

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Diane Schafer Goodstein, Circuit Court Judge

IBN GADSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001855

APPENDIX

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S.C. SUPREME COURT

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1 State of South Carolina)
2 County of Richland) In the Court
3 State of South Carolina,) Of General Sessions
4 Plaintiff,) Case No.: 2018-GS-40-02515
5 vs.) Transcript of Record
6 Ibn Gadson,)
7 Defendant.)
_____)

8
9 July 19, 2017
10 Columbia, South Carolina

11
12 BEFORE:
13 The Honorable Jocelyn Newman, Judge

14
15 APPEARANCES:
16 Kathryn Cavanaugh, Assistant State Solicitor
17 Attorney for the State
18
19 Tivis Southerland, Esquire
20 Attorney for the Defendant

21 ALSO PRESENT:
22 Ibn Gadson

23
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Guilty Plea

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Certificate of Reporter

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EXHIBITS

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NO. DESCRIPTION

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EVDS.

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NONE

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1 Thereupon, the following proceedings were had,

2 MS. CAVANAUGH: The State calls Ibn Gadson.

3 Thereupon,

4 IBN GADSON

5 after having been first duly sworn, testified as follows,

6 THE COURT: Yes, ma'am.

7 MS. CAVANAUGH: Thank you, Your Honor. Standing
8 before you is Mr. Ibn Gadson represented by Tivis
9 Southerland of the private bar. Kathryn Cavanaugh for
10 the State. Investigator Brandon Rasp representing the
11 Sheriff's Department. Mr. Gadson is here pleading guilty
12 to three different sets of charges. The first set comes
13 from a murder that occurred in December of 2015. For
14 those charges he's pleading guilty to armed robbery,
15 attempted armed robbery, assault and battery first, and
16 accessory after the fact of murder. We have negotiated
17 on the armed robbery sentence, Your Honor. We've
18 negotiated a 20 to 25 year range. The other charges are,
19 he's pleading straight up to, however, it is part of the
20 negotiation that they be run concurrent to each other.

21 The second set of charges, while Mr. Gadson was
22 incarcerated at the Alvin S. Glenn Detention Center he
23 was involved in an assault and battery by mob on another
24 inmate. He is pleading guilty to the lesser included
25 assault and battery by mob third degree.

1 And then he's also pleading guilty to a third set of
2 charges. While he was incarcerated on March 14, 2017 he
3 was arrested for throwing bodily fluids on a correctional
4 officer. We have negotiated a time served sentence on
5 that only because we wanted to make sure that he received
6 violent time and that particular, on the negotiated
7 range, and that particular sentence is supposed to be run
8 consecutive so the victim understands that and that's why
9 we're doing time served on that sentence, Your Honor.

10 THE COURT: Okay.

11 MS. CAVANAUGH: In exchange for his plea we are
12 dismissing several charges. We're dismissing two counts
13 of kidnapping from the first set of charges from the
14 murder incident, Your Honor, as well as possession of a
15 weapon during a violent crime and then we're also
16 dismissing a rioting charge that is associated with that
17 assault and battery by mob at Alvin S. Glenn Detention
18 Center.

19 THE COURT: Okay. Mr. Southerland, you represent
20 Mr. Gadson?

21 MR. SOUTHERLAND: Yes. I do, Your Honor.

22 THE COURT: Have you explained to him the charges
23 against him, the possible punishment for each and his
24 constitutional rights?

25 MR. SOUTHERLAND: Yes. I have, Your Honor.

1 THE COURT: To all of these charges does he want to
2 plead guilty or not guilty?

3 MR. SOUTHERLAND: Guilty, Your Honor.

4 THE COURT: Do you agree with his decision to plead
5 guilty.

6 MR. SOUTHERLAND: I do. Yes, ma'am.

7 THE COURT: Do you believe that if required to do so
8 the State could prove him guilty of each of these
9 offenses beyond a reasonable doubt?

10 MR. SOUTHERLAND: Yes. I do, Your Honor.

11 THE COURT: Mr. Gadson, how old are you?

12 MR. GADSON: 20.

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

14 MR. GADSON: GED.

15 THE COURT: What's the last job you had?

16 MR. GADSON: Never been employed.

17 THE COURT: Never?

18 MR. GADSON: No, ma'am.

19 THE COURT: Okay. Are you married?

20 MR. GADSON: No, ma'am.

21 THE COURT: Have any children?

22 MR. GADSON: No, ma'am.

23 THE COURT: Are you currently under the influence of
24 any alcohol or drugs?

25 MR. GADSON: No, ma'am.

1 THE COURT: Do you take any medication of any
2 kind?

3 MR. GADSON: No, ma'am.

4 THE COURT: Do you know of any physical, mental or
5 emotional condition that you have that would prevent you
6 from understanding what you are doing here today?

7 MR. GADSON: No, ma'am.

8 THE COURT: You're here to plead guilty to several
9 charges including armed robbery, attempted armed robbery,
10 assault and battery first degree, accessory after the
11 fact to murder, assault and battery by mob, and throwing
12 bodily fluids; is that correct?

13 MR. GADSON: Yes, ma'am.

14 THE COURT: Solicitor, let me hear the facts.

15 MS. CAVANAUGH: Thank you, Your Honor. I'll start
16 with the first incident. And just so Your Honor is aware
17 the deceased victim's grandmother, Mr. Jeremy Davis'
18 grandmother is here in the courtroom, Ms. Anderson. But
19 the first incident that he's pleading guilty to the
20 charges that stem from the armed robbery and the murder
21 occurred on December the 13th, 2015 around 8:45 p.m. at
22 101 Lee Road which is the location of the Sphinx gas
23 station in Richland County.

24 The victim Mr. Jeremy Davis and his friend also a
25 victim in this case Trevor Wilson were sitting in the

1 car. They used the WiFi frequently at the Sphinx gas
2 station. They had been recently evicted from their
3 apartment due to some, Richland County had arrested
4 several of the occupants of that apartment for some
5 marijuana charges. So they were actually living out of
6 their car.

7 Mr. Gadson and his co-defendant Mr. Austin drove up
8 from the Eutawville area of South Carolina in
9 Mr. Gadson's vehicle. They had devised a plan to rob the
10 occupants of that apartment complex. They did not
11 realize that they no longer lived there so they drove to
12 the apartment complex first and then knew that Mr. Wilson
13 and Mr. Davis hung out at the Sphinx gas station so they
14 went there second and they approached the car. Both of
15 them were armed with pistols. Mr. Gadson actually
16 reached in the car, reached around the driver's door to
17 unlock the vehicle. He got in the back seat where he
18 proceeded to pistol whip Mr. Wilson. They both -- I'm
19 sorry. Yes. Trevor Wilson. There was a struggle in the
20 back seat with Mr. Gadson and Mr. Wilson. He was pistol
21 whipped several times in the face by Mr. Gadson.

22 Mean while the co-defendant Mr. Austin who has
23 already pled guilty to murder was struggling outside of
24 the vehicle with the deceased victim Jeremy Davis. He
25 pointed a gun into the window of where Mr. Davis was

1 sitting. There was a struggle where the victim was
2 trying to prevent himself from getting shot and the
3 co-defendant Mr. Austin eventually did shoot him in the
4 forehead and he died immediately.

5 Once that shot went off, they were able to obtain
6 the deceased victim's gold watch. The gold watch was
7 taken before they fled the scene. They did not take
8 anything from the other victim Trevor Wilson because he
9 didn't really have anything for them to take. They did
10 flee the scene. Trevor Wilson went inside to go get
11 help. Mr. Gadson again was driving the vehicle involved
12 in that crime.

13 Leads were developed after several days when
14 Mr. Gadson's DNA was actually located on the lock, on the
15 interior lock where he was seen on surveillance because
16 this was captured on surveillance. He was seen on
17 surveillance reaching around to pull up to get into the
18 car. So his DNA was found on that interior door lock
19 which led investigators to put him in a photo lineup.
20 Trevor Wilson was not able to actually identify him at
21 that time but he did narrow him down to that looks like
22 him but it wasn't a good pick. But they were able to
23 match the car tag that was seen in the surveillance video
24 and also given by a witness to Mr. Gadson's girlfriend.
25 So they were able to get enough probable cause to obtain

1 warrants on Mr. Gadson.

2 They went to go to Eutawville to speak to him,
3 advise him of his rights. He confessed to being a part
4 of this armed robbery and murder and also implicated his
5 co-defendant Mr. Austin as the shooter. Mr. Austin also
6 subsequently gave a confession describing what his role
7 in the offense was as well as what Mr. Gadson's role was.
8 So those, that's the extent of the facts in that first
9 incident.

10 THE COURT: Okay. Mr. Gadson, is that what happened
11 on December 13th, 2015?

12 MR. GADSON: Yes, ma'am.

13 THE COURT: To the charge of assault and battery
14 first degree do you plead guilty or not guilty?

15 MR. GADSON: Guilty.

16 THE COURT: To the charge of accessory after the
17 fact of murder do you plead guilty or not guilty?

18 MR. GADSON: Guilty.

19 THE COURT: To the charge of armed robbery do you
20 plead guilty or not guilty?

21 MR. GADSON: Guilty.

22 THE COURT: And to the charge of attempted armed
23 robbery do you plead guilty or not guilty?

24 MR. GADSON: Guilty.

25 THE COURT: All right. Let me hear the next

1 incident, Ms. Cavanaugh.

2 MS. CAVANAUGH: Yes, Your Honor. The next incident,
3 this occurred on July 21st of 2016. The victim in this
4 case is Donald Ward. He was a fellow inmate at the Alvin
5 S. Glenn Detention Center in Richland County of
6 Mr. Gadson. Mr. Gadson and about nine other inmates
7 assaulted Mr. Ward causing several injuries, lacerations
8 and contusions to his face. That particular assault
9 ended and then another assault occurred several minutes
10 later before the officers were able to break everybody
11 up. The victim was transported to Palmetto Richland for
12 surgery. The incident was caught on video. Of course,
13 there were correctional officers who observed the actual
14 assault. Officer Pied. I may pronounce his name wrong.
15 He was one of the individuals who was able to identify
16 Mr. Gadson as assaulting Mr. Ward.

17 The victim did require surgery to repair some facial
18 fractures. He also had to have his mouth wired shut for
19 a brief period and he had some loose teeth from this
20 incident. I did meet with Mr. Ward while he was still
21 incarcerated. He was at the Department of Corrections at
22 the time. I brought him over to discuss these actual,
23 this case and he was actually getting out soon and we
24 attempted to call him in order for him to be present here
25 at the number that he said he could be reached at after

1 he was released, however, his father said that he hasn't
2 seen Mr. Ward since he's been released.

3 We are allowing Mr. Gadson to plead guilty to the
4 lesser included on that particular charge due to the fact
5 that I'm not sure that the facial injuries actually meet
6 the standard for assault and battery by mob in the second
7 degree.

8 THE COURT: Let me stop you there. Mr. Gadson, is
9 that what happened with Donald ward on July 21st, 2016?

10 MR. GADSON: Yes, ma'am.

11 THE COURT: Are you sure?

12 MR. GADSON: It wasn't nine people that jumped on
13 him either. It was like a riot.

14 THE COURT: Okay. It wasn't nine people?

15 MR. GADSON: It was like nine people in the riot
16 altogether. It wasn't nine people jumped on him.

17 THE COURT: Okay. Did more than one person jump on
18 him?

19 MR. GADSON: Yes, ma'am.

20 THE COURT: Were you one of those people?

21 MR. GADSON: Yes, ma'am.

22 THE COURT: All right.

23 MR. SOUTHERLAND: If I may. Sorry, Judge.

24 THE COURT: Sure.

25 MR. SOUTHERLAND: The guy got caught stealing

1 canteen from like three different people and then
2 everybody just whipped his behind.

3 THE COURT: Okay. I know. I just want to make sure
4 that what he admits to meets the elements of this crime.

5 MR. SOUTHERLAND: Yes, ma'am.

6 THE COURT: To the charge of assault and battery by
7 mob third degree do you plead guilty or not guilty?

8 MR. GADSON: Guilty.

9 THE COURT: All right. The last incident, Ms.
10 Cavanaugh.

11 MS. CAVANAUGH: Finally, Your Honor, the last
12 incident occurred on March 11th of 2017. Officer Wilson
13 was in the process of actually, who is an employee of the
14 Alvin S. Glenn Detention Center and I have spoken to on
15 at least occasions, he was serving Mr. Gadson his lunch
16 and at that point he threw a carton filled with an
17 unknown liquid substance that was later identified as
18 urine into his face. It caused his eyes to burn. He had
19 to have his eyes flushed out. It says that the incident
20 was actually caught on video as well. I haven't seen
21 that video but I did talk to Mr. Wilson and that's
22 exactly what he related to me that happened on that
23 particular day. And as I stated, he's pleading guilty to
24 time served only because of the complications with it
25 running consecutive to the other negotiations.

1 THE COURT: Understood. Mr. Gadson, is that what
2 happened on March 11th with Officer Wilson?

3 MR. GADSON: Yes, ma'am.

4 THE COURT: To the charge of throwing bodily fluids
5 do you pled guilty or not guilty?

6 MR. GADSON: Guilty.

7 THE COURT: Are you guilty of each of these
8 offenses?

9 MR. GADSON: Yes, ma'am.

10 THE COURT: Outside of the negotiated sentence has
11 anyone promised you anything, threatened you, coerced you
12 or mistreated you in any way to force you to plead
13 guilty?

14 MR. GADSON: No, ma'am.

15 THE COURT: Are you pleading guilty of your own free
16 will and accord?

17 MR. GADSON: Yes, ma'am.

18 THE COURT: Is it your own decision to plead
19 guilty?

20 MR. GADSON: Yes, ma'am.

21 THE COURT: Are you pleading guilty because you are
22 guilty?

23 MR. GADSON: Yes, ma'am.

24 THE COURT: Do you understand that by pleading
25 guilty you are giving up your right to remain silent?

1 MR. GADSON: Yes, ma'am.

2 THE COURT: Do you understand that by pleading
3 guilty you're giving up your right to have a jury
4 trial?

5 MR. GADSON: Yes, ma'am.

6 THE COURT: Do you understand that at a jury trial
7 you could confront and cross examine the State's
8 witnesses against you and present witnesses on your own
9 behalf?

10 MR. GADSON: Yes, ma'am.

11 THE COURT: Do you understand that you could also
12 testify on your behalf if you chose to but no one could
13 force you to and the jury couldn't even consider the fact
14 that you chose not to. Do you understand that?

15 MR. GADSON: Yes, ma'am.

16 THE COURT: Also, the State would be required to
17 prove that you are guilty of each and every one of these
18 offenses beyond a reasonable doubt. Do you understand?

19 MR. GADSON: Yes, ma'am.

20 THE COURT: By pleading guilty here today you're
21 giving up your right to require that to happen. Do you
22 understand?

23 MR. GADSON: Yes, ma'am.

24 THE COURT: Do you want a jury trial on these
25 charges?

1 MR. GADSON: No, ma'am.

2 THE COURT: Do you want me to take your guilty plea
3 here today?

4 MR. GADSON: Yes, ma'am.

5 THE COURT: Are you satisfied with your attorney?

6 MR. GADSON: Yes, ma'am.

7 THE COURT: Has he done everything you have asked
8 him to do?

9 MR. GADSON: Yes, ma'am.

10 THE COURT: Have you had enough time to talk to
11 him?

12 MR. GADSON: Yes, ma'am.

13 THE COURT: Have you understood your talks with
14 him?

15 MR. GADSON: Yes, ma'am.

16 THE COURT: Do you need anymore time to talk to
17 him?

18 MR. GADSON: No, ma'am.

19 THE COURT: Do you have any complaints about him
20 whatsoever?

21 MR. GADSON: No, ma'am.

22 THE COURT: Do you understand the charge of throwing
23 bodily fluids carries a penalty of up to 15 years in
24 prison?

25 MR. GADSON: Yes, ma'am.

1 THE COURT: Consecutive to any other sentence you
2 would serve. Do you understand that?

3 MR. GADSON: Yes, ma'am.

4 THE COURT: Do you understand the charge of assault
5 and battery by mob third degree carries a penalty of up
6 to one year in prison?

7 MR. GADSON: Yes, ma'am.

8 THE COURT: Do you understand the charge of
9 accessory after the fact of murder carries a penalty of
10 up to 15 years in prison?

11 MR. GADSON: Yes, ma'am.

12 THE COURT: Do you understand that the charge of
13 assault and battery first degree carries a penalty of up
14 to 10 years in prison?

15 MR. GADSON: Yes, ma'am.

16 THE COURT: Do you understand that the charge of
17 attempted armed robbery carries a penalty of up to 20
18 years in prison?

19 MR. GADSON: Yes, ma'am.

20 THE COURT: And do you understand that the charge of
21 armed robbery carries a penalty of 10 to 30 years in
22 prison?

23 MR. GADSON: Yes, ma'am.

24 THE COURT: So if you were convicted at trial of
25 each of these offenses and received the maximum sentence,

1 you would be facing 91 years in the Department of
2 Corrections. Do you understand that?

3 MR. GADSON: Yes, ma'am.

4 THE COURT: I understand that your attorney and the
5 State have negotiated a sentence in the range of 20 to 25
6 years for you. Do you understand that?

7 MR. GADSON: Yes, ma'am.

8 THE COURT: And that's on all these charges
9 collectively. Is that your understanding?

10 MR. GADSON: Yes, ma'am.

11 THE COURT: Do you want me to accept that
12 negotiation?

13 MR. GADSON: Yes, ma'am.

14 THE COURT: Also, two of these offenses are
15 considered most serious offenses under the law under the
16 two strikes law. There's a three strikes law, a two
17 strikes law. People say you get three strikes and you're
18 out. There's also a two strikes law. So after two
19 strikes if you were to be convicted of another crime,
20 then the State could seek life without parole for certain
21 crimes against you. Do you understand that?

22 MR. GADSON: Yes, ma'am.

23 THE COURT: And if I accept your plea, you will
24 already have two strikes. Do you understand that?

25 MR. GADSON: Yes, ma'am.

1 THE COURT: Knowing that do you still want to plea
2 guilty?

3 MR. GADSON: Yes, ma'am.

4 THE COURT: Are you sure?

5 MR. GADSON: Yes, ma'am.

6 THE COURT: Have you understood all of my
7 questions?

8 MR. GADSON: Yes, ma'am.

9 THE COURT: I'm sorry. The charge of throwing
10 bodily fluids has not been presented to the Richland
11 County grand jury. It could be presented to the grand
12 jury and they would meet and determine whether there's
13 even enough evidence to prosecute you. Do you understand
14 that?

15 MR. GADSON: Yes, ma'am.

16 THE COURT: Do you want the grand jury to meet about
17 that case or do you want to waive that right?

18 MR. GADSON: Waive it.

19 THE COURT: Okay. Do you have any questions about
20 what you're doing here today?

21 MR. GADSON: No, ma'am.

22 THE COURT: Any questions about the process that's
23 happening right here?

24 MR. GADSON: No, ma'am.

25 THE COURT: Do you understand everything?

1 MR. GADSON: Yes, ma'am.

2 THE COURT: Don't need any more time to talk to your
3 lawyer?

4 MR. GADSON: No, ma'am.

5 THE COURT: Okay. I find there's a substantial
6 factual basis for Mr. Gadson's plea. He's made the plea
7 freely and voluntarily, knowingly and intelligently with
8 the advice of competent counsel with whom he says he is
9 satisfied and I will accept his plea. Ms. Cavanaugh,
10 anything else from the State including his criminal
11 record?

12 MS. CAVANAUGH: Your Honor, he does not have an
13 adult criminal record. I apologize. He does have a
14 history in family court as a juvenile. I don't have that
15 with me. It's in my other notebook. But he does not
16 have an adult record. I believe he was 18 at the time of
17 this offense so he's been incarcerated since he's turned
18 18. The victim's grandmother, the deceased victim's
19 grandmother does not wish to address the court. We have
20 been obviously in communication with her and her son, the
21 victim's father throughout this entire case.

22 The co-defendant in this case did receive 35 years.
23 He pled to murder and the other associated charges. We
24 are giving obviously Mr. Gadson a benefit in this
25 particular case. He was not the shooter and I do believe

1 that this case clearly fell under the felony murder
2 doctrine. I don't believe that there is evidence in this
3 case that support that they planned to kill anyone,
4 however, it occurred. They were both armed with pistols
5 and planned the armed robbery which obviously could
6 always result in a fatal result. So on behalf of the
7 family of Mr. Davis and the other victims in this case
8 as well as the State and the Sheriff's Department we, of
9 course, think that the full 25 years is appropriate, Your
10 Honor.

11 THE COURT: Okay. Mr. Southerland.

12 MR. SOUTHERLAND: Thank you, Your Honor. May it
13 please the Court. I think initially sort of going in
14 reverse here and address the problems down at the jail,
15 Judge. As I mentioned earlier before someone had taken
16 the canteen out of three people's cells. They found out
17 who it was and a bunch of guys beat the guy up and the
18 guy got beat up pretty badly. Following that Mr. Gadson
19 spent a substantial amount, he spent eight months in the
20 shoe following this incident and the bodily fluids
21 incident is inexplicable except to say that, you know,
22 there's a grievance process at the jail if you have got a
23 problem with an inmate and after eight months of
24 isolation it's something that I would not have expected.

25 Of course, getting to know him over the last year

1 and a half I would not have expected any of this really.
2 But he is sorry about those offenses and has taken
3 responsibility for those offenses but really what he's
4 here about is his decision to follow up on Ryan, the
5 co-defendant's idea and to -- Initially they were
6 supposed to come to Columbia and get some weed, hang out
7 with some girls, whatever happens with teenagers, late
8 teen at that point on these days I should say.

9 On the way up, my understanding is that on the way
10 up from Eutawville Ryan floated the idea to, why don't we
11 just rob them and take their weed and their money. He
12 agreed and went along with it and certainly materially
13 participated in it as much as you can as you heard from
14 the facts. He agreed with it. Went and got in the
15 vehicle. He tussled with the other young man and here we
16 are these guys in a car with a couple of ideas that, oh,
17 well, let's do this and so many, the ripples across the
18 spectrum, so many lives of so many people are where we
19 are today.

20 He and I have had a chance to speak about this a lot
21 and he was, initially he told the police everything. He
22 didn't withhold anything from the police initially. Had
23 further interviews in the run up to the trial that was
24 scheduled. It was four or five weeks ago I believe,
25 Judge, where he continued to provide material assistance

1 to the degree that he could and all along we have
2 discussed that there's nothing he's going to be able to
3 do that's going to bring this young man back. Nothing at
4 all. And I think taking responsibility under the
5 circumstances, being cooperative, you know, that's
6 important.

7 There's a 20 to 25 year range here which means
8 approximately the amount of time that he has been on
9 earth he will spend in the Department of Corrections and
10 not in a good facility. It could be Lee County or some
11 other place with mattress fires and stabbings all the
12 time. But we have discussed those limited things he
13 would be able to do. Because really all that he can do
14 at the end of this is come back out, pay his debt and
15 come back out and contribute to society in some way
16 whatever way that he's able.

17 We have discussed a lot of options. Talked about
18 plumbing. I told him about my favorite story about guys
19 looking for something to do. Sometimes I wish that I had
20 just gotten out of high school and become a plumber and
21 here's why. A guy comes over to my house and pulls
22 something out of the wall. He's in and out of there in
23 10 minutes, 105 bucks. And I have got some clients,
24 informed clients that do HVAC, electricians, and there's
25 good money in these trades and you'll have a more limited

1 opportunity to engage in this but there are opportunities
2 there to work on trades while he will be incarcerated.

3 We basically had the conversation you can go there
4 and play cards the whole time or you take what classes
5 are available to you, be ready to come out on the other
6 side and try to give something back to society.

7 But that day, those decisions in that couple of hour
8 period are never going to go away. He's going to have to
9 think about them this entire time and also to think about
10 the future. He's been deeply remorseful from the
11 beginning understanding, you know, that there's nothing
12 that he can do to take it back. That if Your Honor were
13 to sentence him to 20 years, that would be 17 plus years
14 of incarceration and two years of community supervision
15 and I think in light of the degree of cooperation I think
16 that would be ideal, I mean in the range or to come in
17 somewhere in the middle but ultimately he's here to just
18 put this to rest for the family and then to go do his
19 time, Judge. So I ask the Court to consider the 20 year
20 part of the range that would give him plenty of time to
21 think and then also to get himself together and then
22 prepare for re-entry into society, Judge.

23 THE COURT: Anything you want to say, Mr. Gadson?

24 MR. GADSON: No, ma'am.

25 THE COURT: Nothing at all?

1 MR. GADSON: The only thing I just feel like, like
2 he say, just a couple hours one day and I went to go get
3 something and then it just spiraled out of control and
4 couldn't handle it and I can't bring it back. You know
5 what I'm saying? I ain't going to looking to go kill
6 nobody. I just went there to try to get some weed, go
7 chill. You know what I'm saying? I'm willing to go
8 ahead and take my time and do what I got to do to come
9 back into society and be a good person.

10 THE COURT: Anything else from anyone else?

11 MS. CAVANAUGH: No, Your Honor. I just stand by
12 what I originally stated after the facts.

13 THE COURT: Okay. All right. Mr. Gadson, on the
14 charge of throwing bodily fluids the sentence is time
15 served. On the charge of assault and battery by mob
16 third degree the sentence is one year. On the charge of
17 accessory after the fact to murder the sentence is 15
18 years. On the charge of assault and battery first degree
19 the sentence is 10 years. On the charge of attempted
20 armed robbery the sentence is 20 years. And on the
21 charge of armed robbery the sentence is 25 years. All
22 sentences to run concurrent.

23 MR. SOUTHERLAND: Thank you, Your Honor.

24 MS. CAVANAUGH: Thank you, Your Honor.

25 THE COURT: Let's take five minutes.

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 19th day of July, 2017.

11 I FURTHER CERTIFY that the forgoing 24 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 29th day of July, 2018.

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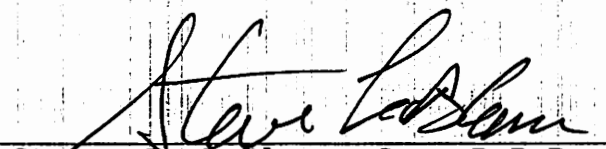
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Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

WITNESSES

(S) Inv. Brandon Rast
- RCSD

ARREST WARRANT NUMBER

2015A4010601200

ACTION OF GRAND JURY

TRUE BILL

Kathryn Whaley
Foreperson of Grand Jury

Date:

APR 14 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-40-01861

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2016

116

THE STATE
vs.

Ibn Gadson

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions. convened on April 13, 2016. the
Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Ibn Gadson did in Richland County on or about December 13, 2015,
commit robbery by feloniously taking from the person or presence of Jeremy
Davis, by means of force or intimidation, goods or monies of Jeremy Davis, such
goods or monies being described as a gold watch, with the intent to deprive the
owner permanently of such property, while armed with a pistol or other deadly
weapon, or while alleging, either by actions or words, that he was armed while
using a representation of a deadly weapon or any object which a person present
during the commission of the robbery reasonably believed to be a deadly weapon.
All in violation of §16-11-330(A), S.C. Code of Laws (1976, as amended).

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



DAN JOHNSON. SOLICITOR

WITNESSES

(S) Inv. Brandon Rast
- RCSD

ARREST WARRANT NUMBER

2015A4010601204

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 14 2016

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-40-01667

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2016

116

THE STATE

vs.

Ibn Gadson

**Indictment for
ATTEMPTED ARMED ROBBERY**

SC Code: 16-11-0330(B)

CDR Code: 0026

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA }
COUNTY OF RICHLAND }

INDICTMENT

At a Court of General Sessions. convened on April 13. 2016. the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Ibn Gadson did. along with co-defendants in Richland County
on or about December 13. 2015. while armed with a deadly weapon.
attempt to take and carry away the personal property from or in the
immediate presence of Trevor Wilson with intent to deprive him of
possession by use of force. threats. or intimidation. in violation of Section
16-11-0330(B). S. C. Code of Laws. (1976. as amended).

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



DAN JOHNSON. SOLICITOR

WITNESSES

(S) Inv. Brandon Rast
- RCSD

ARREST WARRANT NUMBER

2015A4010601206

ACTION OF GRAND JURY

TRUE BILL

Brandon Rast
Foreperson of Grand Jury
Date:

APR 14 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-40-01670

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2016

116

**THE STATE
vs.**

Ibn Gadson

**Indictment for
ASSAULT & BATTERY 1ST DEGREE**

**SC Code: 16-03-600(c)(1)
CDR Code: 3412**

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA }
)
 COUNTY OF RICHLAND }

INDICTMENT

At a Court of General Sessions. convened on April 13, 2016. the
 Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY 1ST DEGREE

That Ibn Gadson did in Richland County on or about December 13, 2015. commit an assault and battery upon the victim. Trevor Wilson. by unlawfully injuring or offering or attempting to injure the victim and the act was accomplished by means likely to produce death or great bodily injury or the act occurred during the commission of a robbery. burglary. kidnapping. or theft. All in violation of S.C. Code of Laws. §16-03-0600(c)(1).

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



 DAN JOHNSON, SOLICITOR

WITNESSES

(S) Inv. Brandon Rast
- RCSD

ARREST WARRANT NUMBER

2015A4010204108

ACTION OF GRAND JURY

TRUE BILL

Brandon Rast
Foreperson of Grand Jury

Date:

APR 14 2016

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-40-01659

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2016

116

**THE STATE
vs.**

Ibn Gadson

**Indictment for
MURDER**

SC Code: 16-03-0010

CDR Code: 0116

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA }
 }
 COUNTY OF RICHLAND }

INDICTMENT

At a Court of General Sessions, convened on April 13, 2016, the
 Grand Jurors of Richland County present upon their oath:

MURDER

That Ibn Gadson did in Richland County, on or about December 13, 2015, kill the victim, Jeremy Davis, with malice aforethought, either express or implied, by means of a gunshot wound, and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, (1976, as amended).

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



 DAN JOHNSON, SOLICITOR

WITNESSES

(S) Inv. April Owens
- USC Police Dept.

T Jordan

ARREST WARRANT NUMBER

2016A4011200299

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 15 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-40-00335

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2017

116

**THE STATE
vs.**

Ibn Gadson

**Indictment for
ASSAULT & BATTERY BY MOB, 2ND
DEGREE**

SC Code: 16-03-0210 (C)
CDR Code: 3432

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 15, 2017, the
 Grand Jurors of Richland County present upon their oath:

ASSAULT & BATTERY BY MOB, 2ND DEGREE -
SERIOUS BODILY INJURY RESULTS

That Ibn Gadson did in Richland County on or about July 21, 2016,
 commit an assault and battery by a mob in upon the victim, DONALD
 WARD, to wit: defendant and other inmates did injure the victim using
 closed fists and/or stomping the victim about the head and/or body, which
 resulted in serious bodily injury requiring surgery to repair multiple facial
 fractures. All in violation of Section 16-3-210(C), SC 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.



DAN JOHNSON, SOLICITOR

WITNESSES

— RCSD

ARREST WARRANT NUMBER

2017A4011200163

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-40-04243

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2017

116

THE STATE
vs.

Ibn Gadson

Indictment for
THROWING BODILY FLUIDS BY A
PRISONER ON A CORRECTIONS OFFICER

SC Code: 24-13-0470
CDR Code: 2526

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

Ibn Gadson
Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on _____, the Grand Jurors of Richland County present upon their oath:

THROWING BODILY FLUIDS BY A PRISONER ON
A CORRECTIONS OFFICER

That Ibn Gadson did on or about March 11, 2017, while in Richland County, throw or attempt to throw bodily fluids, to wit: urine onto the face of Officer Ellijah Wilson, an employee of a local correctional facility, in violation of Section 24-13-0470 S. C. Code of Laws, (1976 as amended).

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Ibn Gadson

AKA:

Race: BLACK Sex: M Age: 20DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] StCity, State, Zip: Fortlawville, SC 29048DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: Kathryn Cavanaugh 77690 [Signature] 69695
 Cavanaugh, Kathryn SC Bar# Defendant Attorney for Defendant SC Bar#
WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 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 Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: July 19, 2017☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4001661A/W#: 2015A4010601200Date of Offense: 12/13/2015S.C. Code §: 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: Kathryn Cavanaugh 77690 [Signature] 69695
 Cavanaugh, Kathryn SC Bar# Defendant Attorney for Defendant SC Bar#
WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 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 Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: July 19, 2017☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

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 Code: 2757Sentence Date: July 19, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

INDICTMENT/CASE#: 2016GS4001667

Ibn Gadson

A/W#: 2015A4010601204

AKA:

Date of Offense: 12/13/2015

Race: BLACK Sex: M Age: 20

S.C. Code §: 16-11-0330(B)

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 0026

Address: [REDACTED] St

City, State, Zip: Eutawville, SC 29048

DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

*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: Robbery / Attempted armed, or allegedly 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(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

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

ATTEST: Kathryn Cavanaugh 77690 Ibn Gadson [Signature] [Signature]
Cavanaugh, Kathryn SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: July 19, 2017

☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. or Job Corp. _____

Recipient:

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

Random Drug/Alcohol testing ☐

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

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

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

\$ _____ paid to Public Defender Fund

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

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

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

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

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

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

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

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

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

TOTAL

\$

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

Presiding Judge

Court Reporter: [Signature]

Judge Code: 2757

SCCA/217 (07/2016)

Sentence Date: July 19, 2017

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Ibn Gadson

AKA:

Race: BLACK Sex: M Age: 20DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] StCity, State, Zip: Eutawville, SC 29048DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery 1st degree

IN THE COURT OF GENERAL SESSIONS (0-10 yrs.)

INDICTMENT/CASE#: 2016GS4001670A/W#: 2015A4010601206Date of Offense: 12/13/2015S.C. Code § : 16-03-600(c)(1)CDR Code #: 3412

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-600(c)(1) of the S.C. Code of Laws, bearing CDR Code # 3412☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Kathryn Cavanaugh 77690 Oleyn Gadson 69695
Cavanaugh, Kathryn SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 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 Services standard conditions of probation, which are incorporated by reference:

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: July 19, 2017☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

TOTAL \$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

_____ 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

Judge Code: 2751

Sentence Date:

July 19, 2017

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Ibn Gadson

AKA:

Race: BLACK Sex: M Age: 20

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] St

City, State, Zip: Eutawville, SC 29048

DL#: [REDACTED] SID#: [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was
TO: Accessory / Accessory after the fact to Felony A, B, C or Murder

in violation of § 16-01-0055 of the S.C. Code of Laws, bearing CDR Code # 2413

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

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

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

ATTEST: Kathryn Cavanaugh 77690 Ibn Gadson 69685
Cavanaugh, Kathryn SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 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 Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: July 19, 2017
☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

*Fine:

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

TOTAL \$

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2751

Sentence Date: July 19, 2017

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Ibn Gadson

AKA:

Race: BLACK Sex: M Age: 20DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] StCity, State, Zip: Eutawville, SC 29048DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Assault & Battery by Mob, 3rd degreein violation of § 16-03-0210 (D) of the S.C. Code of Laws, bearing CDR Code # 3433☒ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Kathryn Cavanaugh 77690 Ibn Gadson 69695
Cavanaugh, Kathryn SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-23-135.

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 PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPSRecipient:

*Fine:

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

TOTAL \$

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4000335A/W#: 2016A4011200299Date of Offense: 7/21/2016S.C. Code §: 16-03-0210 (C)CDR Code #: 3432

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSJuly 19, 2017§ 24-13-40 to be calculated and appliedObtain 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 FundOther: ☐ 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 Code: 2757Sentence Date: July 19, 2017

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Ibn Gadson

AKA:

Race: BLACK Sex: M Age: 20DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] StCity, State, Zip: Eutawville, SC 29048DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Prisoners / Throwing of bodily fluids by prisoner, detainee on state corrections or local law enforcein violation of § 24-13-0470

of the S.C. Code of Laws, bearing CDR Code #

2526☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Kathryn Cavanaugh 77690 Ibn Gadson [REDACTED]
Cavanaugh, Kathryn SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☒ County Detention Center,for a determinate term of time served 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 Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4004243A/W#: 2017A4011200163Date of Offense: 3/11/2017S.C. Code § : 24-13-0470CDR Code #: 2526

SENTENCE SHEET

Time served in☐ CONVICTED OF or ☒ PLEADS

[Handwritten: ORIGINAL]

 days/hours Public Service EmploymentObtain 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 FundOther: ☐ 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 Code: 2157Sentence Date: July 19, 2017

STATE OF SOUTH CAROLINA)

County of Richland)Ibn Gadson)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018CP400 2515APPLICATION FOR
POST-CONVICTION RELIEF2018 MAY - 8 AM 10:14
JENNIFER W. MCBRIDE
C.P.C.S.RICHLAND COUNTY
FILED**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention McCormick
2. Name and location of Court which imposed sentence Richland County
Judicial Center
3. Name(s) of co-defendant(s) (if any) Bryan Alston
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016GS4001661
 - (b) 2016GS4001667

(c) 2016GS4001659

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

(a) 7/19/2017, 25 years(b) 7/19/2017, 20 years(c) 7/19/2017, 15 years

6. Check whether a finding of guilty was made:

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

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

No

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

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

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

(a) I didn't know I could've appealed it.(b) I didn't know how to appeal

(c) _____

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

- (a) Ineffective assistance counsel
- (b) Trail counsel gave erroneous advise to plea guilty
- (c) _____

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

- (a) My counsel told me if I didn't plea I couldn't face the
- (b) death penalty.
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- 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? No trial
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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

(a) the name and address of each attorney who represented you:
 i. Trevor Sutherland
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Arraignment and plea, also sentencing.
 ii. _____
 iii. _____

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

I, Ilon Gadson, 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.

Ilon Gadson
Applicant

SWORN or affirmed to and subscribed before me this

26 day of April, 2018

G. Franklin
Notary Public

My Commission Expires: 12-16-2019

FILED
2018 MAY -8 AM 10:14
JEANETTE W. McBRIDE
C.C.P. & G.S.

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

I would like to have my sentencing reconsidered.

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

No

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Ibn Gadson, 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.

Ibn Gadson

SWORN to and subscribed before me this 26
day of April, 2018.

[Signature] (L.S.)
Notary Public

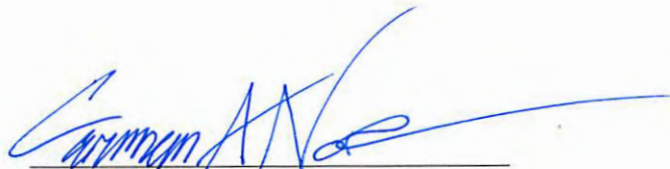
My Commission Expires: 12.16.2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2018-CP-40-02515
	)	
IBN GADSON, #373198	)	
	)	
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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

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

DATED this the 10th day of July, 2018.



Carmen A. Nord, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Ibn Gadson, #373198,	)	Case No.: 2018-CP-40-02515
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on May 8, 2018, would respectfully show this Court:

I.

Ibn Gadson (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In April 2016, the Richland County Grand Jury indicted Applicant for murder (2016-GS-40-1659), armed robbery (2016-GS-40-1661), two counts of kidnapping (2016-GS-40-1665, -1668), possession of a weapon during the commission of a violent crime (2016-GS-40-1666), attempted armed robbery (2016-GS-40-1667), and first-degree assault and battery (2016-GS-40-1670). In March 2017, Applicant was subsequently indicted for second-degree assault and battery by mob (2016-GS-40-0335), and participating in a riot by prisoners (2017-GS-40-0334). Additionally, Applicant waived presentment on one count of throwing bodily fluids on a correctional officer (2017-GS-40-4243). Tivis Sutherland, Esquire, represented Applicant. Assistant Solicitor Kathryn Cavanaugh, Esquire, prosecuted the case.

On July 19, 2017, Applicant pleaded guilty before the Honorable Jocelyn Newman as indicted to armed robbery, attempted armed robbery, and first-degree assault and battery, to the

lesser-included charges of accessory after the fact to murder and third-degree assault and battery by mob. Pursuant to a negotiation with the State, Judge Newman sentenced Applicant to imprisonment for concurrent terms of twenty-five years for armed robbery, twenty years for attempted armed robbery, fifteen years for accessory after the fact, ten years for first-degree assault and battery, and one year for third-degree assault and battery by mob. Judge Newman also sentenced Applicant to a consecutive term of time-served for throwing of fluids on a correctional officer. In exchange for Applicant's plea, the State agreed to dismiss the indictments for both counts of kidnapping, possession of a weapon during the commission of a violent crime, and rioting. Applicant did not appeal his conviction or sentence.

Attached to this Return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject convictions, 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.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Trial counsel gave erroneous advice to plea guilty"
 - b. "My counsel told me if I didn't plea I could've face the death penalty"

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so

undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove 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). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

IV.

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

V.

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

{This space intentionally left blank.}

VI.

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

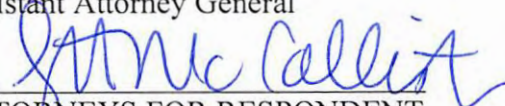
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

7/16, 2018

Ibn Gadson,
Plaintiff,
vs.
State of South Carolina,
Defendant.

June 20, 2019
Columbia, South Carolina

B e f o r e:

The Honorable Dianne Schaffer Goodstein, Judge

A p p e a r a n c e s:

Brianna Schill, Esquire,
Attorney for the Plaintiff

Jonathan Waller, Esquire,
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Case Called/Ms. Schill	4
IBN GADSON	
DIRECT	CROSS
REDIRECT	RE-CROSS
Mr. Waller	7
	19
Ms. Schill	17
TIVIS SUTHERLAND	
Ms. Schill	21
	32
Mr. Waller	27
Decision by the Court	36
Certificate Page	37

EXHIBITS

-- NO EXHIBITS ENTERED --

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1 (On the record at 12:09 p.m.)

2 THE COURT: You want to introduce the case, Ms.
3 Schill?

4 MS. SCHILL: I can do it. Thank you, your Honor.

5 THE COURT: Okay.

6 MS. SCHILL: May it please the Court.

7 THE COURT: Yes.

8 MS. SCHILL: The next matter is *Ibn Gadson v. The*
9 *State of South Carolina*, docket No. 2018-CP-40-2515.

10 During it's April, 2016 term, the Richland County
11 Grand Jury indicted Applicant for murder, armed robbery,
12 two counts of kidnapping, possession of a weapon during
13 the commission of a violent crime, attempted armed
14 robbery, and first degree assault and battery.

15 In March, 2017, Applicant was subsequently indicted
16 for second degree assault and batter by mob and
17 participating in a riot by prisoners. Additionally
18 Applicant waved presentment on one count of throwing
19 bodily fluids on a correctional officer. Tivis
20 Sutherland, Esquire represented Applicant, and Assistant
21 Solicitor Kathryn Cavanaugh prosecuted the case.

22 On July 19, 2017, Applicant pled guilty before the
23 Honorable Jocelyn Newman, as indicted, to armed robbery;
24 attempted armed robbery; and first degree assault and
25 battery; and to the lesser included charges of accessory

1 after the fact to murder; and third degree assault and
2 battery by mob.

3 Pursuant to negotiations with the State, Judge Newman
4 sentenced Applicant to imprisonment for concurrent terms
5 of 25 years for armed robbery, 20 years for attempted
6 armed robbery, 15 years for accessory after the fact, 10
7 years for first degree assault and battery, and 1 year for
8 third degree assault and battery by -- by mob. Judge
9 Newman also sentenced applicant to a consecutive term of
10 time served for throwing of bodily fluids on a
11 correctional officer.

12 In exchange for Applicant's plea, the State agreed to
13 dismiss the indictments for both counts of kidnapping,
14 possession of a weapon during the commission of a violent
15 crime, and rioting. Applicant did not appeal his
16 conviction or sentence.

17 On May 8, 2018, Applicant filed his timely PCR
18 application alleging that trial counsel was ineffective
19 for giving out, quotes -- quote, "erroneous advice to
20 plead guilty; and two, because counsel, quote, "told me if
21 I didn't plead, I could face the death penalty."

22 And Applicant is present today and represented by
23 Jonathan Waller, and I just ask that he clarify that those
24 are the only allegations.

25 MR. WALLER: Your Honor, that -- that's correct.

1 This -- the allegations are ineffective assistance of
2 counsel and involuntary guilty plea.

3 Judge, the one thing I -- I would like to clarify,
4 Mr. Gadson, when we filled his application -- he obviously
5 did so without the benefit of an attorney -- the -- the
6 remedy he was seeking was sentence for reconsideration. I
7 obviously discussed that with him that that's not a remedy
8 that's available to him. So he understands that, Judge.
9 So that -- that's not -- that -- that's not something that
10 he -- he's seeking.

11 So that -- that's the only clarification I -- I would
12 make. But those are the allegations, Your Honor.

13 THE COURT: Very well. Thank you.

14 MR. WALLER: Thank you.

15 THE COURT: You may call your first witness.

16 MR. WALLER: Ibn Gadson.

17 (Mr. Gadson comes forward.)

18 THE COURT: And while Mr. Gadson's coming around to -
19 - to the witness stand, we'd just clarify by -- and I'll
20 recognize an amendment, without objections from -- from
21 the State, that the remedy sought is not a sentence
22 reduction, which is not available as a remedy, but rather
23 a new trial.

24 MS. SCHILL: Yes, Your Honor.

25 THE COURT: All right.

DIRECT EXAMINATION BY MR. WALLER - IBN GADSON

7

1 MR. WALLER: Thank you, Your Honor.

2 COURT CLERK: State your full name, please.

3 MR. GADSON: Ibn Gadson.

4 COURT CLERK: Would you spell your first name,
5 please?

6 MR. GADSON: I-B-N.

7 COURT CLERK: Your last name.

8 MR. GADSON: G-A-D-S-O-N.

9 IBN GADSON, having been first
10 duly sworn, testifies as follows:

11 THE COURT: And Mr. Gadson, I'm going to ask you to
12 state your name. This is a sound check. I just want to
13 make sure I can hear you.

14 MR. GADSON: Ibn Gadson.

15 THE COURT: I can hear you. Thank you.

16 Your witness, Mr. Waller.

17 MR. WALLER: Thank you, Your Honor. May it please
18 the Court.

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. WALLER:

22 Q Good afternoon now, Mr. Gadson. How are you today?

23 A Good, and yourself.

24 Q I'm doing pretty well.

25 Mr. Gadson, you -- you had three separate sets of

1 charges; is that right?

2 A Yes, sir.

3 Q What was the first set of charges?

4 A Armed robbery, murder, kidnapping, the assault; and
5 then I had another charge of rioting, assault by mob.
6 Then another charge of throwing bodily fluids.

7 Q Okay. The -- the murder and armed robbery and
8 kidnapping charges, that was -- took place outside of the
9 apartment complex; is that right?

10 A Yes, sir.

11 Q Okay. That was the first set; is that right?

12 A Yes, sir.

13 Q All right. On those charges, who was your attorney?

14 A Tivis Sutherland.

15 Q Okay. How did Mr. Sutherland come to represent you?

16 A He said he -- what's that word called when me and my
17 co-defendant couldn't have same Public Defender Office
18 representing us?

19 Q It's "conflict"?

20 A Con -- yeah, conflict of interest.

21 Q Okay. So was he appointed to represent you or did
22 you hire him?

23 A Appointed.

24 Q Okay. When was the first time you think you met with
25 Mr. Sutherland?

1 A Probably around -- I would probably say about
2 January/February, 2016.

3 Q Okay. When you first met with him, did you just have
4 the one set of charges or had you picked up some
5 additional charges at that point?

6 A When I first met with him, just the first set of
7 charges.

8 Q Okay. In that first of set that -- the first time
9 you met with him, you were -- had pending murder, pending
10 armed robbery, pending kidnapping, maybe some other
11 charges related to that incident?

12 A Yes, sir.

13 Q What did y'all talk about?

14 A Really nothing -- really we was just getting to know
15 each other and he was saying he was trying to get a better
16 understanding of my case.

17 Q Okay. Did y'all -- did he have any discovery at that
18 time?

19 A No, sir.

20 Q Okay. Did y'all discuss your constitutional rights?

21 A Yes, sir.

22 Q Okay. With regard to your constitutional rights, do
23 you remember what you talked about?

24 A Just the right to a trial, stand trial, stuff like
25 that.

1 Q Okay. Had you given a statement to law enforcement
2 at that time?

3 A Yes, sir.

4 Q Okay. Did y'all talk about your statement at all?

5 A Yes, sir.

6 Q Okay. What did y'all talk specifically about, about
7 your statement, if you recall?

8 A I really don't recall, but I remember we talked about
9 it.

10 Q Okay. Did y'all talk about possibly challenging your
11 statement or -- or anything along those lines?

12 A Not that I can remember.

13 A Okay. Your co-defendant had given -- in those
14 charges, had given a statement as well; is that right?

15 A Yes, sir.

16 Q Did y'all talk about that statement?

17 A No, sir.

18 Q Okay. Did you -- did you know he'd given a statement
19 at that point?

20 A Yes, sir.

21 Q Okay. But -- but then y'all didn't have full
22 discovery.

23 A No, sir.

24 Q Okay. When did you pick up the second set of
25 charges, the assault and battery by mob?

1 A During the altercation at the detention center.

2 Q Okay. About how long after the murder charge did
3 those come up?

4 A Probably about -- say round about six -- six months.
5 Somewhere around there.

6 Q Okay. You met with Mr. Sutherland how many times at
7 that point before that?

8 A Probably about two or three times.

9 Q Okay. When you picked up those new charges, did you
10 and Mr. Sutherland talk specifically about the assault and
11 battery by mob charges?

12 A Yes, sir.

13 Q Okay. Did y'all discuss how it might effect your
14 other charges?

15 A Yes, sir.

16 Q Okay. How about the third set you picked up,
17 throwing bodily fluids.

18 A Yes, sir.

19 Q Okay. Did you and Mr. Sutherland meet after those
20 charges?

21 A No, sir.

22 Q Okay. You didn't meet after those?

23 A (No audible response.)

24 Q Okay. When you and Mr. Sutherland met, when did
25 y'all have a chance to go over some discovery?

1 A We never went over no discover -- discovery.

2

3 Q Okay.

4 A Except the statements.

5 Q He went over the statements. Okay.

6 Was there -- there was some DNA testing done in your
7 case; is that right?

8 A I think so.

9 Q Okay. Did you ever -- did you and Mr. Sutherland
10 ever have a chance to talk about the DNA evidence in your
11 case?

12 A No, sir.

13 Q Okay. Is it your understand that your DNA was found
14 in the vehicle from the armed robbery?

15 A No, sir.

16 Q Okay. Did you and Mr. Sutherland talk about what DNA
17 was present at that scene?

18 A No, sir.

19 Q Okay. Was there any video from any of the incidents?

20 A They -- they were saying there was video. I had
21 asked to see the video on a different occasions, but I
22 ain't [sic] never seen the video.

23 Q Okay. So your understanding was that there -- that a
24 video existed?

25 A Yes, sir.

1 Q Okay. And you asked -- who did you say you'd asked -
2 - who did you ask to see the video?

3 A Tivis, my attorney.

4 Q Okay. Do you know if he acknowledged that he had a
5 copy of the video?

6 A No, sir. He said he didn't.

7 Q Okay. Before you pled guilty, do you know if he ever
8 obtained a copy?

9 A No, sir.

10 Q You don't know or --

11 A I don't -- I don't know.

12 Q Okay. Did you and Mr. Sutherland ever talk about any
13 defences that you might have?

14 A No, sir.

15 Q Okay. You testified earlier that when you only had
16 the murder charges, y'all had talked about your
17 constitutional right to trial.

18 A Yes, sir.

19 Q What else did y'all talk about -- about a trial?

20 A Just the right that I have when -- I had the right to
21 -- to go to trial.

22 Q Okay. Did y'all ever discuss going to trial?

23 A Yes, sir.

24 Q Okay. What did y'all talk about when you -- when you
25 were discussing your trial?

1 A That it would probably a slim chance, but we had a
2 fighting chance.

3 MR. WALLER: Okay.

4 THE COURT: What -- I'm so sorry. I -- I couldn't
5 hear. Could you say that again for me?

6 THE WITNESS: That we had a slim chance, but we had a
7 fighting chance.

8 Q Okay. Did you and Mr. Sutherland ever begin
9 preparing to go to trial?

10 A No, sir.

11 Q Okay. Did you ask him anything about going to trial?

12 A Yes, sir.

13 Q Okay. What did you ask him?

14 A That, like, if I went to trial what -- what he think
15 would happen, how much time I'd get, things in that
16 nature.

17 Q Okay. Did you ever ask him about any defenses that
18 you thought you might have?

19 A No, sir.

20 Q Okay. Did you ever give him any information about
21 the incident or any witnesses you wanted him to talk or
22 anything you wanted him to investigate?

23 A No, sir.

24 Q Okay. What did you tell him about what you wanted to
25 do as trial went?

1 A I really didn't -- at that point in time, it was just
2 talk -- you know what I'm saying -- I wanted to really
3 see, like, what the motion was and what all evidence they
4 had against me.

5 Q Okay. So y'all talked about trial and you wanted
6 some information from him. Did you ever get the
7 information that you asked?

8 A No, sir.

9 Q Okay. At some point, you changed your mind and you
10 pled guilty, okay. Is that right?

11 A Yes, sir.

12 Q What -- what lead to that decision?

13 A I really -- because my co-defendant had went to court
14 and caught his times. So it was like they were kind of,
15 like, pressuring me and they sent me up. And so I was
16 just like -- and I wanted to see the video, but I couldn't
17 see the video. So I was, like, I just take on the plea
18 that it came with.

19 Q Okay. Were y'all -- were y'all on a trial roster or
20 anything like that?

21 A No.

22 Q That you know of.

23 A No.

24 Q Okay. At the time you pled guilty, you think Mr.
25 Sutherland was prepared to go to trial at that point?

1 A No, sir.

2 Q Okay. You've raised in your --in your application
3 that you were told you could face the death penalty. Who
4 told you that?

5 A Tivis.

6 Q Okay. Did -- did you ask him any questions about
7 that?

8 A No, not really.

9 Q Okay. Did he explain to you why -- why you would be
10 eligible for the death penalty

11 A Yeah, he said it was -- he said it was a capital
12 offense.

13 Q Okay.

14 (Brief pause.)

15 Q Mr. Gadson, you ultimately pled guilty. What -- what
16 do you believe that Mr. Sutherland did not do in your case
17 that you asked him to do?

18 A Seek information that I was asking regarding to what
19 the police had.

20 Q Okay. So you didn't have an understanding of the
21 evidence against you.

22 A Yes, sir.

23 Q Okay. If you had an understanding of that, would you
24 have pled guilty or would you have gone to trial?

25 A It depends. I don't know.

1 Q Okay. So you didn't have enough information to -- to
2 make a decision one way or the other.

3 A Yes, sir.

4 Q Okay. So why did you ultimately plead guilty then?

5 A I really don't know. I just did.

6 MR. WALLER: Okay.

7 Your Honor, I have no further questions at this time.

8 THE COURT: Okay. Cross-examination.

9 CROSS-EXAMINATION

10 BY MS. SCHILL:

11 MS. SCHILL: Mr. Gadson.

12 MR. GADSON: How you doing?

13 Q I just want to make sure. So it's your testimony --
14 you originally had said that you did not review any
15 discovery. I just want to make sure.

16 So you reviewed your statement ...

17 A And my co-defendant's statement.

18 Q And your co-defendant's statement and no video.

19 A No, ma'am.

20 Q No DNA.

21 A No, ma'am.

22 Q Okay. Do you remember giving up your constitutional
23 rights during your plea hearing?

24 A Yes, ma'am.

25 Q Okay. Do you recall telling the Judge that you were

1 pleading guilty on your own free will during your plea
2 hearing?

3 A Yes, ma'am.

4 Q Yes. Okay.

5 Do you recall testifying that you were not
6 threatened, coerced, or promised to anything other than
7 what was given to you under the terms of your plea
8 agreement in exchange to your plea of guilty?

9 A Yes, ma'am.

10 Q Do you recall telling the Judge at your plea hearing
11 that you were satisfied with your representation from
12 counsel?

13 A Yes, ma'am.

14 Q Okay. Do you recall telling the Judge that you do
15 not need any more time to speak with counsel?

16 A Yes, ma'am.

17 Q Do you recall telling the Judge that you understood
18 all of your discussions that you had with counsel?

19 A Yes, ma'am.

20 Q Do you recall telling the Judge that you were
21 pleading guilty because you were guilty?

22 A Yes, ma'am.

23 MS. SCHILL: Okay.

24 Beg the Court's indulgence, Your Honor.

25 THE COURT: All right.

1 (Brief pause.)

2 MS. SCHILL: No further questions.

3 THE COURT: All right. Very well. Any ---

4 MR. WALLER: Very briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. WALLER:

7 Q Mr. Gadson, you just testified and it's in the
8 transcript that you were satisfied with -- you told the
9 Court you were satisfied with -- with Mr. Sutherland's
10 representation.

11 A Yes, sir.

12 Q Is that right?

13 A Yes, sir.

14 Q Have you learned new information since that time or
15 additional things come into -- you know, come into your
16 mind that -- that might change that answer?

17 A Yes, sir.

18 Q Okay.

19 A The fact -- like I said, I ain't really have enough
20 information to really base -- get to see if I wanted plead
21 -- really plead guilty or not.

22 Q Okay. So from -- from the time you pled guilty to
23 now, you -- you got new information that would lead you to
24 not be satisfied with Mr. Sutherland's representation.

25 A Yes, sir.

1 MR. WALLER: Okay.

2 Nothing further, Your Honor. Thank you.

3 THE COURT: Very well. All right. Any re-cross?

4 MS. SCHILL: No, Your Honor.

5 THE COURT: All right. All right. Yes, sir. You
6 may go back down to counsel table.

7 (The witness complies.)

8 MR. WALLER: Nothing further from the Applicant, Your
9 Honor.

10 THE COURT: All right. Very well.
11 From the State.

12 MS. SCHILL: Yes. The State would like to call Mr.
13 Tivis Sutherland.

14 (Mr. Sutherland comes forward.)

15 COURT CLERK: Would you state your full name, please.

16 MR. SUTHERLAND: Tivis Colley Sutherland IV.

17 COURT CLERK: Would you spell your first name,
18 please?

19 MR. SUTHERLAND: T-I-V -- Tango, India, Victor,
20 India, Sierra.

21 TIVIS SUTHERLAND, having been
22 first duly sworn, testifies as follows:

23 THE COURT REPORTER: Spell your middle name for me,
24 too?

25 MR. SUTHERLAND: C-O-L-L-E-Y; Charlie, Oscar, Lima

1 Lima, Echo, Yankee.

2 (Brief pause.)

3 THE COURT: All right. Your witness.

4 MS. SCHILL: Thank you.

5 DIRECT EXAMINATION

6 BY MS. SCHILL:

7 Q How long have you been practicing law?

8 A About 15 years.

9 Q Okay. And how much of that has been in criminal law?

10 A 99.9 percent.

11 Q Okay. How did you become involved in Applicant's
12 case?

13 A There -- when -- their co-defendant -- the Public
14 Defender's Office is like one attorney; and so if they
15 have a murder, an armed robbery, even a dope case and
16 there's more than one defendant, then it just gets kicked
17 out to some lawyers. It -- conflicted out to some of the
18 lawyers in town.

19 Q Okay. Do you recall the facts of Applicant's case?

20 A I do pretty much.

21 Q Okay. Would you care to tell the Court of the facts

22 ---

23 A Okay. They were talking about coming -- and this is
24 just from the statements and stuff. Clearly I wasn't
25 there.

1 But they were talking about coming to Columbia, meet
2 girls, smoke some weed; and at some point, I think that
3 fell through. And then they were going to meet somebody
4 for some weed or something in a parking lot, and I think
5 they just sort of -- apparently spontaneously decided to
6 rip the person off -- or the people off.

7 And I think my guy is supposed to have gotten in --
8 like maybe tried one door, it's locked and gotten in the
9 vehicle. The other dude stood out by the driver, I think,
10 with the firearm.

11 My guy starts fighting the guy in the vehicle, struck
12 him with something -- presumably the pistol or whatever --
13 cut his head open there; and the dude by the driver door
14 started fighting with the driver and shot him.

15 And at that point, I think my guy and his pal get
16 into, like, a Jeep or something; and I think that's how
17 they ended up getting to them in Eutawville and they --
18 they left. Only guy that -- the driver died.

19 THE COURT REPORTER: The driver died?

20 MR. SUTHERLAND: Yes, ma'am.

21 Q Did you discuss Applicant's version of the facts of
22 the case with him?

23 A I told -- told him I wasn't -- you know, I'm straight
24 forward with my guys. I told him I wasn't too pleased
25 with the -- with the statement to the cops, so ...

1 Q Okay. What discovery did you receive regarding
2 Applicant's case?

3 A Just a bunch of stuff. I remember we ended up going
4 over it piecemeal, little bit at a time; but you know,
5 statements, incident reports, investigative reports, some
6 video.

7 There was some witness that was, like, behind a Beef
8 O'Brady's or something, who saw it happen, too. That's
9 about it.

10 And apparently they turned over the DNA report late.
11 Something about his DNA being on the door or something.

12 Q Okay. Just to parse that out a little bit, so you
13 reviewed his statements -- Applicant's statement with him
14 and the co -- did you review the co-defendant's statement
15 with him?

16 A Yeah, both of them.

17 Q Did you review the video surveillance with the
18 Applicant?

19 A He is correct. He did not see the video. I just
20 talked to him about it.

21 Q Okay. Did -- did you review the DNA report with him
22 or have a discussion about the DNA?

23 A I had to tell him about it I'm -- I would think, but
24 you know -- I mean, I -- I mean, he and I got along. So
25 it would -- I mean, I would rely on his memory pretty

1 well. I don't think he'd sit up here and make stuff up.
2 Maybe there were a couple of misunderstandings or
3 something, but it had to come up as sort of "icing on the
4 cake" for the -- for the case.

5 Q Okay.

6 (Brief pause.)

7 Q What kind of investigation did you conduct regarding
8 this case?

9 A I did not send an investigator out, I just read the
10 discovery.

11 Q Okay. Did you discuss a trial strategy with
12 Applicant in case he wanted to go to trial?

13 A What -- I remember talking because we just
14 intermittently talked. You know, I'd go down there and
15 talk to him about being in -- and -- and so forth.

16 But what I remember saying, you know, that he was
17 pretty young; and that if they wanted to stick to the
18 murder, then it's possible we could get -- you know, then
19 you're looking at 30 years day-for-day. It's possible we
20 could get that at trial, that sentence; but ideally
21 something would be worked out on the case, which
22 ultimately was. This was hard to defend.

23 Q Okay. Did you advise him of the consequences or the
24 advantages and disadvantages of, you know, accepting a
25 plea offer versus going to trial?

DIRECT EXAMINATION BY MS. SCHILL - TIVIS SUTHERLAND 25

1 A I -- at -- I don't really tell my guys what to do. I
2 just give my opinion: "I think we'll lose if we try the
3 case, but I'll try it."

4 I -- what I recall, we got an offer. I think it was
5 a cap of 25, and I remember him asking if he thought I
6 could -- if we could get 20. And I said I thought so, but
7 I was concerned about the other charges at the jail, you
8 know, picking up more charges down there.

9 And ultimately I think that's what got us at the apex
10 of that.

11 Q Did you tell the Applicant he would -- was there any
12 conversation regarding the death penalty during your
13 discussions with him?

14 A It -- it could not have been -- maybe a
15 misunderstanding. I had one client -- and this was after
16 his case was resolved -- that I told him very directly
17 that, "They're going to stick a needle in your arm if you
18 don't shut up."

19 But he didn't have any pending charges at that time,
20 his cases were over.

21 It didn't -- it's conceivably -- I couldn't see a DP
22 in this case, honest -- honestly. So it had to be some
23 sort of misunderstanding.

24 Now, he could said, "Hey, could I get the death
25 penalty?" And I'm like, "Well, I don't know," you know?

1 But I don't remember that, and I would not tell my guys
2 something like that unless I meant it, so ...

3 Q Okay. Do you think it was in Applicant's best
4 interest to plead guilty?

5 A I think so, ultimately.

6 Q Okay.

7 A He got off the murder and he got an accessory after,
8 which was the -- you know, it's the elephant in the room.
9 It's day-for-day.

10 Like his co-defendant doing 35 day-for-day, you get
11 out 35 years from the day that you are arrested under
12 those circumstances. We're here with a 25-year sentence,
13 get out in 22-ish, so ...

14 Q If Applicant had wanted a trial, what would you have
15 done?

16 A Just tried the case, done as well as I could do to
17 try to decouple the -- the whole felony murder thing. I
18 don't think it would of worked out. I'd done as well as I
19 could do.

20 MS. SCHILL: Okay.

21 Beg the Court's indulgence, Your Honor.

22 THE COURT: Okay.

23 (Brief pause.)

24 Q So you heard Applicant testify that he did not review
25 the video and you believe him.

CROSS-EXAMINATION BY MR. WALLER - TIVIS SUTHERLAND 27

1 A He did not review the video.

2 Q Okay.

3 A I just talked to him about it.

4 Q Okay. But did he know the video existed?

5 A Oh, yeah. I mean ---

6 Q Okay.

7 A --- I'm sure we talked about it. It's just this is
8 what -- this is what we're dealing with here.

9 Q Okay. So at the time he entered his guilty plea, he
10 would've known that the -- the video existed?

11 A Right. Now, I can't say that I have a specific
12 recollection. It's just how do you not talk about that.

13 MS. SCHILL: Those are all the questions I have.

14 THE COURT: Thank you.

15 Yes, sir. Cross ---

16 MR. WALLER: Thank you ---

17 THE COURT: --- examination.

18 MR. WALLER: --- Your Honor.

19 CROSS-EXAMINATION

20 BY MR. WALLER:

21 Q Mr. Sutherland, continuing with the video, you know,
22 did you watch the video?

23 A Yeah. It wasn't great. If you take the statements
24 out of it, you could argue that it's not them. The only
25 thing is what the -- the video does and the statements,

1 they just corroborate each other.

2 Q Okay. Did you transcribe the video; or if there
3 wasn't sound, did you, you know, take notes as to what's
4 happening when -- the time stamps, all that?

5 A I just watched it.

6 Q Okay.

7 A And thought, oh no, when --

8 Q Did you have a chance to go over, you know, what took
9 place on the video with Mr. Gadson?

10 A Other than saying it's on video, maybe. I'd -- see I
11 don't have a specific recollection of that. I mean, I
12 know that he and I -- I'd go see him and we'd talk and
13 what I was speaking about their -- testifying about
14 piecemeal discovery, there were times where he was like,
15 "Hey, man, you said you were going to bring this," and I
16 was like, "You're right," and have to bring it the next
17 time.

18 But it was a -- there was a substantial period of
19 time that I was representing him, like, over a year and
20 half, I think, where ultimately it all sort of just ---

21 Q Okay. But if -- if he had some information from --
22 from viewing the video, he obviously wasn't able to convey
23 that to you because he never saw it.

24 A No, I -- yeah, I guess so. I mean, you know --

25 Q Okay.

1 A -- it's on -- it's on video, dude.

2 Q I -- I guess what I'm getting at is you didn't break
3 it down at 30 seconds in, you know, Subject A gets in the
4 back seat, Subject B being outside. You didn't break it
5 down like that sort of.

6 A It's like reading a script to a -- or it's like
7 reading a book and then watching the movie, I guess.

8 Q Okay. But he ---

9 A That's the way I would relate it to.

10 Q My question is: He didn't have that information?

11 A Other than it's on video. I'm sure ---

12 Q Okay.

13 A I'm positive we had to talk about it.

14 Q You testified earlier it's your understanding that
15 the original intent of Mr. Gadson as well as the co-
16 defendant, coming up from Eutawville, was not to commit a
17 robbery; is that right?

18 A Well, supposed -- supposed to come up and get some
19 weed and smoke it with girls and it fell through.

20 Again, you know, I don't know how much is accurate in
21 that, but that seemed like what the plan would be.

22 Q Okay.

23 A So I'm sure, you know, people over here would get
24 into it at some point and they just didn't get there.

25 Q Okay. You testified that you did not retain an

1 investigator.

2 A No.

3 Q Had you and Mr. Gadson begun to preparing for trial
4 at that point?

5 A Not at -- I don't recall them saying at all that they
6 were going to try the case. It's one of these where you
7 have an event and there are intervening events that draw
8 attention -- if you get a case that's kind of note worthy
9 or kind of brutal or something, what in practice I hope to
10 do is to -- for other brutal or note worthy cases to
11 intervene, just sort of just take that down a notch.

12 You know, waiting for the next big thing. Okay.
13 You're the big thing right now. We need to sit here. We
14 don't need to do any -- file any motions. You just need
15 to wait for the next big thing or the next or the next;
16 and then three or four big things down the road, we might
17 be able to get something done.

18 Q You weren't on a trial roster or anything like that
19 that you know about?

20 A No, and -- no. I mean, other -- I can remember
21 Kathryn saying that it's just a matter -- I don't remember
22 just haggling in the degrees that I do with her in -- sort
23 of minimize, which you do. And it was the other guy that
24 shot the guy. So in trying to minimize -- and over time,
25 get the best offer possible out of it.

1 But again, you know, I talked about this. You can't
2 keep picking up these charges at the jail when we're
3 ultimately, you know, saying, "Hey, look, he's a good kid,
4 he's this, that, and the other," you can't keep picking up
5 charges at the jail for stuff, so ...

6 Q Okay. There's no question that Mr. Gadson's co-
7 defendant was the actual shooter; is that right.

8 A Yeah. They -- he'd admitted it.

9 Q Okay. Had he already pled guilty or how was he --
10 how were these charges resolved?

11 A I think he got -- well, I know, I know he got 35.
12 I don't know what he pled to, but there's only one charge
13 that matters when you plead to murder and it's murder. So
14 35.

15 Q He did ultimately plead though?

16 A Yes. It was 35 years from the day that he was
17 arrested is when he will walk from the jail.

18 Q Were his charges resolved before or after Mr. Gadson;
19 do you know?

20 A I can't -- I -- maybe before. If -- if they would've
21 been done before, then we would of had to have some sort
22 of "substantial assistance" conversation ultimately
23 because people can get their sentences cut if they come
24 back and testify. But I don't remember that, so I don't
25 remember precisely.

REDIRECT EXAMINATION BY MS. SCHILL - TIVIS SUTHERLAND 32

1 But if it was before, then we would of had to have
2 the "substantial assistance" talk where, like, "Look, just
3 because your buddy's case is over, doesn't mean they can't
4 come in and stick it to ya [sic].

5 MR. WALLER: Beg the Court's indulgence, please.

6 THE COURT: Yes.

7 (Brief pause.)

8 MR. WALLER: Thank you, Mr. Sutherland. Nothing
9 further.

10 THE COURT: All right. Redirect?

11 MS. SCHILL: Yes, just a few questions?

12 THE COURT: Yes.

13 REDIRECT EXAMINATION

14 BY MS. SCHILL:

15 Q Mr. Sutherland, did the Applicant ever tell you that
16 he didn't want to plead guilty because he hadn't seen the
17 video?

18 A No. What -- when that offer came -- when they came
19 off the murder and were going to do accessory after, so
20 then you're just over the 85 percent stuff and it's a cap
21 of 25, I remember some back and forth: "Do you think you
22 can get 20?" And I'm thinking that it's possible with a
23 cap.

24 Now, typically if you're gonna get a cap on
25 something, you're gonna get whatever it is; but we had a

REDIRECT EXAMINATION BY MS. SCHILL - TIVIS SUTHERLAND 33

1 little bit of back and forth and it was pretty quick as I
2 recall.

3 It wasn't long before we were in court once they had
4 made that particular offer, and that may have been a --
5 that may have been the only one they ever made. I'm not
6 sure about that.

7 So the whole time we're just waiting for them to come
8 off the murder basically.

9 Q Do you recall the solicitor mentioning that the
10 incident had been caught on video at the plea hearing when
11 they went over the facts?

12 A Oh, yeah.

13 Q Yeah. And so -- and Applicant had -- still pled
14 guilty after hearing that?

15 A Yeah.

16 Q Okay. Do you feel that Applicant had all the
17 necessary information to make an educated decision about
18 his plea, whether or not he was going to plea?

19 A Well --

20 MR. WALLER: I'm going to object to that.

21 MR. SUTHERLAND: Yeah.

22 MR. WALLER: Calls for speculation. I mean, he
23 doesn't know what information he needs.

24 THE COURT: Sustained.

25 MS. SCHILL: Okay.

REDIRECT EXAMINATION

BY MS. SCHILL (CONTINUES):

Q Was this ever really a case you guys were contemplating taking to trial, or was this always trying to get the best plea deal possible?

A Well, that's -- you know, that's any major case that's -- it's sort of a risk reward system where you get a plea offer that's good enough, then trying the case becomes too risky.

If they had wanted him to plead to murder at that point, then it is possible, possible you could get from a jury the same thing you get from a plea, and then the plea doesn't make sense.

Now, you can get hit over the head as well, but for him, in my opinion, the critical thing was getting off the day-for-day, getting off of the murder. Then it's something to work with; otherwise, you're just going go plea this charge. Then you put people over here and you can have a longer version of that and see what happens.

Q And you explained all that to him?

A Yeah. I mean, we told -- we talked -- we didn't just talk about the work stuff, you know, checking in on him with some of the issues he was having down there. But you know, we talked about the case, and he knew it was a crap case and pardon the -- that word.

1 Q And so you kept -- we kept referring to the
2 statement, but this was the statement from Applicant that
3 he was involved in the incident. Is that what the
4 statement says?

5 A Yeah. I mean, my recollection is they both said
6 pretty much the same thing, and what really surprised me
7 was that the co-defendant didn't try to say that he shot
8 him because typically that's what people would -- like,
9 "The other guy shot him," thinking that that's gonna get
10 you out of the accomplice liability, which it generally
11 doesn't, so ...

12 MS. SCHILL: Okay. Those are all the questions I
13 have. Thank you.

14 THE COURT: Re-cross?

15 MR. WALLER: Nothing further, Your Honor.

16 THE COURT: Very well. All right. Now, is this
17 witness free to leave and is there any objection?

18 MR. WALLER: No objection, Your Honor.

19 MS. SCHILL: Yes. Thank you.

20 THE COURT: All right. Thank you, sir.

21 MR. SUTHERLAND: Thank you, Your Honor.

22 (Witness exits the stand.)

23 THE COURT: All right. Any other witnesses on behalf
24 of the State?

25 MS. SCHILL: No, your Honor.

1 THE COURT: Very well. Is there any reply?

2 MR. WALLER: No reply, Your Honor.

3 THE COURT: Very well. Thank you. All right.

4 Counsel, I'll take the matter under advisement. I
5 have my packet. There's some things that I need to look
6 at, and we will send a letter and ask for you to draft a
7 proposed order.

8 MR. WALLER: Thank you, Your Honor.

9 THE COURT: Thank you.

10 MS. SCHILL: Thank you, Your Honor.

11 THE COURT: Thank you so much.

12 (Off the record at 12:45 p.m.)

13 -- END OF TRANSCRIPT OF RECORD --

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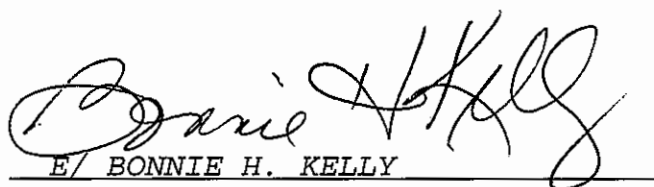
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CERTIFICATE

I, the undersigned Bonnie H. Kelly, CVR, do hereby certify that the foregoing is a true, accurate transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Richland county, South Carolina, on the 20th day of June, 2019.

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



E/ BONNIE H. KELLY

BONNIE H. KELLY, CVR

COURT REPORTER

Columbia, South Carolina

April 28, 2020

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Ibn Gadson, #373198,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-40-02515

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Ibn Gadson (Applicant) on May 8, 2018. Respondent made its Return on July 10, 2018. An evidentiary hearing into the matter was convened on June 20, 2019, at the Richland County Courthouse before the undersigned. Jonathan D. Waller, Esquire, represented Applicant. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office represented Respondent.

At the hearing, Applicant testified on his own behalf. Tivis C. Sutherland, IV, Esquire, Applicant's plea counsel, also testified. This Court had before it a copy of the records of the Richland County Clerk of Court, records from the South Carolina Department of Corrections, the PCR application, Respondent's Return, and the plea transcript. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. During its April 2016 term, the Richland County Grand Jury indicted Applicant for murder

(2016-GS-40-1659), armed robbery (2016-GS-40-1661), two counts of kidnapping (2016-GS-40-1665, -1668), possession of a weapon during the commission of a violent crime (2016-GS-40-1666), attempted armed robbery (2016-GS-40-1667), and first-degree assault and battery (2016-GS-40-1670).

In March 2017, Applicant was subsequently indicted for second-degree assault and battery by mob (2016-GS-40-0335), and participating in a riot by prisoners (2017-GS-40-0334). Additionally, Applicant waived presentment on one count of throwing bodily fluids on a correctional officer (2017-GS-40-4243). Tivis C. Sutherland, Esquire, (Counsel) represented Applicant. Assistant Solicitor Kathryn Cavanaugh, Esquire, prosecuted the case.

On July 19, 2017, Applicant pleaded guilty before the Honorable Jocelyn Newman as indicted to armed robbery, attempted armed robbery, and first-degree assault and battery, and to the lesser-included charges of accessory after the fact to murder and third-degree assault and battery by mob. Pursuant to a negotiation with the State, Judge Newman sentenced Applicant to imprisonment for concurrent terms of twenty-five years for armed robbery, twenty years for attempted armed robbery, fifteen years for accessory after the fact, ten years for first-degree assault and battery, and one year for third-degree assault and battery by mob.¹ Judge Newman also sentenced Applicant to a consecutive term of time-served for throwing of fluids on a correctional officer.

ALLEGATIONS

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

¹ In exchange for his guilty plea, the State also dropped several charges, including: (1) two counts of kidnapping; (2) one count of possession of a weapon during a violent crime; and (3) one count of rioting. (GP Tr. 4, lines 11-17).

"Ineffective Assistance of Counsel"

- a. "Trial counsel gave erroneous advice to plea guilty"
- b. "My counsel told me if I didn't plea I could've face the death penalty"

SUMMARY OF TESTIMONY

Applicant's Testimony

Applicant's Direct Examination

Applicant testified he received three different sets of charges. Applicant testified Counsel represented him because the Public Defender's office had a conflict with one of his co-defendants. Applicant testified he first met with Counsel in January or February 2016. Applicant stated only the first set of charges were pending at the time of his first meeting with Counsel. Applicant claimed they did not discuss much information regarding his case, but that they got to know each other at that meeting. Applicant stated Counsel wanted to get a better understanding of his case during their initial meeting, and they did not discuss discovery at that time.

Applicant indicated he and Counsel discussed his constitutional rights. Applicant testified he gave a statement to law enforcement, and he discussed this statement with Counsel. Applicant stated he and Counsel did not discuss whether they would challenge his statement. Applicant also testified his co-defendant gave a statement to law enforcement, but he and Counsel did not discuss it.

Applicant testified his second set of charges stemmed from a confrontation in jail. Applicant testified he had met with Counsel two or three times at the time he received his second set of charges. Applicant testified he and Counsel discussed his second set of charges and how the new charges would affect his preexisting charges. Applicant claimed he and Counsel did not meet after he received his third set of charges.

Applicant claimed Counsel never discussed discovery with him with the exception of the statements he made to law enforcement. Applicant alleged he never knew about any DNA evidence found at the scene. Applicant testified he was aware of the video of the incident, but he never saw the video itself.

Applicant stated Counsel never discussed defenses to Applicant's cases. Applicant also testified Counsel never began preparing for trial. Applicant admitted he did not give Counsel contact information for any possible witnesses that Counsel could investigate. Applicant testified he decided to plead guilty because his co-defendant had already done so, and Applicant felt pressured to plead guilty. Applicant testified that at the time of his guilty plea, Counsel was not prepared for trial. Applicant further testified he pleaded guilty because Counsel told him he would be sentenced to death if he did not plead guilty. Applicant testified he did not ask Counsel questions about the death penalty.

Applicant testified he believes Counsel did not seek information regarding what evidence the State had against him. Applicant also claimed Counsel did not explain the evidence to him. Applicant claimed that if he had understood the evidence the State had against him, he would not have pleaded guilty.

Applicant's Cross-Examination

On cross-examination, Applicant testified he and Counsel reviewed his statements, but he and Counsel did not review any DNA or video evidence. Applicant recalled telling the plea court he wished to waive his constitutional rights. Applicant recalled telling the plea court he was pleading guilty freely and voluntarily. Applicant recalled telling the plea court he did not need more time to talk to Counsel, and he understood discussions he had with Counsel. Applicant recalled telling the plea court he was pleading guilty because he was guilty.

Applicant's Re-Direct Examination

On re-direct examination, Applicant testified he learned information after his guilty plea hearing that changed his opinion regarding whether he was satisfied with his representation from Counsel. Applicant testified he did not have enough information at the time of his guilty plea hearing to decide if he wanted to plead guilty or not.

*Counsel's Testimony*Counsel's Direct Examination

Counsel testified he has been practicing law for fifteen years and 99.9% of his practice has been in criminal law. Counsel testified he became involved in Applicant's case because the Public Defender's office can only represent one defendant in a co-defendant situation.

Counsel testified Applicant told him that Applicant and his co-defendant went to Columbia to meet women and smoke marijuana. Counsel stated Applicant's plans fell through, and Applicant and his co-defendant planned to meet someone to buy marijuana in a parking lot. Counsel testified Applicant stated he and his co-defendant simultaneously decided to rip off the drug dealer (Victim). Counsel testified Applicant sat in the vehicle while his co-defendant stood outside by Victim. Counsel testified Applicant struck Victim with a gun, but Applicant's co-defendant shot Victim and Victim subsequently died.

Counsel testified he reviewed all relevant discovery with Applicant, but that they reviewed the discovery "a little at a time." Counsel stated discovery included statements, incident reports, video, and DNA evidence found on Victim's car. Counsel testified he reviewed the statements and incident reports with Applicant. Counsel testified he did not show the video to Applicant but that he discussed the contents with Applicant. Counsel testified Applicant knew the video existed at the time he pleaded guilty. Counsel testified he also discussed the DNA evidence with Applicant, and

similarly, Applicant knew of the existence of the DNA evidence at the time of his guilty plea. Counsel testified he did not hire an investigator.

Counsel testified he and Applicant discussed trial strategy “intermittently.” Counsel testified he told Applicant if the State wanted to pursue the murder charge, Applicant could get thirty years, day-for-day. Counsel testified he did not tell Applicant he would receive the death penalty if he did not plead guilty. Counsel testified if Applicant actually believed he was going to receive the death penalty, it would have been due to a misunderstanding. Counsel could not recall a conversation where the death penalty was mentioned.

Counsel testified he believed it was in Applicant’s best interest to plead guilty, but he would have been prepared to try Applicant’s case if Applicant ultimately wanted a trial.

Counsel’s Cross-Examination

On cross-examination, Counsel testified he could not specifically recall what he told Applicant regarding the video evidence other than informing Applicant the incident had been captured on video. Counsel recalled “haggling” with the Solicitor and trying to obtain the best possible plea deal in light of the fact that Applicant was not the shooter.

Counsel’s Re-Direct Examination

On re-direct examination, Counsel testified Applicant never told him he did not want to plead guilty because Applicant had not viewed the video. Counsel further testified the Solicitor mentioned the video evidence at Applicant’s guilty plea hearing and Applicant still chose to plead guilty. Counsel testified Applicant’s co-defendant admitted to shooting the Victim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the witnesses presented at the evidentiary hearing, judged their credibility, and weighed their testimony accordingly in its discussion below. Set forth below are findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Applicant alleges he received ineffective assistance of counsel and his plea was not voluntarily and knowingly made. 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.

This Court finds Applicant failed to prove Counsel’s performance was deficient in any way, nor was Applicant prejudiced by Counsel’s performance. Accordingly, for the reasons below, this Court denies and dismisses Applicant’s application with prejudice.

Applicant’s Involuntary Guilty Plea Based on Counsel’s Alleged Erroneous Advice

Applicant alleges his guilty plea was not voluntarily and knowingly made because he received erroneous advice from Counsel and because Counsel did not review discovery with him. This Court disagrees and finds Applicant knowingly and voluntarily ^{per se} plead guilty.

Applicant testified Counsel never discussed discovery with him, with the exception of the statements Applicant made to law enforcement. Applicant alleged he never knew about any DNA evidence found at the scene. Applicant testified he was aware of the video of the incident, but he never saw the video itself. Applicant testified Counsel discussed Applicant’s statement to law enforcement, but they did not discuss his co-defendant’s statement.

As Applicant testified, he informed the plea court he was not coerced or threatened to plead guilty. (GP Tr. 13, lines 10-14). Applicant also testified at his plea hearing that he was pleading guilty on his own free will and accord. (GP Tr. 13, lines 15-17). At that time, Applicant testified it was his own decision to plead guilty. (GP Tr. 13, lines 18-20). Applicant further testified at his plea hearing that Counsel had done everything he asked him to do. (GP Tr. 15, lines 7-9). Applicant testified at his PCR hearing he recalled telling the plea court that he was satisfied with Counsel, and he did not need more time with Counsel.

At the evidentiary hearing, Counsel testified he reviewed all relevant discovery with Applicant. Counsel stated the discovery included statements, incident reports, video, and DNA evidence found on Victim's car. Counsel testified he reviewed the statements and incident reports with Applicant. Counsel testified he did not show the video to Applicant but he discussed it with Applicant. Counsel testified Applicant knew the video existed at the time he pleaded guilty. Counsel testified he also discussed the DNA evidence with Applicant, and similarly, Applicant knew of the existence of the DNA evidence at the time of his guilty plea.

Applicant also alleges Counsel was ineffective for telling him he would receive the death penalty if he did not plead guilty, and that but for this alleged statement, Applicant would have proceeded to trial.

Applicant testified at the evidentiary hearing Counsel told him he would receive the death penalty if he did not plead guilty. Applicant testified he pleaded guilty based on this alleged statement. However, Counsel testified he did not tell Applicant he would receive the death penalty. Counsel testified he told Applicant if the State wanted to pursue the murder charge, Applicant could get thirty years, day-for-day. Counsel further testified he believed it was in Applicant's best interest

to plead guilty, but that had Applicant wanted a trial, he would have been prepared to try Applicant's case.

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).

This Court finds the testimony of Counsel credible while also finding Applicant's testimony not credible. Counsel discussed the video evidence, the DNA evidence, and both statements with Applicant. The credible evidence shows Applicant was aware of the existence of both the DNA and video evidence, but he still opted to enter a guilty plea without viewing the evidence himself. This Court finds Counsel did not tell Applicant he would receive the death penalty if Applicant did not plead guilty. The transcript reflects Counsel told the plea court he explained to Applicant the charges against him and the possible punishment for each charge. (GP Tr. 4). Furthermore, when

asked at the evidentiary hearing why he ultimately pleaded guilty, Applicant stated he did so because his co-defendant was previously sentenced, and he felt pressured to plead guilty by some unnamed and unspecified influence or person. Applicant did not indicate he pleaded guilty due to this alleged statement by Counsel. This Court finds Applicant ultimately chose to take the negotiated plea, and agrees with Counsel's testimony doing so was in his best interest. Several other charges were dismissed in exchange for Applicant's guilty plea. Additionally, Applicant told the plea court he was freely and voluntarily pleading guilty, he was satisfied with his representation from Counsel, and that Counsel had done everything Applicant asked him to do. Accordingly, this Court finds Applicant freely and voluntarily entered his guilty plea, and therefore, denies and dismisses this application with prejudice.

DSG

CONCLUSION

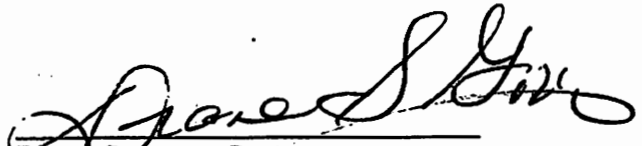
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this application for post-conviction relief is 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; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.


 DIANA SCHAFER GOODSTEIN
 Presiding Circuit Court Judge
 Fifth Judicial Circuit

10/14, 2019