

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

SANTOS A. AGUILERA,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-001376

AMENDED APPENDIX

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General
Rembert Dennis Bldg, Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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Nov 24 2020

SC Court of Appeals

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	2015-GS-40-02709
	)	
	)	
	)	
State Of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Santos A. Aguilera	)	)
<u>DEFENDANT</u>	)	January 31, 2017

B E F O R E:

THE HONORABLE CLIFTON B. NEWMAN, JUDGE.

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

VANCE EATON, ASSISTANT SOLICITOR
Attorney for the State

LUKE SHEALEY, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, there were no witnesses called.)

1 THE COURT: All right.

2 MR. EATON: Please the Court, Your Honor. Vance
3 Eaton for the State. Does, Your Honor, want to wait for
4 the clerk?

5 THE COURT: No, keep talking.

6 MR. EATON: Before you, Your Honor, is Santos
7 Aguilera and his attorney Luck Shealey of the private bar.
8 Mr. Aguilera is pleading guilty today to attempted murder.
9 Your Honor, my victim Jesus Navaro is present here in the
10 court today and I believe would like to address the Court
11 at the appropriate time. Your Honor, I agreed to
12 recommend a sentence of a cap of ten years of
13 incarceration and I would ask the Court for that ten
14 years. And it is my understanding that Mr. Augilera
15 wishes to enter his plea under North Carolina vs. Alford,
16 Your Honor.

17 THE COURT: All right, and, sir, who are you?

18 MR. AVALEZ: Court interpreter Wilmar Avalez.

19 THE COURT: All right, Mr. Avalez, do you
20 solemnly swear or affirm that you will accurately
21 translate these proceedings to the benefit of the Court
22 and the benefit of Mr. Augilera?

23 MR. AVALEZ: I do.

24 THE COURT: All right. Mr. Shealey.

25 MR. SHEALEY: Thank you, Your Honor. May it

1 please the Court. The offer is as Mr. Eaton stated a cap
2 of ten. We certainly will be asking for less time. We
3 would ask that you consider taking this plea under North
4 Carolina vs. Alford considering that my client doesn't
5 necessarily agree with all the exact facts as stated, but
6 does want to take advantage of this deal.

7 THE COURT: All right. Sir, state your --
8 first, she'll swear you in.

9 THE CLERK: Raise your right hand please. Do
10 you solemnly swear that you will accurately ---

11 THE COURT: No, I done him already, the
12 defendant.

13 THE CLERK: Do you swear to tell the truth, the
14 whole truth, and nothing but the truth so help you God?

15 THE DEFENDANT: Of course I do.

16 THE COURT: And what is your name?

17 THE DEFENDANT: Santos Aguilera.

18 THE COURT: And, Mr. Aguilera, what's your
19 native country?

20 THE DEFENDANT: Honduras.

21 THE COURT: Are you an American citizen?

22 THE DEFENDANT: No.

23 THE COURT: Are you -- what is your status here
24 in the U.S.?

25 THE DEFENDANT: What do you mean?

1 THE COURT: Are you on a green card? You're an
2 illegal alien. What's your status here?

3 THE DEFENDANT: I've come in illegally.

4 THE COURT: And do you understand that this
5 guilty plea may result in your deportation?

6 THE DEFENDANT: Of course.

7 THE COURT: And do you want to plead guilty to
8 this charge under North Carolina vs. Alford?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And this charge that you're facing,
11 the charge of attempted murder that carries up to 30 years
12 in prison; is that right?

13 MR. EATON: That's correct, Your Honor.

14 THE COURT: And do you understand that?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: And the -- your lawyer and the
17 Solicitor says they are recommending a sentence -- the
18 Solicitor -- you and your lawyer says recommending a cap
19 or maximum sentence of ten years. Do you understand that
20 is their recommendation?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And do you understand that I do not
23 have to accept the recommendation that the sentence is my
24 decision?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Has anyone promised you anything to
2 get you to plead guilty?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Do you want to give up your
5 Constitutional Right to a jury trial and plead guilty?

6 THE DEFENDANT: No, sir.

7 THE COURT: When I say do you want to give up
8 your Constitutional Right and plead guilty, that means do
9 you want to plead guilty pursuant to North Carolina vs.
10 Alford?

11 THE DEFENDANT: No.

12 THE COURT: You can speak with him, Mr. Shealey.

13 THE DEFENDANT: Oh, yes, of course.

14 THE COURT: You wish to plead guilty pursuant to
15 North Carolina vs. Alford and not have a jury trial?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right, Mr. Solicitor.

18 MR. EATON: Thank you, Your Honor. Your Honor,
19 this took place on December 30th of 2014. Mr.
20 Augilera, his co-defendant Hosea Trarinos (sic), and the
21 victim Jesus Navara, were at a bar on Decker Boulevard
22 called Decker Billiards. All three of them and, I think,
23 a number of their friends had been drinking there for a
24 while. An altercation, an argument started on the dance
25 floor at the bar between the victim who is Mexican and

1 Mr. Augilera and Mr. Trarinos who are Honduran. I believe
2 there was an undercurrent perhaps of national pride in
3 this altercation. Their words -- they started fighting
4 inside the bar, beer bottles were thrown and the bouncers
5 threw a number of people out into the parking lot.

6 Mr. Navara was among those as were a couple of his
7 friends. Mr. Navara, my victim, was very intoxicated, but
8 not all his friends were. And they report watching
9 Mr. Augilera and Mr. Trarinos come after Mr. Navara and
10 they yelled at him vas a morir esta noche, which means
11 you're going to die tonight. And then they watched him
12 stab him repeatedly with knives. Mr. Augilera was
13 identified by a friend of Mr. Navara's ---

14 THE COURT: Is all that true, Mr. Augilera?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right, proceed.

17 MR. EATON: Yes, sir. A friend of Mr.
18 Navara's identified Mr. Augilera and in fact said that in
19 the parking lot before they went for Mr. Navara, Mr.
20 Augilera swung at him with a knife before he then chased
21 after Mr. Navara and they stabbed him.

22 THE COURT: Pointing out to a different person?

23 MR. EATON: Yes, sir, another witness who was
24 able to identify him from a lineup say that's the guy. He
25 been face to face with him. Mr. Navara both of his lungs

1 collapsed, his trachea was cut. He actually showed me his
2 wounds on his torso and it's a jig saw puzzle.

3 THE COURT: Who's that?

4 MR. EATON: That's Mr. Navara right here.

5 THE COURT: Mr. Navara there?

6 MR. EATON: Yes, sir. Mr. Augilera and Mr.
7 Trarinos were then found by a deputy right down the road
8 from Decker Billiards coming out of kind of a wood line
9 right there covered in blood. A lot forensics was done on
10 the scene. Witnesses were interviewed. Ultimately, it
11 turned out that no one could positively identify Mr.
12 Trarinos nor was any of the blood on Mr. Trarino's, the
13 victim's blood. However ---

14 THE COURT: Who is Trarinos again?

15 MR. EATON: The co-defendant, Your Honor.

16 THE COURT: All right.

17 MR. EATON: However, Mr. Augilera was
18 identified, positively identified if you will in a lineup
19 by multiple people at the bar and blood on his clothing
20 was the victim's blood.

21 THE COURT: Has he been jail since 2014?

22 MR. EATON: Yes, sir, he has. So -- and I
23 wanted to explain this because I wanted to explain to the
24 Court why I pled Mr. Trarinos to time served in March of
25 last year to assault by a mob third degree and public

1 disorderly conduct after he served about 16 months. That
2 is not because I didn't think that he didn't deserve a
3 recommendation of ten years, it's because I didn't have
4 the evidence against him. And, of course, my belief that
5 he was involved is not enough, and so that's why he pled
6 out, but we do have the evidence against Mr. Augilera. In
7 fact, it's on the trial docket in February.

8 THE COURT: Mr. Bowe, you hear all those people
9 talking all over the place.

10 BAILIFF: Yes, sir, him.

11 THE COURT: The interpreter, oh.

12 MR. EATON: So all that said, Your Honor, I do
13 think that given the nature of this assault, the severe
14 devastating injuries to the victim, their intention to
15 kill him that night and what you will hear from the victim
16 himself, I believe that ten years is appropriate, Your
17 Honor.

18 THE COURT: All right. Do you disagree with
19 anything he said, Mr. Augilera?

20 THE DEFENDANT: What do you mean?

21 THE COURT: Do you disagree with anything that
22 he's stated?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right. I'll hear from
25 Mr. Navara. He speak English or Spanish or...

1 VICTIM ADVOCATE: I have a statement that Mr.
2 Navara gave me and I translated for him.

3 THE COURT: Do you speak English?

4 MR. NAVARA: A little bit.

5 THE COURT: Un poco?

6 MR. NAVARA: Yes, sir.

7 THE COURT: All right, that's all the Spanish I
8 know.

9 Yes, ma'am.

10 VICTIM ADVOCATE: Your Honor, I am asking that
11 you sentence this man to the maximum time possible because
12 he has destroyed my life. My normal life I use to be a
13 healthy person until he stabbed me. Now, I have many
14 problems with my lungs and I can't work normally because I
15 feel like I lose my breathe and I have to use an inhaler
16 to help me. I can no longer do any heavy lifting. It has
17 financially affected me as well. It has also affected my
18 personalty. I can go from being happy and then I become
19 frustrated very easily and become angry and that causes me
20 problems with my wife.

21 I feel as if you give him a little bit of time
22 he will get out and do the same thing again to someone
23 else and that will not be justice. That is why I am
24 asking that you please give him a minimum of ten years
25 because he has already gotten a chance with a cap and my

1 life has changed forever. Thank you, Jesus Navara.

2 THE COURT: Thank you. Criminal history.

3 MR. EATON: He has a prior deportation, Your
4 Honor.

5 MR. SHEALEY: No other criminal history.

6 THE COURT: Mr. Shealey.

7 MR. SHEALEY: Thank you, Your Honor. May it
8 please the Court. My discussions with my client -- just
9 for the record, I want to make sure that he understands
10 what's happening. The facts as he believes them were
11 slightly different to you because I think that's my
12 obligation, but before I get to that, I'll tell you that
13 Mr. Augilera is here illegally. He is here basically out
14 of fear of imminent death when he returns to Honduras. I
15 do -- he has a cousin who lives in Canada who was very
16 helpful. She talk to me. She sent me news articles and
17 death certificates of his father, his brother, his cousin
18 who were killed from some local militant faction where he
19 thought he had to leave to avoid death, that's why he's
20 here and that's why he has come back after being deported
21 once, but that's just kind of his background.

22 The reason why that plays into this case and why
23 I bring it up is that I've only had the case maybe four or
24 five months. He had a prior attorney they didn't get
25 along and it kind of drug out. But in terms of Mr.

1 Eaton's position that he felt strongly that the
2 co-defendant was more involved perhaps that he could
3 prove. There was a time in the past when he sought, I
4 believe, my clients help to cooperate with his prior
5 attorney and he refused to cooperate. It was reveal to me
6 that's because of a threat from his co-defendant. I know
7 where you live in Honduras. You better not testify
8 against me. He takes that seriously given what's happened
9 to his family. So, I think, that's why he couldn't have
10 been more helpful. And his position was on that night,
11 yes, everybody was there. Everybody had been drinking,
12 but there was this altercation where both parties were
13 ejected from this bar. At that point he told me that he
14 was punched, that his co-defendant ran after the victim.
15 He followed, that there was an altercation where the
16 co-defendant stabbed him. He was there. He got blood on
17 him, but just so he and I are on the same page, I think
18 that's why we asked to do this under Alford. So that
19 would be his version of the facts understanding that
20 whether offered or not hand of one hand of all under our
21 laws you can't do that.

22 However, he does want to -- this was on the
23 trial docket for a couple of months. He wants to accept
24 responsibility for his part in this. He knows that a man
25 has been seriously injured due to his actions and those of

1 his co-defendant, but I just want to kind of lay that back
2 story a little bit.

3 He is 28 years old. As he said, he's here from
4 Honduras. He has an ICE hold on him currently. He will
5 be deported at the end of whatever sentence, Your Honor,
6 decides to give him.

7 In investigating this case and trying to
8 negotiate with the Solicitor, you know, one thing we had
9 to look at was there are federal guidelines in federal
10 laws in place that if you are guilty of a re-entry into
11 this country and commit an assault, your subject to
12 federal prosecution. And my research into that could have
13 been -- it looks like you could be facing up to even five
14 years, so Vance doing his due diligence called ICE a
15 couple few weeks ago and say, hey, are you going to
16 prosecute him in that way because it may affect my plea
17 offer and they said, no, at that time.

18 However, as you know we're in the middle of a
19 new administration, a new attorney general, I'm bringing
20 this up because I don't know that we can say a hundred
21 percent say he will not be given an additional federal
22 sentence. I know that the Solicitor taking him at his
23 word as investigating that, but we're about to have a new
24 attorney general perhaps different policies on punishments
25 then our old attorney general. I bring that up because

1 many people do face federal sentencing based on an
2 aggravated assault and other crimes committed after
3 re-entry that the federal government has taken seriously
4 in the past, so that's just a question mark that's out
5 there. A potential maybe federal consecutive sentence.
6 But, Your Honor, he has two children that are ages four
7 and three that are in Honduras. He sends money to them.
8 He worked as a painter doing siding work as well. He has
9 no prior criminal history in terms of assaults or fights
10 or anything else, it's just a big situation that he did
11 get into for his first situation in the United States, but
12 I would ask you to give a sentence that reflects more fair
13 consideration of justice when you consider what his
14 co-defendant got, who was given time served on a
15 misdemeanor. I would ask -- I would think when you
16 consider that and what the recommendation is here today, I
17 would ask that you consider a sentence between three and
18 five years active sentence, that would be what I would ask
19 of the Court. He does have credit since December 1st of
20 2014, which is 793.

21 THE COURT: 700 and?

22 MR. SHEALEY: 93 days, sir.

23 THE COURT: Sir, anything you like to say?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Sir.

1 THE DEFENDANT: (Defendant speaking in Spanish.)

2 THE COURT: I don't know what you just said.
3 You got to stop at some point for him to tell me.

4 THE DEFENDANT: I am very sorry for what has
5 happened, Your Honor, and being in jail has taught me
6 things about life that I did not know before. I learned
7 to value life more since I been in jail, Your Honor. You
8 see before I hadn't really lost anyone in life or to
9 death, but recently I've lost many people. I lost my
10 father and my brother on the same day. A month later my
11 cousin was also killed and a few days ago my grandfather
12 has also died, so I offer a thousand apologies for what
13 has happened.

14 THE COURT: All right. Anything further, Mr.
15 Shealey?

16 MR. SHEALEY: No, Your Honor.

17 THE COURT: Any response from anyone?

18 MR. EATON: Just that these two Mr. Trarinos and
19 Mr. Augilera were both involved in this but are
20 differently situated because the evidence is different
21 against them.

22 THE COURT: When I look at a sentence for
23 attempted murder, my focus is more on the victim and the
24 impact of the crime on the victim. I cannot sentence this
25 defendant based on anyone's else case. I know nothing

1 about that case. I wasn't the judge on that case and I've
2 listened to the facts of this case and Mr. Augilera's
3 intent to kill Mr. Navara. As a matter of policy, I not
4 defer to the federal government for any sentences and my
5 cases that separate and independent sovereign as far as
6 prosecution of cases. I base my sentence on anything that
7 they have done or might be doing or might consider doing,
8 certainly understand the -- from what I've read concerning
9 the country of Honduras is kind of considered to be one of
10 the most dangerous places in the world. And I can
11 understand people trying to get out of there and get to
12 this country for the same thing people coming from Mexico
13 and other places, but to have the benefit of what's
14 offered in the U.S. and then to attempt to kill someone
15 here as oppose to doing what most other people come here I
16 deal with people from Guatemala, Honduras, Mexico.
17 They're great people, excellent workers.

18 They seem to be almost the backbone of the
19 country now as far as labor supply is concern, but to go
20 to the extent of wanting to kill someone to the impact on
21 the life of the victim, then I sentence according to that
22 crime just as I would be sentencing an American person for
23 doing the same thing and on an attempted murder of trying
24 to kill someone.

25 It's rarely that they get a ten year sentence

1 let alone anything less than a ten year sentence. I'm
2 looking at the maximum sentence or -- he can get up 30
3 years for trying to kill someone and you don't get the
4 benefit of determining or calling the shots of whether or
5 not they're dead. How many times was he stabbed?

6 MR. EATON: Multiple, Your Honor, and they left
7 him in a pool of blood to die.

8 THE COURT: He could have just as easily been
9 dead. He be on a murder trial, a murder charge, so all of
10 that's out of Mr. Augilera's control once he decide to
11 start stabbing. He gets no -- shouldn't in my view get
12 any benefit of good medical care or the fact that someone
13 saved his life or wasn't his time to go. Crime is still
14 the same. It's attempt murder and could just as easily
15 been murder.

16 So I think Mr. Shealey's done a great job to
17 negotiate a cap of ten years. He certainly understands
18 the hardships of everyone prosecuting cases especially and
19 probably all the witnesses speak Spanish in trying to put
20 together and piece the whole thing together is very
21 difficult. I'll impose the sentence that's the cap. I'm
22 not going under there. They're attempting to go above
23 there, but I'm going to stay with what you all have
24 negotiated as far as the cap and I'll sentence him to ten
25 years, with credit for 793 days.

END OF REQUESTED TRANSCRIPT

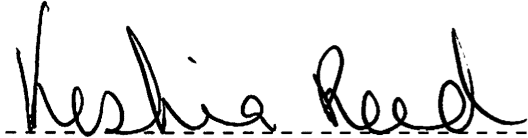
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 19, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Richland County, South Carolina, on the 31st day of January, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 14th day of December 2017.



Keshia Reed, Court Reporter

FORM 5

2017 CP 480 3784

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of RICHLAND)SANTOS A. AGUILERA #371270)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
2017 JUN 20 AM 9:47
JEANETTE MCBRIDE
C.P.

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 KERSHAW CORRECTIONAL INSTITUTE
4848 GOLDMINE HIGHWAY, KERSHAW, SC. 29067
2. Name and location of Court which imposed sentence RICHLAND COUNTY
GENERAL SESSIONS 1701 MAIN STREET, COLUMBIA, SC. 29202
3. Name(s) of co-defendant(s) (if any) JOSE CHIRINO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) CASE No: 2014A4010204191

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 02-02-2017
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty PLED GUILTY TO ATTEMPTED MURDER
- (b) ☐ after a plea of not guilty _____
- (c) ☐ after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. 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) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) INEFFECTIVE INVESTIGATION BY DEFENSE COUNSEL
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) COUNSEL FAILED TO PROPERLY REVIEW DISCOVERY
- (b) COUNSEL FAILED TO INTERVIEW POSSIBLE WITNESSES
- (c) COUNSEL FAILED TO INVESTIGATE THE CASE AS REQUESTED
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. 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?

NO

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 (PLEA)
 (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? N/A
 (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? N/A

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. - PUBLIC DEFENDERS OFFICE

 ii. _____

 iii. _____

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

i. - PLEA AND SENTENCING

 ii. _____

 iii. _____

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

AN ORDER GRANTING POST CONVICTION RELIEF ~~IN~~ PETITION VACATING
MY PRIOR CONVICTIONS AND SENTENCES

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of RICHLAND)

VERIFICATION

I, SANTOS A. AGUILERA, 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.

Santos Aguilera

SWORN to and subscribed before me this 13th
 day of June 2017.

Carmine A. Amosa (L.S.)
 Notary Public

My Commission Expires: December 22, 2013
~~My Commission Expires~~

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

I, SANTOS A. AGUILERA, 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.

s. Santos Aguilera
Applicant

SWORN or affirmed to and subscribed before me this
13th day of June, 2017.

Caroline A. Amador
Notary Public

My Commission Expires: My Commission Expires December 22, 2018

RICHLAND COUNTY
FILED
2017 JUN 20 AM 9:17
JEANETTE W. MCBRIDE
C.C.P. & G.S.

JEANETTE W. McBRIDE
Clerk of Court



MAILING ADDRESS:
POST OFFICE BOX 2766
COLUMBIA, S.C. 29202-2766

TELEPHONE:
Phone: (803) 576-1950
Fax: (803) 576-1785
TDD (803) 748-4999

VIRGINIA F. BELCHER
Chief Deputy Clerk of Court

RICHLAND COUNTY CLERK OF COURT

Richland County Judicial Center
1701 Main Street, Room 205
Columbia, S. C. 29201

June 20, 2017

Jessica E. Kinard
Attorney at Law
South Carolina Attorney General Office
Post Office Box 11549
Columbia, South Carolina 29211

Re: Santos A. Aguilera #371270
2017-CP-400-3784

Dear Ms. Kinard:

I am enclosing a copy of an Application for Post Conviction Relief that has been filed in the Office of the Clerk of Court and assigned civil action number 2017-CP-400-3784.

Also, I have enclosed a copy of his/her criminal records.

Sincerely,

A handwritten signature in blue ink, reading "Judy N. Davis".

Judy N. Davis
Deputy Clerk of Court – Civil Records

Enclosures

cc: Mr. Dan Johnson, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Santos A. Aguilera, #371270,	)	Case No.: 2017-CP-40-03784
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its return to the application for Post-Conviction Relief ("PCR") filed on June 20, 2017 would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In June of 2015, the Richland County Grand Jury indicted Applicant for attempted murder (2015-GS-40-2709). The charges stem from a December 30, 2014 incident in which an altercation occurred between the Applicant and the Victim at a bar on Decker Boulevard. The Applicant shouted "vas a morir esta noche" at the victim, which translates to "you are going to die tonight." Applicant then stabbed the victim multiple times in the chest and neck, resulting in both of his lungs collapsing and a severed trachea. Luke Shealey, Esquire, represented Applicant. Assistant Solicitor Vance Eaton, Esquire, prosecuted the case. On February 11, 2015, Applicant pleaded guilty as indicted to before the Honorable Clifton B. Newman. Pursuant to the State's recommendation, Judge Newman sentenced Applicant to imprisonment for ten years attempted murder with credit for 793 days of time-served credit.

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

II.

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

1. Ineffective assistance of counsel
 - a. Counsel failed to properly review discovery
 - b. Counsel failed to interview possible witnesses
2. Ineffective investigation by defense counsel
 - a. Counsel failed to investigate the case as requested

III.

Respondent interprets Applicant's claim regarding ineffective investigation by defense counsel as one and the same with ineffective assistance of counsel, and will address it accordingly. Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove 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). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

In this case, the record shows Applicant's attorney was informed of his situation and able to represent him competently. He was familiar with the facts of the case, and presented a plausible argument in mitigation. Tr. 11-13. Applicant admitted to his behavior and his knowledge of the potential consequences. Tr. p.5.

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

IV.

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

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 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.

V.

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

VI.

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

Respectfully submitted,

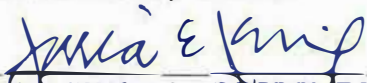
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT

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

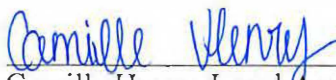
16 Feb., 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2017-CP-40-03784
	)	
Santos A. Aguilera, #371270	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Jonathan D. Waller, Esquire
Waller Law Group, LLC
1116 Blanding Street, Suite 2B
Columbia, South Carolina 29201

DATED this 16th day of February, 2018.


 Camille Henry, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Santos A. Aguilera, #371270,

Applicant,

Vs.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**AMENDMENT TO APPLICATION FOR
POST CONVICTION RELIEF**

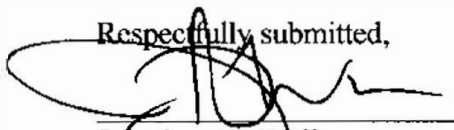
Case No. 2017-CP-000084

RICHLAND COUNTY
FILED
2018 MAR 15 AM 11:48
JEANETTE W. MCBRIDE
CLERK, C.C.P. & G.S.

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed on June 20, 2017, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Luke A. Shealey, Esquire:
 - a. Counsel was ineffective for failing to object to the Assistant Solicitor breaching the plea agreement
 - b. Counsel was ineffective for failing to properly investigate the facts and circumstances of his case: specifically the DNA evidence, or lack thereof, and other evidence pertaining to Applicant's case, thus rendering Applicant's plea involuntary and unknowing.

Respectfully submitted,



Jonathan D. Waller
Waller Law Group
1116 Blanding Street
Suite 2B

Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

March 15, 2018

Columbia, South Carolina

State of South Carolina)
)
)
 County of Richland)

In the Court of Common Pleas

 Fifth Judicial Circuit

Santos A. Aguilera,)
)
 Plaintiff,)
)
 vs.)
)
 The State of South Carolina,)
)
 Defendant.)

2017-CP-40-03784

July 18, 2018

Columbia, South Carolina

B e f o r e:

DeAndrea G. Benjamin, Judge

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

Lindsey McCallister, Esquire
 Attorney for the Plaintiff

Jonathan Waller, Esquire
 Attorney for the Applicant.

Felix L. Kirszenbaum,
 Sworn Translator

Bonnie H. Kelly, CVR
 Circuit Court Reporter

I N D E X

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Motion/Mr. Waller	5
DIRECT CROSS REDIRECT RE-CROSS	
Santos Aguilera	
Mr. Waller 6	
Ms. McCallister 13	
Luke Shealy	
Ms. McCallister 14	
Mr. Waller 29	
Closing Argument/Mr. Waller	34
Closing Argument/Ms. McCallister	36
Decision by the Court	37
Certificate Page	39

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- NO EXHIBITS ENTERED --

1 (On the record at 9:54 a.m.)

2 THE COURT: All right. Yes, ma'am.

3 MS. MCCALLISTER: Your Honor, the next case is *Santos*
4 *Aguilera v The State of South Carolina*, 2017-CP-40-03784.

5 Your Honor, in June, 2015, the Richland County Grand Jury
6 indicted -- oh, I'm sorry. I forgot all about that.

7 Your Honor, I'm sorry. I forgot all about the
8 translator.

9 **FELIX L. KIRSZENBAUM**, certified
10 translator is sworn.

11 MR. KIRSZENBAUM: Felix, middle initial "L," last name
12 Kirszenbaum, K-i-r-s-z-e-n-b-a-u-m.

13 THE COURT: (To the Solicitor) All right. Yes, ma'am.
14 Remember to speak slowly because the translator will have
15 the headphones in.

16 MS. MCCALLISTER: Your Honor, in June, 2015, The
17 Richland County Grand Jury indicted Mr. Aguilera for
18 attempted murder. He was represented on that charge by
19 Luke Shealy, and Assistant Solicitor Vance Eaton prosecuted
20 the case for the State.

21 On February 11, 2015, Mr. Aguilera pleaded guilty as
22 indicted before the Honorable Clifton B. Newman. Pursuant
23 to the State's recommendation, Judge Newman sentenced him
24 to a term of imprisonment of 10 years with credit for time
25 served. He did not appeal his conviction or his sentence.

1 He filed this application for post-conviction relief
2 timely on June 20 -- 20, 2017, and he is represented in
3 this action by Mr. Jonathan Waller. Both Mr. Waller and
4 Mr. Aguilera are present in the courtroom today.

5 (Brief pause.)

6 MS. MCCALLISTER: Your Honor, there have been some
7 amendments filed since the original application was filed,
8 and so I would ask Mr. Waller to clarify -- or specify the
9 allegations that are going forward today at this time.

10 MR. WALLER: Thank you, Your Honor.

11 THE COURT: We're going to give him a pause so he can
12 have an opportunity --

13 MR. WALLER: Yes, ma'am. Your Honor, Mr. Aguilera
14 filed his initial application. After meeting with him, I
15 filed an amendment to that application raising additional
16 grounds that Counsel was ineffective for failing to object
17 to the Assistance Solicitor breaching a plea agreement; as
18 well as Counsel was ineffective for failing to properly
19 investigate the facts and circumstances surrounding his
20 case, specifically the DNA evidence and other evidence
21 pertaining to Applicant's case, thus rendering the plea
22 involuntarily entered into.

23 And I will call Santos Aguilera.

24 **SANTOS AGUILERA**, having been first
25 duly sworn, testifies as follows: (The

DIRECT EXAMINATION BY MR. WALLER - SANTOS AGUILERA

6

1 interpreter speaks with the witness in Spanish.)

2 THE INTERPRETER: Santos Aguilera.

3 WHEREUPON the following
4 examination is conducted with the translator interpreting
5 English to Spanish and Spanish to English as follows:

6 DIRECT EXAMINATION

7 BY MR. WALLER:

8 Q Good morning Mr. Aguilera. How are you today?

9 A Good.

10 Q Mr. Aguilera, I want to talk to you about the -- the
11 charges you had and -- and why you're in prison today.
12 When you were first arrested, what were -- what charge were
13 you arrested for?

14 A Intent to assassinate.

15 Q Okay. Was it attempted murder?

16 A No, sir.

17 Q Who was your attorney on your charge?

18 A He had two attorneys: One last name was Leon [sic]
19 and the second is Luke Shealy.

20 Q Okay. So Mr. Shealy represented you -- was the second
21 lawyer; is that right?

22 A Yes.

23 Q Did you and Mr. Shealy meet and discuss your case?

24 A No.

25 Q When you did talk to him, did you have a translator?

1 A The first time, no.

2 Q The first time no, but the second time you did?

3 A When he came to court, he did have a interpreter.

4 Q Okay. Do you speak some English?

5 A Very little.

6 Q Okay. Did you understand your first conversation with
7 Mr. Shealy?

8 A Very little.

9 Q Okay. And that was without a translator -- or an
10 interpreter?

11 A Yes, sir.

12 Q Okay. When you did meet with Mr. Shealy without the
13 interpreter, what did y'all discuss?

14 A He spoke about the idea that there were no -- not
15 sufficient -- there -- it was not sufficient evidence for
16 the charge of intent to murder, and that he was going to
17 talk to the prosecutor prior to his being deported.

18 Q Okay. You are subject to being deported after your
19 sentence is up; is that right?

20 A Yes.

21 Q Okay. Did you and Mr. Shealy discuss any of the
22 medical or scientific testing in your case?

23 A No.

24 Q Are you aware that there was at least DNA testing done
25 in your case?

DIRECT EXAMINATION BY MR. WALLER - SANTOS AGUILERA

8

1 A He was told, but he had never seen it.

2 Q Okay. You were told there was testing, but you never
3 saw it?

4 A The first time he ever saw it was roughly 20 months
5 after.

6 Q Okay. Did y'all discuss the witnesses's statements
7 that law enforcement had?

8 A No.

9 Q Okay. How 'bout the witnesses's identification of
10 you?

11 A He does not know because they never took him anywhere.

12 Q Okay. Mr. Aguilera, ultimately you ended up pleading
13 guilty to attempted murder. You testified a minute ago
14 that you did not think you were charged with attempted
15 murder. How did you come to plead guilty to attempted
16 murder?

17 A His attorney at the time told him that he -- if he
18 declared himself guilty, he would be given a sentence of
19 three years and then he would be deported and that the
20 sentence would be on time served. And at the time, his
21 father and his brother had been killed and he was desperate
22 to go home.

23 Q Okay. Mr. Aguilera, where are you originally from?

24 A He is from Honduras.

25 Q And your family was having some difficulties there?

1 A The reason that he did agree and declare himself
2 guilty was because he had not been able to communicate with
3 his family, and he considered that if they -- if he was
4 going to be given time served, that that would make it
5 feasible for him to return to Honduras to his family.

6 Q Okay. How long were you in jail before you pled?

7 A Twenty-six months.

8 Q Okay. Do you remember the judge during your plea
9 asking you some questions?

10 A Yes.

11 Q Do you remember answering those questions and -- and
12 telling the judge you understood the charges against you
13 and that you were pleading?

14 A Okay. He does not know anything about American law,
15 and his judge -- his -- sorry -- his attorney explained to
16 him that he understood exactly what he was doing and that
17 he was going to be able to get him to be free if he
18 declared himself guilty.

19 Q Okay. When did he think that he -- excuse me. When
20 did you think that you would be going home from your
21 sentence?

22 A He understood that once that he came to court, that he
23 was going to be returned to jail and then be able to be
24 sent home or deported.

25 Q Okay. The Solicitor in your case recommended a cap of

DIRECT EXAMINATION BY MR. WALLER - SANTOS AGUILERA 10

1 a 10-year sentence. Did you understand that when you went
2 into court that day?

3 A His attorney convinced him that he knew what he was
4 doing, and that yes, the charge could go for 10 years; but
5 that he was only going to receive 3 years and that he was
6 going to be deported.

7 Q Okay. Is that why you pled guilty?

8 A Yes.

9 Q Okay. And I apologize, I keep saying "pled guilty."
10 You pled pursuant to *North Carolina v Alford*; is that
11 right?

12 A For what?

13 Q Pled pursuant to *North Carolina v Alford*.

14 A He was never in Carolina -- North Carolina.

15 Q Okay. You did not plead guilty. You maintained your
16 innocence, but agreed that the State had enough evidence
17 that you would likely be convicted if you had gone to
18 trial?

19 A Due to the fact that he does not really read English
20 at all, he had some friends of his read whatever he was
21 given, and in no part did it say anything about blood being
22 on his person or his clothing.

23 Q Okay. Let me ask it this way: You pled, and that's
24 how you -- you are in the Department of Corrections today.
25 Did you and Mr. Shealy ever discuss you going to trial?

1 A Not at all.

2 Q Okay. Did you ever tell Mr. Shealy that you did not
3 want to plead -- to plead at all?

4 A Yes, he did not.

5 Q Did you tell him you wanted to go to trial?

6 A He said, yes, he was ready for trial.

7 Q Okay. What had y'all discussed about the possible
8 defenses you might have if you had gone to trial?

9 A His attorney told him that he -- when they went to
10 trial, that the possibility was that he could get as much
11 as 30 years in -- of jail. So he -- that -- but assured
12 him that it would not be that way, that he would be let go
13 with the time served.

14 Q That is if you pled guilty or if you pled?

15 A Yes.

16 Q Okay. Mr. Aguilera, I don't have any further
17 questions for you. Is there anything that the judge needs
18 to be aware of Mr. Shealy's representation of you?

19 (Brief pause as interpreter confers with Applicant,
20 off the record and in Spanish.)

21 A The first meeting that they had, the interview with
22 Attorney Shealy was for 15 minutes.

23 The second time it was only for five minutes where he
24 was told that he was only going to get three years, and
25 that he would be let go with time served and he would be

1 able to be deported.

2 Q The second time, when y'all met at court, was the
3 interpreter with you in the meeting or just in the hearing,
4 like today?

5 (Telephone rings.)

6 MR. KIRSENBAUM: I'm sorry, Your Honor. I apologize.

7 A They only spoke for five minutes outside before
8 entering into the courtroom.

9 (Telephone rings.)

10 MR. KIRSENBAUM: (Answers phone) I'm in court, I can't
11 speak.

12 (To The Court) I am -- I apologize.

13 A Essentially, what he's trying to say is that he was
14 not going to plead guilty at all, but the lawyer convinced
15 him that if he did, he was convinced that he would only
16 receive three years; that he knew the judge and that that's
17 all that was going to happen, that he then would be able to
18 be deported.

19 Q Okay.

20 A When they were outside, before they entered the
21 courtroom the second time, he told him that he was going to
22 ask to -- that he would -- should be given from 0 to 3
23 years; and then in the court, the attorney say -- asked
24 that he should be given 3 to 5 years.

25 Q Okay. When you met outside of the court, that five-

CROSS-EXAMINATION BY MS. MCALLISTER - SANTOS AGUILERA 13

1 minute meeting you just talked about, was an interpreter
2 there with you?

3 A Yes.

4 Q Okay. Thank you, Mr. Aguilera. I don't have any
5 further questions. Please answer anything Ms. McCallister
6 has.

7 CROSS-EXAMINATION

8 BY MS. MCALLISTER:

9 Q Did you and Mr. Shealy ever discuss the fact that the
10 charge itself carried up to 30 years?

11 A No.

12 Q Did you -- I think I heard you testify earlier though
13 that you understood, at the time of the plea, that you were
14 looking at a range of 10 years from this date, correct?

15 A The attorney told him that, yes, that he may -- the
16 charge could carry from 0 to 10 years; but since he didn't
17 know exactly what he was doing, that he was only going to
18 get 3 years.

19 Q Thank you.

20 MS. MCCALLISTER: That's all I have for him.

21 THE COURT: Yes, sir?

22 MR. WALLER: Nothing further, Your Honor.

23 THE COURT: All right. You can step down -- he can
24 step down.

25 (The witness exits the stand.)

DIRECT EXAMINATION BY MS. MCALLISTER - LUKE SHEALY 14

1 MR. WALLER: Nothing further from the Applicant, Your
2 Honor.

3 THE COURT: All right. Yes, ma'am. Call your next
4 witness.

5 MS. MCCALLISTER: Thank you. The State calls Luke
6 Shealy.

7 **LUKE SHEALY**, having been first
8 duly sworn, testifies as follows:

9 COURT CLERK: Please state your name for the record.

10 THE WITNESS: Luke Shealy.

11 DIRECT EXAMINATION

12 BY MS. MCCALLISTER:

13 Q Mr. Shealy, where do you currently work?

14 A At the Shealy Law Firm.

15 Q And how long have you been there?

16 A I've been there five years; and prior to that, seven
17 years as a public defender.

18 Q Okay. And do you recall your representation of Mr.
19 Aguilera?

20 A Yes, I do.

21 Q And did you represent him in your private practice or
22 as a public defender?

23 A In private practice, I was on the contractor list at
24 the time, and he was appointed to me by the Court. He
25 previously had Deon O'Neil ---

DIRECT EXAMINATION BY MS. MCALLISTER - LUKE SHEALY 15

1 Q Okay.

2 A --- as appointed lawyer. Due to conflict with his
3 co-defendant and I think Mr. O'Neil had him -- represented
4 him for about a little over a year and a half prior to
5 being relieved and then he was appointed to me.

6 Q Okay. And how long did you represent him prior to
7 the plea?

8 A It looks like ---

9 THE COURT: Hold on a second -- hold on a second.
10 You can interpret while we ---

11 (The interpreter begins to interpret for the applicant.)

12 MR. KIRSZENBAUM: He says he does not remember having
13 a problem with anybody.

14 THE COURT: Well, he just -- he just -- you're just
15 interpreting what they say. He doesn't need to respond.
16 Yeah. You're just going to interpret what they say.

17 MR. KIRSENBAUM: I'm -- I apologize, Your Honor. He
18 says he does not recall, that never ---

19 THE COURT: No, no, no, no, no, no, no, no. All we
20 need you to do -- while he's testifying, all I need you to
21 do is interpret what they're saying. He doesn't need to
22 respond. You just need to tell him what the testimony is.

23 MR. KIRSENBAUM: The testimony that he is giving is
24 that he never had seen you before he rep -- you
25 represented him.

DIRECT EXAMINATION BY MS. MCALLISTER - LUKE SHEALY 16

1 THE COURT: No, no, no, no, no, no, no. So for
2 purposes -- since he's already testified, the only thing
3 that you need to do is interpret what they are saying.
4 That's it.

5 MR. KIRSENBAUM: I'm sorry.

6 THE COURT: For him.

7 MR. KIRSENBAUM: I -- okay.

8 THE COURT: And we'll pause so you can ---

9 MR. KIRSENBAUM: Thank you, Your Honor.

10 THE COURT: -- interpret. Okay.

11 (Brief pause as interpreter confers with Applicant,
12 off the record and in Spanish.)

13 DIRECT EXAMINATION

14 BY MS. MCCALLISTER:

15 Q So I think my last question to you was how long had
16 you represented Mr. Aguilera before the plea?

17 A Looking back on my case action notes for this case,
18 looks like my office received the appointment July 19, and
19 the pleading was on January 31, 2017. So a little over
20 six months.

21 Q And in the course of your representation of Mr.
22 Aguilera, did you go and meet with him prior to the plea?

23 A Yes. It looks like I met with him -- that I can see
24 from my notes -- a total of four times. But I think I
25 could've been down there more if I was just popping in to

DIRECT EXAMINATION BY MS. MCALLISTER - LUKE SHEALY 17

1 say, "Hello. I'm still working on your case," without a
2 very detailed conversation.

3 Q And in -- in those four meetings that you had with
4 Mr. Aguilera, did you have an interpreter present ---

5 A I looked ---

6 Q --- during those meetings?

7 A I looked for anyone that I was going to be discussing
8 any complex legal issues, but my recollection of Mr.
9 Aguilera is that he does speak English well enough to just
10 have a conversation about major concepts. So not for
11 every one, but certainly for the major ones, and certainly
12 the extensive time we discussed his case the day of the
13 plea.

14 Q Okay. So in your experience with Mr. Aguilera, he
15 was able to speak with you in English to discuss the facts
16 of your case and possible, you know, defenses or witnesses
17 and when you went through the evidence?

18 A Yes. In my experience, he understood well enough
19 basic conversational topics like: I'm still waiting on
20 the DNA evidence; this is a problem that there's blood on
21 your pants; here are some basic strategies to defending
22 you; here's why some are better than others. Yes, those.

23 But when it came time to discuss some things like
24 *North Carolina v Alford* or what, you know, a cap might
25 mean and what I might ask for in relation to that cap, I

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1 always wanted to have an interpreter there.

2 Q Okay. And can you describe -- can you just describe
3 briefly, sort of, the facts of the case and what the
4 evidence was that the State had against Mr. Aguilera?

5 A Sure. The evidence that the State had was that Mr.
6 Aguilera was at a bar off Decker Boulevard with some
7 friends. The victim was there as well with his friends.
8 That there -- a fight broke out in the bar due to unknown
9 reasons between the two groups. Both groups were kicked
10 out by security. There was some type of altercation
11 there.

12 But the most problematic point was that three
13 witnesses for the State, who all picked out Mr. Aguilera
14 in the six-pack photo array, observed him chase the victim
15 down the street with his co-defendant, with a knife in his
16 hand, while yelling something to the effect -- in Spanish
17 -- of -- of "You're going to die tonight," while then
18 stabbing him and leaving him to, in fact, die tonight.

19 So that the problem was, you know -- and ultimately
20 blood would be found of the victim on Mr. Aguilera's
21 hands.

22 So that was their major evidence was the eye
23 witnesses and the blood and the fact that the actual
24 words, you know, which would speak to intent,
25 unfortunately, by Mr. Aguilera were problematic, But that

1 was the basic evidence.

2 Q Okay.

3 (Brief pause as the interpreter confers with the
4 Applicant, off the record and in Spanish.)

5 Q Did you discuss all of that evidence with Mr.
6 Aguilera?

7 A Yes. I -- I did in terms of discussing discovery, in
8 terms of whatever -- our possible defense strategies. My
9 memory of Mr. Aguilera was that he never wanted a trial,
10 but he just -- in coming into this case, the prior
11 attorney had the same offer that I did. It was a cap of
12 10, a recommendation, and I received that.

13 The -- the Solicitor was very impatient to continue
14 to move forward with the case. He had Mr. Aguilera on the
15 trial docket due to the age of the case. I pushed back
16 quite a bit to get more time to try to build rapport with
17 Mr. Aguilera, make sure he understood, make sure he -- we
18 reviewed discovery together and do what I could to see if
19 I could improve the offer.

20 So we discussed the trial strategies which would've
21 been essentially self-defense: "I -- it wasn't me, I
22 didn't stab him." Or either if there was evidence of a
23 stabbing, it wasn't with malice and intent to kill.

24 So self-defense was problematic. We discussed that
25 due to the strong evidence of him chasing the victim, the

DIRECT EXAMINATION BY MS. MCALLISTER - LUKE SHEALY 20

1 fact that you could say it wasn't him was problematic due
2 to the three eye witnesses and the victim's blood.

3 So we were really left with potential, if he went to
4 trial, which I was advising would -- would probably not go
5 well, a situation where he might be saying, "Well, it's --
6 it's not -- you can't prove malice," and that was a scary
7 proposition to be in when you're looking at 30 years.

8 So we did discuss that and he never asked me for a
9 trial, although the Solicitor was very much threatening a
10 trial date. He just wanted a better deal.

11 (Brief pause as interpreter confers with Applicant,
12 off the record and in Spanish.)

13 Q Okay. Did Mr. Aguilera ever give you -- what was his
14 story? What was his version of the facts that night?

15 A You know, I'm not the type of lawyer that typically
16 goes in on the first meeting or two and says, "What'd you
17 do? What happened," because that can sometimes backfire
18 and leave us hamstrung for future defenses.

19 But looking at my notes -- and my general approach is
20 to explain the evidence, explain what I think your
21 possible avenues for defense are, explain -- and because
22 he never asked for trial, he just said, "Get -- get a
23 better deal," I -- I pushed -- put a lot of time and
24 energy in trying to get a better deal through mitigation,
25 through his prior very difficult circumstances in

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1 Honduras; through the fact that, really, the co-defendant
2 got such a sweet deal that that might not be fair, to even
3 exploring the concept that I strongly believe that the
4 Federal government may, in fact, prosecute him for illegal
5 re-entry for his second offense to try to convince the
6 Solicitor and/or the judge that he may in fact get a
7 consecutive five-year sentence.

8 That was where a lot of the focus went, but it was
9 always really on that, but -- so other than that -- we
10 spent a lot of time on that, we explored, you know, the
11 concepts with him.

12 And ultimately it was only until about a week before
13 his scheduled plea date that he revealed to me, "Well, you
14 know, certainly I was there. I ran, with my co-defendant,
15 after this guy, after the altercation. I just didn't do
16 the stabbing."

17 Mr. Aguilera, looking at emails early on, was sought
18 to testify against his co-defendant by the Prosecutor.
19 But he -- his past attorney did not want to do that.

20 And ultimately he would tell me that he was scared to
21 because of a threat that his co-defendant had made. Given
22 his past history of violence in Honduras, he took that
23 threat very seriously.

24 So it was one of these things where we kind of --
25 probably wished he hadn't sought or taken up that offer to

DIRECT EXAMINATION BY MS. MCALLISTER - LUKE SHEALY 22

1 cooperate earlier on. He may have gotten better sentence.

2 (Brief pause as interpreter confers with Applicant
3 off the record and in Spanish.)

4 Q You mentioned the co-defendant. What was the
5 situation with the co-defendant and the -- the evidence
6 against the co-defendant versus the evidence against Mr.
7 Aguilera?

8 A Both the co-defendant and Mr. Aguilera were
9 apprehended walking very close to the scene. But un --
10 unlike Mr. Aguilera, for whatever reason, there were no
11 eye witnesses that could positively identify him. And
12 even though both his clothes and Mr. Aguilera's were
13 collected and tested for blood, no blood of any kind came
14 back on the co-defendant's clothes, unlike Mr. Aguilera,
15 who had the victim's blood on this clothes.

16 So given that, and there wasn't any statement by Mr.
17 Aguilera against the co-defendant, which is, you know, why
18 the State wanted his cooperation, the co-defendant's
19 lawyer, I believe it was Jenn -- Jennifer Davis, was able
20 to secure him a deal for time served on a misdemeanor, and
21 he was deported given that there really wasn't any
22 evidence against the co-defendant.

23 Q Okay.

24 (Brief pause as interpreter confers with Applicant,
25 off the record and in Spanish.)

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1 Q Okay. You mentioned that the victim's blood was
2 found on Mr. Aguilera's clothes. Did you discuss that
3 fact with him or did you discuss those testing results
4 with him?

5 A Yes, absolutely. I think once -- when I got the
6 case, it took me a week or so to receive the basic
7 discovery from the Solicitor, I think, and we were still
8 missing the final DNA report. I think I had preliminary
9 reports saying that -- what was collected, what was
10 tested. I think there might've been a presumptive
11 serology test for blood, but we didn't have any matches
12 yet.

13 And then, looking at my notes, by the time I visited
14 him October 13 of 2016, I had those results and discussed
15 with him the impact of a positive DNA match, how that
16 essentially would rule out a "I was not on scene" type
17 defense, and that we -- you know, that plus the three
18 witnesses and -- and particularly bad was that one of the
19 witnesses claimed that Mr. Aguilera lunged at him with a
20 knife, which in my mind, worst case scenario is that if we
21 didn't take this offer, a smart prosecutor could directly
22 present an assault charge for that witness potentially.
23 So it was pretty aggravated.

24 So to me, that -- that was a turning point for us in
25 our -- in our discussions of what would be the best thing

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1 to do; and although I was pushing for a better deal, my
2 suggestion to him was that, when push comes to shove, he
3 should take the offer and we should try to mitigate as
4 best we could to get the best possible results.

5 (Brief pause as interpreter confers with Applicant,
6 off the record and in Spanish.)

7 Q Okay. And when your clients are pleading guilty, do
8 you have, like, a document or some kind of form that you
9 go over with them setting out what the plea is going to be
10 and what they should expect?

11 A Yes. I always fill out an Advice of Rights form that
12 I always do with any client pleading guilty to anything in
13 any county that lays out what they're facing, what their
14 rights are, what rights they give up, what his possible
15 punishment may be, his rights to PCR, his rights to
16 appeal, the fact that we're giving up all rights to a
17 trial, that they contest the case whatsoever --

18 Q And did you do that with Mr. Aguilera in this case?

19 A I did. We did that the day of the plea, in holding,
20 with the interpreter, as part of our discussions about the
21 plea, about what we would ask for, about possible
22 sentencing ranges. That was done. It should be with the
23 Court's file.

24 (Brief pause as interpreter confers with Applicant,
25 off the record and in Spanish.)

1 Q Okay. Did you ever advise Mr. Aguilera that you
2 would -- that he would be able to get three years or get
3 time served and then -- and then be deported and go home
4 that day?

5 A No. What I -- what we discussed a lot, particularly
6 the day of the plea, was obviously he was facing a cap of
7 10 which the judge could even go over as it was just a
8 recommendation. But that -- I know Mr. -- Mr. Aguilera
9 was always very -- felt very like it was an unfair
10 situation that his co-defendant got time served. So he
11 was very much kinda fixated on time served.

12 What I advised him was that I would feel it
13 appropriate to ask for a range of three to five years,
14 which is what I did. And if the judge -- so -- basically,
15 to not offend the judge under these facts. But if the
16 judge gave close to three, given the credit that he had
17 spent already in county jail, that would be very close to
18 time served.

19 However, I never guaranteed that he would get three.
20 I never guaranteed him that he would get anything except I
21 hoped the judge would stay away from the cap. Certainly I
22 wouldn't tell him that he was getting time served and
23 getting released because he has an ICE hold. So I don't
24 know what to say about that.

25 We did -- given his recent revelation, that yes, I

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1 was there, I chased him, we got in this altercation, but I
2 did not, in fact, do the stabbing, the only way that I
3 felt the plea was going to work, was if we were able to do
4 it under *North Carolina v Alford*.

5 I asked the Solicitor if he was okay with that, I
6 explained to Mr. Aguilera what that meant, and that given
7 the fact that a -- even under Mr. Aguilera's latest
8 version, that the Court could find him guilty, a jury
9 could find him guilty under the "hand of one, hand of all,
10 that I thought this would be the best way for him to make
11 it through the plea given his factual recitation.

12 And -- and he still wanted to go forward on that. I
13 think that actually is the only way it actually worked.

14 (Brief pause as interpreter confers with Applicant,
15 off the record and in Spanish.)

16 Q Okay. And on the day of the plea, at the time of the
17 plea, did you feel like Mr. Aguilera understood what he
18 was doing and what the agreement was?

19 A Yes, absolutely.

20 Q Okay.

21 (Brief pause as interpreter confers with Applicant,
22 off the record and in Spanish.)

23 Q Sorry. Circling, sort of, back around to the issue
24 of the evidence, did Mr. Aguilera ever give you the names
25 of any witnesses or any, you know, theories of a defense

1 that he wanted you to investigate?

2 A No. He -- unfortunately, he didn't have any
3 witnesses that he could say, "Talk to this person, they'll
4 say I wasn't there," or either that "I stayed on the scene
5 while my co-defendant did the stabbing." There -- he
6 wasn't able to provide me with anything like that. You
7 know, I think maybe the only person he went there with was
8 his co-defendant, but he -- that was not provided to me to
9 investigate.

10 The only witnesses that I was aware of were the ones
11 that were positively identifying him as the stabber, and
12 saying troubling things towards the victim.

13 (Brief pause as interpreter confers with Applicant,
14 off the record and in Spanish.)

15 Q Okay. And did you -- once you got the DNA testing
16 results back, did you see any way to challenge those
17 results?

18 A I'm not a DNA scientist, but I've read enough reports
19 where that was a high statistical match to the victim.
20 But I didn't feel the need to try to go that route because
21 it was a case where there was over -- overwhelming
22 evidence he was on the scene.

23 So I -- you know, if he had said, "Look, I wasn't
24 even there, I was across town. I have a twin brother who
25 may have been mistaken for me," I certainly would've

1 pursued that, challenged the DNA, explored it more, such
2 as a burglary case where you have DNA on a TV or something
3 and that's your only evidence; but here, I felt the best
4 strategy was either one of diminished mental state, that
5 wasn't malice, that there wasn't intent to kill. It may
6 have been an emotional response to a conflict or either to
7 attempt to try for self-defense; but of course that was
8 very problematic given the victim fleeing and Mr. Aguilera
9 chasing him.

10 Q And in terms of, you know, the diminished malice
11 argument, I think you testified that there were witnesses
12 who would say that Mr. Aguilera and the co-defendant were
13 screaming something along the lines of, "You're going to
14 die tonight," or something like that; is that right?

15 A Right. So one of the key witnesses -- all of them
16 heard that, but one of the witnesses in particular says
17 that -- that Mr. Aguilera swung his knife at him, and then
18 ran after the victim, saying, "You're going to die
19 tonight."

20 So that was always a big problem for me going to
21 trial because that would be the easy way for the Solicitor
22 to prove malice.

23 And instead of getting out of hand or something like
24 that, which -- still a tough pill to swallow facing 20
25 years, it -- I thought the likelihood was pretty good that

1 he would be convicted of -- of attempted murder if he went
2 to trial.

3 (Brief pause as interpreter confers with Applicant,
4 off the record and in Spanish.)

5 MS. MCCALLISTER: It think that's all the questions
6 that I have for Mr. Shealy, Your Honor.

7 THE COURT: Yes, sir.

8 MR. WALLER: Just briefly, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. WALLER:

11 Q Mr. Shealy, you testified that you met with Mr.
12 Aguilera four times. Four -- four that you documented.
13 There may have been other brief ones?

14 A Correct.

15 Q You testified that you had an interpreter present for
16 the -- discussing major topics, but some of the more
17 general topics you did not have an interpreter because you
18 thought Mr. Aguilera understood?

19 A Right.

20 Q Okay. Which of those four were -- were major ones
21 where -- major discussions, where an interpreter was or
22 how many of the four?

23 A I think definitely reviewing discovery and discussing
24 DNA I would've had an interpreter there. And then
25 certainly for the -- the day of the plea where we

1 discussed *North Carolina v Alford*.

2 Again, the -- you know, what he might expect at a
3 plea, what -- you know, him -- him never being in a
4 court, certainly not American court, I wanted him to be
5 thoroughly familiar with what to expect in court that
6 day.

7 You know, he was clearly scared that day. He wanted
8 a better deal, and I told him the deal has never changed,
9 unfortunately. But I thought this was still his best
10 chance at the best result possible under the
11 circumstances.

12 Q Do -- do you specifically have in your notes which
13 meetings had an interpreter?

14 A I definitely -- I don't specifically. I know the day
15 of the plea I list that and obviously I remember that
16 vividly because you can't go to court without an
17 interpreter, and I would've -- it was Wilmer Avilez
18 [sic], from A to Z, and we were down in holding
19 extensively because I -- I do recall Mr. Aguilera getting
20 nervous the day of the plea, kind of insisting on, "Hey,
21 where's my better deal," and we had to go through why.
22 And of course, there was not a better deal.

23 But I don't have it specifically on -- in my notes
24 about the prior meetings; although, my recollection is
25 that when we went down there, probably October 13, to

1 look -- to review discovery extensively and the trial
2 strategy concepts, I would've had the interpreter then.

3 Q Okay. Did you have to get an order for funding or
4 anything like that?

5 A Yes.

6 Q Okay.

7 (Brief pause as interpreter confers with Applicant,
8 off the record and in Spanish.)

9 Q Okay. You mentioned on direct that you -- that Mr.
10 Aguilera had an ICE hold on him. Did you discuss with
11 him that he would ultimately be deported following his --
12 any sentence he did, and did you discuss his immigration
13 status with him?

14 A I did. I don't practice a lot of immigration law,
15 but I -- I typically know, in my experience, if someone
16 gets convicted of a crime like the one he was about to
17 plead to, that that would certainly cause him to be
18 deported at the end of the day.

19 I knew from looking at his rap sheet that he had
20 prior conviction -- at least one for illegal re-entry.
21 You know, we really looked -- I tried to use that almost
22 as mitigation to say, "Hey, Solicitor, hey, Judge, when I
23 called the Federal sentencing commissioner on guidelines,
24 you know, looking at a re-entry conviction for a second
25 offense, that's five years. Let's give him a better deal

1 because he's probably looking at consecutive five years."

2 But unfortunately, the Solicitor called ICE, and they
3 said, "No, we're not prosecuting on this one." So that
4 kinda went out the window.

5 But we did discuss that generally and how he
6 certainly would be deported after whatever sentence.

7 Q You testified a second ago that shortly before the
8 plea, he gave you some information that he may have not
9 been the one who actually did the stabbing. And you
10 mentioned "hand of one, hand of all." Did you discuss
11 that concept with him?

12 A I did. I mean, I think he was wanting to present to
13 me as a way why he should get a better deal. And
14 obviously that -- you know, your roles, your culpability
15 in a crime should affect a sentence.

16 But I did explain that, "Well, if your position is
17 that you go in a fight and you did chase with your co-
18 defendant, that under "hand of one, hand of all," you
19 could still be found guilty of attempted murder even if
20 you didn't, in fact, do the stabbing." Although all of
21 the witnesses were saying he was doing the stabbing.

22 But I did, you know, discuss how he could certainly
23 be convicted at trial, but at -- but I think, you know,
24 ultimately we finagled an *Alford* plea with Judge Newman
25 that he was willing to accept.

24 Q The State represented to the Court that the offer was
25 for a recommendation cap of ten years. Is that your

1 understanding of the complete extent of the plea
2 agreement?

3 A Right. That that was the deal to the prior attorney,
4 that was the deal for me that never changed,
5 unfortunately, even though I attempted to -- a little
6 bit, mitigate, even cast some doubt in the Solicitor's
7 own mind that he could even find these witnesses,
8 although he speaks fluent Spanish and was able to find
9 them through some investigation of his own.

10 But that was the deal prior to me that Mr. Aguilera's
11 prior attorney would have relayed, and that was our deal
12 that never changed.

13 Q Okay. Nothing further. Thank you, Mr. Shealy.

14 THE COURT: Anything else?

15 MS. MCCALLISTER: No, Your Honor.

16 THE COURT: All right. You may step down.

17 MR. SHEALY: Thank you.

18 (The witness exits the stand.)

19 THE COURT: Anything further?

20 MS. MCCALLISTER: Nothing further from the State,
21 Your Honor.

22 THE COURT: All right. Yes, sir?

23 MR. WALLER: Your Honor, just briefly. Mr. Aguilera
24 testified that -- that their meetings outside of court
25 did not have an interpreter. Mr. Shealy testified they

1 met four times and some did have interpreters, some did
2 not. He could not identify what -- which times an
3 interpreter was present.

4 And Your Honor, I think it is certainly -- even if
5 Mr. Aguilera speaks some conversational English,
6 certainly complex legal theories are -- are lost in
7 translation.

8 Mr. Aguilera testified that he didn't see any of the
9 DNA evidence, which he testified was not a match, until
10 20 months after his plea. And also he did not know he
11 had to have been identified. Your Honor, he testified
12 that he wanted to go to trial.

13 Your Honor, his testimony was that he was told by his
14 attorney that he was going to receive three years if he
15 pled guilty.

16 Kind of shifting gears to the plea agreement, Your
17 Honor, the -- Mr. Shealy testified, and I think it's
18 accurate, that the -- the plea agreement was for a
19 recommendation of a cap of 10 years. If Your Honor will
20 look at the transcript, on page 5 of the transcript,
21 excuse me -- page 3 of the transcript, at -- beginning at
22 line 11.

23 You know, the State says they were recommending a cap
24 of 10 years and then turns around and asks for 10 years.
25 At that point, it's not a recommendation of a cap, it's a

1 recommendation of 10 years. And I think that that point,
2 the -- the Solicitor has breached the pre -- the plea
3 agreement, and it's up to Mr. Shealy to object to that,
4 to inform the Court of what the plea agreement actually
5 was.

6 So Your Honor, we -- the Applicant would contend that
7 the plea was involuntarily entered into, and also that
8 the plea agreement was breached, kind of, with the
9 alternative.

10 MS. MCCALLISTER: Your Honor, as far as the
11 allegations go, I mean, Mr. Waller has said today that
12 he's -- he was going forward on two allegations: The
13 issue of the discovery and the DNA evidence and whether a
14 proper investigation was done and this issue of the plea.
15 There were no allegations raised about, you know, having
16 interpreters or whether that was sufficient or not.

17 In any event, though, Mr. Shealy did testify that on
18 the day of the plea there was an interpreter there, not
19 just for the plea itself, but to go over this Advisement
20 of Rights form and to talk through a lot of the issues
21 that Mr. Aguilera was having in terms of, you know, his
22 story and why he felt he should get time served.

23 Mr. Shealy testified that all of that was explained
24 to Mr. Aguilera, and he felt confident that Mr. Aguilera
25 knew what the plea agreement was and what he was doing

1 when he went into the courtroom.

2 He also testified, I believe, that he -- that October
3 meeting to discuss the DNA results, there was an
4 interpreter present for that meeting to the best of Mr.
5 Shealy's recollection.

6 Your Honor, the -- the plea transcript is -- is
7 fairly thorough. The judge explained to Mr. Aguilera the
8 sentencing range and the State's recommendation of a cap
9 of 10 years. It's very clear that the -- that that's
10 what the State put on the record that they were asking
11 for. They were recommending a cap of 10 years, but they
12 were asking for the cap.

13 And Your Honor, in addition, the victim gave a
14 statement on page 10, and you know, the -- that was
15 fairly compelling. And the judge says in his ruling, in
16 deciding what sentence to give, that -- that that
17 victim's statement and the focus on the impact to the
18 victim is his most important consideration. And the
19 victim asked for the -- for the cap of 10 as well.

20 All throughout the -- the plea colloquy, Mr. Aguilera
21 indicated to the Court that he understood what he was
22 doing and he wished to plead guilty. And we think that
23 he -- that his allegations should be denied.

24 THE COURT: All right. I will get something back to
25 you as soon as possible.

1 MR. WALLER: Thank you, Your Honor.

2 MS. MCCALLISTER: Thank you, Your Honor.

3 (Off the record at 11:05 a.m.)

4

5 -- END OF TRANSCRIPT OF RECORD --

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CERTIFICATE

I, the undersigned, Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Richland County, South Carolina, on the 18th day of July, 2019.

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

E/Bonnie H. Kelly

Bonnie H. Kelly, CVR
Court Reporter

Columbia, South Carolina

December 4, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Santos A. Aguilera, #371270,) C.A. No. 2017-CP-40-3784
)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

2019 AUG -8 AM 10:52
JANET W. HARRIS
C.C.P., G.S., & F.C.

RICHLAND COUNTY
FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Santos A. Aguilera (Applicant) on June 20, 2017. Respondent made its Return on February 16, 2018. An evidentiary hearing into the matter was convened on July 18, 2018, at the Richland County Courthouse before the undersigned. Jonathan D. Waller, Esquire, represented Applicant. Assistant Attorney General Lindsey A. McCallister represented Respondent.

At the hearing, Applicant testified on his own behalf. Luke A. Shealey, Esquire, Applicant's plea counsel, was also called to testify. Felix Kirszenbaum was sworn as a certified court interpreter and translated the proceeding from English to Spanish and vice versa for Applicant. This Court had before it a copy of the records of the Richland County Clerk of Court, records from the South Carolina Department of Corrections, the PCR application, Respondent's Return, and the plea transcript. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application for relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In June of 2015, the Richland County Grand Jury indicted Applicant for attempted murder (2015-GS-40-2709). The charges stem from a December 30, 2014, altercation between Applicant and the victim at a bar on Decker Boulevard. Applicant shouted, "Vas a morir esta noche" at the victim, which translates to "You are going to die tonight." Applicant then stabbed the victim multiple times in the chest and neck, resulting in a severed trachea and collapsed lungs. However, the victim survived his injuries. Luke A. Shealey (Counsel), Esquire, represented Applicant. Assistant Solicitor Vance Eaton, Esquire, prosecuted the case. On February 11, 2015, Applicant pleaded guilty as indicted before the Honorable Clifton B. Newman. Pursuant to the State's recommendation, Judge Newman sentenced Applicant to ten years' imprisonment for attempted murder. Applicant did not appeal his convictions or sentences.

ALLEGATIONS

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

1. Ineffective assistance of counsel
 - a. Counsel failed to properly review discovery
 - b. Counsel failed to interview possible witnesses
2. Ineffective investigation by defense counsel
 - a. Counsel failed to investigate the case as requested

On March 15, 2018, through Counsel, Applicant amended his original application to include the following claims of ineffective assistance of counsel:

- a. Counsel was ineffective for failing to object to the Assistant Solicitor breaching the plea agreement.

- b. Counsel was ineffective for failing to investigate the facts and circumstances of [Applicant's] case: specifically the DNA evidence, or lack thereof, and other evidence pertaining to Applicant's case, thus rendering Applicant's plea involuntary and unknowing.

At the evidentiary hearing, Applicant proceeded solely with the two allegations set forth in his amended application. This Court thus finds the allegations pleaded in Applicant's original application are waived and abandoned, and the Court denies and dismisses them with prejudice.

SUMMARY OF TESTIMONY

Applicant testified he was originally charged with "intent to assassinate," but his charge was later changed to attempted murder. Applicant testified he had two attorneys, and Counsel was the second. Applicant testified he did not meet with Counsel to discuss his case, but he also testified he and Counsel met at least twice. According to Applicant, there was no translator present at the first meeting, and he only understood a little bit of what Counsel told him. However, Applicant testified there was an interpreter present for their second meeting and in court on the day of the plea. Applicant testified, during their second meeting, Counsel told him he would be sentenced to three years with credit for time-served and then be deported. Applicant testified he understood he was subject to deportation for this offense. Applicant further testified Counsel told him there was insufficient evidence to support a charge of "intent to murder," and Counsel would speak with the solicitor about deportation.

According to Applicant, he and Counsel did not discuss the scientific or medical evidence in this case. Applicant testified he was aware there was DNA evidence, but he did not see it himself until well after the guilty plea. Applicant explained he does not read English, but he had friends read through his discovery, and it does not mention his blood being on the victim. Applicant also testified he and Counsel never discussed the witness statements or identification of him as the

perpetrator. Applicant testified he pleaded guilty because he is originally from Honduras, and he wanted to be sent back home to his family. Applicant explained he thought he would receive three years of time-served and be deported immediately. Applicant further testified he pleaded guilty because Counsel convinced him Counsel knew what he was doing, and Applicant thought he would be able to go home. Applicant agreed he told the plea judge he understood the charges against him and the plea agreement, and he wished to plead guilty. However, Applicant testified he did so because he did not know American law, and Counsel told him he would be deported, which Applicant wanted. Applicant testified he understood the State's recommendation for a cap of ten years, but Counsel convinced him he would only be sentenced to three years.

Applicant testified he never discussed a trial with Counsel, but he also never wanted to plead guilty until Counsel told him he would only be sentenced to three years and time-served. Applicant testified his first meeting with Counsel lasted approximately fifteen minutes, and the second lasted five minutes. Applicant testified the second meeting was solely about the plea agreement. Applicant further testified Counsel told him he would ask for three years, but during the plea hearing Counsel asked for three-to-five years instead.

Counsel testified he was appointed to Applicant's case after the first attorney realized he had a conflict due to involvement with Applicant's codefendant. Counsel testified he met with Applicant four times and used an interpreter during several meetings to explain major legal concepts. According to Counsel, Applicant understood English well enough to have basic conversations about the facts of the case. Counsel testified he discussed the State's evidence with Applicant. Counsel testified he had the preliminary DNA report at the time he took over the case and reviewed the discovery with Applicant. Counsel also recalled there were three witnesses who

identified Applicant from a photo lineup as the perpetrator, witnesses reported Applicant chased the victim while yelling he would kill the victim, and the victim's blood was found on Applicant's pants.

Counsel further testified Applicant was unable to contribute any potential defenses or identify any potential witnesses. Counsel testified there were problems with all of Applicant's potential defenses. Counsel explained self-defense was problematic because Applicant chased the victim, and actual innocence was problematic because three witnesses identified Applicant as the attacker. Counsel testified he believed the best trial strategy would have been to try for a conviction on a lesser-included offense, but that prospect was also challenging because the State had evidence of malice in that Applicant was yelling the victim would die that night. Counsel also explained Applicant was apprehended very close the scene along with his codefendant and although both of their clothes were tested, only Applicant's pants had the victim's blood on them. Further, none of the witnesses identified the codefendant as the actual perpetrator. Counsel also testified the State wanted Applicant to testify against the codefendant but Applicant declined because he was scared. Counsel explained Applicant refused to make a statement against his codefendant, who was sentenced to time-served and deported.

Counsel further testified Applicant did not want a trial, and Applicant always wanted a better plea deal. Counsel obtained a continuance in order to negotiate a better plea deal. Counsel testified the turning point in the case came when they received the final DNA results confirming it was the victim's blood on Applicant's pants. At that point, Counsel testified, he advised Applicant to accept the plea offer, and he would try to mitigate the sentence as best they could. Counsel testified he could not make a compelling challenge the DNA results because there was

other strong evidence placing Applicant at the scene, and the results showed a high probability of certainty in matching the victim's blood.

According to Counsel, about a week before the plea hearing, Applicant admitted to Counsel to being present and running after the victim with his codefendant, but maintained he did not stab the victim. Counsel testified he then explained the "hand of one, hand of all" accomplice liability theory to Applicant because Applicant felt he should have received a better plea offer from the State at that point. Counsel testified an interpreter was present for his meetings with Applicant where they discussed the DNA evidence and discovery, as well as on the day of the plea when he explained the plea agreement and American court procedure to Applicant.

Counsel denied telling Applicant he would receive a three-year sentence. According to Counsel, Applicant fixated on receiving time-served because that is what his codefendant received. Counsel felt it was appropriate to ask for three-to-five years because Applicant had already served almost three years. Counsel testified Immigration and Customs Enforcement (ICE) placed a detainer on Applicant, so it was not possible for Applicant to go home immediately. Counsel testified Applicant had a previous illegal entry into the country, but ICE had agreed not to prosecute him again. Counsel testified he explained Applicant would be deported once he had served his sentence. Counsel further testified he explained the entire plea agreement to Applicant, including the meaning of an Alford¹ plea and why Counsel thought it was the best outcome. Counsel testified he explained the State offered a sentencing cap of ten years, but the judge could choose to go over that. Finally, Counsel testified he extensively reviewed his standard advice form

¹ Alford v. North Carolina, 400 U.S. 25 (1970).

with Applicant, using an interpreter, on the day of the plea, and he made the signed form part of the record at the plea hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance

by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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

This Court finds Applicant failed to prove Counsel’s performance was deficient in any way, nor was Applicant prejudiced by Counsel’s performance. Counsel met with Applicant on several occasions – including multiple meetings with an interpreter – and reviewed with him the elements of the crimes charged, the evidence and discovery in the case, Applicant’s version of the facts and potential defenses, and the State’s plea offer. This Court finds Applicant ultimately chose to plead guilty because he did not have any viable defenses for trial, and this decision was made freely and voluntarily. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

1. Breach of plea agreement

Applicant alleges Counsel was ineffective for failing to object when the State breached the plea agreement by recommending a ten-year sentence. This Court disagrees and finds the plea colloquy is dispositive as to this issue. The Court finds the record clearly establishes Applicant pleaded guilty freely and voluntarily, and the State did not violate its agreement with Applicant.

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). However, a defendant has no constitutional right to plea bargain, nor is a court required to accept a plea. Id. Nonetheless, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires the plea bargain be honored. Id. at 686, 511 S.E.2d at 401. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The plea transcript reflects an interpreter was present to translate for Applicant during the hearing. Tr. p. 3. The record also reflects the solicitor informed the plea court he had agreed to a cap of ten years, and he was asking for the ten-year sentence. Tr. p. 3. Counsel agreed the State had offered a cap of ten years, but explained the defense would ask for less than that. Tr. p. 4. The plea court clearly explained the potential maximum sentence was thirty years and informed Applicant the court did not have to accept the recommended cap of ten years. Tr. p. 5. Applicant

indicated he understood. Tr. p. 5. The plea judge also explained to Applicant his right to a jury trial, and Applicant informed the plea court he understood his rights and wished to waive them to plead guilty. Tr. p. 6. The victim gave a statement regarding the ongoing impact of the attack on his life and asked the plea court to disregard the recommendation and sentence Applicant to the thirty-year maximum sentence. Tr. pp. 10-11. The plea court declined to do so and honored the recommended cap. The court clearly explained its reasoning in imposing a ten-year sentence, noting the victim had been stabbed multiple times and stating Applicant should not “get any benefit of good medical care [for the victim], or the fact that someone saved [the victim’s] life, or wasn’t [the victim’s] time to go.” Tr. p. 17.

Accordingly, this Court finds Counsel’s representation of Applicant was not deficient, nor was Applicant prejudiced by Counsel’s representation. Counsel met with Applicant on multiple occasions to review discovery, discuss the facts of the case, and explain Applicant’s constitutional rights and options for resolving the case. Further, the plea transcript reflects the State relayed the recommended cap of a ten-year sentence to the plea judge and asked the court to impose the maximum sentence under that cap. Tr. p. 3. Applicant never testified he would not have pleaded guilty if he had known the State would request the maximum under the cap, nor did Applicant object during the plea colloquy when the judge asked him if the solicitor had correctly explained the plea negotiations. Tr. pp. 3-5. This Court finds the solicitor’s request for a ten-year sentence was within the bounds of the plea agreement. See, e.g., Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988) (finding the State breached the plea agreement by opposing a probationary sentence after the solicitor agreed to neither oppose or recommend probation); State v. Rikard, 371 S.C. 295, 638 S.E.2d 72 (Ct. App. 2006) (finding the State did not breach the plea agreement by asking for maximum sentence during a “straight up” guilty plea). The plea court honored the

recommendation and clearly articulated its reasoning for imposing a ten-year sentence. Tr. p. 17. This Court therefore finds Counsel was not deficient because there was no basis for an objection because the solicitor's request was within the agreed upon ten-year cap, nor was Applicant prejudiced because he never testified he did not know the State would recommend ten years or that he would have refused to enter a guilty plea had he known. Therefore, this Court denies relief and dismisses these allegations with prejudice.

2. Failure to investigate and challenge evidence

Applicant alleges Counsel was ineffective because Counsel did not properly investigate the case, specifically the DNA evidence. This Court disagrees and finds Counsel provided effective assistance in this case.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). 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." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

In addition, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with

the rules of evidence at the PCR hearing in order to establish prejudice. See, e.g., Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). To establish counsel failed to adequately prepare for trial, the applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds credible Counsel's testimony Applicant offered no potential defenses or witnesses for Counsel to investigate. Further, the Court finds credible Counsel's assertion there was no viable basis for challenging the DNA evidence as there were three eyewitnesses who placed Applicant at the scene, Applicant ultimately admitted to being there, and the DNA results identified the victim as the donor of the blood on Applicant's pants with a high degree of certainty. Most importantly, Applicant failed to present any evidence showing the DNA could have been successfully challenged, and therefore, he failed to meet his burden of proof. Accordingly, this Court finds Counsel was not deficient in deciding not to challenge the DNA evidence, nor was Applicant prejudiced by Counsel's decision. This allegation is therefore denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.

7-17, 2019


 DEANDREA G. BENJAMIN
 Presiding Circuit Court Judge
 Fifth Judicial Circuit

CASE NUMBER: 2017CP4003784

Santos A Aguilera #371270

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried and heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 8 August 2019 to attorneys of record or to parties (when appearing pro se) as follows:

Santos A Aguilera #371270

Jonathan D Waller

Lindsey Ann McCallister

Santos A Aguilera #371270

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

WITNESSES

(S) B Rast

– Richland County Sheriff

DOCKET NO. 2015GS4002709

The State of South Carolina

County of

Richland

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

Defendant

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

COURT OF GENERAL SESSIONS

JUNE TERM 2015

105

Defendant

THE STATE
vs.

Santos A Aguilera

Witness

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

ARREST WARRANT NUMBER

2014A4010204191

ACTION OF GRAND JURY

TRUE BILL

James L. Rast
Foreperson of Grand Jury
Date: JUN 17 2015

VERDICT

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029
CDR Code: 3410

Foreperson of Petit Jury
Date:

SCANNED 89

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 17, 2015, the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Santos A Aguilera did in Richland County on or about December 1,
2014, did with the intent to kill, attempt to kill JESUS NAVARRO with
malice aforethought, either expressed or implied. All in violation of SC
Code of Laws § 16-3-29 (1976, as amended)

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS.
Santos A. Aguilera

INDICTMENT/CASE#: 2015GS4002709A/W#: 2014A4010204191Date of Offense: 12/1/2014S.C. Code § : 16-03-0029CDR Code #: 3410

AKA: _____
 Race: HISPANIC Sex: M Age: 28
 DOB: [REDACTED] SS#: _____
 Address: [REDACTED] Old Percival Rd
 City, State, Zip: Columbia, SC 29223
 DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Attempted Murder☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.
 ATTEST: [Signature] 79921 Santos Aguilera Attorney for Defendant 75191
 Eaton, Vance SC Bar# Defendant

 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ 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. (793 days credit)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

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

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (07/2016)

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: _____

Sentence Date: 12/1/2014
 CERTIFIED TRUE COPY
 OF ORIGINAL FILED
 [Signature]
 C.C.C.P.&C.S.
 RICHLAND COUNTY
 SOUTH CAROLINA