

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Georgetown County

Honorable George M. McFaddin, Circuit Court Judge

DAQUARIUS HOLMES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000428

APPENDIX

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RECEIVED

Nov 13 2020

S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2013-GS-22-978, 979

The State,)

Plaintiff,)

Transcript of Record

vs.)

June 11, 2015

Daquarius Holmes,)

Defendant.)

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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

Alicia A. Richardson, Esquire
Attorney for Plaintiff

Margaret Ann Kneece, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 EXHIBITS

2 (There were no exhibits marked during the hearing.)

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State v. Holmes

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1 (On the record, June 11, 2015. The Defendant is sworn by
2 clerk.)

3 THE COURT: All right. What have we got?

4 MS. RICHARDSON: Your Honor, this is the State versus
5 Daquarius Alexander Holmes. He is represented by Ms. Kneece.
6 He is going to plead guilty under 2013-GS-22-978 on the charge
7 of armed robbery; 2013-GS-22-979, kidnapping. Under 2013-GS-
8 22-982, that's a true-billed indictment for burglary first
9 degree. He's going to plead to the lesser included charge of
10 burglary second degree violent. The State will nolle prosequere
11 on his plea a number of charges, assault and battery first
12 degree, 2013-976; possession of a weapon during a violent
13 crime, 2013-977; criminal conspiracy, 2013-980; grand larceny
14 \$10,000 or more, which is 2013-981. The State is recommending
15 a 15-year sentence concurrent on these charges. Pursuant to
16 the statute on the kidnapping charge, there's absolutely no
17 allegations whatsoever of sexual -- that this was any -- in
18 any way a sexual incident, that that needs to be reflected on
19 the sentencing sheet pursuant to the statute. The victim of
20 this case, Mr. Dan Gasque, is present.

21 THE COURT: All right. Ms. Kneece, you represent
22 Daquarius -- how do you pronounce it, Daquarius?

23 MS. KNEECE: Daquarius.

24 THE COURT: Daquarius Alexander Holmes on the charge of
25 burglary in the second degree, being a violent classification,

1 kidnapping and armed robbery?

2 MS. KNEECE: Yes, sir. I have.

3 THE COURT: Have you discussed with your client the
4 charges against him, his rights as a Defendant and the
5 consequences of being convicted of these crimes?

6 MS. KNEECE: At great length, Your Honor.

7 THE COURT: In your opinion does your client understand
8 the charges against him, his rights as a Defendant and the
9 consequences of being convicted of these crimes?

10 MS. KNEECE: Yes, sir.

11 THE COURT: And does he wish to plead guilty or not
12 guilty?

13 MS. KNEECE: Guilty.

14 THE COURT: Do you agree with his decision to plead
15 guilty to these charges?

16 MS. KNEECE: I do.

17 THE COURT: Based upon the information you have, if this
18 case proceeded to trial do you feel that the State could prove
19 your client's guilt beyond a reasonable doubt?

20 MS. KNEECE: Yes, sir. I do.

21 THE COURT: Has your client received a competency
22 evaluation?

23 MS. KNEECE: No, sir, nor does he need one.

24 THE COURT: All right. Have we put him under oath?

25 THE CLERK: Yes, sir.

1 THE COURT: All right.

2 Sir, your name is Daquarius Alexander Holmes?

3 MR. HOLMES: Yes, sir.

4 THE COURT: All right. Mr. Holmes, you have been charged
5 and indicted by the Grand Jury with armed robbery, kidnapping
6 and burglary in the first degree. Now, all of these
7 indictments cover lesser included offenses of which burglary
8 in the second degree being a violent classification is a
9 lesser included offense of burglary in the first degree, and
10 according to your attorney you wish to plead guilty to
11 burglary in the second degree being a violent classification,
12 kidnapping and armed robbery; is that correct?

13 MR. HOLMES: Yes, sir.

14 THE COURT: All right. Before I can accept your guilty
15 plea I've got to go over some questions with you to be sure
16 that you understand the charges against you, that you
17 understand your rights as a Defendant, that you understand the
18 consequences of pleading guilty and I must be sure you're
19 pleading guilty voluntarily. Now, during the past 72 hours,
20 have you taken any medication, consumed any alcohol or drugs
21 or been under any influence that would affect your ability to
22 know why you're here?

23 MR. HOLMES: No, sir, not at all.

24 THE COURT: Do you understand why you're here today?

25 MR. HOLMES: Yes, sir.

1 THE COURT: Is there anything about this hearing that you
2 want to ask your lawyer or ask me before we proceed?

3 MR. HOLMES: No, sir, not at all.

4 THE COURT: All right. Now, even though you've been
5 indicted by the Grand Jury, under the constitution of the
6 United States you're presumed innocent of these crimes, and
7 you have the right to have your guilt or innocence determined
8 by a jury trial of your peers. The State bears the burden of
9 proving your guilt beyond a reasonable doubt. You do not have
10 to prove your innocence and you cannot be compelled to testify
11 against yourself. You also have the right to confront and
12 cross examine anybody who testifies against you. If you
13 choose you can present a defense to these charges, but when
14 you plead guilty you give up all of those rights. Do you
15 understand that?

16 MR. HOLMES: Yes, sir.

17 THE COURT: And do you want to give up those rights and
18 plead guilty to these charges?

19 MR. HOLMES: Yes, sir.

20 THE COURT: All right. Now, even though the State's made
21 a recommendation on your sentencing I'm not bound by that
22 recommendation and for burglary in the second degree I could
23 send you to prison for 15 years. For kidnapping I could send
24 you to prison for 30 years. For armed robbery I could send
25 you to prison for 30 years. So if I impose the maximum

1 sentences allowed by law and I ordered them to run
2 consecutively I could send you to prison for 75 years. Do you
3 understand that?

4 MR. HOLMES: Yes, sir.

5 THE COURT: Do you understand that armed robbery carries
6 a mandatory minimum sentence, which means the absolute minimum
7 sentence that must be imposed in that case is 10 years in
8 prison. Do you understand that?

9 MR. HOLMES: Yes, sir.

10 THE COURT: Do you understand that burglary in the second
11 degree, kidnapping and armed robbery, all three of these are
12 classified as violent crimes. Now, what that means is if
13 you're ever convicted of another violent crime then that
14 subsequent conviction, because you'll have three violent crime
15 convictions on your record, that subsequent conviction you
16 would not be eligible for probation and you could not be
17 eligible for parole, and the State'll use this guilty plea
18 against you to show three violent crime convictions on your
19 record. Do you understand that?

20 MR. HOLMES: I understand.

21 THE COURT: Do you understand that burglary in the second
22 degree is classified as a serious crime. Kidnapping is
23 classified as a most serious crime, and armed robbery is
24 classified as a most serious crime. Now, what that means is
25 if you are ever convicted of another crime classified as a

1 most serious crime or if you're ever convicted of another
2 crime that is classified as a serious crime, because you'll
3 have these convictions on your record that subsequent
4 conviction the sentence can be enhanced to life in prison
5 without the possibility of parole because if you get two most
6 serious crime convictions you can go to prison for the rest of
7 your life without parole. For three serious crime convictions
8 you can go to prison for the rest of your life without parole,
9 and you'll have a serious crime and two most serious crime
10 convictions already on your record. So any more convictions
11 of crimes of this nature you're looking at spending the rest
12 of your life in prison. Do you understand that?

13 MR. HOLMES: Yes, sir. I do.

14 THE COURT: Knowing all of that do you wish to plead
15 guilty or not guilty to burglary in the second degree?

16 MR. HOLMES: Guilty.

17 THE COURT: Do you wish to plead guilty or not guilty to
18 kidnapping?

19 MR. HOLMES: Guilty.

20 THE COURT: Do you wish to plead guilty or not guilty to
21 armed robbery?

22 MR. HOLMES: Guilty.

23 THE COURT: Has anybody promised you anything or
24 threatened you in any way to get you to plead guilty?

25 MR. HOLMES: No, sir. Not at all.

1 THE COURT: Are you pleading guilty voluntarily?

2 MR. HOLMES: Yes, sir.

3 THE COURT: Are you satisfied with your lawyer?

4 MR. HOLMES: Yes, sir.

5 THE COURT: Are you pleading guilty to these crimes
6 because you committed these crimes?

7 MR. HOLMES: Yes, sir.

8 THE COURT: All right. I need you to listen carefully
9 while the solicitor gives me the facts of your case. Okay?
10 All right, sir -- ma'am.

11 MS. RICHARDSON: Your Honor, this occurred on July 18,
12 2013, in Georgetown County. The victim, Mr. Dan Gasque, was
13 at his home. This was during the nighttime hours. Three
14 males came, knocked on the door, asked to use a phone. He
15 told them no. They forced their way in. They were armed with
16 a firearm. He was assaulted during that. His house -- they
17 went through his house and safe trying to locate some
18 valuables, were unable to find anything in the house. At that
19 point they forced Mr. Gasque at gunpoint into his own vehicle,
20 which was a new 2013 Dodge Avenger. That's the portion of the
21 armed robbery, Your Honor. They took his vehicle, forced him
22 into the vehicle, drove around to some ATMs trying to get
23 money out of his account, forcing him to try to do that. The
24 car was low on gas. They went to a Kangaroo Station. At that
25 point Mr. Gasque was actually able to escape. One of the Co-

1 Defendants tried to put him back in the car and the clerk or
2 -- and some people at the Kangaroo Station intervened and
3 that's the point that law enforcement was called, and of
4 course at that point law enforcement would have had a, you
5 know, a good description of the vehicle and the tag number
6 since it was the victim's vehicle. The vehicle was spotted in
7 Hemingway. A chase began that went from Hemingway,
8 Williamsburg County into Florence County into Marion County
9 and headed towards Dillon County before the vehicle was
10 stopped with the assistance of highway patrol and Marion
11 County deputies. A few of those vehicles were wrecked in the
12 process and Mr. Gasque's vehicle was wrecked with the suspects
13 in it. The vehicle was driven by Marcus Lambert, who's one of
14 the Co-Defendants in the case. This Defendant, Daquarius
15 Holmes, was found in the vehicle as well as another Co-
16 Defendant, Quantae Priest.

17 THE COURT: All right. All right. Mr. Holmes, you
18 understand what the allegations are against you?

19 MR. HOLMES: Yes, sir.

20 THE COURT: Is that what happened in this case?

21 MR. HOLMES: Yes, sir.

22 THE COURT: All right. Ms. Kneece, anything in
23 mitigation?

24 MS. KNEECE: Yes, sir, and I'd also like to preserve the
25 record. There are a couple of things I'd like to -- the

1 record to reflect is I hired an investigator, Don Myers, to
2 investigate the Defendant's alibi. He went and spoke to the
3 potential witnesses and there was a gap in time. So we were
4 not able to do that to assert an alibi defense.

5 Your Honor, as far as my discussions with this client
6 about the possibility of an Alford plea or taking this case to
7 trial, we did discuss there's no DNA in this case that puts my
8 client at the scene of the -- this victim's house. There's no
9 DNA, and the victim never positively identified my client.
10 Having said that, we discussed the circumstantial evidence,
11 the fact he was found in the car afterwards, the fact he was
12 seen with the other two Co-Defendants and the Co-Defendant
13 gave a statement specifically implicating my client and, and
14 our many discussions has led to him going forward with a
15 guilty plea.

16 Your Honor, I have known Daquarius Holmes, I believe I
17 met him in October of '13, and he just bonded out in March.
18 We have spent -- he was in there 617 days, and I give my
19 clients at the jail my cell phone. Daquarius burned up my
20 cell phone. We've had many discussions, and what's so sad,
21 before I get into some things I want you to consider, is he is
22 an articulate, very intelligent individual. His only prior
23 record is -- conviction is a receiving stolen goods as a
24 juvenile. This courtroom was packed earlier. His aunt, who
25 I've discussed with, she's got a great job at Boeing. They

1 live down in Ladson, his grandmother, his cousins. He's got a
2 couple of friends here. They were packed to support him.
3 He's got a tremendous amount of, of family support. He had a
4 job. He was working at the Waccamaw EOC where he'd work at
5 the water park, movies, with the, with the children there. He
6 was supposed to be at work the next day. He had just known
7 Marcus Lambert, and my client's the youngest out of these
8 group -- out of this group. He was 17. He spent two
9 birthdays in jail. He was 17, and he'd only known this
10 individual for a couple of months, Marcus Lambert, who the
11 evidence shows and a videotaped statement said, "I was the one
12 with the gun. I was the one who drove the car. I am the one
13 who wrote the check." Now, Marcus Lambert and Quantae Priest,
14 Quantae Priest has other significant charges pending. Marcus
15 Lambert has other charges pending. My client -- this is -- we
16 hear this all the time, "They're with the wrong people." This
17 is one of those clear. We've all heard that. I've heard it
18 for 20 years. This is it. In a very short amount of time his
19 life went to hell in a hand basket and it has.

20 Your Honor, when you look at the caption, and I think
21 that's one of the most important things of why I'm going to
22 argue for ten, it says the State of South Carolina versus
23 Daquarius Alexander Holmes, not this victim. It does not
24 behoove the State to lock him up for an additional five years.
25 What is the purpose of that? We know the fact that people go

1 there and they come out worse. Ten is going to give this
2 individual enough time to be punished and when we talk about
3 the Department of Corrections, we all know it's underfunded
4 and the programs are minimal. He's not going to be corrected
5 in there. We need to be very careful as we represent the
6 State and what they need. This man's not going to be made
7 whole any more by an extra five years, but if we -- we throw
8 out numbers left and right. Now that's a 15 year crime.
9 We've got to remember we've got a very young man here that the
10 scale may tilt, that 98 percent of the people incarcerated get
11 out and they aren't necessarily better. Putting him in for
12 that extra five years, I know of no benefit other than a
13 number and we got to hammer them for the crime. It may very
14 well tilt the scale to the other side. He does have
15 potential. He does have family support. He was young when
16 this happened. I, I beg this Court to recognize the
17 deficiencies in the corrective part of our penal system. Ten
18 years to a 19 year old is like doing triple time. He's doing
19 that 15 years. To confine this young man who really was not
20 exposed to this life now gets it and will be exposed.
21 Hopefully he can go there and within 10 year, Your Honor, get
22 his life together. He does have goals and dreams. He spent
23 617 days incarcerated, respectfully request he be given credit
24 for time served.

25 THE COURT: All right. Mr. Holmes, anything you want to

1 say?

2 MS. RICHARDSON: The victim wishes to address the Court.

3 THE COURT: Okay. Mr. Holmes, anything you want to say?

4 MR. GASQUE: Dan Gasque.

5 THE COURT: Okay. All right. Sir, your name?

6 MR. GASQUE: Dan Gasque.

7 THE COURT: All right. Mr. Gasque, what would you like
8 to say?

9 MR. GASQUE: I would like to say that, you know, it's --
10 his life is his life, my life, and I begged them for my life
11 and the intention that they ransacked the house. They called
12 me all kind of name because I was calling on Jesus. They
13 slapped me up. They're -- one forced and one forced me in the
14 trunk, but I, I determined that I was not going to get in the
15 trunk because I know if I get in the trunk that would have
16 been the end of it, and they rode me around to -- I left the
17 house about 11:30. They rode me around about a, about an hour
18 and they come at the Kangaroo Station and the one who had the
19 gun on me say, "You're going to, you're going to get out or
20 you're going to try not" -- I say I'm going to get out. So I
21 got out and I ran into the Kangaroo station, asked the
22 attendant to call 911. He, he did not call 911. What he did
23 he, he tell me we got to take this back outside. So Marcus
24 Lambert he try to force me back in the car, and I look -- a
25 lady come up and she call him, call him by his name, said,

1 "Turn that fellow loose." He did not do nothing and they
2 wouldn't turn me loose. Still all three was together, and I
3 looked toward the washer. Three white young mens come toward
4 and me and hollering telling them, "Turn him loose." They was
5 head toward the ferry. So they turned me loose and I went
6 back in the store and the attendant still didn't call 911.
7 Nervous as I has been I had to call 911 myself. So that's,
8 that's the thing about it. I understand what they saying
9 about him, but my life was in jeopardy also. There my life
10 went backwards until I could come together now.

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

12 All right. Any prior criminal record?

13 MS. RICHARDSON: No adult record. He did have the
14 juvenile conviction that Ms. Kneece mentioned.

15 THE COURT: All right.

16 MS. KNEECE: Your Honor, if -- my client is trying to
17 pull himself together. He does want to speak to the victim.

18 THE COURT: Okay. I -- we're -- I'm already fine.

19 MS. KNEECE: Okay.

20 THE COURT: All right. Mr. Holmes, I will accept your
21 guilty plea. I find that it's made knowingly, voluntarily,
22 fully advised of your rights as a Defendant and the nature of
23 the charge against you and the consequences of your guilty
24 plea. I also find that there is a factual basis to support
25 these charges against you. I'm going to follow the

1 recommendation of the State. On each charge the sentence of
2 the Court is that you be confined to the State Department of
3 Corrections for 15 years. You'll be given credit for 617 days
4 served thus far. All sentences will run concurrently. Thank
5 you very much.

6 MS. KNEECE: Thank you, Your Honor.

7 MS. RICHARDSON: And Your Honor, if you would just make
8 sure that the sentencing sheet reflects that it's --

9 THE COURT: Yeah. I put on the kidnapping that it was
10 not a sexual offense or attempted sexual offense.

11 MS. RICHARDSON: Thank you, Your Honor.

12 (Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Guilty Plea held in the case of The State versus Daquarius Holmes, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on June 11, 2015.

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

Grace L. Hurley, CVR-CM-M
Official Reporter

July 24, 2015.

WITNESSES

Georgetown County Sheriff's Office

ARREST WARRANT NUMBER

2013A2210800095

CDR: 0095 §16-03-0910

DOI: 7/17/2013 – 7/18/2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 10-16-2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013GS2200979 ⁺✓

The State of South Carolina

County of Georgetown

Alicia Richardson

13G00716

COURT OF GENERAL SESSIONS

OCTOBER, 2013 TERM

THE STATE

VS.

DAQUARIS ALEXANDER HOLMES

B / M

ATTORNEY: Kneese,

Indictment for

KIDNAPPING

Jimmy A. Richardson, II, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

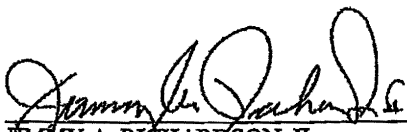
At a Court of General Sessions, convened on October 16, 2013, the Grand Jurors of Georgetown County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Daquaris Alexander Holmes did in Georgetown County on or about July 17-18, 2013, along with co-defendants, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Dan Gasque, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

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


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

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WITNESSES

Georgetown County Sheriff's Office

DOCKET NO. 2013GS2200982 +✓

The State of South Carolina

County of Georgetown

Alicia Richardson

13G00716

COURT OF GENERAL SESSIONS

OCTOBER, 2013 TERM

ARREST WARRANT NUMBER

2013A2210800098

CDR: 0079 §16-11-0311

DOI: 7/17/2013 – 7/18/2013

THE STATE

vs.

DAQUARIS ALEXANDER HOLMES



B / M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Kneece,

Indictment for

Foreperson of Grand Jury

Date: 10-16-2013

VERDICT

BURGLARY, FIRST DEGREE

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on October 16, 2013, the Grand Jurors of Georgetown County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Daquaris Alexander Holmes did in Georgetown County, on or about July 17-18, 2013, along with co-defendants, did enter the dwelling of Dan Gasque without consent and with the intent to commit a crime therein and the entering or remaining occurred in the nighttime and/or when effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime was armed with a deadly weapon, caused physical injury to a person who was not a participant in the crime, and/or displayed what is or appears to be a knife and/or firearm, in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

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


 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

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WITNESSES

Georgetown County Sheriff's Office

DOCKET NO. 2013GS2200978 ✓

The State of South Carolina

County of Georgetown

Alicia Richardson

13G00716

COURT OF GENERAL SESSIONS

OCTOBER, 2013 TERM

ARREST WARRANT NUMBER

2013A2210800094

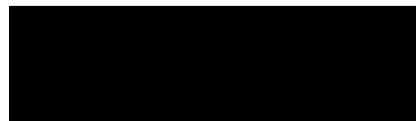
CDR: 0139 §16-11-0330(A)

DOI: 7/17/2013 – 7/18/2013

THE STATE

vs.

DAQUARIS ALEXANDER HOLMES



B / M

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury

Date: 10-16-2013

ATTORNEY: Kneece,

Indictment for

VERDICT

ARMED ROBBERY

Foreperson of Petit Jury

Date:

Jimmy A. Richardson, II, Solicitor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on October 16, 2013, the Grand Jurors of Georgetown County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Daquaris Alexander Holmes did in Georgetown County on or about July 17-18, 2013, while armed with a deadly weapon or while alleging, either by action or words, was armed while using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, take and carry away personal property of Dan Gasque from or in the immediate presence of Dan Gasque with intent to deprive Dan Gasque of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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


 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATEGeorgetown
VS.

Daquaris Alexander Holmes

AKA:

Race: BLACK Sex: M Age: 19

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping D-30 years

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser-Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. 1545.1

ATTEST:

Richardson, Alicia SCB8880 SC Bar# Defendant Attorney for Defendant SC Bar# 11139 Not actual Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for Xmonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 6/11/2015☒ 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. 617 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2200979

A/W#: 2013A2210800095

Date of Offense: 7/17/2013

S.C. Code § : 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

1545.1
Not actual
Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for Xmonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 6/11/2015☒ 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. 617 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ 10.00 beginning 1 Mo after Release

\$ paid to Public Defender Fund

Other: Crime does not include

Sexual offense or attempted

Sexual offense.

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2148

Sentence Date:

June 11, 2015

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
 STATE VS.
Daquaris Alexander Holmes

AKA:

Race: BLACK Sex: M Age: 19

DL#: _____ SID#: _____

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

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

TO: Burglary, 2nd Degree, Violent (after 06/20/85) D-15 yearsin violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086

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

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. 15 cc

ATTORNEY: Richardson, Alicia SCB8880 Daquaris Holmes Margaret J. Lee 11139
 SC Bar# Defendant Attorney for Defendant SC Bar#

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

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
 and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
 of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 6/11/2015☒ 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. 617 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

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

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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

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

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

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

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

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

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

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2200982A/W#: 2013A2210800098Date of Offense: 7/17/2013S.C. Code § : 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS 15 cc

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 \$ 10.00 beginning 1 mo after Release

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Richard J. DentonCourt Reporter: Gracie L. Horkley

SCCA/217 (03/2011)

Presiding Judge Margaret J. LeeJudge Code: 2148Sentence Date: June 11, 2015

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
STATE VS.
Daquaris Alexander Holmes

AKA:
Race: BLACK Sex: M Age: 19

DL#: SID#:

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

In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery 10-30 years

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

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

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

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. 15415 cc

ATTEST: Richardson, Alicia SCB8880 SC Bar# Defendant Margaret J. Quintana 11137 Attorney for Defendant SC Bar#

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

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 6/11/2015
☒ 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. 617 days

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:
§ 14-1-206 (Assessments 107.5%) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114 (BUI Breath Test Fee) \$50 \$
§ 56-5-2942(I) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Brian L. Hurley

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2200978

A/W#: 2013A2210800094

Date of Offense: 7/17/2013

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

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 \$ 10.00 beginning 1 mo after release
\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2148

Sentence Date: June 11, 2015

FORM 5

STATE OF SOUTH CAROLINA)

County of Georgetown)Daguarious Holmes 364360)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2016-CP-22-00448

APPLICATION FOR
POST-CONVICTION RELIEFALMA Y. WHITE
CLERK OF COURT

2016 MAY 27 AM 9:19

FILED
GEORGETOWN COUNTY, S.C.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 Georgetown County General Sessions Court P.O. Box 479 Georgetown, SC 29442
2. Name and location of Court which imposed sentence Georgetown County P.O. Box 479 Georgetown, SC 29442
3. Name(s) of co-defendant(s) (if any) Quante Priest, Marcus Lambert
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Assault and battery First degree 2013-976,
 - (b) Possession of a weapon during a violent crime

Kidnapping 2013-GS-22-982

(c) *2013-977, ARMED Robbery; 2013-GS-22-979*

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

(a) ~~_____~~ *15 Years, June 11, 2015*

(b) : _____

(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?

N/A

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

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

i. *N/A*

ii. _____

iii. _____

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

i. *N/A*

ii. _____

iii. _____

(c) the date of each such result:

i. *N/A*

ii. _____

iii. _____

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

i. *N/A*

ii. _____

iii. _____

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

(a) ~~_____~~

(b) *Lawyer never advise me of a Direct Appeal.*

- (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) failure to investigate, failure to
 (c) explain Alford plea and plea negotiation.

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

(a) Counsel fail to investigate co-defendants
 (b) statement that applicant was not
 (c) involved in Crime Committed.

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

(a) any petition in a State Court under South Carolina Law? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A

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. N/A
 ii. _____
 iii. _____
 iv. _____

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

i. N/A
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- 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?

N/A

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- 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) N/A
 (b) _____
 (c) _____

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

(a) your arraignment and plea? yes
 (b) your trial, if any? _____
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (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. Margaret Ann Kneese
P.O. Box 3966 Pawleys Island, SC.
29585
 ii. _____
 iii. _____

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

i. During plea hearing
 ii. _____
 iii. _____

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

Applicant would seek relief by
New trial or vacated

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

No

STATE OF SOUTH CAROLINA)

County of Georgetown)

VERIFICATION

I, Daquarius Holmes, 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.

Daquarius Holmes

SWORN to and subscribed before me this 17
day of May, 2016.

Debra Easterday (L.S.)
Notary Public

My Commission Expires: 3/3/2020

FILED
GEORGETOWN COUNTY, S.C.

2016 MAY 27 AM 9:19

ALMA Y. WHITE
CLERK OF COURT

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

I, Daquarius Holmes, 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.

Daquarius Holmes
Applicant

SWORN or affirmed to and subscribed before me this

15 day of May, 2016.

Debra Eastwood
Notary Public

My Commission Expires: 3/3/2026

FILED
GEORGETOWN COUNTY, S.C.
2016 MAY 27 AM 9:19
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	
Daquarius Holmes,	)	Case No.: 2016-CP-22-00448
S.C.D.C. No. 364360,	)	
	)	
Applicant,	)	
	)	RETURN AND
v.	)	PARTIAL MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the application for post-conviction relief filed by Daquarius Holmes (Applicant) on May 27, 2016, Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Georgetown County. Applicant was indicted by the October 2013 term of the Grand Jury for Georgetown County for armed robbery (2013-GS-22-0978), assault and battery, 1st degree (2013-GS-22-0976), possession of a weapon during the commission of a violent crime (2013-GS-22-0977), kidnapping (2013-GS-22-0979), criminal conspiracy (2013-GS-22-0980), grand larceny, \$10,000 or more (2013-GS-22-0981) and burglary, 1st degree (2013-GS-22-0982). Margaret Ann Kneece, Esquire, represented Applicant on the charges. Alicia A. Richardson, of the Fifteenth Circuit Solicitor's Office, prosecuted the case.

On June 11, 2015 Applicant pled guilty to armed robbery, kidnapping, and the lesser included offense of burglary, 2nd degree. Pursuant to plea negotiations and in exchange for his guilty plea, the State dropped his remaining charges. Applicant was sentenced on June 11, 2015,

by the Honorable Benjamin H. Culbertson to 15 years' imprisonment for each of the three charges, to be served concurrently. Applicant did not appeal his pleas or sentences.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Failure to investigate."
 - b. "Counsel failed to investigate co-defendant's statement that Applicant was not involved in crime committed."
 - c. "Counsel did not advise me of a direct appeal."
2. Involuntary Guilty Plea
 - a. "[Counsel] failed to explain Alford plea and plea negotiation."

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

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove 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 v. Washington, 466 U.S. 668. First, Applicant must

prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

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

IV.

Applicant further claims his plea was not entered knowingly or voluntarily. 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. See Boykin v.

Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

V.

Applicant's allegation that counsel failed to inform him of his right to appeal from his guilty plea, and that he should therefore be permitted an appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), is without merit as a matter of law. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted).

Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Applicant does not claim that he asked counsel to file an appeal, nor does he offer any other extraordinary circumstances that would entitle him to relief pursuant to White. Applicant only claims that plea counsel and the State failed to affirmatively advise him of the right to appeal. Therefore, even if taken as true, Applicant's claim does not entitle him to relief, and the allegation should be summarily dismissed.

VI.

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), SCRCP. 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, SCRCP. 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.

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

VII.

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

[Conclusion and signature on following page]

VIII.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty plea. As to Applicant's belated appeal claim, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that the allegation should be dismissed as a matter of law.

Respectfully submitted,

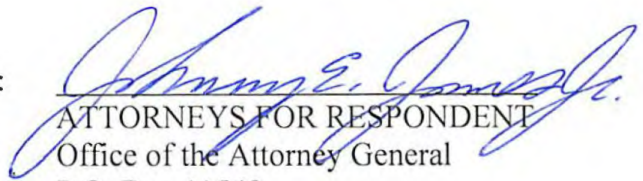
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By:


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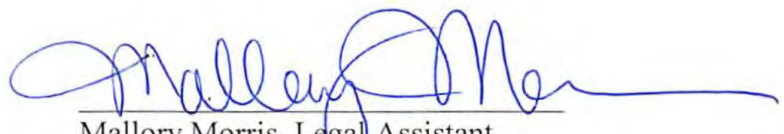
27 July, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	
	)	
	)	2016-CP-22-0448
DAQUARIUS HOLMES, 364360,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by e-mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** on the above-captioned matter on the following person by e-mail:

Steven W. Fowler, Esquire
 1018 Highway 17 South
 North Myrtle Beach, SC 29582

DATED this 27th day of July, 2017.


 Mallory Morris, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF GEORGETOWN) CASE NO. 2016-CP-22-0448
3 PCR HEARING
4
5 -----
6 November 12, 2019
7 BEFORE: The Honorable George M. McFaddin, Jr.
8
9 -----
10 DAQUARIUS HOLMES, SCDC 364360,
11 Applicant,
12 vs.
13 STATE OF SOUTH CAROLINA,
14 Respondent.
15 -----
16
17 APPEARANCES:
18
19 Steven W. Fowler, Esq.
20 For the Applicant.
21 Johnny E. James, Jr., Esq.
22 For the Respondent.
23 Official Court Reporter:
24 Cynthia D. Weaver
25

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2 THE COURT: Whenever you're ready gentlemen.

3 MR. JAMES: All right. If we may have Daquarius
4 Holmes?

5 THE COURT: All right, gentlemen.

6 MR. JAMES: If it may please the Court?

7 Your Honor, this is the matter of Daquarius Holmes
8 versus the State of South Carolina, Docket Number
9 2016-CP-22-00448. Mr. Holmes is present here in the
10 courtroom today and is represented by Mr. Steven Fowler.

11 Mr. Holmes was indicted at the October 2013 term
12 of the Georgetown County Grand Jury for armed robbery;
13 assault and battery, first degree; possession of a weapon
14 during the commission of a violent crime; kidnapping;
15 criminal conspiracy; grand larceny in excess of \$10,000; and
16 burglary first degree. He was represented on those charges
17 by Margaret Ann Kneece, Esquire. And Alicia Richardson of
18 the 15th Circuit Solicitor's Office prosecuted the case.

19 On June 11th, 2015, he pled guilty to armed
20 robbery, kidnapping, and the lesser included offense of
21 burglary second degree. Pursuant to plea negotiations and
22 in exchange for that plea, the State dropped the other
23 charges. He was sentenced that same day on June 11th, 2015,
24 by the Honorable Benjamin H. Culbertson, to 15 years
25 imprisonment for each of the three charges, concurrent. He

1 did not appeal his plea or his sentences.

2 Your Honor, upon consultation with Mr. Fowler the
3 State's understanding is that there may be a motion or two
4 that Mr. Holmes for the Court today.

5 THE COURT: Okay. Yes, sir.

6 MR. FOWLER: Your Honor, first of all, my
7 understanding is that I met these nice people earlier. I
8 believe his mother and brother are here and they're in one
9 of the conference rooms outside or in a waiting room out in
10 the hall and I was wondering if they could be brought in,
11 please?

12 THE COURT: I have no reason why ---

13 MR. JAMES: It actually -- it only occurs to me
14 just now, as long as they're not testifying as witnesses,
15 that's perfectly fine.

16 MR. FOWLER: I don't have a plan for them to
17 testify.

18 THE COURT: If they're not testifying, certainly.

19 MR. JAMES: Bring them on in.

20 THE COURT: Yes, sir.

21 WOMAN: Thank you.

22 MR. FOWLER: And when they arrive, I'll continue,
23 Your Honor.

24 THE COURT: Yes, sir.

25 MR. FOWLER: Your Honor, I believe they are in the

1 courtroom at this point.

2 THE COURT: Yes, sir.

3 MR. FOWLER: Just a couple of -- one thing I'd
4 like to bring to the Court's attention. This has been a
5 long case and Mr. Holmes and I have met several times.

6 One of the things that we -- one of the places
7 where we met was this case was scheduled in Conway at the
8 Horry County Judicial Center several months ago. And I
9 believe -- I believe this is in the record, Judge John
10 brought up that it was a Georgetown case and it was being
11 heard in an Horry County courtroom. At that time I asked my
12 client, Mr. Holmes, if he wished to continue on and he said,
13 No.

14 So we have had several discussions. We've had
15 good discussions, fruitful discussions, I thought. We met
16 here last month and it was a quick turn around from October
17 to today, the 12th of November.

18 One of the main things that he alleges in his
19 complaint is under Number 11, about a co-defendant
20 statement, and one of the things that I recall coming out of
21 that is that we needed the co-defendant here. We were here
22 last time in October, and the gentleman's name is Marcus
23 Lambert, and the order written basically said SCDC can
24 transport.

25 Well, I've spoken with Mr. Lambert today, and he

1 indicated that -- and I've spoken with SCDC, and he was not
2 transported, for whatever reason to the October hearing, to
3 here in Georgetown, Your Honor.

4 So we -- my staff and I went to our computers and
5 we rewrote the order and we made sure that the person
6 referred to in Number 11 was here today, and that the
7 witness shall be transported and, lo and behold, he's here
8 today. So I believe that we've had good discussions. I've
9 done my client's bidding in this, Your Honor, legally.

10 However -- and this may have been brought up at
11 the last hearing, it may have been brought before, I don't
12 remember it being brought up during the Horry County phase
13 of this, because we were ready to go that day, I'm quite
14 certain. He has requested two very distinct legal
15 documents, or matters, and he's brought that to my attention
16 today, and I believe he did in October, but as I said, we
17 were primarily concerned with getting the witness here.

18 And, also, I don't think -- without getting into
19 too much testimony, I think that these can be matters
20 discussed, but I also think that if they could be received,
21 then perhaps we should receive them. He has indicated for
22 any and all information of a preliminary hearing. Ideally,
23 a transcript from his preliminary hearing.

24 Now, the attorney who's serving as the witness
25 today, Your Honor, was not his attorney at that time. I'm

1 not a hundred percent clear who it was, but obviously we
2 would need that information from the attorney, from the
3 preliminary hearing court or whatever.

4 So that's one thing, any and all information
5 including a transcript, if possible, on his preliminary
6 hearing. And I don't know if he was there at the
7 preliminary hearing or not.

8 Secondly, Your Honor, in our discussions this
9 morning, he has asked for some medical records. He's asked
10 for his medical records from Shoreline at Conway. And then
11 he could probably clarify with the Court, but a Waccamaw at
12 Georgetown, I don't know if that's a surgery place or what,
13 but Waccamaw at Georgetown.

14 So he, after discussions this morning, he has
15 indicated to me that he would like that documentation, Your
16 Honor. He would like any and all documentation from a
17 preliminary hearing. He would also like any and all medical
18 records from Shoreline, and what he believes to be as
19 Waccamaw at Georgetown. And, you know, you don't know until
20 you know, sometimes, on these things. And probably -- I
21 assume that when we get these documentation, there could be
22 some things in each of these that may be helpful in this
23 case, Your Honor.

24 And because of that, at this time, I would like to
25 ask for a continuance in this matter to a future date.

1 THE COURT: Mr. James?

2 MR. JAMES: The State respectfully opposes the
3 motion for a continuance, Your Honor. This application was
4 originally filed in May of 2016. It was among the first
5 returns that I wrote in my capacity as an Assistant Attorney
6 General for the State of South Carolina handling PCRs in
7 this Circuit, and here we are two-and-a-half years later and
8 it remains pending.

9 He has had ample, ample time to conduct any
10 research, request any records that he may think is relevant
11 and pertinent to the allegations he intends to raise. And
12 at this point we are ready to move forward.

13 He has primarily insisted upon the presence of one
14 Mr. Marcus Lambert, one of his co-defendants, who is
15 incarcerated in the South Carolina Department of
16 Corrections. Despite some troubles at the previous term
17 where Mr. Lambert declined transport he is present here with
18 us today. It is my understanding that he is behind this big
19 sturdy door or downstairs somewhere and ready to be called
20 to the stand.

21 Ms. Muffy Kneece has been up here at the
22 courthouse a number of times and I've had to turn her away a
23 number of times, much to her considerable chagrin, she's
24 ready to put this case behind her. The State is ready to
25 proceed. And with every continuance that goes by, memories

1 fade, just a little bit more. It gets a little bit more
2 challenging to conduct that complete and full PCR proceeding
3 to make sure that all the allegations are adequately
4 addressed.

5 Your Honor, I'd ask that you deny that motion.

6 THE COURT: How many times has it been, continued,
7 sir?

8 MR. JAMES: I'm told five or six by Ms. Kneece,
9 and she has kept better track of it than I have. I will
10 tell you that the South Carolina Attorney General's data
11 base indicates that this was first placed on a roster and
12 first appeared on a roster September 22nd, 2017. And I'm
13 not sure if it was that date exactly or that week.

14 MR. FOWLER: And, Your Honor, just to be clear,
15 those were not all my or my client's request to be
16 continued. For various reasons witness -- and I can't name
17 them specifically, factually -- but I think witnesses,
18 courtrooms, you know, geography, so several things.

19 So it's not our fault necessarily ---

20 MR. JAMES: Certainly, every form of continuance
21 that could be conceived of has popped up in this case.
22 Whether it was Mr. Lambert, the client transport, Muffy
23 Kneece's unavailability. I think we had one term canceled
24 for a hurricane, at least. We've had continuances on
25 Mr. Frazier's request and for every other reason. But,

1 nonetheless, it is time to resolve this case, Your Honor.

2 THE COURT: I'm not finding fault for anybody for
3 continuances, these things do happen.

4 Your client's raised his hand, sir. What does he
5 want to tell me?

6 THE WITNESS: Okay. First and foremost ---

7 THE COURT: Wait. Tell you lawyer first.

8 (WHEREUPON, there was a pause in the proceedings.)

9 MR. FOWLER: Your Honor, and just to be clear, my
10 client has indicated that it was not all our requests.
11 There were several -- were it weather, conflicts of
12 interest, witnesses, things like that.

13 THE COURT: Oh, I understand that. As I just
14 said, these things happen.

15 When did your client first tell you that he wanted
16 medical records, sir?

17 MR. FOWLER: Your Honor, I don't have the letter,
18 necessarily, from him asking us for medical records or the
19 specificity of it. Even today we're not entirely sure of
20 the Waccamaw that he's referring to in Georgetown. He did
21 ask at the last hearing, Your Honor, I'm sure of that. He
22 may have asked before, I do not know. But the thing about
23 it is our priority was on getting Mr. Lambert here. He's
24 here now. And I think that weighs probably heavily in the
25 Court's discretion.

1 THE COURT: Yes, sir.

2 MR. FOWLER: May I speak with my client?

3 THE COURT: Yes, sir.

4 MR. FOWLER: Your Honor, my client has indicated
5 he does not want to speak to me. So he can -- if you wish
6 to speak to him that's fine or what have you.

7 THE COURT: Okay.

8 You want to tell me something, sir?

9 MR. HOLMES: Yes, you know, I don't want to be up
10 here. I don't want to waste your time. I don't my lawyer
11 wasting your time, as well, okay. I requested these
12 documents from my lawyer here, last year, okay. I requested
13 it from him last year. Now, prior to that, last month when
14 I seen Mr. Fowler, I asked him, Do he (sic) have the
15 documents? I got on a phone call with Mr. Fowler, was the
16 summer of this year 2019, and I believe that that was June,
17 where I was scheduled for court, I have the paperwork right
18 here, as well. Where I was scheduled for court and it was
19 continued being that Ms. Kneece, over there, was protected,
20 all right.

21 Now, being that my lawer Mr. Fowler here said that
22 he did not have the records, I told him, and I also called
23 his secretary, as well. And I let his secretary know that I
24 don't feel as if he's in my best interest because he hasn't
25 been getting what I've been asking for. Yes, he has

1 subpoenaed the witness here today, which is understandable,
2 but he has not been getting the document that I've been
3 asking for and I'm trying to properly gather the information
4 and I'm trying to put everything together as far as my
5 research.

6 I still am gathering information to corroborate
7 with my PCR here today. But I am speaking to let you know
8 that I no longer want Mr. Fowler representing me on this
9 case because I feel as if he is inadequate to a high
10 extent -- a great extent right now. And I don't want him
11 representing me no longer on this PCR case.

12 THE COURT: Okay. So you're going to represent
13 yourself?

14 MR. HOLMES: No. To be honest -- and that's --
15 that's the reason why I've been asking him to get these
16 records for me, okay. Because ---

17 THE COURT: Wait. You ran away with me, now, bear
18 with me.

19 Who's going to represent you today if he's off the
20 case?

21 MR. HOLMES: I do not wish to go pro se, sir. And
22 I do not wish the refusal to withdraw my PCR.

23 THE COURT: All right. Well, I'm not releasing
24 your lawyer today, sir. I'm not going to do that. Not here
25 in the courtroom.

1 MR. HOLMES: Well, I -- I -- I would ---

2 THE COURT: Let me talk. Let me talk, okay? Let
3 me talk.

4 Your lawyer's here today prepared to go forward.
5 He has a witness here that appears to be very integral to
6 your case. This case have been continued several times
7 through no fault of anybody, not blaming anybody. This is
8 an old case. It needs to go forward. And we are going
9 forward, sir.

10 MR. HOLMES: You have -- I told you that I'm
11 highly uncomfortable, and I feel as he ---

12 THE COURT: You told me that, sir.

13 MR. HOLMES: --- he has been not getting the
14 documents that I have been respectfully requesting from him.
15 I've been writing him. I've been calling his office. I've
16 been speaking to his secretary. I told his secretary that I
17 wanted to fire him. I told him last month I wanted to fire
18 him. I'm back here and I'm telling you, to your face, sir,
19 while I'm in here ---

20 THE COURT: Yeah, I'm glad you're in here ---

21 MR. HOLMES: --- that I would like to fire him
22 today ---

23 THE COURT: --- that's enough ---

24 MR. HOLMES: --- he hasn't been doing it.

25 THE COURT: Now, I don't need that street talk,

1 back to your face stuff, okay? I don't need that.

2 Now, we're here today. You filed the PCR. You've
3 had an attorney for several years now. And, now, today, you
4 walk in this courtroom and you don't want him here today.

5 We're going forward.

6 Sir, call your witness.

7 MR. FOWLER: Your Honor, I have another motion
8 that I'd like to make.

9 THE COURT: Yes, sir.

10 MR. FOWLER: Your Honor, I feel that we could go
11 forward today and present a good case. As I said, his
12 Number 11 on his application, the person he's referring to
13 is here, it's Marcus Lambert. We've had several good
14 discussions about that.

15 THE COURT: Yes, sir.

16 MR. FOWLER: And, Your Honor, you know, there is
17 always something in a case that you probably could find or
18 what have you. And I think it's -- I think it's my client's
19 right to be able to say, Well, I want such and such a
20 document and what have you.

21 But the preliminary hearing information he's
22 asking for, I think -- you know, and I don't want to -- that
23 was when Ms. Kneece was not his attorney. It may shed some
24 light on something that relates to her in this litigation
25 today, Your Honor, and I don't know. And I don't know if

1 Georgetown County has transcripts or, you know, anything
2 other than just a sentencing sheet or what-have-you type of
3 thing with preliminary hearings. And also the medical
4 records, to the best of my knowledge, he hasn't given me any
5 kind of specifics on that. Like I said earlier, he
6 mentioned Shoreline at Conway and he mentioned a Waccamaw in
7 Georgetown.

8 So if he wants these records, he's going to have
9 to come up with a little bit more specificity on addresses,
10 telephone numbers, doctors, things like that, and I'll be
11 more than happy to do that.

12 MR. HOLMES: I gave you that, sir. I gave you all
13 that. Last year, I gave you all that to obtain that
14 information for you, sir. I gave you that in 2018.

15 MR. FOWLER: Well, you didn't know the name of
16 your Waccamaw, this morning. So that's -- and I'm just --
17 and I'm speaking -- may I continue to speak, Your Honor?

18 THE COURT: Yes, sir.

19 MR. FOWLER: Okay. So the point of the story is,
20 Your Honor, we've -- I've worked and my staff has worked on
21 this case having a substantive presentation for him. We
22 have subpoenaed witnesses. We've ordered them. We've
23 talked to my client several times. And, you know, if this
24 case were to go another two years, there could be other
25 documents that are out there that might be needed and might

1 shed light on it.

2 But, obviously, my client does not want me to
3 represent him today based on what he has said to the Court.
4 I do not want to stand in his way. I do want any issues
5 coming back on me or my staff after we've done the best we
6 could do on this matter representing him. And he -- you
7 know, I don't know what his state of mind is right now, Your
8 Honor.

9 And I don't know, you know, what he's -- he's
10 going through these papers right now, which is fine. But
11 the point of the story is, I am specifically asking the
12 Court right now to be relieved as his attorney and I would
13 ask the Court to respectfully grant that. And this case be
14 heard as soon as possible, with another attorney, or him
15 being pro se.

16 THE COURT: Mr. James, any comment?

17 MR. JAMES: Your Honor, he is not entitled to
18 counsel of his choice, unless he wants to go out and find
19 one and pay for it. Mr. Fowler was on the contract to
20 receive appointments for Post Conviction Relief matters at
21 the time the State requested appointment of counsel on
22 Mr. Holmes's behalf.

23 Your Honor, the fact that there is a mere
24 disagreement between Mr. Holmes and Mr. Fowler as to how to
25 proceed with the PCR application is not a sufficient cause,

1 in and of itself, to require this Court, or any Court, to
2 relieve Mr. Fowler and appoint a new attorney.

3 Your Honor, this appears to the State, not
4 withstanding the statements by Mr. Holmes a moment ago that
5 he does not wish to waste the Court's time or anybody's
6 time, but this appears to the State to be, yet, another
7 stalling tactic.

8 Your Honor, I would cite the Court to the case
9 Richardson v. State, and the citation for that is:
10 377S.C.103-659S.E.2d493. That is a 2008 Supreme Court Case.
11 And I cite it to you because I was almost verbatim quoting
12 from it a moment ago.

13 The State's ready to proceed. Mr. Fowler sounds
14 like he is ready to proceed. I understand that there is
15 some tension between Mr. Fowler and his client. But,
16 ultimately, Mr. Fowler is Mr. Holmes's attorney. If he
17 wanted a different attorney he has had time to try and
18 retain one. That time has now passed. And we are ready to
19 proceed.

20 MR. FOWLER: And, Your Honor, I think my client
21 would do well as pro se person today, Your Honor. He has
22 quite a bit documentation here. The witness is here that
23 our office ordered -- got the order signed for him to be
24 here. So I think he would be very capable of representing
25 himself today if he chose to go forward.

1 MR. JAMES: Respectfully, Your Honor, if I may
2 speak briefly. Mr. Holmes has explicitly stated he does not
3 wish to proceed pro se.

4 THE COURT: Okay.

5 MR. JAMES: And I have a very substantial fear
6 that if he were to be permitted to proceed pro se in these
7 circumstances we may end up having to do this all over again
8 years down the line after an appeal.

9 MR. FOWLER: And also he has explicitly said that
10 he does not want me as his attorney today. So I feel like
11 that should be a factor.

12 THE COURT: I understand. However, I'm not going
13 to relieve you as his attorney today. He says he doesn't
14 want to go forward pro se. I understand that.

15 So would you call your witness, sir?

16 MR. FOWLER: So you're denying my motion?

17 THE COURT: Yes, sir, I am respectfully.

18 MR. FOWLER: I'd like to call Mr. Daquarius Holmes
19 to the stand, Your Honor.

20 THE CLERK: Do you solemnly swear or affirm that
21 the testimony you're about to give is the truth, the whole
22 truth, and nothing but the truth, so help you God?

23 THE WITNESS: I swear to tell the truth. With all
24 due respect, I'm not able to swear under oath with God,
25 that's against my religious beliefs. I swear to tell the

DAQUARIUS HOLMES - DIRECT BY MR. FOWLER

1 truth.

2 THE CLERK: Okay.

3 THE WITNESS: In this court proceeding.

4 THE COURT: You may be seated, sir.

5 THE CLERK: Okay. Please be seated and state and
6 spell your full name for the record.

7 THE WITNESS: Daquarius Holmes, D-A-Q-U-A-R-I-U-S.
8 Holmes, H-O-L-M-E-S.

9 DAQUARIUS HOLMES, having been duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FOWLER:

13 Q. Mr. Holmes, you filed a Post Conviction Relief
14 application in this case, correct?

15 A. Correct.

16 Q. And you asked -- in Number 10 and 11 on your
17 application you allege the ineffective assistance of counsel
18 by Ms. Kneece; is that correct?

19 A. Correct.

20 Q. You allege a failure to investigate; is that
21 correct?

22 A. That's correct.

23 Q. Okay. Failure to explain your Alford -- an Alford
24 plea, correct?

25 A. Correct.

DAQUARIUS HOLMES - DIRECT BY MR. FOWLER

1 Q. And plea negotiations, correct?

2 A. That's correct.

3 Q. Number 10 and 11 of your statement?

4 A. That's correct.

5 Q. Okay. And also under Number 11 you state that the
6 attorney failed to investigate co-defendant statement that
7 applicant was not involved in the crime committed; is that
8 correct?

9 A. That's correct, sir.

10 Q. In terms of Number 10, Number 1 in my notes
11 anyway, ineffective assistance of counsel. What do you mean
12 by that?

13 A. Ineffective assistant counsel. What I mean by
14 that is, for example, you have the example, you know, pretty
15 much how I'm letting the Judge know that you are ineffective
16 as well as Ms. Kneece here. Pretty much saying that
17 ineffective as in not ---

18 Q. Let me -- let me rephrase the question.

19 A. Yeah.

20 Q. Your attorney at your plea negotiation -- and,
21 Your Honor, at this time I'd like to ask for judicial notice
22 of the transcript of record on June 11th, 2015.

23 MR. JAMES: That should be included in the packet,
24 Your Honor, as an item that was attached at State's file.

25 THE COURT: I have it. No objection?

DAQUARIUS HOLMES - DIRECT BY MR. FOWLER

1 MR. JAMES: No objection.

2 THE COURT: Okay.

3 BY MR. FOWLER:

4 Q. So, specifically, in terms of ineffective
5 assistance of counsel -- and it's Ms. Kneece --

6 MS. KNEECE: That's correct.

7 BY MR. FOWLER:

8 Q. --- that's the correct pronunciation.

9 How was Ms. Kneece ineffective as your attorney?

10 A. Ineffective by failing to investigate the
11 preliminary hearing. Failing to advise me fully of my
12 rights as a applicant -- as a defendant -- I say, as a
13 defendant. The right to that -- I had the right of -- I was
14 not well aware of my rights. I was not well aware of my
15 plea. When I took my plea she was highly ineffective.

16 I have a -- I have a mental health record. I have
17 a mental health record. And Ms. Kneece did not obtain none
18 of my mental health record. Ms. Kneece did not put me
19 through a mental competency evaluation to see whether I
20 could stand or plea to determine whether I was focused
21 enough.

22 May I preserve for the record and let it be known
23 that in the past I took medication to stay focused. Being
24 that I was incarcerated and I was taken (sic) off
25 medication, well along down the line in the past, you know.

DAQUARIUS HOLMES - DIRECT BY MR. FOWLER

1 Ms. Kneece didn't investigate to get none of my
2 records to even see whether I could stand. So I could go on
3 if you want me to keep going on, as far as her being
4 ineffective.

5 Q. Sure. All right.

6 MR. FOWLER: May I approach the witness, Your
7 Honor?

8 THE COURT: Yes, sir.

9 BY MR. FOWLER:

10 Q. And I'm referring to Page 4 of the transcript that
11 I was referring to. Could you read Lines 21 through 24,
12 please, starting with "The Court."

13 A. The Court: Has your client received a competency
14 evaluation?

15 Ms. Kneece says: No, sir, nor does he need one.

16 The Court: All right. Have we put him under
17 oath?

18 The Clerk said: Yes.

19 Q. So why -- why did she not -- okay.

20 Let's talk about the competency evaluation. Did
21 you express to her an interest in having a competency
22 evaluation?

23 A. I told her that I had a -- that I, in fact, had a
24 past mental health record.

25 Q. Okay.

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1 A. Okay. So with that being said, she must have felt
2 as though I didn't needed (sic) one or she didn't indulve
3 (sic) into the files and documentation to determine what I
4 was on mental health for which was to stay focused.

5 Q. Okay. So how did that affect your relationship
6 with her professionally in terms of -- so you're saying you
7 have a mental condition?

8 A. Yes, because I have a short attention span, that's
9 why I was placed on medication with mental health.

10 Q. Okay. When did you tell her about those records?

11 A. I told her I had a mental health record in --
12 between 2013 and the year 2014 during our visits.

13 Q. Okay. Did she subpoena any records?

14 A. No, she did not.

15 Q. Did you ask her to subpoena some records?

16 A. No, she did not. No. No, I did not as well. I
17 did not.

18 Q. Okay. How would her having the mental health
19 records affect your plea?

20 A. Because, at the time, her having it, they would
21 have known and understand whether I was -- whether I was
22 aware of what I was getting myself into. Whether I would
23 have understand (sic). Whether I would have understand
24 (sic) the time I was accepting. Because later on down the
25 line with me filing this Post Conviction Relief here -- then

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1 later on down the line I feel as if we wouldn't have been
2 going through this if everything would have been properly
3 advised to me.

4 Q. Okay. You think she was deficient in her
5 representation of you? Do you think she was deficient in
6 representing you?

7 A. Can you repeat that again?

8 Q. Do you think -- do you think she met a certain
9 standard of representing you in this criminal matter?

10 A. Most definitely.

11 Q. What do you ---

12 A. Very, very, very low standards, sir.

13 Q. Okay. So she did not meet a -- let me rephrase.
14 How would you describe her performance as your
15 attorney?

16 A. I feel as if she was deficient. I feel as if she
17 coerced me to sign a sentencing sheet to take a plea. I
18 feel as if she didn't properly went over these things with
19 me, you know. She pretty much tell me that I was going to
20 plea out to such charges. And I feel as if me not knowing
21 that this guilty plea that I have taken is involuntarily.

22 Q. Okay. In terms in of her -- did you say she
23 coerced you; is that correct?

24 A. Yes, I feel as if she coerced me to plead pretty
25 much letting me know that I'd be facing life and that I was

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1 definitely going to get 25 years to life. Even during my
2 plea -- even during my plea -- I have the transcript right
3 here, it was June the 11th, 2015. She even stated during my
4 plea, the Judge asked her of my record, and being that this
5 was not a juvenile case, and I was not a juvenile at the
6 time, she even brought up my juvenile record, which was
7 prejudice amongst my behalf because she was representing me.

8 Q. Okay. Referring to Page 15, Lines 11 ---

9 MR. FOWLER: If I may approach, Your Honor?

10 THE COURT: Yes, sir.

11 BY MR. FOWLER:

12 Q. Eleven through 15. And you read -- I've got the
13 book -- and you read 11, starting with "The Court," and read
14 through what The Court says there.

15 A. The Court: All right, sir. Thank you. All
16 right. Any prior criminal record?

17 Ms. Richardson: Answer: No adult record. He did
18 have a juvenile conviction that Ms. Kneece mentioned.

19 Q. The Court says.

20 A. The Court: All right. Ms. Kneece.

21 Q. Okay.

22 A. Do you want me to continue?

23 Q. No, no, no. That's good.

24 So even the solicitor brought that Ms. Kneece
25 referred to the criminal -- to your juvenile record,

1 correct?

2 A. True indeed.

3 Q. Okay. Do you feel like that prejudiced the judge
4 in any way?

5 A. I feel that -- I feel as if that was both. I feel
6 that that was harmful amongst me, because she told me time
7 after time that that's not allowed to happen on the
8 solicitor's behalf. But she did it on the behalf of myself
9 and I feel it was harmful to me because the judge was --
10 that was my sentencing day.

11 Q. And it does mention earlier in the transcript
12 where she mentions your juvenile record, correct?

13 A. Yes.

14 Q. Okay. You mentioned several things, and we'll get
15 to them, but you mentioned that ineffective assistance of
16 counsel. There was a preliminary hearing in this matter.

17 Tell me about how that is related to her
18 ineffective assistance of counsel.

19 A. Because I have this sheet right here. I have the
20 sheet signed for the date, November the 7th, 2013. And you
21 asked me earlier who was the individual named. And I have
22 the sheet right here with the signature. I still don't the
23 name, but you can come and look it yourself, this is not her
24 signature. And I -- you -- you and her has been my only
25 attorneys. And you are my PCR attorney and she was my

1 pretrial attorney. And that is not her signature right
2 there on the bottom for attorney for the defendant. And
3 that was during the preliminary and pretrial proceeding of
4 my case. And she did not say whether I did or didn't have
5 the preliminary hearing. She refused to give me those
6 records. And I asked you to give me those records, as well,
7 which I wanted to request before. And to my understanding
8 the preliminary hearing means a lot.

9 Q. Yes, sir ---

10 A. And -- and -- and -- and I do have the right to a
11 preliminary hearing and notice, as well.

12 Q. Okay. Did you receive notice of a preliminary
13 hearing?

14 A. I did not get -- I did not receive no notice, but
15 I did sign the form to have a preliminary hearing. I never
16 waived those rights.

17 Q. Okay. Well, how were you not at a preliminary
18 hearing if you received the signature stating there was one?

19 A. I received -- I received this -- I received this
20 from Ms. Kneece when I got my motion of discovery, when I
21 got my motion, I received this paperwork from Ms. Kneece.
22 It said, "Attorney for the Defendant", which is not her, and
23 it has the -- it has the solicitor's signature on the bottom
24 as well, but it has it from a month before.

25 MR. JAMES: Your Honor, I must respectfully

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1 object, but it's caged objection I suppose. I have no idea
2 what this document is that he is referring to, it hasn't
3 been moved into evidence. It hasn't been shown to the
4 State.

5 BY MR. FOWLER:

6 Q. Okay. Without referring to -- let me -- let me
7 just ask those same questions, okay?

8 And you state that your preliminary hearing was
9 important to you, correct?

10 A. Correct.

11 Q. Okay. And you're stating that Ms. Kneece was not
12 your attorney at the preliminary hearing, correct?

13 A. I'm not sure. I was appointed Ms. Kneece on -- I
14 believe I was appointed Ms. Kneece -- October.

15 Q. What year?

16 A. 2013, yeah, I was appointed Ms. Kneece.

17 Q. And when was the preliminary hearing?

18 A. I'm not sure when the preliminary hearing was.

19 Q. Okay.

20 A. But, however, I do have another signature from
21 another attorney signing as my attorney for defendant
22 during -- a month later.

23 Now, I know and understand that, in order to
24 proceed with indictments, a preliminary hearing must be put
25 into effect. I was not present at no preliminary hearing.

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1 Q. Did you ever find out who your attorney was on
2 that preliminary hearing?

3 A. No, I don't. I only have a signature.

4 Q. Whose signature is it?

5 A. I'm not sure how to pronounce this signature, I
6 just have this signature right here.

7 Q. All right. Very good. So you feel like because
8 she did not follow through with the preliminary hearing
9 documentation that that was hurtful to your case, correct?

10 A. Yes.

11 Q. Okay.

12 A. Because I feel as if I would have went to that
13 preliminary hearing I could have seen all the evidence that
14 was being held against me. And I could have seen what kind
15 of probable cause that they had against me. I could have
16 seen how did they come up with such an indictment against
17 me, as well. I was never given none of that.

18 Q. All right. Did you bring that to her attention at
19 any time?

20 A. Yes, I did.

21 Q. Okay. And what did she say?

22 A. She refused to give me any information about the
23 preliminary hearing at all. And I just let her know that
24 the notice -- the right to a preliminary hearing, which is
25 South Carolina Code 17-23-160.

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1 Q. All right. You mentioned earlier that you were
2 unaware of your full rights as a defendant, you were not
3 aware of your rights. What rights do you feel like she did
4 not bring to your attention?

5 A. Direct appeal. I feel as if ---

6 Q. And let's just kind of list them here, if you
7 don't mind, and then we'll get into them.

8 You said she did not notify you of a direct
9 appeal. What do you mean by -- well, what other rights do
10 you feel like she apparently may have violated other than
11 just direct appeal?

12 A. A motion to reconsider.

13 Q. Okay.

14 A. She didn't advise me of -- I'm not sure if I'm
15 wording this properly -- I'm not sure if I'm wording this
16 properly, but she didn't advise me that I had other rights
17 to get a letter or get a motion for my letter of acquittal.
18 I couldn't get the case acquittal. She didn't advise me of
19 that right at all. I had that right and she didn't advise
20 me of that right.

21 Q. Okay. So is there anything -- any other rights
22 that you feel she did not adequately address with you?

23 What I've got so far is direct appeal, motion to
24 reconsider, and then a motion for acquittal; is that
25 correct?

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1 A. That's correct.

2 Q. So under the ---

3 A. No, I'm sorry. I'm sorry. She didn't advise me
4 of the right for the nolo contendere plea, as well.

5 Q. Okay. Any others?

6 A. Not -- not at the moment that I can think of, sir.

7 Q. Okay. What about direct appeal? Tell me a little
8 bit about that. Why did -- what was her discussion with you
9 about a direct appeal?

10 A. All right. I -- I -- I -- I know and understand
11 that after you agree to a sentence that it's a process.
12 Whether it's direct appeal, and the PCR, and the Supreme
13 Court stages, I wasn't advised of that right. I had went
14 straight to the PCR, because that's the only right that I
15 knew of.

16 Q. Okay.

17 A. Later on down the line that's when I filed that
18 within my motion.

19 Q. Okay. Now, a motion to reconsider, did she
20 discuss that with you at all?

21 A. That wasn't -- that wasn't discussed.

22 Q. Okay. Do you -- what's your thought -- what is
23 your opinion of what a motion to reconsider is?

24 A. Reconsider the time of my sentence.

25 Q. Okay. Did you ever ask her to file a motion to

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1 reconsider?

2 A. I request -- I request for a motion to reconsider,
3 but I wasn't fully aware of what a motion to reconsider was.

4 Q. Okay. But you did ask her?

5 A. But I did request it.

6 Q. All right. And then you said a motion for an
7 acquittal. Did you ever talk with her about that?

8 A. Yes.

9 Q. Okay. What did she say?

10 A. She pretty much couldn't give me straight answers
11 and I asked about the motion for acquittal of my case and my
12 charges. She couldn't give me straight answers.

13 Q. Okay. And then finally you mentioned the nolo
14 contendere. What is that -- do you understand what that is,
15 or familiar with it, based upon your research?

16 A. Yes, that's when you maintain your innocence.
17 That's -- that's pretty much accepting a plea ---

18 Q. Okay.

19 A. --- but maintaining your innocence.

20 Q. Did you ever talk to her about that? Or did she
21 ever bring that to your attention, rather?

22 A. I brought it to her attention so she could
23 properly advise me. She couldn't properly advise me. All
24 she told me was I'll only complete one certain way.

25 Now, however, I feel as if she did coerce me to

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1 accepting a 15-year plea, because she told me about an
2 Alford plea, North Carolina v. Alford is the case, in fact.

3 Q. Did you ---

4 A. And I signed the sentencing and the North Carolina
5 Alford is scratched off on most of my sentencing sheets, I
6 have copies here.

7 Q. Right. Did you plead under Alford at all? Was
8 that brought -- I mean, I don't -- did you plead under
9 Alford or not?

10 A. It's scratched off. So, apparently, it wasn't
11 made known to the Court that I was pleading under an --
12 an -- an Alford plea -- a North Carolina versus Alford plea.

13 Q. Okay. So did she bring to your -- so just to be
14 clear ---

15 A. But she did brought (sic) it to my attention.

16 Q. Okay. What was the discussion like about that?
17 Did you -- did you deny it or did you -- did you want to --

18 A. I never -- I never -- I never denied pleaing the
19 Alford plea, because she told me that that was in my best
20 interest. She told me, Unless you want to get 25 years to
21 life, you want to accept this plea here of the 15 years, the
22 cap, the North Carolina versus Alford, which I have right
23 here with me today. I have my sentencing sheets and you can
24 see that it's been scratched off.

25 Q. Right. Would that have changed your mind if you

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1 had -- if you had properly talked with her about the Alford
2 plea, potentially? In retro -- let me rephrase it this way.

3 In retrospect, would you have pled under Alford or
4 not pled at all? Would you have gone to trial?

5 A. With everything that has happened or just with the
6 plea?

7 Q. I guess -- I guess my question is this: Would you
8 have pled knowing what you know now on her -- her
9 representation of you?

10 A. No. No, I definitely wouldn't.

11 Q. Why not?

12 A. I definitely wouldn't. Another thing, as well, is
13 failure to sign waiver of indictment, okay. I was initially
14 charged with burglary in the first degree and I pled out to
15 a burglary in the second degree.

16 Now, failing to sign a waiver of indictment is
17 pretty much making a written waiver of indictment not
18 presented to a Grand Jury mandatory before the trial, the
19 judge can accept the plea. Now, understand once I said I
20 pled to a second degree burglary. So, therefore, I was not
21 indicted on a second degree burglary. I never signed a
22 waiver -- I never signed or made a waiver for the second
23 degree burglary.

24 Q. All right.

25 A. So I -- I -- I truly feel as if in some way --

1 well, in many ways that my plea is still unduly and
2 involuntarily.

3 Q. Okay. You mentioned medical health records. Did
4 she obtain any kind of medical health records for you?

5 A. Once again, no, sir.

6 Q. Okay. How would that have affected your plea or
7 your representation -- her representation if you had those
8 mental health records?

9 A. That would have had affected me because the judge,
10 himself, sentencing me on that date could have determined
11 whether I was competent enough to know what I was getting
12 myself into. Whether I knowingly, willingly, accepted that
13 plea -- intelligently.

14 Q. Right. You mentioned that -- we discussed earlier
15 and we'll be brief on the -- on the discussion about this --
16 did you and her talk -- and she mentioned in the transcript
17 that there was no -- that you did not need a mental
18 competency evaluation.

19 Did she discuss a mental competency evaluation
20 with you?

21 A. No.

22 Q. Okay.

23 A. Not at all.

24 Q. All right. In your -- in your application,
25 Number 10, you also mentioned after ineffective assistance

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1 of counsel a failure to investigate by Ms. Kneece. What do
2 you mean by that?

3 A. Failure to investigate on the date of
4 November 23rd, 2013, a letter was sent out to Ms. Kneece. I
5 have that letter right here.

6 Q. Right.

7 A. From the witness that's, in fact, Marcus Lambert,
8 my co-defendant, the letter is as written here:

9 Ms. Margaret Ann Kneece, this is Marcus Lambert, I
10 am writing you today to notify you about my co-defendant,
11 Daquarius Holmes. He had nothing to do with the crime that
12 happened on the night of July 17th, 2013, that he is being
13 accused of. The investigators that interviewed me forced me
14 to say he did it because he was in the car with me when I
15 got caught. He was just getting a ride. That was it. He
16 didn't know what I did before I picked him up, and my other
17 co-defendant up. I hope this can help my friend out in any
18 way when we go to court. I'm going to take full
19 responsibility for my actions.

20 Q. Okay.

21 A. So when I'm saying failure to investigate, she
22 failed to investigate this letter that was sent to her. And
23 when she let me know, once she got this letter, I contacted
24 her and she let me know that she had got a letter from my
25 co-defendant pretty much stating that it's exculpatory and

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1 that it's pretty much acquitting me from the crime.

2 I asked her to file a motion for dismissal. She
3 never moved for a motion for dismissal -- I mean, excuse
4 me -- a motion for dismissal the entire 20 months that I sat
5 inside the county jail. She never moved for a motion for
6 dismissal. She never filed for no type of acquittal on my
7 behalf, after she received this letter. So that's what I'm
8 speaking about when I say failure to investigate.

9 Q. Well, now did she hire an investigator, Don Myers,
10 in this matter?

11 A. I believe she did hire an investigator, but that
12 was for a potential witness. That had nothing to do with
13 the letter and the -- the key witness inside this case.

14 Q. Okay. So he didn't -- so Don Meyers nor she
15 investigated the witness, Marcus Lambert, and his statement
16 to her by correspondence, right?

17 A. Not to my knowledge.

18 Q. Okay. All right. Anything else on the failure to
19 investigate that you feel she did not perform adequately in?

20 A. Most definite ---

21 Q. Any other investigations that she needed to do?

22 A. Yeah, most definitely.

23 Q. What's that?

24 A. As far as my indictments, okay. As far as my
25 indictments go, I don't understand how I got indicted.

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1 Q. Okay.

2 A. Like I say, it takes a preliminary hearing for me
3 to even get indicted. And they couldn't show and approve
4 (sic) that a preliminary hearing was held. So they didn't
5 show me no type of evidence that was on the State's behalf
6 being held against me to indictment me, okay.

7 Q. Okay.

8 A. And she failed -- I pretty much feel as if she
9 failed to investigate on the behalf of this letter. I feel
10 as if she failed to investigate on the behalf that I told
11 her that I had another witness that was in the county and
12 she pretty much denied another individual, another inmate at
13 the time, for being my witness.

14 Q. All right. Any other failure to investigate
15 issues or is that it? And if that's it, I assume that maybe
16 enough, but is there anything else under failure to
17 investigate?

18 A. One moment, please.

19 Q. Sure.

20 (A brief pause in the proceedings.)

21 A. Yes.

22 Q. What's that?

23 A. I feel as if she failed to investigate the entire
24 case, to be honest with you. I feel as if she just take the
25 State's word on the case, you know, and...

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1 Q. Okay.

2 A. And it's something -- there's something that I
3 want to read to you. There's something that I want -- I
4 want -- I want to preserve for the record.

5 Q. May I see it briefly, please?

6 A. Yes, you can.

7 Q. (Counsel examines documents.) Is it a case?

8 A. Most of them are cases.

9 Q. Okay.

10 A. Most of them are cases.

11 Q. Okay. Without getting into the details of the
12 case, what are the cases that you're referring to? I mean,
13 and you can speak about it generally, I guess, but what --
14 you're referring to case law; is that correct?

15 A. Yes.

16 Q. Okay. What case law are you referring to?

17 A. I'm referring to case law 46USTC68 (sic) -- excuse
18 me.

19 Q. What's the name of the case?

20 A. Kimmel -- Kimmelman versus Morrison and Rompilla
21 versus Beard, 47U.S.365-106-S.CT (sic).

22 Q. And how does that relate to this PCR today?

23 A. Because the Court ruled the failure to investigate
24 cannot be excused by the lawyers other evidence which were
25 meager and superficial.

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1 Q. Okay. So you don't feel like she's -- let me
2 rephrase that.

3 Do you feel like she has -- she carried her burden
4 to investigate properly?

5 A. No, I don't.

6 Q. Okay. Any ---

7 A. I feel as if -- I feel as if she carried her
8 burden to investigate only on her and the State's extent,
9 not on my extent, to the extent that she was comfortable
10 with.

11 Q. Okay. All right. In terms of the failure to
12 explain the Alford plea, did she explain the Alford plea --
13 what an Alford plea is to you?

14 A. Yes.

15 Q. Okay. Did she tell you not to plead under
16 Alford -- and I don't want -- we've already touched on this,
17 but just to be brief in order of your Number 10 in your
18 allegations. Do you feel like she explained the Alford plea
19 properly to you?

20 A. I feel as if she explained it the best way she
21 could.

22 Q. Okay.

23 A. But I don't feel as if that was in her best
24 interest for her, because she didn't make sure I went
25 through with the Alford plea, because when I signed the

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1 sentencing sheet that was scratched out on the top.

2 Q. Okay. Now, finally, in Number 10, you mentioned
3 plea negotiation. What is your -- what is your allegations
4 against her in terms of a lack of plea negotiation properly
5 with the State? Did she negotiate properly with the State
6 for a plea or do you feel like she was deficient in her
7 plea -- in her negotiations with the State on your best
8 interest? Well, how would you -- strike that.

9 How would you describe her plea negotiations with
10 the State?

11 A. I feel as if it was deficient, because even when
12 we went to court and I did went with the plea, and she told
13 me the cap, you know. She didn't -- she didn't -- she
14 didn't push for that. I even have that in some of my
15 transcripts here today. When you read my transcripts, and
16 my transcripts said that, He's doing that 15. And she told
17 me before I even went in court that I was -- that she was
18 going to shoot for 10 with me, you know. And she went in
19 there and did the -- the -- she went in and did the
20 opposite. She went and did the opposite.

21 So I feel as if that was the whole setup. I feel
22 as that was deficient. And if you don't mind, I would like
23 to elaborate more on failure to investigate.

24 Q. Well, let me ask you a question.

25 You mentioned earlier that she failed to

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1 investigate. What additional information do you have now
2 that you feel like she failed to investigate?

3 A. I have some case laws that I really want to
4 preserve for the record.

5 Q. Well, I think you can state the case law, and
6 briefly tell what it is, but, you know, go ahead and do
7 that.

8 A. All right.

9 Q. With the Judge's indulgence.
10 What case law are you referring to?

11 A. Case law I'm referring to is Elmore -- Elmore
12 versus Ozmint, 661F3D18854 (sic): When the Court found
13 counsel performance was deficient when they were lulled into
14 action -- inaction belief by -- the belief that the police
15 were above reproach, at 85354-861 (sic), the Fourth Circuit
16 granted on an ineffective assistance of counsel claim based
17 on a failure to investigate.

18 Next case law, Anderson versus Johnston,
19 338F3D382.392 Fifth Circuit 2003, (sic), Counsel was
20 ineffective when he relied exclusively on investigative work
21 of the State and based his own pretrial investigation on
22 assumptions divined from a review of the State's file.

23 Pretty much something similar with what Ms. Kneece
24 did in my case.

25 Now, next case is failure ---

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1 MR. JAMES: Your Honor, I'm going to respectfully
2 object. If Counsel wants to argue case law to the Court,
3 that's perfectly fine. But at this point we're just
4 articulating additional -- I wouldn't call them allegations,
5 but it's not probative.

6 THE COURT: Yes, sir. Okay. Sustained.

7 BY MR. FOWLER:

8 Q. Well, let's -- let's -- you've entered that into
9 the record in the transcript. So let's -- let's talk about
10 Number 11 on your application.

11 You said -- and you touched on this earlier with
12 the failure to investigate. So if there's anything new that
13 you did not mention earlier about the failure to investigate
14 on this, specifically, please bring it up now and I'll try
15 to question you appropriately.

16 You state that the attorney failed to investigate
17 co-defendant's statement that applicant was not involved in
18 the crime committed.

19 Now, in the transcript she says that she hired Don
20 Meyers to do an investigation. So, just to be clear, are
21 you saying that Don Meyers, to the best of your knowledge,
22 did not investigate Mr. Lambert and his statement?

23 A. To my knowledge, I don't think that he
24 investigated him.

25 Q. Okay. Did she investigate Marcus Lambert and

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1 discussed with him issues -- and discussed with him what she
2 mentioned?

3 A. No, not that I know of.

4 Q. Okay. All right. Is there -- you -- we've gone
5 over Number 10 and 11 in your application and each of those
6 elements that you presented today.

7 Is there anything else that you feel needs to be
8 brought to the Court's attention. You mentioned the case
9 law. Is there anything else that you feel in Ms. Kneece's
10 representation of you that you feel that the Court needs to
11 be knowledgeable about today? And you've gone over, I
12 believe, what you articulated in the application.

13 A. Most definitely. The reason why Marcus Lambert is
14 here today, you know, pretty much because he has some
15 information, you know.

16 Q. Okay. And we're calling him as a witness in the
17 near future. Is there anything else about...

18 A. Yes. And I would like -- I would like to pretty
19 much preserve that case law, as well, which would be
20 17-27-64 ---

21 MR. JAMES: Objection, Your Honor.

22 THE COURT: Sustained. Sustained.

23 THE WITNESS: 17-27 ---

24 MR. JAMES: Objection.

25 THE COURT: Sustained. Proceed, sir.

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1 BY MR. FOWLER:

2 Q. All right. You've mentioned the case law and the
3 objection has been sustained as to you reading any more, is
4 my understanding.

5 THE COURT: Yes, sir.

6 BY MR. FOWLER:

7 Q. I guess, my question was: Is there anything about
8 her representation, other than what you've articulated in
9 this application, that feels you need to be -- need to be
10 brought to the Court's attention?

11 A. Yes. My involuntary guilty plea. As far as me
12 failing to sign the waiving of indictments on the charges
13 that I'm currently serving time for as we speak.

14 Q. Okay. Do you feel like that's her -- that was her
15 fault that she did not adequately explain that to you?

16 A. Most definitely.

17 Q. Okay. Is there anything else, other than what
18 you've mentioned in this application and just then?

19 A. Other than the oral facts of the witness.

20 Q. Okay. Okay. Very good. And, now, you're
21 familiar with what we're doing today as a PCR, correct? And
22 your understand -- is that correct?

23 A. Yes.

24 Q. Okay. And you understand that if we -- my
25 understanding is that if you win the PCR you go back and

DAQUARIUS HOLMES - DIRECT BY MR. FOWLER

1 face the charges again; is that correct?

2 A. Yes.

3 Q. Okay. How long did you get for sentencing on this
4 case? When she represented you, how long did she get -- how
5 long -- how long did you get in this plea?

6 A. Fifteen years.

7 Q. Okay. And the judge that day explained to you all
8 the amount of years that you could get; is that correct?

9 A. Yes, sir.

10 Q. Okay. And you're willing to go -- continue on
11 with this PCR even though you may get more years if you win
12 the PCR?

13 A. Most definitely.

14 Q. Okay.

15 MR. FOWLER: And if I may approach?

16 THE COURT: Yes, sir.

17 BY MR. FOWLER:

18 Q. And I'm referring to the transcript on Page 7, you
19 mentioned, this is where the Judge speaks. Would you read
20 that?

21 A. I could send you to prison for 75 years. Do you
22 understand that?

23 I answered, Yes, sir.

24 Q. And you're willing to go forward with this PCR
25 today in terms of protecting your rights and going forward,

DAQUARIUS HOLMES - DIRECT BY MR. FOWLER

1 correct?

2 A. Most definitely.

3 Q. Okay. Very good.

4 MR. FOWLER: Your Honor, I have no further
5 questions.

6 THE COURT: Okay. Mr. James?

7 MR. JAMES: Nothing from the State, Your Honor.

8 THE COURT: Thank you, sir. I appreciate it.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. Fowler?

11 MR. FOWLER: Yes, sir, Your Honor, I'd like call
12 Mr. Marcus Lambert to the stand.

13 THE COURT: Okay.

14 THE CLERK: Do you solemnly swear or affirm that
15 that the testimony you are about to give is the truth, the
16 whole truth, and nothing but the truth, so help you God?

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Thank you. Please be seated and then
19 state and spell your full name for the record.

20 THE WITNESS: Marcus Lambert. M-A-R-C-U-S,
21 L-A-M-B-E-R-T.

22 MARCUS LAMBERT, having been duly sworn,
23 testified as follow:

24 DIRECT EXAMINATION

25 MR. FOWLER: And, Your Honor, may I approach the

MARCUS LAMBERT - DIRECT BY MR. FOWLER

1 witness several times?

2 THE COURT: Yes, sir.

3 BY MR. FOWLER:

4 Q. Mr. Lambert, my name is Steve Fowler, and I
5 represent Mr. Daquarius Holmes, you're aware of that,
6 correct?

7 A. Yes.

8 Q. And you're familiar with Mr. Holmes, are you?

9 A. Yeah.

10 Q. Okay.

11 MR. FOWLER: If I may approach?

12 THE COURT: Yes, sir.

13 BY MR. FOWLER:

14 Q. This is something that's already been provided to
15 the State, I'm showing two pages.

16 Is that your handwriting?

17 A. Yes, sir.

18 Q. Okay. And what is -- and could you describe this
19 document?

20 A. Basically, it's a letter to his lawyer, basically,
21 trying to let them know that ---

22 Q. Well, let -- let -- let me just kind of take it
23 one question at a time, okay?

24 A. Uh-huh.

25 Q. What is -- what is this portray? What is this?

MARCUS LAMBERT - DIRECT BY MR. FOWLER

1 Is it an envelope?

2 A. It's a -- envelope -- yeah. A copy of it.

3 Q. Okay. And who's it from?

4 A. Marcus Lambert.

5 Q. Okay. And is that your handwriting?

6 A. Yes, sir.

7 Q. And what is your address?

8 A. Right there it said 2394 Browns Ferry Road,
9 Georgetown, South Carolina.

10 Q. Okay. And was that your address in November of
11 2013?

12 A. Yes, sir.

13 Q. Okay. And who was it addressed to?

14 A. Margaret Ann Kneece.

15 Q. Okay. And what address did you send it to?

16 A. 38 Blackgum Road, Suite C, Pawleys Island,
17 South Carolina.

18 Q. Okay. And is that your handwriting both in the
19 return and addressed to?

20 A. Yes, sir.

21 Q. Okay. And could you -- what date was it
22 postmarked here?

23 A. It says 26, November 2013.

24 Q. Charleston, right?

25 A. Yes, sir.

MARCUS LAMBERT - DIRECT BY MR. FOWLER

1 Q. Okay. Now, before we get into this, and this has
2 again been provided to the State. What is the second
3 document that I'm showing to you?

4 A. It's a letter to Ms. Margaret Kneece.

5 Q. Okay. Was that enclosed in the envelope that you
6 presented?

7 A. Yes, sir.

8 Q. Okay. Is it entirely in your handwriting?

9 A. Yes, sir.

10 Q. Okay. And when was it dated?

11 A. 11/23/13.

12 Q. And is that your signature down at the bottom?

13 A. Yes, it is.

14 Q. Okay. Does this accurately reflect what was sent
15 to her that day?

16 A. Yes, sir.

17 Q. Okay.

18 MR. FOWLER: Your Honor, at this time I'd like to
19 move into evidence the two pages that I showed Mr. Lambert.

20 MR. JAMES: No objection, Your Honor.

21 THE COURT: Without objection.

22 (WHEREUPON, Applicant's Exhibit Number 1 was
23 admitted into evidence.)

24 MR. FOWLER: All right. I'll be providing one to
25 the Court Reporter, and to the Judge, and the State already

MARCUS LAMBERT - DIRECT BY MR. FOWLER

1 has a copy. If I may approach?

2 THE COURT: Yes, sir.

3 MR. FOWLER: Thank you, sir. All right.

4 MR. JAMES: And, just to be clear in my own notes,
5 these are going in together as a single exhibit?

6 MR. FOWLER: Yes, that's correct, because it's the
7 letter and accompanying what was inside the letter.

8 MR. JAMES: Just making sure, thank you.

9 MR. FOWLER: Thank you. And that will be marked a
10 what?

11 COURT REPORTER: Exhibit 1.

12 MR. FOWLER: Exhibit 1. Okay. So we'll be
13 referring to this, both pages, as Exhibit 1. Okay.

14 BY MR. FOWLER:

15 Q. It's a fairly -- to me it's a fairly brief
16 letter -- one, two, three, four, five, six, seven, eight --
17 basically eight -- eight-and-a-half lines.

18 Could you read from the date to your signature,
19 please?

20 A. Eleven -- 11/23/13, Dear Ms. Margaret Ann Kneece,
21 this is Marcus Lambert, I am writing you today to notify you
22 about my co-defendant, Daquarius Holmes. He had nothing to
23 do with the crime that happened on the night of July 17th,
24 2013, that he is being accused of. The investigator that
25 interviewed me forced me to say he did, because he was in

MARCUS LAMBERT - DIRECT BY MR. FOWLER

1 the car with me when I got caught.

2 He was just getting a ride, that was it. He
3 didn't know what I did before I picked him up -- before I
4 picked him and my other co-defendant up. I hope this can
5 help my friend out of -- out in any way when we go to court.
6 I'm going to take full responsibility for my actions.
7 Thanks.

8 Q. Okay. Now, I'm going to take your copy, if you
9 don't mind, and just go over this, the substantive parts of
10 it, anyway, I believe.

11 It's addressed to Ms. Kneece, correct?

12 A. Yeah.

13 Q. Okay. And you basically state who you are,
14 correct?

15 A. Yeah.

16 Q. Okay. And you're basic -- and in the letter you
17 say that he had nothing to do with this crime that happened
18 on the night of July 17th, 2013?

19 A. Yes, sir.

20 Q. Is that correct?

21 A. Yes, sir.

22 Q. Okay. Now, this is in November of '13, and you
23 addressed this to Ms. Kneece, correct?

24 A. Yes, sir.

25 Q. Did she ever contact you after the 13th after --

MARCUS LAMBERT - DIRECT BY MR. FOWLER

1 November 23rd?

2 A. I don't believe so.

3 Q. Okay. Well, did she go over your -- and the
4 transcript that's been entered in is on June 11th, 2015. So
5 this letter was sent several years before, correct? Before
6 he pled, right?

7 A. Yes.

8 Q. Okay. How did she -- did she contact you at all?
9 I mean, and just to be clear, I mean, what did she do?

10 A. Oh, I can't remember. I can't recall her
11 contacting me at all.

12 Q. Okay. Did her investigator, Don Meyers, contact
13 you?

14 A. I can't remember.

15 Q. Okay. So you don't know if they contacted you?

16 A. No, I don't think they did, though.

17 Q. Okay. The investigator that interviewed me forced
18 me to say that he did because he was in the car with me.

19 Now, what investigator are you talking about in
20 this letter?

21 A. I forgot his name.

22 Q. Well, who was he with or she with? Who was the
23 investigator you're referring to here?

24 A. I forgot his name. I think he retired. I forgot
25 his name. I know it's on a warrant. I forgot his name.

MARCUS LAMBERT - DIRECT BY MR. FOWLER

1 Q. Well, who -- what department?

2 A. I think he was a sheriff at the time, or something
3 like that, or detective, or something like that.

4 Q. Okay. So you're saying he forced you -- that,
5 according to this letter, you say ---

6 A. Yeah, yeah.

7 Q. Pardon me?

8 A. Yeah, yeah. Basically.

9 Q. Okay. How did he force you?

10 A. Basically, letting me know like, Yeah, you're
11 going to get life in prison or say the guy right here was
12 with you.

13 Q. Okay. So did he -- so the person -- the
14 investigator who interviewed you give you incentive to turn
15 on Mr. Holmes?

16 A. Yes, sir.

17 Q. Okay. When I got caught -- okay. So now
18 you're -- and without getting into too much of the substance
19 here of the case, you're just saying -- you said in the
20 letter he was -- Mr. Holmes was just getting a ride, that
21 was -- if he didn't know -- he didn't know what you did
22 before you picked him up, right?

23 A. No, he didn't.

24 Q. Okay. So -- and being brief, you're saying that
25 he was an innocent by -- how would you describe his -- his

MARCUS LAMBERT - DIRECT BY MR. FOWLER

1 participation or any -- any participation?

2 A. There wasn't no participating, it was just him
3 being a bystander, and I stopped the car and asked him if he
4 needed a ride, and I gave him a ride, basically.

5 Q. All right. Well, with that information given to
6 Ms. Kneece, did you tell Mr. Holmes about this letter?

7 A. No.

8 Q. Okay. Why didn't you tell ---

9 A. I didn't have any contact with him.

10 Q. Okay. So you didn't have -- so how long did you
11 not have any contact with him? Years or months or what?

12 A. We got locked up in 2013. So since then -- since,
13 like -- like the first couple of weeks since we got locked
14 up, we got separated.

15 Q. Okay. So there was really no opportunity for you
16 to address the Court on his behalf?

17 A. No.

18 Q. Okay. And did he contact you about speaking for
19 him?

20 A. No.

21 Q. Okay. And why -- why -- and you may have answered
22 this just a minute ago. Why did he not -- why do you feel
23 like he didn't contact you to investigate this letter more,
24 because you were separated?

25 A. I mean, no, I wouldn't say that, because we don't

MARCUS LAMBERT - DIRECT BY MR. FOWLER

1 got no type of way to get in touch with each other, we
2 inmates.

3 Q. All right. Why did you feel like it was necessary
4 to contact Ms. Kneece with this information?

5 A. Because I felt like he didn't deserve to be in
6 this position that he in now and he was innocent.

7 Q. Okay.

8 MR. FOWLER: If I may have a moment, Your Honor?

9 THE COURT: Yes, sir.

10 MR. FOWLER: Your Honor, just a couple of more
11 questions.

12 THE COURT: Yes, sir.

13 BY MR. FOWLER:

14 Q. Okay. Was the investigator that contacted you
15 Melvyn Garrett?

16 A. Yes.

17 Q. Okay. And was he with ---

18 A. Another white dude.

19 Q. Yeah. Was he with the Georgetown Police
20 Department -- no, was he with the Georgetown Sheriff?

21 A. I -- I -- I guess so.

22 Q. Okay. All right. But he -- he's the one that
23 you're referring to in the letter, correct?

24 A. Yes, sir.

25 Q. All right. And his name is also on the arrest

MARCUS LAMBERT - DIRECT BY MR. FOWLER

1 warrant in the documentation, correct?

2 A. Yes, sir.

3 Q. Okay. Very good. Now, this letter -- this letter
4 is -- going back to the letter -- and it's pretty much the
5 final question, I guess -- this letter was from November of
6 2013. That was -- I'm not good at math, but this is
7 November of 2019, so six years ago. Is this the way you
8 currently feel about Mr. Holmes?

9 A. Yes, sir.

10 Q. Why do you feel that way?

11 A. I wouldn't -- I wouldn't want to be here if I was
12 innocent.

13 Q. Okay. All right. So you feel like he's innocent
14 of the charges?

15 A. Yes, sir.

16 Q. Okay. Did he ever -- did he ever talk to you
17 about why he pled guilty or anything like that?

18 A. No, sir.

19 Q. Okay. Do you feel like he should have pled guilty
20 with knowing what you know?

21 MR. JAMES: Objection, relevance.

22 THE COURT: Sustained.

23 BY MR. FOWLER:

24 Q. Don't answer that question.

25 Anything else about the letter that you feel is

MARCUS LAMBERT - CROSS BY MR. JAMES

1 relevant?

2 A. No, sir.

3 MR. FOWLER: Just a moment, Your Honor.

4 THE COURT: Yes, sir.

5 MR. FOWLER: All right. I after conferring with
6 my client for a little bit asking him several questions and
7 talking to him we have no further questions for this
8 witness.

9 THE COURT: All right. Mr. James?

10 CROSS-EXAMINATION

11 BY MR. JAMES:

12 Q. Good afternoon, Mr. Lambert.

13 A. How are you doing?

14 Q. I'm doing all right. How about yourself?

15 A. All right.

16 Q. You and I have never spoken before, have we?

17 A. No.

18 Q. So you initially gave a statement to law
19 enforcement inculcating Mr. Holmes, correct?

20 A. Say that again.

21 Q. You initially gave a statement to law enforcement
22 inculcating, Mr. Holmes, correct?

23 A. Yes.

24 Q. And then you wrote this letter that is Applicant's
25 Exhibit Number 1 to Ms. Muffy Kneece, correct?

MARCUS LAMBERT - CROSS BY MR. JAMES

1 A. Yes.

2 Q. Stating that law enforcement made you do that,
3 correct?

4 A. Yes.

5 Q. Was anybody threatening you at the time you wrote
6 this letter?

7 A. Threatening me with a life sentence.

8 Q. Was anybody threatening you to get you to write
9 this letter?

10 A. Oh, no. That's what you meant. I thought you was
11 still talking about the detective.

12 Q. We'll get to that here in just a moment.

13 A. No, not threatening ---

14 Q. But as to this letter?

15 A. No.

16 Q. Did anybody promise you anything in order to you
17 make you write this letter?

18 A. No, sir.

19 Q. Did anybody suggest to you that perhaps some good
20 thing would come your way if you wrote this letter?

21 A. No, sir.

22 Q. Did you talk to anybody at all about writing this
23 letter before you wrote this letter?

24 A. No, sir.

25 Q. Or when you were writing this letter?

MARCUS LAMBERT - CROSS BY MR. JAMES

1 A. No, sir.

2 Q. Were you represented by counsel at the time you
3 wrote this letter?

4 A. I was represented by, I think, a public defender,
5 yeah.

6 Q. Do you recall who?

7 A. I can't even remember the dude name, it's been so
8 long. I just remember the next attorney that my family
9 hired.

10 Q. Who did your family ultimately hire?

11 A. Julian Hanna.

12 Q. But ultimately you were represented by counsel
13 over the course of dealing with your own charges, right?

14 MR. FOWLER: Objection, Your Honor, relevance. I
15 mean...

16 MR. JAMES: It gets to the ---

17 THE COURT: Hold on. Yes, sir.

18 MR. FOWLER: You know, I mean, this is a letter,
19 and we didn't go -- we didn't expand the scope of who was
20 represented by counsel or anything like that. The scope of
21 his testimony has been and is that he wrote this letter for
22 Mr. Holmes and he has a feeling, even currently, that this
23 is -- that this is the way his stance is and that he told
24 Ms. Kneece.

25 Him being represented by counsel, and these other

MARCUS LAMBERT - CROSS BY MR. JAMES

1 things, I feel like there's a relevance issue, Your Honor.

2 THE COURT: Mr. James?

3 MR. JAMES: He asked questions about whether or
4 not he was ever contacted by Muffy Kneece or her staff. If
5 he is represented by counsel, being that she is also an
6 attorney, that presents some complications. And so whether
7 or not he was represented by counsel is highly relevant.

8 THE COURT: I'll allow it, sir. Overruled.

9 BY MR. JAMES:

10 Q. And so you were represented by counsel over the
11 course of dealing with your own charges?

12 A. Yes.

13 Q. All right. At any point after writing this letter
14 did you recant the contents of this letter to anybody?

15 A. No, sir.

16 Q. After writing this letter did you ever tell
17 anybody else that Mr. Holmes was, in fact, the participant
18 in the crimes alleged?

19 A. No, sir.

20 Q. Did you ever have a conversation with an
21 investigator, Steve Brown?

22 A. I can't remember.

23 Q. You can't recall?

24 A. No.

25 Q. Okay. So you would not recall recanting anything

MARCUS LAMBERT - CROSS BY MR. JAMES

1 to Mr. Steve Brown?

2 A. No, I can't remember.

3 Q. I asked you a series of questions in the context
4 of this letter. I'm going to ask you a similar series of
5 questions in the context of us here today in this courtroom.

6 A. Okay.

7 Q. Has anybody threatened you in order to elicit your
8 testimony here today?

9 A. No, sir.

10 Q. Has anybody promised you any kind of reward in
11 exchange for your testimony today?

12 A. No, sir.

13 Q. Has anybody hinted at the possibility that good
14 things may happen for you in exchange for your testimony
15 here today?

16 A. No, sir.

17 Q. And your version of events was that the car was
18 already stolen at the time you picked up Mr. Holmes?

19 A. No, I stole the car.

20 Q. Well, that's what I'm saying. You had already
21 stolen the car?

22 A. Yeah.

23 Q. And then you found Mr. Holmes?

24 A. Yeah.

25 Q. And he was just on the side of the road?

MARCUS LAMBERT - CROSS BY MR. JAMES

1 A. Yeah, he was walking.

2 Q. Did you know him?

3 A. Yeah, I knew him.

4 Q. Okay. So you pulled over and you picked him up?

5 A. I asked him if he needed a ride, he said, Yeah.

6 Q. Was this before or after the stop at the gas
7 station?

8 A. This was after the stop at the gas station.

9 Q. Okay. Was this before or after law enforcement
10 began their pursuit?

11 A. This was before law enforcement began their
12 pursuit.

13 Q. You stopped at the gas station. You leave from
14 there, you see Mr. Holmes, you pick him up, you keep going
15 down the road, and then all of a sudden you got blue lights
16 ablaze behind you?

17 A. No, it ain't happen like that.

18 Q. Oh, okay. Well, how did it happen?

19 MR. FOWLER: Your Honor, I'm going to object
20 again. We're not going on the merits of the case. We're
21 basically saying that he wrote this letter and that that's
22 the way he stands right now in his position with Mr. Holmes.

23 I would -- I would ask that that last testimony --
24 that that last statement be stricken by Attorney General
25 James, and he not talk about the actual facts of the case,

MARCUS LAMBERT - CROSS BY MR. JAMES

1 necessarily.

2 THE COURT: Mr. James?

3 MR. JAMES: The probative value of the letter is
4 inextricably linked to the probative value and credibility
5 of his version of events on the day in question.

6 So, if he gives a version of events, and it don't
7 make any sense, then certainly the letter loses some of its
8 credibility, as well.

9 THE COURT: I'll allow it, sir.

10 BY MR. JAMES:

11 Q. What actually happened that day?

12 A. Well, after I left the gas station, after Mr. --
13 after my victim got away, after I left the gas station, I
14 went to go pick up my clothes from a girl house. Once I
15 picked up my clothes, I seen him walking, and I asked him if
16 he needed a ride. I was going to drop him off real quick
17 before I headed out of town. And when I got inside
18 Johnsonville, that's when the blue lights got on -- on the
19 back of me.

20 Q. And at that point there was no stopping without
21 surrendering to law enforcement, correct?

22 A. No.

23 Q. And you were in the car?

24 A. Yeah.

25 Q. And Mr. Holmes was in the car?

MARCUS LAMBERT - CROSS BY MR. JAMES

1 A. Yes, sir.

2 Q. And Mr. Quantae Priest was in the car?

3 A. Yes, sir.

4 MR. JAMES: Beg a moment of the Court's
5 indulgence?

6 THE COURT: Yes, sir.

7 (A brief pause in the proceedings.)

8 BY MR. JAMES:

9 Q. Mr. Lambert, you indicated that you could not
10 remember earlier, so I will be a little more specific. Do
11 you recall interviewing with the Solicitor' Office and an
12 investigator there on January 15th, 2014?

13 MR. FOWLER: Your Honor, once again, I would like
14 to ---

15 THE WITNESS: I can't remember.

16 THE COURT: Hold on.

17 MR. FOWLER: Your Honor, I'd like to object to the
18 relevance. That does not have anything to with the letter.
19 It doesn't have anything to do with his contact with
20 Ms. Kneece. It doesn't have anything to do with any
21 attorney's contact with Ms. Kneece. That is clearly outside
22 the scope of this hearing and her representation of
23 Mr. Holmes. So I'd like to object to the question at this
24 point.

25 THE COURT: I assume you're doing it for

MARCUS LAMBERT - CROSS BY MR. JAMES

1 credibility purposes, sir?

2 MR. JAMES: Your Honor, and this is something I
3 will get into in greater detail with the State's witness or
4 Applicant's next witness, depending on how she's called.
5 But the States's position is going to be that Mr. Lambert
6 recanted his recantation.

7 THE COURT: Okay. I'll allow it ---

8 MR. JAMES: In that interview and, therefore, it
9 is relevant.

10 THE COURT: I'll allow it, sir. Go ahead.

11 MR. JAMES: All right.

12 THE COURT: The question was: Do you recall a
13 January '14 meeting?

14 BY MR. JAMES:

15 Q. Do you recall a January 15th, 2014 meeting with an
16 investigator from the Solicitor's Office by the name of
17 Steve Brown?

18 A. No, I don't remember.

19 Q. So you don't recall recanting your recantation?

20 A. No, sir.

21 Q. Have you ever recanted your recantation?

22 A. Not that I can recall.

23 Q. Not that you can recall?

24 A. No, sir.

25 Q. Okay. So you don't deny it, you just can't

MARCUS LAMBERT - REDIRECT BY MR. FOWLER

1 remember?

2 A. I just can't remember.

3 Q. Okay.

4 MR. JAMES: No further question for this witness.

5 THE COURT: All right, sir.

6 MR. FOWLER: Your Honor, may I speak with my
7 client for just a moment, please?

8 THE COURT: Yes, sir.

9 MR. FOWLER: Your Honor, just a moment, please?

10 THE COURT: Yes, sir.

11 (A brief pause in the proceedings.)

12 REDIRECT EXAMINATION

13 BY MR. FOWLER:

14 Q. Would this letter -- if -- would Mr. -- do you
15 know if Mr. -- did you take -- let -- let ---

16 MR. FOWLER: Just a moment, Your Honor, please?

17 THE COURT: Yes, sir.

18 (A brief pause in the proceedings.)

19 MR. FOWLER: Your; Honor, after conferring with my
20 client and discussing some potential questions, no
21 further -- no further questions for this witness, Your
22 Honor.

23 THE COURT: So there was no redirect, then, was
24 there? Or was there? Did he ask anything?

25 MR. JAMES: He didn't ask a question. I can't put

1 his hand up if I wanted to.

2 THE COURT: That's what I thought. Thank you,
3 sir. Thank you.

4 Mr. Fowler?

5 MR. FOWLER: Your Honor, after speaking with my
6 client, we have no further witnesses at this time.

7 THE COURT: All right, sir.

8 MR. FOWLER: I would like a sheet of paper from
9 the Court, or a blank sheet of paper, if at all possible.

10 THE COURT: Sure. Mr. James, Mr. Fowler, you
11 don't mind if take maybe five minutes so I can call Sumpter
12 just to make sure that I'm straight there about anything
13 that might have happened today?

14 MR. JAMES: We're here at the Court's leisure,
15 Your Honor. Take all the time you need.

16 THE COURT: Just give me five minutes.

17 THE BAILIFF: Can Mr. Lambert be excused?

18 MR. FOWLER: Your Honor, can we go back on the
19 record for just a moment?

20 THE COURT: Yes, sir.

21 MR. FOWLER: I've been asked if Mr. Lambert can be
22 excused.

23 MR. JAMES: I have no objection to sending
24 Mr. Lambert back to the South Carolina Department of
25 Corrections.

1 MR. FOWLER: Your Honor, no objection. He can
2 proceed back as far as a witness.

3 THE COURT: All right. Yes, sir.

4 (WHEREUPON, a break was held from 4:44 p.m. until
5 4:58 p.m.)

6 THE BAILIFF: All rise.

7 THE COURT: We're back.

8 MR. FOWLER: Your Honor, it's my understanding
9 that we're back on the record.

10 THE COURT: Yes, sir.

11 MR. FOWLER: I've spoken with my client and spoke
12 briefly with his family outside and we have no further
13 witnesses at this time.

14 THE COURT: Okay. Sir.

15 MR. JAMES: The State calls Muffy Kneece, Your
16 Honor.

17 THE CLERK: Do you solemnly swear or affirm that
18 the testimony you're about to give is the truth, the whole
19 truth, and nothing but the truth, so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Thank you. Please be seated and state
22 and spell your full name for the record.

23 THE WITNESS: Margaret Ann Kneece.

24 M-A-R-G-A-R-E-T, A-N-N, K-N-E-E-C-E. But everybody calls me
25 Muffy. I didn't pick it.

1 MARGARET ANN KNEECE, having been duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. JAMES:

5 Q. Good evening, Ms. Kneece.

6 A. Good evening.

7 Q. If you want, I can wait a moment and let yourself
8 get settled.

9 A. I think I'm good.

10 Q. All right. Are you an attorney licensed to
11 practice in the State of South Carolina?

12 A. I am.

13 Q. All right. And for how long have you been so
14 licensed?

15 A. Since 1995.

16 Q. And since 1995 what portion of your practice has
17 been criminal law?

18 A. Eighty percent. I'm a former prosecutor, as well.

19 Q. Did you represent Mr. Daquarius Holmes?

20 A. I did.

21 Q. How did you come to represent him?

22 A. I was appointed.

23 Q. Were you working through the Public Defender's
24 Office or were you appointed as a conflict counsel?

25 A. As a -- I have a contract with the South Carolina

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1 Commission of Indigent Defense.

2 Q. About how many times did you meet with Mr. Holmes
3 in the course of your representation?

4 A. I actually met with him over 14 times, but I do
5 something that I don't know another public defender --
6 contract defender does, is I give all my clients my cell
7 phone numbers. I have them call in ---

8 MR. FOWLER: Objection, Your Honor, relevance.
9 She's going into -- she's answered the question, it's
10 meaning, but the relevance of cell phone numbers is not a
11 need.

12 THE COURT: I think it goes to access and
13 accessibility. The access of the client's talking to her.

14 What's your position, Mr. James?

15 MR. JAMES: It goes to her accessibility and
16 general availability to her client. Of course, the
17 representation to establish her general effectiveness.

18 THE COURT: I'll allow it. Overruled, sir.

19 Proceed, Mr. James.

20 THE WITNESS: So I met with him over 14 times.
21 And I have them call in at least twice a week. If they have
22 any questions, they can reach me, unless I'm in a trial.
23 And then sometimes it's convenient for me, as well, in case
24 I have a question I need to ask them in review of their
25 discovery. We had very frequent communication.

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1 BY MR. JAMES:

2 Q. Did you file motions pursuant to Rule 5 and Brady?

3 A. They are filed by the Public Defender's Office as
4 part of my contract. So they were filed even before I even
5 get an official order of appointment.

6 Q. But ultimately did you, either, directly from the
7 Solicitor's Office or through the Public Defender's Office
8 receive material responsive to those motions?

9 A. Yes, they are were filed on my behalf. Yes, I
10 did.

11 Q. Did you review those materials?

12 A. Extensively.

13 Q. Did you review those materials with your client,
14 Mr. Holmes?

15 A. I did.

16 Q. I'm sorry, you said you did?

17 A. Yes.

18 Q. Okay. In summary, briefly, what was the State's
19 case against your client?

20 A. He was charged with assault and battery first
21 degree, possession of a fire arm during the commission of a
22 violent crime, armed robbery, kidnapping, criminal
23 conspiracy, grand larceny, and burglary first.

24 In a nutshell, it was alleged that Marcus Lambert,
25 Quantae Priest and Daquarius Holmes knocked on a victim, by

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1 the name of Mr. Dan Gasque's house, under the premise that
2 they would ask him for a ride into town. Things went south.
3 They entered his residence forcefully. They were armed with
4 weapons. They beat him with the weapons. Ransacked his
5 home. Took some money and some ATM ---

6 MR. FOWLER: Objection, Your Honor. This goes to
7 the merits of the case and not her representation of
8 Mr. Holmes.

9 MR. JAMES: To know what to investigate, to know
10 what to advise her client of ---

11 THE COURT: Sir, I'll allow it. She's telling us
12 what she ---

13 MR. JAMES: Exactly.

14 THE COURT: I'll sustain that, yes, sir.
15 Go ahead.

16 THE WITNESS: So it was alleged that they had
17 taken ATM cards and some money. They then exited the home
18 and tried to force Mr. Gasque into the trunk of the vehicle,
19 were unsuccessful, in the back. They rode around to ATMs.
20 And, ultimately, the fuel light came on and they, at some
21 point, tried to cash a check or deposit a check and then get
22 money back. At some point the fuel light came on. They
23 stopped at a gas station. Marcus Lambert is seen in the
24 store. The victim escaped. There is a struggle with the
25 victim and Marcus Lambert. There was a person who was just

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1 in the parking lot ended up knowing Marcus Lambert, screamed
2 his name, Let him go, Let him go.

3 Well, the car that had pulled up to get the gas,
4 Mr. Gasque's car, pulled up and Marcus Lambert got in that
5 vehicle. And there was a three-county high-speed chase in
6 speeds at excess of 100 miles an hour crossing over on the
7 opposite lanes of the highway. And Mr. -- and there --
8 ultimately the highway patrol nicked the car in attempts to
9 get it to stop and the car flipped over.

10 Mr. Holmes was found -- was one of the
11 participants -- occupants of the car -- of the vehicle. And
12 so in going into what did I investigate. I watched video.
13 The police reports. We -- I hired an investigator who went
14 out to investigate one of his many stories. One of his
15 stories was an alibi that I could not substantiate with the
16 investigation.

17 In regards to the defenses that he had, Daquarius
18 was all over the board. And he became a jailhouse lawyer,
19 which it becomes difficult to talk to them, because of his
20 youth at the time, he was the youngest one there. You want
21 to let them know it's not TV. And it's not what the
22 jailhouse lawyers try to tell them.

23 So I had to have a tremendous amount of patience
24 in dealing with him. But one of his stories was that he --
25 after the Marcus Lambert letter -- that he had no idea what

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1 had gone on, and that he was a victim of the kidnapping
2 himself ---

3 MR. FOWLER: Objection, Your Honor. This is --
4 Your Honor, this is beyond the scope of the question. I
5 believe the question was about what happened or based on
6 your allowing it. But this is going beyond the scope of the
7 question and just rambling, Your Honor. I'd like for it to
8 be phrased in the form of a question by Attorney General
9 James.

10 THE COURT: Okay. Will you guide it just a little
11 bit, Mr. James?

12 BY MR. JAMES:

13 Q. What did your client tell you about what happened?

14 A. Well, he told me, in fact, that all of these
15 yellow papers, which the Court, for the record, is probably
16 over 60, 65, are mostly composed of different renditions of
17 what happened. But one of the events was that he just ended
18 up walking on the road, seeing Marcus Lambert, and got in
19 the car, had asked him for a ride, got in the car, and then
20 fell asleep and then didn't know what had happened.

21 And so I discussed with him multiple things in
22 regards to that. That Marcus Lambert's girlfriend had given
23 a statement. A witness that Daquarius was with Marcus and
24 Quantae prior to the incident in which Marcus Lambert had
25 fully confessed when a -- at the police station in Marion,

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1 that Quantae and Daquarius were with him. And his alibi
2 didn't work out. And that if his -- he was asking an
3 individual for a ride who didn't have a car. That's who
4 that -- I went through how that would appear in front of a
5 jury.

6 MR. FOWLER: Your Honor, I once again, object. He
7 asked the question what he told her, and she's now going
8 into the investigation portion of it. I would ask that her
9 testimony be grounded in Mr. James's questions, not just
10 five-minute speeches, Your Honor.

11 BY MR. JAMES:

12 Q. How did you go about investigating what your
13 client told you?

14 A. I hired an investigator. I, myself, went and
15 viewed the evidence at the Solicitor's Office and talked to
16 my client -- my client.

17 Q. And what did you discover by way of that
18 investigation? You were discussing it a moment ago, prior
19 to the objection.

20 A. It was very hard for -- we'd come up with a
21 defense and then I would have to talk to him about the --
22 how unbelievable that would be in front of 12 people. And
23 then the next time I would talk to him or go see him he
24 would have a different rendition of what happened.

25 And going back to one of those is, let's just

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1 take, for instance, the Marcus Lambert letter. The Marcus
2 Lambert letter is ---

3 MR. FOWLER: Objection, Your Honor. She's now
4 talking about the Marcus Lambert letter and not her
5 investigation of it.

6 THE COURT: Mr. James, put it in a question.

7 MR. JAMES: If I may approach the witness?

8 THE COURT: Yes, sir.

9 BY MR. JAMES:

10 Q. Do you have a copy of what has been marked as
11 Applicant's Exhibit Number 1, this is the Marcus Lambert
12 Letter to which you were referring a moment ago?

13 A. I do.

14 Q. Are you familiar with this letter?

15 A. I am.

16 Q. Did you receive this letter?

17 A. I did.

18 Q. What was your reaction when you got this letter?

19 A. I went and spoke to Mr. Holmes. I went down to
20 the detention center. If you look at the dates on the
21 letter, it appears he wrote it in November, but it is
22 written 11/23. It is stamped -- postmarked 11/26 out of
23 Charleston. That's a holiday period. So I probably
24 received it around the first of December. I then went, and
25 my notes reflect, that I sat down and discussed with him the

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1 pros and cons of the letter. That if that was going to be
2 his defense, that he was just picked up and knew nothing
3 about it, the things that we discussed as a result of that
4 were that a witness had put him with Marcus Lambert, three
5 black males were -- entered into the victim's home,
6 according to the victim, that a witness had put him before.

7 And one of the most damaging components of the
8 video that was at the Marion County, from one of the dash
9 cams, is Daquarius who supposedly had no idea ---

10 MR. FOWLER: Your Honor, I object to this because
11 she's describing a video that's not in evidence and I
12 haven't seen it and she's trying to describe a video. I
13 think that's hearsay, Your Honor. And I would like to
14 object on those grounds.

15 THE COURT: Mr. James?

16 MR. JAMES: She is not describing anything for the
17 truth of the matter asserted. She is describing the State's
18 case against her client as she understood it which is core
19 to how she represented him.

20 MR. FOWLER: And, Your Honor, our contention is,
21 that she's describing what's on the video that has not been
22 entered into evidence today. And I -- we don't know if it's
23 true or not. So she's talking about something that's not in
24 evidence and can't be proven today.

25 THE COURT: What did she do after she saw the

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1 video? You ask her. I'm trying to ---

2 MR. JAMES: I understand, Your Honor. But I --
3 I -- I -- would respectfully request a moment to determine
4 to what extent I want to continue fighting this objection.

5 THE COURT: Yes, sir.

6 MR. JAMES: If Mr. Fowler would like I -- I'm sure
7 we can dig up the video from somewhere and take -- take a
8 break and introduce it into evidence, if he would prefer
9 that as opposed to her summary and description of it.

10 THE COURT: Well, I would ---

11 BY MR. JAMES:

12 Q. What did you do -- what did you do after you saw
13 the video?

14 A. I discussed with Daquarius the fact that it was
15 going to be problematic to present to a jury that he
16 supposedly had no idea what was going on. Was a victim
17 himself, and kidnapped, yet he's laughing hysterically. His
18 response on the video is not consistent with someone who had
19 just gone through a three-county high-speed chase over 100
20 miles an hour and had no idea what was going on.

21 MR. FOWLER: And, Your Honor, once again, I'd like
22 to renew my objection.

23 THE COURT: All right.

24 MR. FOWLER: She's stating what's on the video,
25 not what she went over with her client, or his reaction to

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1 it.

2 THE COURT: I'll overrule that. I think she did
3 go over it with her client.

4 Proceed, sir.

5 MR. JAMES: Thank you, Your Honor.

6 THE WITNESS: Subsequent ---

7 BY MR. JAMES:

8 Q. Before -- let me -- let me ask you another
9 question.

10 Did you ever attempt to contact Marcus Lambert
11 after you received this letter from him?

12 A. I did not. It was represented by opposing
13 counsel.

14 Q. And so, in your determination, he was unavailable
15 to be directly contacted?

16 A. That's correct. In addition, shortly again with
17 the holidays, after I spoke with him, then we had Christmas
18 break, and shortly thereafter, I was made aware by the
19 Solicitors' Office that he -- a video was played ---

20 Q. Well, let's stop, because there will be an
21 objection in a moment.

22 Did you ever contact or otherwise communicate with
23 the Solicitor's Office as regards with this letter that is
24 Applicant's Exhibit Number 1?

25 A. I did.

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1 Q. All right. And what did you learn from that
2 communication?

3 A. That he had recanted ---

4 Q. Who is he?

5 A. Marcus Lambert had recanted his recant. And had
6 given a videotaped statement to the investigator, Steven
7 Brown, with the Solicitor's Office stating that that letter
8 was, in fact, not true.

9 MR. FOWLER: Your Honor, once again she's relying
10 on documents or a video that's not in evidence today, and
11 I'd like to object to that. I'd like to ask for that answer
12 to be stricken, that last part.

13 THE COURT: Mr. James?

14 MR. JAMES: Again, it's not testimony that is
15 necessarily offered for the truth of the matter asserted.
16 It is Counsel's understanding of the evidence that existed
17 against her client which is central to addressing any claim
18 of ineffectiveness as counsel.

19 THE COURT: I'll allow it. I'll allow it.

20 Proceed, sir.

21 BY MR. JAMES:

22 Q. So you communicated with the Solicitor's Office
23 and they said that Marcus Lambert took back the letter,
24 correct?

25 A. That is correct.

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1 Q. Okay. Had you provided them a copy of the letter?

2 A. I believe I did.

3 Q. Okay.

4 A. I believe I did. I'm -- in fact, I'm most certain
5 I did, because it was exculpatory.

6 Q. Do you recall on what date this recantation of the
7 letter is said to have occurred?

8 A. January 15th, 2014.

9 Q. Did you have an opportunity to review this video
10 that you are discussing or is this just what you heard from
11 the Solicitor's Office?

12 A. I reviewed it, as well as showed it to my client,
13 as well.

14 Q. What was your client's reaction?

15 A. I don't recall, specifically, but I think we moved
16 onto another defense.

17 Q. So after reviewing that video the defense of, I
18 was picked up on the side of the road was scuttled and moved
19 onto something else?

20 A. That is correct.

21 Q. Okay. Do you recall the timeline of events that
22 occurred on the date of the burglary leading to the
23 high-speed chase?

24 A. Timeline in regards to the?

25 Q. I'll reframe it this way: You reviewed the

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1 State's evidence against your client, correct?

2 A. Correct.

3 Q. Okay. And you had this story from Marcus Lambert
4 and your client that your client was picked up, fell asleep
5 in the car, correct?

6 A. Correct.

7 Q. Do you recall if it was technically feasible for
8 that to have even occurred given the time available from the
9 time of the commission of the crime to the time of the
10 initiation of the chase?

11 A. We ---

12 MR. FOWLER: Objection, Your Honor, speculation.

13 THE COURT: Sustained. I'll sustain that.

14 THE WITNESS: We discussed it.

15 THE COURT: Wait, wait, wait. Sh, sh. Sustained.

16 Okay. Proceed, sir.

17 BY MR. JAMES:

18 Q. Was your familiarity with the evidence such that
19 you had reason to doubt the viability of the Marcus Lambert
20 picked me up story? Did you have reasons to doubt it before
21 the recantation of the letter?

22 A. I had multiple reasons, yes.

23 Q. What were they?

24 A. I had done a Google search of his timeline, and
25 did like a MapQuest, and his timeline could not match up

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1 with where he was saying he was at this time as to where the
2 timeline from when the victim said that his -- they came
3 into his house, matching that with the timelines of the
4 video from the gas station, to the video cams of the Marion
5 County, and I discussed that with my client.

6 MR. FOWLER: Your Honor, I'd like to object to
7 that answer, because she's not been certified as an expert
8 on timing and car -- and one distance to the other, or what
9 have you. I think it might be her investigation, but she's
10 not -- she can't say quantitatively what is and what is not
11 a time for -- a time be at a certain place at a certain
12 time.

13 THE COURT: Are you offering her as an expert on
14 that?

15 MR. JAMES: I'm not offering her as an expert,
16 Your Honor. It's perfectly within the lay capacity of any
17 individual to know how long it takes to get from A to B.

18 THE COURT: Then proceed. Overruled, sir.

19 BY MR. JAMES:

20 Q. So you investigated and determined that there was
21 not enough time?

22 A. Every story Daquarius Holmes gave me I
23 investigated. Every one. To the minute.

24 Q. Did you discuss with your client the elements of
25 the crimes alleged against him?

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1 A. At length.

2 Q. And would it be fair to say that you developed a
3 number of defenses for your client to advance at trial?

4 A. Did I develop a number of defenses? I was put ---

5 Q. Well, let's -- let's revise that question.

6 Did you investigate the possibility of a number of
7 defenses for your client?

8 A. Yes.

9 Q. Okay. And did you explain these various potential
10 defenses to your client?

11 A. Yes.

12 Q. Their strengths and their weaknesses?

13 A. Correct.

14 Q. And, as you indicated, his version of events would
15 change a little bit, correct?

16 A. Not a little bit, that's incorrect. They ---

17 Q. They would ---

18 A. --- would change significantly.

19 Q. They would change significantly?

20 A. That's correct.

21 Q. And so the nature of the defenses that you would
22 have to investigate would change significantly with it?

23 A. That is correct.

24 Q. Did you enter into plea negotiations with the
25 State?

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1 A. I did.

2 Q. What sort of offer or offers did you receive?

3 A. Armed -- he could plead guilty to armed robbery,
4 kidnapping, burglary second, violent reduced from burglary
5 first degree. This offer was given to me February 20th of
6 2015. And this is after many, many, many discussions with
7 the solicitor that she officially formalized that offer and
8 then stuck firm to it.

9 Q. You said "She", which solicitor?

10 A. Deputy Solicitor Alicia Richardson.

11 Q. Do you see her in the courtroom right now?

12 A. I do.

13 Q. Okay. And was there a firm range of sentencing
14 that went along with this offer or a specific number of
15 years or a recommendation or negation?

16 A. She recommended -- I believe I was able to
17 persuade her somewhere towards the end of let me have that
18 as a cap, and let me, please, try to -- try to work down
19 from that. An uphill battle, given the facts of the case.

20 Q. And what exactly was that cap?

21 A. Fifteen.

22 Q. Did you communicate this offer to your client?

23 A. Yes.

24 Q. And what was his disposition with respect to that
25 offer?

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1 A. He agreed as it came time, as she was getting
2 closer to trial, we continued to discuss his defenses. The
3 pros and cons of the positions that he was taking. He
4 agreed to plead guilty. And we did discuss at length an
5 Alford plea, as well. We did change that on the day of
6 sentencing.

7 Q. So that was -- I'm going to -- well, that will
8 work.

9 You discussed with your client his various
10 Constitutional rights, correct?

11 A. In fact, I have a sheet that I go with -- that I
12 do with every one of my clients that I check off, and they
13 sign it. And I put the time for the credit that they -- I
14 need to ask the judge to give them credit for the time that
15 they've served, they're name, the date of the plea, the
16 judge's name, what they're pleading to, and then sign it.
17 And, yes, I go through that plea checklist again. And it --
18 go over their Constitutional rights.

19 Q. And I know you mentioned a lot of these
20 specifically just now, but to make sure that my own
21 checklist is marked off, you went over his right to a jury
22 trial?

23 A. I did.

24 Q. And his right to remain silent?

25 A. I did.

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1 Q. And his right to confront the witnesses against
2 him?

3 A. Yes.

4 Q. And his right to testify if he didn't want to
5 remain silent?

6 A. Yes.

7 Q. And going down this checklist, did you
8 specifically check off each of these rights and others as
9 you reviewed them with your client?

10 A. This was the day of sentencing and I had reviewed
11 these at least four or five times prior to doing this again.
12 This is for my records to keep in my file. I had gone over
13 all of these extensively with him.

14 MR. FOWLER: Your Honor, does the State plan to
15 move this into evidence?

16 MR. JAMES: Yes, I do.

17 MR. FOWLER: Okay. May I have a copy?

18 MR. JAMES: Do you have a copy of that checklist
19 with you up there?

20 THE WITNESS: I do.

21 MR. JAMES: If I may approach? We can mark this
22 as State's Number 1.

23 (WHEREUPON, State's Exhibit Number 1 was marked
24 for identification.)

25

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1 BY MR. JAMES:

2 Q. I'm handing back to you what has now been marked
3 for identification as State's Exhibit Number 1. At the top
4 it states, "Plea Check List." Is this the checklist that we
5 have been discussing?

6 A. Yes.

7 Q. And did you indicate the checkmarks on this
8 checklist or did Mr. Holmes check these off?

9 A. That I don't recall, but because of Number 6 that
10 has the "N-A," that's my handwriting, I would -- I would be
11 confident in saying I checked them off as I went through
12 them on this one.

13 Q. And there is some additional handwriting in the
14 top left corner that reads, "617 days." Is that your
15 handwriting or Mr. Holmes's?

16 A. That is my handwriting.

17 Q. All right. And there is some additional
18 handwriting in the top right corner that reads,
19 "Judge Culbertson, Daquarius Holmes, 6/11/15, plea, AR,
20 kidnapping, burg second." Is that your handwriting or
21 Mr. Holmes's handwriting?

22 A. That is my handwriting.

23 Q. All right. And below that there is what appears
24 to be a signature that reads, "Daquarius Holmes, June 11th,
25 6/11/15." Is that your handwriting or Mr. Holmes's

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1 handwriting?

2 A. That is Daquarius Holmes's handwriting in my
3 presence.

4 MR. JAMES: All right. The State would
5 respectfully move to introduce this document at State's
6 Exhibit Number 1.

7 MR. FOWLER: Your Honor, upon her own admission,
8 she doesn't know who checked these. It's not very clear
9 what it says. I mean, does that mean that it happened or
10 what have you?

11 So, first of all, she can't verify that he's
12 not -- she's not been qualified to verify Daquarius Holmes's
13 signature.

14 Secondly, she does not -- she stated that she did
15 not know who checked these. And this could have been made
16 this afternoon, Your Honor, as far as I know. So I object
17 to this coming in.

18 THE COURT: Okay. Mr. James?

19 MR. JAMES: If I may answer that objection with
20 some additional questions?

21 THE COURT: Yes, sir.

22 BY MR. JAMES:

23 Q. You indicated that you communicated regularly with
24 your client, correct?

25 A. Yes.

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1 Q. And did you receive writings from your client?

2 A. Yes.

3 Q. All right. And handwritten documents from your
4 client?

5 A. He signed this in my presence.

6 Q. And he signed it in your presence?

7 A. That's correct.

8 Q. So you have those reasons to believe that is, in
9 fact, his signature, correct?

10 A. Correct. And the "N-A" on Number 6 is consistent
11 with me filling that portion out. Therefore, it's
12 consistent, and I'm confident that I checked those as I
13 discussed it with him again.

14 MR. JAMES: All right. The State's position is
15 that you do not need to be an expert in order to identify
16 somebody else's handwriting, especially in the circumstances
17 here where he signed it in her presence.

18 THE COURT: Yes, sir.

19 MR. FOWLER: Your Honor, we would renew our
20 objection, Your Honor.

21 THE COURT: Okay. It's respectfully overruled.

22 (WHEREUPON, State's Exhibit Number 1 was admitted
23 into evidence.)

24 BY MR. JAMES:

25 Q. And did Mr. Holmes sign this document before or

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1 after you went through the checklist?

2 A. After I went through the checklist.

3 Q. Another specific right that I'll pull off of the
4 checklist here, you discussed with your client his right to
5 appeal the guilty plea, correct?

6 A. Yes.

7 Q. And so he was -- you made him aware that he could
8 appeal it, correct?

9 A. We had numerous conversations about the pros and
10 cons of, if he won an appeal, that he would start back from
11 the beginning. And let me say this, as I said to Daquarius,
12 as I say this to all my clients, I encourage them ---

13 MR. FOWLER: Objection. Objection, Your Honor.
14 Is this something that she specifically stated to him or to
15 her -- all her clients.

16 THE COURT: Did you tell him that?

17 THE WITNESS: I told him and every single one.

18 THE COURT: Proceed, ma'am.

19 THE WITNESS: I have no problem. I encourage them
20 if they get jail time to have another lawyer review the job
21 that I did. That it gives me comfort in knowing that
22 someone's not sitting incarcerated for a mistake that I
23 possibly could have made. But I talked to Daquarius,
24 specifically about the fact that I felt that this was an
25 incredible and fair plea offer, that if he won -- be

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1 careful, if you win an appeal, whether it's against the job
2 that I did, or on some technicality, that he starts back and
3 he is subject to life in prison. Seventy-five years was the
4 amount of years, plus, you know, the burglary first was life
5 in prison. I had extensive conversations regarding that
6 with him.

7 Q. Did he ever ask you to file an appeal?

8 A. No, and I spoke to him after the plea from the
9 detention center. I also, in an attempt to get a downward
10 departure for him, at the time that his co-defendant,
11 Quantae Priest, was being tried. I contacted the warden of
12 the facility where he was, I spoke to him personally. And,
13 again, encouraged him to help himself and cooperate with the
14 State. And at no time during those conversations did he
15 ever ask me to file an appeal on his behalf.

16 Q. You discussed with him the concept of an Alford
17 plea, correct?

18 A. I did.

19 Q. Was there ever any offer by the State for a deal
20 in exchange for an Alford plea?

21 A. No. The State ---

22 Q. Do you have a copy of the sentencing sheet up
23 there for burglary second?

24 A. I...

25 Q. If not, I can approach.

M.A. KNEECE - DIRECT BY MR. JAMES

1 A. I do not.

2 MR. FOWLER: May I see what he's referring to,
3 Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. JAMES:

6 Q. I'm handing to you a partially redacted copy of
7 the sentencing sheet for the County of Georgetown, State,
8 versus Daquarius Alexander Holmes, Indictment ending 982,
9 that is for burglary second degree.

10 I have circled and highlighted a portion in the
11 top right corner that appears to be the word "Alford"
12 scratched out.

13 MR. FOWLER: Your Honor, is Mr. James taking
14 judicial notice of this?

15 MR. JAMES: It is included in the records that
16 have been attached to the return and submitted to the Court
17 if Your Honor would like to additionally take judicial
18 notice of them to add the sentencing sheets to the record?

19 THE COURT: Yes, I do.

20 MR. JAMES: All right.

21 THE COURT: He testified to that, also.

22 MR. JAMES: Absolutely, Your Honor, thank you.

23 BY MR. JAMES:

24 Q. Do you have any knowledge of why Alford was
25 written down on the sentencing sheet in the first place?

M.A. KNEECE - DIRECT BY MR. JAMES

1 A. Absolutely.

2 Q. All right. Why was it written down in the first
3 place?

4 A. And the transcript reflects me noting that to the
5 Court during the plea, as well. Judge Culberston, after
6 hearing the facts of the case and knowing Judge Culbertson
7 very well, it was my professional advice that he would not
8 appreciate Daquarius not accepting responsibility for the
9 crimes that he had committed. That an Alford plea is
10 treated the same as a guilty plea. And that under Alford, I
11 felt that Daquarius would be -- it could harm my potential
12 to get less than the 15.

13 So I felt he would -- Daquarius would be in a
14 better position if he accepted responsibility in front of
15 Judge Culbertson versus under an Alford plea for the facts
16 of this case. And, again, noted on Page 11 of the
17 transcript, I even said that during the plea, that we had
18 had those discussions. But after hearing and seeing the
19 victim was present and able to speak, and hearing from the
20 victim in the past, I felt that Alford was not -- we had a
21 better chance at getting less than 15 if he accepted full
22 responsibility in front of Judge Culbertson. And he had
23 ultimately agreed -- Daquarius did.

24 Q. So the indication of North Carolina versus Alford
25 was thus scratched from the sentencing sheet, correct?

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1 A. That's correct.

2 Q. And to make sure that it's abundantly clear on the
3 record, when you refer to the transcript, you are referring
4 to Page 11, Lines 5 to 15?

5 A. That is correct.

6 Q. Okay. Did you represent Mr. Holmes in any
7 preliminary hearing?

8 A. I do not recall a preliminary hearing. And when I
9 look at the -- my appointment date, the date of his arrest,
10 and the indictment date, I do not believe that there was a
11 preliminary hearing. I certainly was not aware of one and
12 he was indicted by the Grand Jury, I believe, the 16th.

13 I was -- my order was clocked, which makes it
14 effective on the 15th. And his -- and he was indicted, I
15 believe, on October 16th. So there was not a preliminary
16 hearing.

17 Q. So your client was true bill indicted by the
18 Georgetown County Grand Jury?

19 A. Yes.

20 Q. And he was indicted for burglary first degree,
21 correct?

22 A. That is correct.

23 Q. And then, ultimately, he pled guilty to burglary
24 second degree, correct?

25 A. As a lesser included, yes.

M.A. KNEECE - DIRECT BY MR. JAMES

1 Q. And it is your understanding that that is a lesser
2 included offense?

3 A. Yes.

4 Q. All right.

5 MR. JAMES: I beg a moment of the Court's
6 indulgence.

7 THE COURT: Yes, sir.

8 BY MR. JAMES:

9 Q. Did you ever have any reason to question your
10 client's competency?

11 A. No.

12 Q. Did he ever request that you obtain his own prior
13 mental health records?

14 A. The first I ever heard of that was today. Nor do
15 I have any knowledge he even made any request while at the
16 Georgetown County Detention Center.

17 Q. You were able to communicate with your client?

18 A. Yes.

19 Q. He was able to communicate with you?

20 A. Yes, and did so.

21 Q. Notwithstanding the challenges presented by the
22 changing stories, he was able to work with you to assist in
23 his own defense?

24 A. I'm sorry, repeat that.

25 Q. Notwithstanding his -- the difficulty of dealing

M.A. KNEECE - DIRECT BY MR. JAMES

1 with his changing versions of events, he was capable of
2 working with you to assist in his own defense?

3 A. Yes.

4 Q. And did he appear to understand what you were
5 telling him when you did have conversations with him?

6 A. Yes. He had done a tremendous amount of research
7 himself and was very articulate with legal vocabulary.

8 Q. Did you ever have reason to believe that your
9 client, at the time of the crimes, was incapable of
10 conforming his behavior to the demands of the law?

11 MR. FOWLER: Objection, Your Honor, speculation.
12 That's a question that an expert would need to answer.

13 THE COURT: I think that's correct. That would be
14 a question for somebody else to ask. She sort of covered
15 that line, anyway.

16 MR. JAMES: Since there have been ---

17 THE COURT: I know, but she's not qualified to
18 answer that particular question.

19 BY MR. JAMES:

20 Q. Did you ever hear anything from your client that
21 gave you reason to believe that you should investigate an
22 insanity defense?

23 A. No.

24 Q. If Mr. Holmes had rejected the plea offer and
25 insisted on taking this case to trial, would you have been

M. A. KNEECE - CROSS BY MR. FOWLER

1 prepared to do so?

2 MR. FOWLER: Objection, Your Honor, speculation.

3 THE WITNESS: I was prepared ---

4 THE COURT: All right. She can answer that -- he
5 can ask that. Overruled. Go ahead.

6 THE WITNESS: I was prepared with his last
7 defense.

8 THE COURT: Okay.

9 MR. JAMES: I have no further questions, Your
10 Honor.

11 THE COURT: All right, sir.

12 CROSS-EXAMINATION

13 BY MR. FOWLER:

14 Q. You mentioned earlier that -- I believe in your --
15 and I want to do this correctly -- I think you said in his
16 communications with you, he was all over the board; is that
17 correct?

18 A. Yes, that's correct.

19 Q. What do you mean by that?

20 A. He would talk to -- quote some people in jail,
21 just like he did here, and come up with a defense that
22 didn't really seem logical. And so it would take him -- we
23 would discuss it -- some of the times I met with him were
24 for more than two hours, and we would discuss it. And then
25 the next time I would come back he would come up with a

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1 different defense. A different explanation.

2 Q. Why do you -- in your personal opinion, why do
3 believe that happened?

4 A. Because he was guilty and trying to come up with
5 any defense he could to get out of the charges.

6 Q. Yeah, but you said it wasn't logical. So does
7 that go to his inability to reason?

8 A. I'm not qualified to make that -- at no time did I
9 question his competency.

10 Q. Even though you said he was all over the board,
11 correct?

12 A. He was a 17 year-old at the time that this
13 happened. It was consistent with his age.

14 Q. Okay. So he was a minor when this happened,
15 correct?

16 A. He was 17 years old. And, at the time, I think,
17 at the plea, he may have been 19.

18 Q. Did he ever speak to a -- did you ever send him to
19 any kind of child psychologist?

20 A. No, I didn't feel the -- feel the need.

21 Q. Even though you're saying he had illogical
22 statements or ramblings; is that correct?

23 A. For -- they were more consistent with his youth
24 and inexperience and naitivite (sic), in regards to what a
25 jury would logically believe, if that's what it was.

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1 It wasn't that it was -- and I've had experience,
2 myself -- I'm not qualified -- I've had experience with
3 those who've been evaluated as competent and those who have
4 not been competent. So I've had some experience -- at no
5 time was that an issue.

6 Q. So you're saying you're not experienced -- you
7 said he was young, you said he was naive, you said he had
8 logical reasons, and all the sum of this -- and underage,
9 17, dealing with what, I believe, older persons, perhaps.

10 So you're saying that all those things did not
11 factor in to him going to any kind of psychologist, right?

12 A. Nope.

13 Q. And you took it upon yourself to make a
14 determination on his mental state of mind; is that correct?

15 A. No.

16 Q. You just said that ---

17 A. That's -- that -- what I'm saying is, is my
18 experience as a lawyer to those who've been evaluated and
19 the threshold and the -- I did not have one red flag as far
20 as his mental capacity to understand and communicate with me
21 and participate in his defense, nor did I think there was an
22 issue of an insanity defense.

23 Q. Okay. So you're ---

24 A. That's what I'm saying.

25 Q. So you said there were no red flags. But, to

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1 repeat, you said he had logical issues, he was all over the
2 board, and you said his story would change significantly
3 over a short period of time, correct?

4 A. Well, let me ---

5 Q. Is that correct?

6 A. --- make -- I did, but I think maybe the
7 appropriate -- when you say, "logical," because I see what
8 you're saying on this, maybe the reality -- realistic -- it
9 was not realistic the defenses he was suggesting.

10 Q. What.

11 A. The scenarios. So I may have misspoken and
12 clarifying that as logical, when the accurate word, or more
13 descriptive word, and appropriate word, would be "realistic"
14 instead of "logical."

15 Q. So you think he had a problem -- or had or has a
16 problem with reality?

17 A. In what his -- in what he was contemplating a jury
18 would buy, at times, yes. Because he would throw out
19 something, and it wasn't until we discussed it as to what 12
20 people in a box would -- when they -- when you really looked
21 at it, that how -- he'd asked -- sir, he asked someone
22 without a car for a ride. Was in a car. Had no idea what
23 was going on, on a three county high-speed chase, that it
24 was -- I did not think a jury -- when he was laughing at the
25 scene ---

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1 MR. FOWLER: Objection, Your Honor, she's stating
2 something that's not in the evidence, I believe.

3 THE WITNESS: I -- I mean, I'm answering the
4 question ---

5 THE COURT: Go ahead, ma'am. Go. Go.

6 THE WITNESS: --- of the conversations that I had,
7 that it was not going to be logical, real, that a jury would
8 buy that, at the time, that he had been crossing over four
9 lanes of highway over a 100 miles an hour, he would laugh.
10 And then when making it to the police department, would not
11 say to them, "Help, help, I'm a victim here," he refused to
12 talk to them. Those were my conversations. And that's what
13 I think is not real and not logical, to be clear.

14 Q. Well, that's in the legal perspective, not a
15 mental health perspective, correct?

16 A. That's in any perspective. But I did not ---

17 Q. But you just said ---

18 A. --- have any ---

19 Q. Let me ask my question, please.

20 You just said it was a legal perspective as to
21 what would float with a jury, potentially, not what his true
22 state of mind was with reality or changing his story
23 significantly from day to day, correct?

24 You never -- you never solicited any
25 psychologists, mental health expert to help you out in

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1 communicating with him, did you?

2 A. I didn't have any problem communicating with him.

3 Q. But you just said his story would change from day
4 to day and also that he was all over the place.

5 So which is it? Was he all over the board and
6 changed significantly his story? Or you had a problem
7 communicating with him?

8 A. That -- you're -- you're trying to bifurcate the
9 two. Those are the same -- I didn't have problems
10 communicating. We would sit down and discuss ---

11 Q. But you just said ---

12 THE COURT: Wait a minute. Let her talk.

13 THE WITNESS: We would sit down and discuss how
14 that was not going to be an appropriate defense to put in
15 front of 12 people, because it didn't make sense. It wasn't
16 logical. He would then change his story again to a
17 different rendition of facts. And we would discuss it and
18 talk it through. That's what would happen.

19 BY MR. FOWLER:

20 Q. Earlier you mentioned that you did receive the
21 Marcus Lambert letter, that's Exhibit 1 on our end, from
22 November 23rd, 2013; is that correct?

23 A. Yes, that is correct.

24 Q. Did you contact his attorney about this letter --
25 Marcus Lambert's attorney?

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1 A. No, I -- by the time I met -- I got the letter, I
2 met with Daquarius around the middle of December. Then, I
3 believe, we had other court matters, the break, and then
4 January, I think that year we started, like, right after the
5 holiday -- after the January holiday, had a week in court.
6 And then I received notification that that was coming --
7 that that video was coming. So, no, I did not.

8 Q. Okay. But it's postmarked in November, correct?

9 A. That's correct. And I met with Daquarius and
10 discussed it with him. And I believe, to the best of my
11 recollection, that I provided it to the Solicitor's Office.
12 But I received notice that Marcus had recanted his recant
13 and a video was coming shortly thereafter.

14 Q. Well, let me -- let me just ask my question, if
15 you don't mind.

16 So, I guess to be clear, a person represented by
17 counsel in this type of case contacted you and you met --
18 and to be clear -- you never contacted his attorney by
19 email, by text, by phone call, saying your client contacted
20 me about my client?

21 A. No. And -- and the reason why -- the reason why
22 is when I received the video which is an ---

23 Q. Well, I'm talking about the letter, not the video.

24 A. The reason why I did not contact them about the
25 letter, sir, is because it's about a month time frame

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1 with -- in our world is very reasonable to the fact that I
2 received a video shortly within a little over a month's
3 time, that Marcus Lambert said he made it up -- it was not a
4 credible video.

5 It was -- I mean, it was not a credible letter.
6 His original confession was very credible. The letter was
7 not credible. But the second interview regarding the
8 recanting of that was very credible. And that he stated in
9 there, which I discussed with my client, that the reason why
10 he did that, is they had a plan that he was going to get
11 them out on bond, or help them get out on bond, and then
12 they would help him get out on bond. Plus, he had been
13 threatened at the GCDC -- at Georgetown County Detention
14 Center -- I believe he was at J. Reuben Long when he had
15 given that statement.

16 So it was more consistent with him being more
17 comfortable that I felt that letter was dead in the water.
18 We discussed the pros and cons on going forward on Marcus's
19 statement that Daquarius was just picked up and had no idea
20 what was going on.

21 Q. Okay. So you just referred to our Exhibit 1 as,
22 "The letter was dead in the water," correct?

23 A. It was not consistent with Marcus's -- was -- his
24 interviews were more believable when he was crying and
25 remorseful at the Marion County Detention Center, and was

1 very believable as to what happened. Was very believable on
2 the interview with investigator Steven Brown. But this
3 letter wasn't believable, and if Daquarius wanted to go
4 forward with that as a defense, I felt the jury would have a
5 hard time with the credibility of that letter.

6 So, yes, it was my professional opinion by the
7 time it got -- I did not need to talk to Marcus's attorney,
8 I had an interview that he had given and recanted that.
9 That was my professional decision at that point and I
10 discussed it with my client.

11 Q. So it was your professional decision not to pursue
12 anything regarding this letter, right?

13 A. Well, that's not true. I pursued discussing with
14 my client the pros and cons of going back -- back to the
15 theory of, "Hey, I was just picked up. I didn't know
16 anything about what they had done." A witness --
17 cross-examining a witness who had put him with Marcus and
18 Quantae earlier that day. Contradicting the man who said
19 three black men were with him, and three black men were
20 found in the car, of which, at the end he's laughing.

21 So that's what I discussed with him.

22 Q. So -- so when you said, "This letter was not
23 believable," that was based upon your professional opinion,
24 correct?

25 A. And after discussions with my client.

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1 Q. Did he ever bring that letter back up to your
2 attention at any point?

3 A. We didn't -- Marcus -- we didn't put a lot more
4 time into that after that. I don't recall. My notes don't
5 reflect anything -- after me meeting with Daquarius and
6 discussing the pros and cons of going back to that defense.

7 Q. Did Mr. Holmes ever attempt to fire you as his
8 public defender?

9 A. He did. I believe it was in front of Judge Couch,
10 and who offered for him to go and proceed pro se and that he
11 wanted another attorney. The Judge explained to him that he
12 was not -- he had not established that I had not done my job
13 effectively and denied his request.

14 At that time, offered for Daquarius to proceed pro
15 se, and Daquarius withdrew his motion. I could have filed
16 my own motion to be relieved, but I did not. I did not.

17 Q. Why did he want to fire you?

18 MR. JAMES: Objection, speculation.

19 THE COURT: Sustained.

20 THE WITNESS: Yeah, I can't -- I can't remember.

21 BY MR. FOWLER:

22 Q. But you said there was a motion, correct?

23 A. I think I filed one on his behalf. Motion to
24 relieve me as -- relieve me as counsel -- I mean, motion for
25 him to relieve me as counsel.

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1 Q. So did you author that document?

2 A. Did I what?

3 Q. Did you author it? Did you -- so you said you
4 created a document?

5 A. I filed a motion on his behalf to relieve me, yes.

6 Q. So ---

7 A. Any time my client ever says that, absolutely put
8 him up in front of a judge and say anything he wants to say.

9 Q. What was his discussion -- so there was a hearing
10 on that, right?

11 A. Yes.

12 MR. JAMES: Objection, Your Honor. I'm not sure
13 how this rabbit hole is relevant to any of the allegations
14 set forth in the application or any of the allegations that
15 were brought up in Mr. Holmes's earlier testimony.

16 MR. FOWLER: Your Honor, my understanding is he's
17 displeased with her now, he was displeased with her then.

18 THE COURT: I'll allow it. Go ahead, sir, go
19 ahead.

20 BY MR. FOWLER:

21 Q. Okay. So there an official motion file with the
22 court? Based on your -- to fire you. So based on your
23 recollection who signed that at the bottom? Was it you or
24 was it him?

25 A. I'm sure I did.

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1 Q. I see. So you created the document?

2 A. Yes, to put him in front of a judge so that he
3 could tell a judge any complaint he wanted to about me.

4 Q. Okay. So in the document you created what were
5 the complaints you spelled out he felt that you ---

6 A. I don't recall. I just -- I just made a motion
7 that he wanted to relieve me as counsel and let him tell a
8 judge whatever it was. I don't know how specific I was.

9 Q. So were you at the hearing?

10 A. Oh, yeah.

11 Q. Okay. So what was said at the hearing?

12 A. I don't recall. I think he was saying, kind of,
13 the stuff he was saying without any specifics. The judge
14 did -- there's a transcript of that, sir, you can get it.
15 But the judge, I do recall, was specific in asking if he had
16 any difficulty communicating with me as far -- if I went to
17 go see him. Had he asked me to do anything that I failed to
18 do. And his answers were, No. And he could not articulate
19 a reasonable answer as to give the judge justification for
20 relieving me.

21 Q. Okay. Now, was he -- did he have a choice that
22 day to go pro se, in a hearing that day, or was it -- was it
23 pro se later -- was there a hearing that day that he would
24 have to go pro se on?

25 A. I mean, this was -- I represented him in his

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1 motion to relieve me as counsel.

2 Q. All right. But was there something coming before
3 the Court, other than that day that he had to be pro se on,
4 perhaps? Or was that ---

5 A. I don't recall that.

6 Q. So you're saying that ---

7 MR. JAMES: Before we proceed, Your Honor, I'm
8 just going to renew the State's objection and establish a
9 continuing objection here if Your Honor will allow it.

10 The State has no prior notice of whatever
11 allegation it is that we're trying to zero in on with this
12 discussion of the prior effort to relieve Ms. Kneece as
13 counsel. And I do not believe that it is relevant to the
14 allegations, Your Honor.

15 MR. FOWLER: Your Honor, I think it's very
16 relevant. Well, she -- he filed something -- he's -- he was
17 dis -- he's displeased with her now. Apparently he was
18 displeased with her then. And she's the one who authored
19 the motion to fire herself. And I think this is about as
20 relevant as anything. And if she had specifics about when
21 it was filed and the transcript of whatever day and the
22 month and the year. I think it's very relevant to it.
23 She's got a huge file up there, and, you know, if she has it
24 in her file, then she can spell it out. I mean, she's big
25 box of paperwork.

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1 THE COURT: What's that got to do with his
2 complaints today, though, that's my concern.

3 MR. FOWLER: Well, they may be the same complaints
4 that she -- that he had whenever this was filed.

5 THE COURT: It's already been addressed by a
6 judge, right?

7 MR. FOWLER: I assume so.

8 THE COURT: Already one time?

9 THE WITNESS: Yes, sir.

10 THE COURT: I mean, she said that judge, whoever
11 it was, I don't remember the name, didn't find that he had
12 grounds to have her removed from the case.

13 So I'll rule that we go forward without going
14 deeper into this subject.

15 MR. JAMES: Thank you, Your Honor.

16 THE COURT: Proceed, sir.

17 BY MR. FOWLER:

18 Q. Did Mr. Holmes ever sign off on any of the
19 documents given to him by you?

20 A. What do you mean, "sign off"?

21 Q. Did he ever sign anything related to the document,
22 like verification that he received it or what have you?

23 A. Actually, I had given him more than one copy of
24 discovery. That's never been an issue brought up at any
25 time that he didn't have copies of his indictments. That's

1 the first I've heard of that.

2 Q. On your checklist it says, "Plea Checklist." This
3 is, I believe, State's Exhibit 1. What do these checkmarks
4 represent?

5 A. Conversations that I had with my client in regards
6 to the issues listed here.

7 Q. Okay. So does that mean that he -- so it means
8 that you just merely discussed it with him, correct?

9 A. No, it means that he had no assertion that he --
10 let's take, for instance, you know, understand how a jury
11 trial works. I don't just ask that I actually go through
12 the process for them of how a jury trial works. And after
13 we go through, I ask, Do you have any questions in regards
14 to that, and then I check it.

15 So, Do you understand you have the right to remain
16 silent? You don't have to say one dadgum thing. The burden
17 of proof is on the State. The State of one. You can sit
18 there and not say one word during the entire trial. And the
19 judge will instruct the jury that you have a Constitutional
20 right to remain silent. Do you understand that? Do you
21 have any questions in regards to that? Then I check the
22 box.

23 Q. Okay. So as to Number 10, Any mental health
24 problems or addiction issues? The check by that, what does
25 that mean?

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1 A. That means he said he did not have any.

2 Q. And you did not use any other ---

3 A. He never brought that up at all. And, again, I am
4 not aware that he even brought it up while he was
5 incarcerated. I'm still a little confused here if he's
6 saying he had those issues prior to being incarcerated,
7 or -- he never brought it up while he was incarcerated.

8 Q. Did he ever waive presentment to a Grand Jury
9 while you were representing him?

10 A. There was no waiver. He pled to the armed robbery
11 of which he was indicted on. He pled to the kidnapping.
12 And the burglary second degree was a lesser included offense
13 of the burglary first of which he was indicted.

14 Q. Did you ever receive a request from him to file an
15 appeal on his behalf in regards to this -- this matter?

16 A. No.

17 Q. So he never sent anything to you from the
18 detention center saying he would like an appeal?

19 A. No.

20 Q. Okay. Was Mr. Holmes ever placed in a photo
21 line-up for identification purposes?

22 A. I believe he was. I believe he was. My
23 recollection was -- I think they all were.

24 Q. Okay. Did you file -- did you ever file any
25 motions to dismiss the charges?

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1 A. No.

2 Q. Did you ever move for appeal -- did you ever file
3 a motion for an acquittal of the charges?

4 A. No. Those -- in my opinion, those motions you
5 just referenced would have been frivolous. There was --
6 there was sufficient evidence to move forward. I -- I do
7 not file frivolous motions.

8 Q. Okay. But that's in your opinion, correct -- your
9 professional opinion?

10 A. Yes.

11 Q. Okay.

12 A. Based upon the evidence that was presented to me,
13 yes.

14 Q. This was touched on, on direct, when were you
15 assigned to Mr. Holmes's case? What month and year?

16 A. I officially -- when the order is clocked is when
17 I am officially on board. It's not when they prepare it,
18 it's not when the judge assigns it, it's when it's clocked,
19 and the order was clocked on October 15th, 2013.

20 Q. October 15th, 2013?

21 A. Yes.

22 Q. Did you ever request a preliminary hearing after
23 that time?

24 A. He was indicted on the 16th. I probably did not
25 even receive the clocked order. It takes sometimes a week,

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1 or even two, for me to receive -- to know the orders that
2 I've been assigned, or appointed.

3 Q. Did you go over the facts presented to the Grand
4 Jury with this defendant?

5 A. I discussed the facts. I don't know what was
6 specifically presented to the Grand Jury, other than what's
7 on the indictment. But I discussed the evidence in this
8 case at length with him. I spent a significant amount of
9 time with Daquarius, over 617 days. Via telephone. Via
10 visits. We discussed the evidence against him.

11 Q. But that 617 days, that's the time from when he
12 pled back to your representation -- your initial
13 appointment, correct?

14 A. No. That was the length of time he was
15 incarcerated. So maybe it's less than the 617, he was
16 incarcerated. But I -- that's how many days he was given
17 credit for time served. So I was close thereto.

18 THE COURT: Folks, let's stop right now, so we can
19 all take a break, for five or ten minutes.

20 MR. FOWLER: Your Honor, I'm about to wind up, if
21 that's okay.

22 THE COURT: Mr. James, how do you feel about that,
23 sir?

24 MR. JAMES: I haven't heard anything that gives me
25 reason to believe I have anything on redirect, Your Honor.

M. A. KNEECE - CROSS BY MR. FOWLER

1 THE COURT: Okay.

2 MR. FOWLER: So if I may -- may I have just a
3 moment?

4 THE COURT: Yes, sir. Yes, sir.

5 (A brief pause in the proceedings.)

6 MR. FOWLER: Your Honor, after speaking with my
7 client for a few moments we have no further questions of
8 this witness at this time.

9 MR. JAMES: Nothing from the State, Your Honor.

10 THE COURT: Now, let me make this clear. If you
11 need more time, we'll just take a break and keep on going.
12 I don't want anybody to think that I'm calling the curtain
13 down.

14 MR. FOWLER: If I may, let me speak to my client
15 for a moment.

16 THE COURT: Yes, sir.

17 (A brief a pause in the proceedings.)

18 MR. FOWLER: Your Honor, once again I have spoken
19 with my client, here at the table, and we discussed some
20 things that he was concerned about. And I believe I've
21 answered all of his questions. And he indicated that
22 there's -- he has no further questions at this time.

23 THE COURT: Okay. Mr. James?

24 MR. JAMES: Nothing further from the State, Your
25 Honor.

1 THE COURT: Okay. You may be seated.

2 Any other witnesses? I guess not.

3 MR. JAMES: That would be the State's showing,
4 Your Honor.

5 THE COURT: All right. I'm sorry to all that
6 we're here this late. But because I'm not coming back here
7 tomorrow, we had to finish this. I don't normally like to
8 go past five, for the sake of everyone, but we had to today.
9 I've got an hour and a half ride. I suffer some, too,
10 because I get home so late. And without any comment,
11 Mr. Holmes, even though you wanted your lawyer off the case
12 today.

13 MR. HOLMES: Yes.

14 THE COURT: I understand that. But not
15 withstanding your desire to not have him as an attorney, I
16 must admit that he, in my opinion, represented you, knowing
17 that, with great alacrity and very zealously. I thank the
18 patience of all of you. I will get a ruling out on this
19 one, along with the other three that I have taken under
20 consideration. And I thank you for your patience, all of
21 you. Take care.

22 MR. JAMES: Thank you.

23 THE WITNESS: Thank you, Your Honor.

24 MR. FOWLER: Thank you.

25 (WHEREUPON, the proceedings concluded.)

CERTIFICATE OF REPORTER

State of South Carolina)

County of Georgetown)

I, Cynthia D. Weaver, Official Court Reporter for the
Fifteenth Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the matter of the captioned case,
relative to appeal, in the Court of Common Pleas for
Georgetown County, South Carolina, on the 12th day of
November, 2019.

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

June 1, 2020



Cynthia D. Weaver,
Official Court Reporter
State of South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

Daquarius Holmes,) Case No.: 2016-CP-22-00448
S.C.D.C. No. 364360,)
)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

ORDER OF DISMISSAL

FILED
GEORGETOWN COUNTY, S.C.
2020 FEB 26 PM 1:09
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed by Daquarius Holmes (“Applicant”) on May 27, 2016. Respondent made its return on or about July 27, 2017. The Court convened an evidentiary hearing into the matter on Tuesday, November 12, 2019, at the Georgetown County Judicial Center in Georgetown, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s co-defendant, Marcus Lambert, and Applicant’s plea counsel, Margaret Ann Kneece, Esq. (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Georgetown County Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the evidentiary hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

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

October 2013 term of the Georgetown County Grand Jury for armed robbery (2013-GS-22-00978); kidnapping (2013-GS-22-00979); and burglary, first degree (2013-GS-22-00982).¹ Margaret Ann Kneece, Esq. represented Applicant, and Alicia A. Richardson, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On June 11, 2015, Applicant pled guilty to the lesser-included offense of burglary, second degree, violent, and as indicted for armed robbery and kidnapping. Consistent with the State's recommendation, the Honorable Benjamin H. Culbertson sentenced Applicant to imprisonment for concurrent terms of fifteen years. Applicant did not appeal his plea or sentence.

Present Application

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

1. "Ineffective assistance of Counsel"
 - a. "failure to investigate"
 - i. "Counsel fail to investigate co-defendants statement that applicant was not involved in Crime Committed."
 - b. "failure to explain Alford plea and plea negotiation"

Applicant informally raised the following additional allegations by communications to Respondent:

2. Ineffective assistance of counsel, in that:
 - a. Counsel failed to advise him of his right to a direct appeal;
 - b. Counsel failed to quash the indictment;
 - c. Counsel failed to investigate, advise Applicant regarding a preliminary hearing.

Applicant requests relief as follows:

- "Applicant would seek relief by New trial or vacated"

¹ Applicant was additionally indicted for assault and battery, first degree (2013-GS-22-00976); possession of a weapon during the commission of a violent crime (2013-GS-22-00977); criminal conspiracy (2013-GS-22-00980); and grand larceny, \$10,000 or more (2013-GS-22-00981). These charges were dropped as part of Applicant's guilty plea.



At the evidentiary hearing, Applicant during his direct examination testimony alleged that he was not mentally competent at the time of his guilty plea.

II. MOTIONS FOR CONTINUANCE, RELIEF OF PCR COUNSEL

At the outset of the evidentiary hearing, PCR counsel informed the Court that Applicant wished for a continuance in order to obtain additional records; Respondent opposed the motion. “As actions are called, counsel may request that the action be continued. If good and sufficient cause for continuance is shown, the continuance may be granted by the court.” Rule 40(i)(1), SCRCF. Whether to grant or deny a motion for a continuance is addressed to the sound discretion of this court, through circuit courts are advised to be flexible with procedural requirements in post-conviction relief actions before applicants suffer procedural default on *substantial* claims. See State v. Colden, 372 S.C. 428, 435, 641 S.E.2d 912, 916 (Ct. App. 2007) (continuances in discretion of trial court); Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017) (encouraging flexibility).

PCR counsel explained to the Court that the matter had previously been continued in order to obtain the presence of witness Marcus Lambert, and once in order to ensure the hearing would be conducted in Georgetown County, rather than Horry County. PCR counsel provided that Applicant wished to obtain a transcript of a preliminary hearing and that Applicant wanted medical records from the Waccamaw Center for Mental Health. Respondent opposed the motion, arguing the application was filed in 2016, had been pending for more than three years, had been continued numerous times, that Respondent and its witness were prepared to proceed, and that Applicant had enjoyed ample opportunity to obtain any records he desired. Applicant directly addressed the Court and complained he instructed PCR counsel to obtain the records the



previous year, and expressed that he no longer wished to be represented by PCR counsel, but that he did not wish to proceed *pro se*.

Upon this Court's initial denial of the motions from the bench, PCR counsel further argued that Applicant had a right to obtain records he felt were essential to his action, and noted that Applicant was clearly not happy with him. PCR counsel moved to be relieved. Respondent further argued in opposition that Applicant was engaged in merely dilatory conduct of the same kind as addressed in Richardson v. State, 377 S.C. 103, 659 S.E.2d 493 (2008).

This Court reiterates here for clarity its denial of the motions from the bench. Applicant has enjoyed more than three years since filing the application to conduct any further research, raise any additional claims, or obtain records he deems necessary to support any claims he wishes to raise. Applicant is represented by counsel who can perform these tasks on his behalf.

As to the transcript of any preliminary hearing, Applicant has never raised by amendment any allegations relating to any preliminary hearing, has not demonstrated that a preliminary hearing was conducted such that a transcript could have been produced, and has not demonstrated that if a preliminary hearing was conducted, that a transcript could still be produced after the passage of so many years. Further, in the absence of any articulated allegations, this Court is strained to conceive of how any events at any preliminary hearing could provide evidence to support Applicant in meeting his burden under Hill.

As to medical records, again, Applicant has never raised by amendment any allegations relating to his mental health, and has not demonstrated what, if any, records exist to be retrieved. Furthermore, as will be explored in Section II.A.2, below, Applicant's testimony as to his new mental health claim reflects that it is not a substantial claim, but a new and baseless assertion by Applicant intended to further delay the adjudication of his application.

A handwritten signature in black ink, consisting of a stylized, cursive letter 'A' followed by a small flourish.

As to the motion to be relieved, the Court finds Respondent's citation to Richardson to be instructive. Applicant's mere dissatisfaction with PCR counsel is inadequate to justify reliving PCR counsel, and Applicant reflects no desire to proceed *pro se*. Applicant is not entitled to appointment of PCR counsel of his choosing, and PCR counsel cannot be relieved of his duties of representation simply because his client is troublesome.

The Court understands the evidentiary hearing was not the first time this matter was called before the court. No good and sufficient cause is demonstrated for either motion and, for all of these reasons, Applicant's motions to continue and relieve counsel were, and are, **DENIED.**

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove 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, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.



In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. 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). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the



proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” Id. at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient



before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

1. Failure to Investigate – Exculpatory Statement of Marcus Lambert

Applicant alleges Counsel was ineffective in failing to investigate statements made by co-defendant Marcus Lambert exculpating Applicant. “[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” *Strickland*, 466 U.S. at 690-91. “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Id.* at 691. “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Id.*

“The reasonableness of counsel’s actions may be determined or substantially influenced by the defendant’s own statements or actions.” *Id.* “Counsel’s actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant.” *Id.* “In particular, what investigation decisions are reasonable depends critically on such information.”

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v.*



State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

During the plea proceeding, the plea court asked Applicant if he was satisfied with the services of Counsel, and Applicant replied in the affirmative. (Tr. 9, ll. 3-4). The State shortly thereafter provided a factual basis for the plea, which provided that the victim, Dan Gasque, was robbed in his home, forced into his own 2013 Dodge Avenger, then escaped at a Kangaroo gas station. (Tr. 9-10). Law enforcement subsequently spotted the Avenger in Hemingway, South Carolina, and pursued the vehicle through three counties before it—as well as “a few” law enforcement vehicles—crashed the high speed chase to an end. (Tr. 10, ll. 4-13). Marcus Lambert was identified as the driver of the vehicle, while Applicant and co-defendant Quantae Priest were also pulled from the wreck. (Tr. 10, ll. 13-16). Applicant confirmed the State’s factual recitation. (Tr. 10, ll. 20-21).

Counsel opened mitigation by explaining some of her efforts in the case. Counsel explained that she hired a private investigator to run down Applicant’s alibi, but the alibi turned out to be inadequate. (Tr. 10-11). Counsel noted the weaknesses and strengths in the State’s case. As to weaknesses, there was no DNA evidence to connect Applicant to the crimes committed at the victim’s house, and the victim never positively identified Applicant as one of the perpetrators. (Tr. 11, ll. 5-9) As to strengths, Counsel acknowledged Applicant was found in



the stolen car at the conclusion of the high speed chase, had been seen with the other two co-defendants, and that one co-defendant had given statements inculcating him. (Tr. 11, ll. 10-15). After extolling some of Applicant's virtues, Counsel explained Applicant "had just known Marcus Lambert," and was the youngest of the three involved. (Tr. 11-12, quoted portion at Tr. 12, ll. 6-7). Counsel continued:

[Applicant] was 17, and he'd only known this individual for a couple of months, Marcus Lambert, who the evidence shows and a videotaped statement said, "I was the one with the gun. I was the one who drove the car. I am the one who wrote the check."

(Tr. 12, ll. 9-13). Counsel thereafter argued for a ten year sentence. (Tr. 12-13). As previously noted in the procedural history, the plea court sentenced Applicant to fifteen years.

At the evidentiary hearing, Applicant testified that Marcus Lambert wrote a letter dated November 23, 2013, that Counsel received the letter, and that Applicant asked her to file a motion to dismiss the charges against him. Applicant acknowledged Counsel hired a private investigator, Don Myers, but not for the purpose of looking into Lambert's letter.

Marcus Lambert, SCDC #353364, was transported to and testified at the evidentiary hearing. Lambert testified he was familiar with Applicant and confirmed that the letter dated November 23, 2013, and postmarked November 26, 2013, was entirely his handwriting. The letter was addressed to Counsel, and read in substance:

This is Marcus Lambert. I am writing to you today to notify you about my co-defendant Daquarius Holmes. He had nothing to do with the crime that happen on the night of July 17, 2013 that he is being accused of. The investigators that interviewed me forced me to say he did because he was in the car with me when I got caught. He was just getting a ride that was it he didn't know what I did before I picked him and my other co-defendant up. I hope this can help my friend out in any way when we go to Court. I'm going to take full responsibility for my actions. Thanks.

(Applicant's Exhibit #1). Despite the letter, Lambert testified he was never contacted by Counsel. Lambert could not recall ever meeting with Don Myers, and testified that he did not

think he ever spoke to the investigator. Lambert claimed that then-Investigator Melvyn Garrett threatened him with life in prison if he did not stick by his statements inculcating Applicant in the crime. Lambert testified that Applicant was just a bystander who he picked up after the victim escaped at the Kangaroo gas station, and was innocent of the crime.

On cross-examination, Lambert denied that his statements in the letter or his testimony at the evidentiary hearing were the product of any threats or promises. Lambert acknowledged that he had been represented by an attorney at the time of the letter and up to Applicant's guilty plea. Prodded for further details as to the day of the crimes, Lambert testified that after he left the Kangaroo he retrieved clothes from his girlfriend, saw Applicant, picked him up, and then fled from police after seeing blue lights near Johnsonville, South Carolina. Lambert could not recall ever meeting with an Investigator Steve Brown, nor did he recall ever recanting the letter exculpating Applicant.

Counsel testified she began the practice of law in 1995 and that approximately 80% of her experience was in criminal law. Counsel explained the Public Defender's Office filed motions pursuant to Rule 5, SCCrimP, and Brady,² and she received discovery responsive to the motions. After summarizing the facts of the case, Counsel testified that Applicant was "all over the board" in his own recollections and required tremendous patience. Counsel investigated Applicant's alibi, but it did not check out. In one version of events, Applicant claimed he saw Lambert driving by, asked him for a ride, fell asleep in the car, and woke up mid-chase. Another version involved Applicant asking for a ride from someone who had no car. Counsel recalled that she would explain to Applicant the defects in his stories, which would prompt Applicant to then change his story.

² Brady v. Maryland, 373 U.S. 83 (1963).



Counsel testified she received Lambert's letter and reviewed it. Counsel explained that other witnesses placed Applicant with Lambert. Counsel additionally noted that perhaps most damaging was that Applicant was laughing on the dashcam video of the end of the chase and his arrest. Counsel provided the letter to the State, but Lambert ultimately recanted the letter on or about January 15, 2014, in a recorded interview. Counsel watched the video of Lambert's recantation and showed it to Applicant, after which they ditched any strategy contingent on Lambert's assistance. Counsel testified she independently investigated Applicant's purported routes via MapQuest in conjunction with known facts and determined that there simply was not enough time for Applicant's recollections to be possible. Immediately prior to the entry of Applicant's guilty plea, Counsel presented Applicant a "plea checklist," reviewed with him one final time the subjects set forth therein, and elicited his confirmation that they had discussed the subjects through a series of checkmarks and Applicant's signature. (State's Exhibit #1). Applicant confirmed on the checklist that he and Counsel "7. Discussed evidence against defendant." Id. Applicant further confirmed that he was "14. Satisfied with attorney's services." Id.

On cross-examination, Counsel expanded upon her "all over the board" remark by explaining that Applicant would quote other inmates and offer illogical defenses to her. Counsel again stated that she met with Applicant, discussed the Lambert letter with him, gave the letter to the State, and was thereafter told that Lambert recanted the letter on video. Counsel opined that the letter was not credible and that the original interview and the recantation were both very believable. Counsel and Applicant did not spend much time on Lambert after his recantation.

The Court finds no ineffectiveness on the part of Counsel. The Court finds credible Lambert's testimony that he wrote the letter, sent the letter to Counsel, and was not thereafter



contacted by Counsel. The Court does not find credible Lambert's testimony as to the substantive events of July 2013, or his conspicuous inability to remember recanting the statement. This Court similarly gives no weight to Lambert's claims he was threatened with life in prison if he did not recant. The Court does find credible Counsel's testimony regarding the Lambert letter, and gives it substantial weight. Applicant's testimony on this point was limited to agreed upon facts: Lambert produced a letter and sent it to Counsel; Counsel and Applicant discussed the letter; Applicant asked her to move the charges be dismissed.

The Court finds that Lambert wrote an exculpatory letter and sent it to Counsel. Counsel received the letter, discussed it with Applicant, and forwarded it on to the State. Counsel did not communicate with Lambert directly and could not have done so as he was also charged in the crime and represented by his own attorney. The State accepted the letter and investigated it further with Lambert,³ who recanted the letter in a video recorded interview. Counsel communicated Lambert's recantation to Applicant, and they moved on to explore other potential defenses. None of the facts before the Court reflect inadequate investigation by Counsel, but rather reflect that she followed up upon new evidence and performed exactly as any reasonably competent attorney would given such a scenario. Applicant was fully aware of Lambert's letter and the subsequent recantation at the time of his guilty plea, and chose at that time to plead guilty. Applicant has failed to show any deficiency on the part of Counsel, or that but for the deficiency alleged he would not have pled guilty but would have proceeded to trial, and accordingly his request for relief by way of this allegation is **DENIED**.

2. Failure to Investigate – Mental Health

³ That the State was able to directly explore the letter with Lambert would appear to reflect Lambert's willing cooperation with law enforcement under the advice of his attorney, which implicitly suggests Lambert's attorney would not have permitted communications by Counsel to Lambert to do otherwise.



Immediately prior to the evidentiary hearing, and throughout his testimony at the evidentiary hearing, Applicant raised for the first time allegations that Counsel was ineffective for failing to investigate whether he was competent to enter a guilty plea. Excuse from procedural default in PCR matters is rare, but the courts are encouraged to exercise its own discretion to reach the merits of *substantial* issues within the flexibility of the Rules of Civil Procedure. Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017).

“Due process of law prohibits the conviction of a person who is mentally incompetent.” Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992). An accused is competent to stand trial if he or she has sufficient capability to consult with his or her lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings. Id., 308 S.C. at 232, 417 S.E.2d at 596. “The focus of a competency inquiry is the defendant’s mental capacity; the question is whether he [or she] has the *ability* to understand the proceedings.” Garren v. State, 423 S.C. 1, 14, 813 S.E.2d 704, 711 (2018) (quoting Godinez v. Moran, 509 U.S. 389 (1993)).

As to the deficiency prong under Strickland, an attorney may reasonably rely upon his or her own perceptions of a defendant in determining whether or not their client should be mentally evaluated. Jeter, 308 S.C. at 233, 417 S.E.2d at 596. When establishing Strickland prejudice in the context of counsel’s failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the original proceeding. Garren, 423 S.C. at 12, 813 S.E.2d at 710 (citing Ramirez v. State, 419 S.C. 14, 21, 795 S.E.2d 841, 845 (2017)). As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable

mental health issues which undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. Id., 423 S.C. at 13-14, 813 S.E.2d at 711. An applicant alleging incompetence *in fact* must show by a preponderance of the evidence that he was incompetent at the time of his original proceedings. Id., 423 S.C. at 16, 813 S.E.2d 704, 713; Hall v. Catoe, 360 S.C. 353, 358, 601 S.E.2d 335, 338 (2004).

During the plea proceeding, the plea court asked Applicant if he was under the influence of any alcohol, drugs, or other substances which might affect his understanding, to which Applicant replied “No, sir, not at all.” (Tr. 5, ll. 19-23). Applicant confirmed he understood why he was present in the courthouse. (Tr. 5, ll. 24-25).

At the evidentiary hearing, Applicant testified that he had a record of mental health issues, which Counsel did not obtain or review to confirm his competency to proceed with a plea. Applicant conceded he had no records at the evidentiary hearing. Applicant further testified that he was previously diagnosed with attention deficit hyperactivity disorder, and that he required medication to pay attention. Applicant speculated that, at the time of the plea, his medical records could have shown whether he understood everything that was taking place. Applicant testified Counsel never discussed with him the possibility of having him mentally evaluated.

Counsel testified she never perceived any reason to question Applicant’s competency. Counsel denied Applicant ever asked her to retrieve any mental health records. Counsel opined that Applicant fully understood their conversations and noted that he independently engaged in tremendous research. Counsel opined there was nothing to support any insanity defense. Though not specifically mentioned in testimony, the Court notes that the plea checklist provided by Counsel and signed by Applicant indicates the two addressed “10. Any mental health problems or addiction issues.” (State’s Exhibit #1).



On cross-examination, after explaining her “all over the board” remark, Counsel confirmed that she did not send Applicant to be mentally evaluated. Counsel described Applicant as naïve, and again firmly asserted there was not one red flag to prompt her to pursue any competency or insanity issues. Counsel explained that Applicant’s proposed defenses were merely unrealistic, such that no jury would have accepted them. Counsel testified she had no problems communicating with Applicant, and that there was no need for any mental health evaluation.

First, the Court finds this issue is not sufficiently meritorious or substantial to justify excusing Applicant’s procedural default in failing to properly plead the issue in either his application or in any subsequent amendment. As concluded in Section II, above, this Court is of the firm belief that Applicant’s claim is little more than dilatory conduct by an Applicant who can find no sufficiently meritorious claims to justify vacating his guilty plea. Applicant does not bring to the court substantive evidence to support a potentially meritorious claim that he simply forgot to amend into the application, but rather asserts a claim that is breezily unburdened by any meaningful factual support.

The merits of the claim as they are presented to this Court reinforce the Court’s finding of procedural default. The plea transcript reflects Applicant’s complete understanding of events as they were occurring and his answers to the plea court’s questions reflect he was paying attention and knew what was taking place. Applicant never testified at the evidentiary hearing that he did not understand what occurred at the plea proceeding, but rather merely offered the possibility that records might support his claimed diagnosis of ADHD. Applicant presented no records. Counsel testified she never perceived any mental issues to explore with Applicant, and that he was fully engaged in their conversations exploring possible defenses based on his ever-changing



and diverse recollections of precisely what happened on the day in question. Applicant has failed to present any evidence to meet his burden under Hill, and failed to demonstrate any reason why he should be relieved of his procedural default; accordingly, his request for relief by way of this allegation is **DENIED**.

3. Failure to Advise of Alford Pleas

Applicant alleges Counsel was ineffective in failing to discuss the option of entering a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). “The Alford plea is, in essence, a guilty plea and carries with it the same penalties and punishments.” State v. Herndon, 403 S.C. 84, 91, 742 S.E.2d 375, 379 (2013). Consequently, this Court is unable to conceive of how further discussion of Alford could have prompted Applicant not to take a course of action which was “different” for the purposes of Strickland or Hill: additional knowledge of Alford would not rationally prompt any defendant to instead proceed to trial, and the possibility a defendant would enter an Alford plea instead of a standard guilty plea is not a meaningful difference in outcome.

In any event, during the plea proceeding, Counsel specifically noted that she discussed with Applicant the options of pursuing an Alford plea or taking the case to trial. (Tr. 11, ll. 5-7). At the evidentiary hearing, Applicant testified he brought up the subject of Alford to Counsel, who explained it to him and purportedly told him it was not an option. Counsel testified she told Applicant that Judge Culbertson would not “appreciate” an Alford plea and that Applicant agreed with her conclusion.

Applicant has failed to present anything to support his burden under Strickland or Hill, and his request for relief by way of this allegation is **DENIED**.



4. Failure to Quash Indictment

Applicant alleges Counsel was ineffective in failing to quash the indictments against him. The Court will not belabor this allegation: as Applicant was pulled laughing from the wreck of the stolen vehicle at the conclusion of a high speed chase, and as Applicant was implicated by co-defendants of involvement in the crimes, ample probable cause existed to support his indictment and no basis for any such motion existed, as acknowledged by Counsel at the evidentiary hearing. Applicant cannot show ineffectiveness by way of this allegation and his claim for relief therefrom is **DENIED**.

5. Failure to Investigate, Advise of, Address Preliminary Hearing

Applicant alleges Counsel was ineffective in failing to do anything with respect to his preliminary hearing. “Any defendant charged with a crime not triable by a magistrate shall be brought before a magistrate and shall be given notice of his right to a preliminary hearing solely to determine whether sufficient evidence exists to warrant the defendant’s detention and trial.” Rule 2(a), SCCrimP. “The hearing shall not be held, however, if the defendant is indicted by a grand jury or waives indictment before the preliminary hearing is held.” Rule 2(b), SCCrimP; see also State v. Ballington, 346 S.C. 262, 269, 551 S.E.2d 280, 283 (Ct. App. 2001) (recognizing a circuit court cannot “restore the right to a preliminary hearing by ordering a post-indictment preliminary hearing”), overruled on other grounds by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009).

The Georgetown County Sheriff’s Department sought and obtained a warrant for Applicant’s arrest on July 22, 2013. The warrant was served on Applicant on August 23, 2013. Applicant’s indictments were true billed by the Georgetown County Grand Jury on October 16, 2013.



Applicant was uncertain if he did or did not have a preliminary hearing, and was uncertain if Counsel represented him at any preliminary hearing. Applicant testified to his belief that the court must conduct a preliminary hearing before he could be indicted.

Counsel testified she was appointed to represent Applicant pursuant to a contract with the Office of Indigent Defense. Counsel could not recall any preliminary hearing, and did not believe one was held. Counsel noted that she was appointed after Applicant was indicted.

Applicant has failed to show any ineffectiveness. Applicant presents no evidence that he ever requested a preliminary hearing, to show he was wrongfully denied any preliminary hearing, as to whether a preliminary hearing did or did not occur, or how the occurrence or non-occurrence of a preliminary hearing could have impacted his decision to plead guilty. Applicant was indicted by the grand jury and thereafter was no longer entitled to any preliminary hearing. Applicant has failed to meet his burden as to either prong of Hill, and his request for relief by way of this allegation is **DENIED**.

5. Failure to Advise of Direct Appeal Rights

Applicant alleges that he was denied the right to a direct appeal of his plea and sentence. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430

F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the “bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.” Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, “White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served.” Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

The plea court made no mention of the right to a direct appeal during the plea colloquy. Applicant testified at the evidentiary hearing that he was not advised of his rights, and that he was not advised of his right to an appeal. Counsel testified she told Applicant about his right to a direct appeal and that Applicant never asked for an appeal. The plea checklist provided by Counsel and signed by Applicant reflects that the two discussed “15. Right to Appeal Guilty Plea – Must be done within 10 days of written order of the Court.” (State’s Exhibit #1). On cross-examination, Counsel reaffirmed that Applicant never asked for an appeal.

The Court finds Applicant was advised of his rights to a direct appeal and did not ask Counsel to file any such appeal. The Court gives no credence to Applicant’s testimony regarding this allegation. The Court finds Counsel’s testimony regarding this allegation to be highly



credible and dispositive. Applicant's allegation is refuted by the credible evidence before the Court, such that he cannot meet his burden, and his claim for relief is **DENIED**.

III. CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 21 day of July, 2020.

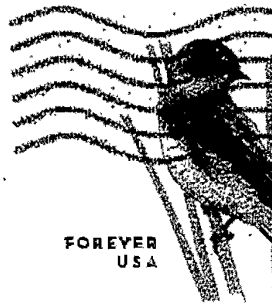
[Signature], South Carolina

[Signature]
 GEORGE M. MCFADDIN, JR.
 Presiding Judge
 Fifteenth Judicial Circuit

Marcus Lambert
2394 Browns Ferry Rd.
Georgetown, SC 29440

CHARLESTON SC 294

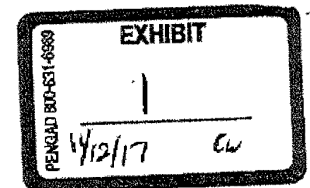
25 NOV 2013 PM 1 T



Bank

Margaret Ann Kneece
38 Blackgum Rd.
Suite C
Pawleys Island, SC 29585

25565+8495



11-23-13

Dear Mrs. Margaret Ann Kneese,

This is Marcus Landolt. I am writing to you today to notify you about my co-defendant Dayvarius Holmes. He had nothing to do with the crime that happen on the night of July 17, 2013 that he is being accused of. The investigators that interviewed me forced me to say he did because he was in the car with me when I got caught. He was just getting a ride that was it he didn't know what I did before I picked him and my other co-defendant up. I hope this can help my friend out in any way when we go to Court. I'm going to take full responsibility for my actions. Thanks

Marcus Landolt

6/7 Days

KNEECE LAW FIRM
 Margaret Ann Kneece, Esquire
 P.O.Box 3966
 Pawley's Island, SC 29585
 843-424-6393
 Fax(s) 843-314-3205 / 843-235-8844
MAK@KNEECELAWFIRM.COM

Judge Culbertson
 Dagnan's Holmes
 6/11/15

Plea Checklist:

Plea
 A/R
 Kidnapping
 Burg. 2nd

- ☒ 1. Right to remain silent.
- ☒ 2. Right to a jury trial and speedy trial.
- ☒ 3. Understand how a jury trial works.
- ☒ 4. Right to cross examine state's witnesses.
- ☒ 5. Power to Subpoena Witnesses on your behalf.
- ☒ 6. Waiver- Waive present to grand jury.
- ☒ 7. Discussed evidence against defendant.
- ☒ 8. Any promises or threats to plead guilty.
- ☒ 9. Pleading guilty freely and voluntarily.
- ☒ 10. Any mental health problems or addiction issues.
- ☒ 11. Any drugs or alcohol in last 24 hours.
- ☒ 12. Enhancement possible if charged for similar crime in the future.
- ☒ 13. Understand the charges against him/her.
- ☒ 14. Satisfied with attorney's services.
- ☒ 15. Right to Appeal Guilty Plea – Must be done within 10 days of written order of the Court.
- ☒ 16. If currently on Probation or Parole, understand a Guilty Plea could result in a revocation of that Probation or Parole.

Dagnan's Holmes
 June 11th
 6/11/15