

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable , Circuit Court Judge

TIMOTHY ODELL HEAD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000860

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER)

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
18-GS-43-0059

TIMOTHY ODELL HEAD,)

DEFENDANT.)

July 24, 2018
Sumter, South Carolina

B E F O R E :

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE

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

JOHN P. MEADORS, ESQ.
Assistant Solicitor

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Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

I N D E X

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Motion for evaluation

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Colloquy with defendant

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(There were no exhibits submitted.)

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1 MR. MEADORS: Before you is Timothy Odell
2 Head, Sumter County true billed indictment
3 2018-GS-43-59, with his attorney Mr. Jack Barnes.
4 We were prepared -- this is one of the cases on the
5 trial docket, Your Honor, and I believe this case or
6 another case will be called before you in the
7 morning. Mr. Barnes, I believe, has a motion. Do
8 you want us to come up or stay at counsel table?

9 THE COURT: You can just come up, it will
10 be fine.

11 (WHEREUPON, counsel approached the
12 Bench for an off-the-record discussion.)
13 (Mr. Barnes confers with defendant.)

14 THE COURT: Mr. Barnes, did you want to
15 put anything on the record, sir?

16 MR. BARNES: Just briefly, Your Honor. As
17 we discussed in chambers, we are here on my motions
18 to have Mr. Head evaluated under both M'Naghten and
19 Blair to determine whether or not he is able to
20 assist me in the defense of his case and also
21 whether or not there may be some mental illness
22 diagnosis that might provide him with some sort of
23 defense.

24 THE COURT: Mr. Meadors.

25 MR. MEADORS: May it please the Court.

1 Judge, my understanding of the law is that Your
2 Honor must have some reason to believe that a
3 mental, that there's an issue that would require an
4 examination. Judge, I have three cases which we
5 discussed back in the hallway: State v. Burgess,
6 State v. White, and State v. Colden, C-O-L-D-E-N.
7 If I may approach.

8 THE COURT: Yes, sir.

9 MR. MEADORS: Judge, the statute is
10 44-23-210 and it does provide that whenever a judge
11 of the circuit court has reason to believe that a
12 person on trial before him is not fit to stand trial
13 because they lack capacity to understand the
14 proceedings against them or assist in their defense
15 as a result of a lack of a mental capacity, the
16 judge shall -- and then it goes into the order and
17 examination. But the first hurdle, and it's
18 obviously in your discretion, Judge, if you have
19 reason to believe -- and the State believes, the
20 State believes that for you to have reason to
21 believe there must be some sort of showing.

22 The cases that I handed up, Your Honor,
23 two of them are pretrial where the courts in both
24 cases held that a mental examination was not, they
25 did not feel that they were appropriate. They were

1 upheld in both of those on appeal. The other case
2 was a guilty plea that was then challenged for the
3 basis that the Court had not ordered a mental
4 evaluation and that was upheld. Judge, specifically
5 Burgess, in that case the defendant suffered from
6 the term used in the statute was mental retardation.
7 I believe that language has changed after referring
8 with some of my colleagues and mentally handicapped,
9 and considering that and also counsel's lack of
10 ability to communicate, the Court found that mental
11 evaluation was not appropriate in that case.

12 The next in line, Judge, is State v. White
13 and in that case the defendant had a history of
14 mental illness, had been to psychiatrists privately
15 several times; and after inquiring, an inquiry by
16 the Court, the Court determined that they were
17 competent, they were not in need of examination.
18 And the most recent case is State v. Colden and it's
19 a 2007 case. In that case nothing was presented on
20 behalf of the defendant regarding prior history of
21 mental illness. I think in that case it had been
22 put off several terms. I believe it was an Aiken
23 case. Some lawyers got involved in August,
24 September; it was set for October. Then finally was
25 going to be tried in December where the attorneys

1 asked for mental evaluation at the final court date
2 and it was denied, and part of their reasoning was
3 that they had trouble communicating and following
4 the defendant. In all these cases, Your Honor, the
5 Court conducted an inquiry of the defendant as to
6 whether or not they understood the proceedings,
7 understood the roles of each of the parties and that
8 seemed to be important to the appellate court in
9 affirming the trial court's decision not to grant a
10 mental competency evaluation.

11 Other factors though that are highlighted
12 in State v. Blair, a seminal case, and also State v.
13 Burgess was evidence of irrational behavior,
14 demeanor at trial. Of course, we're not at trial.
15 One of these was prior to trial. We are pretrial
16 obviously. And any prior medical opinion on
17 defendant's competency to stand trial which I was
18 not aware that there was any prior today. There may
19 be some, there may not be, I don't know; but I
20 certainly believe my counsel here if he says there
21 have been. Judge, we'd respectfully ask Your Honor
22 to inquire the defendant the nature of these
23 proceedings and if he understand Your Honor's role,
24 Mr. Barnes' role, and my role prior to you making
25 your decision respectfully.

1 MR. BARNES: And Your Honor, before you
2 begin asking my client some questions I feel
3 somewhat compelled to put this on the record, and I
4 do not think that Mr. Meadors is making any sort of
5 assumption about my reasons for doing this and my
6 not wanting to trial Mr. Head or whatever it might
7 be. I am not aware of any pattern in the Public
8 Defender's Office of our inability to try cases for
9 any reason; but this is now the second month in a
10 row that some issue like this has arisen where
11 failure to, you know, give knowledge of some guilty
12 plea or something like that. There is no pattern in
13 our office of doing that so to the extent this is
14 some effort to thwart a pattern or something like
15 that, I think that's completely misguided and a
16 little bit offensive that there is some notion that
17 our office tries to play games with them. That is
18 simply not the case.

19 MR. MEADORS: And I don't know what he's
20 talking about.

21 MR. BARNES: They have, they have 80 cases
22 on their trial roster and, you know, I understand
23 that Mr. Head's case was called. It's a year old.
24 But there are also cases on the trial list that are
25 four and five years old so why there's some urgency

1 for this, I don't know. I just, I just want it to
2 be clear that to the extent there's some idea in the
3 Solicitor's Office that we somehow play games with
4 them and don't want to try cases, that's not true.
5 I don't think it's some sort of appropriate thing.
6 If there were some pattern, fine, call us out on it;
7 but if there's not a pattern, then we take umbrage
8 that that's some sort of, you know, cultural idea up
9 there about our office. And so that's all I really
10 want to say about that.

11 THE COURT: I didn't get the impression
12 that he was inferring that at all, or he didn't.

13 MR. MEADORS: But he just said that he,
14 you know, he wanted to make sure that this, that
15 some effort to try to get a mental evaluation today
16 before trial doesn't become, you know, a thing.

17 THE COURT: Well, I didn't take it that
18 way and I certainly don't think that about either
19 side of this room.

20 MR. MEADORS: Judge, it's just, I
21 certainly did not -- that is nowhere said in here on
22 record at all. I don't believe that. I've been out
23 on the road getting signatures the last two months
24 so I have no idea what he's talking about a prior
25 plea. All I know is I got this case ready. It's

1 been on the docket two times. Yesterday he said I'm
2 gonna move for a mental evaluation so. I just want
3 a hearing; it's that simple. There's no other
4 motive and I hope he knows that I don't, I'm not --
5 I think this is the right thing to do.

6 MR. BARNES: I just want to make it clear
7 that we do not play games with them.

8 THE COURT: Mr. Head.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: How are you today?

11 THE DEFENDANT: Oh, I'm faring middle, I
12 guess.

13 THE COURT: Well, is it a good day or bad
14 day?

15 THE DEFENDANT: Well, I've been in
16 solitary confinement for about three months just
17 because somebody said that they wanted my commissary
18 or they were going to kill me. And they're getting
19 ready to move us back over into maximum security,
20 but you know, you lay there in that cell and your
21 mind just goes everywhere and so, you know, it's
22 almost like unstable thinking. I was totally
23 unprepared to come here today, but got -- I'm fully
24 prepared to try to answer any questions that you may
25 have if you could be more specific.

1 THE COURT: What's your understanding of
2 the charges against you, Mr. Head?

3 THE DEFENDANT: Armed robbery and
4 possession of a firearm during the commission of a
5 crime.

6 THE COURT: Do you know why you're here
7 today?

8 THE DEFENDANT: Oh, right now today is
9 because to see if it's proper, appropriate to go
10 forward with the incompetency mental health.

11 THE COURT: Tell me what your lawyer's job
12 is in your case.

13 THE DEFENDANT: To represent me in my
14 defense.

15 THE COURT: And what would that involve,
16 do you know?

17 THE DEFENDANT: Well, we've discussed all
18 the different things of my background and where I
19 grew up and I'm not fully sure how to answer that
20 question.

21 MR. BARNES: And I just want to make sure
22 he doesn't reveal any attorney-client privilege.

23 THE COURT: I know, I know, I know, I was
24 getting ready to hold up my hand.

25 Mr. Head, in a trial we have a jury. What

1 do you think the juries do? What's the job of a
2 jury?

3 THE DEFENDANT: To make the truthful and
4 fair judgment based on the evidence that may be
5 available.

6 THE COURT: All right. I don't mean to
7 offend you, but I am curious, this is part of what I
8 call the oriented factors, oriented times four. You
9 know where you are today right now?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Where?

12 THE DEFENDANT: In the courthouse in
13 Sumter.

14 THE COURT: All right. Do you know what
15 day of the week it is?

16 THE DEFENDANT: Tuesday.

17 THE COURT: Do you know what my job is?

18 THE DEFENDANT: To make judgment call on
19 what's presented in the courtroom.

20 THE COURT: At trial what do think your
21 lawyer's job is?

22 THE DEFENDANT: To fully represent me.

23 THE COURT: And how would he do that, do
24 you know?

25 THE DEFENDANT: By presenting what's

1 available in my defense and what's available that
2 would show that any evidence that may be shown is
3 possibly not true evidence against me, you know,
4 against my innocence.

5 THE COURT: Yes, sir. How old are you,
6 sir?

7 THE DEFENDANT: 59.

8 THE COURT: Have you worked in the past,
9 sir?

10 THE DEFENDANT: I'm on disability, sir,
11 for bipolar and schizophrenia. I've been on
12 disability since '99. 2015 I was released from
13 doing 15 years prison in Idaho and was on mental
14 health during that entire time and for
15 two-and-a-half, or two-and-a-half to three years
16 following my release I stayed on medications and
17 then got on medications just right after I returned
18 to Sumter. That's been just recently.

19 THE COURT: Are you medicated today?

20 THE DEFENDANT: Yes, sir. I've been on
21 medication at the jail on Depakote, for the past
22 year.

23 THE COURT: Okay. Mr. Barnes, anything
24 else you want to say, sir?

25 MR. BARNES: No, sir, Your Honor.

1 THE COURT: Mr. Meadors.

2 MR. MEADORS: I think Your Honor didn't
3 inquire in my role, the prosecutor's role, that's
4 under the case law.

5 THE COURT: How about his role, Mr. Head,
6 the prosecutor's role?

7 THE DEFENDANT: To bring out evidence and
8 if he believes t hat the person is guilty to get the
9 person the help they need by considering where they
10 need to go to get that help.

11 THE COURT: All right. I don't claim to
12 be an expert in this field, however, Mr. Head in my
13 opinion has been responsive to my questions. He
14 hasn't rambled. He's reasonably articulate in what
15 he says. He's oriented clearly times four today.
16 He knows where he is, what he's doing, why he's
17 here, and his name, the date, appears to have a
18 reasonably good grasp of the roles of what we do in
19 a courtroom and a trial. He's on his medication,
20 says he is. Appears to have a good memory. So for
21 right now, I say for right now, I'm gonna
22 respectfully deny your motion, Mr. Barnes.

23 MR. BARNES: Yes, sir.

24 THE COURT: And nothing that you done or
25 not done, it's my call to make, I got to make it. I

1 think, I think any of you who have ever worked with
2 me in this court or the other court know that it
3 doesn't take much for me to order an evaluation when
4 I think it needs to be done. And I'm not sure, I
5 don't think it needs to be done here. Now I know
6 that basically paves the way for a trial in this
7 case. I will ponder this some more overnight. For
8 right now it is denied, Mr. Barnes.

9 MR. BARNES: Yes, sir. And just for
10 purposes of clarity of the record, I agree, Your
11 Honor, that under Blair there probably is not an
12 evaluation necessary; but M'Naghten is a different
13 animal all together, and I do not believe that at
14 this point I'm prepared to go forward and so to the
15 extent that we need to distinguish between Blair and
16 M'Naghten I would ask Your Honor to please give that
17 distinction a difference. I'm sorry, give the
18 distinction some -- I can't think of a word I need.

19 THE COURT: I'll give it some more
20 thought.

21 MR. BARNES: Yes, sir.

22 THE COURT: Okay. Now if this case is for
23 trial tomorrow, Mr. Meadors, your witnesses nearby?

24 MR. MEADORS: Yes, sir.

25 THE COURT: And yours, Mr. Barnes?

1 MR. BARNES: I do not believe that I have
2 any witnesses, Your Honor, other than the defendant
3 who may or may not testify.

4 THE COURT: Okay, all right. So that's
5 where we stand now subject to my reserving the right
6 to change my mind overnight.

7 MR. MEADORS: Yes, sir.

8 MR. BARNES: Thank you, Your Honor.

9 THE COURT: Thank y'all.

10 MR. MEADORS: Judge, I guess just to
11 followup, can we stay on the record real quick.
12 Just for Your Honor, if your mind is still pondering
13 I think for the record I need to say since he went
14 into the M'Naghten the issue is there, whether or
15 not you understand what you did was wrong and can
16 conform, there's a video in this case -- and I think
17 this is appropriate to add at this point -- a video
18 in the case where right before Mr. Head robs the
19 victim someone is coming in the Sunoco. This is the
20 Sunoco on Broad Street. He stops and waits and goes
21 back for this individual to come in and purchase,
22 pay for gas I think, and then leaves, and then walks
23 back up so we think that would show at that point an
24 ability to -- he knew what he was doing basically
25 casing the joint, if you will, so he knew to backup

1 so he wouldn't get caught. We just think that's
2 evidence to go forward as far as the M'Naghten.
3 That's all we have.

4 MR. BARNES: And if Your Honor would like
5 to look at the video I'd be happy to let you look at
6 it because, you know, ultimately that would be a
7 determination for the jury, I think, in some
8 respect; but I don't know that Mr. Meadors'
9 evaluation of the videotape is any sort of
10 professional psychiatric evaluation of what that may
11 or may not mean.

12 THE COURT: I understand.

13 MR. MEADORS: Clearly I'm not a
14 psychiatrist, didn't claim to be. I'd probably need
15 to be seen by a psychiatrist myself, but I just
16 added that and since he brought up the M'Naghten.

17 THE COURT: And both of you before you
18 leave, please know that I think greatly of both of
19 you and any hints or beliefs of anything said
20 improperly or -- what's that word, I can't think of
21 it. I don't think that about either one of you.

22 MR. MEADORS: We're good.

23 THE COURT: Yeah, y'all are good.

24 MR. BARNES: Yes, sir.

25 MR. MEADORS: Thank you.

1 MR. BARNES: And so do we, do I need to be
2 prepared to go to trial tomorrow or is there
3 something before us at this point? I thought Ms.
4 Beharry was arguing some motions for a trial to
5 start tomorrow morning. I'm just trying to get my
6 time.

7 THE COURT: I heard she was going to do
8 that.

9 MR. MEADORS: Your Honor, I think we'll be
10 able to let him know that by 3:45 hopefully.

11 THE COURT: Okay, all right.

12 MR. MEADORS: Or maybe sooner than that if
13 we can.

14 THE COURT: Okay. If y'all would, Mr.
15 Meadors, Mr. Barnes, if you'd give Ms. Andrea, my
16 colleague actually, your cell phone numbers, I will
17 further contact you later today or tonight.

18 MR. BARNES: Okay.

19 THE COURT: I'm too cheap to have internet
20 at my house.

21 MR. BARNES: That's fine.

22 THE COURT: I'll text it to you. Thank
23 y'all.

24 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 17th day of January, 2020.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
18-GS-43-0059

TIMOTHY ODELL HEAD,)

DEFENDANT.)

July 24, 25, 2018
Sumter, South Carolina

B E F O R E :

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE

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

JOHN P. MEADORS, ESQ.
Assistant Solicitor

A. JACKSON BARNES, ESQ.
Attorney for Defendant

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Circuit Court Reporter

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(There were no exhibits submitted.)

1 THE COURT: What do we need to do first?

2 MR. BARNES: Thank you, Your Honor. My
3 client has informed me he has an issue he would like
4 to take up with Your Honor.

5 THE COURT: All right.

6 MR. BARNES: And so that's our initial
7 matter.

8 THE COURT: Mr. Head, good morning, Mr.
9 Head, how are you?

10 THE DEFENDANT: All right.

11 THE COURT: What would you like to talk
12 about, Mr. Head?

13 THE DEFENDANT: Well, I just feel like
14 that I haven't been fully represented and I don't
15 feel like that my attorney is really in the interest
16 of defending my position and what I, the role I
17 played in this crime that I supposedly did and I, I
18 requested all my discovery and I haven't received it
19 all. I never did see anything where this toy bee
20 bee gun was even recovered, which according to the
21 preliminary it was recovered. Also, my attorney has
22 been very persistent and completely refuse to budge
23 on issues where I deemed should be maybe brought out
24 to get fairness in my sentencing so I would like to,
25 I would like to get a different attorney.

1 THE COURT: All right. Anybody else want
2 to be heard on this?

3 THE DEFENDANT: I haven't seen all my
4 discovery.

5 THE COURT: Okay, you told me that. You
6 told me that.

7 Mr. Meadors, you want to be heard if you
8 want to?

9 MR. MEADORS: Your Honor, I think the law
10 is he's not, he's entitled to an attorney, not an
11 attorney of his choice. State's ready to go to
12 trial.

13 THE COURT: Yes, sir.

14 MR. BARNES: And Your Honor, I think for
15 the record to be clear, Mr. Head has not seen the
16 pistol or gun that was recovered and, nor have I, so
17 if it's here in the courtroom; but as Your Honor
18 knows, the law enforcement does not provide us with
19 the full weapon when, if there is one.

20 THE COURT: Yes, sir.

21 Mr. Head, I respectfully deny your motion,
22 sir. Here we are on the day of a trial and then you
23 wish to bring this matter before the Court. I'm not
24 fussing at you, I'm not mad at you, but quite simply
25 stating, you're not entitled to choose your lawyers

1 so we will recess to reassess and be ready to start
2 with the trial and pick a jury ---

3 THE DEFENDANT: There's just one other
4 issue I had.

5 THE COURT: I was talking, Mr. Head. I'm
6 still talking. We will assemble at 11:00 to draw a
7 jury unless there's a resolution here and -- what
8 else you want to say Mr. Head?

9 THE DEFENDANT: I guess it's been about a
10 year-and-a-half ago I was up on less serious
11 charges, and when I was arrested -- I have a serious
12 illness in my spine, degenerative disk, and I told
13 the police officers not to handcuff me in my back
14 but in front of me, and they had me handcuffed in
15 the back and yanked me to my feet. And when we got
16 to the police department, they wouldn't let me use
17 the restroom for about an hour until I told the
18 transport officer that if they didn't get me to a
19 restroom it was gonna be in his car and that --
20 those charges were all dropped, but one I got time
21 served and did treatment. And from what I, my
22 understanding was that that was because of the way I
23 was treated.

24 And also, I feel that the way that this
25 prosecutor has come at me -- it hasn't be two days,

1 three days since I told my public defender about the
2 mental health issues that I want to go forward on
3 the mental health issues, that this prosecutor
4 attacked me with this high sentence offer so I feel
5 that that's vindictive, that I also feel that that's
6 in retaliation of what happened about a
7 year-and-a-half ago.

8 THE COURT: Okay. Mr. Head, you're
9 certainly entitled to believe whatever you want to
10 believe. That issue is not before the Court today.
11 We will recess until 11:00 at which time we will
12 draw a jury or bring this matter to an end
13 otherwise. Thank y'all very much.

14 Thank you, Mr. Head, very well said.

15 (End of motion hearing on July 24, 2018.)

16 (Guilty plea was taken on July 25, 2018.)

17 MR. MEADORS: May it please the Court,
18 Your Honor, before you is Timothy Odell Head with
19 his attorney Mr. Jack Barnes, Sumter County true
20 billed indictment 2018-GS-43-59. It is an
21 indictment for armed robbery and possession of a
22 weapon during the commission of a violent crime.
23 Mr. Barnes and I have discussed this case. We are
24 dropping count two, the possession of a weapon, and
25 the defendant is now entering a plea to armed

1 robbery count one of this indictment, and there's a
2 recommendation we'd like to put on the record at the
3 appropriate time please.

4 THE COURT: Yes, sir.

5 THE CLERK: Sir, raise your right hand and
6 state your name.

7 THE DEFENDANT: Timothy Head.

8 WHEREUPON,

9 **TIMOTHY HEAD,**
10 having been duly sworn by the Clerk, testified
11 as follows:

12 THE COURT: Is that right, Mr. Barnes?

13 MR. BARNES: Yes, sir, Your Honor.

14 THE COURT: Mr. Head, we're back together
15 again. Mr. Head, how do you wish to plead to the
16 charge of armed robbery?

17 THE DEFENDANT: Guilty, Your Honor.

18 THE COURT: All right. Mr. Head, have you
19 had enough time to talk to your lawyer about what
20 you decide to do today?

21 THE DEFENDANT: I have.

22 THE COURT: Have you told Mr. Barnes
23 everything you know about what allegedly happened?

24 THE DEFENDANT: I have.

25 THE COURT: Has Mr. Barnes answered your

1 questions to your satisfaction, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has Mr. Barnes shared with you
4 whatever information and discovery he has in his
5 possession or evidence or information with you?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Are you overall satisfied with
8 the service of your lawyer Mr. Barnes?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has anyone promised you
11 anything to plead guilty? I'm not talking about a
12 plea arrangement or plea discussions. I'm talking
13 about anything beyond that.

14 THE DEFENDANT: No, sir.

15 THE COURT: Has anybody threatened you or
16 forced you to come in here and plead guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you pleading, therefore,
19 guilty freely and voluntarily?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you today under the
22 influence of any medications, drugs, or alcohol?

23 THE DEFENDANT: Just the medications that
24 I take for my high blood pressure, diabetes, and my
25 mental illness.

1 THE COURT: All right. And are you
2 compliant with those medications today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Does that give you any
5 concerns about going forward today taking those
6 medications?

7 THE DEFENDANT: No.

8 THE COURT: Do you have a suspected or
9 known or diagnosed mental or physical condition that
10 makes it difficult for you to understand what you're
11 doing today?

12 THE DEFENDANT: No, sir.

13 THE COURT: Now the sentence you're
14 looking at on the high side will be 30 years of
15 confinement. Recommendations will be made by both
16 sides. And although I am inclined to follow the
17 recommendation, you have to know, though, that I
18 could change my mind and give you 30 years. Do you
19 understand that?

20 THE DEFENDANT: Yes, sir, I do.

21 THE COURT: When you plead guilty,
22 Mr. Head, you give up the right to remain silent on
23 this charge. Do you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You also, Mr. Head, give up

1 the right to a trial by jury where 12 persons could
2 find you not guilty on the charge or guilty. A
3 guilty plea verdict would require that the State
4 prove your guilt to the jury by a standard of beyond
5 a reasonable doubt. The verdict would have to be
6 unanimous. Or you could be found not guilty. At
7 your trial no one could force you to testify, and
8 you could choose not to testify and the Court would
9 tell the jury that you have the right to do that and
10 not to hold it against you. Even if you did not
11 testify, your lawyer can call people to testify for
12 you on your behalf and your lawyer could question
13 people who testify against you. And your defenses
14 could be presented at trial, which you give all of
15 that up that goes to the jury trial when you plead
16 guilty. Do you understand that, Mr. Head?

17 THE DEFENDANT: Yes.

18 THE COURT: You have ten days to appeal
19 the sentence of the Court and the guilty plea, do
20 you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Meadors.

23 MR. MEADORS: May it please the Court.
24 Your Honor, this happened approximately a year ago
25 August 22nd, 2017, at 1083, 1083 Broad Street here

1 in Sumter County in the city of Sumter and Sumter
2 County. That location is Sunoco, Your Honor. It's
3 right before you get to the Wendy's on the right if
4 you're leaving town. The teller or the clerk, if
5 you will, that day Ms. Leanna Adams -- Leanna,
6 please raise your right hand at this point so the
7 judge can see you.

8 THE COURT: Okay. Thank you, ma'am.

9 MR. MEADORS: Ms. Adams, had been working
10 there for a while. It's approximately 10:15, Judge,
11 that evening. The defendant comes in Sunoco, gets
12 initially two tall boys I believe, Keystone beers,
13 brings them to the counter. After that you see him
14 and he goes to the back of the store. We believe at
15 that point he was looking out the window -- there's
16 a video of this judge -- and an individual has
17 pulled out to one of the gas pumps comes in and pays
18 for the gas it appears, gives the money to
19 Ms. Adams. That individual then leaves. Mr. Head
20 then goes back to the counter and asked Ms. Adams
21 for some Newport cigarettes. At that point she goes
22 and gets the cigarettes, come back and places them
23 on the counter. And as she started to ring them up
24 he pulls a gun from his back beneath his shirt in
25 his waist in the back of his pants, points it at

1 her, says, give me all the money. At that point
2 Ms. Adams was trying to ring up, trying to open the
3 register, has a little trouble, but she finally does
4 a no cash sale or something. The drawer comes open
5 and then she just grabs a bunch of money, gives them
6 to Mr. Head, and then reaches with her own hand and
7 grabs two handful of money from the cash register,
8 puts them on the counter. Mr. Head at that point,
9 he had the gun pointed at her initially, Judge, when
10 he said give me all the money. He puts the gun
11 down, puts the, both wads of money into a plastic
12 bag and also puts the gun in there. At that point
13 he closes the bag up, tells her don't call the
14 police or don't hit the panic button, don't do
15 anything 'till I leave. You then see him leaving
16 Sunoco and I believe going, left out of the store.
17 At that point Ms. Adams hits the panic button and
18 you can see her doing that. She gets her phone and
19 has to put her code in and then she calls 9-1-1 and
20 gives a description of the person. The City
21 responds. Amanda is here.

22 Judge, what's interesting about this case,
23 the video is downloaded and it's put on social
24 media, Facebook. I don't know if it went on TV or
25 not. But law enforcement, specifically Trip Mays,

1 sees it and says, I know this person by name and
2 sight. Now we would have been careful offering that
3 at trial, but he had prior dealings with Mr. Head
4 and just knew him so he calls, I believe, Trevor
5 Brown and calls the City and say, hey, I know this
6 guy and I know where he is, he's at Carolina Inn.
7 So I think Sergeant Mays initially goes to Carolina
8 Inn where the defendant is staying, calls the City.
9 Irene Culick, Sergeant, started preparing a photo
10 lineup with Mr. Head in it to show the victim. The
11 victim was presented with the lineup and she did
12 pick out Mr. Head as the individual who had robbed
13 her.

14 Judge, Amanda Snapp with the City, she
15 initially responds to Carolina Inn. The City and
16 the County get a consent to search the defendant's
17 room. They find the Keystone beer cans. Amanda
18 Snapp did a great job, got fingerprints, matched
19 them back to the defendant from his motel room.
20 Judge, he declined to talk to Sergeant Culick.

21 On the video it just, you just see it on
22 the video, Judge. It's one of the stronger cases
23 I've ever seen. You see him come in; it's clear
24 video. He's ID'd by Ms., my victim Ms. Adams. He's
25 ID'd by Trip Mayes and I believe he would have been

1 ID'd by the jury, quite frankly, when they saw the
2 video of him in the store. Judge, everybody's got
3 their favorite Quik Way or Circle K, I know you do,
4 I know I do, and you get to know these people. And
5 when I was talking to Leanna Adams yesterday she
6 graduated from North Central in Kershaw County and
7 then she went and graduated from Coker, Coker
8 College. And I said what'd you do after that? She
9 said, well, I just kept clerking at the store. I
10 said why? She said, I love it. She likes being a
11 clerk and she likes greeting people and she's great
12 with people, does a great job, and she's now at a
13 different location. And her manager loves her, we
14 went out there and talked to her but. She enjoys
15 this and it's like my favorite clerk who knows the
16 good and the bad of what I buy. She enjoys this
17 job. And she's never been robbed before and I
18 talked to her getting her ready for trial and I
19 said, were you scared? She said, yeah, I was
20 scared. Did you think that was a real gun? Yeah, I
21 thought it was a real gun. And you can see the side
22 view of her. When he points a gun she does the real
23 reaction and thank goodness it wasn't worse than
24 that. And I say that just because I know under the
25 law, you know, if a person reasonably believes --

1 and I'll hand this to the judge if that's okay.
2 This is what he pointed at her and she thought it
3 was real, and I just want to show that to the judge.
4 And it looks real, that looks real in the video, but
5 that is the weapon that he used.

6 THE COURT: Yes, sir.

7 MR. MEADORS: Judge, at the appropriate
8 time Mr. Miller has his prior record he's going to
9 read. I don't know if Ms. Adams wants to say
10 anything or law enforcement. Again, the City did an
11 excellent job in this case, as well as the County
12 with their help. I don't know if you want to do
13 this now, but we are prepared. And Judge, we have a
14 recommendation when you want me to put it on the
15 record.

16 THE COURT: Let me finish with the plea
17 and then I'll come back.

18 Now, Mr. Head, did you hear what Mr.
19 Meadors said allegedly happened?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you -- is that
22 substantially correct what he said?

23 THE DEFENDANT: Yes, sir. I've had some
24 crisis situations where I was, everything had been
25 stolen and I was just homeless. I left the shelter

1 on Oakland where the bed bugs were biting and they
2 wouldn't move me to another bunk. I was off my meds
3 and I was really at the brink of suicide. I was
4 really probably in the worst state of mind that I
5 ever remember being in. And the part that I don't
6 have any recollection or really don't have memory,
7 was pointing the gun or beebee gun whatever. It was
8 just lots of things I didn't even remember when I
9 woke up the next day; but I do remember that I just
10 wanted to die, you know, sleeping on the ground and,
11 but.

12 I'm not a violent person. I've never been
13 charged with hurting anybody even though I've got
14 the prison record I have. I've been in a few
15 fights, but it's all been self-defense. I have no
16 desire to hurt people. That's, you know, I'm not a
17 threat to society. I have some other, some family
18 out west. I'd come back from Idaho after being in
19 prison that length of time, and I did three years on
20 parole in Idaho successfully and came back here to
21 find my family in chaos. My 28 year old son doesn't
22 want to have anything to do with me. And then when
23 my truck and everything got stolen I was just at the
24 brink of nothing to live for. I have a lot of
25 chronic pain and I'm just having, just having a hard

1 time seeing how I was going to get back on my feet.

2 But I don't even feel that I would survive
3 much time across the water because I've spent time
4 in prison and I know how they prey on older and
5 weaker people and people that are sick and so I, I
6 have a lot of fear. I have a lot of remorse and I
7 have a lot of fear, but I can assure you there's
8 some inheritance money that's come up through the
9 family that will help me go back out west where I
10 can get better psychiatric mental health clinic care
11 and a fresh start that that was my hope, is that I
12 could not have a whole lot of time and be able to go
13 out and get a better start, you know, before I'll
14 get health problems of mine at my age or possibility
15 of getting really, you know, messed up in prison.
16 But I can assure you that it was just a, I've never
17 gone off the end, deep end, the way I had with all
18 my possessions getting stolen, my truck getting
19 stolen.

20 THE COURT: All right, sir. I thank you
21 for that and the record will reflect that while Mr.
22 Head offered lengthy what I will call mitigating
23 reasons about what the Court should do, he did reply
24 yes as substantially correct in that he had remorse
25 for what he did. So Mr. Head, now sir, are you

1 pleading guilty because you are guilty as charged,
2 sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you still wish to plead
5 guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Barnes, you have any
8 concerns about his plea?

9 MR. BARNES: No, sir.

10 THE COURT: I find that Mr. Head is
11 exceptionally well represented today. He has a
12 lawyer who has been, I know, for the last two days
13 all over and on top of this case trying as hard as
14 he could to represent his client best's interest.
15 Actions taken that Mr. Head obviously didn't know
16 about or wasn't present to see, but there was an
17 earnest effort by Mr. Barnes to do everything within
18 his power to help Mr. Head. I don't see how he can
19 be faulted in that regard. I find Mr. Head is
20 oriented today times four, that his speaking to the
21 Court just now indicated that he is really quite
22 well spoken, very much engaged and responsive in
23 this entire process, no rambling speech. I find
24 he's got a keen draft of what we're doing today and
25 have been doing. And except for this little

1 situation he finds himself in, not little, but
2 serious situation, I find Mr. Head to be quite an
3 impressive person, appears to be quite well read
4 just by listening to him talk.

5 So I have no hesitation in accepting the
6 plea, I find he's done it freely, knowingly, and
7 voluntarily with the advice and consent of good
8 trial counsel and I find it's factually based.

9 And now Mr. Meadors, I'll hear from you,
10 again, and Mr. Barnes in just a minute.

11 MR. MEADORS: Can we approach please.

12 THE COURT: Yes, sir.

13 (WHEREUPON, counsel approached the Bench for an
14 off-the-record discussion.)

15 THE COURT: Mr. Barnes, I left out the
16 question about violent more serious. Would you tell
17 him on the record what you already told him, sir.

18 MR. BARNES: Yes, sir. Mr. Head, in our
19 discussion below this morning I indicated to you
20 that this was a most serious and violent crime and
21 as a result of that, you know, the amount of time
22 you'll have to serve I believe to be around
23 85 percent; but because of the nature of it being
24 most serious and violent, we were limited in what we
25 could do for purposes of a sentence and ---

1 (Attorneys confer.)

2 MR. BARNES: Oh, yes. And that it also is
3 considered, is one strike so that if he were to
4 receive two more strikes, the one, one more, that he
5 doesn't get a third strike.

6 THE COURT: Do you understand that,
7 Mr. Head, sir?

8 THE DEFENDANT: Yes.

9 THE COURT: Forgive me for not asking you
10 that. Your good lawyer was here so I thought I'd
11 let him explain it to you. But do you understand
12 that, Mr. Head?

13 THE DEFENDANT: I do.

14 THE COURT: Does that change your desire
15 to plead guilty today?

16 THE DEFENDANT: No, sir, I'd like to go
17 forward.

18 THE COURT: Mr. Meadors.

19 MR. MEADORS: Thank you, Your Honor, may
20 it please the Court. Mr. Miller will summarize his
21 record with your permission.

22 THE COURT: All right, sir.

23 THE INVESTIGATOR: Judge, in 1984 out of
24 the State of Georgia he has a attempting to allude a
25 police officer charge and conviction. These next

1 ones are out of the State of Idaho. He has a
2 robbery conviction in which he received a three year
3 sentence and then some probation afterwards and then
4 had a violation of his probation following that. He
5 also has a disorderly conduct conviction from, I'm
6 sorry, out of the State of Idaho. Then he has
7 another robbery conviction out of the State of Idaho
8 from 2012. He has several shoplifting charges and
9 convictions out of the State of South Carolina. He
10 has a petit larceny from 2004, shoplifting in which
11 he received 30 days, and then in 2004 he has a
12 criminal conspiracy and two forgery convictions. In
13 2004 he has another shoplifting conviction. That's
14 for March 18th. And then on March 22nd he has
15 another two shopliftings in which he received a
16 conviction. In June of 2004 he has four petit
17 larceny convictions and two shoplifting convictions.
18 October of 1980 he has a receiving stolen goods and
19 a use of vehicle without permission conviction.
20 1978, he has another failure to stop for police
21 conviction and a shoplifting conviction, and then he
22 has another shoplifting conviction from 2016. 2005
23 he has a shoplifting conviction. I apologize for
24 these being not in order of the day, it's just how
25 they're on the NCIC, Judge. And November of 2005 he

1 has two more forgery convictions and a conspiracy
2 conviction, Judge. And then 2016 he has three more
3 shoplifting convictions, Judge. And that's his
4 record.

5 MR. MEADORS: Judge, I talked with
6 Ms. Adams. I want to thank her for being here. She
7 does not want to address the Court. Plea
8 discussions included Ms. Adams as well as law
9 enforcement. And after discussing the two interns
10 from the City and the interns with us, Judge, after
11 discussing it with everybody we had agreed and
12 extended the offer and we're asking respectfully,
13 Judge, if you would consider the recommendation of
14 15 years.

15 THE COURT: Okay. Mr. Barnes.

16 MR. BARNES: Thank you, Your Honor. Mr.
17 Head is 59 years old and so the reality is that a 15
18 year conviction may or may not allow him to get out
19 depending on his health and other things like that.
20 Your Honor's heard a lot about Mr. Head's life over
21 the course of the last two days. You've heard him
22 today. His road through life thus far has been
23 rocky and difficult and painful and tragic in many
24 ways. Through much of his adult life he's suffered
25 not only from mental illness, but with drug related

1 addiction issues. And that's not an excuse for
2 anything he's ever done, but it's just a way of,
3 gives Your Honor some context as to the kind of life
4 he's lived which based on those forgery and
5 shoplifting charges and as Your Honor well knows,
6 those are often triggered by people who are homeless
7 and addicted to drugs and all those kinds of things,
8 none of which is an excuse, it's just context for
9 Your Honor.

10 I think that Mr. Head himself over the
11 course of the last two days has given you a flavor
12 of what his life has been like and it has been
13 fairly painful. A 15 year sentence is going to be
14 additionally very painful, but I would ask Your
15 Honor to respectfully go along with the
16 recommendation and sentence Mr. Head to the 15
17 years. And I would, just for one, so the record is
18 very clear about this Your Honor, Mr. Meadors and I
19 talked about it and one of the conditions of the
20 recommendation was that I would not get to argue for
21 less than 15 years so I'm honoring my word with Mr.
22 Meadors and I'm doing that.

23 THE COURT: Mr. Head, did you want to say
24 anything else, sir?

25 THE DEFENDANT: Well, I know what the law

1 is and I don't want, I don't want to change the
2 course of things or upset you or whatever, but I ---

3 THE COURT: Well, just, Mr. Head, just
4 remember this now, I told you earlier that most
5 likely I would be going with the recommendation so
6 just ---

7 THE DEFENDANT: That will be it.

8 THE COURT: All right. I told the lawyers
9 earlier that if a plea was reached or a sentence was
10 reached by then they thought was fair under all the
11 circumstances, that I would go along with it and
12 I'll keep my word too. So the sentence of the Court
13 is South Carolina Department of Corrections for 15
14 years, and I have signed the sentencing sheet.

15 Mr. Head, I wish you luck, sir, I do. I
16 hope things can work out for you, sir. Have a good
17 day.

18 MR. MEADORS: Your Honor, before we go off
19 the record, I handed Mr. Barnes this. This is a
20 case of State v. Bradshaw. I just want to make it a
21 part of the record. It's another case from, would
22 apply to yesterday.

23 THE COURT: Thank you, okay.

24 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence,
South Carolina, this 5th day of July, 2019.

Frances B. Ray

FRANCES B. RAY, RPR

FORM 5

RECORDED

STATE OF SOUTH CAROLINA

County of SUMTER

2019 MAY 17 PM IN THE COURT OF COMMON PLEAS

Timothy Ddell Head 303482
 Full name and prison number (if any) of Applicant

v.

State of South Carolina

Respondent

2019-CP-43-998

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED TRUE COPY
 OF ORIGINAL FILE
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

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 BROAD RIVER CORRECTIONAL INSTITUTION
4460 BROAD RIVER Rd COLUMBIA, SC. 29210
2. Name and location of Court which imposed sentence SUMTER COUNTY COURT
OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018-BS-43-DD59 - S.C. CODE ANN. § 16-11-0330 (A)
 - (b) SEE: ATTACHED EXHIBITS "A" & "B"

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 25 2018
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. SEE: ATTACHED EXHIBIT "C"
- (b) the result in each such Court to which you appealed:
- i. DENIED
- ii. SEE: ATTACHED EXHIBIT "D"
- iii. _____
- (c) the date of each such result:
- i. OCTOBER 16, 2018 REMITTITUR
- ii. _____
- iii. SEE: ATTACHED EXHIBIT "E"
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNKNOWN
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) N/A

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE: ATTACHED
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE: ATTACHED
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. 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) NOT APPROPRIATE FOR DIRECT REVIEW
 (b) _____
 (c) _____

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

(a) your arraignment and plea? YES
 (b) your trial, if any? —
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

(a) the name and address of each attorney who represented you:
 i. ALLEN JACKSON BARNES - SUMTER COUNTY PUBLIC DEFENDER'S OFFICE - 215 N. HARVIN ST. #151 - SUMTER, SC 29150
 ii. _____
 iii. NO APPELLATE COUNSEL WAS APPOINTED
 (b) the proceedings at which each such attorney represented you:
 i. GUILTY PLEA & SENTENCING
 ii. _____
 iii. DIRECT REVIEW

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

VACATE PLEA - AND RELEASE FROM Custody

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

No

STATE OF SOUTH CAROLINA)

County of SUMTER)

VERIFICATION

I, Timothy Odell Head, 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.

Timothy Odell Head

SWORN to and subscribed before me this 9th day of May, 2019.

Jennifer Washt (L.S.)
Notary Public

My Commission Expires: March 8, 2028

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

I, Timothy Odell Head, 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.

Timothy Head
Applicant

SWORN or affirmed to and subscribed before me this
9th day of May, 2019.

Jennifer Washington
Notary Public

My Commission Expires: March 8, 2028

2019 MAY 17 PM 3:13
JAMES C. CAMPBELL
CLERK OF COURT
SUMMIT COUNTY, S.C.

RECORDED

STATE OF South Carolina
County of Sumter

IN THE COURT OF COMMON PLEAS

Timothy Odell Head #303482
Applicant,

vs.

State of South Carolina,
Respondent.

C/A No: _____

Applicant's
Attachment To
Post Conviction Relief
Application

Page 3, No: 10:

INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE
COUNSEL. 6th AND 14th AMENDMENTS TO THE UNITED
STATES CONSTITUTION.

Page 3, No: 11:

- 1.) Applicant's plea of guilty WAS NOT MADE WITH
OR BASED ON ADVICE OF COMPETENT COUNSEL.

- 2.) Applicant's plea of guilty was NOT ENTERED INTELLIGENTLY. BOYKIN vs ALABAMA.
- 3.) TRIAL COUNSEL NEVER REVIEWED THE PRE-TRIAL DISCOVERY WITH APPLICANT.
- 4.) TRIAL COUNSEL NEVER REQUESTED APPLICANT TO BE EVALUATED (MENTAL STATE OF MIND) TO DETERMINE CRIMINAL RESPONSIBILITY AND COMPETENCY STATE vs BLAIR.
- 5.) TRIAL COUNSEL DID NOT ADVISE APPLICANT TO THE ELEMENTS OF THE CHARGED OFFENSES WHICH MUST BE PROVED BEYOND A REASONABLE DOUBT; NOR DID COUNSEL DISCUSS ANY AFFIRMATIVE DEFENSE WITH APPLICANT.
- 6.) TRIAL COUNSEL DID NOT INVESTIGATE AND DISCUSS HIS FINDINGS WITH APPLICANT.
- 7.) TRIAL COUNSEL NEVER DISCUSSED THE ADVANTAGES AND DISADVANTAGES OF A PLEA WITH APPLICANT VERSUS THE ADVANTAGES AND DISADVANTAGES OF A TRIAL, SO THAT APPLICANT COULD MAKE

AN INFORMED CHOICE OF WHETHER TO ENTER A PLEA OR TRY HIS CASE.

- 8.) TRIAL COUNSEL DID NOT PREPARE APPLICANT'S CASE FOR TRIAL; INSTEAD, COUNSEL NEGOTIATED WITH THE PROSECUTION FOR APPLICANT TO ENTER A PLEA.
- 9.) APPLICANT WAS NEVER APPOINTED APPELLATE COUNSEL TO ASSIST AND PERFECT HIS DIRECT APPEAL. U.S. VS CHRONIE, _____ U.S. _____
- 10.) APPLICANT ASSERTS THE CUMULATIVE ERROR DOCTRINE IN WHICH TWO (2) OR MORE INDIVIDUALLY HARMLESS ERRORS HAS THE POTENTIAL TO PREJUDICE THE APPLICANT TO THE SAME EXTENT AS A SINGLE REVERSABLE ERROR. PAVEL VS HOLLINS, 261 F.3d 210 (2001).

APPLICANT FURTHER ASSERTS THAT DEFENSE COUNSEL IN A CRIMINAL CASE "MUST" UNDERSTAND THE CAUSE OF ACCUSATION AND ELEMENTS OF THE OFFENSES WITH WHICH HIS CLIENT IS CHARGED

AND "shall" display some appreciation of the recognized defenses thereof.

UNLESS COUNSEL BRINGS THESE RUDIMENTS TO THE TABLE, A DEFENDANT LIKELY WILL BE DEPRIVED OF A FAIR "OPPORTUNITY" TO MEET THE CASE OF THE PROSECUTION. STRICKLAND VS WASHINGTON, 466 U.S. AT 685 AND THUS A DEFENDANT WILL BE PLACED AT AN UNDUE RISK OF HAVING NO EFFECTIVE ADVOCATE FOR HIS CAUSE.

PHRASED ANOTHER WAY "IF AN ATTORNEY DOES NOT GRASP THE BASICS OF THE CHARGE AND THE POTENTIAL DEFENSES THEREOF" AN ACCUSED MAY WELL BE STRIPPED OF THE VERY MEANS THAT ARE ESSENTIAL TO SUBJECT THE PROSECUTIONS' CASE TO ANY ADVERSARIAL PROCESS.

CONCLUSION

IN CONCLUSION APPLICANT REQUEST THAT APPOINTED COUNSEL BE PERMITTED TO FURTHER AMEND THIS POST-CONVICTION RELIEF APPLICATION

to conform to the evidence presented at the PCR Hearing should any new or unaddressed issues arise during the hearing that have not been specifically addressed in this Application or to any Amended Application.

Respectfully submitted

Timothy D. Head

Timothy Odell Head 303482
Broad River Corr. Inst.
446D Broad River Rd.
Columbia, SC.

2921D

Applicant

Date: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
	)	
Timothy Odell Head, #303482	)	Case No.: 2019-CP-43-998
	)	
Applicant,	)	RETURN, MOTION FOR MORE
	)	DEFINITE STATEMENT, AND
	)	PARTIAL MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on May 17, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Correction pursuant to orders of commitment of the Sumter County Clerk of Court. During its January 2018 term, the Sumter County Grand Jury indicted Applicant for armed robbery and possession of a weapon during the commission of a violent crime (2018-GS-43-0059). John P. Meadors of the Third Circuit Solicitor's Office represented the State. A. Jackson Barnes, Esquire represented Applicant. On July 24-25, 2018, Applicant pled guilty as indicted for armed robbery before the Honorable George McFaddin. The charge for possession of a weapon during the commission of a violent crime was dropped as a result of the plea deal. Judge McFaddin sentenced Applicant to fifteen years' imprisonment. On August 1, 2018, Applicant filed a notice of appeal. On September 18, 2018, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. The remittitur was issued on October 16, 2018.

II. Factual History

On August 22, 2017, Applicant robbed a sales associate at the Sonoco on 1083 Broad Street in Sumter County. Assistant Solicitor Meadors summarized the facts at Applicant's guilty plea hearings as follows:

"It's approximately 10:15, Judge, that evening. The defendant comes in Sunoco, gets initially two tall boys I believe, Keystone beers, brings them back to the counter. After that you see him and he goes to the back of the store. We believe at this point he was looking out the window- there's a video of this judge – and an individual has pulled out to one of the gas pumps comes in and pays for the gas it appears, gives money to Ms. Adams. That individual then leaves. Mr. Head then goes back to the counter and asks Ms. Adams for some Newport cigarettes, come[s] back and places them on the counter. And as she started to ring them up he pulls a gun from his back beneath his shirt in the back of his pants, points it at her, says, give me all the money. At that point Ms. Adams was trying to ring up, trying to open the register, has a little trouble, but she finally does a no cash sale or something. The drawer comes open and then she just grabs a bunch of money, gives them to Mr. Head, and then reaches with her own hand and grabs two handfuls of money from the cash register, puts them on the counter. Mr. Head, at that point he had the gun pointed at her initially, Judge, when he said give me all the money. He put the gun down, puts the, both wads of money into a plastic bag and also puts the gun in there. At

that point he closes the bag up, tells her don't call the police or don't hit the panic button, don't do anything until I leave. You then see him leaving Sunoco and I believe going, left out of the store. At that point Ms. Adams hits the panic button and you can see her doing that. She gets her phone and gives a description of the person. The city responds."

(GP Tr. 11-12).

III. Allegations Raised and Relief Sought in Application

In his application for post-conviction relief, Applicant alleges various allegations, which Respondent interprets as the following:

1. Involuntary Guilty Plea
2. Ineffective Assistance of Counsel
 - a. Failure to review pre-trial discovery with Applicant
 - b. "Trial Counsel never requested applicant be evaluated (mental state of mind) to determine criminal responsibility and comp[et]ency."
 - c. "Counsel did not advise Applicant to the elements of the charged offenses which must be proved beyond a reasonable doubt; nor did counsel discuss any affirmative defense with Applicant."
 - d. "Trial Counsel did not investigate and discuss his findings with Applicant"
 - e. "Trial counsel never discussed the advantages and disadvantages of a plea with Applicant versus the advantages and disadvantages of a trial, so that Applicant an informed choice of whether to enter a plea or try his case."
 - f. "Trial counsel did not prepare Applicant's case for trial; instead, counsel negotiated with the prosecution or Applicant to enter a plea."

3. Applicant was never appointed appellate counsel to assist and perfect his direct appeal.

As requested relief, Applicant requests the Court “vacate [his] plea – and release from custody.”

Attached herewith and incorporated herein by reference are the records of the Sumter County of Court regarding the subject convictions challenged in this application, Applicant’s records from the Department of Corrections, Applicant’s appellate record, and the application. Respondent reserves the right to amend its return upon the receipt of other relevant records.

IV. Response to Allegations of Ineffective Assistance of Counsel

In his application, Applicant asserts various claims of ineffective assistance of counsel. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland 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.

First, Applicant alleges plea counsel was ineffective for failing to review discovery with Applicant. At Applicant’s guilty plea hearing, Judge McFaddin asked Applicant if plea counsel shared all discovery, evidence, and information that was in counsel’s possession. Applicant responded, “Yes, Your Honor.” (GP Tr. 8). Respondent submits Applicant cannot satisfy the requirements set forth in Strickland. However, this allegation probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Second, Applicant alleges that plea counsel was ineffective for failing to request a mental health evaluation. During Applicant’s guilty plea hearing, the court engaged in a colloquy during which Judge McFaddin asked Applicant about his mental health. Applicant testified he was only under the influence of medications that he took for his blood pressure, diabetes, and his “mental illness.” (GP Tr. 8). Judge McFaddin asked Applicant whether he was “compliant” with those medications at that time to which Applicant responded, “Yes, Sir.” (GP Tr. 9). Judge McFaddin further asked Applicant, “Does that give you any concerns about going forward today taking those medications,” to which Applicant responded, “No.” (GP TR. 9). Applicant testified he did not

have a suspected or known or diagnosed mental physical condition that would make it difficult for him to understand what he was doing at his guilty plea hearing. (GP Tr. 9). Respondent submits Applicant cannot satisfy the requirements set forth in Strickland. However, this allegation probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Third, Applicant alleges plea counsel “did not advise Applicant to the elements of the charged offenses which must be proved beyond a reasonable doubt; nor did counsel discuss any affirmative defense with Applicant.” Respondent submits Applicant cannot satisfy the requirements set forth in Strickland. Applicant testified he was satisfied with plea counsel’s representation. (GP Tr. 8). However, this allegation probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Fourth, Applicant alleges plea counsel was ineffective for failing to investigate Applicant’s case. However, Applicant wholly fails to set forth with specificity the facts and circumstances upon which this claim is based, including what plea counsel should have investigated and what such an investigation would have yielded and how this would have supported Applicant’s case. Accordingly, Applicant moves herein for a more definite statement regarding this allegation.

Fifth, Applicant alleges plea counsel was ineffective for failing to explain the advantages and disadvantages of going to trial versus making a guilty plea. Respondent submits that Applicant cannot satisfy the requirements set forth in Strickland. Applicant testified he was satisfied with plea counsel’s representation. (GP Tr. 8). However, this allegation probably raises questions of

fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Sixth, Applicant alleges plea counsel was ineffective for failing to prepare Applicant's case for trial. Respondent submits that Applicant cannot satisfy the requirements set forth in Strickland. Applicant testified he was satisfied with plea counsel's representation. (GP Tr. 8). However, this allegation probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Involuntary Guilty Plea

Applicant further alleges that his plea was not voluntarily made. Respondent submits that this allegation is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. Applicant testified he was only under the influence of medications that he took for his blood pressure, diabetes, and his "mental illness." (GP Tr. 8). Judge McFaddin asked Applicant whether he was "compliant" with those medications at that time to which Applicant responded, "Yes, Sir." (GP Tr. 9). Judge McFaddin further asked Applicant, "Does that give you any concerns about going forward today taking those medications," to which Applicant responded, "No." (GP Tr. 9). Applicant testified he did not have a suspected or known or diagnosed mental physical condition that would make it difficult for him to understand what he was doing at his guilty plea hearing. (GP Tr. 9). Applicant testified he was not promised anything to plead guilty. (GP Tr. 8). Applicant testified he was not threatened, or coerced into pleading guilty (GP Tr. 8). Applicant testified he was freely and voluntarily pleading guilty. (GP Tr. 8). However, allegations regarding the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

VI. Failure to Appoint Appellate Counsel

Applicant asserts he is entitled to relief because he was not appointed appellate counsel. Respondent submits this allegation is without merit and should be summarily dismissed. Applicant's allegation is directly refuted by the record.

Assistant Public Defendant Barnes filed a Notice of Appeal on behalf of Applicant. Plea counsel indicated by letter to the Criminal Appeals Clerk that, pursuant to SCACR 203(d)(1)(B)(iv), he did not "find any issues which can be reviewed on appeal," but that he "filed the current appeal at the request of [his] client to preserve his rights in this case." The letter also stated that the matter was being referred to the Office of Appellate Defense. Thereafter, the South

Carolina Court of Appeals sent plea counsel a letter instructing him to inform Applicant that Applicant had twenty (20) days from the date of plea counsel's transmittal letter to inform the Court in writing of any arguable basis that there are issues preserved for appeal. Applicant did not provide any such explanation to the court. Accordingly, by Order dated September 18, 2018, the South Carolina Court of Appeals dismissed Applicant's appeal due to Applicant's failure to provide a sufficient explanation pursuant to 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. Contrary to Applicant's assertion, Applicant had appellate counsel to the extent that he was entitled to appellate counsel at that time. Applicant failed to provide a sufficient explanation in accordance with the South Carolina Appellate Court Rules, and therefore, he was not entitled to continue with his appeal. Accordingly, all appellate court rules were followed appropriately. Based on this, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70(c) on the basis that there is no genuine issue of material fact and the allegation should be dismissed as a matter of law.

VII. Motion for More Definite Statement

In his application, Applicant fails to set forth with specificity the facts and circumstances upon which his failure to investigate claim is based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to this

allegation. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his allegation of failure to investigate. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VIII. Any Future Amendments and Invocation of Discovery Process

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

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests

that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

IV. Response to Any and All Other Allegations

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

X. Request for an Evidentiary Hearing, Amended Application, and Summary Dismissal

WHEREFORE, having made its return, the State requests an evidentiary hearing be held only as to the claims of ineffective assistance of counsel and involuntary guilty plea that were sufficiently alleged. The State requests applicant, through his counsel, amend the application to provide the required specificity for his allegation of failure to investigate. Respondent moves to summarily dismiss Applicant's allegation of failure to appoint appellate counsel.

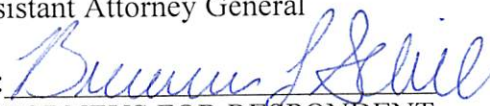
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

July 25, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2019-CP-43-998
	)	
TIMOTHY ODELL HEAD, #303482,	)	
	)	
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, Motion for a More Definite Statement, and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC.
Post Office Box 1058
Charleston, South Carolina 29402

DATED this the 25th day of July, 2019.


Kaitlyn S. Slice, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) COURT OF COMMON PLEAS

TIMOTHY ODELL HEAD)
303482

APPLICANT,)

v.)

TRANSCRIPT OF RECORD
19-CP-43-00998

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

February 24, 2020
Sumter, South Carolina

B E F O R E :

THE HONORABLE R. KIRK GRIFFIN, JUDGE

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

JAMES K. FALK, ESQ.
Attorney for the Applicant

BRIANNA L. SCHILL, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MS. SCHILL: Your Honor, the next case
2 is Timothy Odell Head versus State of South
3 Carolina, case number 2019-CP-43-998. Applicant
4 is presently confined in the South Carolina
5 Department of Corrections pursuant to orders of
6 commitment of the Sumter County Clerk of Court.
7 During its January 2018 term the Sumter County
8 grand jury indicted applicant for armed robbery
9 and possession of a weapon during commission of a
10 violent crime. John P. Meadors of the Third
11 Circuit Solicitor's Office represented the State.
12 Allen Jackson Barnes, Esquire, represented
13 applicant on July 24th and 25th, 2018. Applicant
14 pled guilty as indicted for armed robbery before
15 the Honorable George McFaddin. The charge for
16 possession of a weapon during the commission of a
17 violent crime was dropped as a result of the plea
18 offer. Judge McFaddin sentenced applicant to 15
19 years of imprisonment. On August 1st, 2018,
20 applicant filed a notice of appeal. On
21 September 18th, 2018, the South Carolina Court of
22 Appeals dismissed applicant's appeal for failing
23 to provide a sufficient explanation as required by
24 Rule 203(d) (1) (b) (4) of the South Carolina
25 Appellate Court Rules. The remittitur was issued

1 on October 16th, 2018. Applicant filed this
2 timely PCR application on May 17th, 2019.
3 Respondent subsequently filed a return and partial
4 motion to dismiss.

5 Applicant is present today and
6 represented by James Falk, Esquire; and Your
7 Honor, I'd just like to put on the record the
8 allegations that the State understands applicant's
9 going forward on. Those allegations are: One,
10 involuntarily guilty plea; two, ineffective
11 assistance of counsel for (a), failure to review
12 pretrial discovery with applicant, (b), "Trial
13 counsel never requested applicant be evaluated for
14 mental state of mind to determine criminal
15 responsibility, competency, (c), "Counsel did not
16 advise applicant to the elements of the charged
17 offenses which must be proof beyond reasonable
18 doubt, nor did counsel discuss any affirmative
19 defenses with applicant, (d), "Trial counsel did
20 not investigate and discuss his findings with
21 applicant, (e) "Trial counsel never discussed the
22 advantages and disadvantages of a plea with
23 applicant versus the advantages and disadvantages
24 of trial. Applicant made -- can make a informed
25 choice of whether to enter a plea or try his case.

1 And finally, (f) "Trial counsel did not prepare
2 applicant's case for trial; instead, counsel
3 negotiated with the prosecution for applicant to
4 enter a plea.

5 I notice, would like the applicant to
6 verify those are the applications that they're
7 going forward on.

8 MR. FALK: We're prepared to go
9 forward on those allegations.

10 THE COURT: All right.

11 Mr. Head, stand up. Remain standing
12 for me. Before we go forward I just want to put
13 on the record and make you aware that the -- if
14 you are successful in your application for
15 post-conviction relief, you understand that the
16 relief that can be granted by this court is a new
17 trial.

18 THE APPLICANT: Yes, sir.

19 THE COURT: And you understand that at
20 that new trial you'll be facing the same charges
21 and same penalties that you were facing back when
22 this case began. You understand that?

23 THE APPLICANT: Absolutely.

24 THE COURT: So you would be facing up
25 to 30 years on the armed robbery with the

AW - T. HEAD - DIRECT

1 mandatory minimum of ten years and also an
2 additional five for possession of a weapon during
3 the commission of violent crime?

4 THE APPLICANT: Yes, sir.

5 THE COURT: And you want to go forward
6 with your PCR application here this morning?

7 THE APPLICANT: Yes, sir.

8 THE COURT: All right. Mr. Falk, call
9 your first witness.

10 MR. FALK: I'd like to call Mr. Head
11 to the stand.

12 THE COURT: Mr. Head, come on around.

13 THE CLERK: Place your left hand on
14 the Bible, raise your right hand. State your
15 name.

16 THE WITNESS: Timothy Odell Head.

17 WHEREUPON,

18 **TIMOTHY O. HEAD,**
19 having been duly sworn by the clerk, testified
20 as follows:

21 THE CLERK: Thank you much. Step
22 around. Watch yourself coming up the ramp. Sir,
23 state your name for the record and spell your last
24 name please.

25 THE WITNESS: Timothy Odell Head, and

1 my last name is spelled H-E-A-D.

2 **DIRECT EXAMINATION**

3 BY MR. FALK:

4 Q. Mr. Head, can you hear me?

5 A. Yes.

6 Q. All right. July 24th and 25th of
7 2018, that's when you entered your guilty plea.
8 Does that sound right to you?

9 A. Yes.

10 Q. All right, now, was your case also
11 scheduled to go to trial at that, that week?

12 A. I had asked my lawyer Mr. Barnes,
13 being that he had taken so long to acknowledge my
14 mental health defense, he had practically had not
15 acknowledged it up to that point. I asked him to
16 at least give us at least one more term so that
17 him and I could get together and be prepared on
18 all bases on that defense.

19 Q. No, I appreciate that and; but when
20 I'm looking through the transcript, it looks like
21 they were ready to pick a jury.

22 A. Oh, yeah, and they said that either I
23 plead today or they're going to put me on trial,
24 that they wouldn't give us any time.

25 Q. And they were gonna put you on a trial

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1 — your trial was gonna start that week.

2 A. Almost right then, yeah.

3 Q. Okay, all right. Now can you go
4 through your mental health condition.

5 A. To start out, when I was a teenager my
6 mother was pretty abusive and instead of getting
7 switched till I was bleeding, I would runaway if I
8 got anything less than a C and a —

9 Q. I'm sorry, can you back up. Instead
10 of?

11 A. Instead of getting a switching with
12 switches and getting bleeding, you know, from the
13 beatings —

14 Q. Oh, okay.

15 A. —I would runaway from home. And so
16 I graduated high school at the age of 17 in the
17 Department of Youth Services and then I had mental
18 problems. I would fall asleep in school and
19 different things, but they put me in a mental
20 health clinic and diagnosed me with bipolar with
21 schizo-affect which means — the reason I'm not
22 schizophrenia is because it's not all the time;
23 but during a mood swing of my bipolar I have
24 schizo-type symptoms that are familiar, that are
25 very similar to a type of symptom that someone

AW - T. HEAD - DIRECT

1 that has schizophrenia would have. They're very
2 similar. So when I'm not having a bipolar swing I
3 don't have the schizo-type symptoms. And then
4 major depression because of all the chaos in
5 growing up. My dad spent all his life trying to
6 keep the family together and he's as good a dad as
7 I could have had, needless to say. And I love my
8 mother, I mean, that was the way she was raised so
9 I don't really try to blame her. But anyway, I
10 had trouble all my life. The only job I was
11 really successful at was over the road truck
12 driver where I didn't have to answer to anybody.
13 When dad co-signed for the truck ---

14 Q. Okay, let me interrupt you for a
15 moment.

16 A. I know I got scattered away so.

17 Q. So you said that you have a mental
18 health diagnosis of bipolar and schizo-affective
19 disorder?

20 A. Yes. '99 I was approved for
21 disability benefits, and the reason ---

22 Q. That was gonna be my next question.

23 A. Receiving disability income since '99.

24 Q. Okay. And ---

25 A. Been on medication the whole time.

AW - T. HEAD - DIRECT

1 Q. And what is that medication?

2 A. Lithium, Trazodone, and I always
3 forget the other one. There's one more that helps
4 me relax 'cause I have chronic pain in my spine.

5 Q. But the lithium and the Trazodone are
6 primarily ---

7 A. Mental health.

8 Q. ---mental health?

9 A. Yes, sir.

10 Q. Where do you get your medicine?

11 A. Well, at this time it comes through
12 medical at the prison.

13 Q. And just, I don't know the answer to
14 this question. So if you're getting disability
15 payments for a mental health disease, then does
16 social security also ---

17 A. That comes from social security.

18 Q. Right. So do you also, do they pay
19 for your medication? How do you get your
20 medications?

21 A. Right, I get Medicare, Medicaid, and
22 it covers my medication.

23 Q. Okay, all right. So explain to the
24 Court how you think you were acting when you're in
25 one of your schizo ---

AW - T. HEAD - DIRECT

1 A. It's like dominoes, my thinking.
2 It'll just jump from one thought to the other. It
3 can't have time, heck of a time staying focused on
4 one thing. I jump to conclusions, you know, just
5 frantic sometimes over nothing. I just, I usually
6 just stay to myself inside whenever that occurs
7 and just try to avoid contact with people whenever
8 I'm in one of those bouts.

9 Q. Have you ---

10 A. As long as I'm taking my medication
11 I'm usually okay.

12 Q. Have you always been in the Sumter
13 County area?

14 A. No, I was a long haul truck driver. I
15 moved around after my divorce. I divorced my
16 ex-wife due to, you know, I caught her cheating on
17 me and everything and I left her and then I just
18 moved around quite a bit and I wasn't sure where I
19 wanted to live. And then I came back from Idaho
20 where I'd lived. I lived in Idaho for about 15
21 years and came back, came back here.

22 Q. Well, prior to the incident at the
23 Sunoco Station where were you living?

24 A. I was here. I'd been here about a
25 year.

AW - T. HEAD - DIRECT

1 Q. Were you, did you have a house here,
2 did you have an apartment here?

3 A. I had different friends. Kent Mobley
4 was the main one. He, he made, expressed to me
5 that I was always welcome at his house. I went to
6 school with one of his daughters, and he was -- I
7 don't even know if he's still alive but. I used
8 to go by his house and I'd always bring a sack of
9 potatoes and some groceries and cook for him. And
10 he said that I had my own bedroom and bed, and he
11 said any time I needed a place if I came into town
12 so that's usually where I was at if I wasn't at my
13 mother's place.

14 Q. How did you get your medication during
15 this time?

16 A. I'd just go to the health department
17 on a checkup visit for my medication, take the
18 prescription, you know, to the drug store with my
19 Medicare, Medicare or Medicaid card.

20 Q. When prior to the incident,
21 immediately prior to the incident at the Sunoco
22 were you on your medication?

23 A. No, sir, I'd gotten off, I stopped
24 taking the medication for about a week. And
25 then are you wanting to know about what happened

AW - T. HEAD - DIRECT

1 with the shelter incident and all?

2 Q. I'm trying to get us to that
3 conversation, yes.

4 A. Okay.

5 Q. And I think it's important for the
6 Court to know about whether or not you were on
7 your mental health medicine at the time of this
8 occurrence.

9 A. Right.

10 Q. So could you explain that.

11 A. Yeah, my belongings got scattered
12 between the shelter, Kent Mobley's house and my
13 bag and junk that I was carrying, my backpack and
14 stuff. And one thing, one of Kent's requirements
15 is if you're using drugs or anything, you know,
16 not to hang out at his house so I honored that.
17 And I didn't take my medication for about five or
18 six days. And I had a nice pickup truck. I had
19 some money saved up that I had hidden in the truck
20 and whatever I owned was on that, in that truck.
21 It was a four wheel drive, Ford pickup. And
22 someone stole the truck and so I ended up checking
23 in the shelter on Oakland Avenue and the bed that
24 I, that they put me in ended up being ridden, the
25 mattress, with bedbugs. They wouldn't take care

AW - T. HEAD - DIRECT

1 of it, change the mattresses. They wouldn't put
2 me in another bunk so I had to go. I mean, here I
3 was waking up bleeding and scratching with these
4 bedbugs so.

5 Q. So did you have access to your
6 medication at this time?

7 A. Oh, yeah, I had -- yeah, I was, but I,
8 that was driving me so frantic I just slipped off
9 the medication. I got so outraged with the truck
10 getting stolen and the bedbugs, I just slipped off
11 the medication. And then I was sleeping outside
12 and the frame of mind I was in, you know, I got
13 very heavily intoxicated and that triggered me
14 into a manic phase with my illness.

15 Q. What conversations did you have with
16 your -- how many times did you meet with your
17 lawyer prior to your plea?

18 A. It was two or three times.

19 Q. Okay. And at what point did you ask
20 him -- did you raise this mental health issue that
21 you had with him? Was he ---

22 A. From the very beginning.

23 Q. Okay. And what did you tell him?

24 A. I told him I've been to mental health
25 since I was a teenager and I want to have that

AW - T. HEAD - DIRECT

1 mental health status, you know, and a evaluation
2 done.

3 Q. What's, what was your understanding of
4 the mental health evaluation? What were you
5 looking for? To see whether or not you were
6 criminally responsible for the actions at the
7 Sonoco?

8 A. Right, my men-- my possible frame of
9 mind during the time of the crime.

10 Q. Okay. Did your lawyer also talk to
11 you about needing to be in a certain mental health
12 position so that you could assist him with your
13 trial?

14 A. He didn't really go into very, ---

15 Q. Sort of?

16 A. ---in many details of anything.

17 Q. Was there any conversation regarding
18 competency to stand trial?

19 A. Didn't say anything about it.

20 Q. And were you ---

21 A. He said, at one point he said, well, I
22 don't think we can prove that you are insane.
23 Like, you have to be insane to get any kind of
24 recognition of mental health.

25 Q. Uh-huh.

AW - T. HEAD - DIRECT

1 A. Mental illness.

2 Q. So was, were you ever given a mental
3 health evaluation?

4 A. No.

5 Q. Okay.

6 A. Well, the judge asked me some
7 questions, four or five questions, what do you
8 think his job is and this, that, and the other;
9 and he says, well, he thought I was of good mind
10 or something so I think that's what he called his
11 mental evaluation.

12 Q. But you were never ---

13 A. Not by a person of that, of that ---

14 Q. Forensic psychologist, forensic ---

15 A. Right, right.

16 Q. ---psychiatrist?

17 A. No personnel of that ---

18 THE COURT: Mr. Head, I'm gonna stop
19 you right there. You got to wait till your lawyer
20 finishes asking you questions before you answer
21 ---

22 THE WITNESS: Okay.

23 THE COURT: ---'cause this lady right
24 here is taking down everything you say, and when
25 y'all are both talking at the same time it makes

AW - T. HEAD - DIRECT

1 it hard on her, okay.

2 THE WITNESS: I'm sorry.

3 THE COURT: So let him ask the
4 question, take a second, and then answer, okay.

5 THE WITNESS: All right.

6 THE COURT: All right, Mr. Falk, go
7 ahead.

8 BY MR. FALK:

9 Q. What part of the pretrial discovery do
10 you believe your lawyer did not do? You said
11 failure to review pretrial discovery with
12 applicant so what were you referring to there?

13 A. Oh, at that point he hadn't shown me
14 any discovery, period.

15 Q. Okay.

16 A. At that point when I made that request
17 he hadn't shown me any.

18 Q. Were you made aware that there was a
19 video at the Sonoco?

20 A. Yeah, but he didn't show me any of
21 that. I didn't see any of that.

22 Q. Okay. And you said that you were not
23 advised of the elements of the charged offenses.

24 A. Right.

25 Q. So what were you understanding that

AW - T. HEAD - DIRECT

1 you were pleading guilty to?

2 A. Just robbery, armed robbery.

3 Q. Okay. And ---

4 A. And also there was a, there was a
5 co-defendant. He was in the truck with me and he
6 was the one who put me up to doing it; and he
7 wouldn't let me, he wouldn't give me that
8 information to the authorities or the courts. He
9 was, he was a two time convicted armed robber from
10 Florida, and he said -- we were fishing and
11 selling fish and salvaged metal and stuff to make
12 money; and he got the beebie pistol from a pile of
13 trash and he kept putting me up to it. But
14 anyway, I tried to inform him of this at the
15 preliminary. He said that's not gonna help you
16 none; and he wouldn't take the, he wouldn't take
17 the information.

18 Q. Did you give him any contact
19 information for that individual?

20 A. No, but I know his name, I can tell
21 you his name. They call him Skeet. His last name
22 is Roebuck and he's from Florida.

23 Q. Would you ---

24 A. He was living with David Taylor who is
25 on disability.

AW - T. HEAD - DIRECT

1 Q. Would you have known how to get in
2 contact with Skeet, Mr. Roebuck?

3 A. All I know is they were, they were
4 living in that motel out 15; but they had just got
5 evicted from a apartment. I think they were
6 spending most of the money on drugs; they couldn't
7 pay the rent.

8 Q. So he was still in Sumter County?

9 A. I think he's still around.

10 Q. But at the time when you were
11 preparing for your case ---

12 A. He was around then, yeah.

13 Q. Okay.

14 A. He told me if I didn't -- Dave Taylor,
15 who the pickup truck belonged to, was locked up on
16 some selling crack charges; and Skeet told me if I
17 didn't get some money, if I had to rob a store
18 that I was out of this equation. They were gonna,
19 he was going to kick me out of the motel room.

20 Q. Now what was your understanding of --
21 you had said that your lawyer should have
22 discussed with you the pros and cons of pleading
23 versus going to trial.

24 A. Right. Well, I was so heavily
25 intoxicated and off my meds that I felt like that

AW - T. HEAD - DIRECT

1 should have been recognized, maybe some leniency
2 on my time, on my sentence.

3 Q. When I started looking at the plea
4 transcript from July 24th and 25th that started
5 with you making a motion to, for new counsel; is
6 that right?

7 A. Right.

8 Q. And what was, what was behind that?

9 A. That was all about him, you know, the
10 not doing motion of discovery, not recognizing my
11 request for representing me on my mental health
12 allegation, all of it, you know, basically.

13 Q. And what was your idea, what was your
14 understanding of what you were pleading to?

15 A. Armed robbery.

16 Q. And did you have an understanding what
17 the sentencing range, ---

18 A. Yeah.

19 Q. ---what your exposure was?

20 A. They'd have to do a reduction in the
21 charge to lower the sentence, I know.

22 Q. So was there a, did you have a
23 conversation with him about trying to get a deal
24 to ---

25 A. I asked him about it. He said the

AW - T. HEAD - DIRECT

1 judge is not offering anything.

2 Q. So when you went in on the plea did
3 you know you could get a 15 year sentence?

4 A. Yeah.

5 Q. Let's talk a little bit about your
6 appeal. So did you ask your lawyer to file an
7 appeal?

8 A. Yes.

9 Q. And what happened to that? What was
10 your understanding of what happened?

11 A. They said it was insufficient
12 explanation and -- I was at R&E when that was
13 happening, and they had, they had exhausted my
14 deadline time before I could get in the law
15 library and I got some of it in, but not as much
16 as I'd intended to.

17 Q. What issues would you have wanted to
18 raise on appeal?

19 A. Well, I don't real-- I didn't come
20 prepared 'cause they sent me to the tank not even
21 telling me what I was coming to. And I was
22 prepared back in October when my original schedule
23 was and I don't really even, I'm not even familiar
24 with that information unless it's brought up, you
25 know.

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1 Q. What would you have wanted Mr. Barnes
2 have done differently in this case?

3 A. Well, if he'd at least got me someone
4 that's in the mental, in the medical field to
5 evaluate me. I had a friend that was sitting in
6 the courtroom when I was, that day, and he said
7 when they let me out the courtroom that my lawyer
8 was saying that nobody could be that intelligent
9 and have mental illnesses like Mr. Head supposedly
10 has. And my response to that would have been,
11 well, how about Hitler, he ran the military, ran a
12 country and he had more mental illnesses than I
13 have. He was, you know, he was a maniac, you
14 know. And it's just, I know one thing what my
15 problem is, is to staying on my medications and
16 not abusing them, you know, using drugs and stuff,
17 you know, alcohol.

18 Q. I guess I should have started this by
19 have you taken your medication today?

20 A. Yes.

21 Q. Have you been taking it?

22 A. Yes, I have, I have.

23 Q. So for the last several months you've
24 been taking your medication?

25 A. Right. Reading the Bible, going to

1 church, yeah, yes, sir.

2 Q. So you understand what's going on
3 today?

4 A. Oh, absolutely.

5 Q. Okay. And you believe that your
6 actions at the Sonoco Station were a result of you
7 not being on your medication at that time?

8 A. Yes, sir.

9 MR. FALK: Your Honor, I have no
10 further questions?

11 THE COURT: Ms. Schill.

12 **CROSS-EXAMINATION**

13 BY MS. SCHILL:

14 Q. Hi, Mr. Head, how are you doing?

15 A. All right.

16 Q. Good. I think you testified earlier
17 that you met with Mr. Barnes approximately two to
18 three times. Is that what your testimony was?

19 A. That's correct.

20 Q. Were those in person meetings or were
21 any of those over the telephone?

22 A. Yeah, they were in person at the
23 county jail.

24 Q. Okay. So is that an exhaustive list
25 of your meetings or didn't you guys ever talk

1 over the telephone?

2 A. We talked some, but it wasn't what I
3 expected, like I say, not getting to see my
4 discovery and the different things. I thought he
5 could have put more effort in possibly getting a
6 deal, some kind of better deal than he did, you
7 know.

8 Q. Okay. So I know you talked a little
9 bit about this earlier. So is it your testimony
10 that you didn't see any of your discovery, Mr.
11 Barnes never showed you any of your discovery?

12 A. I saw a few pictures and that's all.
13 And then also we had talked about going in front
14 of Judge Cothran who was coming on the next term;
15 and so he said, okay, well then, I'll bring up
16 your mental health defense and all that on the
17 beginning of, at the, after the end of this
18 McFaddin's term. And apparently when I talked to
19 him the last week of McFaddin's term, it seems
20 like two days after that they brought me up in
21 front of McFaddin and this is, you know, it's like
22 plea or go on trial.

23 Q. Okay.

24 A. Without allowing requested time.

25 Q. So was it your testimony that

AW - T. HEAD - CROSS

1 Mr. Barnes did not review the elements of the
2 charges with you? Is that your testimony?

3 A. Apparently not.

4 Q. Okay. And was it your testimony that
5 Mr. Barnes did not discuss the advantages and
6 disadvantages of pleading guilty as opposed to ---

7 A. Right.

8 Q. ---taking your case to trial?

9 A. Right.

10 Q. Okay. Do you recall giving up your
11 constitutional rights when you pled guilty?

12 A. With just what is normally happens,
13 you know, whenever you do a plea bargain.

14 Q. Okay. Do you recall in your case you
15 went before the judge during your plea hearing and
16 gave up your right to jury trial to confront
17 witnesses?

18 A. Right, right.

19 Q. Okay. And your right to remain
20 silent, do you recall that?

21 A. Right.

22 Q. Do you recall telling the judge at
23 your plea hearing that you had been taking
24 medication for a mental illness, a blood pressure
25 medication, and diabetes ---

AW - T. HEAD - CROSS

1 A. Yes.

2 Q. ---at the time of your guilty plea
3 hearing? Do you recall that?

4 A. Uh-huh, yes.

5 Q. And you recall telling the judge
6 immediately thereafter that you were taking your
7 prescriptions as you were prescribed them?

8 A. Correct.

9 Q. Okay. Do you recall telling the judge
10 at your plea hearing that you didn't have any
11 concerns about going forward?

12 A. Right. My lawyer did tell me, he said
13 the judge says if you start up any fuss he's just
14 gonna slam the book on you. That's what he told
15 me when that day so I just went along with it.

16 Q. Do you recall telling the judge that
17 you did not have a suspected or known or diagnosed
18 mental or physical condition that would have made
19 it difficult for you to understand what you were
20 doing during your guilty plea?

21 A. Yeah, at that point I was just saying
22 yes to everything that...

23 Q. Okay, do you recall that?

24 A. Yeah.

25 Q. Do you recall telling the judge you

1 were not threatened or coerced into pleading
2 guilty?

3 A. I did.

4 Q. Okay. Do you recall telling the judge
5 that you were not promised anything in exchange
6 for pleading guilty other than the terms of your

7 ---

8 A. Right.

9 Q. ---plea offer? Do you recall that?

10 A. Yeah. I don't really recall it, but
11 it rings a bell.

12 Q. Would you like to see the transcript
13 or?

14 A. No, that's alright.

15 Q. All right. Do you recall telling the
16 judge at the beginning of your plea hearing that
17 you had an issue with Mr. Barnes because you were
18 not able to see the pistol that was used in your
19 case? Do you recall?

20 A. Yeah, all the discovery, right.

21 Q. Okay, but you recall specifically
22 bringing up ---

23 A. I mentioned that.

24 Q. ---the gun?

25 A. Yeah, I mentioned that.

AW - T. HEAD - CROSS

1 Q. Okay. And do you recall Mr. Barnes
2 explaining to the court that law enforcement does
3 not provide defense with the actual gun?

4 A. Right.

5 Q. The actual physical gun?

6 A. But they provided it anyway, yeah.

7 Q. Okay. Do you recall telling the court
8 you were satisfied with your representation from
9 Mr. Barnes?

10 A. I don't remember that.

11 Q. You don't? Okay.

12 A. I was -- that was when I was pleading
13 motion to fire my lawyer at that time.

14 MS. SCHILL: May I approach, Your
15 Honor?

16 THE COURT: Sure.

17 BY MS. SCHILL:

18 Q. I'm bringing you a copy of the
19 transcript. Here you go.

20 A. All right.

21 Q. I'm gonna direct your attention to
22 page 8, line 7 through 9. Starting on line 7 the
23 court says, "Are you overall satisfied with the
24 service of your lawyer Mr. Barnes?" And how did
25 you reply?

1 A. Yes, sir.

2 Q. Okay. And do you recall then telling
3 plea court that Mr. Barnes shared all the relevant
4 discovery with you?

5 A. He did that day. That day he brought,
6 he brought it and he got the gun; but up till that
7 day he hadn't shared it.

8 Q. Okay, but you do recall telling the
9 plea court that at that point you saw the
10 discovery?

11 A. Right.

12 Q. Mr. Barnes ---

13 A. It was, yeah.

14 Q. Do you recall telling the plea court
15 that Mr. Barnes had answered all of your questions
16 to your satisfaction?

17 A. I don't even, I don't really remember
18 that.

19 Q. I want to direct your attention to
20 page 7. Starting on line 25 the court says, "Has
21 Mr. Barnes answered your questions to your
22 satisfaction, sir?" And on line 2, page 8, your
23 reply was?

24 A. What line?

25 Q. Page 8, line 2, that will be your

1 response.

2 A. Oh, yes.

3 Q. And you recall telling the plea court
4 that you did not need anymore time to discuss your
5 case with Mr. Barnes?

6 A. Right, that was when he was wrapping
7 up the plea bargain.

8 Q. Okay, but do you recall telling the
9 plea court that?

10 A. Right.

11 Q. Okay. Do you recall telling the plea
12 court that you're pleading freely and voluntarily
13 to the crime?

14 A. Yes.

15 Q. And we're gonna take a step back, I
16 guess, a little bit to your hearing on July 24th
17 before Judge McFaddin. Do you recall Judge
18 McFaddin asking you a series of questions
19 including your current mental state and the job of
20 the prosecutor and the judge and your defense
21 attorney and ---

22 A. Right.

23 Q. ---a series of questions, do you
24 recall that? Okay. Do you recall what Judge
25 McFaddin's conclusion was regarding your mental

1 state?

2 A. I can't just read it to you, I mean,
3 off the top of my head, but if I heard it I would
4 recognize it.

5 Q. Okay. I can direct your attention in
6 a second.

7 MS. SCHILL: Beg the Court's
8 indulgence, Your Honor.

9 THE COURT: That's fine.

10 BY MS. SCHILL:

11 Q. Okay. The court's sort of finding, I
12 guess you can call it, is on page 13 of the
13 transcript that I'll give you.

14 MS. SCHILL: May I approach, Your
15 Honor?

16 THE COURT: Sure.

17 BY MS. SCHILL:

18 Q. So on page 13, line 11, the court
19 says, "Mr. Head in my opinion has been responsive
20 to my questions. He hasn't rambled. He's
21 reasonably articulated what he says. He's
22 oriented clearly times four today. He knows where
23 he is, what he's doing and why he's here, and is
24 deemed to be -- appears to have a reasonably good
25 grasp of the rules of what we do in a courtroom

AW - T. HEAD - CROSS

1 and trial. He's on his medication, says he is.
2 Appears to have a good memory so for right now, I
3 say for right now I'm gonna respectfully deny your
4 motion, Mr. Barnes." Do you recall the judge
5 saying that at your hearing?

6 A. Yeah, yeah. Well, yeah, they had me
7 in a stable environment, would give me my
8 medication and everything, naturally.

9 Q. Okay. And do you recall also at your
10 plea hearing telling the court that you had been
11 compliant with your medication; is that correct?

12 A. Yeah.

13 Q. Okay.

14 MS. SCHILL: Beg the Court's
15 indulgence, Your Honor.

16 THE WITNESS: Do you want this one
17 transcript back?

18 MS. SCHILL: You can hang on to it for
19 just a second.

20 THE WITNESS: All right.

21 MS. SCHILL: Those are all the
22 questions I have, Your Honor. May I grab my
23 transcript?

24 THE COURT: Any redirect?

25 MR. FALK: Your Honor, technically

1 this is redirect, but I wanted Mr. Head to have an
2 opportunity to talk about -- I want to refresh his
3 recollection with what he filed with the Court of
4 Appeals as far as his issues he wanted to raise on
5 appeal.

6 THE COURT: Go ahead.

7 **REDIRECT EXAMINATION**

8 BY MR. FALK:

9 Q. Mr. Head, I'm gonna show you the
10 letters that you filed with the Court of Appeals;
11 and if you could, I'm gonna show you one that was
12 dated August 22nd, 2018.

13 MS. SCHILL: Your Honor, I'm gonna
14 object. I don't think that has anything to do
15 with the allegations.

16 THE COURT: Before we, before we go
17 down that road I see you're pulling them up on
18 your tablet there. Are they part of the record?
19 Have they been ---

20 MR. FALK: Well, the appellate
21 pleadings ---

22 MS. SCHILL: There are certain, there
23 are certain documents from the appeal file I
24 believe, Your Honor, in the judge's packet.

25 MR. FALK: These are the two letters

1 he sent to the Court of Appeals.

2 MS. SCHILL: I don't think those are
3 part of the record. I could be incorrect, but...

4 MR. FALK: Your Honor, if I can show
5 you the letters.

6 THE COURT: I'll be glad to look at
7 them. These are what were filed with the Court of
8 Appeals.

9 (Pause.)

10 MR. FALK: And I'm not really trying
11 to introduce them. I'm just trying to use them to
12 refresh his recollection of the issues that he
13 raised, wanted to raise.

14 THE COURT: Mr. Falk, do you have this
15 in a hard copy?

16 MR. FALK: I can forward that to you.

17 THE COURT: I just wanted to make sure
18 that he's able to, you're able to question him
19 about the contents of the letter and if he needs
20 his recollection refreshed that he can look at it
21 and we'll all be on the same sheet of music.

22 BY MR. FALK:

23 Q. Do you remember writing a letter to
24 the Court of Appeals on August 22nd, 2018?

25 A. Yes.

AW - T. HEAD - REDIRECT

1 Q. Okay. Do you remember what you said?

2 A. I would have to jog my memory.

3 MR. FALK: All right. Your Honor, I'd
4 like to hand him this and let him read over it.

5 BY MR. FALK:

6 Q. Do not read from it. Just look over
7 it and see if it jogs your memory.

8 A. All right.

9 THE COURT: And Ms. Schill, I note
10 your objection. I'm gonna overrule that objection
11 and let him go ahead and we'll cover this ground
12 for whatever it's worth.

13 MR. FALK: Okay.

14 (Tablet was handed to the witness.)

15 MR. FALK: You want me to scroll it
16 down for you?

17 THE WITNESS: I got it.

18 (Pause while witness reads.)

19 THE WITNESS: Okay.

20 BY MR. FALK:

21 Q. Is it fair to say that in your appeal
22 you were really raising issues of the ineffective
23 assistance of counsel; is that correct?

24 A. Right.

25 Q. That your lawyer did not want to help

1 you with medical?

2 A. Correct.

3 Q. And there weren't really any other
4 issues as far as the legality of the sentence that
5 you were trying to raise; is that correct?

6 A. Right.

7 Q. Okay. That was -- I have no further
8 questions.

9 MS. SCHILL: No other questions.

10 THE COURT: Any recross?

11 MS. SCHILL: No.

12 THE COURT: Mr. Falk?

13 MR. FALK: If he could be excused.

14 THE COURT: You can stand on down, Mr.
15 Head. You can go back to the table.

16 MR. FALK: We call Mr. Barnes to the
17 stand.

18 THE COURT: Mr. Barnes.

19 THE CLERK: Place your left hand on
20 the Bible, raise your right hand. State your
21 name.

22 THE WITNESS: Allen Jackson Barnes.

23 WHEREUPON,

24 **ALLEN J. BARNES,**
25 having been duly sworn by the clerk, testified

1 as follows:

2 THE CLERK: Thank you much. Come on
3 around. State your name for the record and spell
4 your last name please.

5 THE WITNESS: Allen Jackson Barnes,
6 B-A-R-N-E-S.

7 **DIRECT EXAMINATION**

8 BY MR. FALK:

9 Q. Mr. Barnes, what is your recollection
10 of the conversations that you had with Mr. Head
11 regarding his mental health condition?

12 A. My -- so we have a computerized system
13 in our office called Defender Data; and in
14 addition to documents and other things, that
15 system allows you to keep notes, case notes, so
16 that you don't have to ever worry about keeping up
17 with paper. So reviewing my notes prior to today
18 it appears that I first met with Mr. Head in, I
19 believe, September of 2017; and on that very first
20 meeting in mid September of 2017 he indicated to
21 me that he, you know, had long standing mental
22 issues, bipolar and schizophren-- schizo-affective
23 disorder so I knew from our initial meeting that
24 he had, that he suffered from a mental illness or
25 illnesses.

AW - A. BARNES - DIRECT

1 And according to my notes I met with
2 him on average once a month so prior to the
3 actual, his actually being called for trial we had
4 met about a dozen times or more. And of course,
5 as with someone who suffers from mental illnesses
6 a common theme or discussion so it was not, it was
7 not an issue; but Mr. Head, as he was today, was
8 always very engaged with me so I never had any
9 concerns about his mental illness. I mean, most
10 of the focus of our discussions prior to his
11 pleading guilty were about, one, his desire to
12 stay at Sumter-Lee as long as he could so he
13 didn't have to go to SCDC any sooner than he had
14 to, and you know, our trying to work out some sort
15 of guilty plea. He tried to convince me to
16 convince the prosecutor to essentially banish him
17 from South Carolina to Idaho, you know, and
18 promise to never come back. I mean, clearly we
19 can't do that, and we have those and I told him
20 that on numerous occasions. But it wasn't
21 until -- so he shows up on the trial roster twice
22 before the July 2018 trial week. Both of those
23 times he never got called so he was never, we
24 never had to deal with his actually going to trial
25 at that point or pleading guilty. I don't --

1 Q. If I can interrupt you. So he, his
2 case was up for trial twice?

3 A. Twice before -- well, actually up the
4 third time, the third time.

5 Q. This is the third time?

6 A. Yes, sir.

7 Q. So what was the defense going to be?

8 A. Well, that was our problem, he didn't
9 really have a defense. I mean, he -- over the
10 course of the year when we would discuss his case
11 he kept saying over and over and over, well, it
12 was a toy beebie gun; and I explained to him over
13 and over and over that it didn't have to be a real
14 weapon, that as long as one could reasonably
15 believe it to be a weapon, that he could still be
16 found guilty of it and so that, you know, we
17 couldn't ever use that fact that it was a toy gun
18 as a defense. And Mr. Head understood this.

19 I mean, we were always working towards
20 a guilty plea. We were never seriously going to
21 go to trial on this because my notes reflect that
22 in November of 2017 is when I first got discovery
23 and sent it to him or discussed it with him; and
24 he asked that I had still photo, that I have still
25 photographs made from the video, which I did. And

1 then sometime after November of 2017 we reviewed
2 those still photographs, and he saw at that time
3 that it was very evident that it was him in those
4 pictures and that he could clearly be identified.
5 So at that point we sort of doubled down on the
6 idea of getting him the best plea deal possible.

7 Q. And so what was -- can you describe
8 what your negotiations were with the State on this
9 case?

10 A. Well, as anyone who knows John Meadors
11 who was the prosecutor handling his case, knows --
12 rarely does Mr. Meadors even make a plea offer and
13 he certainly doesn't make one prior to your case
14 actually being called. And so, you know, while I
15 asked Mr. Meadors on multiple occasions for an
16 offer, no offer ever came to pass until the actual
17 week of trial that week in July and the offer was
18 15 years, a recommendation of 15 years. That, of
19 course, recognizing that there was a 10 year
20 mandatory minimum for armed robbery so, you know,
21 given Mr. Head's extensive criminal history which
22 includes at least one, perhaps two prior
23 robberies, forgeries, larceny charges, and many,
24 many, many shoplifting charges, I thought 15 years
25 was a pretty good deal.

1 Q. What conversations did you have with
2 Mr. Meadors about your client's mental health?

3 A. Well, as I said, over the course of
4 the year when I met with him a dozen times at
5 least, I never really had any concerns about his
6 mental illness. I mean, as you can see from
7 today, he is a very intelligent man. He's very
8 articulate. And so I never had any concerns about
9 his mental illness until Monday the 23rd and I
10 went to visit him and said, you know, you're up
11 for trial as we expected because, again, we had
12 discussions the previous two months that he was on
13 the trial list and may or may not be reached. So
14 that Monday I go to the jail and he was very
15 lethargic, that's the best way to describe him.
16 And, you know, I don't know whether I caught him
17 just having woken up from a nap or what, but I
18 left the jail and got back to my office and told
19 my colleagues, I said, you know, I met with Mr.
20 Head this morning, he appeared to be very
21 lethargic and uninterested. And I had some
22 concerns if this is going to be his mental state
23 that he can assist me this week in his trial so I
24 believe that I'm gonna have to make a motion for a
25 mental evaluation. Again, this was the first time

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1 I had ever -- because we knew that he was being
2 medicated and no question by then when he's taking
3 his medication, which he had that whole year, that
4 he was able to assist me. And I also, while I did
5 have some concerns given the fact that he
6 admittedly was using drugs and alcohol on the
7 night of the event, the robbery, you know, the
8 fact that he could articulate things about the gun
9 and the video, he appeared to be casing the store
10 before he robbed it, you know, perhaps there were
11 some M'Naghten issues, but I never really felt
12 like they rose to the level of any sort of -- I
13 didn't think he would be found legally
14 incompetent.

15 So I saw Mr. Meadors that Monday
16 afternoon or talked to him, I can't remember
17 which, but I indicated to him that I was going to
18 ask for a mental evaluation and I asked him to
19 consent. I mean, as a general rule the Public
20 Defender's Office and the Solicitor's Office
21 simply consent to those and have them done. And
22 you know, John pushed back and said, you know, why
23 haven't you raised this issue before now. And I
24 said, well, it's never been a issue before now,
25 but I met with him today and he was very out of it

1 and so I have some concerns about his ability to
2 assist me this week if this is how he's going to
3 be. And he said, okay, well, I'm gonna not
4 consent and we'll just have to have the judge
5 decide. So he was brought over the next day. So
6 I think either that afternoon or perhaps the next
7 morning, I don't remember, we actually had an in
8 chambers conversation with Judge McFaddin where
9 Mr. Meadors explained that he was not going to
10 consent to the evaluation and that he explained to
11 the judge it was his understanding of the law that
12 if the judge didn't believe a mental evaluation
13 was necessary, that he didn't have to order one
14 and that he did so by examining the witness.

15 So the next day Mr. Head shows up for
16 the, this mental evaluation hearing, and he was a
17 completely different person. I mean, he was
18 articulate, he was engaged, he was energetic. So
19 he was not, in fact, the same person that alarmed
20 me the day before. He was the same person that I
21 had met with the dozen or so times before that.

22 Q. So the evaluation that you were
23 looking for was really a Blair evaluation, a
24 competency to stand trial?

25 A. Well, I ac— yes. Yes, it was a Blair

1 evaluation. But again, given that we all pretty
2 much agreed that he was drunk and/or stoned when
3 he committed the robbery, that we needed to at
4 least touch on the M'Naghten issue as well.

5 Q. Okay, that's what I was trying to get
6 to. And the judge denied both -- well, he didn't
7 allow -- he didn't permit any evaluation?

8 A. He did not.

9 Q. Okay. And the colloquy that the judge
10 had with him the day before does really address
11 the competency to stand trial issues; is that fair
12 to say?

13 A. Yes, sir, it did. And as I recall, at
14 the end of that hearing I also said, well, Your
15 Honor, just so that we're perfectly clear about
16 the record, I believe you need to give some
17 consideration to the M'Naghten issue as well. And
18 he acknowledged that and I think at that point Mr.
19 Meadors went into the reasons why he thought a
20 M'Naghten examination was not necessary either
21 including the fact that if the judge looked at the
22 video he would see that Mr. Head came into the
23 store, he went to get a beer, he sort of -- as Mr.
24 Meadors described it -- cased the joint. He was
25 headed to the counter, then saw somebody at the

1 fuel tanks so he sort of lingered again to wait
2 for that person to leave. So based on those
3 mannerisms and characteristics he, Mr. Meadors
4 made the argument that a M'Naghten evaluation was
5 not necessary either. And as I recall, we
6 provided Judge McFaddin with a copy of the
7 videotape so he could review that overnight.

8 Q. And was the judge ever made aware of
9 his medication history?

10 A. Yes, sir. He was, I believe he asked
11 Mr. Head -- of course, the transcript will
12 obviously show what actually happened; but I
13 believe that he asked Mr. Head what medications he
14 was on and he told him -- I remember he told him
15 Depakote for sure, but I don't remember if there
16 were any other. Depakote just comes to mind.

17 Q. By the way, was it clear that the
18 issue with your client was that he possibly has a
19 criminal responsibility issue if he's not on his
20 medication or when he's on his medication he's
21 fine?

22 A. Well, ---

23 Q. I mean, he -- you would never have, is
24 the M'Naghten issue, does that come up because
25 he's not on medication?

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1 A. It came up because he wasn't on his
2 medication, but that wasn't really the focus of my
3 concern initially. The focus of my concern
4 initially was a Blair evaluation.

5 Q. Okay.

6 A. Because, you know, in my many
7 discussions with him about what happened, while he
8 might have been off of his medicine during that
9 event and he might have been drunk, he had lots of
10 recollections about the details about that. I
11 mean, you know, he told me about things that
12 happened afterwards and how where the gun was
13 thrown and this, that, and the other. You know,
14 and you can look at that video and see that he
15 clearly understood what was going on. So while he
16 might have been off of his medication during that
17 period of time -- I don't know whether he was or
18 not -- I mean, he tells me he was and he tells me
19 that he was using drugs and drunk and he could
20 have been. But honestly, based on our many
21 discussions I never really had many M'Naghten
22 issues. It was kind of a throw away at the end of
23 the mental evaluation hearing because, as I said,
24 my Blair concerns from the Monday when I met him
25 at the jail were completely alleviated when he

1 showed up for that hearing on Tuesday. He
2 absolutely understood everything that was going
3 on.

4 Q. So how did the conversation go with
5 him as far as accepting a plea?

6 A. So I explained to him that Mr. Meadors
7 had made an offer of 15 years, which he thought
8 was excessive. I explained to him that he was
9 facing, if he pled to armed robbery he was facing
10 a mandatory minimum of 10 years and that given his
11 criminal history I felt like it certainly -- he
12 knew that if he went to trial he would lose and
13 that he was facing 30 or more years depending on
14 if we went to trial on both those charges or not.
15 And so at the end of the day 15 years was a good
16 deal for him and I explained that to him. He knew
17 he could not win a trial; that's why we didn't go
18 to trial. So you know, he didn't have an option.
19 There is no constitutional right to plead guilty;
20 and if he was going to accept a recommendation, he
21 was gonna accept it then. If he didn't accept it
22 then, the deal was off, and I explained all of
23 that to him. I mean, the reality of it is that
24 Mr. Head is no stranger to pleading guilty; he
25 knows how it works. You accept the offer when

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1 it's given. I mean, based on the man's criminal
2 history he's done it many, many times.

3 Q. You had said that you explained to him
4 that in South Carolina you can get an armed
5 robbery conviction even if it is a toy gun; is
6 that correct?

7 A. Yes, and we actually had that
8 discussion the very first time I met with him in
9 September of 2017 because, and my notes reflect,
10 that he was being very cagey, well, I don't think
11 that's me, but if it was me it was a toy beebee
12 gun. And I explained to him, I said, sir, that
13 doesn't matter. I mean, if somebody comes in and
14 sticks their hand in their pocket, points their
15 index finger at you, they can still be charged
16 with armed robbery even if it's only their hand.
17 I mean, the, it's not what the gun was, it's what
18 the person who is being, had it pointed at them
19 believes and is that belief reasonable. And I
20 will tell you that he absolutely had seen the
21 discovery on many times 'cause, in fact, as I
22 said, I had still photographs made for him and
23 shared them with him. But, no, I didn't have a
24 gun, and of course, you know, law enforcement is
25 not going to give me their evidence prior to

1 trial. But I will tell you that on that morning
2 of the hearing when the evidence custodian showed
3 us the gun, it absolutely looked like a real gun.
4 I can promise you that had I had that pointed at
5 my face and as a clerk in a convenience store, I
6 would no question believed that it was a real gun.
7 In fact, as I recall, when the gun was pulled out
8 Judge McFaddin kind of went, whoa, whoa, whoa,
9 let's wait a minute here. And we had to take it
10 out, make sure there was nothing in the chamber.
11 I mean, it, it, the idea that this was some sort
12 of color plastic pistol that any child would
13 realize was fake was completely false. It looked
14 like a real gun.

15 Q. But the reasonableness of the clerk's
16 belief that the gun was in fact a real gun, that
17 would have been an issue for the jury to
18 determine; is that correct?

19 A. Absolutely it would have been an issue
20 and I explained that, as I said, to Mr. -- my
21 notes from my computer reflect that I had that
22 conversation with him at least four times about
23 how the test is not what it actually was, but what
24 the clerk would believe and so that's what we
25 needed to focus on, not whether it was a beebee

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1 gun or not. He - I will tell you, he had a
2 difficult time coming to terms with that idea, you
3 know, because he so easily knew that it was a fake
4 gun. You know, he thought everybody should accept
5 that. So I will admit he had a difficult time
6 coming to terms with the fact that it didn't
7 matter whether it was real or not. I mean, which
8 is one of the reasons why I kept having to tell
9 him over and over and over again that just doesn't
10 matter.

11 Q. Did you, did he talk with you about
12 the, as he referred to as co-defendant in this
13 case, the person from Florida who was actually
14 coercing him into committing this robbery?

15 A. Today is the very first time I have
16 ever heard that. Now he did tell me about some
17 roommates he had at the Carolina Inn and this,
18 that, or the other; but as far as a co-defendant
19 goes, today is the very first time I've ever heard
20 that. To my knowledge, none of the investigative
21 reports or any of the investigation done by law
22 enforcement showed there to be any other person
23 involved in this. I mean, he did have some
24 roommates. I suspect they might have been
25 accessories 'cause I think he went back to the

1 motel and drank beer with them or something and
2 maybe shared some money with them, I don't know;
3 but at best, they were accessories, but they were
4 never part of the investigation.

5 Q. I have no further questions. Thank
6 you.

7 **CROSS-EXAMINATION**

8 BY MS. SCHILL:

9 Q. Hi, Mr. Barnes. Thanks for being
10 here.

11 A. You're welcome.

12 Q. I'm gonna try to keep this brief and
13 direct. How long have you been practicing law?

14 A. I graduated from law school in 1992.
15 I did a two year federal clerkship after that and
16 then I've been actively engaged in the practice of
17 law since 1994.

18 Q. What percentage of your practice has
19 been criminal law?

20 A. I first started doing criminal work in
21 2009 mainly by way of federal appointments through
22 the CJA list; and it, you know, until I became a
23 public defender four years ago I would say
24 probably only about 15 percent of my work was
25 criminal at that time. For the last four years

1 it's been my full-time job.

2 Q. Was Mr. Head the first criminal
3 defendant you were ever, you ever represented that
4 had any mental health issues at all?

5 A. No.

6 Q. Okay.

7 A. Sadly about 85 percent of my clients
8 have mental issues?

9 Q. Okay. Did you discuss the elements of
10 the charges with Mr. Head?

11 A. Without a doubt.

12 Q. Okay. What about the defenses to the
13 charges? Kind of touched on them a little bit
14 but.

15 A. Yeah, I mean, the problem with this
16 case always was that the video was so clear and
17 that there really weren't any defenses. I mean,
18 there just weren't. That was never a focus of our
19 discussions. We never really focused on a defense
20 because, you know, there wasn't a defense.

21 Q. Did you discuss the advantages and
22 disadvantages of going to trial versus pleading
23 guilty?

24 A. I did. And in fact, I think that was
25 part of our first discussion because, as I said,

1 you know, he initially said, well, something to
2 the effect that we know that I'm gonna end up
3 pleading guilty, but I want to stream this out as
4 long as possible so I can stay in Sumter-Lee
5 rather than having to go to SCDC.

6 Q. Okay. Did you discuss the possible
7 sentences with Mr. Head?

8 A. I did.

9 Q. Okay.

10 A. I mean, we always knew there was 10
11 year mandatory minimum.

12 Q. Okay. Did Mr. Head ever give you the
13 name of any witnesses or leads to investigate that
14 you did not investigate?

15 A. No. And when I was asked by Judge
16 McFaddin who my witnesses were, would be, I told
17 him that I didn't have any witnesses other than
18 Mr. Head if he chose to testify.

19 Q. Okay. So just briefly, you spoke a
20 little bit about your communications with Mr.
21 Head. I just want to verify. So your
22 communications with him, did Mr. Head always
23 appear to understand your communications with him?

24 A. Yes.

25 Q. Okay. So, and would he ask you

1 pretty, questions that other criminal defendants
2 with who didn't have mental health issues would
3 have asked? Did he seem to ask coherent
4 questions?

5 A. Absolutely. I mean, I think it's
6 important to make a distinction here. He, we all
7 acknowledge that he has a mental illness, but his
8 mental illness is and was during this year treated
9 so no question but that he's competent when he's
10 being treated and he was treated. So no, I never
11 had any issues about his mental illness because he
12 was, in fact, being compliant at the jail when
13 given his medicine.

14 Q. Okay. Do you think it was in
15 Mr. Head's best interest to plead guilty?

16 A. Without question.

17 Q. Okay. And if Mr. Head ultimately had
18 said I do not want to plead guilty, I want to go
19 to trial, what would you have done?

20 A. I would have gone to trial.

21 Q. Okay.

22 A. I was prepared to do that that day.

23 Q. And whose decision is it ultimately to
24 plead guilty or go to trial?

25 A. It's always the client's decision and

1 it was Mr. Head's decision in this case. He knew
2 based on his record that he might very likely get
3 30 years.

4 Q. Okay. And did you tell Mr. Head prior
5 to his guilty plea hearing that he had to answer
6 in a particular way for the judge -- I guess, to
7 rephrase, did, to use Mr. Head's words, did you
8 ever tell Mr. Head that the judge would throw the
9 book at him if he didn't respond affirmatively to
10 the judge's questions?

11 A. What I explained to him -- I doubt
12 that I would have said throw the book at him
13 'cause that's just not a phrase I would use. I
14 think what I explained to Mr. Head was that if he
15 was gonna go forward with his guilty plea that he
16 would have to answer the questions as the judge
17 posed them to him. In other words, 'cause I
18 explained as part of my conversation I had with
19 every single client, when the judge says to you do
20 you understand you're giving up certain rights,
21 yes, sir. If you don't say yes, sir or yes,
22 ma'am, the judge cannot go forward with your
23 guilty plea. The same is true for any questions
24 regarding mental illness or understanding what
25 you're doing. You have to be compliant with and

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1 answer the judge's questions in a way that will
2 allow him to go forward with the guilty plea. So
3 I'm confident what I explained to judge, I mean to
4 Mr. Head was, that in order for the judge to
5 accept his plea -- and it's not automatic. You
6 know, I mean, we've all had clients who get half
7 way through a plea and just suddenly decide
8 they're not gonna answer the question for whatever
9 reason and the judge cannot go forward with the
10 plea. So if I made that point to Mr. Head I'm
11 confident it was in that context.

12 Q. Okay.

13 MS. SCHILL: Beg the Court's
14 indulgence, Your Honor.

15 BY MS. SCHILL:

16 Q. Sorry, just a couple of more brief
17 questions just for the record. So that first
18 hearing before Judge McFaddin on July 24th you
19 made that motion under both Blair and M'Naghten;
20 is that correct?

21 A. I did. And I believe that it was at
22 the end of the hearing where judge, because Judge
23 McFaddin essentially in his analysis in denying my
24 motion talked about, you know, the -- his being
25 aware of time, place, what everybody does, and

1 this, that, and the other so I said to him, Your
2 Honor, just to be perfectly clear, please
3 understand that my motion was made under both
4 M'Naghten and Blair. So as Your Honor -- I think
5 what he said was I'm going to deny your motion,
6 but I will continue to ponder it overnight. And
7 at that point I said, well, Your Honor, would you
8 please consider giving, please give some
9 consideration as you ponder to the idea of an
10 M'Naghten analysis as well and Mr., at that point
11 Mr. Meadors, you know, went through a factual
12 description of the video so that the judge would
13 have some context for the M'Naghten analysis. In
14 fact, we sent the video back in chambers with
15 Judge McFaddin so that he could close that loop on
16 the M'Naghten issue as well. So yes, it was both
17 Blair and a M'Naghten analysis.

18 Q. Okay, thank you.

19 MS. SCHILL: Beg the Court's
20 indulgence one more time, Your Honor. Those are
21 all the questions I have. Thank you.

22 THE COURT: Any redirect?

23 MR. FALK: No redirect.

24 THE COURT: Mr. Barnes, you can step
25 down.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Mr. Falk.

3 MR. FALK: We have no further
4 witnesses.

5 THE COURT: Anything from the State?

6 MS. SCHILL: State has no witnesses,
7 Your Honor. Thank you.

8 THE COURT: All right. Ladies and
9 gentlemen, I'm gonna take this matter under
10 advisement. I'm gonna ask each side to submit
11 proposed orders in this case. And before I ask
12 this question let me preface it with, be
13 realistic, how many days do you think you're gonna
14 need to get me those proposed orders?

15 MS. SCHILL: I was gonna say 30 days I
16 think would be okay. I mean, I ---

17 THE COURT: Why don't we go for 60?

18 MS. SCHILL: Okay, I won't argue with
19 that. Thank you, Your Honor.

20 MR. FALK: Your Honor, 60 is fine. I
21 wanted to clarify an issue. I think that the only
22 issues that we're really going forward with are
23 the issues as related to mental health. The issue
24 as far as the appeal, pursuing the appeal, we
25 would withdraw that because it's clear that the

1 issues he wanted to raise on appeal were basically
2 PCR issues that he raised here.

3 THE COURT: Okay, so let me be
4 absolutely certain. I'm looking at his
5 application. So he's, according to his
6 application he has raised -- the attachment to his
7 post-conviction relief application he's raised ---

8 MS. SCHILL: Your Honor ---

9 THE COURT: ---ten particular issues
10 that he had so I guess let's just narrow it down
11 just so y'all can put the appropriate or address
12 the allegations appropriately in the order. So
13 just the mental health?

14 MR. FALK: The best issues relate to
15 the mental health, yes, Your Honor.

16 THE COURT: Okay.

17 MR. FALK: I mean, as far as whether
18 or not he was advised of the pros and cons of
19 pleading versus going to trial, whether or not --
20 and I guess we would also raise, you know, whether
21 or not trial counsel was, had done an adequate
22 investigation. I'd still like the opportunity to
23 address that. But we would phrase this as a, I
24 mean, I would clarify my issue in saying that on
25 that day my client was faced with the opportunity

1 he either go forward with a trial without the
2 benefit of a mental health evaluation. And since
3 he knew he wasn't going to get a mental health
4 evaluation which he was relying on his attorney,
5 that's why my client was coerced into pleading
6 guilty.

7 THE COURT: Okay. And so ---

8 MR. FALK: He was given no choice.

9 THE COURT: All right. So I guess
10 procedurally the order needs to address that issue
11 and then the failure to investigate issue?

12 MR. FALK: Yes, Your Honor.

13 THE COURT: So your client, I guess,
14 waives the remaining allegations in the PCR
15 application other than the mental health issue and
16 the failure to investigate?

17 MR. FALK: Yes, Your Honor.

18 THE COURT: Is the State clear with
19 that?

20 MS. SCHILL: Sort of. What about the
21 involuntary guilty plea, are you gonna ---

22 MR. FALK: That's what I'm saying.
23 This is an involuntary guilty plea. He is ---

24 MS. SCHILL: Involuntary, okay.

25 MR. FALK: And it was involuntary

1 because he felt coerced because he was faced with
2 either going to trial without the benefit of a
3 mental health evaluation or taking his plea right
4 now. So that's why, our argument is he was
5 presented with no option but to take the plea or
6 run the risk of going to trial without the benefit
7 of a mental health evaluation and that's why it's
8 the involuntary plea, the coercion.

9 MS. SCHILL: Okay, I got it, thank
10 you.

11 THE COURT: Okay. All right, well, if
12 y'all just submit those orders to my law clerk, or
13 proposed orders to my law clerk within 60 days and
14 she can give you her email address. And once the
15 orders are submitted I'll have a ruling within 30
16 days of the order being submitted.

17 MR. FALK: Since this is the first
18 time I've appeared before you, do you want me to
19 submit it in a PDF and a Word version or how ---

20 THE COURT: I prefer a Word version so
21 I can edit.

22 MR. FALK: Edit.

23 THE COURT: Changes, edit.

24 MR. FALK: Yes, Your Honor.

25 THE COURT: That'd be fine.

1 MS. SCHILL: Thank you, Your Honor.

2 THE COURT: Okay.

3 (Pause.)

4 THE COURT: Back on the record. Go
5 ahead, Mr. Falk.

6 MR. FALK: Your Honor, usually in
7 these PCR hearings the entire appellate record
8 from the general sessions trial is usually part of
9 this record for the PCR, and I was maybe relying
10 on that, I shouldn't have. I'm asking if the
11 Court would allow me to supplement whatever record
12 there is in this case for the two letters that he
13 sent to the Court of Appeals in response to why he
14 was appealing his conviction, and I understand
15 that we're waiving that issue as far as going
16 forward. I just want to make it complete.

17 THE COURT: And I mean, I think the
18 issues that were raised in those letters are
19 cumulative to what is already before the Court in
20 the PCR application. But I don't have any problem
21 with you supplementing the record with hard copies
22 of those letters, but I don't think they bring up
23 any new, any new issues or cause anybody to have
24 to —

25 MS. SCHILL: I agree that they don't

1 and ---

2 THE COURT: ---do additional work ---

3 MR. FALK: ---I just want that to be
4 clear going forward.

5 THE COURT: I know that's probably a
6 little bit out of the ordinary. I don't think
7 that there's any harm in allowing that so that's
8 certainly fine with me. Just, like I say, 'cause
9 they don't, there are no new allegations. It
10 doesn't change the parameters of this case in any
11 fashion so I'm happy to allow you to do that.

12 MR. FALK: Thank you.

13 THE COURT: All right. Anything else
14 before we adjourn?

15 MS. SCHILL: That's it.

16

17 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA))
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South
Carolina, this 30th day of June, 2020.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Timothy Odell Head, #303482)

Case No.: 2019-CP-43-998

Applicant,)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

CERTIFIED TRUE COPY
ORIGINAL FILE
Barbara Shaper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed on May 17, 2019, by Timothy Odell Head (Applicant). An evidentiary hearing into the matter was convened on February 24, 2020, at the Sumter County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire (PCR Counsel). Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. A. Jack Barnes, Assistant Public Defender of the Third Circuit Public Defender's Office (Counsel), also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY AND ALLEGATIONS RAISED

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In January 2018, the Sumter County Grand Jury indicted Applicant for armed robbery and possession of a weapon during the commission of a violent crime (2018-GS-43-0059). John P. Meadors of the Third Circuit Solicitor's Office prosecuted the case. Counsel represented Applicant.

On July 24–25, 2018, Applicant pled guilty as indicted to armed robbery before the

Honorable George M. McFaddin. In exchange for the guilty plea, the State dropped the weapons charge. Judge McFaddin accepted Applicant's guilty plea and sentenced him to serve fifteen years' imprisonment. Applicant appealed.

Counsel filed a timely notice of appeal and statement pursuant to Rule 203(d)(1)(B)(iv), SCACR, on August 1, 2018. On September 18, 2018, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. *State v. Head*, S.C. Ct. App. Order filed Sept. 18, 2018. The remittitur was issued on October 16, 2018.

On May 17, 2019, Applicant filed this application for post-conviction relief, alleging that he is unlawfully incarcerated for the following reasons:

1. Involuntary Guilty Plea.
2. Ineffective Assistance of Counsel:
 - a. Failure to review pre-trial discovery with Applicant;
 - b. "Trial Counsel never requested applicant be evaluated (mental state of mind) to determine criminal responsibility and comp[et]ency;"
 - c. "Counsel did not advise Applicant to the elements of the charged offenses which must be proved beyond a reasonable doubt; nor did counsel discuss any affirmative defense with Applicant;"
 - d. "Trial Counsel did not investigate and discuss his findings with Applicant;"
 - e. "Trial counsel never discussed the advantages and disadvantages of a plea with Applicant versus the advantages and disadvantages of a trial, so that Applicant an informed choice of whether to enter a plea or try his case;"
 - f. "Trial counsel did not prepare Applicant's case for trial; instead, counsel negotiated with the prosecution or Applicant to enter a plea."
3. Applicant was never appointed appellate counsel to assist and perfect his direct appeal.

As requested relief, Applicant requests the Court "vacate [his] plea – and release from custody." Respondent filed its Return and moved for Applicant's third allegation to be summarily dismissed.

An evidentiary hearing took place on February 24, 2020, at the Sumter County Courthouse. At the outset of the hearing, Applicant, through PCR Counsel, indicated he would be moving forward with his allegations of ineffective assistance of counsel and involuntary guilty plea. However, at the conclusion of the hearing, Applicant stated he was only going forward on the following allegations:

- (1) Failure to request a competency hearing;
- (2) Failure to assert an insanity defense;
- (3) Failure to investigate; and
- (4) Involuntary guilty plea

Therefore, this Court hereby considers any and all remaining allegations waived and abandoned.

FACTUAL BACKGROUND

On August 22, 2017, Applicant robbed a sales associate at the Sonoco on Broad Street in Sumter County. Assistant Solicitor Meadors summarized the facts at Applicant's guilty plea hearings as follows:

"[At] approximately 10:15, Judge, that evening. The defendant comes in Sunoco, gets initially two tall boys I believe, Keystone beers, brings them back to the counter. After that you see him and he goes to the back of the store. We believe at this point he was looking out the window- there's a video of this judge – and an individual has pulled out to one of the gas pumps comes in and pays for the gas it appears, gives money to Ms. Adams. That individual then leaves. Mr. Head then goes back to the counter and asks Ms. Adams for some Newport cigarettes, come[s] back and places them on the counter. And as she started to ring them up he pulls a gun from his back beneath his shirt in the back of his pants, points it at her, says, give me all the money. At that point Ms. Adams was trying to ring up, trying to open the register, has a little trouble, but she finally does a no cash sale or something. The drawer comes open and then she just grabs a bunch of money, gives them to Mr. Head, and then reaches with her own hand and grabs two handfuls of money from the cash register, puts them on the counter. Mr. Head, at that point he had the gun pointed at her initially, Judge, when he said give me all the money. He put the gun down, puts the, both wads of money into a plastic bag and also puts the gun in there. At that point he closes the bag up, tells her don't call the police or don't hit the panic button, don't do anything until I leave. You then see him leaving Sunoco and I believe going, left out of the store. At that point Ms. Adams

hits the panic button and you can see her doing that. She gets her phone and gives a description of the person. The city responds.”

(GP Tr. 11-12).

SUMMARY OF PCR TESTIMONY

Applicant's Testimony

Applicant testified he entered his guilty plea on July 24, 2018, and that his case was scheduled to go to trial that week. Applicant testified he asked Counsel to acknowledge his mental health. Applicant stated he wanted more time to prepare his case because Counsel did not take steps to acknowledge his mental health. Applicant testified his mother was abusive toward him and admitted him to a mental health clinic. Applicant testified he suffers from “schizo-type problems” and bi-polar disorder. According to Applicant, he does not suffer from “full schizophrenia,” and that he only suffers from schizophrenia when his bipolar “swings.” Applicant testified he spent his entire life keeping his family together.

Applicant testified he received disability payments in 1999, during which time he was on medication including, lithium, trazodone, and another medication that he could not recall by name, but helped him relax. Applicant testified he has “scattered thinking” and “jumps to conclusion” when he is having a mood swing. Applicant admitted that if he takes his medication properly he is “okay.”

Applicant testified that at some point prior to the crime, he stopped taking his medication for approximately one week. Applicant testified he met with Counsel two-to-three times, and the first thing he discussed with Counsel was Applicant’s mental health. According to Applicant, Counsel did not “go into many details” about his mental competency. Applicant testified Counsel informed him that he did not believe they could prove that he was mentally insane such that they would have a defense based on Applicant’s mental health. Applicant testified he recalled a judge

asking him questions and concluding that he was of a “good mind.” Applicant testified he had been properly taking his medications at the time of that hearing, and believes that his actions were the result of not being on medication at the time of the incident. Applicant testified an unnamed co-defendant forced him to commit the crime.

Applicant testified Counsel did not show him all of the evidence the State had against him, including the video from the gas station. According to Applicant, Counsel did not advise him of the elements of the offenses, nor did Counsel discuss the advantages and disadvantages of going to trial versus pleading guilty. Applicant admitted he understood the possible sentences he faced for the charges.

Applicant also recalled giving up his constitutional rights at his plea hearing. Applicant testified he recalled telling the plea court he had been compliant with his medications at the time of his plea hearing, and that he was not threatened or coerced into pleading guilty. After refreshing his recollection by reviewing the plea transcript, Applicant testified he recalled informing the plea court he was satisfied with Counsel’s representation. Applicant admitted he told the plea court Counsel reviewed the relevant discovery with him. Applicant further testified he told the plea court Counsel answered all of his questions to his satisfaction. Applicant testified he recalled telling the plea court he did not need any more time to discuss his case with Counsel.

Counsel’s Testimony

Counsel testified he has been admitted to practice law since 1994, but began practicing criminal law in 2009. Counsel testified he began working at the public defender’s office approximately four years prior to the PCR hearing.

Counsel testified he first met with Applicant in September 2017. Counsel testified that during this first meeting, Applicant informed him he had long standing mental health issues.

Counsel testified he met with Applicant at least once per month, totaling approximately twelve times, or more, prior to Applicant's plea hearing, and that Applicant's mental health was a common theme or issue during their discussions. Counsel testified he "without a doubt" went over the elements of the charges with Applicant.

Counsel testified Applicant did not have any viable defenses as the evidence was "so clear." Counsel testified Applicant believed he had a defense because, according to Applicant, the gun used was a bb gun. Counsel testified he explained to Applicant that argument did not necessitate a defense because the weapon did not have to be a real gun. Counsel testified that Applicant appeared to understand this after he and Counsel discussed this.

Counsel testified he and Applicant discussed the advantages and disadvantages of pleading guilty versus going to trial and the possible sentences Applicant was facing. Counsel testified Applicant did not give him any possible witnesses or leads regarding his case. Counsel testified he reviewed all discovery with Applicant. Counsel testified the PCR hearing was the first time he ever heard the theory that a co-defendant forced him to commit the crime, as Applicant had never mentioned a co-defendant at any point prior to the PCR hearing. Counsel also testified nothing in any of the police reports or evidence suggested that another individual was involved. Counsel testified Applicant always appeared to understand their conversations, and that Applicant was always engaged in their conversations.

Counsel testified Applicant was not interested in going to trial and that their goal was always to get him the best deal possible. Counsel testified the assistant solicitor did not make many plea offers, and that the assistant solicitor did not make an offer until the week of trial. Counsel testified this offer was for a recommendation of fifteen years. Counsel testified he thought

this was a reasonable deal considering Applicant's extensive criminal history. Counsel testified he and Applicant discussed the terms of the plea offer, and Applicant understood the terms.

Counsel testified that on the Monday prior to trial, Applicant was lethargic, and Counsel was worried about his mental health at that point. Counsel testified he requested a mental health evaluation because of Applicant's behavior. Counsel testified the assistant solicitor would not consent to a mental health evaluation so they had a hearing before Judge McFaddin regarding an evaluation. Counsel testified that Applicant showed up at the competency hearing and was "totally normal." Counsel testified Judge McFaddin went through a thorough colloquy and ultimately denied Applicant's request for a mental health evaluation.

Counsel testified he requested a mental health evaluation for his client pursuant to *Blair*¹, but also presented a *M'Naghten*² issue to the court. Counsel testified he and the solicitor discussed the *M'Naghten* issue, and he did not think Applicant had a meritorious *M'Naghten* argument given video surveillance showed Applicant casing the store before committing the robbery, Applicant seemed to clearly understand what he was doing, and, Applicant admitted to being under the influence of drugs and alcohol at the time of the crime. Counsel also testified Applicant has an extensive memory of the crime. Counsel testified he discussed Applicant's medications with the court.

Counsel testified he had no concerns regarding Applicant's mental health at the time of his guilty plea hearing, and Applicant's ability to enter his guilty plea. Counsel testified that Applicant "absolutely" appeared to understand everything that was occurring during his guilty plea hearing.

¹ *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981).

² *M'Naghten's Case*, 8 Eng. Rep. 718 (1843).

Counsel also testified that Applicant was “not a stranger” to pleading guilty as he had previously plead guilty to several crimes.

APPLICABLE LAW

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,

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.

Involuntary Guilty Plea

An Applicant alleging the guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56. A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant and statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. *Edmonds v. Lewis*, 546 F.2d 566, 568 (4th Cir. 1976) (citing *Crawford v. U.S.*, 519 F.2d 347, 350 (4th Cir. 1975)).

In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417 (2001).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Sumter County Clerk of Court records regarding the subject convictions, the plea transcript, the *Blair/M'Naghten* motion hearing transcript, Applicant's records from the South Carolina Department of Corrections, the appellate records, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

1. *Failure to Request a Mental Health Evaluation*

Applicant alleges Counsel was ineffective for failing to request a mental health evaluation to evaluate Applicant's competency. This Court disagrees.

Applicant stated he wanted more time to prepare his case because Counsel did not take steps to acknowledge his mental health. Applicant testified Counsel did not "go into many details" about his mental competency. Applicant testified he recalled a judge asking him questions and concluding that he was of a "good mind."

Counsel testified he appeared before Judge McFaddin for a hearing in which he requested a mental health evaluation pursuant to *Blair*, and also argued Applicant should be entitled to an *M'Naghten* insanity defense. Counsel testified that during their first meeting, Applicant informed him he had long standing mental health issues. Counsel testified he met with Applicant at least once per month, totaling approximately twelve times, or more, prior to Applicant's case being called for trial, and that Applicant's mental health was a common theme or issue during their

meetings. Counsel testified that on the Monday prior to trial, Applicant was lethargic and Counsel was worried about his mental health at that point. Counsel testified that based on this, he requested a mental health evaluation. Counsel testified the assistant solicitor would not consent to a mental health evaluation so they had a hearing before Judge McFaddin. Counsel testified that Applicant showed up at the competency hearing and was “totally normal.” Counsel testified Judge McFaddin went through a thorough colloquy and ultimately denied Applicant’s request for a mental health evaluation.

This Court finds Counsel’s testimony on this issue very credible, while finding Applicant’s testimony credible only to the extent he testified he recalled Judge McFaddin asking him questions regarding his mental health. As Counsel testified, and as supported by the record, Counsel did move for a mental health evaluation on behalf of Applicant. A hearing took place before Judge McFaddin on July 24, 2018. (*See* Motion Hearing Tr.) Judge McFaddin asked Applicant a series of questions regarding his mental health and his ability to assist in his defense. (Motion Hearing Tr. 9-13). Ultimately, Judge McFaddin denied Applicant’s motion for a mental health evaluation, finding, *inter alia*, that Applicant was “reasonably articulate...clearly oriented times four today... appears to have a reasonable grasp of the roles of what we do in a courtroom and trial.” (Motion Hearing Tr. 14). Moreover, Applicant has not articulated any specific arguments Counsel should have made but did not. Accordingly, Applicant has failed to meet his burden as to deficiency on behalf of Counsel.

This Court further finds Applicant failed to meet his burden to show any resulting prejudice, which requires him to show, 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). Accordingly, this Court finds Applicant has failed to meet his burden showing constitutional ineffectiveness of Counsel, and therefore, this allegation is denied and dismissed with prejudice.

2. *Failure to Assert M’Naghten Defense*

In his application for post-conviction relief, Applicant alleges Counsel was ineffective for failing to assert a *M’Naghten* insanity defense. This Court disagrees.

Applicant testified he asked Counsel to acknowledge his mental health. Applicant stated he wanted more time to prepare his case because Counsel did not take steps to acknowledge his mental health. Applicant testified his mother was abusive toward him and admitted him to a mental health clinic. Applicant testified he suffers from “schizo-type problems and bi-polar disorder. According to Applicant, he does not suffer from “full schizophrenia.” Applicant testified he only suffers from schizophrenia when his bipolar “swings.” Applicant testified he has “scattered thinking” and “jumps to conclusion” when he is having a mood swing. Applicant admitted that if he takes his medication properly he is “okay,” but that he had stopped taking his medication at the time of the crime.

Counsel testified he and Applicant discussed Applicant’s mental health issues from the beginning of his representation of Applicant. Counsel testified he did not believe Applicant had a meritorious insanity defense due to the high standard for insanity, and due to the fact that the surveillance video showed Applicant was casing the scene of the crime prior to committing the crime. Counsel testified he still made a *M’Naghten* argument to Judge McFaddin during the motion hearing on July 24, 2018, but Judge McFaddin ultimately denied his motion.

This Court finds Counsel’s testimony very credible, while also finding Applicant’s testimony not credible because Applicant’s allegation is directly refuted by the record. As Counsel

testified, he raised an insanity argument with Judge McFaddin during the July 24, 2018, hearing, but that motion was ultimately denied by the court. (Motion Hearing Tr. 14-15). Additionally, Applicant has not specified any additional arguments Counsel should have made to the court, but did not. Importantly, Applicant informed the plea court he had been taking his medications at the time of the plea hearing, and that he understood he was giving up his constitutional rights, including the right to further pursue any defenses regarding his case. (GP Trial Tr. 10, l. 11-14). Moreover, Applicant has not provided any evidence in support of his claim that he was mentally ill during the crime such that he would have been entitled to an insanity defense, other than his self-serving testimony at the PCR hearing. Accordingly, Applicant has failed to meet his burden as to deficiency.

This Court further finds Applicant failed to meet his burden to show any resulting prejudice, which requires Applicant to show 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). As previously discussed, Applicant has not specifically provided any evidence to show he was incompetent at the time he committed the crime. Accordingly, this Court finds Applicant has failed to meet his burden showing constitutional ineffectiveness of Counsel, and therefore, this allegation is denied and dismissed with prejudice.

3. *Failure to Investigate*

Failure to Investigate, Generally

"[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)).

Failure to Investigate Applicant's Case

Applicant alleges Counsel was ineffective for failing to sufficiently investigate Applicant's case. This Court disagrees.

As mentioned above, Counsel testified he reviewed the evidence the State had against Applicant, including but not limited to, witness statements and surveillance video. Counsel testified the evidence against Applicant was very strong. Counsel testified Applicant did not give him any leads or witnesses to investigate. Applicant testified he generally did not think Counsel did an adequate job at investigating his case, but did not identify what specifically Counsel failed to do regarding his investigation.

This Court finds Counsel's testimony on this issue credible, while also finding Applicant's testimony not credible. Counsel credibly testified he investigated Applicant's case. Additionally, Applicant has not provided any testimony or evidence showing what Counsel would have uncovered by way of additional investigation. Accordingly, Applicant has failed to meet his burden as to any deficiency regarding Counsel's investigation.

This Court further finds Applicant failed to meet his burden to show any resulting prejudice, which requires Applicant to show this Court 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). Accordingly, this allegation is denied and dismissed with prejudice.

4. *Involuntary Guilty Plea*

Applicant alleges his guilty plea was not freely and voluntarily made. This Court disagrees.

Applicant testified Counsel did not show him all of the evidence the State had against him, including the video from the gas station. According to Applicant, Counsel did not advise him of the elements of the offenses, nor did Counsel discuss the advantages and disadvantages of going to trial versus pleading guilty. Applicant admitted he understood the possible sentences he was facing for the charges. Applicant also recalled giving up his constitutional rights at his plea hearing. Applicant testified he recalled telling the plea court he had been compliant with his medications at the time of his plea hearing, and that he was not threatened or coerced into pleading guilty.

Counsel testified this offer was for a fifteen year recommendation. Counsel testified he thought this was a good deal considering Applicant's extensive criminal history. Counsel testified he and Applicant discussed the terms of the plea offer. Counsel testified he and Applicant discussed the possible sentences for the charges, the elements of the offenses, the advantages and disadvantages of going to trial versus pleading guilty, and the State's evidence against Applicant. Counsel testified Applicant appeared to be of a sound mind during his plea hearing and appeared to understand what was occurring during the plea hearing.

This Court finds Counsel's testimony on this issue very credible, while finding Applicant's testimony credible only to the extent he testified he recalled giving up his constitutional rights during the plea hearing, and to the extent he recalled telling the court he was compliant with his medications, he understood the possible sentences, and that he was not threatened or coerced into

pleading guilty. Applicant's allegation is directly refuted by the record. As Applicant testified, he waived his constitutional rights at his plea hearing, including his right to assert any defenses. (GP Tr. 9-10). Applicant testified told the plea court he had enough time to speak to Counsel regarding his case and that he was satisfied with Counsel's representation of him. (GP Tr. 7). Applicant testified at the guilty plea hearing that he was not coerced or threatened to plead guilty. (GP Tr. 8). Applicant told the plea court he was compliant with his medications on the day of his plea hearing and that he was not currently suffering from any medical or mental conditions that prevented him from understanding what he was doing during the guilty plea hearing. (GP Tr. 8). It is clear from the testimony and the record that Applicant's plea was freely and voluntarily made. Accordingly, this application is denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief pursuant to the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10 to -160. Counsel was not deficient in any manner regarding his performance before or during the plea hearing, nor was Applicant prejudiced by Counsel's representation. Applicant's plea was freely and voluntarily made. Accordingly, all allegations are 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

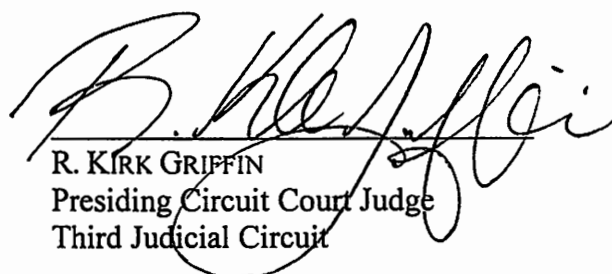
appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.

May 27, 2020.
Sumter, SC


R. KIRK GRIFFIN
Presiding Circuit Court Judge
Third Judicial Circuit

WITNESSES

Eric D. Gill Sumter Police Dept.

ARREST WARRANT NUMBER

2017A4320100628 2017A4320100629

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 1/11/18

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-43-0059**The State of South Carolina****County of SUMTER****COURT OF GENERAL SESSIONS**January TERM 2018**THE STATE**

vs.

TIMOTHY ODELL HEAD**Indictment for**Armed Robbery / Possession of a Weapon during the
Commission of a Violent Crime**ERNEST A. FINNEY, III, SOLICITOR**

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Armed Robbery / Possession of a Weapon during the
Commission of a Violent Crime

At a Court of General Sessions, convened on January 11, 2018 the Grand Jurors of
SUMTER County present upon their oath:

CERTIFIED TRUE COPY
OF ORIGINAL FILE
Barbara Harper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

COUNT ONE-ARMED ROBBERY

That on or about August 22, 2017, in Sumter County, South Carolina, the Defendant, Timothy Odell Head, at Sunoco 1083 Broad street, by use of force, threats or intimidation and while armed with a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of cashier Leanna Adams with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

COUNT TWO-POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Timothy Odell Head did in Sumter County, on or about August 22, 2017, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, to wit: Armed Robbery in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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

Solicitor

