

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to York County

Michael G. Nettles, Circuit Court Judge

—————
ARQUIVIUS MCCLEE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-0002565

—————
APPENDIX
—————

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ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) SIXTEENTH JUDICIAL CIRCUIT
 COUNTY OF YORK) CASE NO.: 2016-CP-46-1873,
 1874, 1875, 1877, 1878

STATE OF SOUTH CAROLINA)
)
 vs.) TRANSCRIPT OF RECORD
)
 ARQUIVIUS LEE QUON MCCLEE)

MARCH 22, 2017
 YORK, SOUTH CAROLINA

BEFORE THE HONORABLE JOHN C. HAYES, III

APPEARANCES:

WILLY THOMPSON, DEPUTY SOLICITOR
 YORK, SOUTH CAROLINA

ATTORNEY FOR THE STATE

JAMES MORTON, ESQUIRE
 ROCK HILL, SOUTH CAROLINA

JOHN SHIFLET, ESQUIRE
 ROCK HILL, SOUTH CAROLINA

ATTORNEYS FOR THE DEFENDANT

SHIRLEY BROOM
 16TH Circuit Court Reporter

I-N-D-E-X

NO TESTIMONY TAKEN

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

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

1 THE COURT - Good morning.

2 MR. THOMPSON - May it please the Court, Your
3 Honor. This is the State of South Carolina versus
4 Arquivius McClee. Mr. McClee is represented, actually, by
5 three attorneys but here with him today, John Mark Shiflet
6 and James Morton of the York County Bar. He's also been
7 represented by Nathan Sheldon who has been dealing with us
8 on this case, as well. The defendant is entering a guilty
9 plea today on a number of indictments, Your Honor,
10 Indictments 2016-GS-46-1873 for attempted murder, 2016-GS-
11 46-1874 for attempted murder, 2016-GS-46-1875 wherein he
12 was indicted for common -- for armed robbery; he's pleading
13 to common-law robbery or strong-armed robbery, 2016-GS-46-
14 1877 possession of a firearm during the commission of a
15 violent crime, 2016-GS-46-1878 for criminal conspiracy.
16 Each of these indictments has been true billed by the grand
17 jury. He is, as I said, pleading guilty to each of the
18 charges. We have entered into a plea agreement with the
19 defendant. He is cooperating in the investigation of this
20 case and the prosecution of this case and is now making
21 himself available to testify against any defendant who
22 stands trial. At this point the only other defendant
23 currently charged and standing trial is going to be Mr.
24 Reid, and Mr. Reid, if necessary, he would testify for the
25 State in the trial against Mr. Reid. Your Honor, as well,

1 part of the plea agreement we would dismissing several
2 indictments, Indictment 2016-GS-46-00022 for unlawful
3 carrying of a pistol, 2016-GS-46-1876 for kidnapping, 2016-
4 GS-46-1879 for unlawful carrying of a pistol and 2016-GS-
5 46-3769 where he had a direct indictment for murder.

6 As well, Your Honor, the State at this time is
7 going to defer sentencing. We're asking the Court to defer
8 sentencing as we await the prosecution of the final
9 defendant in the case. Two of the other co-defendants in
10 the case have already pled guilty, a Damonte Withers ad
11 Deandre Howze and are also awaiting sentencing following
12 the completion of prosecution of each of the co-defendants.

13 Your Honor, this is a recommendation for when
14 sentencing time comes, and that would be that the defendant
15 receive a ten-year sentence for the common-law robbery
16 charge, strong-armed robbery charge; as well, the State is
17 going to recommend at that time, of course, upon complete
18 fulfillment of his plea agreement, that the remaining
19 charges, the attempted murders, the possession of a firearm
20 charge and conspiracy charge, each receive a five-year
21 sentence to run concurrent with that ten-year sentence. So
22 he would basically have no parole sentence of at least five
23 years within a ten-year sentence and the ten years will be
24 the total sentence.

1 As well, Your Honor, a copy of the plea agreement
2 is before the Court. The defendant, once again, is --
3 he'll plead in Court today and will be bound by his pleas
4 even if he violates the agreement, and at that time the
5 Court will be allowed to sentence the defendant in any way
6 it sees fit, including consecutive sentencing if he were to
7 violate the terms of his plea agreement for cooperation.
8 The defendant has given a full statement to the State and
9 it has been recorded both on audio and video and has been
10 cooperative in dealing with us at this time.

11 We are prepared now, Your Honor, to go ahead and
12 go forward with his colloquy and the rest.

13 THE COURT - All right, I think -- maybe I ought
14 to start -- I didn't know who all was involved in this. I
15 should put on the record and make sure that nobody has
16 anybody issues with the fact that my current law clerk is
17 starting to work for the Morton Gettys firm in August, and
18 I don't believe that presents any kind of conflict in
19 taking a plea, but I wanted to make sure that that was on
20 the record if anybody has any questions about -- about any
21 issues that may arise. I don't find it to be any kind of
22 conflict. Again, this is an agreed upon plea agreement and
23 it's the acceptance of the plea.

24 MR. THOMPSON - The State sees no conflict, Your
25 Honor. I would not, and if I did, I would waive it at this

1 point in time, as well, because as the Court has aptly
 2 pointed out, this is truly a rather tight recommendation --
 3 recommendation on his plea. I don't see that it would be
 4 veered from by the Court.

5 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. MORTON
 6 AND MR. MCCLEE WHICH WAS NOT REPORTED)

7 MR. SHIFLET - That's correct, Your Honor, and we
 8 would also add to that that his counsel, Nathan Sheldon,
 9 was primarily his counsel and the Morton Gettys firm was
 10 appointed as a co-counsel some time after that fact, so
 11 he's been represented across the board, and we agree that
 12 there's no -- no conflict, and we also would waive any.

13 THE COURT - Okay. And I feel confident Mr.
 14 Pierce has not done any work in regard to this -- shouldn't
 15 be because he's working for me -- on this case. Is that
 16 correct?

17 MR. MORTON - Yes, sir, Your Honor.

18 THE COURT - All right. Mr. McClee, how old are
 19 you?

20 MR. MCCLEE - 23.

21 THE COURT - You represented by Mr. Shiflet and
 22 these other two lawyers, Mr. Sheldon and Mr. Morton?

23 MR. MCCLEE - Yes, sir.

24 THE COURT - You satisfied with the way they've
 25 handled your case?

1 MR. MCCLEE - Yes, sir.

2 THE COURT - You're charged with several offenses.
3 One is criminal conspiracy which carries up to five years
4 in jail. One is for possession of a weapon during the
5 commission of a violent crime which is a felony and carries
6 up to five years in jail, and criminal conspiracy is also a
7 felony. You're charged with two counts, I believe, of
8 attempted murder. These each carry up to 30 years in jail;
9 they are felonies. The law does not allow any part of
10 those sentences to be suspended, nor is an individual
11 pleading or having been found guilty of attempted murder
12 entitled to any probationary period. It's a felony; it
13 requires that -- is a parole ineligible offense which means
14 that anyone sentenced for attempted murder would have to
15 serve 85 percent of their sentence before they would be
16 eligible for any early work release, and if they were
17 released into an early work release program, that program
18 would have certain conditions that must be followed by the
19 person on supervision. It is a violent offense. A violent
20 offense is the type of offense which affects one's rights
21 while they're incarcerated. There are certain programs
22 non-violent offenders can participate in that violent
23 offenders are not allowed to participate in or take
24 advantage of. And too, murder's also a most serious
25 offense. A most serious offense is a type of offense that

1 if in your lifetime you receive three -- two most serious
2 or a combination of three serious and most serious offenses
3 you'd be subject to being incarcerated for life without
4 parole, that is a true life sentence. These -- attempted
5 murder is a felony, also. Do you understand that?

6 MR. MCCLEE - Yes, sir.

7 THE COURT - Strong-armed robbery is also a
8 felony; it carries up to 15 years in jail. Do you
9 understand that penalty?

10 MR. MCCLEE - Yes, sir.

11 THE COURT - The attempted murder indictment, the
12 first one that I'm going over, they're all 2016 and this is
13 1873, alleges that on or about November 29th, 2015 you did
14 unlawfully and with malice aforethought either express or
15 implied attempt to kill Deandre Howze by means of shooting
16 at him with intent to kill him, and that this happened on
17 ■ Scoggins Street in the City of Rock Hill. Do you
18 understand that charge ---

19 MR. MCCLEE - Yes, sir.

20 THE COURT - --- and the possible sentence you
21 could receive?

22 MR. MCCLEE - Yes, sir.

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

24 MR. MCCLEE - Guilty.

1 THE COURT - You're charged in the second
2 indictment, 1874 for attempted murder. It's alleged that
3 on or about November 29th, 2015 you willfully and
4 unlawfully and with malice aforethought either express or
5 implied attempted to kill Destany Marie Hutchison by means
6 of shooting at her with intent to kill her, and that this
7 occurred also at [REDACTED] Scoggins Street in the City of Rock
8 Hill. How do you plead to that?

9 MR. MCCLEE - Guilty.

10 THE COURT - You're charged with strong-armed
11 robbery. It's alleged that on or about November 29th, 2015
12 that you while armed with a deadly weapon did attempt to
13 take cell phones, currency from the presence of Damonte
14 Withers and that this attempted robbery occurred at or near
15 [REDACTED] Scoggins Street in Rock Hill. You understand that?

16 MR. MCCLEE - Yes, sir.

17 THE COURT - How do you plead to that?

18 MR. MCCLEE - Guilty.

19 THE COURT - You're charged with possessing a
20 weapon during the commission of a violent crime. This is
21 Indictment 1877. That last indictment was 1875; 1877
22 possession of a firearm during the commission of a violent
23 crime, that indictment charges you with on or about
24 November 29th, 2015 being in possession of a firearm while
25 committing violent crimes of armed robbery -- says armed

1 robbery or attempted murder, but you're pleading today to
2 attempted murder, and that the crime occurred at [REDACTED]
3 Scoggins Street. You understand that charge and potential
4 penalty?

5 MR. MCCLEE - Yes, sir.

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

7 MR. MCCLEE - Guilty.

8 THE COURT - Lastly, you're charged with criminal
9 conspiracy, and that indictment alleges that here in York
10 County on or about November 29th, 2015 you did knowingly
11 and feloniously conspire with Antravius White, LaDaniel
12 Reid and/or Davon Thompson for the purpose of committing
13 the crime of armed robbery in violation of the laws of this
14 State. Do you understand that charge and the potential
15 penalty?

16 MR. MCCLEE - Yes, sir.

17 THE COURT - How do you plead to that?

18 MR. MCCLEE - Guilty.

19 THE COURT - Have you read and -- you've signed --
20 so I'm going to ask what -- make sure you have -- well, let
21 me put this way. I have in front of me a -- an -- a plea
22 agreement, a plea agreement between you and the State; it
23 sets for eight particulars with which you and the State
24 agree to, signed by your attorney and you and Mr. Thompson,

1 signed by Mr. Morton. You've read and understand that plea
2 agreement?

3 MR. MCCLEE - Yes, sir

4 THE COURT - How far'd you go in school?

5 MR. MCCLEE - I have a GED.

6 THE COURT - So you don't have any trouble reading

7 ---

8 MR. MCCLEE - No, sir.

9 THE COURT - --- and understanding?

10 MR. MCCLEE - No, sir.

11 THE COURT - All right. Other than what's set
12 forth in that plea agreement as outlined further by the
13 solicitor a few minutes ago, has anyone made any other
14 promise or threats to cause you to enter today your plea of
15 guilt to these set of charges?

16 MR. MCCLEE - No, sir.

17 THE COURT - Mr. McCree, are you today under the
18 influence -- Mr. McClee, are you today under the influence
19 of anything that would cause you to be intoxicated?

20 MR. MCCLEE - No, sir.

21 THE COURT - Are you entering your plea today to
22 this charge freely and voluntarily, Mr. McClee?

23 MR. MCCLEE - Yes, sir.

24 THE COURT - Mr. McClee, you have a right to a
25 trial by jury on these charges. They happened it appears

1 at the same date at the same place, so they could most
2 likely be tried together at one trial before one jury, but
3 you have a right to have them tried by a jury. You are
4 presumed innocent of these charges and so presumed until
5 the State were to be able to prove to a jury your guilt
6 beyond a reasonable doubt. As to the charge, you have the
7 right to remain silent. As to each of these charges no one
8 can make you testify or give any statement against you
9 regarding the charges. You have the right to confront the
10 witnesses who the State would call to testify against you.
11 Through your attorney, you'd have the right to see, hear
12 and question and cross examine those witnesses the State
13 would call to testify against you. You have the right to
14 have the State make to come to Court through use of
15 subpoena any witnesses who you think would testify
16 favorably for you. You understand you have these rights?

17 MR. MCCLEE - Yes, sir.

18 THE COURT - Do you have any questions about them?

19 MR. MCCLEE - No, sir.

20 THE COURT - I advise you, Mr. McClee, that by
21 entering a plea of guilt to this set of charges that as to
22 these charges you're giving up those rights. You're also
23 giving up any defense that you might have to the charges.
24 Do you understand that?

25 MR. MCCLEE - Yes, sir.

1 THE COURT - Do you have any questions about any
2 of that?

3 MR. MCCLEE - No, sir.

4 THE COURT - Knowing those things I ask again, how
5 do you plead to attempted murder regarding the victim,
6 Deandre Howze?

7 MR. MCCLEE - Guilty.

8 THE COURT - How do you plead to attempted murder
9 involving the attempted victim, Destany Hutchison?

10 MR. MCCLEE - Guilty.

11 THE COURT - How do you plead to strong-armed
12 robbery with the victim being Damonte Withers?

13 MR. MCCLEE - Guilty.

14 THE COURT - How do you plead to possession of a
15 weapon during the commission of attempted murder?

16 MR. MCCLEE - Guilty.

17 THE COURT - How do you plead to criminal
18 conspiracy as set forth in the indictment wherein it is
19 stated that you and Mr. White and Mr. Reid and Mr. Thompson
20 committed -- conspired to commit the crime of armed
21 robbery? How do you plead to that?

22 MR. MCCLEE - Guilty.

23 THE COURT - All right, I'm going to ask you to
24 listen while I'm given the facts.

1 MR. THOMPSON - May it please the Court, Your
2 Honor. This occurred on the 29th of November of 2015 in
3 Rock Hill at ■ Scoggins Street. The defendant had rented
4 a white Nissan car. At that point in time he had -- I
5 think the day before according to what he's told us --
6 actually let his friend, Mr. White, borrow the car, because
7 he was -- the defendant himself was not feeling well. Mr.
8 White and Mr. Thompson called him the next day, which would
9 be Sunday, telling him they were over on Scoggins Street
10 and they were coming to pick him up. They picked him up;
11 they discussed what they were going to be doing; they
12 mentioned that Mr. Reid was already at Scoggins Street and
13 told the defendant, this defendant, that they were heading
14 that way, that the guys from Charlotte, that they had
15 bought credit cards before were coming to -- or that they
16 had sold credit cards to before were coming to purchase
17 credit cards again, and they discussed -- Mr. White
18 discussed the opportunity that if things didn't go exactly
19 the way he wanted them to go that he would then rob them
20 and they would take the money that they had, the men from
21 Charlotte, and those two men were Damonte Withers and
22 Deandre Howze. The defendants conspired at that point in
23 time and the defendant tacitly understood what was going on
24 and agreed to what they would be doing. Even Mr. White, as
25 they got in the house and backed the car upon into the

1 yard, he uh -- he was driving at that point, the defendant
2 here, and Mr. Thompson was in the back of the car and Mr.
3 White went inside; Mr. Reid was on the porch when they
4 arrived, and Mr. White and Mr. Reid went inside. This was
5 a home that they did not really have much of a connection
6 with. It was Mr. Reid that brought them to this home. He
7 was familiar with the owner of the home or the woman who
8 was at least staying there. This woman was someone who
9 would trade sex for drugs and would trade money for the
10 opportunity for someone to be able to use the house, and at
11 that time, it's our understanding, that Mr. Reid had
12 arranged for them to be able to use the house for some
13 period of time at that point. Ultimately, the two men from
14 Charlotte did show up, and when they did, Mr. Withers went
15 inside and they were greeted, of course, by each -- by the
16 young men here, including the defendant and went up to
17 greet Mr. Withers and knew him and had dealt with him
18 before. Mr. Withers went inside; Mr. Howze stayed outside
19 and the defendant admitted he was armed with a 9 millimeter
20 pistol at the time, that he'd then placed it in the glove
21 box shortly before those men arrived. As well, Mr.
22 Thompson was armed with a 9 millimeter pistol and he,
23 ultimately, discovered that the rifle that belonged to him
24 was in the possession of Mr. White inside, a 223 rifle, and
25 in addition ultimately from the evidence it's discovered

1 that Mr. Reid had a -- at least a .22, if not a rifle, a
2 pistol, with him inside, as well. When Mr. Withers went
3 in, he tells us that he was robbed at gunpoint by Mr. White
4 and Mr. Reid, that he did not know Mr. Reid and could not
5 see him because it was dark inside; this place had no
6 electricity, it was around 5:30 and it had already started
7 to get dark and the inside of the place was rather dark.
8 They stole his cell phones and his money. As well, they
9 required him to give -- give them the code to the cell
10 phones. They, ultimately, put some duck tape around his
11 hands and put him into a back bedroom and then motioned for
12 Mr. White to come in -- or I'm sorry -- for -- Mr. White
13 motioned for Mr. Howze to come in and, ultimately, Mr.
14 Howze then came in thinking that he would then, maybe be
15 verifying some of the credit cards which is something they
16 did to make sure they were active credit cards and not fake
17 so inactive, so that they could actually purchase them and
18 make money from them, but when Mr. Howze came in, he was
19 also held at gunpoint and, ultimately, Mr. White fired at
20 Mr. Howze with the 223 rifle and missed him, apparently, by
21 just -- a very short amount, fired into the doorway
22 instead, and at that point Mr. Howze pulled his 9
23 millimeter pistol and fired back at Mr. White killing Mr.
24 White, and then Mr. Howze's gun, apparently, jammed and he
25 tried to run out of the residence. As he did so, Mr. Reid

1 fired numerous times upon him, shot him three times in the
2 back with a .22. As well, he was shot through the foot and
3 that bullet went through and through so we don't know what
4 caliber that was, but it appeared to be one that was larger
5 than a .22 from the size of the hole in his foot.
6 Ultimately, though he was able to escape, but in doing
7 that, kind of a mayhem occurred outside. Mr. Thompson
8 jumped out of the vehicle at some and began firing at Mr.
9 Howze, as well, and firing they thought at a car that was -
10 - or a pickup truck that was they thought was somehow
11 associated with the gentlemen from Charlotte. It just so
12 happened, I think, it probably actually belonged to someone
13 who lived across the street. Since these men were not
14 familiar with dealing in that street they did not know
15 that. That car was driven by Destany Hutchison and she had
16 just come back with her husband and child. The husband and
17 child had gone inside; she was still in the pickup truck.
18 They thought it -- that it pulled up basically to help or
19 pick up the men from Charlotte, so they began firing upon
20 the person in the pickup truck, fortunately, Ms. Hutchison
21 was not shot herself, but the pickup truck was shot several
22 times by what appears to be a 9 millimeter from the size of
23 the hole, the holes in the pickup. She was able to drive
24 away and get away at that point. The defendant himself
25 stayed in the driver's seat of his car and tried to drive

1 out through the yard, because he was blocked in the
2 driveway from the other vehicle having pulled in. When he
3 got out in the yard he had seen Mr. Reid run out of the
4 house, as well. Mr. Thompson got in the car with him, then
5 Mr. Reid banged on the other side of the car in the back
6 door and asked to get him. They contemplated not letting
7 him in, but did, they let Mr. Reid back in the car. They
8 drove away at that time and, ultimately, dispersed and
9 spread out. He did have further contact with Mr. Reid
10 after that through their cell phones, and Mr. Reid has
11 agreed to him that he was shooting at the victim in this
12 case, or actually Mr. Howze in this case, trying to shoot
13 him after he -- Mr. Howze had shot Mr. White and that they
14 were trying to rob him at the time and confirm that, as
15 well.

16 Those are the basic facts, Your Honor, of what
17 occurred. The defendant has admitted to those facts and
18 admitted to his participation in the crime itself. He has
19 no other prior adult record.

20 THE COURT - All right, Mr. McClee, do you agree
21 that those -- that's how it happened, that those facts are
22 true?

23 MR. MCCLEE - Yes, sir.

24 THE COURT - Mr. McClee, I accept your pleas. I
25 find they're freely, voluntarily, knowingly and

1 intelligently entered, entered with advice of competent
2 counsel with whom you're satisfied. I find the facts
3 support your plea and you've signed pleas of guilt to these
4 charges and you've also entered into a plea agreement as
5 I've referenced earlier. I'll be glad to hear at this
6 point from your attorney, Mr. Shiftlet or Mr. Morton who's
7 present and you, or we can wait and myself or another Judge
8 hear that, whatever you want to say later, but I'll be glad
9 to hear from you at this point.

10 MR. SHIFLET - Very briefly, Your Honor.
11 Understanding that we're here today just for the purposes
12 of entering the plea and that sentencing will be deferred
13 to a later time, we'll likewise defer any mitigation,
14 understanding that this is an offer from the State that we
15 have entered into, a plea agreement that governs this plea
16 and we would tell the Court that we do agree with Mr.
17 McClee's decision to enter into this plea and also his plea
18 agreement. We've met with him on numerous, numerous
19 occasions throughout the course of our representation and
20 we feel like he fully understands the terms of this
21 agreement and the consequences if he were to not abide by
22 those terms. So we agree with his decision today.

23 THE COURT - Mr. McClee, anything you want to say
24 at this point?

25 MR. MCCLEE - No, sir.

1 THE COURT - Okay. I did not ask, but we probably
2 should put on the record, has the State's complied with the
3 Victim's Right's Act?

4 MR. THOMPSON - Yes, Your Honor, we have.

5 THE COURT - And is there any restitution?

6 MR. THOMPSON - We haven't worked that out yet,
7 but if there is, we would discuss that with when
8 sentencing.

9 THE COURT - All right, well, I've accepted your
10 pleas, of course, I'm not going to impose a sentence, but
11 I've accepted your pleas to all of these charges today.
12 Thank you.

13 MR. THOMPSON - Thank you, Your Honor.

14 (END OF TRANSCRIPT)

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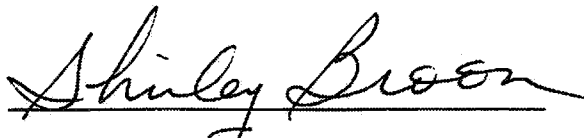
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 22 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Arquivius Lee Quon McClee as taken by me in The Court of General Sessions for the Sixteenth Judicial Circuit on March 22, 2017 and provided by me this the 9th day of June, 2018.

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



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

State of South Carolina.,)	In the Court of General
)	Sessions for York
)	
County of York.)	Case No.: 2016-GS-46-00022
	2016-GS-46-01873
	2016-GS-46-01874
	2016-Gs-46-01875
	2016-GS-46-01876
State of South Carolina.,)	2016-GS-46-01877
)	2016-GS-46-01878
Plaintiff.,)	2016-GS-46-01879
)	2016-GS-46-03769
-vs-)	
)	
Arquivius Lee Quon McClee.,)	Transcript of Record
)	Sentencing Hearing
Defendant.)	
_____)	
	March 31, 2017
	York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., judge.

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WITNESS

BY:

PAGE NO.

No witnesses were called to testify.

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD.</u>
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No Exhibits were received into the record.

1 (COURT IN SESSION FRIDAY, MARCH 31, 2017 IN THE MATTER
2 OF STATE VERSUS ARQUIVIUS LEE QUON MCCLEE AT 10:39 A.M.)

3 SOLICITOR THOMPSON: May it please the Court, your
4 Honor?

5 THE COURT: He's already entered his plea, correct?

6 SOLICITOR THOMPSON: Yes, your Honor, he has.

7 THE COURT: Okay.

8 SOLICITOR THOMPSON: So we're here for sentencing on
9 Arquivius Lee Quon McClee. Your Honor, the plea was
10 entered last week to the following indictments:

11 2016-GS-46-1873 for Attempted Murder; 1874 for
12 Attempted Murder; 1875 to Common Law Robbery or Strong
13 Armed Robbery; 1877 for Possession of a Firearm During the
14 Commission of a Violent Crime, and 1878 for Criminal
15 Conspiracy.

16 And there is a plea agreement in the case, your Honor,
17 I believe there is a copy that she'll hand up to you
18 momentarily and that top is the facts.

19 Your Honor, Mr. McClee cooperated in his - ultimately
20 in the prosecution of his co-defendant Mr. Reid. And as
21 part of that he has complied with his plea agreement
22 therefore the State is recommending that the Court follow
23 that plea agreement which is for a ten-year sentence on the
24 strong armed robber. And then for the remaining sentences
25 for attempted murder, the two counts; possession of a

1 firearm during the commission of a violent crime and
2 criminal conspiracy a five-year sentence to run concurrent
3 with the ten-year sentence.

4 THE COURT: How old are you, Mr. McClee?

5 MR. MCCLEE: Twenty-three.

6 THE COURT: And you appeared before me last week, and
7 I went over with you your rights, and went over the facts
8 and accepted you plea so you're here today to receive a
9 sentence and I'm not going over all that but do you have
10 some questions about anything that I talked to you about
11 last week.

12 MR. MCCLEE: No, sir.

13 THE COURT: You don't have any questions about the
14 rights you've given up and you have given them up. Do you
15 understand that? You don't have a question about what the
16 State alleges are to be the - I call them operative facts,
17 the facts underlying the charge, that is what you were
18 involved in. Do you need to discuss that with me further?

19 MR. MCCLEE: No, sir.

20 THE COURT: All right. Well then I'll - The paperwork
21 hasn't been handed, up but the only thing for me to do is
22 hear from your attorneys and impose sentence, so I'll let
23 them go ahead.

24 MR. MORTON: Your Honor, if you've got one minute, his
25 sister --

1 THE COURT: That's fine. No, I'm not in that big a
2 hurry.

3 MR. SHELDON: And, Judge, while she is coming up, I
4 just - The Solicitor and I agree that its four hundred and
5 forty-three days credit for time served.

6 THE COURT: All right.

7 MR. MORTON: State your name for the record and what
8 grade you're in.

9 A. My name is (inaudible) and I'm in the ninth grade.

10 MR. MORTON: You have to speak up so everybody can
11 hear you.

12 THE COURT: I'm listening, just repeat - speak up loud
13 please.

14 A. Yes, sir. My brother Quon - Arquivius - always been
15 a good person. He always had his life on track and he
16 never got in any trouble. All he did was go to work and
17 stay at home. He wasn't the going out type. He wouldn't
18 hang out with everybody and he stayed to himself unlike
19 other boys his age. He do have a son Aiden, he's three
20 now, and that was his heart. He stayed focused on him and
21 himself. Aiden always asking where his daddy is and it's
22 so hard to tell him that he's gonna be away for a while.
23 And I know it's killing him - Quon - not to be able to see
24 him and spend time with him like he used to. Trey loved
25 Aiden too just like Quon.

1 My brother is far from a criminal and for y'all to
2 know so little about him and his character y'all can't
3 judge him from what y'all say now. My brother didn't
4 smoke, he didn't drink, he didn't hang around a big crowd.
5 He took care of everyone and made sure that they were
6 straight especially Trey. Him and Trey was closer than
7 Trey was with anyone else.

8 When they had - When Trey had got out Quan was there
9 made sure that he had a job, had a place to stay, had
10 clothes on his back -- He tried his best to keep Trey out
11 of trouble and off the streets and on track. But the end
12 of the day Trey did have his own mind, he was his own
13 person, and made his own decisions. Quan couldn't stop
14 Trey from going into that house that night. Nobody could.
15 Trey was his own person, Trey was a grown man.

16 So I'm confused on why my brother is doing all this
17 time for something that he didn't do or couldn't stop. God
18 don't make no mistakes. That was my cousin's -- decision.
19 God don't make no mistakes. At the end of the day only God
20 and Trey know what happened in that house that night and my
21 brother didn't pull the trigger like doing this.

22 THE COURT: All right. Well I appreciate that and I
23 know you're very concerned about your brother and you're
24 very mature for a ninth grader.

25 A. Thank you.

1 THE COURT: Very brave of you to come before a judge
2 and make that statement. It was very articulate.

3 A. Have a nice day.

4 THE COURT: All right. Yes, sir.

5 MR. SHELDON: Thank you, your Honor, may it please the
6 Court, very briefly. Mr. McClee has no prior record, your
7 Honor. As the Solicitor stated he has come forward,
8 acknowledged his involvement in this, which is I believe
9 described as a ruckess or a malay and that's exactly what
10 this fact pattern was.

11 Your Honor, we would ask that the Court give him
12 credit for the four hundred and forty-three days he's done
13 in jail. And that the Court go along with the
14 recommendation of the State, your Honor, that essentially
15 allowing him a taste of SCDC. Certainly five years is a
16 long time for somebody that's never been down there but
17 also allowing him to come out and live a life after that.

18 So, we would thank the Solicitor's office for that
19 offer and that's all I have to say, your Honor.

20 THE COURT: All right. Mr. Morton, do you have
21 anything to say?

22 MR. MORTON: No, sir, your Honor.

23 THE COURT: Mr. McClee, anything you want to say?

24 MR. MCCLEE: I just want to say I learned from my
25 mistakes and I want to thank my family for their support

1 and thank the State for giving me another chance.

2 THE COURT: Well, unfortunately you did - you were
3 involved in a very, very, very, very serious offense,
4 that's how serious this event was, but based on your
5 sister, as she just appeared before me, and I'm sure your -
6 the rest of your family is made out of the same cloth, that
7 is that they are a very fine family. I don't know them but
8 based on meeting your sister, and you not having any real
9 record, or no record at all, you have a great opportunity
10 when you get out to assimilate yourself back into society
11 and be a productive citizen and enjoy the rest of your
12 life, so I wish you the best even though you were involved
13 a reckless incident so I wish --

14 When we have these episodes perhaps the victim's
15 obviously, and the victim's families, although no victim's
16 families have said anything, have been greatly impacted.
17 May be some silver lining would be the salvaging of some
18 youth, you.

19 All right, strong armed robbery, ten years. All of
20 these are to run concurrent, four hundred and forty-three
21 days credit. Five years on attempted murder, five years on
22 possession of a weapon during the commission of a violent
23 crime. Another murder - this is the second one, this is
24 1873, five years. And on criminal conspiracy five years.
25 Again they're all to run concurrent with credit for four

1 hundred and forty-three days. Thank you.

2 MR. SHELDON: Thank you, your Honor.

3 MR. MORTON: Thank you, your Honor.

4 (DEFENDANT ARQUIVIUS MCCLEE, BLACK MALES, EXITS
5 COURTROOM.)

6 - END OF TRANSCRIPT OF RECORD.-

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CERTIFICATE OF REPORTER

State of South Carolina)
)
 County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit 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 General Sessions for York County, South Carolina, on 31st day of March, 2017.

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

Wanda S. Nelson, CVR-M
 Certified Verbatim Reporter,
 Circuit Court Reporter,
 Notary Public, in and for
 The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: _____/_____/_____

FORM 5

STATE OF SOUTH CAROLINA)
County of York)
Ar'Quivius McClee 372043)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

v.)
State of South Carolina)
)
)
)
)
)
)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED-PROV 1499
2010 FEB -7 PM 2:14
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Bridgeland correctional institution
2. Name and location of Court which imposed sentence York county General sessions court - York, SC 29745
3. Name(s) of co-defendant(s) (if any) Devon Thompson
Ladaniel Meid
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016GS4601875
 - (b) 2016GS4601874

2018 FEB 16 AM 8:54
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
CERTIFIED TRUE COPY

(c) 2016GS4601877, 2016GS4601873, 2016GS4601878

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

- (a) 03-31-17/10 years
- (b) 03-31-17/5 years concurrent with a
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

no

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

- (a) This is a per issue and attorney's ruling
- (b) _____

(c) _____

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

(a) Ineffective assistance of counsel

(b) _____

(c) _____

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

(a) attorney failed to inform me properly concerning
(b) my plea and charges that was then consented blocking my
(c) parole which attorney notified me that i was eligible for
parole

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

- (a) attorney failed to do so
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

- (a) the name and address of each attorney who represented you:
 - i. Nathan Sheldon - 331 E main st #200
Mock hill, SC 29730
 - ii. James morton - 331 E main st # 300
Mock Hill, SC 29730
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Nathan Sheldon
 - ii. James morton
 - iii. _____

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

That said conviction be overturned

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

NO

STATE OF SOUTH CAROLINA)
County of York)

VERIFICATION

I, Arquivius L. Mcclee, 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.

Arquivius Mcclee
Arquivius Mcclee

SWORN to and subscribed before me this 31 day of January, 2018.

Virginia Robinson (L.S.)
Notary Public

My Commission Expires: May 29 2021

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

I, Arquinius L. Mcclae, 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.

Arquinius Mcclae
Applicant

SWORN or affirmed to and subscribed before me this

31 day of January, 2018.

Virginia Robinson
Notary Public

My Commission Expires: May 20, 2021

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	SIXTEENTH JUDICIAL CIRCUIT
)	
ArQuivius McClee, #372043,)	Case No.: 2018-CP-46-0334
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

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

I. Procedural History

ArQuivius McClee (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In June 2016, the York County Grand Jury indicted Applicant for possession of a firearm during the commission of a violent crime (2016-GS-46-1877), two counts of attempted murder (2016-GS-46-1873; 2016-GS-46-1874), armed robbery (2016-GS-46-1875), and criminal conspiracy (2016-GS-46-1878). Nathan James Sheldon, Esquire represented Applicant. Deputy Solicitor W. William Thompson, Jr. of the Sixteenth Circuit Solicitor’s Office prosecuted the case.

On March 3, 2017, Applicant pleaded guilty as indicted to all charges before the Honorable John C. Hayes, III. Sentencing was deferred until March 31, 2017. When the parties reconvened for sentencing, pursuant to the State’s recommendation, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of ten years for strong arm robbery, five years for criminal conspiracy, five years each for attempted murder and possession of a firearm during the commission of a violent crime, along with credit for time served of 443 days. Applicant did

not appeal his conviction or sentence.

II. Factual History

On November 29, 2015, Applicant and his friends drove his rented Nissan to Scoggins Street in Rock Hill to meet with “some guys” from Charlotte that they sold credit cards to in the past. (GP Tr. 14-15.) The purpose of the meeting was to again sell credit cards to the subjects from Charlotte. (GP Tr. 15.) During the drive, the group devised a plan to rob the subjects of their money if the meeting did not go as planned. (GP Tr. 15.) Applicant and his friends arrived at Scoggins Street – a house they were using to conduct their business – and waited for the Charlotte subjects to show up. (GP Tr. 15-16.) At the time of the meeting, Applicant and his friends were armed with firearms. (GP Tr. 16.) As one of the subjects entered the home, he was robbed of his cell phone and money at gunpoint by Applicant’s friends. (GP Tr. 17.) The subject was then bound with duct tape and put into a back bedroom. (GP Tr. 17.) At that point, Applicant’s friends motioned for the second subject from Charlotte to enter the home. (GP Tr. 17.) As he entered the home, he was also held at gunpoint, but one of Applicant’s friends fired at the subject barley missing him. (GP Tr. 17.) The subject fired back and killed one of Applicant’s friends. (GP Tr. 17.) The subject fled the scene after his gun jammed and Applicant’s other friend continued to fire at the subject as he fled. (GP Tr. 18.) During the commotion, Applicant’s friend began firing at an innocent family who had just returned home believing they were associates of the Charlotte subjects. (GP Tr. 18.) No one in the truck was injured, however, numerous shots were fired into the truck. (GP Tr. 18.) Applicant drove one of his friends and another subject who resides at the Scoggins Street residence away from the scene. (GP Tr. 19.)

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. Attorney failed to properly inform Applicant of how his parole would be affected by his plea agreement.

As requested relief, Applicant requests that his “conviction be overturned”.

Attached to this Return and incorporated by reference are the records of the York 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.

III. Response to Allegation of Ineffective Assistance of Counsel

Applicant alleges his attorney was constitutionally ineffective for failing to properly advise him regarding parole eligibility. In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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 v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at

625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. 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).

In the present case, Applicant can satisfy neither requirement of the Strickland test. In the case at bar, Applicant's basis for his claim of ineffective assistance of counsel is that his attorney did not properly advise him on how his plea agreement would affect his eligibility for parole. In Randall, the South Carolina Supreme Court held that counsel had no affirmative obligation to advise defendant of the collateral consequences regarding parole eligibility prior to entering a guilty plea. See Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004) The Court further held in Smith that unless counsel gives erroneous parole advice, parole information is not a ground for collateral attack of a guilty plea. See Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997)

Additionally, on the date of his guilty plea, Applicant signed an extensive Plea Waiver Form where he initialed throughout the document indicating he agreed to the terms of his plea agreement. The charges, sentences, and parole implications are delineated in the document.

Specifically, the two counts of Attempted Murder are marked as “violent”, “most serious” felonies which carry a penalty of no more than 30 years and offer “no parole.” Applicant initialed next to each of these charges. (Plea Waiver Form, pg 1) Additionally, Applicant also indicated he was satisfied with his attorney and that his attorney had “reviewed with me all the factual and legal issues surrounding my case...” (Plea Waiver Form, pg 3)

Notwithstanding the Plea Waiver Form, Judge Hayes conducted a thorough plea colloquy with Applicant regarding his decision to plead guilty. During the guilty plea, the State explained the terms as follows:

The State is going to recommend at that time, of course, upon complete fulfillments of his plea agreement, that the remaining charges, the attempted murders, the possession of a firearm charge, and conspiracy charge, each receive a five-year sentence to run concurrent with that ten-year sentence. So he would basically have no parole sentence of at least five years within a ten-year sentence and the ten years will be the total sentence.

(GP Tr. 5.) Judge Hayes continue to reiterate the plea sentence and implications to Applicant.

Judge Hayes stated:

You’re charged with several offenses. One is criminal conspiracy which carries up to five years in jail. One is for possession of a weapon during the commission of a violent crime which is a felony and carries up to five years in jail, and criminal conspiracy is also a felony. You’re charged with two counts...of attempted murder. These each carry up to 30 years in jail; they are felonies. The law does not allow any part of those sentences to be suspended, nor is an individual pleading or having been found guilty of attempted murder entitled to any probationary period. It’s a felony; it...is parole ineligible offense which means that anyone sentenced for attempted murder would have to serve 85 percent of their sentence before they would be eligible for any early work release, and if they were released into an early work release program, that program would have certain conditions that must be followed by the person on supervision. It is a violent offense. A violent offense is the type of offense which affects one’s rights while they’re incarcerated. There are certain programs non-violent offenders can participate in that violent offenders are not allowed to participate in

or take advantage of. And too, murder's also a most serious offense. A most serious offense is a type of offense if in your lifetime you receive three—two most serious or a combination of three serious and most serious offenses you'd be subject to being incarcerated for life without parole, that is a true life sentence. These —attempted murder is a felony, also. Do you understand that?

(GP Tr. 9.) Applicant responded “Yes, sir” to the court indicating he understood the charges and sentencing implications explained by Judge Hayes. (GP Tr. 9.) Even if Applicant’s counsel erred in advising him on the parole implications for his charges, the court’s guilty plea colloquy with Applicant would have cured any such error. “For a plea hearing to cure deficient advice, the plea hearing must unambiguously address and resolve the incorrect advice[.]” See Robinson v. State, 422 S.C. 78, 810 S.E.2d, 32 (2018). In this case, the State and court provided correct sentencing information with the appropriate parole implications to Applicant prior to him entering his guilty plea.

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

IV. 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), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings

will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

V. 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.

VI. Request for an Evidentiary Hearing

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

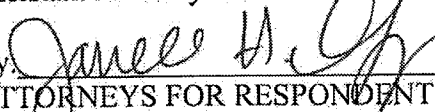
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JANELL H. GREGORY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

7/11, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Ar'Quivious McClee, #372043,)
)
Applicant,)

**AMENDMENT TO APPLICATION FOR
POST CONVICTION RELIEF**

Vs.)

Case No.: ~~2019~~-CP-46-00334
2018

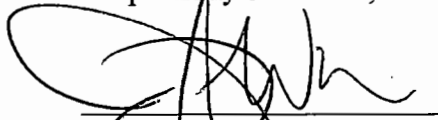
State of South Carolina,)

Respondent.)

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed on February 7, 2019, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Nathan Sheldon, Esquire, James Morton, Esquire, and John Mark Shiflet, Esquire:
 - a. Counsel was ineffective for failing to object to the State's breach or the plea agreement, or in the alternative make a motion to withdraw Applicant's plea.
2. Applicant prays for the relief of this Court ordering specific performance of the terms of the plea agreement.

Respectfully submitted,



Jonathan D. Waller
Waller Law Group
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Columbia, South Carolina 29201
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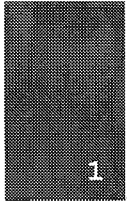
November 7, 2019
Columbia, South Carolina

McClee vs. State of SC
Amendment to PCR Application

DAVID HAMILTON
Clerk of Court
Circuit Court
YORK COUNTY, SC

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ARQUIVIUS MCCLEE v. STATE OF SOUTH CAROLINA - 00334

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

CIRCUIT COURT DIVISION

YORK COUNTY

2018-CP-46-00334

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-----x
Arquivius McClee,      :
                        :
      Plaintiff,       :
                        :
      vs.              :           TRANSCRIPT OF HEARING
                        :
                        :
The State,             :
                        :
      Defendant.      :
-----x

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January 6, 2020
York, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge Presiding.

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P R O C E E D I N G S

* * *

YORK, SOUTH CAROLINA

(Whereupon, the following proceedings were held in open court. The Defendant was present with her attorney, along with counsel for the State.)

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1 THE COURT: I recognize the Attorney General, and
2 you may call your first case.

3 MS. GREGORY: Thank you, Your Honor. Our first
4 case is Docket Number 2018-CP-46-00334, State versus
5 ArQuivius McClee. Applicant was indicted at the June
6 2015 term of York County Grand Jury for two counts of
7 attempted murder, armed robbery, criminal conspiracy,
8 and possession of a firearm during the commission of a
9 violent crime, as well as two counts of unlawful
10 carrying of a pistol, kidnapping, and a direct
11 indictment was obtained for murder.

12 Pursuant to a plea agreement, on March 31st,
13 2017, applicant pled guilty before Judge John Hayes to
14 strong-armed robbery, two counts of attempted murder,
15 possession of a firearm during the commission of a
16 violent crime, and criminal conspiracy. The remaining
17 charges were dismissed.

18 Sentencing was deferred until March 31st of 2017.
19 At that time, pursuant to the State's recommendation,
20 Judge Hayes sentenced applicant to imprisonment for
21 concurrent terms of ten years for strong-armed
22 robbery, five years for criminal conspiracy, five
23 years for each attempted murder charge and possession

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1 of a firearm during the commission of a violent crime.

2 Applicant filed a timely application for post-
3 conviction relief on February 8th, 2018, alleging he
4 was being held in custody unlawfully based on
5 ineffective assistance of counsel, alleging that
6 counsel did not adequately explain applicant's plea
7 and sentence. Applicant through counsel submitted his
8 application on November 7th, 2019, alleging counsel
9 was ineffective for failing to object to the State's
10 breach of a plea agreement or any alternative to make
11 a motion to withdraw the applicant's plea.

12 In terms of relief, applicant wants this Court to
13 order specific components of the terms of the plea
14 agreement.

15 Applicant is present today and represented by
16 Mr. Waller.

17 THE COURT: Mr. Waller, I'll recognize you at
18 this time. If you could sort of outline all the
19 issues that you want to present to the Court.

20 MR. WALLER: Thank you, Your Honor, may it please
21 the Court.

22 Judge, Mr. McClee is not -- is certainly not
23 challenging the overall conviction. He is challenging

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1 one specific charge. There were two weapons charges.
2 According to the plea agreement, that is not what he
3 pled to.

4 So that's really the crux of it, Judge, it's the
5 two weapons charge where he pled to possession of a
6 weapon during the commission of a violent crime. The
7 allegation is the weapons charge that was supposed to
8 be part of his plea agreement was unlawful carrying of
9 a pistol. He is alleging that his counsel was
10 ineffective in failing to make sure that wasn't a
11 forced thing, and the alternative to move to withdraw
12 the plea once it was not -- you know, once that was
13 already pled to. And, Judge, he is seeking the
14 specific reform of swapping those two out. No one is
15 challenging the time period either as far as --

16 THE COURT: And what you're saying is it would
17 have no effect on his sentence?

18 MR. WALLER: It would have an effect on kind of
19 the parole eligibility and time-served credits and
20 things like that. It wouldn't have any effect on the
21 number of years that he's sentenced to.

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

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1 MR. WALLER: Thank you, Your Honor.

2 The applicant will call ArQuivius McClee.

3 THE COURT: Yes, sir, if you could please come
4 forward?

5 (Swearing in of witness.)

6 THE COURT: Have a seat there in the witness
7 chair, and I'm going to ask that you pull up real
8 close to that microphone, speak loudly, clearly, and
9 slowly in order that we can hear everything that you
10 have to say. And let's start with your full name,
11 please, sir?

12 THE WITNESS: ArQuivius McClee.

13 * * *

14 ARQUIVIUS MCCLEE

15 called as a witness by and on behalf of
16 the Defendant to testify, being first duly
17 sworn was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. WALLER:

20 Q Good morning, Mr. McClee, how are you today?

21 A I'm all right.

22 Q Mr. McClee, I need you to speak up a little bit
23 for me so not only the Judge can hear but also that

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1 the court reporter can hear to make sure she's taking
2 everything down. So just speak loudly and clearly so
3 she can hear what you have to say.

4 Mr. McClee, you were -- you were arrested and
5 charged with a bunch of different charges; is that
6 right?

7 A Yes, sir.

8 Q Do you remember what you were originally charged
9 with?

10 A Two attempted murders, armed robbery, and
11 possession of a firearm.

12 Q Okay. That was originally, right?

13 A Yeah.

14 Q And they added some of the charges later on; is
15 that ---

16 A Yeah. It was supposed to have been enhanced to
17 the murder.

18 Q Okay.

19 A Yeah.

20 Q Okay. So we had some armed robberies originally,
21 a murder or attempted murder, that kind of went with
22 both of them, and was there a criminal conspiracy in
23 there?

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- 1 A Yes, sir.
- 2 Q There was possession of a weapon during the
3 commission of a violent crime?
- 4 A Yes, sir.
- 5 Q Was there an unlawful carrying of a pistol?
- 6 A Yeah.
- 7 Q Okay. And criminal conspiracy charge; is that
8 right, too?
- 9 A Yes, sir.
- 10 Q All right. That was it?
- 11 A Yes, sir.
- 12 Q Did all these charges come from one incident or
13 more than one incident?
- 14 A Yeah, all of them except unlawful carrying. I
15 caught that charge and then they arrested me.
- 16 Q Okay. So that came as a result of your arrest?
- 17 A Yes.
- 18 Q Who was your attorney on these charges?
- 19 A Nathan Sheldon and James Morton.
- 20 Q Okay. How did you end up getting two attorneys?
- 21 A I guess -- I don't know, I guess Nathan needed
22 help.
- 23 Q Okay. So who was the first one?

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- 1 A Nathan.
- 2 Q Okay. How did you -- how did Mr. Sheldon come to
3 represent you?
- 4 A Oh, I fired D'Agostino, I think that's his name.
- 5 Q You hired an attorney to represent you and then
6 you hired Mr. Sheldon; is that right?
- 7 A No, it was Court-appointed.
- 8 Q Okay. Mr. Sheldon was court appointed.
- 9 A Yes.
- 10 Q All right. How did Mr. Morton -- you said he was
11 next. How did he come into play? Mr. Sheldon --
- 12 A I had previously hired him for my bond hearing,
13 so he -- he's been there since day one.
- 14 Q Okay.
- 15 A Yeah.
- 16 Q How about Mr. Shiflett?
- 17 A He works with -- at the time he was working with
18 Jim Morton, yeah.
- 19 Q Okay. After you were arrested, about how long
20 was it from when you were arrested until you ended up
21 pleading guilty?
- 22 A It was 15 months.
- 23 Q Okay. Four hundred and something days; is that

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1 right?

2 A Yes, sir.

3 Q During that time, what did you and your lawyers
4 talk about?

5 A t the beginning, I mean we -- at the beginning,
6 there really wasn't nothing to talk about because
7 wasn't nothing change at the time, and I wasn't -- I
8 wasn't trying to plead guilty until like -- probably
9 like a year into my sentence.

10 Q Okay. Did you all have a chance to talk about
11 the discovery in your case?

12 A There really wasn't nothing to talk about. It
13 was - the witness statements against me. There wasn't
14 no evidence but witness statements.

15 Q Okay. There were some witness statements --
16 there were some pictures that were introduced at your
17 pleadings. Did you all have a chance to talk about
18 those pictures?

19 A No, the pictures really wasn't relevant, I mean
20 it wasn't no big deal.

21 Q Pictures were of you and some of your co-
22 defendants together; is that right?

23 A Yes.

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1 Q All right. At some point, you made the decision
2 to plead guilty?

3 A Yes, sir.

4 Q Or to plead. What went into making that
5 decision?

6 A I -- I mean I was -- I was ready to get it over
7 with, you know, and my lawyers was telling me how
8 serious the charges were and I didn't want to -- I
9 didn't want to risk it.

10 Q Okay. And so when you and your lawyers were
11 talking about pleading guilty, what -- what was that
12 process like? What were the -- the offers that were
13 made or ---

14 A Well, I got my first offer October 31st. I think
15 that's when it was. And it was like between 10 and 15
16 years if I cooperated, and I refused it then because I
17 was -- you know, I was basically telling them -- you
18 know, it was my first time in trouble. You know, I
19 don't deserve that much time for my cooperation. You
20 know, and I thought about it, and my lawyers, we
21 talked about it some more. And I was -- you know, I
22 told him, I said, "The only way I'll plead guilty is
23 if I can get something non-violent to where I can be

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1 able to go up for parole." It was -- he said they
2 sure I can get that, you know. I really -- they said
3 that I really deserve no time, you know, because of my
4 minimum participation in the crimes.

5 Q And I should have asked you that. So Judge
6 Nettles understands, there was never any allegations
7 that you were, you know, the person who actually
8 committed the murder or actually was the trigger man?

9 A It was my first cousin who got killed.

10 Q Okay. So the allegations against you were kind
11 of secondary to some of your --

12 A Yeah, it was basically like some -- like
13 accessory, you know.

14 Q Okay.

15 A Just being there.

16 Q Okay. So you rejected the first plea offer?

17 A Yeah.

18 Q What happened next? Did you get another one?
19 Did your lawyers do something ---

20 A No, it was the same. They talked to the
21 solicitor and got the same offer back on the table,
22 but with what I told them I would take, that's when
23 the non-violent came into effect, and then that's

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1 where it was.

2 Q At some point we landed on ten years for strong-
3 armed robbery?

4 A Yeah.

5 Q And five years for several other charges; is that
6 right?

7 A Yes.

8 Q Okay. Did you and any of your lawyers have a
9 chance to talk about the weapons charge in the case?

10 A Yeah. Because at the time I was -- I was -- I
11 was, you know, and the day of the crime I was in
12 possession of a gun, but it wasn't that long and it
13 was in the glove department.

14 And the day I was arrested, the firearm was
15 recovered and I was charged with unlawful carrying of
16 the same firearm. And basically, you know, and they
17 was saying, you know, when we was talking about the
18 plea, Mr. Thompson kept saying he wanted to charge me
19 with that charge to plead guilty to it. But -- and I
20 was telling them, and they were also saying that
21 that's -- it wouldn't be right if -- because I wasn't
22 in possession of no firearm.

23 Q Okay. So you're talking about with your -- are

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1 you talking about the unlawful carrying?

2 A Yeah, I -- yeah.

3 Q You're talking about the possession of a weapon
4 in the commission of a violent crime?

5 A Yeah, yeah, yeah. I -- yeah. I wasn't -- I
6 wasn't in possession of no firearm that night of the
7 crime. That's why they wouldn't --

8 Q The night of the murder and armed robbery?

9 A Yeah, yeah. And at the time, I was a recent gun
10 owner, you know.

11 Q Okay.

12 A But they were saying that it wouldn't go right if
13 -- because I pleaded guilty to it because I wasn't in
14 possession of no firearm. You know, for anything, it
15 would be unlawful carrying.

16 Q Okay. Did you and any of your lawyers talk about
17 -- talk about how much time you would do with the
18 unlawful carrying of a pistol versus the other one?

19 A Yeah, see, when my lawyer gave me a paper showing
20 my earliest parole date and my release date, and at
21 the time it was time served for the attempted murder,
22 and it was -- he had the -- he had the gun charge on
23 there and -- and at the time, I was -- I was telling

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1 my lawyer that couldn't be right because with the ten
2 years non-violent, I was supposed to be on parole
3 earlier, you know, and he was saying -- and when I
4 checked the paper, it was showing the wrong gun
5 charge. I was reading five years before I go up for
6 parole, and that's when he was saying he was going to
7 change it, because that's not supposed to be there.

8 Q Okay.

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

10 BY MR. WALLER:

11 Q Mr. McClee, I'm going to show you something
12 that's been marked as Applicant's Exhibit 1 for ID
13 purposes only at this time and ask you if you
14 recognize that?

15 (Applicant's Exhibit 1 marked for ID only.)

16 BY THE WITNESS:

17 A Yes, this is the paper my lawyer gave me.

18 Q Okay. That was -- you all talked about how much
19 time you would have to do. He had something from SCDC
20 calculating your sentence?

21 A Yes, sir.

22 Q When you all talked, I believe your testimony was
23 that the paper that he gave you showed a different gun

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1 charge than you thought you were pleading to?

2 A Yes, sir.

3 Q Okay. The paper that he gave you, and correct me
4 if I'm wrong, shows a calculation based on the
5 possession of a weapon during the commission of a
6 violent crime charge?

7 A Correct, yes, sir.

8 Q Okay. What happened at that meeting that led you
9 to think that that charge was incorrect?

10 A Because at the time I knew what -- I pretty much
11 had the statutes on all my charges, so when I seen
12 parole at the end of the day, I knew, and I looked
13 down at the charges because it -- I knew then that
14 that was the charge that was making my parole bigger
15 than what it would originally be if it was just the 10
16 non-violent.

17 Q Okay. Who were you -- who did you talk about
18 that with? Was it all three of your lawyers or one
19 specific one?

20 A No, it was Nathan.

21 Q Nathan Sheldon?

22 A Yes, sir.

23 Q Okay. What did he tell you at that meeting that

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1 made you think that the charge should have been
2 different?

3 A He would change it to unlawful carrying.

4 Q He told you it was going to be changed to
5 unlawful carrying?

6 A Yes, sir.

7 Q Okay. And when you -- you ultimately ended up
8 going to court and pled guilty to the possession of a
9 weapon during the commission of a violent crime?

10 A Yes, sir.

11 Q Okay. You signed a plea agreement listing the
12 possession of a weapon during the commission of a
13 violent crime charge; do you recall that?

14 A Yeah, I -- yes, I did.

15 Q Okay. Why did you sign those if you thought that
16 that was the charge?

17 A Because at the time -- at the time I was -- I was
18 taking my attorney's advice and I trusted my attorney.
19 We had built a relationship so whatever he said, you
20 know, I pretty much went with because I trusted him.

21 But --

22 THE COURT: That was a signed plea agreement?

23 MR. WALLERS: It is, Your Honor.

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1 BY THE WITNESS:

2 A Yeah, and I pretty much trusted him. And I knew
3 they wouldn't - you know.

4 Q Did you get a chance to read the entire plea
5 agreement before you signed it?

6 A No, sir.

7 Q Were you -- you testified earlier you had never
8 been in trouble before?

9 A No, sir.

10 Q When you were actually pleading -- you were in
11 front of the judge pleading guilty, were you paying
12 close attention?

13 A Yeah, but I pretty much -- it was hard for me to
14 understand what was going on. I was told, you know,
15 just say yes to everything, and so the judge can
16 accept the plea. That's pretty much what I did.

17 Q Okay. So our contention here today is that the
18 weapons charge that you pled to was just the incorrect
19 one. It was supposed to be the unlawful carrying of a
20 weapon?

21 A Yeah. And the attempted murder, I'm doing --
22 I've already served four years on that charge, and it
23 was supposed to have been time served.

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1 Q Okay. That was the other part of it is that you
2 were supposed to get credit for what you had, 434
3 days; is that right?

4 A Yes, sir.

5 Q But you ended up getting five years for that; is
6 that right?

7 A Yes, sir. And I have served four years on it.

8 Q Okay. And you're asking the judge to basically
9 enforce what you understood you were pleading to,
10 that's a weapons charge, the unlawful carrying of a
11 pistol as well as time served for the attempted
12 murder; is that right?

13 A Yes, sir.

14 Q Mr. McClee, I don't have any further questions
15 for you. Is there anything you think I have left out
16 or that Judge Nettles needs to be aware of any of your
17 three attorneys' representation of you?

18 A No, sir.

19 MR. WALLER: Please answer any questions Ms.
20 Gregory has.

21 THE COURT: Ms. Gregory, you're recognized for
22 cross-examination.

23 MS. GREGORY: Thank you, Your Honor.

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* * *

CROSS-EXAMINATION

1 BY MS. GREGORY:

2 Q Good morning, Mr. McClee.

3 A Good morning.

4 Q So you had three attorneys, right?

5 A Yes, ma'am.

6 Q But Nathan Sheldon was your main attorney?

7 A Yes, ma'am.

8 Q And so you didn't retain all of them, you
9 retained -- or was it all court-appointed?

10 A No, I -- it was all court-appointed.

11 Q Court-appointed?

12 A Yes, ma'am.

13 Q And I'm going to --

14 MS. GREGORY: May I approach, Your Honor?

15 THE COURT: Yes.

16 BY MS. GREGORY:

17 Q I'm going to draw your attention to page 5 of the
18 plea transcript. I've highlighted -- if you could
19 just review the highlighted portion, and that goes to
20 the next page.

21 A Well, should I read it?

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1 Q You can just read it to yourself.

2 A All right.

3 Q And refresh your memory.

4 THE COURT: This is the plea transcript you're
5 referring to?

6 MS. GREGORY: Yes, Your Honor, page 5. And it's
7 starting at the bottom, Your Honor. I didn't look at
8 the line, but it's the State speaking.

9 THE COURT: Very good.

10 BY MS. GREGORY:

11 Q Now, do you remember that occurring during your
12 plea hearing? That was at the very beginning of your
13 plea hearing.

14 A I think so. Now it's been a long time ago, but
15 I ---

16 Q That's why I had you read it. But at the
17 beginning, the State specifically said what they were
18 going to -- what you were going to be pursuing in your
19 plea agreement, right? That's what that was?

20 A Yeah.

21 Q And they said possession of a firearm charge, not
22 the unlawful carry charge. They actually specifically
23 stated they would be dismissing that one.

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1 Do you recall that at all?

2 A Yeah, I recall, but ---

3 Q Okay. And do you recall signing the plea waiver
4 form as well?

5 MS. GREGORY: May I approach, Your Honor?

6 BY MS. GREGORY:

7 Q Do you recognize this form?

8 MS. GREGORY: It's part of your packet, Your
9 Honor.

10 BY THE WITNESS:

11 A Yes, ma'am, I do.

12 Q Okay. And do you recall, are these your
13 initials?

14 A Yes.

15 Q Okay. And this one says, "Possession of a weapon
16 during the commission of a violent crime"; is that
17 correct?

18 A Yes.

19 Q Are those your initials?

20 A Yes, ma'am.

21 Q Okay. Who went over those with you; do you
22 remember?

23 A I can't remember.

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- 1 Q Okay. Is that your signature at the back?
- 2 A Yes, ma'am.
- 3 Q And do you know who this is? John Shiflett?
- 4 A Yes, ma'am.
- 5 Q Who is that?
- 6 A He was my attorney at the time.
- 7 Q He was one of your attorneys?
- 8 A Yes, ma'am.
- 9 Q Okay. And that plea waiver form went over your
- 10 rights, and it indicated what you were going to be
- 11 pleading to; is that correct?
- 12 A Yes, but I did what I was told. Like I say, I
- 13 trusted my attorneys and -- you know, everything --
- 14 and everything was a rushed process. When I agreed to
- 15 take the plea, you know, everything was rushed.
- 16 Q Okay. But you recall signing that and ---
- 17 A Yes, ma'am.
- 18 Q --- possession of a weapon during a violent
- 19 crime, not unlawful carry?
- 20 A Yes, ma'am, I do.
- 21 Q And do you recall the Court going over each of
- 22 your charges with you during the plea hearing?
- 23 A Yes, but I did what I was told.

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1 Q Okay. You recall telling the judge you wanted to
2 plead guilty even after he told you what the potential
3 sentence was for possession of a weapon during the
4 commission of a violent crime?

5 MS. GREGORY: Your Honor, that's on page 8 and 9
6 of the plea transcript.

7 BY MS. GREGORY:

8 Q Even after he told you what the potential
9 sentence is, you said you wanted to plead guilty to
10 possession of a weapon during the commission of a
11 violent crime?

12 A Yes, I did due to my lawyer telling me if I -- if
13 I -- if I opposed anything, my plea won't get
14 accepted.

15 Q Okay. Do you recall telling the judge you were
16 satisfied with your attorneys?

17 A Yes, I was.

18 Q Do you recall telling the judge no one promised
19 or threatened you in order for you to plead guilty?

20 A I did as I was told to say it.

21 Q Okay. Do you recall agreeing with the facts
22 decided by the State, the facts of your case?

23 A No.

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1 Q You don't recall that?

2 MS. GREGORY: May I approach, Your Honor?

3 THE COURT: Yes.

4 MS. GREGORY: It's on page 19, Your Honor.

5 BY MS. GREGORY:

6 Q These are the facts. I don't know if you want to
7 read those. But this is your response highlighted.

8 A I mean, yeah, I probably agreed to it, but I had
9 to do what I had to do to get my plea accepted.

10 MR. WALLER: Judge, if there's sections of the
11 transcript, we stipulate the transcript is accurate.

12 THE COURT: Very good.

13 BY MS. GREGORY:

14 Q Do you recall telling the Judge that you are
15 entering your plea freely and voluntarily?

16 A Yes, I recall all that.

17 Q And at the very end of the plea, do you recall
18 Mr. Shiflett telling the Court that they had not met
19 -- they had met with you on numerous occasions
20 throughout the course of their representation and
21 believe you fully understood the agreement and
22 consequences of your plea?

23 THE COURT: That's on page 20, Your Honor.

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1 BY THE WITNESS:

2 A Yes, I agreed to all that.

3 Q So why didn't you tell the Court that you were
4 pleading to a charge that you didn't agree with?

5 A Because at the time, now, I'm facing murder, I'm
6 facing life plus I didn't know how many years the
7 other charge carry. I had to go with whatever my
8 lawyer was telling me to do, but I opposed to it, you
9 know, from what they was telling me, I won't be able
10 to get the deal, so I had to say what they was telling
11 me to say to get it.

12 Q But you're saying that the deal didn't include
13 the charge that you said you should have had; is that
14 correct?

15 A No, no, it didn't, but I kept being told that it
16 would be fixed.

17 Q It would be fixed. Okay.

18 A Yeah.

19 Q Do you recall signing your sentencing sheet?

20 A Yeah.

21 Q You had signed a sentencing sheet for the
22 possession of a weapon during commission of a violent
23 crime; is that correct?

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1 A Yeah.

2 Q But you never told the judge ---

3 A But at the time, when I did, the day I got
4 sentenced, when I was signing the sentencing sheets, I
5 was asking about the time served for the attempted
6 murder, and he said, "Look at the bottom," and at the
7 bottom of my sentencing sheet it states 443 days. So
8 that's -- that's the only reason why I didn't rebut it
9 then because at the time, -- it's my first time coming
10 through the court system. They're telling me to look
11 at the 443 days, that is my time served for attempted
12 murder, okay, cool. And for the possession of a
13 firearm charge, you know, they kept saying they're
14 going to get it fixed, they're going to get it fixed,
15 because I was asking why they're still there. But
16 they're saying they're going to fix it.

17 Q Who was telling you that they were going to fix
18 it?

19 A My lawyers.

20 Q All three of them?

21 A Nathan, yeah.

22 Q Nathan? Did Mr. Morton or Mr. Shiflett say that
23 to you as well?

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1 A I can't remember.

2 Q Okay. And is your biggest complaint that your
3 earliest parole eligibility date is not the same?

4 A It's not.

5 Q That your earliest parole eligibility date; is
6 that what you're worried about? Is that the date that
7 you're worried about?

8 A No, I'm worried -- I'm not -- I'm not
9 understanding what you mean.

10 Q I'll show you the calculation.

11 MS. GREGORY: May I approach, Your Honor?

12 THE COURT: Yes.

13 BY MS. GREGORY:

14 Q The calculator here that your attorney had, he
15 was discussing earliest possible parole eligibility.
16 Is that the date that you're concerned about?

17 A Yes.

18 Q Okay. I went on the SCDC website and printed
19 out ---

20 MS. GREGORY: May I approach, Your Honor?

21 THE COURT: Yes.

22 BY MS. GREGORY:

23 Q --- your profile. According to SCDC, your

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1 earliest projected parole eligibility date is
2 1/11/2021.

3 A Right.

4 Q The calculator says it's 1/12/2021. So you're
5 actually a day early. So is this calculation wrong?

6 A No, I'm not saying it's wrong, but it's -- that's
7 not what I was expecting. I --

8 Q What were you expecting?

9 A I was expecting, you know, with taking a ten-year
10 non-violent plea, I was supposed to be -- after I
11 served a third of the sentence, I was supposed to be
12 eligible every year. So I didn't expect either one of
13 those dates.

14 Q Okay. But do you agree with me that this date,
15 your earliest possible parole eligibility date, ---

16 MR. WALLER: Judge, I'm going to object. I'm not
17 sure exactly what -- if you can show what you're
18 looking at.

19 MS. GREGORY: The printout from SCDC.

20 BY MS. GREGORY:

21 Q Is the date -- your date is earlier on your SCDC
22 profile; is that correct?

23 A Yeah.

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1 Q Okay.

2 MS. GREGORY: No further questions, Your Honor.

3 THE COURT: Any redirect?

4 MR. WALLER: Just very briefly.

5 * * *

6 REDIRECT EXAMINATION

7 BY MR. WALLER:

8 Q Mr. McClee, you were shown a copy of the waiver
9 -- the plea waiver form that you signed; is that
10 right?

11 A Yes, sir.

12 MR. WALLER: Your Honor, may I approach the
13 witness?

14 THE COURT: Yes.

15 BY MR. WALLER:

16 Q Looking at the plea waiver form, is the
17 possession of a weapon during the commission of a
18 violent crime -- is that marked as a no parole
19 offense?

20 A No, sir.

21 Q Do you understand now that it is a no parole
22 offense?

23 A Yeah.

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1 Q Okay.

2 MR. WALLER: Nothing further, Your Honor.

3 THE COURT: You may step down. Anything further
4 from the applicant?

5 MR. WALLER: Nothing further from the applicant.

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

7 MS. GREGORY: Thank you, Your Honor. The State
8 would call Nathan Sheldon.

9 THE COURT: Mr. Sheldon, please come forward.

10 (Swearing in of witness)

11 THE COURT: Have a seat in the witness chair.

12 Pull up real close to that microphone, speak loudly,
13 clearly and slowly. We want to hear everything that
14 you have to say, and let's start with your full name,
15 Mr. Sheldon.

16 WITNESS: Nathan James Sheldon.

17 THE COURT: Spell that last name.

18 WITNESS: S-H-E-L-D as in dog, O-N.

19 * * *

20 NATHAN SHELDON

21 called as a witness by and on behalf of
22 the Defendant to testify, being first duly
23 sworn was examined and testified as follows:

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1 DIRECT EXAMINATION

2 BY MS. GREGORY:

3 Q Good morning, Mr. Sheldon.

4 A Good morning.

5 Q How long have you been practicing law?

6 A About -- a little over 13 years.

7 Q And how much of that has been criminal law?

8 A I'm -- the entire 13 years, but I guess in my own
9 practice, probably about 40 or 50 percent.

10 Q Okay. And Mr. McClee testified earlier that you
11 were retained -- or appointed in this case?

12 A That's correct. Dan D'Agostino originally
13 represented him. I think Dan represented him for
14 about two months, and then after that, the judge
15 relieved Mr. D'Agostino and then appointed me to the
16 case, probably in, I think, about March of 2016.

17 Q And you had co-counsel in this case. How did
18 that come about?

19 A I can't remember exactly, I know that -- so Jim
20 Morton had represented Mr. McClee for the purposes of
21 bond, like he testified to.

22 So Dan D'Agostino is appointed to represent Mr.
23 McClee. His family hires Morton and Gettys for the

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1 purposes of bond only. And so he has two -- kind of
2 two attorneys at that time.

3 Then Mr. D'Agostino gets relieved. I know that
4 Mr. Morton's familiar with the case. I can't remember
5 if it was before the direct indictment for murder or
6 after, but this case got extreme -- the facts of this
7 case were extremely complex.

8 Q What were the facts?

9 A Essentially there's a crack house, there's two
10 gangs. One, Your Honor, -- and these are the facts
11 according to the State. I'm not saying -- there's two
12 gangs. One in Rock Hill and one in Charlotte. The
13 Charlotte gang sells -- steals credit cards and sells
14 them. A very profitable business for this Charlotte
15 gang. The Rock Hill gang essentially lures them into
16 this trap house in Rock Hill for the purposes of
17 negotiating a deal for stolen credit cards.

18 Sort of -- I mean for lack of a better word, all
19 hell breaks loose at this trap house, right? So
20 initially the first guy goes in, we'll call him Victim
21 1, I guess, goes in and according to the State,
22 according to the surviving -- to the surviving
23 Charlotte gang members, the -- he's immediately sort

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1 of bound and gagged and tied up in a back room, right?
2 So then the Rock Hill gang kind of lure in. Gang
3 member number 2, gang member number 2 comes in and
4 they have a -- like an M-16 or something that's -- and
5 they're about to kill gang member number 2.

6 Gang member number 1 is still tied up in the back
7 room. Well, the gun jams. And so gang member number
8 2 then sort of on his way out running behind him
9 shoots. The bullet from that gun ricochet's off of
10 the M-16 and goes straight through what ends up being
11 victim's head. It kills him instantly. Runs out into
12 the street, guy that's tied up in the back room gets
13 super strength, you know, rips the duct tape off,
14 jumps out the window, and then so they're shooting at
15 gang member number 2 in the street.

16 Gang member number one takes off and then -- and
17 essentially the leader of the Rock Hill gang is the
18 one that ends up dead on the ground. So it was a real
19 complex sort of transferred intent, felony murder,
20 hand of one hand of all case against Mr. McClee who is
21 accused of doing nothing else but being the lookout
22 guy outside.

23 I think there was -- he ended up giving a very

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1 detailed statement to Law Enforcement to end his part
2 of his plea to wrap up the case against the Charlotte
3 guys. But ultimately that's why he wasn't originally
4 charged with murder because essentially the victim is,
5 I believe, his cousin, but a really good friend of his
6 who ends up down on the ground, and so it's a very
7 convoluted, complicated -- and South Carolina really
8 hasn't addressed whether he could he even be charged
9 with murder at all given that it was essentially the
10 opposing gang that shot him.

11 You know, they were going under the theory that -
12 - that he could even though it was his friend
13 essentially down on the ground and nobody he was with
14 shot him. So ---

15 Q Right. He was part of the Rock Hill ---

16 A That's right. That's right.

17 Q And did you ask him what his version of the facts
18 were?

19 A Initially, I got several different versions.
20 First, he wasn't there, then he was there but he was
21 just selling marijuana. And we brought in a private
22 investigator in this case, Pete Skidmore. We brought
23 in Johnny Hartley who is an FBI -- former FBI lie

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1 detector guy that gave him a lie detector, because we
2 would get more and more essentially closer to the
3 truth the further along we got.

4 Finally, we had a version of the truth that we
5 thought we could take to the State and make some
6 headway with, and ultimately we brought in our
7 polygrapher, that didn't work, so that the truth kind
8 of evolved through the case. But yes, ultimately we
9 do get to a statement that he gives to Law Enforcement
10 that I believe to be probably pretty close to the
11 truth.

12 Q Okay. And how many times did you guys meet with
13 him during your investigation?

14 A Personally 13 to 15 for me, but I mean when
15 you've got three lawyers, plus I don't know how many
16 times Dan met with him, plus sometimes the
17 investigator would go, none of us were there when the
18 polygrapher was there. I mean it was -- it was a lot.
19 It was a lot.

20 Q So you all weren't together every time you met
21 with him?

22 A No. No. And that -- which was very helpful.
23 Having three lawyers just made it easy. I was sort of

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1 in charge of -- sort of in charge of everything
2 leading the plea, but also the SCDC stuff, I've done a
3 lot of PCRs so I understand the way sentences work.
4 John Shiflett was really in charge of the law aspect
5 because this was extremely -- it was new territory for
6 South Carolina, so we were looking at cases out of
7 North Carolina, Georgia, Illinois, to find out how
8 this murder charge could actually be brought and what
9 we could do to argue it.

10 And the jurisdictions are split. I mean they
11 really are. And then -- and then Jimbo's just, you
12 know, valuable as -- just kind of did it all. So ---

13 Q Okay.

14 A --- and related really well to Mr. McClee, too.

15 Q Okay. And how did the plea offer come about in
16 this case?

17 A Well, the prosecutor knew, I think, from the get-
18 go that essentially nobody in the house was -- was
19 sort of innocent. I mean I think about a five-year-
20 old in the street ends up dead, we're probably having
21 a much different conversation today at this hearing
22 than we are now. But I think it evolved relatively
23 the way Mr. McClee said, that it probably did come

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1 with a ten to 15 offer to the strong-arm or whatever
2 else they wanted to attest to. I don't really
3 remember. I know that his number was -- was five.
4 That's what ultimately I got the State to was five
5 years.

6 Q Okay. What were the terms of the plea offer that
7 you presented to him that he ultimately accepted?

8 A The strong-arm for ten. I knew that was non-
9 violent so he would be parole eligible. But
10 essentially the anchor charge in this whole thing like
11 we've heard is that possession of a weapon during the
12 commission of a violent crime, which is day for day.

13 I mean there's no question and there's no
14 question that that was explained to him, there's no
15 question from the SCDC calculator, and then you needed
16 a violent crime to attach to that, which would be the
17 attempted murders. There was definitely discussion
18 about that being a time served sentence for
19 Mr. McClee.

20 Mr. -- Mr. Thompson just wouldn't do it. But by
21 sentencing him to five years on those charges at 85
22 percent, it was guaranteed that those were going to
23 max out prior to that five-year anchor of the

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1 possession of a weapon during the commission of a
2 violent crime. So everything was a throwaway charge
3 except the strong-armed robbery and the possession of
4 a weapon during a violent crime.

5 Q Okay.

6 A In other words, the two charges that he's pled to
7 are actually like essentially are triggering the time
8 that he's doing.

9 Q Okay. And you heard his testimony. Was there
10 ever a discussion that the unlawful carry was supposed
11 to be the firearm charge that was reduced?

12 A No. I mean we had -- we had to have a way to get
13 it to five, and that was the way that we did it. I do
14 want to address something. In the calculator that he
15 was shown, while it does say time served in the
16 attempted murder, that's simply not because that's
17 what the State was offering because they didn't, but
18 because the calculator for some reason attaches the
19 murderer statute to attempted murder.

20 So if you don't type in attempted murder as a
21 time-served sentence, you get something really wacky
22 that comes out. And that's why for the purposes of
23 this, which I knew that that would not be affecting

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1 that day for day, it didn't bother me to run that as a
2 time-served sentence. It didn't impact what the dates
3 were at all.

4 Q Okay. And did you explain that to him, why it
5 would appear on that calculator ---

6 A I -- yeah, I'm assuming I did. I mean he
7 understood he was going to do five years.

8 Q Okay.

9 A I mean there was no question about that, that he
10 understood that. And I sent an email to all of the
11 defendant attorneys and the prosecutor
12 contemporaneously with meeting him explaining all this
13 stuff to him.

14 Q Okay. And do you know what date -- was that
15 potentially March 21st of 2017?

16 A Yeah, it would have been very close to his
17 sentencing. That's right.

18 Q Okay.

19 MS. GREGORY: Your Honor, may I approach?

20 THE COURT: Yes.

21 BY MS. GREGORY:

22 Q I've highlighted this. Can you tell me if that's
23 the email?

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1 A That is the email. Yes.

2 Q And what does that email say?

3 A This was sent on March 21st, 2017, which I think
4 would have been the day before his sentencing hearing
5 -- or his plea hearing. It says -- and this was to
6 the investigators on the case, the Police officers,
7 paralegals, and also the prosecutor and both of the
8 defense attorneys. It said, "Thank you. I can't be
9 there, but Jim and/or John will be -- he being John
10 Shiflett or Jim Morton -- just so we are clear.

11 I had informed Mr. McClee he will be pleading to
12 common law robbery off of the AR indictment for a
13 negotiated plea," so he was originally indicted as the
14 armed robbery, but he pled to common law strong-armed,
15 for a negotiated ten, possession firearm, violent
16 crime for five -- excuse me, criminal conspiracy for
17 five, attempted murder times two for five each, all
18 concurrent. State dismisses murder, unlawful carry,
19 and kidnapping."

20 Q And that's an accurate resitation of that email?

21 A Well, and then it goes on and states, "Mr. McClee
22 has been informed of his rights, the day for day
23 nature of the sentence, the most serious offenses,

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1 etcetera, I think that covers anything. If I'm
2 missing something, if necessary, credit for time
3 served tomorrow will be 435 days."

4 Q And does that accurately represent the email that
5 you sent?

6 A It does, and that -- and that would have been
7 sent almost immediately after leaving the jail talking
8 to him.

9 MS. GREGORY: Your Honor, this was previously
10 marked as State's Exhibit 1. We would ask that this
11 be introduced into evidence at this time.

12 THE COURT: That email was from who to who?

13 THE WITNESS: It's from me to all of the other
14 attorneys on the case and their paralegals and things
15 like that.

16 MS. GREGORY: And the solicitor.

17 MR. WALLER: No objection, Your Honor.

18 (Whereupon, State's Exhibit Number 1 is
19 introduced into evidence at this time.)

20 BY MS. GREGORY:

21 Q So this email indicates that it's possession of a
22 weapon during the commission of a violent crime?

23 A And a day for day offense.

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1 Q And day for day offense. And that's what you
2 discussed with Mr. McClee?

3 A Yeah. And some attorneys get confused on this.
4 I mean I've done a lot of PCR work, and there is one
5 specifically in this county where both the prosecutor,
6 the defense attorney, even the judge allowed for a
7 three-year sentence to that possession of a weapon
8 during the commission of a violent crime. And
9 unfortunately because the day for day nature, they had
10 to -- it really messed things up as to what they were
11 intending to do, and we were able to fix it. But that
12 was prior to this. I was extremely, extremely, clear
13 with everyone that this was a day for day offense
14 because I had seen that mistake happen before.

15 Q Okay. And you were extremely clear with
16 Mr. McClee as well?

17 A Yes.

18 Q And he understood those discussions?

19 A Yes. And I was -- I mean he said he did -- his
20 number was five. If I could get this to five, he
21 would take it. And the prosecutor didn't want him to
22 be parole eligible before five, and so that offense
23 actually is the crux of the agreement.

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1 That got everybody where they said they were --
2 they were able to meet. I mean there's a dead body on
3 the ground. He's charged with murder. He said if you
4 get me five, then I'll take five. And that's what we
5 did.

6 Q Okay. Mr. McClee testified that you indicated
7 that you were going to be fixing something after his
8 plea. Was there anything to fix?

9 A No. I wasn't at the plea hearing, so I mean the
10 discussion he had with John Shiflett -- I'm not sure.
11 At the sentencing, no, no -- I mean no, I had no
12 recollection of that whatsoever. And that -- I mean
13 that just wouldn't make any sense. I mean if he
14 didn't want to take it, he just wouldn't take it. We
15 were gearing up for trial in this case up until I mean
16 the eve of this plea.

17 I mean it was a deferred plea in sentencing
18 because there are these co-defendants that haven't
19 agreed to plea yet, and so that's why you see it's
20 eight days away because they wanted to lock in his
21 testimony, let all the other dominoes fall, and then
22 once everybody else had pled, he gets the benefit of
23 what he agreed to.

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1 Q Okay. And was it his decision to plead guilty?

2 A Yeah, I mean and I agree that it was tough to get
3 him there and that we were probably pretty forceful in
4 that, you know, this is a very serious thing, and we
5 got five, and we're messing around with -- I don't
6 personally think he should have been charged with
7 murder. I mean if it were up to me, he wouldn't have.
8 And I don't know that that would have stuck. But even
9 still, there were a ton of other charges that could
10 have waxed him with some serious time in this case,
11 and it just didn't make a lot of sense for him to go
12 forward at trial. I mean --

13 Q Would you have taken it to trial if that's what
14 he wanted to do?

15 A Yeah, of course. I mean I think Jim Morton to
16 this day probably still would like to go try it, but
17 -- but it just didn't -- it didn't make sense. I mean
18 it didn't make sense. If they were offering 30 years,
19 then we would have had a trial, but at five years with
20 what he was charged with, no guarantee that that
21 murder was going away, and like -- especially after we
22 hear that -- you know, the final version of the facts,
23 he was likely to get convicted of something, it didn't

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1 make a lot of sense to try it.

2 Q Okay. I'm going to show you the sentencing plea
3 -- or the sentencing. You were present for the
4 sentencing; is that correct?

5 A For the sentencing, not for the actual acceptance
6 of the plea.

7 Q Okay.

8 MS. GREGORY: May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MS. GREGORY:

11 Q Page 4 and 5, the highlighted portion, if you
12 could just read these over, is that the State
13 basically stating what the plea agreement is?

14 A Yes.

15 Q Is that, in fact, what's imposed by the judge
16 during that sentencing hearing?

17 A It is, yes.

18 Q And is that the same sentence and plea offer that
19 you discussed with Mr. McClee?

20 A Yes.

21 MS. GREGORY: No further questions, Your Honor.

22 THE COURT: Mr. Waller?

23 MR. WALLER: Thank you, Your Honor.

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1

* * *

2

CROSS-EXAMINATION

3

BY MR. WALLER:

4

Q Good morning, Mr. Sheldon, how are you today?

5

A Good. Good morning.

6

Q Mr. Sheldon, I guess, first of all, how -- what's

7

your understanding of how the State charged him and

8

the sentencing with the murder?

9

A I don't think that they should have - my

10

understanding of why they did it was because to put

11

some screws to him to plea, and my understanding of

12

their theory of it was essentially that it was a

13

felony murder, hand of one hand of all and transferred

14

intent.

15

Q Okay. It was the kind of situation where they

16

couldn't have had -- but for the actions of the Rock

17

Hill group, he couldn't have had the other guy there

18

shooting?

19

A I guess. I mean that wasn't my issue as much of

20

as the fact that he essentially had somebody with a

21

relatively imperfect at best self-defense claim sort

22

of being -- so you had a shooter that's not charged

23

with murder, but an innocent outside who's the lookout

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1 that is, like that was -- that was really what was
2 very difficult about the case.

3 Q Well, that was going to be my next question. The
4 Charlotte group, were they charged with anything?

5 A I -- they were definitely charged with a ton of
6 things. Whether they were charged with the murder or
7 not, I don't think they were. I can't remember for
8 sure.

9 Q Were they charged based on the credit card stuff
10 or anything related to this actual one incident?

11 A I think they were charged with all sorts of --
12 with -- I don't know. I mean I think, yes,
13 independently they were probably charged with some
14 credit card stuff. In fact, the Feds I think were
15 looking into them in Charlotte. I mean these guys
16 were driving like Maseratis if I remember. I mean it
17 was crazy. So but for the Rock Hill incident, they
18 were definitely charged with all sorts -- with all
19 sorts of stuff.

20 Q Okay.

21 A I just can't remember if they charged the shooter
22 with the actual murder or not. I don't think that
23 they did.

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1 Q But even outside the murder, Mr. McClee was still
2 looking at some serious charges?

3 A Oh, no question, he was looking at the attempted
4 murder for -- and the kidnapping and the armed
5 robbery. And that would have all stemmed from what
6 happened inside the home with the Rock Hill group.

7 Q Okay.

8 MR. WALLER: Your Honor, may I approach the
9 witness?

10 THE COURT: Yes.

11 BY MR. WALLER:

12 Q I'm going to show you what's been marked for ID
13 purposes as Applicant's Number 1 and ask if you
14 recognize that.

15 A I do.

16 Q That's the SCDC sentence calculator you gave
17 Mr. McClee?

18 A Yes.

19 Q Okay.

20 MR. WALLER: Your Honor, so I would move to admit
21 that as Applicant's 1.

22 THE COURT: Any objection?

23 MS. GREGORY: No, no, Your Honor.

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1 THE COURT: It's into evidence.

2 (Whereupon, Applicant's Exhibit 1 is moved into
3 evidence without objection.)

4 BY MR. WALLER:

5 Q Mr. Sheldon, you testified on direct that the
6 calculator has kind of a glitch in it. The attempted
7 murder is shown -- it messes up the calculation if
8 it's shown as anything but time served; is that right?

9 A That's my understanding -- that's what I
10 remember, and if you look at the -- above the date
11 summary, it says, "The statute for offense number
12 three states that the mandatory minimum sentence is 30
13 years." And so -- but regardless, I knew it wasn't
14 going to affect his actual sentence though.

15 Q My question then is why did it have that on
16 there?

17 A Why did it have what?

18 Q The attempted murder? Why --

19 A Because I think it's -- whether or not it affects
20 the parole eligibility. That's what I wanted to show.
21 I had to have a violent offense on there, because I
22 wanted to make sure that any conviction for a violent
23 offense wasn't going to affect what I believed his

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1 parole eligibility to be at the five-year mark.

2 Q Did you run them both ways?

3 A Did I -- in terms of?

4 Q With just the possession of a weapon during the
5 commission of a violent crime and the strong-armed
6 robbery, did you run that as a calculation?

7 A I -- I can't remember. I know I ran one where
8 the match out date was like 20 years, and I knew that
9 that was not going to be right.

10 Q Okay. I guess my question is what was the --
11 what was the point of giving Mr. McClee a document
12 showing him a time served sentence for the murder?

13 A To have the possession of a weapon during --
14 well, the point of giving him this document was to
15 show him the parole eligibility date. Right.

16 That was the point of giving him this document,
17 to show how this possession of a weapon during a
18 violent crime. To have the attempted murder on there
19 was to show him that -- it was to show him the --
20 having a violent -- having a violent offense or non-
21 parolable offense conviction on there was not going to
22 affect that parole ineligibility. That's my
23 recollection of it. And this was only 13 days prior

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1 to the plea.

2 Q Okay. Did anything change in that 13 days?

3 A Not that I remember. I mean I was trying to get
4 the prosecutor to give him time served on those
5 attempted murders. I actually wanted them to not give
6 it to him at all. But he thought that that would be
7 just too much of a legal fix and having him plea to
8 possession of a weapon during the commission of a
9 violent crime with not pleading to any actual violent
10 crime. And so that's why he pled to these. It's my
11 recollection he wasn't willing to do time served, but
12 he was willing to structure it such that it would not
13 impact the ultimate parole eligibility date after that
14 day for day filing.

15 Q Okay. Mr. McClee testified he picked up the
16 unlawful carrying of a pistol charge when he was
17 arrested.

18 A That's right. They pulled him over and arrested
19 him on that charge and charged him with everything
20 else.

21 Q Did you all ever discuss, you and Mr. McClee
22 discuss ever trying to use that as a weapons charge?

23 A No. I mean I -- that was -- I mean I -- that

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1 carried up to a year, that was going to be a throwaway
2 charge no matter what.

3 Q Okay. But you all never talked about it?

4 A Not that I remember. I mean -- we should
5 probably talk about the charge but I mean -- I can't
6 speak for every lawyer, but when you're deal -- I mean
7 when you've got a guy charged with murder, I mean the
8 guy comes in, you know, he's charged with DUI, but
9 there's a dead body in the trunk, we're not really
10 talking much about the DUI. I mean that's kind of how
11 I treated it. I mean this was a maximum one-year non-
12 violent offense, right?

13 Q Okay.

14 MR. WALLER: Beg the Court's indulgence for a
15 brief moment.

16 Thank you, Mr. Sheldon, nothing further.

17 THE COURT: Any redirect?

18 MS. GREGORY: No, Your Honor.

19 THE COURT: You may step down.

20 You may call your next witness.

21 MS. GREGORY: We call Jim Morton.

22 THE COURT: Mr. Morton, please come forward.

23 (Swearing in of the witness.)

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1 THE COURT: Mr. Morton, have a seat in the
2 witness chair, please, sir. And I'll ask you to pull
3 up real close to that microphone, speak loudly,
4 clearly and slowly so that we can hear everything that
5 you have to say. Now start with your full name,
6 Mr. Morton.

7 THE WITNESS: Full name is James Michael Morton.

8 THE COURT: Very good.

9 * * *

10 JAMES MICHAEL MORTON

11 called as a witness by and on behalf of
12 the Defendant to testify, being first duly
13 sworn was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. GREGORY:

16 Q Good morning, Mr. Morton.

17 A Good morning.

18 Q How long have you been practicing law?

19 A Almost 35 years.

20 Q And how much of that has been in criminal law?

21 A Ninety percent.

22 Q And how did you come to represent Mr. McClee?

23 A They came to me for purposes of a bond hearing.

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1 They had a dispute, I believe, with Mr. D'Agostino, so
2 Mr. Shiflett and I agreed to try and get a bond for
3 Mr. McClee.

4 Q Okay. Did you have a defined role in this
5 representation? Were you the head of the three
6 attorneys that were involved?

7 A No, not necessarily. You know, bond was
8 eventually denied and Mr. Shiflett and I agreed to
9 stay on and help Mr. Sheldon defend this case.

10 Q Is there anything Mr. Shiflett did that you
11 weren't involved in? Did you guys work independently
12 or together?

13 A We worked -- we worked together.

14 Q Okay. So there was time that you met with
15 Mr. McClee that Mr. Shiflett wasn't with you?

16 A Well, there may have been. I can't remember.

17 Q Okay. And how long did you represent Mr. McClee
18 prior to his guilty plea?

19 A A year and a half, I guess, somewhere
20 thereabouts.

21 Q Do you recall how many times you met with him
22 during the year and a half?

23 A I think Mr. Sheldon said 13 to 15, probably more

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1 than that, to tell you the truth.

2 Q Okay. Do you recall if Mr. Shiflett was with you
3 during those meetings?

4 A Most of the meetings for sure.

5 Q What about Mr. Sheldon?

6 A Most of the meetings.

7 Q Did you hear Mr. Sheldon's testimony regarding
8 the facts of the case?

9 A Yes.

10 Q Is that what you recall?

11 A Yes.

12 Q Do you recall what Mr. McClee told you as far as
13 the facts you believe to be the case?

14 A He initially told us that he was not present,
15 that he learned of his -- it was a difficult situation
16 for him because it was his first cousin and close
17 friend who was the victim and who had gotten shot, and
18 so he initially told us that he wasn't there, that he
19 learned -- he was at his mom's house, that he learned
20 from his girlfriend that his first cousin had been
21 killed, and he obviously wasn't immediately arrested.
22 And then that changed to, you know, he was there, but
23 he didn't know what was going on, to finally, you

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1 know, what came out was that he had -- he had been
2 there and knew that the guys from Charlotte were
3 coming down for this thing.

4 Q Okay. And how did the plea negotiation come
5 about? What was your role in that?

6 A My role was meeting with the lawyers and meeting
7 with Mr. McClee and meeting with his family a lot,
8 meeting with the prosecutor. As Nathan said, we had
9 private investigators, we went to the scene, we, you
10 know, -- we did ever piece of investigation. It was a
11 very complicated case. We met with the prosecutor.
12 We met with Mr. McClee numerous times. And we
13 eventually had a polygrapher -- our own polygrapher
14 come in to talk to Mr. McClee.

15 Q Regarding the facts of the case?

16 A Yes.

17 Q Okay. What did you understand the plea agreement
18 to be?

19 A As Mr. Sheldon stated, the attempted murder, the
20 strong-armed robbery, the possession of a gun during
21 crime of violence.

22 Q Okay.

23 MS. GREGORY: Your Honor, may I approach?

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1 THE COURT: Yes.

2 BY MS. GREGORY:

3 Q I'm going to show you what State's Exhibit 1 --

4 do you recognize that?

5 A Yes, ma'am, it's an email from Nathan Sheldon to
6 those of us who were involved.

7 Q Including the solicitor Willie Thompson?

8 A Correct.

9 Q Okay. And the terms outlined in that email, do
10 those match what in fact was imposed on Mr. McClee?

11 A It does.

12 Q It shows term just what he's saying in there, the
13 terms of the plea are there?

14 A Well, the -- as he's testified, the main part was
15 the possession of a firearm during commission of a
16 crime of violence, which is a day for day five-year
17 sentence, and that the others would run concurrent to
18 that.

19 Q Okay. And did you discuss that with Mr. McClee?

20 A Yes, I did.

21 Q Did he seem to understand that?

22 A Yes, he did.

23 Q Was there anything regarding the unlawful carry

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1 that you discussed with him as being part of the plea?

2 A Unlawful carry was never really in the mix.

3 Q Okay. And he testified after the plea, the
4 attorneys were telling him they were going to fix it,
5 was there anything to fix after the plea?

6 A No.

7 Q Were you present when the State went over the
8 terms in the very beginning of the plea hearing --
9 went over the terms of the plea agreement?

10 A Yes.

11 Q Okay. I'm going to show you ---

12 MS. GREGORY: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MS. GREGORY:

15 Q --- page five of the plea agreement. If you
16 could just read that to yourself?

17 A (Reads document.) Okay.

18 Q In those terms, did those match the email that
19 you said you were sent by Mr. Sheldon?

20 A Correct.

21 Q Okay. And those included the possession of a
22 weapon during the commission of a violent crime?

23 A Correct.

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1 Q Was unlawful carry mentioned there?

2 A No.

3 Q Were you present at the sentencing hearing?

4 A You know, to tell you the truth, I think I was,
5 yes.

6 MS. GREGORY: May I approach, Your Honor?

7 THE COURT: Yes.

8 BY MS. GREGORY:

9 Q I'll provide you the sentencing transcript just
10 so you can refresh your memory.

11 A (Reviews document.)

12 Q Were you present during sentencing?

13 A Correct.

14 Q Was the sentence imposed on Mr. McClee, the
15 sentence that you expected pursuant to the plea
16 agreement?

17 A Correct.

18 Q Did he ever indicate to you that he wished to
19 withdraw his plea?

20 A No.

21 Q And he seemed to understand all your discussions?

22 A He did.

23 Q Okay.

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1 MS. GREGORY: No further questions, Your Honor.

2 THE COURT: Any cross-examination?

3 MR. WALLER: Very briefly, Your Honor.

4 * * *

5 CROSS-EXAMINATION

6 BY MR. WALLER:

7 Q Mr. Morton, were you present in the meeting when
8 Mr. McClee was presented with the release date
9 calculation from SCDC?

10 A I can't remember.

11 Q Okay. Do you have any notes when you would have
12 met with him just ten days or two weeks leading up to
13 the plea as far as dates go?

14 A Not that I recall.

15 Q Okay.

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

17 THE COURT: Yes.

18 MR. WALLER: Nothing further. Thank you.

19 THE COURT: Any redirect?

20 MS. GREGORY: Oh, no, Your Honor.

21 THE COURT: You may step down. Thank you, Mr.
22 Morton.

23 THE WITNESS: Thank you, Your Honor.

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1 THE COURT: Call your next witness.

2 MS. GREGORY: The State would call John Shiflett.

3 THE COURT: Mr. Shiflett, please come forward.

4 (Swearing in of the witness.)

5 THE COURT: Have a seat in the witness chair.

6 Pull up real close to that microphone, speak loudly,
7 clearly, and slowly in order that we can hear
8 everything that you have to say. And let's start with
9 your full name, Mr. Shiflett, and spell that last
10 name.

11 THE WITNESS: Full name is John Mark Shiflett.

12 Last name S-H-I-F as in fruit, L-E-T.

13 THE COURT: Very good.

14 JOHN MARK SHIFLETT

15 called as a witness by and on behalf of
16 the Defendant to testify, being first duly
17 sworn was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. GREGORY:

20 Q Thank you, Mr. Shiflett. Do you currently
21 practice law?

22 A I do not.

23 Q How long did you practice law?

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1 A Ten, eleven years.

2 Q And was a lot of that in criminal defense?

3 A Well, half of it was defense and half of it was
4 just general prosecution.

5 Q Okay. What was your role in this case?

6 A I was in a capacity of support to Mr. Morton
7 primarily. I worked for Morton and Gettys and would
8 take on various task when it was a support task, and
9 work with Mr. Nathan Sheldon as well from the legal
10 research standpoint involved in this case.

11 Q Is there anything you did independently of Mr.
12 Sheldon or Mr. Morton?

13 A No.

14 Q Okay. And how long did you represent Mr. McClee
15 before his plea?

16 A Same timeframe as previously stated.

17 Q Okay. And do you recall how many times you met
18 with him? Would it be the 13 to 15 ---

19 A Same timeframe previously.

20 Q Were you here -- you heard Mr. Sheldon discuss
21 the facts of the case?

22 A I did. I would concur with that.

23 Q Okay. What was your role in the plea

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1 negotiations?

2 A The same as Jim primarily. We were involved in
3 numerous meetings with Mr. McClee as well as the
4 prosecution, and we would just communicate back and
5 forth, consistent with Nathan as he described.

6 Q Did you discuss the plea terms with Mr. McClee?

7 A Did, yes, sir -- yes, ma'am.

8 Q And did he seem to understand those discussions?

9 A He did.

10 Q Okay. Did you receive an email from Mr. Sheldon
11 prior to the plea hearing?

12 A Yes, ma'am.

13 MS. GREGORY: Your Honor, may I approach?

14 THE COURT: Yes.

15 BY MS. GREGORY:

16 Q I'm going to show you State's Exhibit 1. If you
17 could just review that?

18 A (Reviews document.) Okay.

19 Q Did that email accurately reflect the plea
20 agreement Mr. McClee received from the State?

21 A It does.

22 Q Does that reflect the plea agreement he
23 ultimately received?

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1 A Yes, ma'am, it does.

2 Q And you were at the plea hearing, correct?

3 A I was.

4 Q At the very beginning when the State began
5 discussing the plea, was that accurate as well?

6 A Yes, ma'am.

7 Q Were you also at the sentencing?

8 A I was.

9 Q Okay. I'm sorry, prior to the sentencing, do you
10 recall going over a plea waiver form with Mr. McClee?

11 A Yes, I do.

12 Q You discussed -- or tell us what you discussed
13 with him regarding the plea waiver form?

14 A Sure. Essentially -- what it's -- it's
15 essentially a plea waiver affidavit form that the
16 solicitor's office was using at the time of the plea.
17 I'm not sure if they still are.

18 It essentially just puts in writing everything
19 that we've been discussing already, which charges he
20 is pleading to, which charges were being dismissed as
21 a part of that plea agreement. It walks through each
22 of those individually and explains what they are and a
23 place for him to initial. There's also a beginning

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1 section that goes through his general rights to an
2 attorney and, you know, what rights he's giving up by
3 accept -- or entering a plea. And I believe my name
4 is on that plea waiver affidavit form. We all met
5 with Mr. McClee together as a group, we went through
6 this process with him at great length, and then, of
7 course, at some point, you know, when you're in a
8 courtroom leading up to the actual plea, somebody's
9 got to go up and actually have him fill out the
10 paperwork, and I was -- in my support capacity, I was
11 the one who -- who dealt with that.

12 MS. GREGORY: Your Honor, may I approach?

13 THE COURT: Yes.

14 BY MS. GREGORY:

15 Q I'm going to hand you a form. Do you recognize
16 that to be the plea waiver form you went over with
17 Mr. McClee?

18 A I do.

19 Q And if you flip to the next page, did you witness
20 him initialing next to that?

21 A Yes, ma'am.

22 Q And it's for what charge?

23 A This is possession of weapon during commission of

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1 a violent crime.

2 Q And did you sign that plea waiver form as well?

3 A I did.

4 Q Okay. So in your discussions with him, did he
5 understand he was pleading guilty to possession of a
6 weapon during the commission of a violent crime and
7 not an unlawful carry?

8 A That is correct.

9 Q Did he ever ask you to withdraw his plea after
10 the plea hearing?

11 A He did not.

12 Q Okay. He testified there was something that his
13 attorneys were supposed to fix. Was there anything
14 that you indicated to him that you were going to be
15 fixing after the plea?

16 A We had no discussion along those lines that I'm
17 aware of.

18 Q Okay. Were you present also at the sentencing
19 hearing, correct?

20 A Yes, ma'am.

21 Q Was the sentence imposed, the sentence that you
22 had discussed with him?

23 A It was consistent.

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1 Q Did he ever indicate to you after the sentencing
2 hearing that he wished to withdraw his plea?

3 A No, ma'am.

4 Q Was there anything that you were supposed to fix
5 after the sentencing?

6 A There was not.

7 Q Did you feel it was in Mr. McClees's best
8 interest to take the plea?

9 A I did.

10 Q If he had wanted to pursue trial, would you have
11 pursued trial?

12 A Yes, we were. We were in preparation of that.

13 Q All right.

14 MS. GREGORY: No further questions, Your Honor.

15 THE COURT: One question I do have is there was
16 mention of the polygraph that was implemented in a
17 plea negotiation process. Did he pass that test?

18 THE WITNESS: He did not.

19 THE COURT: All right. Cross-examination?

20 MR. WALLER: Thank you, Your Honor.

21 BY MR. WALLER:

22 Q Good morning, Mr. Shiflett. How are you today?

23 A Good morning. How are you?

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1 Q Doing well. Thank you for asking me.

2 Mr. Shiflett, were you present at the
3 meeting when Mr. McClee was given the State
4 calculation?

5 A I don't recall. I do not believe that I was.

6 Q Okay. I know you have left Morton and Gettys.
7 Do you maintain an independent file for any of your
8 cases or for all of your cases, or is that a Morton
9 and Gettys file?

10 A That was a Morton and Gettys file.

11 Q Okay. Have you had a chance to review that file?

12 A I have looked over some of the materials from the
13 plea, the transcript and such.

14 Q Okay. We've been talking about this plea waiver
15 form. Is that something you created or who created
16 that document?

17 A That's produced by the solicitor's office or the
18 clerk's office in conjunction with the paperwork
19 required for pleading.

20 Q Okay. I think you've got a copy of it up there
21 with you; is that right?

22 A That's correct.

23 Q Okay. On the possession of a weapon during the

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1 commission of a violent crime charge, it didn't mark
2 that it's no parole?

3 A It's marked nonviolent, no. Those boxes are not
4 checked.

5 Q Okay. They are checked on some of the other --
6 the particularly attempted murders, the no parole is
7 checked; is that right?

8 A That's correct.

9 Q Okay.

10 A Of course, as I stated, we don't enter any
11 independent information on the forms, but in our
12 negotiations, the way I explained this was, we would
13 have met with Mr. McClee at length about what he's
14 pleading to and the nature of his sentence and what
15 that would be as Nathan described. And then after
16 that it would have been followed up with a let's fill
17 out the paperwork. So ---

18 Q And you were the one that would have gone over
19 the paperwork with Mr. McClee?

20 A That's correct.

21 Q And that plea waiver was part of that paperwork
22 along with the sentencing sheets and ---

23 A That's correct.

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1 Q Okay.

2 MR. WALLER: Beg the Court's indulgence again.

3 Thank you, Mr. Shiflett, nothing further.

4 THE COURT: Any redirect?

5 MS. GREGORY: Briefly, Your Honor.

6 * * *

7 REDIRECT EXAMINATION

8 BY MS. GREGORY:

9 Q As Mr. Jonathan Waller pointed out that the plea
10 waiver form does not have it marked for the possession
11 of weapon during the commission of a violent crime,
12 day for day, did your discussions with Mr. McClee
13 convey that it was indeed day for day?

14 A That's correct. As we said, it was -- five years
15 was always the central component.

16 Q And ---

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

18 THE COURT: Yes.

19 BY MS. GREGORY:

20 Q --- I'm handing you the plea transcript, and it's
21 page 29 for your reference, line 18 right here
22 (indicating). If you would --

23 A The hearing or sentencing?

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1 Q That's the plea hearing.

2 A Okay.

3 Q Would you read what you stated to the Court at
4 that point?

5 A Starting with your --

6 Q Right.

7 A "We met with them on numerous -- numerous
8 occasions throughout the course of our representation
9 and we feel like he fully understands the terms of
10 this agreement and the consequences if he were to not
11 abide by those terms. So we agree with his decision
12 today."

13 Q All right. Thank you. And so that -- would that
14 indicate that you've discussed with him the terms of
15 his plea?

16 A Yes, it would.

17 Q And he understood those discussions?

18 A Yes, it would.

19 Q And a plea that he entered from the possession of
20 a weapon during the commission of a violent crime, he
21 understood there's no parole or end date for that?

22 A He did.

23 MS. GREGORY: No further questions, Your Honor.

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1 THE WITNESS: Thank you.

2 THE COURT: You may step down.

3 Anything further from the State?

4 MS. GREGORY: No, Your Honor. And we ask our
5 witnesses be released.

6 THE COURT: Any objection?

7 MR. WALLER: No objection, Your Honor.

8 THE COURT: Anything further in reply, Mr.
9 Waller?

10 MR. WALLER: Nothing in reply, Your Honor. A
11 brief argument at the appropriate time.

12 THE COURT: Hear, hear.

13 And I'll recognize you first since you had the
14 burden of proving it.

15 MR. WALLER: Thank you, Your Honor.

16 Judge, I've got a couple of pages I'd like to
17 send up. Judge, our Courts have held that plea
18 agreements fall under contract hearings, and that the
19 enforcement of those, again, falls under contract
20 hearing.

21 Your Honor, may I approach?

22 THE COURT: Yes.

23 MR. WALLER: Judge, what the Court said is that

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1 if a defendant pleads guilty or is made a plea offer,
2 they have to detrimentally rely on that in order to
3 enforce it. As we all know, the State can make the
4 offer and rescind that offer, you know, immediately
5 without any explanation.

6 Judge, Mr. McClee, I think he had pled, but he
7 also gave a statement to Law Enforcement and
8 cooperated with Law Enforcement. Judge, his testimony
9 was that he -- they did discuss the unlawful carrying
10 of the pistol, and that he believed that while
11 initially all the paperwork said possession of a
12 weapon during the commission of a violent crime, he
13 believed that it was going to be changed to the
14 unlawful carrying of a pistol because he understood
15 that would affect not the number of years he was given
16 but the eligibility for parole or custody status.

17 Judge, there are -- he was given several
18 documents, and in leading up to his plea, the plea
19 waiver form does not show that possession of a weapon
20 during the commission of a violent crime carries day
21 for day sentence or that is not parole eligible.

22 Judge, a document given to him by his own
23 attorneys showed that he -- showed a calculation based

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1 on a time served sentence for the attempted murder.
2 Judge, I think there was a lot of maybe
3 miscommunication is the best word, there's a lot of
4 documents floating around that aren't exactly what now
5 the testimony is the plea offer was the entire time.
6 I think it's very easy to -- for Mr. McClee not to
7 understand what was actually -- how it got from what
8 he thought it was to what it to ultimately being. You
9 have these documents floating around that they show
10 just slightly but the important slight difference is
11 in the offer.

12 So I ask that you grant Mr. McClee his relief and
13 he's not challenging the conviction itself or the plea
14 itself, just the terms of the agreement. Thank you,
15 Your Honor.

16 THE COURT: Anything?

17 MS. GREGORY: No, Your Honor. Just that my
18 argument would be the sentencing sheet that Mr. McClee
19 signed, the testimony from all three attorneys today,
20 the email that Mr. Sheldon sent, what the plea terms
21 were, and that their testimony indicating that he
22 understood that to be the five years for the
23 possession of a weapon during the commission of a

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1 violent crime were very clear.

2 THE COURT: All right. I'm going to ask that you
3 prepare an order denying the applicant's post-official
4 relief and I'm going to ask that you note in your
5 order a number of different things which include but
6 not limited to the fact that it was a signed plea
7 agreement that set forth the charges to which he was
8 going to be pleading to.

9 Particularly, the sworn testimony of the plea
10 itself and the plea waiver form although there was not
11 evidence, in particular, the fact that it was not
12 marked violent and non-parolable on the possession of
13 a weapon during the commission of a violent crime,
14 it's clear from the testimony presented here today
15 that that was explained to him and he understood that.

16 The plea transcript is very important in that
17 plea transcript itself and the sentencing transcript
18 shows the plea indeed was free and voluntary and he
19 was aware based on the sentencing sheets, the plea
20 itself, and the sentencing transcript he understood
21 exactly what he was pleading to. He indicated that he
22 was satisfied with his lawyer, it's clear from reading
23 the transcript of the plea itself and the sentencing

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1 that the plea was voluntary.

2 And a particular note to the testimony of
3 Mr. Sheldon where he explained what the nature of the
4 plea was and that it wasn't as though there was some
5 confusion about the weapons charge, but that was
6 really the anchor of the plea, and that he understood
7 that it was going to be a five-year sentence.

8 That conversation not only was testified to
9 here today, but it was confirmed in an email to the
10 other lawyers that they were able to effectuate this
11 fairly -- or this very beneficial margin for the
12 defendant. And the email itself indicates day for day
13 and that that was discussed with him.

14 Essentially what I'm called upon to do is to
15 determine whether or not Mr. McClee is believable and
16 credible. Of course, the testimony here today was
17 that first of all he denied that he was there at all,
18 and then it evolved throughout his representation and
19 he actually took a polygraph and he failed that.

20 So it would seem to me that his
21 believability and his credibility is not the best. I
22 do indeed find, and I've had my opportunity to view
23 the demeanor and the substance of the testimony of the

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1 applicant himself and his various lawyers, and I find
2 that he is not credible, and that they indeed are
3 credible.

4 Also, one of the things I think that's important,
5 you know, a lot of times things can sort of get off-
6 kilter and a person gets sentenced to something that's
7 just not really fair and sort of goes to a substantive
8 due process and sometimes post-conviction relief will
9 be an avenue to try to correct that.

10 When you look at what all transpired,
11 activities of this gang here in Rock Hill and what
12 they did and what they attempted to do, five years not
13 only is a good deal, it's an extraordinary deal for
14 him. To be quite honest, the worst thing that I could
15 do for Mr. McClee would be to grant post-conviction
16 relief. So I think it was -- the deal was negotiated,
17 I find that Mr. McClee understood exactly what he was
18 getting into and what he pled to, he had very fine
19 lawyers working on his behalf, and there's certainly
20 no manifested injustice given the circumstances of the
21 crime itself.

22 I'll ask that you prepare that order and send a
23 copy of that to Mr. Waller to ensure that that

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1 accurately reflects what my ruling is here today.

2 MS. GREGORY: Thank you, Your Honor.

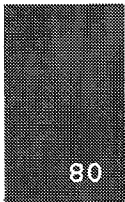
3 THE COURT: All right.

4 Good luck to you, Mr. McClee.

5 * * *

6 - - -END OF TRANSCRIPT- - -

7



ARQUIVIUS MCCLEE v. STATE OF SOUTH CAROLINA - 00334
CERTIFICATE OF REPORTER

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22

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional 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 and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for York County, South Carolina, on the 6th day of January, 2020.

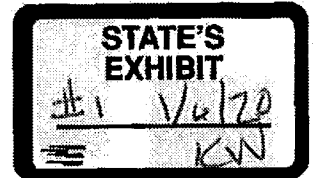
I do further certify that I am not related, of counsel, or of interest to any party hereto.

This, the 18th day of May, 2020.

Kymberlee M. Williams, CSR/RPR

Janell Gregory

From: Nathan Sheldon <nathan@nathansheldonlaw.com>
Sent: Monday, October 29, 2018 10:35 AM
To: Janell Gregory
Subject: Fw: McClee plea



See below

Nathan J. Sheldon
 The Law Office of Nathan J. Sheldon
 Fountain Park Place
 331 E. Main St., Suite 200
 Rock Hill, SC 29730
 803-909-9343
 Nathan@nathansheldonlaw.com
www.nathansheldonlaw.com

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From: Nathan Sheldon
Sent: Tuesday, March 21, 2017 2:56 PM
To: Thompson, Willy; Morton, Jim; John Mark Shiflet (John.Shiflet@mortongettys.com)
Cc: Collins, Merry; Parrish, Martha; Lubben, Jim; Thomas, Ryan (Ryan.Thomas@cityofrockhill.com); Hughes, Samantha
Subject: Re: McClee plea

Thank you. I can't be there, but Jim and/or John will be. Just so we are clear:

I have informed Mr. McClee he will be pleading to:
 Common Law Robbery (off of the AR indictment) for a negotiated 10
 Poss Firearm During the Commission of violent Crime for 5
 Crim Conspiracy for 5
 Att Murder x2 for 5 each
 All concurrent

State dismisses Murder, Unlawful Carry and Kidnapping

Mr. McClee has been informed of his rights, the day for day nature of the sentence, the most serious offenses, etc.

I think that covers everything. If I am missing something please let me know. Thank you.

If necessary: Credit for TS tomorrow will be 435 days

Nathan

Nathan J. Sheldon
 The Law Office of Nathan J. Sheldon
 Fountain Park Place
 331 E. Main St., Suite 200
 Rock Hill, SC 29730
 803-909-9343
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From: Thompson, Willy <Willy.Thompson@yorkcountygov.com>

Sent: Tuesday, March 21, 2017 2:37:12 PM

To: Nathan Sheldon; Morton, Jim; John Mark Shiflet (John.Shiflet@mortongettys.com)

Cc: Collins, Merry; Parrish, Martha; Lubben, Jim; Thomas, Ryan (Ryan.Thomas@cityofrockhill.com); Hughes, Samantha

Subject: McClee plea

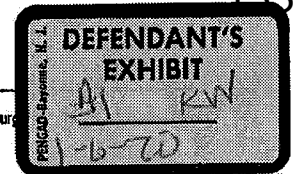
Gentlemen,

Judge Hayes has confirmed that he will take Mr. McClee's guilty plea tomorrow at 11:00 AM. The Detention Center will have Mr. McClee up in the holding cell at 10:30 AM so you can sit down with him and get all of the paperwork signed. I will see you then.

Thanks, Willy

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:: Release Date Calculation

These sentence calculation screens are a general guideline to provide information regarding the sentencing of an offender. While we are confident that the information is accurate, we are not responsible for any errors or omissions. For more information, please contact the Department of Corrections (Inmate Records Office at (803) 886-8531) in the event that you have any sentencing questions or need technical assistance.

Please note the following disclaimers:

- While all attempts are made to provide complete and accurate information, SCDC does not warrant the accuracy or reliability of any information on this system and shall not be liable for any losses caused by such reliance on the accuracy or reliability of such information, including, but not limited to, incidental and consequential damages. This system is provided "as is" without warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability or fitness for a particular purpose. SCDC maintains all immunities as provided in the South Carolina Tort Claims Act.
- Any person who relies on any information obtained from this system does so at his or her own risk. In addition, nothing contained on this system is an official record of SCDC or its employees.
- The information that is generated from these screens reflects current sentencing statutes as of (effective date). This system will not reflect either prior or future sentencing guidelines.
- The information that is generated from these screens will directly reflect and is only as good as the data that is entered. The screens are not designed to catch technical errors, such as entering sentences other than those called for in mandatory sentencing.
- The release dates calculated reflect an "earliest possible case scenario", meaning that all possible credits that an inmate could earn (good time, earned work credit, etc.) are projected into these dates. Once an offender is committed to our system, these dates could be negatively impacted in several ways, including if the offender loses good time, fails to earn good time, or fails to earn work credits for any reason. Therefore, this system cannot be used to calculate the release date of an inmate who has already been sentenced.
- These screens do not take into account any prior or subsequent convictions that the offender may have or incur. In certain cases, prior or subsequent convictions will have a direct impact on the offender's status, in many cases negatively. Issues such as second and third strike statutes and subsequent violent offenses are examples.
- These screens should not be used for any offender sentenced under the Youthful Offender Act.

- The Statute for Offense #3 states that the Mandatory Minimum Inc. Sentence is 30 year(s).

Date Summary

Earliest Possible Parole Eligibility Date: 01/12/2021
 Earliest Possible Release Date: 01/13/2021

Offense #1

Offense #1 Code: 0549 - Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Total Sentence:

5	0	0
---	---	---

Inc. Sentence:

5	0	0
---	---	---

Sentence Date: 03/21/2017

Jail Credit: 434

Consecutive to Offense #1: Yes No

Offense #2 Code: 0137 - Robbery / Common law robbery, strong arm robbery

Total Sentence:

10	0	0
----	---	---

Inc. Sentence:

10	0	0
----	---	---

Sentence Date: 03/21/2017

Jail Credit: 434

Consecutive to Offense #2: Yes No

Offense #3 Code: 3410 - Assault / Attempted Murder

Total Sentence:

0	0	434
---	---	-----

Inc. Sentence:

0	0	434
---	---	-----

Sentence Date: 03/21/2017

Jail Credit: 434

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 [Version: 1.3.12 Built: 09/01/2015 10:04:06 AM Time: 10:27:39 AM]

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 ArQuivius McClee, #372043,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

2018-CP-46-0334

ORDER OF DISMISSAL

2020 FEB 13 PM 2:30
 DAVID HORTON
 C.O. CLERK
 YORK COUNTY, SC

FILED-RECEIVED

This matter comes before this Court by way of an application for post-conviction relief filed on February 8, 2018, by ArQuivius McClee (Applicant). The State (Respondent) issued a Return on April 23, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on January 6, 2020, at the Moss Justice Center. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Nathan J. Sheldon Esquire (Sheldon), James M. Morton, Esquire (Morton), and John M. Shiflet, Esquire (Shiflet) also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In June 2016, the York County Grand Jury indicted Applicant for possession of a firearm during the commission of a violent crime (2016-GS-46-1877), two counts of attempted murder (2016-GS-46-1873; 2016-GS-46-1874), armed robbery (2016-GS-46-1875), two counts of unlawful carrying of a pistol (2016-GS-46-

1876, -3769), kidnapping (2016-GS-46-1879) and criminal conspiracy (2016-GS-46-1878). The State also obtained a direct indictment against Applicant for murder. Sheldon, Morton, and Shiflet represented Applicant. Deputy Solicitor W. William Thompson, Jr. of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On March 3, 2017, Applicant entered a guilty plea before the Honorable John C. Hayes, III, to possession of a firearm during the commission of a violent crime, strong armed robbery, and criminal conspiracy. In exchange for Applicant's guilty plea, the State dismissed the following charges: two counts of unlawful carrying of a pistol, kidnapping, and murder. Sentencing was deferred until March 31, 2017. When the parties reconvened for sentencing, pursuant to the State's recommendation, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of ten years for strong arm robbery, five years for criminal conspiracy, five years each for attempted murder and possession of a firearm during the commission of a violent crime, along with credit for time served of 443 days. Applicant did not appeal his conviction or sentence.

SUMMARY OF FACTS

On November 29, 2015, Applicant and his friends drove his rented Nissan to Scoggins Street in Rock Hill to meet with "some guys" from Charlotte that they sold credit cards to in the past. (GP Tr. 14-15.) The purpose of the meeting was to again sell credit cards to the subjects from Charlotte. (GP Tr. 15.) During the drive, the group devised a plan to rob the subjects of their money if the meeting did not go as planned. (GP Tr. 15.) Applicant and his friends arrived at Scoggins Street – a house they were using to conduct their business – and waited for the Charlotte subjects to show up. (GP Tr. 15-16.) At the time of the meeting, Applicant and his friends were armed with firearms. (GP Tr. 16.) As one of the subjects entered the home, he was robbed of his cell phone and money at gunpoint by Applicant's friends. (GP Tr. 17.) The subject was then

bound with duct tape and put into a back bedroom. (GP Tr. 17.) At that point, Applicant's friends motioned for the second subject from Charlotte to enter the home. (GP Tr. 17.) As he entered the home, he was also held at gunpoint, but one of Applicant's friends fired at the subject barley missing him. (GP Tr. 17.) The subject fired back and killed one of Applicant's friends. (GP Tr. 17.) The subject fled the scene after his gun jammed and Applicant's other friend continued to fire at the subject as he fled. (GP Tr. 18.) During the commotion, Applicant's friend began firing at an innocent family who had just returned home believing they were associates of the Charlotte subjects. (GP Tr. 18.) No one in the truck was injured, however, numerous shots were fired into the truck. (GP Tr. 18.) Applicant drove one of his friends and another subject who resides at the Scoggins Street residence away from the scene. (GP Tr. 19.)

ALLEGATIONS RAISED

In his original application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Counsel
 - a. Attorney failed to properly inform Applicant of how his parole would be affected by his plea agreement.

On December 13, 2019, Applicant filed an amended application alleging he was being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Counsel
 - a. Counsel was ineffective for failing to object to the State's breach of the plea agreement, or in the alternative make a motion to withdraw Applicant's plea.

On January 6, 2020, Applicant's post-conviction relief hearing was held at the Moss Justice Center and Applicant proceeded in his evidentiary hearing solely on the issue set forth in his amended application.

APPLICABLE LAW

In a post-conviction relief action, the 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 300 S.C. 115.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject

convictions, the plea transcript, the exhibits provided during the hearing, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

Counsel was ineffective for failing to object to the State's breach of the plea agreement, or in the alternative make a motion to withdraw Applicant's plea.

Applicant alleges he was told by Sheldon, Morton, and Shiflet that he would be pleading guilty to the unlawful carry of a weapon charge rather than the possession of a firearm during the commission of a violent crime charge. However, Applicant plead guilty to numerous charges including possession of a weapon during the commission of a violent crime and, pursuant to plea negotiations, several other charges were dismissed including Applicant's unlawful carry charge.

Applicant's Testimony:

At the post-conviction relief hearing, Applicant testified Sheldon was his first attorney and he hired Morton and Shiflet after his bond hearing. Applicant testified he rejected the first offer from the State because it was for ten to fifteen years and he believed that was too much time, since this is the first time he has been in trouble. Applicant testified he had minimum participation in the incident. Applicant testified that his first cousin was killed during the incident. Applicant testified his attorneys spoke to the State and got the first offer back on the table. Applicant testified the offer was for ten years for the strong armed robbery and five years for all of the other offenses. Applicant testified he was in possession of a gun, but it was in his glove box at the time and not on his person. Applicant testified his lawyers wanted him to plead guilty to the possession of a weapon during the commission of a violent crime charge, but Applicant testified he was not in possession of a firearm the night of the robbery.

Applicant testified his attorney gave him a print out of the SCDC calculation for his sentence. Applicant testified he told the lawyer the weapons charge was different than what he thought he was pleading to. Applicant testified his lawyer told him he would change it to the unlawful carry charge. Applicant testified he plead to the possession of a weapon during the commission of a violent crime charge. Applicant testified he signed the plea waiver form because he trusted his attorneys and had built a relationship with them. Applicant testified he did not have a chance to read the entire plea agreement before he signed it. Applicant testified he was told to say "yes" to everything so the judge would accept his plea. Applicant testified he wants the court to enforce the plea he understood he would receive.

On cross-examination, Applicant testified all of his attorneys were court appointed. Applicant testified he recalled the State explaining Applicant would be pleading guilty to the possession of a firearm during the commission of a violent crime charge, among other charges, at the outset of his plea hearing. Applicant testified and confirmed his initials on the plea waiver form where he detailed he was pleading guilty to numerous crimes including possession of a weapon during the commission of a violent crime. Applicant testified he did what he was told to do. Applicant testified he recalled telling the judge he wanted to plead guilty after the judge went over his charges and potential sentences. Applicant testified he recalled agreeing to the facts set forth during the plea by the State. Applicant testified he did not tell the court he was not supposed to be pleading to the possession of a weapon during the commission of a violent crime charge because he was told by his attorneys it would be fixed multiple times.

Applicant was shown his SCDC profile which confirms his earliest parole date is January 11, 2021, which Applicant testified he agreed it is a day earlier than the date provided on the SCDC calculation provided to him by Sheldon. Applicant testified he did not expect that to be the date.

During re-direct examination, Applicant confirms the possession of a weapon during the commission of a violent crime offense is not marked as a "no-parole" offense on the plea waiver form. Applicant testified he did not understand until now that the offense was a no-parole offense.

Sheldon's Testimony:

Sheldon testified he has been practicing law for thirteen years and criminal defense was about half of his practice. Sheldon testified Morton and Shiflet assisted him in Applicant's case. Sheldon testified he met with Applicant at least thirteen times during his representation. Sheldon testified Morton and Shiflet met with Applicant without him at times too, so overall, there were more meetings with Applicant than just Sheldon's meetings.

Sheldon testified initially they received several versions of the story from Applicant. Sheldon testified they hired an investigator and had Applicant take a polygraph in order to determine the facts of the case.

Sheldon testified Applicant was interested in pleading if he could get five years. Sheldon testified he discussed a plea with the State and the prosecutor did not believe anyone involved in the incident was innocent. Sheldon testified the possession of a weapon during the commission of a violent crime was the anchor charge for the State. Sheldon testified that charge was day for day and that was definitely discussed with Applicant. Sheldon testified all of Applicant's charges were "throw away" charges except for the strong armed robbery and the possession of a weapon during the commission of a violent crime charges. Sheldon testified he never discussed Applicant pleading guilty to the unlawful carry charge as that was always being dismissed as part of the plea agreement. Sheldon testified he explained the SCDC calculator to Applicant and Applicant understood he was going away for five years.

Sheldon identified an email he sent to the prosecutor and his co-counsel the day before Applicant's plea. Sheldon read the email to this Court and the letter was entered into evidence as State's exhibit 1. In the letter, Sheldon explained he had reviewed the charges Applicant was pleading to the following day, had reviewed Applicant's constitutional rights, and the day-for-day nature of Applicant's sentence. In the letter, it is clear the terms of Applicant's plea included the possession of a weapon during the commission of a violent crime charge and that the unlawful carry charge is being dismissed. Sheldon testified he was "extremely clear" with Applicant regarding the terms of his plea and the day-for-day nature of the weapons charge.

Sheldon testified he did not tell Applicant that he would fix his charges after his plea as there was nothing to fix. Sheldon testified it was Applicant's decision to plead guilty and it was in his best interest to plead guilty. Sheldon testified Applicant had numerous other charges that would have exposed him to a lot more time had he not accepted the plea. Sheldon testified if Applicant wanted to go to trial, he would have taken his case to trial.

On cross-examination, Sheldon testified his issue was Applicant being charged with murder when the group from Charlotte also involved in the incident was not charged with murder. Sheldon testified Applicant was still looking at some serious charges even without the murder charge. Sheldon testified he ran the numbers in the SCDC calculator the way he did because he knew the SCDC calculator had a "glitch" in it. Sheldon testified he knew the possession of a weapon during the commission of a violent crime charge was going to affect his sentence because it is day-for-day. Sheldon testified the point of the SCDC calculator was to show him the parole eligibility date. Sheldon testified he was trying to get the State to offer Applicant time served on the attempted murder charges, but the State was concerned about Applicant pleading to the

weapons charge without a violent crime. Sheldon testified he never told Applicant he was pleading to the unlawful carry charge.

Morton's Testimony:

Morton testified he has been practicing law for thirty-five years. Morton testified he originally represented Applicant for his bond, and then agreed to stay on with Shiflet to help Sheldon. Morton testified he met with Applicant more than fifteen times.

Morton testified Applicant originally told him that he was not present at the scene, but his story changed numerous times. Morton testified they hired private investigators, went to the scene, and met with the prosecutor. Morton testified he was involved in meeting with Applicant and his family a lot prior to Applicant's plea. Morton testified he believed Applicant understood their discussions during their meetings.

Morton identified State's exhibit 1 as an email he received from Sheldon outlining the terms of Applicant's plea agreement. Morton testified the email accurately set forth the terms of the plea offer and matched the charges and sentence that was imposed on Applicant the following day during his guilty plea. Morton testified there was nothing to "fix" after the plea hearing as Applicant pled to the charges they had discussed. Morton testified he was present at Applicant's sentencing hearing and he was sentenced properly based on the plea agreement with the State. Morton testified Applicant never asked him to withdraw his plea and never indicated he did not want to accept the plea.

Shiflet's Testimony:

Shiflet testified he was working with Morton at his practice at the time they represented Applicant. Shiflet testified he no longer practices law. Shiflet testified he practiced law for about eleven years and spent part of that time in prosecution and part of it in criminal defense. Shiflet

testified his role in this case was a "support" role. Shiflet testified he was with Morton during the meetings with Applicant and he never met with Applicant alone.

Shiflet testified he discussed the terms of Applicant's plea with him and he appeared to understand their discussions. Shiflet identified State's exhibit 1 and explained the email accurately set forth the terms of Applicant's plea. Shiflet testified he was present for the plea hearing and the sentencing hearing. Shiflet testified he went over the plea waiver form with Applicant. Shiflet testified the plea waiver form detailed the terms of Applicant's plea. Shiflet testified he went over the plea and the process with Applicant at great length. Shiflet testified he witnessed Applicant signing and initialing the form, including the part that explains Applicant was pleading to possession of a weapon during the commission of a violent crime.

Shiflet testified Applicant never asked him to withdraw the plea. Shiflet testified he never discussed "fixing" anything after the plea for Applicant, and there was nothing to "fix." Shiflet testified he believed it was in Applicant's best interest to plead guilty. Shiflet testified he and the other attorneys would have taken Applicant's case to trial had Applicant wanted to pursue a trial.

On cross-examination, Shiflet testified he did not maintain an independent file of Applicant's case, and the file was maintained by the law firm. Shiflet testified the plea waiver form does not have the possession of a weapon during the commission of a violent crime charge marked as a non-parole offense. However, Shiflet testified that he explained to Applicant the day-for-day nature of the possession of a weapon charge and that the weapons charge was a non-parole offense.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). However, a defendant has no constitutional right to plea

bargain, nor is a trial judge required to accept a plea. Id. Nonetheless, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires the plea bargain be honored. Id. at 686, 511 S.E.2d at 401. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Lecke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court finds the testimony of Sheldon, Morton, and Shiflet as to this allegation very credible and the testimony of Applicant not credible. This Court finds the plea and sentencing transcripts show the plea was freely and voluntarily entered. This Court finds Applicant was aware of what he was pleading to based on both transcripts and the sentencing sheets, which Applicant also signed. Further, Applicant signed a plea agreement and a plea waiver form, although the weapons charge was not marked as non-parole offense, it is clear from the credible testimony of Sheldon, Morton, and Shiflet that it was explained to him.

This Court finds Applicant's lawyers explained the terms and nature of the plea, the sentence Applicant was to receive, and that the possession of a weapon during the commission of a violent crime charge was the anchor charge for Applicant's plea. This Court finds Applicant was aware his sentence would be five years and the email from Sheldon confirms Applicant was aware of the terms of his plea. Further, this Court finds credible the testimony of Applicant's attorneys that Applicant never requested his plea be withdrawn after his guilty plea hearing or his sentencing hearing, and, therefore, his attorneys cannot be found deficient for failing to file such a motion in this case. This Court finds no manifest injustice has occurred in Applicant's case as he received

the plea agreement he bargained for based on the credible testimony of his attorneys. Therefore, based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Sheldon, Morton, or Shiflet and Applicant's post-conviction relief application is denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, the Court finds and concludes 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.


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

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is to remain in the custody of Respondent.

AND IT IS SO ORDERED this 7 day of February, 2020.

Sharon, South Carolina


MICHAEL G. NETTLES
Presiding Judge
Sixteenth Judicial Circuit

WITNESSES

RHPD

Witnessing Officer *Tripp*

ARREST WARRANT NUMBER

2016A4620300126

ACTION OF GRAND JURY

Joseph J. ...
Foreperson of Grand Jury

Date: *6-16-16*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS46- *01877*

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 16TH, TERM 2016

THE STATE

VS.

ARQUIVIUS LEE QUON MCCLEE

INDICTMENT FOR

**POSSESSION OF A FIREARM DURING
THE COMMISSION OF A VIOLENT
CRIME**

SC Code: § 16-23-0490

CDR Code: 0549

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

Defendant

I *Arquivius McClee*
hereby appear in my own proper person and plead guilty to the within indictment or to *as charged*

Arquivius McClee
Defendant

Witness:

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

STATE OF SOUTH CAROLINA
 COUNTY OF YORK

CERTIFIED TRUE COPY

2018 FEB 18 AM 10:12

INDICTMENT

DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

At a Court of General Sessions, convened on June 16, 2016, the Grand Jurors of York County present upon their oath:

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

Arquivius Lee Quon McClee did in York County on or about November 29, 2015, possess a firearm while committing the violent crime(s) of Armed Robbery, Kidnapping, and/or Attempted Murder. The crime occurred at or near [REDACTED] Scoggins Street in the city of Rock Hill, South Carolina. All in violation of 16-23-0490, *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.


 WILLY THOMPSON
 DEPUTY SOLICITOR

WITNESSES

RHPD

Witnessing Officer: *Tripp*

ARREST WARRANT NUMBER

2016A4620300125

ACTION OF GRAND JURY

Joseph [Signature]
Foreperson of Grand Jury
Date: *6-16-16*
TRUE BILL

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS46- *01873*

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 16TH, TERM 2016

THE STATE

VS.

ARQUIVIUS LEE QUON MCCLEE

INDICTMENT FOR

ATTEMPTED MURDER

SC Code: § 16-03-0029
CDR Code: 3410

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

148

Defendant

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

Arquivius McClee
Defendant

Witness:

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

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
2018 FEB -8 AM 10:12

INDICTMENT

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on June 16, 2016, the Grand Jurors of York County present upon their oath:

ATTEMPTED MURDER

Arquivius Lee Quon McClee did in York County on or about November 29, 2015, unlawfully, and with malice aforethought, either express or implied, attempt to kill Deandre Howze by means of shooting at him with the intent to kill him. The crime occurred at or near ■■■ Scoggins Street in the city of Rock Hill, South Carolina. All in violation of 16-03-0029, *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.


WILLY THOMPSON
DEPUTY SOLICITOR

WITNESSES

RHPD

Witnessing Officer: *TRIPP*

ARREST WARRANT NUMBER

2016A4620300202

ACTION OF GRAND JURY

Joseph Lamb
Foreperson of Grand Jury
Date: *6-16-16*

TRUE BILL

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS46- *01874*

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 16TH, TERM 2016

THE STATE

VS.

ARQUIVIUS LEE QUON MCCLEE

INDICTMENT FOR

ATTEMPTED MURDER

SC Code: § 16-03-0029
CDR Code: 3410

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

150

Defendant

Arquivius McClee
hereby appear in my own proper person and plead guilty to the within indictment or to
as charged

Arquivius McClee
Defendant

Witness:

Shanley CIA Supervisor
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA CERTIFIED TRUE COPY
COUNTY OF YORK 2016 FEB 28 AM 10:12 INDICTMENT

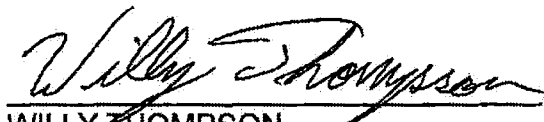
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on June 16, 2016, the Grand Jurors of York County present upon their oath:

ATTEMPTED MURDER

Arquivius Lee Quon McClee did in York County on or about November 29, 2015, willfully, unlawfully, and with malice aforethought, either express or implied, attempt to kill Destany Marie Hutchison by means of shooting at her with the intent to kill her. The crime occurred at or near ■■■ Scoggins Street in the city of Rock Hill, South Carolina. All in violation of 16-03-0029, *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.


WILLY THOMPSON
DEPUTY SOLICITOR

WITNESSES

RHPD

Witnessing Officer: *TRIPP*

ARREST WARRANT NUMBER

2016A4620300124

ACTION OF GRAND JURY

Joseph Farber
Foreperson of Grand Jury
Date: *6-16-16*

TRUE BILL

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS46- *01875*

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 16TH, TERM 2016

THE STATE

VS.

ARQUIVIUS LEE QUON MCCLEE

INDICTMENT FOR

ARMED ROBBERY

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

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

152

Defendant

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

Strong Arm Robbery

Arquivius McClee
Defendant

Witness:

Shanlis CA Singson
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
2018 FEB 28 AM 10:12 INDICTMENT

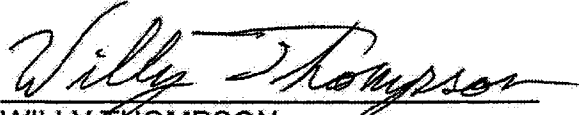
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on June 16, 2016, the Grand Jurors of York County present upon their oath:

ARMED ROBBERY

Arquivius Lee Quon McClee did in York County on or about November 29, 2015, while armed with a deadly weapon or while displaying what a person present during the robbery would reasonably believe to be a deadly weapon, steal by means of force, threat, or intimidation, a quantity of US Currency and two cell phones from the person or presence of Damonte Withers. The Armed Robbery occurred at or near [REDACTED] Scoggins Street in the city of Rock Hill, South Carolina. All in violation of 16-11-0330(A), *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.


WILLY THOMPSON
DEPUTY SOLICITOR

WITNESSES

RHPD

Witnessing Officer: *Tripp*

ARREST WARRANT NUMBER

2016A4620300122

ACTION OF GRAND JURY

Joseph J. [Signature]
Foreperson of Grand Jury

Date: *6-16-16*

TRUE BILL

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS46- *01878*

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 16TH, TERM 2016

THE STATE

VS.

ARQUIVIUS LEE QUON MCCLEE

INDICTMENT FOR

CRIMINAL CONSPIRACY

SC Code: § 16-17-0410

CDR Code: 0049

154
After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Arquivius McClee
hereby appear in my own proper person and plead guilty to the within indictment or to *as charged*

Arquivius McClee
Defendant

Witness:

Shawna C. [Signature]
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

CERTIFIED TRUE COPY

COUNTY OF YORK

2018 FEB -8 AM 10:12

INDICTMENT


DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on June 16, 2016, the Grand Jurors of York County present upon their oath:

CRIMINAL CONSPIRACY

Arquivius Lee Quon McClee did on or about November 29, 2015, in York County, South Carolina, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree, or have tacit understanding with Antravious White, LaDaniel Reid, and/or Devon Thompson for the purpose of committing the crime of Armed Robbery, all in violation of Section 16-17-0410, *Code of Laws of South Carolina* (1976), amended.

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


WILLY THOMPSON
DEPUTY SOLICITOR

COUNTY OF YORK

STATE VS.

ARQUIVIUS LEE QUON MCCLEE

AKA: Trell, Arquivius Mcclee

Race: Black Sex: M Age: 23

DOB: [redacted] SS#: [redacted]

Address: Horseman Drive

City, State, Zip: Rock Hill, SC 29730-5620

DL# [redacted] SID# SC02223485

*CDL Yes No CMV Yes No Hazmat Yes No

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

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

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

INDICTMENT/CASE#: 2016GS4601877
A/W: 2016A4620300126
Date of Offense: 11/29/2015
S.C. Code §: 16-23-0490
CDR Code #: 0549

CERTIFIED TRUE COPY
2018 FEB -8 AM 10:13

ORIGINAL SENTENCE SHEET

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

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

ATTEST

Willy Thompson 65118
Willy Thompson, Deputy Solicitor SC Bar #

Arquivius Mcclee
Defendant

David Hamilton 74943
Attorney for Defendant SC Bar #

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

for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years

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

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

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

CONCURRENT or CONSECUTIVE to sentence on: 3/31/17

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. 4/13 Jan

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing

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

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

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

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

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

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

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

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

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

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

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

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

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

TOTAL \$ 126

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: Wanda Nelson
SCCA/217 (07/2016)

Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

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

Presiding Judge: [Signature]
Judge Bar ID: 286 Judge Code: 2049
Sentence Date: 3-31-17

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK

STATE VS.

ARQUIVIUS LEE QUON MCCLEE

AKA: Trell, Arquivius Mcclee

Race: Black Sex: M Age: 23

DOB: [redacted] SS#: [redacted]

Address: Horseman Drive

City, State, Zip: Rock Hill, SC 29730-5620

DL# [redacted] SID# SC02223485

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Attempted Murder

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 §17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

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

ATTEST

Willy Thompson 65118
Willy Thompson, Deputy Solicitor SC Bar #

Arquivius Mcclee
Defendant

David Hamilton 74943
Attorney for Defendant SC Bar #

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

CONCURRENT or CONSECUTIVE to sentence on: _____

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

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____

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

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

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

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: Wanda Nelson
SCCA/217 (07/2016)

Presiding Judge: [Signature]
Judge Bar ID: 12867 Judge Code: 6049
Sentence Date: 3-31-17

ORIGINAL

SENTENCE SHEET
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2016GS4601873
2016A4620300125
11/29/2015
16-03-0029
3410
2018 FEB 6 AM 10:13

COUNTY OF YORK

STATE VS.

ARQUIVIUS LEE QUON MCCLEE

AKA: Trell, Arquivius Mcclee

Race: Black Sex: M Age: 23

DOB: [redacted] SS#: [redacted]

Address: Horseman Drive

City, State, Zip: Rock Hill, SC 29730-5620

DL# [redacted] SID# SC02223485

*CDL Yes No CMV Yes No Hazmat Yes No

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

CONVICTED OF or

PLEADS

TO: Attempted Murder

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 §17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

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

ATTEST:

Willy Thompson 65118
Willy Thompson, Deputy Solicitor SC Bar #

Arquivius Mcclee
Defendant

David Hamilton 74943
Attorney for Defendant SC Bar #

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

CONCURRENT or CONSECUTIVE to sentence on: 3/31/17

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. 443 days

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

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

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

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

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

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

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

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

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

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

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

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

TOTAL \$ 125

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

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

Clerk of Court/Deputy Clerk: David Hamilton

Court Reporter: Wanda Nelson

SCCA/217 (07/2016)

Presiding Judge: John A. ...

Judge Bar ID: 2860 Judge Code: 2049

Sentence Date: 3-31-17

filed

ORIGINAL

SENTENCE SHEET

CERTIFIED TRUE COPY
2018 FEB -8 AM 10:13
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK

STATE VS.

ARQUIVIUS LEE QUON MCCLLEE

AKA: Trell, Arquivius Mccllee

Race: Black Sex: M Age: 23

DOB: [redacted] SS#: [redacted]

Address: [redacted] Horseman Drive

City, State, Zip: Rock Hill, SC 29730-5620

DL# [redacted] SID# SC02223485

*CDL Yes No CMV Yes No Hazmat Yes No

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

CONVICTED OF or

PLEADS

TO: Strong Arm Robbery

In violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137

INDICTMENT/CASE#: 2016GS4601875
A/W: 2016A4620300124
Date of Offense: 11/29/2015
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

FERTIFIED TRUE COPY

2018 FEB -8 AM 10:13

ORIGINAL

SENTENCE SHEET

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

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

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

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

ATTEST:

Willy Thompson 65118
Willy Thompson, Deputy Solicitor SC Bar #

Arquivius Mccllee
Defendant

David Hamilton 74943
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 10 days/months/year or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 3/31/17

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. 443 days

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

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

TOTAL \$ 125 Other: _____

David Hamilton

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: Wanda Nelson
SCCA/217 (07/2016)

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: [Signature]
Judge Bar ID: 72807 Judge Code: 2049
Sentence Date: 3-31-17

COUNTY OF YORK

STATE VS.

ARQUIVIUS LEE QUON MCCLEE

AKA: Trell, Arquivius Mcclee

Race: Black Sex: M Age: 23

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Horseman Drive

City, State, Zip: Rock Hill, SC 29730-5620

DL# [REDACTED] SID# SC02223485

*CDL Yes No CMV Yes No Hazmat Yes No

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

CONVICTED OF or PLEADS

TO: Criminal Conspiracy

In violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

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

ATTEST

Willy Thompson 65118
Willy Thompson, Deputy Solicitor SC Bar #

Arquivius Mcclee
Defendant

David Hamilton 74943
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 3 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

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

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____

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

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: [Signature]
Judge Bar ID: 21161 Judge Code: 2049
Sentence Date: 3-31-17

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: Wanda Nelson
SCCA/217 (07/2016)

file
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DAVID HAMILTON
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