

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

—————  
Certiorari to Spartanburg County

Thomas A. Russo, Circuit Court Judge  
—————

DENNIS RAY ALEXANDER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000141  
—————

APPENDIX  
—————

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S.C. SUPREME COURT

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3  
4 STATE OF SOUTH CAROLINA, ) TRANSCRIPT  
5 PLAINTIFF, ) OF  
6 vs. ) RECORD  
7 DENNIS RAY ALEXANDER, ) 2016-GS-42-5023  
8 DEFENDANT. ) 2016-GS-42-2396

9  
10 October 2<sup>nd</sup>, 2017  
11 Spartanburg, South Carolina

12  
13 B E F O R E :

14 THE HONORABLE J. MARK HAYES, II, Judge.

15  
16 A P P E A R A N C E S :

17 JENNIFER JORDAN and SPENSER SMITH  
18 ASSISTANT SOLICITORS  
Attorneys for the State

19 ANDREW JOHNSTON  
20 ESQ.  
Attorney for the Defendant

21  
22  
23 PAMELA E. GREEN  
24 Circuit Court Reporter  
Seventh Judicial Circuit

25

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E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>State's Exhibits</u>		
S-1	Photograph	3	8
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P R O C E E D I N G S

(WHEREUPON, two photographs were marked as State's Exhibit Nos. 1 and 2 for identification purposes only at this time.)

SOLICITOR JORDAN: Thank you, Your Honor.

The State calls Dennis Ray Alexander.

Your Honor, before the Court is Dennis Ray Alexander. He's before the Court on three indictments.

The first one is charging him under 2016-GS-42-5023 with distribution of crack cocaine or cocaine base first offense. He's represented by Mr. Johnston and pleading guilty to that with a recommendation of a time served sentence.

His other two charges, Your Honor, arise out of the same one -- just one indictment. Two counts.

Under Count 1 of 2016-GS-42-2396 is attempted murder. Under Count 2, it is a possession of a weapon during the violent crime.

The recommendation -- he is -- by indications from his attorney, Mr. Johnston, he's pleading under North Carolina versus Alford to those charges. The recommendation by the State is for a concurrent cap of 20 years on those two charges, concurrent with each other, and with the ten year sentence he received in Federal Court in August of 2017.

1 That was for a weapons violation directly related to this  
2 case.

3 THE COURT: You are Mr. Alexander?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Please raise your right hand. Let the  
6 Clerk of Court swear you in.

7 (WHEREUPON, the Defendant was placed under oath at this  
8 time.)

9 THE COURT: Sir, it is your intent to enter a plea to  
10 the charges that were just announced?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: How old are you?

13 THE DEFENDANT: Forty.

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

15 THE DEFENDANT: Ninth.

16 THE COURT: Did you ever obtain a GED?

17 THE DEFENDANT: No, sir.

18 THE COURT: Presently, you married, single, divorced,  
19 or widowed?

20 THE DEFENDANT: Married, separated though.

21 THE COURT: Do you have children?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How many?

24 THE DEFENDANT: Six.

25 THE COURT: How old is your oldest?

1 THE DEFENDANT: Twenty-five.

2 THE COURT: And your youngest?

3 THE DEFENDANT: Two.

4 THE COURT: And---

5 THE DEFENDANT: Three.

6 THE COURT: ---prior -- pardon?

7 THE DEFENDANT: Three.

8 THE COURT: Three.

9 Prior to your arrest, did you have a job outside the  
10 home?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: What were you doing?

13 THE DEFENDANT: I worked at Kraft Food, Kraft Food in  
14 Newberry, South Carolina.

15 THE COURT: Ever serve in the military?

16 THE DEFENDANT: No, sir.

17 THE COURT: On this -- these charges, how long of a  
18 time have you been in jail?

19 THE DEFENDANT: I think like 20, 20, 20 months. A year  
20 and---

21 THE COURT: All right.

22 THE DEFENDANT: ---a year and six maybe.

23 SOLICITOR JORDAN: Mr. Smith is figuring that---

24 SOLICITOR SMITH: 566 days.

25 THE COURT: 566. Thank you.

1           sir, within the last 24-hours, have you consumed any  
2 type of substance that's adversely or negatively affecting  
3 your ability to understand what we're doing today?

4           THE DEFENDANT: No, sir.

5           THE COURT: In the past, have you ever been treated for  
6 any type of substance abuse issues?

7           THE DEFENDANT: No, sir.

8           THE COURT: Are you satisfied with the work that your  
9 lawyer has done?

10          THE DEFENDANT: Yes, sir.

11          THE COURT: Feel like you -- do you feel like that  
12 you've had enough time to talk to him about the legal  
13 elements of the offenses that you're pleading to, any  
14 possible defenses you might have to these charges?

15          THE DEFENDANT: Yes, sir.

16          THE COURT: And, sir, has anybody perhaps come to you  
17 and threatened you in any way or have they made you promises  
18 in order to get you to make the decision to enter the plea  
19 today?

20          THE DEFENDANT: No, sir.

21          THE COURT: Am I correct to conclude that your decision  
22 to enter these pleas today that it is a free and voluntary  
23 decision on your part?

24          THE DEFENDANT: Yes, sir.

25          THE COURT: Sir, I need for you to understand that,

1 under the law, you are presumed innocent of all of these  
2 charges, and you do have a right to have a jury trial on any  
3 or all of these charges. At any jury trial that would take  
4 place, the State would have the burden of proof, and the  
5 State would have to convince all 12 members of a jury that  
6 you're, in fact, guilty beyond a reasonable doubt of these  
7 charges.

8 Do you understand that you have a right to that jury  
9 trial?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And do you wish to have a jury trial on any  
12 of these charges?

13 THE DEFENDANT: No, sir.

14 THE COURT: Sir, I need for you to understand that  
15 there are other very important Constitutional rights that  
16 you are entitled to, but that you have to give up in order  
17 to enter a plea.

18 You have to give up your right to confront and  
19 cross-examine the State's witnesses. You also have to give  
20 up your right to present evidence which you or your lawyer  
21 might feel would establish a defense, and you have to give  
22 up your right of subpoena as well as your right to remain  
23 silent.

24 Do you understand all those rights?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do you wish to give up all those rights  
2 and go forward with the plea?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Mr. Alexander, please listen to  
5 the solicitor. She's going to provide us with the facts.

6 SOLICITOR JORDAN: Your Honor, I'm gonna hand up two,  
7 two sets of papers -- photographs that have been marked  
8 previously as State's Exhibit No. 1 and 2, and I'd like to  
9 admit those into evidence as part of the facts and the  
10 basis -- the factual basis of the plea. Photographs have  
11 been previously provided to Mr. Alexander and Mr. Johnston  
12 through discovery.

13 There's five pictures in State's Exhibit 1 or five  
14 pages of pictures, and there's 16 pages of pictures in  
15 State's Exhibit 2.

16 MR. JOHNSTON: Without objection, sir.

17 THE COURT: Without objection.

18 (WHEREUPON, State's Exhibit Nos. 1 and 2 were received  
19 into evidence at this time.)

20 SOLICITOR JORDAN: Your Honor, I'm gonna start out with  
21 the drug buys, the drug buys related to the search warrant  
22 that led to the attempted murder charge.

23 On March the 5<sup>th</sup> of 2016, the Defendant and a  
24 codefendant, a Michael Goggins, participated in a drug buy  
25 with a confidential reliable information working along with

1 the Woodruff Police Department at [REDACTED] Harrison Street here  
2 in Spartanburg County. Crack cocaine was sold during that.  
3 That incident was captured on video and audio recording.

4 Your Honor, the information from the search -- from the  
5 buy was used to obtain a search warrant that was obtained on  
6 March the 8<sup>th</sup> of 2016.

7 In the early morning hours of March the 14<sup>th</sup>, 2016,  
8 about 6:20 in the morning, officers with the Spartanburg,  
9 I'm sorry, officers with the Woodruff Police Department went  
10 to the aforementioned residence at [REDACTED] Harrison Street to  
11 execute the search warrant. Once there, Sergeant Dawkins,  
12 Darryl Dawkins, who is present here in the courtroom seated  
13 on the very front row, was knocked and announced police,  
14 police, police at the front door. Officer Brian Knighton  
15 used a tool to breach the door. Dawkins came in first.

16 It's a very small house, as the Court can see in  
17 State's Exhibit No. 2. I would call it like a block house  
18 that has basically a living room, a kitchen, and two  
19 bedrooms at the end of a short hallway along with a  
20 bathroom.

21 Dawkins, as I stated, was the first one inside. He  
22 went left towards a hallway, and, at that time, a single  
23 gunshot wound -- a single gunshot came from one of the back  
24 bedrooms. Officer Dawkins was shot in the upper left arm.  
25 It went in the front of his biceps and came out the back of

1 his triceps.

2 Your Honor, officers, at that point in time, did not  
3 return fire because the defendant had a two-year-old child.  
4 His son, Aiden, was present in the house at that time. The  
5 officer could hear him crying. So, they did not return  
6 fire.

7 Officers from local law enforcement agencies responded  
8 to the scene. Investigator Sean Nix with the Spartanburg  
9 County Sheriff's Department executed another search warrant  
10 at that residence to collect evidence from the shooting of  
11 Mr. Dawkins -- of Sergeant Dawkins. Inside of the  
12 Defendant's bedroom he found a Norinco 9-millimeter  
13 submachine gun. You'll see photographs of where that was  
14 located in State's Exhibit No. 2. Sean Nix, from the  
15 Sheriff's Department, found it beside the wall between the  
16 bed and the, and the wall in the bedroom where Mr. Alexander  
17 was at along with his two-year-old child.

18 Your Honor, just to let the Court know that, as  
19 Investigator Nix was securing the gun, he stated in his  
20 incident report that, in attempting to make the gun safe, he  
21 observed a square button on the back of the handle that  
22 appeared to be a magazine release. He pointed the weapon  
23 away from other officers and down towards the mattress to  
24 press the button. That caused the weapon to discharge  
25 instead of clearing the cartridge so that there was a -- the

1 weapon had become jammed earlier. The weapon fired a  
2 projectile into the mattress and ejected a cartridge into  
3 the bed mattress.

4 Your Honor, you have the photographs that show Sergeant  
5 Dawkins wounds. You have the photographs that shows that he  
6 was wearing a bulletproof vest that day, and you also have  
7 the photographs showing the bedroom in the home where this  
8 occurred.

9 THE COURT: Mr. Alexander, you were able to hear the  
10 solicitor when she told me the facts?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you believe that, as she stated the  
13 facts to me, that she is substantially correct?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right.

16 THE DEFENDANT: Not -- I never heard them announce  
17 police or none of that right there.

18 THE COURT: All right. Other than that, do you believe  
19 she's correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. And, sir, do you understand  
22 that, on the distribution of crack charge of -- that I could  
23 sentence you up to 15 years?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And do you understand that I'm not bound by

1 a recommendation made by the State?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And you still wish to enter that plea?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Sir, on the possession of weapon during the  
6 commission, during the, the commission of a violent crime,  
7 do you understand that I could sentence you up to five years  
8 on that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you still wish to enter that plea as  
11 well?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Sir, do you understand that, on the  
14 attempted murder charges, that I could sentence you up to 30  
15 years on that charge?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And do you understand that that particular  
18 offense is classified as both a violent and also as a most  
19 serious offense?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And have you been able to talk to your  
22 lawyer as to the consequences and ramifications of that  
23 offense being classified as both violent and most serious?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And you still wish to enter that plea?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And, sir, do you also understand that I'm  
3 not bound by a recommendation made by you -- made by the  
4 solicitor?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you still wish to enter that plea?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: In regards to the charge of attempted  
9 murder, do you believe that the State could produce  
10 sufficient evidence to prove your guilt of that charge  
11 beyond a reasonable doubt, and that, if you went to trial, a  
12 jury would most probably find you guilty of that charge?

13 (No response.)

14 THE COURT: Do you need me to ask it again?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Sir, in regards to the charge  
17 of attempted murder, do you believe that the State could  
18 produce sufficient evidence to prove your guilt of that  
19 charge beyond a reasonable doubt, and that, if you went to  
20 trial, a jury would most probably find you guilty of that  
21 charge?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Sir, in regards to the charge of possession  
24 of a weapon during the commission of a violent crime, do you  
25 believe that the State could produce sufficient evidence to

1 prove your guilt of that charge beyond a reasonable doubt,  
2 and that, if you went to trial, a jury would most probably  
3 find you guilty of that charge?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And, sir, are you, in fact, guilty of the  
6 distribution of crack charge?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have all of your answers to my questions  
9 today been truthful and honest?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Discovery's been shared with the defense?

12 SOLICITOR JORDAN: Yes, sir, it has.

13 THE COURT: Prior record.

14 SOLICITOR JORDAN: Your Honor, he has, starting in,  
15 starting in 1997, a possession of alcohol by a minor, simple  
16 possession of marijuana, and open container.

17 A 2000 resisting arrest and breach of trust less than a  
18 thousand. He has, from 2000, another minor in possession of  
19 alcohol along with a giving false information.

20 He has a 2000 -- I'm sorry. He has a 2001 criminal  
21 domestic violence first offense.

22 He has a 2002 arrest date, convicted in 2004, of  
23 criminal domestic violence of a high and aggravated nature.  
24 He has a 2002 arrest for criminal domestic violence that was  
25 convicted, but the date is unstated in the NCIC.

1 He has a 2004 fraudulent check.

2 2005, assault and battery of a high and aggravated  
3 nature.

4 2007, fraudulent check. 2007, appears to be a  
5 violation of parole on the previously mentioned assault and  
6 battery of a high and aggravated nature.

7 2010, criminal domestic violent third.

8 And, from 2014, a DUI.

9 Your Honor, he also, as I stated earlier, has a federal  
10 weapons conviction for possessing this weapon when he was  
11 not allowed to. That is directly related from this case.  
12 He received a ten year sentence in August of 2017.

13 THE COURT: I do have the photographs of the officer  
14 indicating the injury.

15 Does the officer wish to address the Court?

16 SOLICITOR JORDAN: Your Honor, he had indicated to me  
17 yesterday that he did not wish to address the Court. I'll  
18 see if he does -- I would like to address the Court at the  
19 appropriate time just on behalf of the State.

20 THE COURT: Yes, ma'am.

21 SOLICITOR JORDAN: Your Honor, I know the Defendant's  
22 position -- the Defendant believes that he or Defendant has  
23 stated that he did not under -- hear that police had  
24 announced.

25 In the officer's reports, Hendrix, Henson, Dawkins, and

1 Castillio, and Knighton, they all stated that Darryl Dawkins  
2 knocked on the door and announced that it was the police who  
3 were coming in before the door was breached. And the  
4 biggest thing I just want the Court to know about is to know  
5 about Darryl and the possibility that we almost lost him  
6 that day.

7 Darryl had been an officer with the Woodruff Police  
8 Department for 22 years. It's my understanding, from  
9 talking to him recently, that he is -- he was close to  
10 retirement about the time that he got shot, if I remember  
11 correctly from our conversations, but he's still, still an  
12 active police officer today.

13 He is part of an outreach program or he has an outreach  
14 program in Woodruff where he uses his own time and resources  
15 to supplement the hot lunch program at Kelly Acres, which is  
16 a neighborhood where we see a lot of crime from Woodruff.  
17 He also helps organize the Department's night -- National  
18 Night Out they have.

19 I think one of the -- in addition to the physical pain  
20 that he still has from some muscle spasms from the injury,  
21 he says that, if he doesn't work out about every other day,  
22 that the pain, which is normally at a two, will go to about  
23 a five or a six if he doesn't work out regularly, I guess,  
24 to keep the muscle stretched or used.

25 The biggest thing I think that stays with him to this

1 date is the fact that there was a two-year-old child in that  
 2 house in the bedroom with a submachine gun when this  
 3 Defendant chose to fire it, and the -- and he's just  
 4 thankful that no shots were fired back that harmed Aiden or  
 5 in any way harmed that child there that day. Thankful that  
 6 we have law enforcement that heard the child, and did not  
 7 fire back not knowing that this Defendant's gun had  
 8 apparently jammed when, when they were in there.

9       And the other thing that sticks out with me about  
 10 Darryl, and I think it just shows the type of person he is,  
 11 is that, when we had the initial bond hearing in this case  
 12 back in March of 2016, I don't remember if I talked to  
 13 Darryl or someone in my office had talked to Darryl the day  
 14 of, that Monday or that Tuesday, but Darryl did not attend  
 15 the bond hearing cause he told me that his mom was upset,  
 16 and he just wanted to spend time with her. And I think that  
 17 shows a lot to Darryl that his biggest concerns in this case  
 18 were that he did not hurt a child, and that his mother was  
 19 upset about the, you know, potentially losing him.

20       Darryl was quoted in the paper a couple years ago, if I  
 21 can put my hands on it, after he received an award, as  
 22 stated that he feels blessed that he has the opportunity  
 23 every day to help somebody. I made a pact with myself a  
 24 long time ago to try and help someone every day, and I guess  
 25 that's just what sticks with me. He said a lot of time in

1 these cases that we spend time focused on the defendant and  
2 his actions, but I also wanted just to focus on Darryl and  
3 his actions and the possibility that we could of lost him  
4 that day.

5 THE COURT: Thank you, ma'am.

6 Yes, sir.

7 MR. JOHNSTON: May it please the Court, Your Honor.

8 During the course of my career, I've met a lot of  
9 defendants who had a lot of anger against police officers or  
10 against a specific police officer in general for real or  
11 imagined slights or grudges. I can tell you Dennis  
12 Alexander's not one of those people. He's really basically  
13 a happy person. Every time I've always met with him, he's  
14 never said anything untoward about police, and certainly not  
15 about this officer who was wounded in the line of duty.

16 Your Honor, but, under the circumstances, there's some  
17 things that I think the Court should know. The  
18 investigation that the police did indicates that Dennis was  
19 in fear of another individual that he had met -- he had run  
20 into at a barbecue earlier that day. This individual was a  
21 name -- was a person by the name of Adrial.

22 THE DEFENDANT: Garnett.

23 MR. JOHNSTON: And this person had threatened him, and  
24 this isn't just something that the client mentioned. In  
25 fact, this is something that his codefendant, Michael

1 Goggins, mentions in his statement. In the statement taken  
 2 from the codefendant that the codefendant says, among other  
 3 things, Dennis brought a gun in the house last night in fear  
 4 that Adrial would come to the house and he wanted to protect  
 5 his son. That's the first time there's ever been a gun in  
 6 the house. That, again, is according to the codefendant,  
 7 Michael Goggins, who was not charged with the murder, but he  
 8 was charged with the drugs in this case.

9       According to what my client tells me, this Adrial  
 10 person is a very dangerous man, that he is responsible for  
 11 the death of at least one person on the street. A person by  
 12 the name of Cecil, Cecil Gilliam.

13       Dennis had his two-year-old son with him that night.  
 14 He was caring for his son and his son was in the bed with  
 15 him. They were not partying or anything like that, and, to  
 16 the best of my knowledge, no drugs were found in this house.

17       Your Honor, I'm certainly no expert on police tactics,  
 18 but I picked up a thing or two over the years, and one of  
 19 the things I would emphasize to you is that there is a  
 20 competing desire with a police officer or group of police  
 21 officers who have a search warrant. The first is that they  
 22 gain speedy access to the location so that they can seize  
 23 whatever it is they're looking for, in this case drugs, so  
 24 that the drugs are not destroyed or gotten rid of or  
 25 anything like that.

1           So, there's a desire by them to get in the house and  
2 secure the contraband before it can be destroyed, but they  
3 also have a desire that there be no one hurt in the  
4 execution of the search warrant. So, one of the things that  
5 they do to try to avoid anyone being hurt is to knock and  
6 announce.

7           Now, there are no knock search warrants, but that's not  
8 implicated in this case. The officers did not ask for a no  
9 knock warrant, but this is in the early morning hours, and  
10 Dennis is asleep with his son. He tells me that the first  
11 thing he heard was a noise, and then a rumbling down the  
12 hallway. He says he never heard anything along the lines of  
13 police or search warrant or anything like that.

14           In Mr. Goggins written statement, he told the police,  
15 "I woke up this morning to a thud at the door. Immediately  
16 I heard noise and then a shot. Then I heard police,  
17 police." So, in his written statement, the codefendant,  
18 again being interviewed separately from Dennis, says that he  
19 didn't hear a antecedent knock and announce.

20           Now, there is some material in the solicitor's  
21 discovery that says they talked to Mr. Goggins a little bit  
22 more, and that perhaps Mr. Goggins took that back and said  
23 well, he wasn't sure. Maybe he did or maybe he didn't hear  
24 that. But, anyway, this is what his written statement says.  
25           I'd also point out that at least one of the police

1 officers, in his written statement, neglected, or not  
2 neglected, he didn't say that there was a knock and announce  
3 by the police in his first statement.

4 Now, they went back and reinterviewed him, and he added  
5 an addendum saying that there was a knock and announce, but,  
6 in any event, this man tells me that he didn't hear it, and  
7 that his main concern, again, was his son, and that if he  
8 knew it was the police, he wouldn't have done anything as  
9 far as firing his, his weapon. He fired into the dark  
10 through the doorway.

11 He has absolutely nothing against Sergeant Dawkins. In  
12 fact, he told me he likes Sergeant Dawkins. He told the  
13 investigators he likes Sergeant -- that he likes Sergeant  
14 Dawkins. Woodruff is a small town, and I believe they went  
15 to school together at some point, and they had never had any  
16 problems with one another.

17 Mr. Alexander views this totally as a situation where  
18 Sergeant Dawkins was doing his job, and he is so thankful  
19 that Sergeant Dawkins was not hurt any worse than he was.

20 As far as the gun being jammed, I don't know if they're  
21 offering this as a theory that he intended to fire the  
22 weapon some more. My interpretation of it is that the gun  
23 was capable of firing at least one other round before it  
24 jammed. It didn't jam until after that second round was  
25 discharged by the police officer.

1           Now, this gun, to my knowledge, was never examined by a  
2 firearms expert at SLED. So, I really don't think anything  
3 that could be said about that is conclusive. I would submit  
4 to the Court that one shot was fired, and, when Dennis  
5 realized that it was the police, he didn't fire again.

6           Your Honor, we have a situation where he's already,  
7 excuse me, he's already got a sentence of ten years. The  
8 Court probably knows this, but just in case the Court  
9 doesn't, there's no parole in the federal system. He has to  
10 serve 85 percent. It's like a no parole crime here in South  
11 Carolina. He has to serve 85 percent before he is eligible.

12           So, Your Honor, in this situation, I think it was an  
13 unfortunate occurrence of a series of events that led to  
14 this officer's wounding. Again, he's so glad that it wasn't  
15 any worse. He wishes he'd never gotten himself involved in  
16 the drug dealing that led to where the police had to get a  
17 search warrant for this house that he was living in, but he  
18 can't take that back.

19           He only stands before you, Your Honor, and before  
20 Sergeant Dawkins asking for mercy. We would respectfully  
21 ask the Court to accept the recommendation of 20 years -- of  
22 a cap of 20 years concurrent with the ten year sentence, but  
23 that leaves the Court still a wide latitude in determining  
24 what to do with Dennis.

25           I would ask the Court to consider sentencing him to ten

1 or at least substantially less than the 20 that has been, so  
2 to speak, agreed upon between the parties as, as a maximum.

3 At your pleasure, Your Honor, he would like to address  
4 you, but I would like to just say what he said in his  
5 statement. I, Dennis Alexander, did not know it was the  
6 police that was in the house when I fired. I am truly  
7 sorry, but I thought it was Adrial coming in, and I was just  
8 trying to protect me and my son's life. God's honest truth.  
9 He'd like to address you.

10 THE COURT: Mr. Alexander, do you agree with the  
11 statements that were just made by your lawyer?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Alexander, is there anything else that  
14 you would like to say or want me to know or consider?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Be more than happy to hear from you.

17 THE DEFENDANT: Okay. I just, first of all, I want to  
18 apologize, Sergeant Dawkins, Woodruff Police Department. I  
19 want to apologize to the Court, solicitors, all of y'all,  
20 and I just want to say I'm truly sorry. I mean I was just  
21 only protecting my -- trying to protect my son. That's it.

22 I mean I make mistakes. I'm only human. I made a  
23 mistake. I'm truly sorry. Like I said, I just -- onliest  
24 want to protect my son. That's all I was doing. I never  
25 had a problem with Sergeant Dawkins. Never. I mean I've

1 talked to him on occasion a time. Never had no conflict.  
2 Nothing.

3 I mean he can speak forward and tell you that. I mean  
4 I'm just truly sorry that all this right here took place and  
5 happened.

6 THE COURT: Thank you, Mr. Alexander.

7 well, Mr. Alexander, you do understand that by -- in  
8 order to enter the plea, you have to give up any possible  
9 defenses you might have to this -- to these charges?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And that's what you want to do?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. All right.

14 SOLICITOR JORDAN: Your Honor, may I possibly briefly  
15 reply?

16 THE COURT: Briefly.

17 SOLICITOR JORDAN: Your Honor, just as to his child, I  
18 would just want the Court to know that the child did not  
19 live there at the Defendant's house. That -- it's my  
20 understanding that was the first time the child had spent  
21 the night at his house that night, and I would just argue  
22 that, if he was in such fear, he should not of had his  
23 two-year-old child there.

24 THE COURT: I find that there's a substantial factual  
25 basis for the plea.

1           On the attempted murder charge, it will be a 20 year  
2 sentence at the State Department of Corrections. I've  
3 indicated that will run concurrent with the other charges  
4 including the Federal charges. He'll get credit for the 566  
5 days.

6           On the possession of weapons charge, that is a five  
7 year sentence. Run concurrent with the other charges  
8 including the Federal charge, which he receives credit for  
9 566 days.

10          And on the distribution of crack charge, that is a  
11 sentence at the Department of Corrections for 566 days.  
12 Runs concurrent with the other charge. He gets credit for  
13 566 days. That is a time served sentence.

14          Good luck to you, sir.

15          MR. JOHNSTON: Thank you, Your Honor.

16          SOLICITOR JORDAN: Thank you, Your Honor.

17

18

19           \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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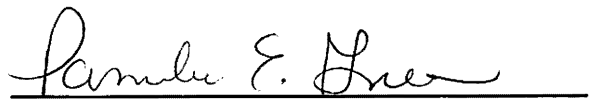
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 2<sup>nd</sup> day of October, 2017.

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

April 30<sup>th</sup>, 2018



PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA )

County of SPARTANBURG )

IN THE COURT OF COMMON PLEAS

2018CP42008T1

Dennis Ray Alexander #270129  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEF

2018 MAR 12 PM 5:06  
M. HOPE BLACKEY  
SOUTH CAROLINA COURT REPORTERS & VIDEO

**INSTRUCTIONS B READ CAREFULLY**

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

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

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

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence GENERAL SESSIONS SPARTANBURG, SOUTH CAROLINA
3. Name(s) of co-defendant(s) (if any) NICHOLAS ANTHONY GOGGINS
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2016GS 4205023/Dist. of Cocaine

- (b) 2016G54202396/ATTEMPTED MURDER
- (c) 2016G54202396A/POSSESSION OF WEAPON

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

- (a) 10/02/17 - 566 DAYS
- (b) 10/02/17 - 20 YEARS
- (c) 10/02/17 - 5 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 ALFORD PLEA

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

I ASKED MY PLEA ATTORNEY TO DO SO. HE DID NOT.

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

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

(a) I HAVE NOT HEARD ANYTHING →

SPARKMAN COUNTY CLERK  
 2018 MAR 12 PM 12:06  
 M. HDPE BLACKLEY

(b) FROM MY ATTORNEY, WAR HALE J  
 (c) RECEIVED ANY NOTICE FROM THE COURT OF APPEALS

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

(a) INEFFECTIVE ASSISTANCE OF COUNSEL  
 (b) NO SELF-DEFENSE MOTION FROM COUNSEL  
 (c) BREAKING AND ENTERING IN RESIDENCE

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

(a) SEE ATTACHED PAGE ONE (1)  
 (b) SEE ATTACHED PAGE TWO (2)  
 (c) SEE ATTACHED PAGE THREE (3)

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-conviction 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

CLERK OF COURT  
 SPARTANBURG COUNTY  
 2018 MAR 2 PM 2:06  
 M. HOPKINS BLACKEY

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

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

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 such disposition:

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

ii. \_\_\_\_\_

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

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

S. KRAMERSON  
2018 MAR 12 PM 12:06  
M. HOPE BLACKLEY

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) BECAUSE I AM PRESENTLY
- (b) DO SO LOW IN POSS COLLECTION
- (c) RELIEF

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
- (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 Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. ANDREW T. JOHNSTON
  - 184 E. DANIEL MORGAN AV.
  - ii. POST OFFICE BOX 3252 (MAILING)
  - SPARTANBURG, S.C. 29304-3252
  - iii. \_\_\_\_\_

- (b) the proceedings at which each such attorney represented you:
  - i. PRELIMINARY HEARING & PLEA
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

2018 MAR 12 PM 12:06  
 HOPE BLACKLEY  
 SPARTANBURG COUNTY

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

NEW TRIAL OR NEW PLEA

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

NO

2018 MAR 12 PM 12: 06  
M. HOPE BLACKLEY  
3/2018

STATE OF SOUTH CAROLINA )  
County of Richmond )

VERIFICATION

I, Dennis Alexander, 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.

Dennis Alexander

SWORN to and subscribed before me this 8<sup>th</sup> day of March, 2018.

Lisa Brown-Alston (L.S.)  
Notary Public

LISA BROWN-ALSTON  
Notary Public, State of South Carolina  
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

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

I, Dennis Alexander, 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.

Dennis Alexander  
Applicant

SWORN or affirmed to and subscribed before me this  
8<sup>th</sup> day of MARCH, 2018.

Lisa Brown-Alston  
Notary Public

LISA BROWN-ALSTON  
Notary Public, State of South Carolina  
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

CLERK OF COURT  
SPARTANBURG COUNTY  
2018 MAR 12 PM 12: 06  
M. HOPE BLACKLEY

My ATTORNEY WAS INEFFECTIVE FOR THE HANDLING OF MY RULE(S), WHICH IS THE DISCOVERY OF THE EVIDENCE THE STATE HAD AGAINST ME. HAD MY ATTORNEY HAD DISCUSSED WITH ME THE EVIDENCE THEY HAD, I WOULD NOT HAVE PLEADED. I DO NOT BELIEVE THAT MY ATTORNEY REPRESENTED ME IN MY BEST INTERESTS. MY ATTORNEY AND THE STATE VIOLATED MY DUE PROCESS BY COERCION AND THREATS TO PROSECUTE ME TO THE FULLEST OF THE LAW. I DO BELIEVE IF I HAD KNOWN WHAT I KNOW NOW, I WOULD HAVE WENT TO TRIAL.

CLERK OF DISTRICT COURT  
 PARTIAL BENCH  
 2018 MAR 12 PM 12:08  
 M. HOPE BLACKLEY

by my plea Counsel Refusing to Investigate. The legalities of the Entry at my place of Residence, my Attorney would and should have known that the shooting was from a quick reflex in defending myself and my son, by the officers not announcing themselves as police officers, I believed at that time and place, that my home was being invaded by unknown persons by my Attorney Refusing to investigate the witnesses who was present at the time of the incident, he would have become aware of the same about the officers not making themselves known, I do have witnesses to attest to the same. I would not have taken a plea. The shooting was for self-defense and the protection of my family.

SPRINGFIELD, MA  
2018 MAR 12 PM 12:05  
M. HOPE BLACKLICK

THE WOODHUFF POLICE DEPARTMENT ENTERED MY PLACE OF RESIDENCE, BY BREAKING THROUGH THE DOOR, UNANNOUNCED, WITH ONLY A SEARCH WARRANT, SUPPOSINGLY, AND NOT AN ARREST WARRANT. AT THE TIME THE POLICE HANDCUFFED ME, READ MY RIGHTS, BUT NEVER DID THEY PRODUCE AN ARREST WARRANT. EVEN THOUGH THEY SAID THEY HAD A SEARCH WARRANT, IT WAS NEVER GIVEN TO ME TO ADVISE ME OF WHAT THEY WERE LOOKING FOR. NEITHER WAS AN ARREST WARRANT PRODUCED ON THE DAY OF MY ARREST, SO, WHY WAS I ARRESTED BY A SEARCH WARRANT THAT NEVER PRODUCED ANYTHING IN MY HOUSE, I DO BELIEVE THAT MY FOURTH (4<sup>th</sup>) AMENDMENT WAS VIOLATED.

Denver, Colorado #2-70128  
 Monday, 1/15/50  
 General  
 271

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 )  
 Dennis Ray Alexander, #270129 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2018-CP-42-0871

**RETURN**

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on March 12, 2018, would respectfully show this Court:

**I. Procedural History**

Dennis Ray Alexander (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In May 2016, the Spartanburg County Grand Jury indicted Applicant for one count of Attempted Murder and one count of Possession of a Weapon During the Commission of a Violent Crime (2016-GS-42-2396; Counts 1 & 2). In October 2016, the Spartanburg County Grand Jury indicted Applicant for Distribution of a Cocaine Base (2016-GS-42-5023). Andrew Johnston, Esquire, represented the Applicant. Assistant Solicitors Jennifer Jordan and Spencer Smith represented the State.

On October 2, 2017, Applicant appeared before the Honorable J. Mark Hayes, II, where he pled guilty as indicted. Applicant entered an Alford plea. North Carolina v. Alford, 400 U.S. 25 (1970). The State recommended a cap of twenty years for all three charges to run concurrently. Judge Hayes sentenced Applicant to twenty years for attempted murder charge, five years for possession of a weapon during the commission of a violent crime, and time served for distribution

of cocaine base. All three charges were ordered to run concurrently. Applicant did not appeal his conviction or sentence.

## **II. Summary of Facts Adduced at Guilty Plea Proceeding**

At the beginning of the plea proceeding, Assistant Solicitor Jordan informed the Court that the State was recommending a cap of twenty years as a concurrent sentence on all three charges against the Applicant. (Tr. p. 3, lines 20-25). Applicant was pleading guilty to the charge of distribution of cocaine base, but he was pleading guilty under Alford for the remaining two charges. (Tr. p. 3, 20-22). Applicant informed Judge Hayes that he was satisfied with his attorney's representation of him. (Tr. p. 6, 8-10). Applicant informed Judge Hayes that he had received sufficient time to talk with his attorney about the elements of each charge and any possible defenses he might have. (Tr. p. 6, lines 11-15). Applicant informed Judge Hayes that no one had threatened Applicant, or made promises to Applicant, in order to persuade Applicant to plead guilty to his charges. (Tr. p. 6, lines 16-20). Applicant informed the Court that he was entering this guilty plea freely and voluntarily. (Tr. p. 6, lines 21-24).

Judge Hayes instructed Applicant on his right to a jury trial, but Applicant informed the Court he did not wish to have a jury trial. (Tr. p. 7, lines 1-13). Judge Hayes continued by instructing Applicant that he is giving up a right to present evidence which Applicant, or his attorney, may feel would establish a defense to the charges. (Tr. p. 7, lines 14-25). Applicant informed the Court that he understood the rights he was giving up and that he wished to go forward with the guilty plea. (Tr. p. 8, lines 1-3).

Solicitor Jordan gave a summary of the facts surrounding Applicant's case. On March 5, 2016, the Woodruff Police Department used a confidential informant to facilitate a drug buy involving the Applicant and his co-defendant. (Tr. p. 8, lines 23-25). The drug buy was captured

on video with audio. (Tr. p. 9, lines 1-3). On March 8, 2016, the Woodruff Police Department obtained a search warrant for the location of the drug buy, Applicant's residence. (Tr. p. 9, lines 4-6). On March 14, 2016, at 6:20 a.m., law enforcement executed the search warrant at Applicant's home. (Tr. p. 9, lines 7-15).

According to the State, Officers announced their presence by knocking on the door and announcing their identity, prior to breaching the front door and entering the home. (Tr. p. 9, lines 7-15). Upon entering the main hallway, an Officer with Woodruff Police was shot in the upper left arm by the Applicant. (Tr. p. 9, lines 21-25). Officers did not return fire, because they determined Applicant's young son was in the bedroom with Applicant. (Tr. p. 10, lines 2-6). After Applicant was arrested, the Spartanburg County Sheriff's Department obtained and executed a second search warrant relating to the shooting. (Tr. p. 10, 7-17). A gun was located that was believed to have been used in the shooting. (Tr. p. 10, 11-17).

Applicant informed Judge Hayes that heard and understood the facts as presented by the State. (Tr. p. 11, lines 9-20). Applicant only disagreed with the assertion that the Police announced their presence, as Applicant informed Judge Hayes that he was unaware it was the police in his home. (Tr. p. 11, lines 9-20). Applicant agreed with the remainder of the facts as presented to the Court. (Tr. p. 11, lines 18-20).

Judge Hayes informed Applicant each charge against him and the possible sentence he could impose. (Tr. p. 11, 21-25). Applicant understood each charge and informed the Court he still wished to enter the guilty plea. (Tr. p. 12, 1-25). As required under North Carolina v. Alford, Judge Hayes asked Applicant if he believed the State could produce sufficient evidence to prove Applicant's guilty beyond a reasonable doubt, and if he went to trial, a jury would most probably find Applicant guilty. (Tr. p. 13; 14, lines 1-4). Judge Hayes asked this of the Applicant as to the

charges of attempted murder and possession of a weapon during the commission of a violent crime. (Tr. p. 13-14). Applicant informed the Court that he understood the sufficiency of the State's evidence. (Tr. p. 14, lines 1-4). Applicant informed the Court that he was, in fact, guilty of distribution of cocaine base. (Tr. p. 14, lines 5-7).

Applicant informed the Court that he had been truthful and honest in his answers to the Court's questions concerning his guilty plea. (Tr. p. 14, lines 8-10). Judge Hayes inquired whether discovery had been shared with the Defense, and the State claimed it had. (Tr. p. 14, lines 11-12). Applicant did not object to the State's claim. Applicant stated that he held no anger towards the police, but he was only trying to protect his son during the shooting. (Tr. p. 23, lines 17-24). Again, Applicant informed the Court that he understood that he was giving up any possible defenses to his charges by choosing to enter a guilty plea. (Tr. p. 24, lines 7-12).

### **III. Allegations Raised and Relief Sought**

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

1. Ineffective Assistance of Counsel
  - a. "No self-defense motion from counsel"
  - b. Failure to Investigate
    - i. "Breaking and Entering in Residence"
  - c. "For handling of my Rule (5)"
  - d. "Shooting was in self-defense and protection of my family"
  - e. "4<sup>th</sup> amendment violation"
  - f. "No arrest warrant"
2. Prosecutorial Misconduct
  - a. "Coercion and threats to prosecute to fullest extent of the law"

In his application for post-conviction relief, Applicant is seeking a "new trial or new plea."

Attached to this Return and incorporated by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent

reserves the right to amend this Return upon receipt of any relevant materials.

#### **IV. Response to Allegations of Ineffective Assistance of Counsel**

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant 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).

#### **V. Response to Allegations of Prosecutorial Misconduct**

Applicant also alleges prosecutorial misconduct. This is an improper allegation in Applicant's case. Prosecutorial Misconduct is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Applicant did not appeal his plea or sentence. Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Notwithstanding the procedural bar to this claim, Respondent submits that Applicant provides no evidence to suggest prosecutorial impropriety. Therefore, Respondent submits that this allegation should be summarily dismissed.

#### **VI. Any Future Amendments**

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

#### **VII. Response to All Other Allegations**

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

#### **VIII. Request for an Evidentiary Hearing**

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, including those of prosecutorial misconduct, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

(signature page to follow)

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JORDAN A. COX  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

June 6, 2018

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 )  
 )  
 DENNIS RAY ALEXANDER, )  
 S.C.D.C. No. 270129, )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

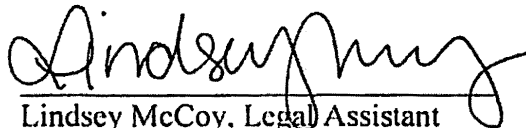
2018-CP-42-00871

AFFIDAVIT OF SERVICE BY MAIL

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

**Susannah C. Ross, Esquire**  
**Ross & Enderlin, PA**  
**330 East Coffee Street**  
**Greenville, South Carolina 29601**

DATED this the 6<sup>th</sup> day of June, 2018.

  
 Lindsey McCoy, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS )  
SEVENTH JUDICIAL CIRCUIT )

DENNIS RAY ALEXANDER, )  
APPLICANT. )

AMENDED APPLICATION

v. )

THE STATE OF SOUTH CAROLINA, )  
RESPONDENT. )

CASE # 2018-CP-42-0871

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2018 SEP 11 AM 8:52  
M. HOPPE-BLACKLEY

This matter comes before the Court by way of application of post conviction relief filed March 12, 2018, alleging ineffective assistance of trial counsel. A Return was made on June 6, 2018. This application is intended to incorporate the allegations in the original application with the additions of the following allegations:

1. Ineffective assistance of trial counsel for

(a) failure to move for immunity or dismissal under SC Code Section 16-11-450;

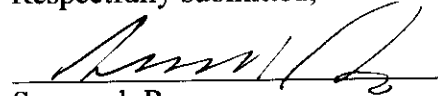
(b) failure to advise the Applicant that he could move for immunity or dismissal under SC Code Section 16-11-450 prior to plea;

(c) failure to advise the Applicant that the State would have to prove to a jury that he had a specific intent to kill to get a conviction for attempted murder under State v. King, 412 S.C 403, 772 S.E.2d 189, (Ct. App. 4/22/15), and

(d) failure to assure that the Applicant received the benefit of his plea bargain which was to have the sentence run concurrent to his Federal sentence.

Due Process violations due to Applicant not receiving the benefit of his plea bargain which was to have the sentence run concurrent to his Federal sentence. *See Clark v. State*, 468 S.E.2d 653 (1996) .

Respectfully submitted,



Susannah Ross  
Attorney for the Applicant  
330 E. Coffee St,  
Greenville, SC 29601  
(864) 242-0029

Greenville, South Carolina  
This 4 day of September 2018

FILED  
CLERK OF COURT  
SPRINGFIELD COUNTY  
2018 SEP 11 AM 8:52  
M. HOPE BLACKLEY



# Spartanburg County

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

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



**M. Hope Blackley**  
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7<sup>TH</sup> JUDICIAL CIRCUIT

Lewis Roy Alexander

CASE # 2018CP42-871

Applicant

CERTIFICATE OF SERVICE

VS  
State  
Respondent

I certify that, on this date, I served a copy of the Amended Applications  
In this action dated 9-4 2018 on 9-11-18

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

Megan Johnson  
Susannah Ross  
\_\_\_\_\_  
\_\_\_\_\_

9-11-18  
(Date)

Corice Taylor  
(Signature)



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E X H I B I T S

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

1  
2  
3 MR. JAMES: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. JAMES: Your Honor, this is the matter of Dennis  
6 Ray Alexander versus State of South Carolina. Docket Number  
7 2018-CP-42-00871. Mr. Alexander is present here in the  
8 courtroom today, and is represented by Ms. Susannah Ross,  
9 Esquire.

10 Mr. Alexander was indicted at the May, 2016 term of the  
11 Spartanburg County Grand Jury for one count of attempted  
12 murder, and one count of possession of a weapon during the  
13 commission of a violent crime. In October, 2016 was  
14 additionally indicted for distribution of cocaine base.  
15 Andrew Johnston, Esquire, represented him, and Assistant  
16 Solicitor Jennifer Jordan and Spenser Smith prosecuted the  
17 matter.

18 On October 2<sup>nd</sup>, 2017, he appeared before the Honorable  
19 J. Mark Hayes, II where he pled guilty pursuant to North  
20 Carolina versus Alford. The State recommended a cap of 20  
21 years for all three charges to run concurrently, and Judge  
22 Hayes sentenced him to 20 years for the attempted murder  
23 charge, five years for possession of a weapon during the  
24 commission of a violent crime, and time served for  
25 distribution of cocaine base, and all of those charges were

1 set to run concurrent.

2 Your Honor, my understanding of the allegations  
3 primarily is that Mr. Alexander alleges that he is not  
4 receiving the benefit of his plea bargain insofar as whether  
5 or not his charges are running concurrent to his federal  
6 charges to which he pled prior to this plea. And with that  
7 stated, I will concede the floor to Ms. Ross to correct,  
8 subtract to, or add to anything I just said.

9 MS. ROSS: Thank you.

10 THE COURT: All right. Ms. Ross.

11 MS. ROSS: May it please the Court.

12 If I could, I'm, I'm handing opposing counsel and, and  
13 yourself, I believe this is the pertinent case law is State  
14 v. -- I mean Clark v. State.

15 THE COURT: Yes, ma'am.

16 MS. ROSS: And I also handed up Ham v. State, which is  
17 an unpublished opinion, and I recognize, as such, it is an  
18 unpublished opinion, but it's -- it is very much on point,  
19 and I believe it guides us to the direction that I, I think  
20 this case would likely go. So, I, I don't even know if it's  
21 ineffective assistance of counsel here, but the allegation  
22 is that he simply did not receive the benefit of the bargain  
23 and due process requires that he does. And we'd ask for a  
24 remedy of that situation, and I'm happy to present testimony  
25 at this time if the Court feels that it would assist.

1 THE COURT: I'll be happy to hear -- allow you to do  
2 that.

3 MS. ROSS: Okay. Mr. Alexander, I'll call you to the  
4 stand, and, procedurally, Judge, there -- there's one other  
5 thing. At this time, I'd like to go -- move forward on the  
6 Clark v. State issue only, the benefit of the bargain.

7 THE COURT: All right.

8 MS. ROSS: There, there were other issues potentially  
9 of ineffective assistance of counsel, but I don't think that  
10 they should come to play here, and, if, if they do, I'd  
11 possibly ask for a continuance to get a witness for the full  
12 hearing. But I don't think that's---

13 MR. JAMES: I have no interest in a bifurcated hearing,  
14 Your Honor. We can either move forward on all the  
15 allegations she wishes to move forward on today or, if she  
16 needs additional time, she can move for a continuance on all  
17 the matters.

18 THE COURT: Okay. I mean I, I understand that.

19 I mean are you, are you not prepared to go forward on  
20 the other matters?

21 MS. ROSS: I could leave -- there's one -- yes, I'm  
22 prepared. I'm prepared. There's one witness who's another  
23 inmate. This was a, a situation where a search warrant was  
24 served, and an officer was shot, and there was another  
25 person in Mr. Alexander's home or his child and another

1 person. And their testimony would be, and their statement  
2 was that they didn't hear the officers announce police.

3 So, there was no announcement. I could get that by  
4 affidavit after the fact if you'd like or testimony by  
5 phone.

6 THE COURT: Sure. I mean if you need that, you could  
7 --.

8 MR. JAMES: Your Honor, testimony of that kind would  
9 necessitate that inmate being transported---

10 THE COURT: Well, I---

11 MR. JAMES: ---here to the courtroom so that you can  
12 make a ruling upon his credibility, especially as the State  
13 has not previously had notice of the witness which she is  
14 referring. And so, if she does intend to proceed on that  
15 allegation, then it's not -- she, she can try and proceed on  
16 it today, but the State's going to object to leaving the  
17 record open or bifurcating this hearing.

18 THE COURT: What is -- let me ask you this, and I  
19 understand your objection, Mr. James, in, in, in doing that.  
20 But here -- here's, here's the thing, and I'm just thinking  
21 out loud, and I want to hear your, your, your, your  
22 thoughts, and it probably would change your position. But,  
23 obviously, she would have to move at that point for a  
24 continuance to get that, that witness here from the  
25 Department of Corrections, and we could do that. That's not

1 an issue. That's not a problem. But that doesn't make this  
2 Clark v. State issue go away. It's still there.

3 So, if we did continue the matter, we would then come  
4 back, and we'd have that witness in place, and then we would  
5 hear the whole thing. It seems like a waste of resources  
6 and time to have had Mr. Alexander brought over here, and  
7 not deal with the things we can deal with.

8 What prejudice is there to the State if we -- if I  
9 allow her to go forward on the Clark issue, and keep the  
10 record open to have the other matters heard?

11 Obviously the one issue is, more than likely, I won't  
12 be the judge at the next one.

13 MR. JAMES: Well, Your Honor, that's actually part of  
14 the issue. If you start the hearing, I, I believe it would  
15 be appropriate for you to retain jurisdiction over all  
16 future matters for the hearing. So, any second hearing that  
17 might be necessary would have to go before Your Honor, which  
18 might be a simple straightforward affair. It might end up  
19 being extraordinarily difficult to find time on an already  
20 crowded Common Pleas roster outside of the typical terms of  
21 Post-Conviction Relief that we have here in the Seventh  
22 Circuit.

23 Additionally, I hate to phrase it this way, but,  
24 unfortunately, the Attorney General's Office has been  
25 subject to elevated turnover in the Assistant Attorney

1 General who attend to these matters.

2 So, there is always a risk that, if you bifurcate the  
3 hearing, one attorney comes and handles the first hearing,  
4 and then a second attorney has to come and handle the back  
5 half of the hearing, and then order the transcript or any  
6 other records in order to be familiar with what happened in  
7 the first hearing in order to prepare the second hearing.  
8 And I state that with my own knowledge that here, in a  
9 future term, I'm going to have to do just that, read the  
10 transcripts of a first hearing, and then go to a second  
11 hearing with only that knowledge of, of what happened  
12 previously in front of an extraordinarily skilled retained  
13 counsel.

14 I, I -- it's an unfortunate expenditure of the Court's  
15 time that we've brought him here today, and the possibility  
16 that we may have to bring him here again in the future. But  
17 if we're doing two hearings, we're going to have to do that  
18 anyway.

19 THE COURT: Yeah.

20 MR. JAMES: So, ultimately, it's not going to cost the  
21 Court much more if indeed Ms. Ross believes that this  
22 witness is necessary for her to move, move forward on all  
23 of, of the allegations, and then should we move forward  
24 altogether.

25 THE COURT: Okay.

1 MS. ROSS: And the---

2 THE COURT: Ms. Ross.

3 MS. ROSS: The witness is -- the witness would say no  
4 more than that. I believe his, his testimony or potential  
5 testimony was out during the time of the plea. Everyone  
6 understood that that would be -- I believe everyone  
7 understood that would be the kind of codefendant's  
8 testimony.

9 THE COURT: Right.

10 MS. ROSS: And so it's a small matter. It's just  
11 something, for record preservation, I'd like to, to leave  
12 open because my client did tell me that this person existed,  
13 was in the house as, as well, and could testify as to this  
14 one, one fact that would go to the potential hearing under  
15 Stand Your Ground, which---

16 THE COURT: All---

17 MS. ROSS: ---did happen---

18 THE COURT: All, all of this was, was in place prior to  
19 the plea, right?

20 MS. ROSS: Yes.

21 THE COURT: Okay.

22 MS. ROSS: So, with the---

23 THE COURT: And he chose to go forward on the plea as  
24 an Alford plea?

25 MS. ROSS: Correct.

1 THE COURT: So no, no one is -- I mean he -- he's  
2 taking responsibility under Alford without accepting the,  
3 the allegations of, of wrongdoing that the State has made  
4 against him.

5 MS. ROSS: Correct. It's a, it's a small point.

6 THE COURT: So, how does, how does, how does that --  
7 how would that change if he was made a -- I mean all of this  
8 he was aware of and yet he -- with all this information, he  
9 made a conscious decision to enter a plea under Alford.

10 MS. ROSS: Correct.

11 THE COURT: So, how was -- what, what would this  
12 witness contribute?

13 MS. ROSS: Only the, the small matter of advising him  
14 to take a plea under Alford without doing a Stand Your  
15 Ground motion to try to show that it, it was a Stand Your  
16 Ground issue even though law enforcement was involved  
17 because this codefendant said he did not hear law  
18 enforcement announce police. So, that's the only small  
19 matter, and, and I don't think it's the strength of this  
20 case, and that's why I did not subpoena him for today  
21 because I feel like the Clark matter, that it would be a  
22 waste of the State's time to transport this witness because  
23 I don't believe that is the dispositive matter for, for  
24 today. It's the Clark v. State issue.

25 THE COURT: well, I'm gonna, I'm gonna let you make the

1 decision. I -- I'm gonna -- I, I, I agree with Mr. James  
2 that we either need to hear everything or, or not, and I  
3 don't know if you have to have that witness to go forward or  
4 not. I'll be -- I'm -- I certainly would accommodate you as  
5 far as a request for a continuance if you would like to do  
6 that, and have that witness present. And if you need time  
7 to talk with Mr. Alexander about that.

8 MS. ROSS: No, Judge. I'll just proceed, proceed  
9 forward. It comes down to that decision was wrong, we can  
10 handle that at the -- the Court can look over that at a  
11 later time. So --.

12 THE COURT: All right. Go ahead.

13 MS. ROSS: I'd ask that Mr.---

14 THE COURT: Now, was Mr. Alexander placed under oath?  
15 Mr. Alexander, if I could get you to do me a favor?

16 If you could just place your left-hand on the Bible and  
17 raise your right-hand the best you can.

18 DENNIS ALEXANDER, being first duly  
19 sworn, testified as follows:

20 THE COURT: Thank you, sir. You may have a seat.

21 All right. Ms. Ross.

22 DIRECT EXAMINATION

23 BY MS. ROSS:

24 Q Okay. Mr. Alexander, if you could just explain to the  
25 Court why you're here today very briefly and I'll guide you.

1 A I'm here just to let them know that I, I didn't want --  
2 I don't feel that I got a fair trial cause I didn't know  
3 about the, about the sentence, the sentence that I got. I  
4 was thinking that I was gonna get a lesser, a lesser  
5 sentence from my lawyer.

6 Q Okay. Did your lawyer tell you -- you had a federal  
7 sentence as well, correct?

8 A Yeah.

9 Q And did your lawyer tell you something about how this  
10 sentence, the State sentence, and the Federal sentence would  
11 run?

12 A No, I just, I just -- I asked him, I said -- he, he  
13 just said it's zero -- it's from zero to 20, and I, and I  
14 said well, do you think that you would be able to get it  
15 under the 20, and he said I think I can get it under the 20.

16 Q Okay. Did you think that it would run con -- together  
17 with the 10 years you already got in Federal Court or you  
18 were looking at in Federal Court?

19 A Do I think it would run it?

20 Q Yeah.

21 Didn't you think you were---

22 A Yeah. I did.

23 Q ---running---

24 A That's what I think it was doing.

25 Q Because that's what your lawyer told you?

Dennis Alexander - Direct examination  
By Ms. Ross

1 A Yes, ma'am.

2 Q Okay. Now, just going back.

3 Can I show you -- do you recognize this letter?

4 A This letter from my lawyer right here.

5 (WHEREUPON, a letter was marked as Applicant's Exhibit  
6 No. 1 for identification purposes only at this time.)

7 Q Okay. So this is the letter from your lawyer?

8 A Yes, ma'am.

9 Q And when did he send that to you?

10 A I ain't sure the exact date. It's just -- I knows it's  
11 a couple months ago.

12 Q All right.

13 A Andrew---

14 MS. ROSS: I would move this in as Applicant's Exhibit  
15 1.

16 THE COURT: Any objection?

17 Have you seen that, Mr. James?

18 MR. JAMES: I have, Your Honor. I was trying to decide  
19 if it would be better to actually move it into evidence  
20 under Mr. Johnston's, Johnston's testimony but no objection.

21 THE COURT: All right.

22 MS. ROSS: I can leave it here -- will you accept it?

23 THE COURT: That's fine.

24 MS. ROSS: Okay. Then I'd move that as Applicant's  
25 Exhibit 1.

1 (WHEREUPON, Applicant's Exhibit No. 1 was received into  
2 evidence at this time.)

3 Q Now, going back to your guilty plea, you pled under  
4 Alford.

5 Do you know what that means?

6 A Not exactly sure.

7 Q Okay. When you pled guilty, do you know what you pled  
8 to?

9 A Zero to 20.

10 Q All right. Do you know what the charge was?

11 A Attempted murder, distribution of crack cocaine, and I  
12 think possession of a firearm during a violent crime --

13 Q All right.

14 A -- commission of a crime.

15 Q And do you know what -- do you know what Alford means,  
16 an Alford plea?

17 A The way -- the way my lawyer explained to me like it's  
18 not saying that I'm guilty. As -- you know what I'm saying?

19 It's just saying that they can -- might could find  
20 something reasonably me -- in me, and sentence me to a lot  
21 of time.

22 Q Okay. And did he talk to you about self-defense?

23 A I ain't -- we ain't have too much lengthy no  
24 conversation about no law of self-defense.

25 Q Did he talk to you about moving for immunity or

Dennis Alexander - Direct examination  
By Ms. Ross

1 dismissal of the charge?

2 A No, I didn't hear none of that.

3 Q Did he tell you that, under attempted murder, that,  
4 that they -- the State would of had to prove an actual  
5 intent to kill to a jury?

6 A Yeah, he did say that.

7 Q Okay. So, he told you that -- that they'd have to  
8 prove an actual intent to kill?

9 A He said they would have to prove it, but he said, if we  
10 go forward with a trial, this right here, he wouldn't think  
11 that we would all make it.

12 Q Okay. Did -- you mentioned to me something about  
13 investigating body cams or something like that.

14 A Uh-huh. (Affirmative).

15 Q Did you feel that he failed to investigate your case  
16 fully?

17 A Yes, ma'am.

18 Q And as far as the, the police announcing at your house,  
19 did you have any issue with that?

20 A They didn't announce.

21 Q Do you think there would of been some evidence out  
22 there that they didn't announce that your lawyer didn't  
23 find?

24 A I mean really on there right there it just be my word  
25 against theirs.

1 Q Okay. Okay. If you had known that you didn't have an  
2 actual -- you didn't have to have an actual intent to  
3 kill -- I mean you had to rely on an actual intent to kill  
4 for attempted murder.

5 If you had known that, and had all the investigation  
6 done, would you have pled guilty?

7 A No, ma'am.

8 MS. ROSS: Okay. I've got no further questions.

9 THE COURT: All right. Cross.

10 CROSS-EXAMINATION

11 BY MR. JAMES:

12 Q Mr. Alexander, how are you doing today?

13 A All right, sir.

14 Q Do you recall about how many times you met with your  
15 lawyer before you entered your Alford plea?

16 A On the, on the Alford plea I think we met about twice.  
17 Maybe three.

18 Q And those are in person meetings?

19 A Sir?

20 Q Those, those meetings were in person?

21 A Yes, sir.

22 Q Okay. Do you ever communicate with him by telephone or  
23 letter?

24 A No, sir.

25 Q Okay. Did he review with you all of the discovery in

Dennis Alexander - Cross-examination  
By Mr. James

1 your case?

2 A No, cause I never did see -- really see -- well, I seen  
3 about, about on the drug part, but I never did see like who  
4 the one setting it up and all this other. No, I didn't  
5 never see everything. I seen the gun, you know, what I had,  
6 the gun that I shot and all that right there. I seen all  
7 that.

8 Q And you told him your version of what happened that  
9 night, correct?

10 A Correct.

11 Q All right. And am I correct in that your version of  
12 events was that you didn't hear the police announce the  
13 raid?

14 A Yes, sir.

15 Q Okay. And that when you heard the movement out in the  
16 hallway, you produced a firearm and shot down the hall?

17 A Yes, sir.

18 Q Okay. And you surrendered after that, right?

19 A Yes, sir.

20 Q Okay. Did you give him any potential leads or  
21 witnesses to follow-up on?

22 A About---

23 Q People to talk to.

24 A About why I shot?

25 Q About why you shot, about---

1 A Yes, I gave him Adriel Garnett who had just killed  
2 Cecil Gilliam on █████ Sharp Street, and he was around, and he  
3 wanted to come and do something to my partner, which it was  
4 Michael Goggins. He had been sending messages and threaten  
5 that he was all coming to rob him. And that night when it,  
6 when it happened, when it happened -- Travis -- I mean not  
7 Travis. Tavis, Tavis Geter and Frank Jones came to the  
8 house and said what if y'all---

9 MR. JAMES: I'm gonna object to hearsay there.

10 Let's not get to talking about what other people said.

11 But, but you gave him the leads---

12 A (Witness nods affirmatively.)

13 Q ---to follow-up on?

14 A (Witness nods affirmatively.)

15 Q Okay. And for the court reporter's assistance, try and  
16 make sure you say yes or no to any of my questions. Don't  
17 just nod or shake your head. She---

18 A Yes, sir.

19 Q ---has a harder time writing that down.

20 A Yes, sir.

21 Q Do you know right now if your Federal sentence and your  
22 State sentence are both running concurrent?

23 A I talked to my caseworker. She said the, the State can  
24 run in with the Federal, but the Federal can not run in with  
25 the State. So, right now, it's -- right now I'm doing dead

Dennis Alexander - Cross-examination  
By Mr. James

1 time on Federal.

2 Q would it change your opinion as to this PCR if it was  
3 arranged so that both your -- all of your sentences are  
4 properly running together?

5 A Yes, sir.

6 Q It would?

7 A Yes.

8 Q Okay.

9 A I still would go, go through my PCR.

10 Q Oh, you'd still go for the PCR --

11 A Uh-huh. (Affirmative).

12 Q -- even if you were just serving the 20, and everything  
13 was running altogether?

14 A I'd still go for PCR.

15 Q why did you plead pursuant to Alford?

16 A why did I plead?

17 Q why did you plead?

18 A Cause my attorney said that it -- he feel that it would  
19 be one of the best decisions -- be a good decision.

20 Q And so you pled because you thought the State would be  
21 able to convict you?

22 A No. No, I just, I just -- I didn't know what, what  
23 really could happen. He just said the Alford plea would be  
24 not saying that you guilty, and not -- just saying they a  
25 reason where they could find something against you.

1 MR. JAMES: I have no further questions for this  
2 witness.

3 MS. ROSS: No redirect.

4 THE COURT: All right. Thank you very much, sir. You  
5 may step down.

6 MS. ROSS: We'd call Andy Johnston at this time.

7 THE COURT: All right. Mr. Johnston.

8 Sir, if you would please place your left-hand on the  
9 Bible and raise your right?

10 ANDY JOHNSTON, being first duly  
11 sworn, testified as follows:

12 THE COURT: Thank you, sir. If you'd would please  
13 state your name for the record, Mr. Johnston?

14 THE WITNESS: Andrew Johnston.

15 DIRECT EXAMINATION

16 BY MS. ROSS:

17 Q Good morning, Mr. Johnston. Excuse me.

18 A Good morning.

19 Q Well, I guess if -- I'm just gonna show you this to  
20 start it off.

21 Did you mail this to Mr. Alexander?

22 A I didn't put it in the mail, but I directed it -- I, I  
23 did dictate the letter, and I did direct that it be sent to  
24 him, yes. Yes, ma'am.

25 Q And why did you send that to him?

Andy Johnston - Direct examination  
By MS. ROSS

1 A Because I was concerned that Mr. Alexander was not  
2 receiving the benefit of the bargain that I had negotiated  
3 for him in his plea some time before that.

4 what happened was I had assumed that he had gone into  
5 the Federal Bureau of Prisons. But I received a copy of his  
6 PCR materials from the Attorney General's Office, and I saw  
7 that he was residing somewhere in the State Department of  
8 Corrections. So, that gave me concern that he was not  
9 getting the benefit of the bargain.

10 So, I wrote to him and asked or suggested to him that  
11 he should bring this up to his PCR counsel, and let the PCR  
12 counsel act how they felt best.

13 Q Thank you. Just put it up there, and, in your letter,  
14 you did cite Clark v. State, correct?

15 A Yes, ma'am.

16 Q And that's because you felt it was the dispositive case  
17 on this issue or --

18 A Yes.

19 Q -- on point?

20 A I, I didn't spend a lot of time researching it under  
21 the circumstances, but it was something that I found. I  
22 don't remember if the Ham case came up. I don't know the  
23 date of that case is that you were discussing earlier. But  
24 I knew Clark at least raised the issues that I was concerned  
25 with, and felt that it would be appropriate for Mr.

1 Alexander to have a copy of that case.

2 Q Okay. Thank you. I guess I'm gonna move on into some  
3 other issues that we would go to ineffective assistance of  
4 counsel.

5 A Yes, ma'am.

6 Q With Mr. Alexander's case, did you review all the  
7 discovery with him?

8 A To the best of my recollection, yes.

9 Q And did you ask for any subpoena or ask for any body  
10 cams or videos of the shooting?

11 A I filed a Rule 5 Brady in the case, served it on the  
12 Solicitor's Office. As a general rule, the Solicitor's  
13 Office provides copies of body worn cameras, body worn  
14 camera videos that are extant or that -- in, in a given  
15 case. And so at -- as I sit here now, I didn't recall if  
16 there were body worn cameras from the incident the night of  
17 the shooting.

18 I could review my file for that. But, as I sit here  
19 now, I don't have a recollection of that, but they will  
20 provide those to us typically. It's not necessary for us to  
21 subpoena law enforcement agents -- agencies for that. If I  
22 felt that they were not being forthcoming in that, that  
23 certainly would have been an alternative for me.

24 Now, there were, if, if memory serves me, there was a  
25 video about the drug distribution case. I'm not a hundred

Andy Johnston - Direct examination  
By Ms. Ross

1 percent sure about this, but I believe that there was a  
2 video on that, and the practice of this solicitor's Office  
3 is not to provide me copies of those sorts of videos. Their  
4 policy is that I may go and watch it myself.

5 Q Uh-huh. (Affirmative).

6 A And I can make them produce a copy to me, but it is my  
7 understanding that their policy is that, if I do that, all  
8 negotiations cease and everything is a straight up deal from  
9 that point. And, as was stated earlier, there was an, an  
10 agreement in this case that I felt was favorable for Mr.  
11 Alexander.

12 Q Okay. And just looking at the -- what, what you saw  
13 in, in your discovery, was there any evidence that law  
14 enforcement or specifically the officer who was shot did not  
15 identify himself when he entered into the home?

16 A I -- as I sit here now, I can't answer that question.  
17 You'd have to show me what you're -- what specifically  
18 you're talking about. I mean I know that that was an issue,  
19 but, as I sit here now, I can't remember what exactly is in  
20 the discovery. There's a good bit of materials there, as  
21 you can see. I can't address that right now.

22 Q Well, in the, the plea colloquy, have you reviewed that  
23 plea colloquy at all?

24 A I took a quick look at it to see only for the issue of  
25 what was said about the offer, and what the judge said about

1 accepting the offer, and ordering the enforcement of the  
2 offer. But as to the rest of it, I can't say that I studied  
3 it closely, but I'm more than willing to look at it now.

4 MS. ROSS: Beg the Court's indulgence one second.

5 (Pause.)

6 Q I think I provided my client with my copy. I'd just  
7 refer you to Page 11, Line 16.

8 A All right. Let me lay hands on it here.

9 All right. I'm looking at the transcript of the  
10 record.

11 Q Page 11, Line 16 according to my notes.

12 A Okay. Dated October 2<sup>nd</sup>, 2017, and what page again  
13 please, ma'am?

14 Q 11.

15 A Page 11.

16 Q Line 16.

17 A Okay. Line 16. The defendant. No -- not -- I never  
18 heard them announce police or none of that right there.

19 Q All right.

20 A Yes. And, and that was his position with me throughout  
21 the process.

22 Q Okay. And going on to a bit of what, what you stated  
23 in, in response -- in, in your colloquy.

24 Did you also say, say that, that the incident reports  
25 had different -- were -- differed on whether there was an

Andy Johnston - Direct examination  
By MS. ROSS

1 announcement made?

2 A Can, can you direct me to a, a page?

3 MS. ROSS: Beg the Court's indulgence.

4 THE COURT: Yes, ma'am.

5 (Pause.)

6 Q Okay. On Page 20.

7 A Yes, ma'am.

8 Q And in, in that, are you talking about the no knock  
9 warrant?

10 A Okay. That was a -- that's a three page, three page  
11 statement by me. So, which, which paragraph are we --?

12 Q On Page 20.

13 A This third paragraph perhaps?

14 Q Yes.

15 A In Mr. Goggins written -- all right. I, I think I  
16 recall now what, what it is we're talking about. There's a  
17 gentleman by the name of -- I believe his name is Michael  
18 Goggins, and it seems to me that he gave at least two  
19 versions of -- that he was present at the scene, and that he  
20 gave at least two versions of what occurred. So, I say it,  
21 it was a no knock -- well, I'm not -- I, I -- as I say, I'm  
22 not sure whether it was a no knock search warrant or not.  
23 I, I can't remember about that.

24 It says the officers did not ask for a no knock  
25 warrant, but this is early -- in the early morning hours and

1 Dennis is asleep with his son. He tells me that the first  
2 thing he heard was a noise, and then a rumbling down the  
3 hallway. He says he never heard anything along the lines of  
4 police or search warrant or anything like that.

5 Then I go on to talk about this Mr. Goggins.

6 Q Uh-huh. (Affirmative).

7 A In Mr. Goggins written statement, he told the police "I  
8 woke up this morning to a thud at the door. Immediately I  
9 heard noise and then I -- and then a shot. I heard police,  
10 police."

11 So, in his written statement, the codefendant, again  
12 being interviewed separately from Dennis, says that he  
13 didn't hear an antecedent knock and announce.

14 Then I go on to say, "now there's some material in the  
15 solicitor's discovery that says they talked to Mr. Goggins a  
16 little bit more, and that perhaps Mr. Goggins took that  
17 back, and said well, he wasn't sure. Maybe he did or maybe  
18 he didn't hear that. But, anyway, this is what his written  
19 statement says."

20 So, this is starting to come back to me. It, it --  
21 what it sounds like is he gave this initial written  
22 statement. As time went on, the solicitors and/or their  
23 investigators, I don't remember, talked to him further, and  
24 he kind of took that back, and they did make that known to  
25 me, that being Brady, Brady type material. They made it

Andy Johnston - Direct examination  
By MS. ROSS

1 known to me.

2 Q And, and then you point out, on Line 25, that one of  
3 the police officers --?

4 A "I'd like to -- I'd also point out that at least one of  
5 the police officers, in his written statement, neglected, or  
6 not neglected, he didn't say there was a knock and announce  
7 by the police in his first statement."

8 Yes, I, I do have a recollection of that, but they went  
9 back and reinterviewed that officer, and he made an  
10 addendum. And I think the addendum was specific to the  
11 knock and announce point. But what I told the judge at that  
12 time was, "and he added an addendum saying there was a knock  
13 and announce, but, in any event, this man tells me that he  
14 didn't hear it, and that his main concern, again, was his  
15 son, and that, if he knew it was the police, he wouldn't of  
16 done anything as far as firing his weapon. He fired into  
17 the dark through the doorway."

18 Q Okay. Thank you.

19 Now, did you ever move for dismissal under the -- for  
20 immunity or dismissal under 16-11-450?

21 A No, ma'am, I did not.

22 Q Now, did you discuss that matter with him?

23 A I don't have a specific recollection of it, but I did  
24 look in my file and I saw that I had printed out the  
25 Protection of Persons and Property Act. And so it would be

1 my assumption, my thought that I went over the applicable  
2 portion of -- portions of that with him, and I had, and  
3 highlighted Subsection B(4) against whom the deadly force is  
4 used is a law enforcement officer. Basically it says that  
5 the presumption provided in Subsection A does not apply if  
6 the person against whom the deadly force is used is a law  
7 enforcement officer who enters or attempts to enter a  
8 dwelling, residence, or occupied vehicle in the performance  
9 of his official duties, and he identifies himself in  
10 accordance with applicable law or the person using force  
11 knows or reasonably should have known that the, that the  
12 person entering or attempting to enter is a law enforcement  
13 officer.

14 So, in addition to the other things that would have to  
15 be shown in a Castle Doctrine type of hearing, we would have  
16 the law enforcement exception to deal with. Of course, the  
17 law enforcement exception, and, and I don't think the  
18 statute's very clear on this, but there -- there's some  
19 wiggle room through about whether or not the person knew or  
20 reasonably should of known that the person who was trying to  
21 come in was a law enforcement officer.

22 Q Okay. Now, did you discuss this with Mr. Alexander  
23 prior to his plea?

24 A I do not have a specific recollection of that. Again,  
25 I have it printed out. So, I assume that I did. I was

Andy Johnston - Direct examination  
By Ms. Ross

1 certainly aware of it, it being a potential defense for Mr.  
2 Alexander.

3 Q And you're aware he could of moved on with that hearing  
4 and, and still gone on afterwards to plead guilty---

5 A He could have.

6 Q ---under Alford?

7 A He could have, but our Solicitor's Office could have  
8 taken the position that, if he goes forward with the  
9 hearing, and this is not something that would be unknown for  
10 them to do, that if he should go forward with a hearing of  
11 that type, that the offer they had made to him, which,  
12 again, I viewed as favorable under the circumstances, would  
13 be withdrawn.

14 Q All right. And in -- I think it's, it's unnecessary  
15 given the Applicant's testimony, but did you advise that,  
16 for attempted murder, there has to be a specific intent to  
17 kill pursuant to State v. King?

18 A Yes, that -- and that is my understanding of the law.

19 Q And that was his testimony as well. Thank you.

20 A Yes, ma'am.

21 THE COURT: Cross.

22 MR. JAMES: If I may, if I may have just one moment,  
23 Your Honor?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. JAMES:

2 Q Mr. Johnston?

3 A Yes, sir.

4 Q How are you doing today?

5 A Fine.

6 How are you, sir?

7 Q I'm doing very well.

8 You're an attorney licensed to practice in the State,  
9 correct?

10 A That is correct.

11 Q How long have you been doing this?

12 A Since 1985.

13 Q How much of your experience has been criminal?

14 A Over the years -- over the years, sometimes -- I'll  
15 say, overall, 75 percent, in, in -- if you view my career in  
16 toto.

17 Q And how did you come to represent Mr. Alexander?

18 A I was retained. Now, I did not represent him in the  
19 Federal case that arose from the same facts. I am pretty  
20 sure that he had a Federal public defender on that, but  
21 his -- the name of that person is not known to me as I sit  
22 here.

23 Q But you were aware of the Federal case?

24 A Oh, yes. Absolutely.

25 Q All right. You specifically advised your client as to

Andy Johnston - Cross-examination  
By Mr. James

1 how he should proceed with his plea in the context of the  
2 Federal case, correct?

3 That's an obtuse question. Let me phrase it  
4 differently.

5 A Okay.

6 Q Did you specifically delay in having your client plead  
7 in light of the pending federal charges?

8 A Absolutely. And we have a case management order in  
9 this circuit or this county. And so I had to have the  
10 cooperation of the Assistant Solicitor to that, and she was  
11 cooperative on that point. So, yes, the, the Federal case  
12 arose after the State charges, but the Federal cases  
13 typically move fairly fast. So, I did do my best to hold  
14 off a disposition of his State case until we saw how he had  
15 fared in the Federal case, and to take advantage of the  
16 possibility that, if he were convicted in the Federal case,  
17 and given a sentence, a timed sentence, that there might be  
18 the possibility of concurrent sentencing with that Federal  
19 sentence.

20 Q And you used the word possibility just now.

21 Did you promise him that these sentences would be run  
22 concurrent together?

23 A I did not promise him that, but that is what they were  
24 recommending, and they---

25 Q who is they?

1 A The Solicitor's Office, Assistant Solicitor Jen Jordan,  
2 and Spenser Smith who had the drug case. They were willing  
3 to make that as a recommendation, and, in my experience with  
4 Judge Hayes, he usually accepts those recommendations so  
5 long as they're reasonable, and would probably be inclined,  
6 if he did not wish to accept the recommendation, to allow  
7 Mr. Alexander to withdraw.

8 So, I did not promise him, but I, I, I would say that I  
9 probably told him it was a very good possibility.

10 Q But notwithstanding the fact it was a good  
11 possibility, you did advise your client about the also  
12 possibility that the judge could sentence him without regard  
13 to the recommendation?

14 A Certainly. And I haven't looked at the plea colloquy  
15 for this point, but I would imagine that Judge Hayes told  
16 him that as well.

17 Q Isn't it true that your client told you that he was  
18 asleep and then awoke to noise?

19 Is that an accurate recollection of, of what your  
20 client told you happened?

21 A I believe that that is what he said, yes.

22 Q And so, isn't it true that the fact that he awoke in  
23 the middle of these events provided a complication to  
24 offering a Castle defense?

25 A Well, that, and the fact that the officers would have

Andy Johnston - Cross-examination  
By Mr. James

1 said, I think that they would have said, that they did, in  
2 fact, knock and announce. That would also of been a  
3 significant problem as well.

4       There, there was also, as was referenced earlier, the  
5 written statement of Michael Goggins in which he  
6 affirmatively said that he heard it. I don't believe Mr.  
7 Goggins was in the same room as Mr. Alexander, but they were  
8 in the same, in the same house. Of course, as was  
9 referenced, he did kind of walk that back, but I'm sure, at  
10 trial, the, the State would of impeached him with his  
11 earlier written statement had he varied from that.

12 Q     So, there were substantial difficulties in proceeding  
13 on a Castle, Stand Your Ground/Persons and Protect --  
14 Persons and Property Protection Act---

15 A     Yes---

16 Q     ---is that was---

17 A     ---that, that would have been, I think, a difficult  
18 thing to win. However, had we decided to go to trial, that  
19 would have been the smart play to have first begun with I  
20 believe it's a Duncan hearing, to have had that first, and  
21 then allowed the Judge to rule, and then go forward with the  
22 trial or the appeal depending on what the Judge's ruling  
23 was. But I thought it rather iffy that we would win those  
24 points.

25       Again, they were making, what I thought, was a

1 favorable recommendation both in terms of the concurrent  
2 aspect, and in terms of the fact that they were willing to  
3 give him a cap or willing to recommend a cap I should say.

4 Q Is that---

5 A Because at that -- it wasn't -- the bargain wasn't just  
6 or the offer that they made wasn't just concurrent  
7 sentencing. It was also that he get a cap of 20 on the more  
8 serious charge, which was the attempted murder warrant, and  
9 the fact that he already was down for 10 with the Feds at 85  
10 percent. Overall, I recommended it to him.

11 Q So, the recommended cap of 20 years was a major  
12 motivating factor in your counsel to your client?

13 A That, and the concurrent with his already imposed 10  
14 year Federal sentence, yes. And, and his, his exposure of,  
15 of what he faced if we went to trial and he were to be  
16 convicted.

17 Q And what was his exposure if he went to trial and was  
18 to be convicted?

19 A Well, I believe that attempted murder carries up to 30  
20 years at 85 percent, and, of course, that could have been  
21 imposed consecutively to his Federal sentence. So, he faced  
22 quite substantial jeopardy there, and he had a drug case  
23 too, but the attempted murder was the, was the driving  
24 charge.

25 Q Mr. Alexander give you any leads or witnesses to

Andy Johnston - Cross-examination  
By Mr. James

1 follow-up on, anybody to talk to?

2 A I want to say that he told me about his landlord, and  
3 that he told me the landlord had some information that might  
4 help me. And, to the best of my recollection, I did speak  
5 with the landlord. And while the landlord was sympathetic  
6 to Mr. Alexander, he could not give me anything that was, in  
7 my opinion, was helpful.

8 Q Did you conduct an independent investigation into the  
9 facts of this case?

10 A Well, I reviewed the discovery material. I reviewed it  
11 with him. I did speak with the landlord. That is what I  
12 did to investigate.

13 Q What was Mr. Alexander's concern or primary interest  
14 when you first communicated to him the offer of 20 years  
15 capped?

16 A I don't know that I can tell you what his primary  
17 concern was. I, I don't remember. I mean I'm sure he had  
18 the concerns that anyone in that position would have, which  
19 is how much time am I ultimately going to have to serve, is  
20 the judge going to accept it, that sort of thing.

21 Q And you discussed Mr. Alexander's Constitutional  
22 rights, correct?

23 A Absolutely.

24 Q His right to remain silent?

25 A Yes.

1 Q And his right to a jury trial?

2 A Yes.

3 Q His right to confront the witnesses against him?

4 A Yes.

5 Q You did not learn of any concerns about the concurrent  
6 character of the State and Federal sentences until well  
7 after the plea.

8 Isn't that correct?

9 A That is correct because, again, I made the assumption  
10 that, because he had been sentenced as, as we talked  
11 earlier, I had gone to some efforts to make sure that his  
12 Federal case was both a -- he entered his plea, and that he  
13 had been sentenced before we did anything in the State  
14 Court. I assumed that the U.S. Marshals were gonna transfer  
15 him to the Bureau of Prisons, and did not learn anything to  
16 the contrary until, as I said earlier, I received the  
17 package in the mail from your office. But it immediately  
18 caused me concern as, as was stated.

19 Q Do you know for certain that they're not running  
20 concurrent?

21 A No, I don't, I don't know for certain. I know that, as  
22 a general principle, you can run State charges, State time  
23 with Federal time, but not the converse. I have heard that  
24 a Federal judge has the authority to designate the South  
25 Carolina Department of Corrections as a place for the

Andy Johnston - Cross-examination  
By Mr. James

1 defendant to serve his time. To my knowledge -- or I have  
2 no knowledge of that being done in this case one way or the  
3 other. I -- my intent -- I would assume that it was not  
4 done.

5 Q whose decision was it, ultimately, to plead pursuant to  
6 Alford?

7 A Oh, it was definitely Mr. Alexander's.

8 Q If Mr. Alexander had refused to plea, and insisted that  
9 he proceed to trial, would you have been prepared to do so?

10 A Certainly.

11 MR. JAMES: I have no further questions for this  
12 witness, Your Honor.

13 THE COURT: Anything on redirect?

14 REDIRECT EXAMINATION

15 BY MS. ROSS:

16 Q Mr. Johnston, did you hear Mr. Alexander testify that  
17 his caseworker told him that, because he was in State  
18 custody, the charges weren't running concurrently?

19 A I did hear that.

20 Q And is, is that your understanding of how other  
21 cases---

22 A That is my under---

23 Q ---have run?

24 A That is my understanding, in general, of how it works.  
25 Although, as I've said, I have heard that a Federal judge,

1 if he orders something specifically, can accomplish that,  
2 but I have no reason to believe that that was done in Mr.  
3 Alexander's case.

4 Q Now, as far as the, the letter you sent Mr. Alexander,  
5 this is---

6 A Yes, ma'am.

7 Q ---because -- you sent him that letter because you felt  
8 that he did not receive the benefit of the plea bargain as  
9 you explained it to him?

10 A I was very concerned about that, yes.

11 Q And your understanding of the plea bargain that you  
12 entered into, and explained to your client, Mr. Alexander,  
13 was that he would receive concurrent time with his Federal  
14 sentence?

15 A There were, there were other features to it, but that  
16 was certainly an integral, integral aspect of it.

17 Q Okay. Thank you.

18 I've got no further questions.

19 THE COURT: Anything further of this witness?

20 MR. JAMES: No, Your Honor.

21 THE COURT: Thank you very much, Mr. Johnston. You may  
22 step down, sir.

23 THE WITNESS: Yes, sir.

24 MS. ROSS: Judge, we, we have no other -- nothing  
25 further, but I would ask for leave, if, if you have any

Jennifer Jordan - Direct examination  
By Mr. James

1 questions or suspicions that there charges are running  
2 concurrently, which they are not, I will be happy to present  
3 some further documentation to show that.

4 THE COURT: Okay. I -- well, I'll, I'll address that  
5 in just a little bit.

6 Is anything further from the State?

7 MR. JAMES: I would briefly like to call to the stand  
8 the Solicitor, Ms. Jennifer Jordan.

9 THE COURT: All right. Ms. Jordan, if you would please  
10 come around, ma'am.

11 Place your left-hand on the Bible and raise your right  
12 please.

13 JENNIFER JORDAN, being first duly  
14 sworn, testified as follows:

15 THE COURT: Thank you, ma'am. If you would please  
16 state your full name for the record.

17 THE WITNESS: It's Jennifer Anne Judy Jordan.

18 THE COURT: All right.

19 DIRECT EXAMINATION

20 BY MR. JAMES:

21 Q Good morning, Ms. Jordan.

22 A Morning.

23 Q How are you doing today?

24 A I'm good.

25 Q For whom do you work?

1 A Seventh Circuit Solicitor's Office.

2 Q And what do you do?

3 A I'm a prosecutor there.

4 Q Were you assigned to the case of State versus Dennis  
5 Ray Alexander?

6 A Yes.

7 Q All right. Were you the only solicitor assigned to the  
8 case?

9 A It was assigned to me at PCMS, and I was working the  
10 case with Spenser Smith. PCMS is our database in our  
11 office.

12 Q Did you receive a motion pursuant to Rule 5 and Brady  
13 from counsel for the Applicant?

14 A Yes.

15 Q All right. And did you provide materials responsive to  
16 that motion?

17 A We did.

18 Q Okay. Do you recall if there were any body cam videos  
19 from the night of the raid?

20 A My recollection from that, and I haven't reviewed the  
21 file, but my recollection is that the -- Woodruff Police  
22 Department did not have body cams activated. I don't even  
23 remember if they even had them on. The only body cams that  
24 we did have were from the sheriffs deputies who responded  
25 after the search warrant was executed --

Jennifer Jordan - Direct examination  
By Mr. James

1 Q Okay.

2 A -- or after they breached the door.

3 Q So, there was no recording of the actual knock and  
4 storming of the house?

5 A No, sir. Not to my recollection. I haven't reviewed  
6 the file since October of 2017, which I believe is when the  
7 plea was.

8 Q What were the terms that you offered to Mr. Alexander?

9 A I looked at the email earlier this morning, and it was  
10 a concurrent cap of 20 years. I can't remember if it was  
11 just on the attempted murder. It was time served on the  
12 drug distribution, and I don't remember what we did with the  
13 weapons charge that we had. But it was concurrent with each  
14 other, and concurrent with the Federal sentence. It was a  
15 recommendation.

16 MR. JAMES: Beg a moment of the Court's indulgence.

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. JAMES: I have no further questions for this  
20 witness.

21 THE COURT: All right. Anything on cross?

22 MS. ROSS: No, Your Honor.

23 THE COURT: Thank you, ma'am.

24 THE WITNESS: Thank you.

25 THE COURT: You may step down.

1 All right. Anything else from the State?

2 MR. JAMES: That is the State's showing, Your Honor.

3 THE COURT: All right. And I'll, I'll hear from, from  
4 both of you, but, Ms. Ross, with regards to the -- this  
5 Clark issue, and I'm just assuming, but if Mr. Alexander,  
6 after his -- subsequent to his plea on October the 2<sup>nd</sup> of  
7 2017, if he was then transported to the State Department of  
8 Corrections, and he's been there since, I'm, I'm confident  
9 he's not receiving any credit on his Federal sentence.

10 MS. ROSS: Thank you, Judge.

11 THE COURT: Now, having said that, let -- I'll be happy  
12 then, if, if y'all want to do a little closing remarks  
13 regarding the PCR here, and then we'll deal with all of  
14 that.

15 Okay?

16 MS. ROSS: Thank you, Judge.

17 I'll, I'll stand by my Amended Application on the  
18 arguments. I have them outlined, ineffective assistant of  
19 counsel for failing to move, move for immunity or dismissal  
20 under the Castle Doctrine or S.C. Code Section 16-11-450,  
21 failure to advise the Applicant that he could -- had  
22 possibly a chance of immunity or dismissal under the same,  
23 and, as far as my third argument regarding State v. King,  
24 it's apparent from the testimony that Mr. Alexander was  
25 advised of a specific intent to kill, and, and also with

1 regard to failure to assure the Applicant received the  
2 benefit of his plea bargain, which was to have the sentence  
3 run concurrent to his Federal sentence I think.

4 THE COURT: Did I -- and I'm -- I'm asking -- did I  
5 misconstrue the testimony?

6 I thought there was testimony -- and now I realize  
7 that, that they never made a motion under the Stand Your  
8 Ground Act. I, I mean I understand that. But I was led to  
9 believe, from the testimony, that there was a discussion  
10 about that, but that the concern was that they would lose  
11 the plea offer or they would risk losing the plea offer if  
12 they were to go forward on that, number one, was, was a --  
13 one of the concerns, and the other concern was the chances  
14 of prevailing with the officers taking the position that  
15 they did announce, and then the other witness kind of being  
16 wishy washy on that. So, I---

17 MS. ROSS: That was Mr. Johnston's testimony, correct?

18 THE COURT: Okay.

19 MS. ROSS: Mr. Alexander did not back that up one way  
20 or the other, and Mr. Johnson didn't refer to anything in  
21 his, in his file discussing that, but them reviewing that  
22 though, he did have the section printed out in his file.

23 THE COURT: Okay.

24 MS. ROSS: And then we'd also put on the record that  
25 due process violation to not, not receiving the benefit of

1 the bargain as well as ineffective assistance of counsel.

2 THE COURT: All right.

3 All right. Mr. James.

4 MR. JAMES: Very briefly, Your Honor.

5 As to the first and second allegations in the Amended  
6 Application, Your Honor stated it succinctly. They  
7 discussed the possibility of a Castle defense. They  
8 discussed the possibility that they would lose the favorable  
9 plea offer if they tried to proceed upon that. They  
10 discussed the poor prospects of that Castle defense, and,  
11 ultimately, he decided to plead pursuant to North Carolina  
12 versus Alford.

13 Your Honor, the testimony here today again shows why  
14 his chances on that Castle defense were slim to none  
15 existent insofar as law enforcement would have testified  
16 that they knocked and announced, and that Mr. Alexander,  
17 having been asleep at the time, was not in a credible  
18 position to deny or contest anything that law enforcement  
19 says. In addition to the conflicting statements of the  
20 other person who was in the house who similarly said that he  
21 was awoken (sic) from his slumber by the noise, and  
22 initially indicated that they didn't really announce until  
23 after they were inside, and then he gives a different  
24 statement later on. All those things together provide and  
25 show that the Castle defense was not going to be meritorious

1 for him.

2 Your Honor, additionally, as Applicant's counsel has  
3 clarified, there was testimony to show that State versus  
4 King was discussed, and the import of specific intent.

5 Your Honor, as to the benefit of the plea bargain, Mr.  
6 Alexander pled for a variety of reasons including but not  
7 limited to the recommendation that everything would be  
8 served concurrent. Your Honor, I understand, in the  
9 immediate practical sense, your stated position of  
10 confidence that he is not receiving concurrent credit. At  
11 this time, the State's position is that Applicant has, at  
12 this time, failed to meet his burden of showing that he is  
13 not receiving that concurrent credit by virtue of any  
14 testimony or records from the Federal Bureau of Prisons or  
15 the United States Attorney's Office to show that they are  
16 both not giving him credit concurrent with the State's  
17 sentence, and unwilling to make any effort to make that  
18 happen.

19 As was testified to on the stand by the original plea  
20 counsel, there are mechanisms by which the outcome of  
21 concurrent service can be achieved, and, at this time, it  
22 doesn't appear that Applicant has pursued all of those  
23 avenues, and, having failed to meet his burden, as it is his  
24 burden under Strickland versus Washington, the State's  
25 position is that he has failed to show any deficiency of

1 counsel, that he has failed to show any prejudice from the  
2 deficiencies alleged, and that the Application for  
3 Post-Conviction Relief should be denied in its entirety.

4 To the extent that Your Honor -- no, I'll end my  
5 argument there.

6 THE COURT: All right.

7 MS. ROSS: Judge, may I respond?

8 THE COURT: Yes ma'am.

9 MS. ROSS: Just briefly.

10 while I understand that Ham v. State is an published  
11 opinion, I did provide it to the Court, and, on Page 3, it's  
12 on the, the left-hand center paragraph in bold that case  
13 quotes Clark, and states, in bold, "a guilty plea which is  
14 based on a plea bargain which is not fulfilled or is  
15 unfillable can not stand." It -- here it says if it's not  
16 fulfilled, and, in this case, clearly it has not been  
17 fulfilled for Mr. Alexander.

18 THE COURT: All right. As to -- and, and I'm gonna,  
19 I'm gonna kind of bifurcate this in my comments.

20 As to the other allegations in the, in the Complaint --  
21 in the Application, I'm gonna respectfully deny the, the  
22 motion for relief. I, I don't think there's been a showing  
23 of ineffective assistance.

24 I think he, he entered a plea of guilty as to the  
25 distribution of crack charge, which was a 15 year exposure.

1 Of course, he, he -- they recommended a time served on that,  
2 and he certainly received the -- that, that benefit. And  
3 then, and then there was the, the issue with regarding the,  
4 the attempted murder, and, and he entered his plea under  
5 Alford, and it, it did appear, from the testimony, that  
6 there was, there was consideration of the, the Stand Your  
7 Ground issue.

8 And there was also consideration regarding the plea  
9 being offered with the understanding of concurrent time,  
10 that he had a 10 year Federal sentence that was out there  
11 that he was gonna have to serve regardless of what happened  
12 with the State charge. And in, in the consideration of  
13 that, they -- it -- you know, if I recall the testimony,  
14 they actually held off on this State charge until that  
15 Federal case could be adjudicated so that they could  
16 accomplish concurrent sentencing. And, and so, it -- and,  
17 and then, of course, his plea under Alford was made with,  
18 with everything that was presented here today was, was  
19 understood and was with the knowledge -- it was a  
20 knowledgeable and voluntary plea under Alford.

21 And, and, under Alford, the Court asked Mr. Alexander  
22 specifically do you believe that the State could produce  
23 sufficient evidence to prove your guilt of that charge of  
24 attempted murder beyond a reasonable doubt, and that, if he  
25 went to trial, that a jury would most probably find him

1 guilty of that charge. Mr. Alexander responded yes, sir,  
2 which certainly does support an Alford plea.

3 And, and so I just -- I don't think anything presented  
4 here would, would rise, rise to the level of, of the  
5 Strickland v. Washington standard.

6 And now I would say that, as to the issue regarding his  
7 sentence running concurrent, I've, I've read both cases that  
8 were presented, and I think, if I'm -- if I understand this  
9 case law, I think I have the authority to order the  
10 Department of Corrections to deliver Mr. Clark -- Mr.  
11 Alexander over to the Federal authorities to serve his  
12 Federal sentence.

13 Now, he received a sentence in this case of 20 years.  
14 He received credit for, I think, 566 days pretrial time, and  
15 it's been a couple of years since he entered this plea. I  
16 think that, if I order Mr. Alexander to be delivered over to  
17 the custody of Federal authorities to begin serving that  
18 sentence, he could serve that sentence, receive the  
19 concurrent time that he's entitled to on his State charge,  
20 and then, when he's released from Federal custody, whatever  
21 balance there is, if any, on the State charge, he could be  
22 returned to the State custody or he could be released if  
23 he's, if he's served his time. So, I think that is, is  
24 correct about it.

25 Now, the question is gonna be is, if I order that and

1 the Federal -- the Bureau of Prisons, Prisons, for some  
2 reason, whatever reason, refuses to accept him at this time  
3 because he has this outstanding State charge, at that time,  
4 then I think you would be entitled to come back before the  
5 Court to seek the relief that the, that the Ham Court  
6 discusses, which is to allow him to withdraw the plea, and  
7 put him back. But I think that that's something that can be  
8 done if, if, in fact, the Federal authorities would not take  
9 him into their custody.

10 Do you agree with that, Ms. Ross?

11 MS. ROSS: Judge, I---

12 THE COURT: I know you don't agree with my ruling,  
13 but---

14 MS. ROSS: I haven't had this situation before. I  
15 don't know that he would of -- I don't believe the Federal  
16 system is gonna give him credit for the time he's been  
17 serving---

18 THE COURT: They're not.

19 MS. ROSS: ---towards the 10.

20 THE COURT: They're not going to.

21 MS. ROSS: And I, and I understand what you're saying  
22 given that he has 20, in the State system, that it may work,  
23 work out in the wash.

24 THE COURT: well, it will work out.

25 MS. ROSS: I, I just don't know how, how it would. So

1 --.

2 THE COURT: Well, here's, here's---

3 MS. ROSS: That, by no means---

4 THE COURT: If I order him to the Federal authorities,  
5 and let's say that takes a week, so starting next week he's  
6 in Federal custody serving his Federal sentence, it's a 10  
7 year sentence. I, I don't know what -- I, I can't predict,  
8 but let's do worst case scenario, that he serves 10 years on  
9 that Federal sentence.

10 well, once he's released -- now, Judge Hayes ordered  
11 that this time, this State time, run concurrent with the  
12 Federal sentence. So, all of this State time he gonna --  
13 that he's gotten up to this point he's going to get credit  
14 for, and all of the time that he's in Federal prison he is  
15 going to get credit for. So, that -- that's going to occur,  
16 which complies with his plea to run it concurrent with his  
17 Federal sentence.

18 I don't know -- I don't know how much time he has  
19 credited for in the State system.

20 MS. ROSS: And, and I'm not sure either, Judge. I  
21 understand that's your ruling, and, and you're looking at  
22 the case law that I handed up. So, to me, that did not seem  
23 a remedy that was suggested in those cases. However---

24 THE COURT: That -- that's not a remedy?

25 MS. ROSS: For the -- the remedy that, that they had

1 suggested or in Ham---

2 THE COURT: well---

3 MS. ROSS: ---was---

4 THE COURT: well, don't ignore Clark versus State.

5 MS. ROSS: well, true.

6 THE COURT: The last paragraph in Clark says "it is  
7 within the power of the Circuit Court to order the  
8 Department of Corrections to deliver Clark to the custody of  
9 the Federal authorities to begin service of his Federal  
10 sentence. Accordingly, the matter is remanded to the  
11 Circuit Court with instructions to take further action in  
12 accordance with this opinion."

13 MS. ROSS: I understand---

14 THE COURT: And, and Clark was in the same position  
15 that Mr. Alexander's in.

16 MS. ROSS: Correct. That, that was just at a different  
17 place. It wasn't the, the plea judge. It was going back to  
18 the General Sessions judge. But, again, Judge, I, I don't  
19 know how this would play out either. I'll just -- that,  
20 that's the difference.

21 MR. JAMES: If I may intercede briefly, Your Honor?

22 THE COURT: Yes, sir.

23 MR. JAMES: This is tangential to your question of how  
24 much credit he got for -- so far in the State system.

25 According to the SCDC records, I have printed out

1 Friday, April 13 of 2018, his projected max out date is  
2 March 11<sup>th</sup>, 2033. This being 2019, if he went to the  
3 Federal Bureau of Prisons today or next week or any time in  
4 2019, he would complete that sentence, even if it were  
5 day-to-day, he'd still have some change leftover back in the  
6 State system is the State's understanding.

7 Beyond that, I agree with the Court's suggested course  
8 of action in ordering him into the Federal custody  
9 notwithstanding the State's more hardline position that its  
10 side of the bargain was simply to make the recommendation.  
11 After that, anything is up to the judge. So --.

12 THE COURT: And I think---

13 MR. JAMES: We lived up to our end of it.

14 THE COURT: Well, no. I think it was clear, Judge,  
15 Judge Hayes clearly says that it is -- that -- that that  
16 sentence is to run concurrent. It says on the -- let's see.

17 On the attempted murder charge, it will be a 20 year  
18 sentence at the State Department of Corrections. I've  
19 indicated that will run concurrent with the other charges  
20 including the Federal charges. He will get credit for the  
21 566 days.

22 So, that certainly was the -- that was the benefit of  
23 the -- he was given a, a, a plea offer. It was presented to  
24 the Court. The Court honored it in its ruling, but it  
25 didn't -- it's, it's -- it was mucked up. Mr. Alexander

1 should of been taken from there and sent back to the  
2 Federal -- Mr. Alexander, did you serve any time in the  
3 Federal system on---

4 THE APPLICANT: No, sir.

5 THE COURT: You, you entered that, that plea, and then  
6 you were moved back to the State system to face these  
7 charges.

8 Is that correct?

9 THE APPLICANT: Yes, the county come here, and then,  
10 from the county, they just sent from the county down to  
11 SCDC.

12 THE COURT: Oh, okay. And, and so you, you never have  
13 been in the Federal system?

14 THE APPLICANT: The only time I went to -- in Anderson  
15 to the, to the, to the little county jail part of it when --  
16 just to be -- to see the judge.

17 THE COURT: Right.

18 THE APPLICANT: That's it.

19 THE COURT: Right.

20 Okay. All right. So, I'm, I'm gonna respectfully deny  
21 the, the Application for Post-Conviction Relief based on  
22 what I -- I've told you. But I am going though, however  
23 because I, because I think, I think it is appropriate that  
24 Mr. Alexander receive the benefit of that bargain, and I'm  
25 going to order that the Department of Corrections, as soon

1 as possible, deliver him over to the custody of the Federal  
2 authorities to begin serving that Federal sentence.

3 Now, if there is any reason, Ms. Ross, that that --  
4 that the Federal system will not do that -- I can't think of  
5 any reason why they would -- I understand, in Ham, that  
6 there was some potential -- there was a probation matter  
7 that was pending, and they would not take, take him because  
8 of that potential probation matter. We don't have that  
9 here. It's simply a sentence that he's serving, and, and,  
10 and so they -- I, I don't see any reason why, if the State  
11 is willing to turn him over to the Federal authorities to,  
12 to serve that sentence, and, and just toll the sentence  
13 here, that they would have a problem doing that.

14 But if, for any reason that doesn't occur or there's a  
15 problem with it, then you, you get back with me. I'm gonna  
16 retain jurisdiction for that purpose if I need to come back  
17 and hear from you with regards to that issue.

18 MS. ROSS: All right. Thank you.

19 THE COURT: All right.

20 MR. JAMES: Thank you, Your Honor.

21 THE COURT: All right.

22 MR. JAMES: Is it your intention to write that order or  
23 are you asking the State to write it?

24 THE COURT: I'm gonna get you to prepare a proposed  
25 order, and, and let Ms. Ross look at that.

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MR. JAMES: Thank you, Your Honor.

THE COURT: All right.

MS. ROSS: Thank you, Judge.

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

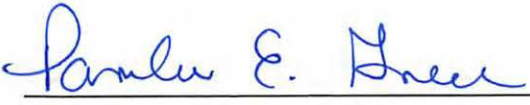
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C E R T I F I C A T E

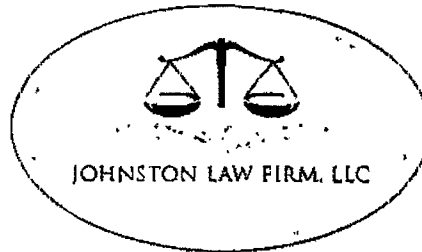
I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 4<sup>th</sup> day of March, 2019.

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

April 25<sup>th</sup>, 2020



PAMELA E. GREEN, Court Reporter



April 24, 2018

Dennis Alexander #270129  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

Dear Mr. Alexander:

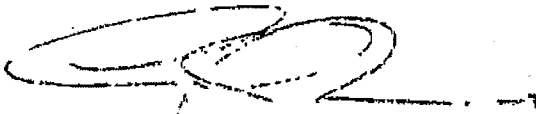
I received a copy of your Post Conviction Relief Application. I noticed that you are incarcerated at Broad River Correctional Institution. You are obviously not in Federal custody. The whole point of your Plea was for you to get a State sentence concurrent with your Federal sentence.

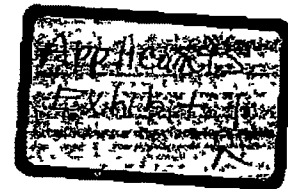
This would mean that you are not getting the benefit of the Plea Agreement. Perhaps you should consider adding this to your Post Conviction Relief Application. I have enclosed a copy of, Clark v. State, 468 S. E. 2d 653, 321 S.C. 377 (1996). This may be of benefit to you.

You were supposed to begin your Federal sentence and serve your State sentence concurrent with it. Apparently, they never transferred you to begin the Federal sentence. I strongly suggest that you bring this to the attention of your Post Conviction Relief attorney.

I wish you the best of luck in this endeavor.

Sincerely yours,

  
Andrew J. Johnston  
AJJ/tlh



Andrew J. Johnston, Attorney-at-Law

184 N. Daniel Morgan Ave. | Spartanburg, SC 29306 | Mailing: PO Box 3252 | Spartanburg, SC 29304-3252  
Phone: (864) 591-1093 | Telefax: (864) 591-1371 | www.spartanburglegal.com

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE SEVENTH JUDICIAL CIRCUIT  
COUNTY OF SPARTANBURG )

Dennis Ray Alexander, ) Case No.: 2018-CP-42-00871  
S.C.D.C. No. 270129, )  
 )

Applicant, )

v. ) **MOTION TO SUPPLEMENT RECORD,**  
 ) **AMEND REQUEST FOR PROPOSED ORDER**

State of South Carolina, )  
 )

Respondent. )  
 )

---

This matter comes before the Court by way of an application for post-conviction relief filed by Dennis Ray Alexander (“Applicant”) on March 12, 2018. Respondent made its return on or about June 6, 2018. The Court convened an evidentiary hearing into the matter on March 4, 2019, at the Spartanburg County Judicial Center in Spartanburg, South Carolina.

At the close of the hearing, the Court directed Respondent to prepare a proposed order seeking, in part, to direct the South Carolina Department of Corrections to take efforts to effectuate the intent of Applicant’s sentence: either deliver Applicant into federal custody or obtain a designation of the place of his state incarceration as his place of federal incarceration, such that his state and federal sentences could run concurrent.

Subsequent to the hearing, Respondent obtained records from Applicant’s federal conviction, as well as an e-mail from the Federal Bureau of Prisons, indicating that Applicant’s state incarceration facility is already designated as his incarceration location for his federal sentence (Motion Exhibit 1) and that he is actively serving time towards both his federal and his state sentences (Motion Exhibit 2). As such, Applicant’s federal and state sentences are running

concurrent, and the proposed order requested by the Court is moot. Respondent seeks to add these documents to the record to establish as much.

WHEREFORE, Respondent moves to supplement the record with the attached exhibits:

1. United States v. Dennis Ray Alexander, Judgement in a Criminal Case dated August 22, 2017 – Five pages.
2. E-mail titled “31344-171” from Christina Micieli ([cmicieli@bop.gov](mailto:cmicieli@bop.gov)) sent Thursday, August 1, 2019.

AND WHEREFORE, Respondent moves the Court amend its request for a proposed order to *deny* Applicant’s claim of ineffective assistance of counsel for failing to ensure Applicant receives the benefit of his plea bargain.

Respectfully submitted,

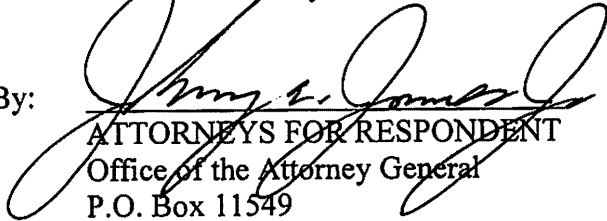
ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.  
Assistant Attorney General

By:

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

12 Aug, 2019

Motion Exhibit #1

United States v. Dennis Ray Alexander, Judgement in a Criminal Case dated  
August 22, 2017 – Five pages.

UNITED STATES DISTRICT COURT
District of South Carolina

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

vs.

Dennis Ray Alexander

Case Number: 7:16cr00370 (1)

USM Number: 31344-171

James Loggins
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 1.
pleaded nolo contendere to count(s) which was accepted by the court.
was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Table with 4 columns: Title & Section, Nature of Offense, Offense Ended, Count. Row 1: 18:922(g)(1) and 924(a)(2), Please see indictment, 3/14/16, 1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s).
Count(s) is are dismissed on the motion of the United States.
Forfeiture provision is hereby dismissed on motion of the United States Attorney.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

August 22, 2017
Date of Imposition of Judgment

S/ Timothy M Cain
Signature of Judge

Honorable Timothy M. Cain, USDJ
Name and Title of Judge

August 22, 2017
Date

DEFENDANT: Dennis Ray Alexander  
CASE NUMBER: 7:16cr00370

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of ONE HUNDRED AND TWENTY (120) MONTHS. This sentence shall commence the date of sentencing, August 22, 2017. The state facility is designated as the incarceration location for the federal sentence until such time the defendant is remanded to federal custody.

- The court makes the following recommendations to the Bureau of Prisons:
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
- at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_.
- as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- before 2 p.m. on \_\_\_\_\_.
- as notified by the United States Marshal.
- as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this Judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Dennis Ray Alexander  
CASE NUMBER: 7:16cr00370

### SUPERVISED RELEASE

The defendant shall be placed on supervised release for a term of THREE (3) YEARS.

1. The defendant shall submit to substance abuse testing to determine if you have used a prohibited substance. The defendant shall contribute to the costs of such treatment not to exceed an amount determined reasonable pursuant to the court approved "U.S. Probation Office's Sliding Scale for Services," and shall cooperate in securing any applicable third party payment, such as insurance or Medicaid.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.



DEFENDANT: Dennis Ray Alexander  
CASE NUMBER: 7:16cr00370

**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payment of \$ 100.00 due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance with  C,  D, or  E, or  F below: or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_(weekly, monthly, quarterly) installments of \$ \_\_\_\_\_over a period of \_\_\_\_\_(e.g., months or years), to commence \_\_\_\_\_ (30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_(weekly, monthly, quarterly) installments of \$ \_\_\_\_\_over a period of \_\_\_\_\_(e.g., months or years), to commence \_\_\_\_\_ (30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

As directed in the Preliminary Order of Forfeiture, filed \_\_\_\_\_ and the said order is incorporated herein as part of this judgment.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Motion Exhibit #2

E-mail titled "31344-171" from Christina Micieli ([cmicieli@bop.gov](mailto:cmicieli@bop.gov)) sent  
Thursday, August 1, 2019.

**Johnny James**

---

**From:** Christina Micieli <cmicieli@bop.gov>  
**Sent:** Thursday, August 1, 2019 11:30 AM  
**To:** Johnny James  
**Subject:** 31344-171

Good Morning,

Per our Phone Conversation for Dennis Ray Alexander, was sentenced in federal court on 08-22-2017 to 120 months. This sentence began running on 08-22-2017 the day that it was imposed. He has received credit from 03-14-2016 thru 08-21-2017 (526 days).

He currently has a projected release date of 11-28-2024.

**Christina Micieli**

**Classification & Computation Technician**

Federal Bureau of Prisons

Designations & Sentence Computation Center

ECHO Team

[cmicieli@bop.gov](mailto:cmicieli@bop.gov)

**Desk: 972-352-4408**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 DENNIS RAY ALEXANDER, #270129 )  
 )  
                                   Applicant, )  
                                   ) )  
                                   vs )  
                                   ) )  
 STATE OF SOUTH CAROLINA, )  
                                   ) )  
                                   Respondent, )  
 \_\_\_\_\_ )

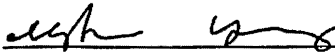
IN THE COURT OF COMMON PLEAS  
 2018-CP-42-00871

AFFIDAVIT OF SERVICE BY MAIL

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

**Susannah Conyers Ross  
 Ross & Enderlin, PA  
 330 East Coffee St.  
 Greenville, SC 29601**

DATED this the 12<sup>th</sup> day of August, 2019.

  
 \_\_\_\_\_  
 Meghan Young, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS  
) FOR THE SEVENTH JUDICIAL CIRCUIT  
)

Dennis Ray Alexander,  
S.C.D.C. No. 270129,

) Case No.: 2018-CP-42-00871  
)

Applicant,

) ORDER OF DISMISSAL  
)

v.

State of South Carolina,

Respondent.

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SPARTANBURG COUNTY  
AMY W. COX

This matter comes before the Court by way of an application for post-conviction relief filed by Dennis Ray Alexander ("Applicant") on March 12, 2018. Respondent made its return on or about June 6, 2018. The Court convened an evidentiary hearing into the matter on March 4, 2019, at the Spartanburg County Judicial Center in Spartanburg, South Carolina. Applicant was present at the hearing and represented by Susannah C. Ross, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Andrew J. Johnston, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, the pleadings, and Applicant's federal sentencing sheets. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the May

2016 term of the Spartanburg County Grand Jury for attempted murder and possession of a weapon during the commission of a violent crime (2016-GS-42-02396, Cts. I & II). Applicant was further indicted at the October 2016 term for distribution of cocaine base (2016-GS-42-05023). Andrew J. Johnston, Esq. represented Applicant; Jennifer A.J. Jordan and Spenser H. Smith, Esqs., of the Seventh Circuit Solicitor's Office, prosecuted the case. On October 2, 2017, Applicant entered an Alford plea to the above indictments. Upon the State's recommendation of concurrent sentences not to exceed 20 years, The Honorable J. Mark Hayes, II sentenced Applicant to imprisonment for concurrent terms of 20 years for attempted murder, 5 years for the weapon, and "time served" for the drugs. Applicant did not appeal his plea or sentence.

**Present Application**

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

1. Ineffective assistance of plea counsel, in that:
  - a. "No self-defense motion from counsel"
  - b. Counsel failed to investigate "Breaking and Entering in Residence"
  - c. "For handling of my Rule (5)"
  - d. "Shooting was in self-defense and protection of my family"
  - e. "4<sup>th</sup> amendment violation"
  - f. "No arrest warrant"
2. Prosecutorial Misconduct:
  - a. "Coercion and threats to prosecute to fullest extent of the law"

Applicant, by and through PCR counsel, thereafter amended his application to raise the following additional grounds for relief:

1. Ineffective assistance of plea counsel, for:
  - a. "failure to move for immunity or dismissal under SC Code Section 16-11-450;"
  - b. "failure to advise the Applicant that he could for immunity or dismissal under SC Code Section 16-11-450 prior to plea;"

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- c. "failure to advise the Applicant that the State would have to prove to a jury that he had specific intent to kill to get a conviction for attempted murder under State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015);"
- d. "failure to assure that the Applicant received the benefit of his plea bargain which was to have the sentence run concurrent to his Federal sentence."

Applicant requests relief as follows:

- "New Trial or New Plea

At the evidentiary hearing, Applicant proceeded forward only upon the amended allegations.

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

**A. Ineffective Assistance of Counsel**

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversary process that the trial cannot be relied upon as having produced a just result." Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at

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442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient

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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. *Id.* at 696-97.

**1. Failure to Move for Immunity, Advise Regarding S.C. Code Ann. § 16-11-450**

Applicant alleges Counsel was ineffective in failing to move for immunity or otherwise advise him regarding the Protection of Persons and Property Act (hereinafter "the Act"). "When applicable, the Act provides immunity from prosecution." *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013). The Act provides:

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended to likely cause death or great bodily injury to another person if the person: (1) against whom the deadly force is used is in the process of unlawfully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-440(A): However, the above presumption does not apply if the person:

(4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

S.C. Code Ann. § 16-11-440(B)(4). "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard[.]" *Id.* (citing *State v. W. Cox*, 392 S.C. 404, 709 S.E.2d 662 (2011)).

Applicant testified he explained his version of events to Counsel—namely that he never heard law enforcement announce and identify themselves before they stormed the house—but acknowledged that the case would boil down to his word against theirs. On cross-examination, Applicant testified he met with Counsel on two or three occasions. Applicant testified that

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AM W. COX

though he saw some of his discovery, he did not review all of it with Counsel. Applicant stated he provided Counsel a lead to a witness who could explain why Applicant shot at the police storming his house. Nonetheless, Applicant recalled Counsel told him that accepting the plea offer would be a good deal. Applicant testified he did *not* plead guilty because he thought the State could convict him.

Counsel testified he filed motions pursuant to Rule 5, SCRCrimP, and Brady v. Maryland, and received materials he understood and believed to be complete. Counsel testified he reviewed all of the discovery with Applicant. Counsel opined that the State's plea offer was favorable to Applicant. Counsel declined to say there was *no* evidence to show that law enforcement failed to announce and identify itself, but explained the challenges that faced Applicant and why they did not move for immunity under the Act. First, Applicant was asleep when law enforcement first arrived and was said to have announced themselves. Second, the witness Applicant provided, his landlord, was sympathetic but not actually of any help. Third, Applicant's co-defendant, Michael Goggins, gave conflicting statements as to whether he heard the police announce and identify themselves before or after storming in. Counsel noted that he had a copy of the Act with the law enforcement exception highlighted. Counsel explained that Applicant could have tried his luck with an immunity hearing, and then pled guilty thereafter if it did not resolve in his favor, but that he would have lost the favorable plea offer from the State in the process. Counsel testified he would have attempted to invoke the Castle doctrine if the case had gone to trial, but opined that Applicant's chances of prevailing were "iffy."

Prosecutor Jennifer Jordan testified she turned over all discovery in the case. Jordan testified there were no police bodycam recordings of law enforcement's arrival and announcement.

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The Court finds no deficiency on the part of Counsel, nor any prejudice from the deficiency alleged. Counsel conducted a reasonable investigation and reviewed the discovery provided in this case with Applicant. All discovery was provided to Counsel by the State. Counsel fully explained the strengths and weaknesses of Applicant's case, both in the context of the State's burden at trial and Applicant's burden in proceeding to an immunity hearing. Counsel and Applicant weighed the value of proceeding to an immunity hearing against the fact that they would lose the plea offer by doing so, and determined they did not wish to risk the favorable plea offer on a slim chance of prevailing. The Court finds that given the facts before it, Applicant has failed to show that had he proceeded to an immunity hearing, he would have prevailed. To the contrary, based on the record before this Court, the Court finds there is no credible evidence to refute law enforcement's anticipated testimony that they knocked on the door, announced their presence, and identified themselves as police before storming the house. For all of these reasons, the Court finds Applicant has failed to meet his burden of showing any deficiency on the part of Counsel, or any prejudice from the deficiency alleged, and his request for relief by way of this allegation is DENIED.

**2. Failure to Advise Regarding "Specific Intent"**

Applicant alleges Counsel was ineffective in failing to advise Applicant that the State would need to establish "specific intent" beyond a reasonable doubt in order to secure his conviction. Attempted murder is a specific intent crime. State v. King, 422 S.C. 106, 2017 S.C. 18 (2017).

As explored in the previous subsection, Applicant and Counsel discussed the different versions of what happened on the night of the raid, as would be relevant to considering the State's ability to prove specific intent. At the evidentiary hearing, Applicant did not specifically

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mention whether he was or was not advised of the element of specific intent. Counsel testified he explained King to Applicant and appraised him that the State would have to prove specific intent beyond a reasonable doubt.

The Court finds Counsel informed Applicant that the State would have to prove specific intent beyond a reasonable doubt in order to convict him for attempted murder. Counsel and Applicant fully discussed the facts in the case relevant to the issue of specific intent. Counsel credibly testified to this point at the evidentiary hearing, and notes that Applicant offered no testimony to dispute Counsel's recollection. Applicant has failed to meet his burden of showing Counsel was deficient in advising him of the elements of the charges against him; accordingly, his request for relief by way of this allegation is **DENIED**.

### *3. Failure to Ensure Concurrent Federal Sentencing*

The Court rejects Applicant's contention that Counsel was ineffective for failing to ensure his state and federal sentences would run concurrently because they are, in fact, running concurrent to one another. "The sentence of a person convicted of a federal offense commences to run from the date on which such person is received at the penitentiary." Clark v. State, 321 S.C. 377, 379, 468 S.E.2d 653, 655 (1996) (citing Thomas v. Whalen, 962 F.2d 358 (4th Cir. 1992)); see also 18 U.S.C. § 3585(a) (stating the same). "Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently." 18 U.S.C. § 3584(a); see also Setser v. United States, 566 U.S. 231 (2012) (holding a federal district court has discretion to run a federal sentence consecutively to an anticipated state sentence). However, where a state term of imprisonment is anticipated to result from another offense that is "relevant"

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conduct" to the offense for which a defendant is sentenced in federal court, the federal sentence "shall be imposed to run concurrently to the anticipated term of imprisonment." Federal Sentencing Guidelines Manual § 5G1.3(c); see also United States v. Olmeda, 894 F.3d 89 (2d Cir. 2018) (remanding for resentencing where a federal district court failed to take into account § 5G1.3(c)).

"Although a state trial judge may properly order the sentences which he or she imposes to run concurrently, or consecutively, to each other, a state court is without authority to modify or place conditions on a sentence from a foreign jurisdiction." Clark, 321 S.C. at 379, 468 S.E.2d at 655. Accordingly, where a defendant is subject to a federal sentence and a state court subsequently imposes a separate sentence intended to run concurrent to the federal sentence, there is only one way to effectuate the state trial court's order: have the defendant delivered to federal custody to serve his federal sentence. Id. Federal custody can be established either by physically delivering the inmate into the custody of the Federal Bureau of Prisons, or by designation of the state prison in which the inmate is incarcerated by the Federal Bureau of Prisons as the inmate's place of federal detention. See 18 U.S.C. 3621(b)

At the evidentiary hearing, Applicant testified he thought he would be sentenced to less than twenty years, and that he thought his State sentence would run together with his federal sentence. However, Applicant testified he later learned from a "case worker" that his federal sentence could not run concurrent with his State sentence. Pressed by the State on cross examination, Applicant affirmed he would go forward with his PCR even if his State and federal sentences were run concurrent.

Counsel testified that he was concerned Applicant was not receiving the benefit of his plea bargain, and that the ten year federal sentence was not running concurrent to the State

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sentence; Counsel thus sent Applicant a letter explaining his concern. (Applicant's Exhibit #1). Counsel also brought Clark v. State to Applicant's attention. Counsel testified the plea agreement was favorable to Applicant. On cross-examination, Counsel clarified that he did not represent Applicant on his federal charges, but that he delayed his plea in state court in order to ensure the plea and sentence was entered subsequent to the federal sentence. Counsel also clarified that he did not promise Applicant he would receive a concurrent sentence, only that the State would recommend it. Counsel recalled that he advised Applicant that the Judge could sentence him without regard to the State's recommendation. Counsel learned of the sentencing issue after being notified that Applicant had filed for post-conviction relief, and testified that he assumed the Federal Bureau of Prisons would have picked Applicant up to take him into custody. Counsel also testified that he did not know for certain that the federal and State sentences were not running concurrent. Counsel confirmed that the concurrent character of the sentences was a critical aspect of the plea deal.

Subsequent to the evidentiary hearing, Respondent contacted this Court by e-mail on July 5, 2019, and provided copies of Applicant's indictment in federal district court, as well as his sentencing sheets (i.e. "Judgement in a Criminal Case") on the federal charge. Respondent formalized its communication and request to supplement the record by "Motion to Supplement Record, Amend Request for Proposed Order" filed August 14, 2019 (hereinafter "Respondent's Motion"). The second page of the federal judgment indicates a sentence of 120 months to begin on August 22, 2017, and further indicates that "[t]he state facility is designated as the incarceration location for the federal sentence until such time the defendant is remanded to federal custody." (Respondent's Motion Exhibit #1). Respondent further provided an e-mail communication from the Federal Bureau of Prisons to indicate that the federal sentence was

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indeed active and running concurrent to the state sentence, and that Applicant's projected "release" date on the federal sentence is November 28, 2014, and would otherwise "maxout" on March 13, 2026. (Respondent's Motion Exhibit #2).

Applicant has filed no objections since the filing and service of the motion. The Court grants Respondent's motion to supplement the record, and its request to submit a proposed order reflecting the additional information contained therein.

In light of the information to conclusively establish that Applicant's federal sentence is running concurrent to his state sentence, and vice-versa, the Court finds that Applicant's claim that Counsel failed to ensure his sentences were running concurrent is without factual basis. Accordingly, Applicant cannot show any deficiency on the part of Counsel by way of this allegation, or any prejudice from the deficiency alleged, and his request for relief is DENIED.

[Conclusion and signature on following page]

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**III. CONCLUSION**

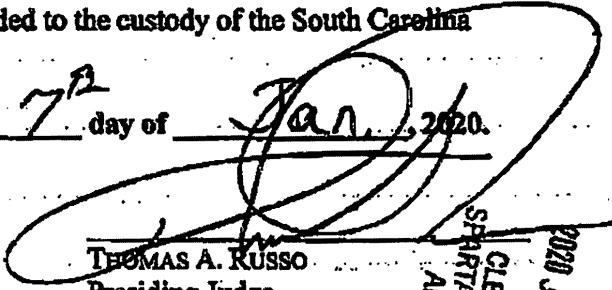
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 7<sup>th</sup> day of Jan., 2020.



THOMAS A. RUSSO  
Presiding Judge  
Seventh Judicial Circuit

Florence, South Carolina

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WITNESSES

SCSO

SENTENCE MADE

ARRESTED

INDEXED

FILED WARRANTS

FILED SIGNATURE

ASSESSMENT AND FINE CARD MADE

ARREST WARRANT NUMBER

2016A4210101056-Count 1  
 2016A4210101057-Count 2

ACTION OF GRAND JURY

MAY 06 2016

**True Bill**

Foreperson of Grand Jury  
 Date:

VERDICT

Foreperson of Petit Jury  
 Date:

DOCKET NO. -

**16-GS-42-2394**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 09 2016

TERM

THE STATE

vs.

Dennis Ray Alexander

Indictment for

COUNT ONE- ATTEMPTED MURDER, COUNT  
 TWO-POSSESSION OF WEAPON DURING  
 VIOLENT CRIME

SC Code: 16-3-029, 16-23-490

CDR Code: 3410, 549

Class FEL-A & FEL-F

2016 MAY 10

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DOCKET NO. **16-GS-42-5023**

WITNESSES

WOODRUFF PD

*Sgt. Danell Purkin*  
OFFICER MADE

COMPUTER

WARRANTS

ASSESSMENT AND

ARREST WARRANT NUMBER

2016A4221200026

ACTION OF GRAND JURY

SEP 30 2016

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Spartanburg

*Barry J. Barnette, Solicitor*

COURT OF GENERAL SESSIONS

OCT 03 2016

TERM

THE STATE

vs.

Dennis Ray Alexander

Indictment for

DISTRIBUTION OF COCAINE BASE

SC Code: 44-53-375

2016 OCT -8  
M. HOPE

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

INDICTMENT

SEP 30 2016

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

**DISTRIBUTION COCAINE BASE**

That Dennis Ray Alexander did in Spartanburg County on or about March 5, 2016, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Cocaine Base, a schedule II controlled substance under provisions of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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

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

COUNTY OF SPARTANBURG VS. Dennis Ray Alexander

INDICTMENT/CASE#: 2016GS4202396 A/W#: 2016A4210101056 Date of Offense: 3/14/2016 S.C. Code §: 16-03-0029 CDR Code #: 3410

SENTENCE SHEET

Race: BLACK Sex: M Age: 40 DOB: [redacted] SS#: [redacted] Address: Old Timber Rd. [redacted] City, State Zip: [redacted] DL#: [redacted] SID#: [redacted]

CONVICTED OF or PLEADS ALFORD

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: JORDAN, JENNIFER A SC Bar# 69423 Defendant BARRA, [redacted] SC Bar# [redacted] Attorney for Defendant ANDERSON, [redacted] SC Bar# 3064

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: 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. 56 days

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 Total: \$ plus 20% fee: \$ Payment Terms: Set by SCDPPPS

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

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 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/ea, 3% to County (if paid in installments) \$ 3.75. TOTAL: \$ 128.75

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: [redacted] Court Reporter: [redacted] SCCA/217 (07/2016)

Presiding Judge: [redacted] Judge Code: 2132 Sentence Date: 10/2/17

COUNTY OF SPARTANBURG VS. Dennis Ray Alexander

INDICTMENT/CASE#: 2016GS4202396A A/W#: 2016A4210101057 Date of Offense: 3/14/2016 S.C. Code §: 16-23-0490 CDR Code #: 0549

AKA: Race: BLACK Sex: M Age: 40 DOB: SS#: Address: Old Timber Rd. City, State Zip: ... SC 29388 DL#: SID#:

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 ALFORD TO: Possession of weapon during violent crime (Attempted Murder) 5 years

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549 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. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: JORDAN, JENNIFER A SC Bar# 69423 Defendant Attorney for Defendant SC Bar# 3064

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable\*, the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: with other charges including federal charges. 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 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:

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 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) \$ 3.75. TOTAL \$128.75

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: Green A. Stacy Court Reporter: SCCA/217 (07/2016)

Presiding Judge: Judge Code: 2132 Sentence Date: 10/2/19

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Dennis Ray Alexander

AKA:

Race: Sex: M Age:

DOB: SS#:

Address: Old Timber Rd

City, State, Zip: Woodruff SC 29388

DL#: SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Distribution of cocaine base, 1st 0-15 years and/or fine up to \$25K

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4205023

A/W#: 2016A4221300026

Date of Offense: 3/5/2016

S.C. Code §: 44-53-0375(B)(1)

CDR Code #: 3014

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 44-53-0375(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3014

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. (Time serve)

SMITH, SPENSER R SC Bar# 69423 Defendant Attorney for Defendant SC Bar# 3064

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

for a determinate term of 560 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

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Rate, Amount. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00, § 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 \$ 25.00, § 14-1-213 (Drug Court Surcharge) \$150 \$150.00, § 50-21-114(BUI Breath Test Fee) \$50 \$, § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$, 3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

PTUP days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ paid to Public Defender Fund

Other:

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

Presiding Judge

Judge Code: 212

Sentence Date: 10/2/17