

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable George M. McFaddin, Circuit Court Judge

JAMISON D. HOLMES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000942

APPENDIX

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INDEX

INDEX	i
TRANSCRIPT OF GUILTY PLEA HEARING HELD JULY 21, 2017	1
APPLICATION FOR POST-CONVICTION RELIEF	27
RETURN.....	32
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING HELD NOVEMBER 16, 2018	38
ORDER OF DISMISSAL.....	67
INDICTMENTS	75

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

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD
16-GS-43-1237

v.)

JAMISON D. HOLMES,)

DEFENDANT.)

July 21, 2017
Sumter, South Carolina

B E F O R E :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE

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

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Assistant Solicitor

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I N D E X

	Page
Voir dire of defendant	3
Facts given by Mr. Meadors	7
Remarks by investigator	12
Mitigation remarks by Mr. Brunson	13
Remarks by the defendant	23
Sentence of the Court	24

(There were no exhibits submitted.)

1 MR. MEADORS: May it please the Court,
2 Your Honor, this is Sumter County true bill
3 indictment 2016-GS-43-1237, the State of South
4 Carolina versus Jamison Holmes. Mr. Holmes is here
5 with his attorney Mr. Will Brunson. Your Honor,
6 this is a true billed indictment, four count
7 indictment. The defendant is pleading guilty to
8 counts two and count three, which are attempted
9 murder. Count one and count four, gun charges, are
10 being dismissed as a result of this plea. In
11 addition, Your Honor, the recommendation is for a
12 concurrent sentence.

13 THE COURT: Okay.

14 THE CLERK: Raise your right hand. State
15 your name please.

16 THE DEFENDANT: Jamison Daudi Holmes.
17 WHEREUPON,

18 **JAMISON HOLMES,**
19 having been duly sworn by the Clerk, testified
20 as follows:

21 THE COURT: Mr. Holmes, do you want to
22 plead guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you had enough time to
25 talk to your lawyer about this decision?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you satisfied with his
3 representation?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has anybody promised you
6 anything or threatened you in any way?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: You under the influence of
9 alcohol or drugs today?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Do you have any mental
12 diseases that would keep you from understanding what
13 you're doing?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: You understand each one of
16 these carry up to 30 years in prison?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: They're violent and most
19 serious.

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: So if you get another most
22 serious, when you get out you're gonna be looking at
23 life without possibility of parole. You understand
24 that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And neither one of them are
2 parolable offenses, you understand that.

3 THE DEFENDANT: Okay.

4 THE COURT: By pleading you've given up
5 certain constitutional rights. You have the right
6 to remain silent, but when you plead guilty you give
7 that right up under the Fifth Amendment 'cause
8 you're telling me you're guilty. You understand?

9 THE DEFENDANT: Yes, sir. Yes, Your
10 Honor.

11 THE COURT: And you also have a right to a
12 jury trial, and in that trial you'd be presumed
13 innocent. The State would have the burden of
14 proving you guilty beyond a reasonable doubt to all
15 twelve jurors. You'd be able to sit in the
16 courtroom and confront each witness that would
17 testify against you from the witness stand. Your
18 lawyer could cross-examine each one of the State's
19 witnesses. He could subpoena witnesses to testify
20 on your behalf. He could put up any defenses you
21 have to this crime, but when you plead guilty you're
22 giving all that up. You understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you're giving up any
25 appeals that could come out of that trial ---

1 THE DEFENDANT: Yes, sir.

2 THE COURT: ---by pleading guilty. If you
3 want to appeal this guilty plea today you've got to
4 file it with the Clerk's office within ten days of
5 today's date or you give that up. You understand?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: If you've got any questions
8 about the discovery material that the State has
9 provided your attorney, did you have a chance to go
10 over it with him?

11 THE DEFENSE: Yes, I did, Your Honor.

12 THE COURT: You think they've given you
13 everything that you're entitled to?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. You got any questions
16 about that at all?

17 THE DEFENDANT: No, sir.

18 THE COURT: Okay. You got any questions
19 you want to ask me concerning your rights?

20 THE DEFENDANT: No, sir.

21 THE COURT: Okay. The solicitor's gonna
22 tell me what happened. I'm gonna come back and talk
23 to you about it.

24 MR. MEADORS: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. MEADORS: Judge, this happened on
2 July 17th of last year, 2016. Your Honor may be
3 familiar with the place. It's Studio 378 which is
4 3880 Broad Street. If you're headed out of town
5 it's on the left. It's been several establishments,
6 but it's -- I know at this time it's Studio 378, it
7 may still be. The victims in this case, Your Honor,
8 Mr. Richard Cason.

9 Richard, stand so the judge can see you.

10 And Mr. James McLeod, stand up.

11 They were working for Tactical Security
12 owned by -- one of the owners is here, Ms. Amber
13 Soward.

14 Ms. Soward, would you stand up. Thank
15 you.

16 They were working security at this
17 establishment that night. As the day went into
18 evening, Your Honor, the defendant did come -- and I
19 don't know if the judge knows this, but Studio 378
20 is a private club. You can come in if you're a
21 member. You can bring a guest in if you want to.
22 Numerous witnesses provided statements that
23 Mr. Jamison Holmes had gotten in some sort of
24 altercation with a female in the parking lot of
25 Studio 378. He then attempted to go inside, Judge.

1 At that point the owners, security at the club,
2 denied him access because what had happened
3 previously with this female. At this point he's
4 walking back to his vehicle, I believe an Impala,
5 with James McLeod and Richard Cason, Judge. As he's
6 getting back to, close to his vehicle, he initially
7 leaves Mr. McLeod, goes to his vehicle, goes to the
8 passenger side door of Mr. Holmes' vehicle. He goes
9 to his own vehicle, passenger side door, opens the
10 door, reaches into the glove box. At this point he
11 puts something either in his pocket or his
12 waistband, we're not sure, several witnesses to
13 this.

14 At this point I believe the testimony
15 would be he starts walking back towards the club and
16 that's where Mr. McLeod, James McLeod, meets him.
17 And at that point the testimony would be that
18 Mr. Holmes either reached or got something from his
19 pocket and it dropped. We got a witness who would
20 then say they thought it was a gun. At that point I
21 think Mr. McLeod will testify he thought it was a
22 gun. The defendant reaches down, picks up the gun,
23 and immediately with a .38, fires the pistol at the
24 victim Mr. James McLeod. He's wearing this vest,
25 Judge.

1 What's this made of? Ceramic bulletproof
2 vest. You can see the hole in the middle of it.
3 After that Mr. Cason will testify that the defendant
4 then turned at him and shot another projectile,
5 fired the .38 Special again. After that the
6 victims, Mr. Cason and Mr. McLeod, exchanged gun
7 fire with the defendant, fired back at him and fired
8 into his vehicle, numerous shots in the vehicle. I
9 know he was hit several times. I think they pulled
10 one projectile out of him; but I know he was hit
11 several times, perhaps as much as five, four, four
12 times. He was hit by this return fire from the
13 officers.

14 Judge, the defendant left Studio, the
15 Studio club, took a right, went to Stamey Livestock
16 Road, took a left. The two just citizens out that
17 night called dispatch and said they observed his
18 vehicle erratically, reckless driving. Highway
19 patrol is responding. The defendant ends up
20 wrecking his car at the intersection of Stamey
21 Livestock and Frierson, and I believe there's a
22 masonic lodge there. He wrecked into that. It
23 was — they put it back together, and he did end up
24 wrecking the vehicle. Highway patrol shows up. EMS
25 shows up. Sumter County Sheriff's Department shows

1 up. Initially the defendant's asked, do you have a
2 gun. EMS not going to go in to try to help him
3 until they clear the scene. They know there's been
4 a shooting prior. He denied having a gun. I
5 believe the highway patrolman found the gun on the
6 floorboard; it was a .38. Once they got that, they
7 cleared the scene and the defendant was taken back
8 to the hospital.

9 Judge, Richard Cason, been talking in the
10 last few days, thought he was hit, but wasn't sure.
11 Five days later, July 22nd, 2016, at the bond
12 setting I believe, he brings his vest and shows
13 where he had indeed been hit. And this is on the
14 side, Judge, so if you'll see he was wearing it like
15 this. And basically, his testimony would be after
16 Mr. McLeod got hit, he was going around the
17 defendant's car for cover. He started firing and
18 then that's when he got hit on the side. One issue
19 'cause security's firing the .40s, he's firing the
20 .38, where did this come from? What bullet came
21 from Mr. Cason's?

22 I was on the phone with SLED the last few
23 weeks. Mr. Chad Smith, I want the record to reflect
24 did an outstanding job getting us a report this
25 week. And based on the bullet and the lead

1 fragments that came from Mr. Cason's vest, Your
2 Honor, Chad Smith from SLED was able to determine
3 through microscopic examinations of the bullet that
4 it was most consistent with a bullet coming from a
5 .38 Special or a Magnum. There were no other
6 weapons out there except a .38 and a Glock 40 so I
7 believe we could have shown without a doubt that the
8 .38 fired which came from the defendant. And that's
9 something Mr. Brunson wanted and I wanted, and I
10 think we shut that door this week.

11 Judge, I know at some point the victims
12 want to talk briefly. I don't know when you want to
13 do that, and I just have a few words also in
14 addition to this; but I think that's, hopefully
15 that's a sufficient factual background for the plea.

16 THE COURT: Okay.

17 Mr. Holmes, you heard what the Solicitor
18 told me. Is that correct?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: You pleading guilty 'cause you
21 are guilty?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Then I find there's a factual
24 basis for your plea. It is freely and voluntarily
25 entered into. You had advice of competent counsel

1 whom you tell me you're satisfied with; I'll accept
2 your plea. Now I'll be glad to hear from you and
3 the victim and then I'll let Mr. Brunson tell me
4 anything he wants to.

5 MR. BRUNSON: Thank you, Your Honor.

6 MR. MEADORS: Your Honor, they have
7 decided, they said I covered it.

8 THE COURT: Okay.

9 MR. MEADORS: I want to say they've been
10 most professional dealing with me and been up here
11 several times, I want to thank them for that, just
12 thanking everybody for that. Judge, you know, and
13 Mr. Rose may have a few things. And I won't go
14 overboard. You know, a lot of these attempted
15 murder cases we have trouble proving intent and all.
16 I don't know if I've ever had a case where somebody
17 wasn't dead or shot where I could really show
18 intent, especially on the first victim with
19 Mr. McLeod. And that's about as direct evidence of
20 intent as I think I can show the Court. Mr. Dubose
21 has a few final words.

22 THE INVESTIGATOR: Judge, we just add, Mr.
23 Meadors covered a short version of it. These two
24 gentlemen here was at the club. They were working
25 supporting their families, had no clue they would be

1 shot that night. Luckily they did have these vests
2 on. Looking at Mr. McLeod's vest, if this firearm
3 been stuck three to four inches up he wouldn't be
4 here today, so we ask that you consider that and
5 give the appropriate sentence.

6 THE COURT: Okay.

7 MR. MEADORS: And Judge ---

8 THE COURT: Does he have a prior record?

9 MR. MEADORS: We just need to get it,
10 Judge. He has a distribution of crack in '93 and a
11 possession with intent to distribute marijuana in
12 '94. Judge, I will just finally, want to thank my
13 office in helping me with this case, especially Mr.
14 Miller who's been assisting and Investigator Dubose
15 as always for helping me. Beg the Court's
16 indulgence. Judge, in closing I thank God they were
17 wearing a vest. That's all.

18 THE COURT: Yes, sir.

19 Yes, sir, Mr. Brunson.

20 MR. BRUNSON: May it please the Court,
21 Your Honor.

22 THE COURT: Yes, sir.

23 MR. BRUNSON: First we'd like to thank the
24 Court for hearing this plea. I know that it isn't,
25 it's kind of out of order as this isn't a plea week.

1 And I wanted to indicate to the Court that this is
2 perhaps the most difficult plea that I've done for a
3 number of reasons.

4 Your Honor, Mr. Jamison Holmes is 42 years
5 of age. He's lived in Sumter all his life. He's
6 living in Sumter County out in Dalzell with his
7 fiancée who is currently in the courtroom.

8 Ms. Shanna, would you stand.

9 And their two children. They've got two
10 children that live in the household with them. Your
11 Honor, he graduated from Sumter High School in 1993.
12 Actually, that's two years after me, I graduated in
13 1991. And I remember this young man from high
14 school. He had the reputation of being a fun loving
15 guy. That's how I remember him. And you'll hear
16 from the family members, you'll hear from his
17 fiancée, wife. She'll indicate what kind of father
18 and companion that he made. You'll hear from his
19 employer, Ms. Patricia Wilson. I'm sorry, Voter
20 Registration Election Commission. She'll tell you
21 what kind of employee he was. In fact, not only did
22 he work one job, he worked two. At the time of this
23 incident he was gainfully employed at Porter
24 Fabrication. He had worked there for — ten
25 years? — five years, and was doing well. He worked

1 at voter registration and election, started out as a
2 volunteer working polls, poll officer, setting up
3 machines at ballot places. Then he went down there
4 and started working part-time. Ms. Patricia
5 Jefferson was going to hire him full-time. He was
6 doing very well, Your Honor. So he's a hard working
7 man, family man, who has not been convicted of
8 anything in over 20 years. In fact, in 1993 I
9 believe he was 18 years old and in 1994 I believe he
10 was 19 years of age so he was on a track of being a
11 productive and positive citizen.

12 Everybody I talked to in this case, and we
13 had an investigator and everybody that he talked to
14 was shocked by this fact pattern. They could not
15 put it together. Everyone says this is not this
16 young man's character, we don't know what happened.
17 And what made this case so difficult is I was hired
18 immediately. He was almost dead himself after
19 having been shot four times. He's got a plate in
20 his hip. He's got rods in his leg. He was at
21 Richland Memorial for about four, five days, and
22 transported from the hospital to the detention
23 center. And when I first met him he had no
24 recollection of what occurred. In fact, he
25 couldn't, he didn't even know what was going on.

1 The last thing he remembers is being in the parking
2 lot of a nightclub engaged in an altercation, being
3 struck in the head, and I think that's borne out in
4 the affidavits that he was struck in the head and
5 that he woke up days later in the hospital. Now, of
6 course he read the statements from others and pieced
7 together what occurred. So I started to investigate
8 it a bit, and I said, well tell me about what
9 happened that day. Well, on July 16th, 2016, my
10 client and his fiance and his family were planning
11 to go to Myrtle Beach, but she took ill, had a cold,
12 did not go. He received phone calls from some
13 friends saying, hey, come out with us to a party.
14 He went to a white party, a all white outfit party.
15 Where was that party at?

16 THE DEFENDANT: Union Hall.

17 MR. BRUNSON: At the Union Hall. He got
18 together with a number of friends. We talked to
19 those friends. And he had some drinks. Apparently,
20 he consumed too much alcohol. In fact, Your Honor,
21 when we received the toxicology and I believe you've
22 got that, the State has that I believe. But at any
23 rate his, he was intoxicated. Your Honor, Mr.
24 Holmes wanted to plead guilty after he discovered
25 what happened, did not want to waste the Court's

1 time, wanted to take full responsibility for his
2 actions after he learned what they were. And as
3 indicated by the State, the only reason this isn't
4 over or wasn't over before is because we wanted the
5 last bit of ballistics because there was a lot of
6 gun fire, and of course, he didn't have a
7 recollection. But since that's in, we're before
8 Your Honor pleading guilty today.

9 Now, he stands before you pleading guilty
10 and could be sentenced to prison for a very long
11 time. We respectfully ask the Court to consider a
12 few things in sentencing, a few things that we
13 believe are mitigating circumstances. One, that
14 Mr. Holmes is not like other defendants that we see
15 who are in and out of trouble who have a history of
16 violence in the past, who are prone to trouble.
17 This is a hard working man, family man, who made a
18 decision to, a last minute decision, to go out and
19 be with some friends and consumed too much alcohol.
20 As a result of that, got into an altercation, and
21 this resulted. Now, of course his actions are
22 horrible and he realizes that he must be penalized
23 in that he will go to the Department of Corrections;
24 but Your Honor, we respectfully ask the Court to
25 consider a sentence that is consistent with justice.

1 In this particular instance we thank God that they
2 were wearing vests and that they aren't dead. We
3 thank God for that, and the result then is the two
4 security officers were not harmed. I believe
5 Mr. McLeod fell and sustained a bruise, a pretty bad
6 bruise on his knee, but the vest saved his life. I
7 believe the other officer, I'm sorry, not officer,
8 security guard, didn't recover or receive any
9 physical injuries whatsoever and we thank God for
10 that. The other thing, these security guards were
11 able to return to work, armed duty, I believe a week
12 later. And so, although their lives were
13 interrupted by this, they've been able to pull it
14 together and we're thankful for that, and my client
15 is going to apologize to them in court at the
16 appropriate time.

17 However, Your Honor, when you think about
18 Mr. Holmes, and if it pleases the Court, I'd like to
19 submit a copy of the toxicology for your
20 consideration. Your Honor, we'd ask the Court to
21 consider those things that were mentioned earlier,
22 that he'll go away having been altered forever, the
23 amount of sleepless nights that he reports having
24 from having done something that he doesn't have a
25 recollection to doing. He indicates that he will

1 never ever consume an intoxicating liquor or
2 anything else in the future once he gets this behind
3 him. He's been jailed since he left Richland
4 Memorial Hospital so, Your Honor, he's been in jail
5 for a year and we understand that he's got to go to
6 Department of Corrections for more years. But we'd
7 ask the Court to consider the fact that he, too,
8 almost died and he's left with metal in his body
9 that he'll have to live with for the rest of his
10 life behind this incident and that when he returns
11 from the Department of Corrections, at some point
12 he's gonna have to try to pull his life together for
13 a decision that he made to consume alcohol that got
14 him in this trouble. So, if it pleases the Court,
15 we'd like to ask the Court to hear from his fiance
16 Ms. Leshanna (ph) Williams at the appropriate time.

17 THE COURT: Okay. I'll be glad to hear
18 from anybody you want.

19 MS. WILLIAMS: I'm James' fiance, and I
20 for one know that character that they're describing,
21 that's not my husband. I've been with this man 16
22 years and 16 days as of today. We have three kids
23 and two grandkids. And when we argue or whatever, I
24 go in one room, he goes in another. We don't have
25 no kind of dispute like that. I know this is not

1 him. I'm just asking that you be just as lenient
2 and mercy on him. That's my heart. And we have our
3 last son is going to Crestwood this year, plays
4 basketball and Jamison is his coach. I'm sorry for
5 what happened, but he sustained most of the injury.
6 And like I said, the two security guards, I'm just,
7 I'm glad they wasn't hurt so bad but, this is not
8 Jamison character. Jamison is a good man. He's, we
9 go to church, he's home. When he does come home
10 from work he washes, eats dinner and goes to another
11 job and back home. I know this is not him. I'm
12 just asking that you just be lenient on him. I
13 don't know what else to say.

14 THE COURT: Were you there that night at
15 the club?

16 MS. WILLIAMS: No, I was home, I was sick.
17 We were home together and he asked me could he go to
18 the white party and I told him go ahead 'cause I was
19 feeling real bad and I just couldn't get up. We
20 were supposed to be going to the beach and we didn't
21 go, and I stayed home.

22 THE COURT: Okay. Thank you, Ma'am.

23 MR. BRUNSON: Patricia Jefferson. Y'all
24 want to say anything from the church?

25 Your Honor, one of the members of his

1 congregation would like to make a statement.

2 THE COURT: Okay.

3 MS. PITTS: Good afternoon, Your Honor, my
4 name is Tanisha Pitts. I've known Jamison for
5 possibly over 30 years. We attended church
6 together, Union Station AME church. We also went to
7 school together. I've known him to be a very
8 intelligent, thoughtful, caring person. Also I
9 taught at Ruby J. Johnson Headstart when his son was
10 there. He was a awesome father volunteering, being
11 an active part of the program. Please have mercy on
12 him and give him another opportunity to try to get
13 it together. On that night I don't know what
14 happened, but that's not the Jamison I know.

15 THE COURT: Thank you.

16 MR. BRUNSON: Any other members of the
17 family? Good afternoon, Your Honor. Jamison and I
18 were raised basically as sisters and brothers. My
19 name is Dessa Holmes and I am Jamison's first cousin
20 speaking on behalf of the family. Jamison and I
21 were raised sisters and brothers basically in the
22 same home. We've been raised in a nurturing, caring
23 home with our grandparents and our parents were very
24 close knit family and we shared many momentous
25 occasions. People was there for the birth of my

1 child and actually came and took care of me during
2 extended illness. The picture that have been
3 painted today is not that of Jamison. Never
4 violent, never screaming, is not a loud person, he's
5 soft spoken. I don't know what happened on that
6 night to lead to this today. I don't want to
7 minimize the hurt and pain of the victims because I
8 realized that they, too, may have some type of
9 experience, some type of flashbacks or whatever from
10 that night. But I'm asking you today in rendering
11 your decision that you would consider and be
12 lenient, to give him the appropriate punishment, but
13 be lenient, and allow him the opportunity to be a
14 father to his son because his son really needs him
15 at this point. At this point in time he really
16 doesn't know what's going on and as a family we have
17 sheltered him because we don't want him to be
18 destroyed because he's a honor student in basketball
19 and excelling very well. And I hope that in your
20 decision today that you would be lenient.

21 And I apologize to the victims on behalf
22 of our family and Jamison that you will be lenient
23 and issue appropriate punishment and allow him to
24 return to our family, but more so return to his son
25 and his fiance so he can go on be a productive

1 citizen and I appreciate your time today. Thank
2 you, sir.

3 THE COURT: Thank you, ma'am.

4 MR. BRUNSON: And finally, the defendant,
5 Your Honor, would like to address the Court very
6 briefly.

7 THE COURT: Okay.

8 THE DEFENDANT: Good afternoon, Your
9 Honor, and the court. Yes, I fully accept my
10 responsibilities for my actions and I apologize to
11 the victim and the family. I'm very, so sorry and
12 thankful, God thankful, that they were wearing vests
13 and were not injured. I also wanted to apologize to
14 my family and friends who have supported me the
15 whole time. The question at hand is the unknown,
16 but as I said, I accept my responsibilities and my
17 action. Last but definitely not least, I want to
18 apologize to my community 'cause as it was said, in
19 the last 15, almost 20 years, I have been working to
20 become a family guy, family man, and give back to my
21 community. Like I said, working 15 plus years for
22 voter registration and working at polls and
23 elections and also last summer coaching the Sumter
24 Rockets AU basketball team in which players from
25 that team have gained full scholarships to college

1 and offers there as well, and I apologize to them
2 that I haven't been there for them over this past
3 year. And I apologize to you and the courts for
4 taking up your time. Thank you, Your Honor.

5 THE COURT: Thank you, sir. Anything else
6 from the State?

7 MR. MEADORS: Very briefly in respectful
8 reply to Mr. Brunson. Mr. McLeod was out of work
9 for a month and Mr. Cason never came back to work,
10 and they've experienced emotional trama as you can
11 imagine from this incident and I think still live
12 with it daily. They're both shy. I thought they
13 were going to speak, but they didn't and I respect
14 that too. But that bullet hole, Judge, is about as
15 real as it gets without getting real. That's all we
16 have.

17 THE COURT: Thank you. I'm gonna take
18 about a ten minute break to think about this. I'll
19 be back.

20 (WHEREUPON, a recess was taken from the
21 proceedings.)

22 THE COURT: All right. I've taken into
23 consideration the seriousness in the situation and
24 the fact we could have been looking at a double
25 homicide and the fact, you know, that they were

1 security guards. And I'm glad they had on a vest
2 and the fact that he has pled guilty, the fact that
3 he's maintained good employment. I don't know what
4 in the world he was thinking this night because he's
5 not a typical defendant who would get himself in
6 this situation. And I hate for him and I hate it
7 for these guys, but he's the one that did it. He's
8 the one that made that choice, and he's one that
9 pulled that gun out and shot them, especially the
10 first guy in the chest so.

11 On count one the sentence of the Court is
12 you're committed to the State Department of
13 Corrections for a term of 18 years. On count two
14 it's 18 to run concurrent. I'm giving you credit
15 for the time you served so far. Good luck to you.

16
17
18 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
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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 11th day of August, 2018.

Frances B. Ray

FRANCES B. RAY, RPR

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RECORDED

Referred to

Jameson/ck

CERTIFIED TRUE COPY
OF ORIGINAL FILE

In the Court of Common Pleas

CLERK OF COURT
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

County of SUMTER

Jameson D. Holmes #216587
Full name and prison number (if any) of Applicant,

vs.

SOUTH CAROLINA
Name of Respondent.

2018-CP-43-804

APPLICATION FOR
POST-CONVICTION RELIEF

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention SEDC LEE CORRECTIONAL INSTITUTION

2. Name and location of Court which imposed sentence SUMTER COUNTY

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) #2016-GS-43-1237 (2) MURDER/ATTEMPTED MURDER

(b) _____

(c) _____

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

(a) 7/21/17; SENTENCE OF (2) 18 YEAR CONCURRENT TERMS IN SEDC

(b) _____

(c) _____

5. 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

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

No

7. If you answered "yes" to (6), list

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) I WAS UNAWARE OF THE GROUNDS FOR DIRECT APPEAL

(b) _____

(c) _____

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

(a) INEFFECTIVE ASSISTANCE OF COUNSEL

(b) BIAS SENTENCING

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) MISINFORMED BY COUNSEL OF RIGHTS & EVIDENCE

(b) SENTENCED ON POSSIBILITY INSTEAD OF ACTUALITY

(c) _____

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

30 14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) 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) This is my initial filing in this matter

(b) _____

(c) _____

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

(a) your arraignment and plea? YES

(b) your trial, if any? YES

(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

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

i. ATTY William H BRUNSON, 425 N MAIN ST, SUMTER, SC

ii. _____

iii. _____

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

i. ARRAIGNMENT, PLEA & SENTENCING

ii. _____

iii. _____

18. State clearly the relief you seek in filing this application.

RECONSIDERATION. A chance to ENTER my plea BEFORE an unbiased judge.

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

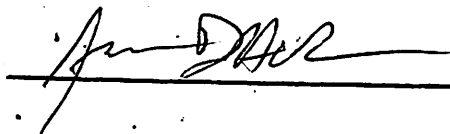
NO

STATE OF SOUTH CAROLINA

County of SUMTER

VERIFICATION

I, Samison D. Holmes #216587, 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.


SWORN to and subscribed before me this 1day of May, 19 2018
Uniqua Greene (L.S.)
Notary Public
My Commission Expires: 9-29-2027

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

I, Samison D. Holmes #216587, 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 therefor.


 Applicant

SWORN or affirmed to and subscribed before me this

1 day of May, 19 2018
Uniqua Greene
Notary Public
My Commission Expires 9-29-2027

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

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

Jamison D. Holmes, #216587,

2018-CP-43-00806

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

)
)
)
)
)
)
)
)
)
)
)

In response to the application for post-conviction relief filed by Jamison D. Holmes (Applicant) on May 3, 2018, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the December 2016 term of the Sumter County Grand Jury for two counts of attempted murder, unlawful carrying of a pistol, and possession of a weapon during the commission of a violent crime (2016-GS-43-1237). The charges stem from an incident on July 17, 2016, when Applicant got into an altercation with a female in the parking lot of Studio 378, a private club in Sumter County. After the fight, Applicant attempted to go inside the club, but he was denied access by the security guards at the door. Applicant then returned to his vehicle, pull what witnesses believed to be a gun from his glove box, went back to the door of the club, and shot the security guards. The victim was wearing a bullet proof vest. The guards returned fire on Applicant as he got in his car and drove away from the scene, ultimately crashing his car into a building and he was taken to the hospital. Tr. 7-11.

William H. Brunson, Esquire, represented Applicant on the charges. Assistant Solicitor John P. Meadors, Esquire, prosecuted the case. On July 21, 2017, Applicant pled guilty as indicted to both counts of attempted murder before the Honorable R. Ferrell Cothran, Jr. The weapons charges were dismissed in exchange for his guilty plea. Judge Cothran sentenced Applicant to imprisonment for eighteen years for both charges, to run concurrently. Applicant did not appeal his guilty plea or his sentence.

II.

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

1. Ineffective Assistance of Counsel
 - a. “Misinformed by counsel of rights and evidence”
2. Bias Sentencing
 - a. Sentenced on possibility instead of actuality

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

III.

Respondent asserts Applicant’s claims of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

IV.

Applicant's allegation of biased sentencing by the plea judge raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

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.

VI.

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

VII.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN.
Assistant Attorney General

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

August 16, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2018-CP-43-0806
	)	
JAMISON D. HOLMES, #216587,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
1419 Pendleton Street
Columbia, SC 29201

DATED this 16th day of August, 2018.


 Kaitlyn S. Slice, Legal Assistant
 For Respondent

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

JAMISON D. HOLMES)
216587)
PETITIONER,)
v.) TRANSCRIPT OF RECORD
18-CP-43-00806

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

November 16, 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:

TIMOTHY L. GRIFFITH, ESQ.
Attorney for the Petitioner

BENJAMIN H. LIMBAUGH, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

I N D E X

	Page
Background of the case	3
Jamison Holmes:	
Direct examination	5
Cross-examination	11
Redirect examination	
Willie Brunson:	
Direct examination	17
Cross-examination	23
Redirect examination	26
Closing remarks by Mr. Griffith	27
Closing remarks by Mr. Limbaugh	27
Ruling of the Court	28

(There were no exhibits submitted.)

1 MR. LIMBAUGH: Next we have Jamison D.
2 Holmes, case number 2018-CP-43-0806. Applicant is
3 confined in the South Carolina Department of
4 Corrections pursuant to orders of commitment of
5 the Sumter County Clerk of Court. Applicant was
6 indicted at the December 2016 term of the Sumter
7 County grand jury for two counts of attempted
8 murder, unlawful carrying of a pistol, and
9 possession of a weapon during the commission of a
10 violent crime. The charges stem from an incident
11 on July 17th, 2016, when applicant got into an
12 altercation with a female in the parking lot of
13 Studio 378. It's a private club in Sumter County.
14 After the fight the applicant attempted to go
15 inside the club that he was denied access by the
16 security guard at the door. Applicant then
17 returned to his vehicle, pulled what witnesses
18 believed to be a gun from his glove box, went back
19 to the door of the club and shot the security
20 guards. The victims were wearing bullet proof
21 vests. The guards returned fire at the applicant
22 as he got into his car and drove away from the
23 scene, ultimately crashing his car into a building
24 and he was taken to the hospital.

25 William H. Brunson, Esquire,

1 represented applicant on the charges. Assistant
2 Solicitor John P. Meadors, Esquire, prosecuted the
3 case. On June 21st, 2017, applicant pled guilty
4 as indicted to both counts of attempted murder
5 before the Honorable R. Ferrell Cothran, Jr. The
6 weapons charges were dismissed in exchange for his
7 guilty plea. Judge Cothran sentenced applicant to
8 imprisonment for 18 years for both charges to run
9 concurrently. Applicant did not appeal his guilty
10 plea.

11 On May 3rd, 2018, applicant filed this
12 post-conviction relief application in which he
13 stated the following reasons: Ineffective
14 assistance of counsel, misinformed by counsel of
15 rights and evidence, biased sentencing, sentenced
16 on possibility instead of actuality. May I
17 approach with your packet, Your Honor.

18 THE COURT: Yes, sir.

19 MR. LIMBAUGH: Thank you, Your Honor.
20 He's represented today by Mr. Timothy Griffith.

21 THE COURT: Yes, sir.

22 MR. LIMBAUGH: I'll pass it to him
23 now.

24 THE COURT: Mr. Griffith, sir.

25 MR. GRIFFITH: Thank you, Your Honor.

PW - J. HOLMES - DIRECT

1 If it please the Court.

2 THE COURT: Yes, sir.

3 MR. GRIFFITH: We call Mr. Jamison
4 Holmes.

5 THE CLERK: Put your left hand on the
6 Bible, raise your right hand, state your name.

7 THE WITNESS: Jamison Daudi Holmes.
8 WHEREUPON,

9 **JAMISON D. HOLMES,**
10 having been duly sworn by the clerk, testified
11 as follows:

12 THE CLERK: Thank you. State your
13 name for the record and spell your last name
14 please.

15 THE WITNESS: Jamison Daudi Holmes,
16 H-O-L-M-E-S.

17 THE COURT REPORTER: Can you spell
18 your middle name for me.

19 THE WITNESS: D-A-U-D-I.

20 THE COURT REPORTER: Thank you.

21 **DIRECT EXAMINATION**

22 BY MR. GRIFFITH:

23 Q Mr. Holmes.

24 A Yes, sir.

25 Q You are currently incarcerated; is

1 that correct?

2 A Yes, sir.

3 Q Where are you incarcerated?

4 A At Lee Correctional Institution in
5 Bishopville, South Carolina.

6 Q And how long have you been
7 incarcerated?

8 A I've been incarcerated since July of
9 2016.

10 Q And you were convicted for, on what
11 charges?

12 A Two attempted murders.

13 Q Is that what you were convicted, is
14 that what your ---

15 A Those are the two charges that I pled
16 to in July of '17, 2017.

17 Q Okay. And so you pled guilty, was
18 that on the advice of your attorney?

19 A Yes, sir.

20 Q And who was your attorney?

21 A Attorney Brunson, William Brunson.

22 Q Was he your only attorney?

23 A Yes, sir.

24 Q And you do understand that if you win
25 your PCR that you would be subject to a new trial,

1 do you understand that?

2 A Yes, sir.

3 Q You'd be tried for two attempted
4 murders, and did you have other charges?

5 A Yes, sir, the possession of a firearm
6 and possession during a violent offense if I'm not
7 mistaken, yes, sir.

8 Q And what sentence were you, was
9 imposed upon you for these crimes?

10 A Eighteen years, 85 percent violent,
11 most violent, to run concurrent.

12 Q So basically you have an 18 year
13 sentence?

14 A Yes, sir.

15 Q So you do understand that should you
16 win your appeal that you would be subject to
17 possibly 60 years for the attempted murders?

18 A Yes, sir.

19 Q Plus the weapons charges; is that
20 correct?

21 A Yes, sir.

22 Q Okay. I just want to be sure you
23 understood.

24 A Yes, sir.

25 Q But why are you seeking a new trial

1 today?

2 A Based on evidence, new evidence that I
3 wasn't aware of at the time, I really believe that
4 I can be a new trial, that I can handle a new
5 trial. It's the ballistic reports right here. I
6 don't know if I need the exhibit.

7 Q No, just let us know what it is at
8 this point.

9 A Oh. It was the forensic report sent
10 to me from Attorney Brunson's office stating that
11 the fragments found in one of the agent's vest did
12 not match the firearm that they found in my
13 possession.

14 Q And were you aware of that evidence
15 prior to pleading guilty?

16 A No, sir, I would have never pleaded
17 guilty if I knew of this information, no, sir.

18 Q And when did you become aware of that
19 information?

20 A Postmark October 4th, 2017, received
21 at Kirkland R&E Center October 5th, and I received
22 it after that.

23 Q Okay. So had you talked to your
24 attorney about that evidence prior to ---

25 A Prior to --

PW - J. HOLMES - DIRECT

1 Q ---the guilty plea?

2 A No, sir. Well, his statement was he
3 received it and it was what he was waiting for,
4 and it matched the ballistics from the firearm
5 that was found; which is once I received it and
6 read it and understood it, it's not true.

7 Q So you're basing your request for a
8 PCR on new evidence ---

9 A Yes, sir.

10 Q ---that you received after your guilty
11 plea?

12 A Yes, sir.

13 Q That you became aware of after your
14 guilty plea?

15 A Yes, sir.

16 MR. LIMBAUGH: Your Honor, the State
17 would object. That allegation was not raised in
18 his application.

19 THE COURT: I will sustain.

20 MR. LIMBAUGH: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 BY MR. GRIFFITH:

23 Q You're telling the Court that your
24 attorney did not provide you with that evidence
25 prior to this, to your guilty plea?

1 A Yes, sir. I didn't receive it until
2 October of 2017.

3 Q And so your attorney was ineffective
4 in that you didn't see that evidence prior ---

5 A Yes, sir.

6 Q ---to that time?

7 A Yes, sir.

8 Q Your attorney told you something about
9 that evidence; isn't that correct?

10 A Yes, sir.

11 Q But he was incorrect?

12 A Yes, sir.

13 Q So he ineffectively portrayed to you
14 that that evidence did not reflect -- that it did
15 reflect the same gun?

16 A Yes, sir.

17 Q But now that you've read it you see
18 that it doesn't?

19 A Yes, sir.

20 Q So ineffective assistance of counsel?

21 A Yes, sir.

22 Q Had you known that prior to the guilty
23 plea would you have gone to trial?

24 A Never would have. Oh, gone to trial
25 or -- yes, sir.

1 Q Would have gone to trial?

2 A Yes, sir, I would have taken it to
3 trial, yes, sir.

4 Q And would you have pled guilty?

5 A No, sir, I would not have pled guilty.

6 Q I have no further questions.

7 THE COURT: Mr. Limbaugh.

8 MR. LIMBAUGH: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 BY MR. LIMBAUGH:

11 Q How are you doing today, Mr. Holmes?

12 A So far so good. Yourself?

13 Q Good, thank you. How many times did
14 you and Mr. Brunson meet before the guilty plea?

15 A Five times within a year.

16 Q Okay. Did he go over discovery with
17 you at those meetings?

18 A Briefly, some of it.

19 Q Some of it? Do you recall discussing
20 any possible defenses with Mr. Brunson to these
21 charges talking about your case with him?

22 A Yes, we had. But mainly he felt like
23 I couldn't stand trial for some reason and also,
24 as I said in my application, withheld evidence
25 from me as far as pictures and stuff like that

1 about my case that I had never seen.

2 Q So do you remember your plea hearing?

3 A My plea hearing?

4 Q Yes.

5 A Yes, sir.

6 Q Do you remember the judge asking if
7 you had any questions about your discovery
8 material and if the State had -- or if you'd gone
9 over that with your attorney?

10 A Yes, sir.

11 Q And do you remember what your answer
12 was?

13 A Yes, sir.

14 Q What was that answer?

15 A Yes.

16 Q Do you remember the court asking if
17 you'd been given everything that you were entitled
18 to?

19 A No, I don't recall that.

20 MR. LIMBAUGH: May I approach, Your
21 Honor, to refresh?

22 THE COURT: Yes, sir.

23 MR. LIMBAUGH: I'm on page 6 of the
24 transcript, Your Honor.

25 BY MR. LIMBAUGH:

1 Q Lines 12 through 14. If you can just
2 read this for me.

3 A 12 through 14. "He given you
4 everything that you're entitled to? Yes, sir.
5 Okay."

6 Q Thank you.

7 A Uh-huh.

8 Q Do you remember the court going over
9 your constitutional rights with you?

10 A Yes, sir.

11 Q Did Mr. Brunson go over those rights
12 with you?

13 A I don't recall.

14 Q Do you remember the court going over
15 them with you at the plea hearing?

16 A Yes.

17 Q Do you remember agreeing to the facts
18 that the Solicitor read out at your plea hearing?

19 A No, sir.

20 MR. LIMBAUGH: Your Honor, we're on
21 page 11 of the transcript. May I read, Your
22 Honor?

23 THE COURT: Yes, sir.

24 BY MR. LIMBAUGH:

25 Q "Mr. Holmes, you heard what the

1 Solicitor told me; is that correct?" Applicant
2 responds, "Yes, Your Honor." And that is in
3 reference to the recitation of the facts by the
4 solicitor. And did you, you got a chance to speak
5 at the end of your plea hearing; is that correct?

6 A Yes.

7 Q Do you recall taking responsibility
8 for your actions in that speech?

9 A Not in its entirety because I didn't
10 recall what happened that evening, that night.

11 Q But you did say that you accepted full
12 responsibility for your actions; is that correct?

13 A For my part they got me, yes, sir.

14 Q And just to be sure, you were sworn in
15 for that plea hearing; is that correct?

16 A Yes, sir.

17 Q And just to go over one more time as
18 Mr. Griffith did, you're aware that if you're
19 granted PCR today it would be going back to facing
20 two attempted murder charges; is that correct?

21 A And the two firearm charges, yes, sir.

22 Q Right.

23 MR. LIMBAUGH: That's all I have, Your
24 Honor?

25 THE COURT: Mr. Griffith.

1 MR. GRIFFITH: Brief redirect, Your
2 Honor.

3 **REDIRECT EXAMINATION**

4 BY MR. GRIFFITH:

5 Q Just for clarification, at the time of
6 the incident you were unconscious after this
7 happened; is that correct?

8 A Yes, sir.

9 Q You didn't remember anything, did you?

10 A No, sir.

11 Q You were in the hospital; weren't you?

12 A Yes, sir, highly medicated for three
13 months, yes, sir.

14 Q Okay. And even though you stated that
15 you had gone over the discovery with your
16 attorney, he -- you're telling the Court that he
17 incorrectly told you that that showed that it was
18 your bullet.

19 A Oh, yes, sir, okay. To clarify, my
20 motion of discovery is the paperwork that's left
21 on that desk right there which did not include
22 this document from the SLED, South Carolina Law
23 Enforcement Division. This was not included in my
24 motion, no, sir. This is dated July 19th, 2017,
25 which would have been two days before my plea

1 agreement, before my plea hearing. No, I didn't
2 have this in my possession to go over at that
3 time.

4 Q So when you told the judge you had all
5 your discovery you didn't know that there was
6 more, did you?

7 A Yeah, I didn't know that this was
8 supposed to be a part of my discovery, no, sir.

9 Q Okay, so you didn't lie. You told the
10 judge you had all that you knew of?

11 A Yes, sir.

12 Q No further questions.

13 THE COURT: Mr. Limbaugh.

14 MR. LIMBAUGH: Nothing, Your Honor.

15 THE COURT: You may step down, sir.

16 Thank you, sir.

17 Mr. Griffith, anybody else?

18 MR. GRIFFITH: No further witnesses,

19 Your Honor.

20 THE COURT: All right. Mr. Limbaugh.

21 MR. LIMBAUGH: The State will call Mr.

22 Brunson.

23 THE CLERK: Left hand on the Bible,
24 right hand up. State your name.

25 THE WITNESS: Willie Brunson.

1 WHEREUPON,

2 **WILLIE BRUNSON,**

3 having been duly sworn by the clerk, testified
4 as follows:

5 THE CLERK: Step around please, watch
6 your step coming up the ramp. State your name for
7 the record, spell your last name please.

8 THE WITNESS: Willie Brunson,
9 B-R-U-N-S-O-N.

10 **DIRECT EXAMINATION**

11 BY MR. LIMBAUGH:

12 Q How are you doing, Mr. Brunson?

13 A Doing well.

14 Q How long have you been practicing law?

15 A Since 2004.

16 Q And how much of that has been criminal
17 since then?

18 A Pretty much all of it.

19 Q Were you appointed or retained by
20 Mr. Holmes in this case?

21 A Retained.

22 Q Retained. Do you recall how these
23 charges arose?

24 A I do.

25 Q Can you just give us a brief

1 recitation for us.

2 A My client was actually found in a
3 vehicle laid back in the front seat with his feet
4 protruding out of the driver's side window, and
5 the vehicle that he was in was found inside of a
6 building where it had crashed through the wall;
7 and apparently he had been driving this motor
8 vehicle from 378 Doghouse Nightclub wherein he had
9 been shot several times at that location and the
10 allegation at the time was that he had shot two
11 security officers.

12 Q How many times do you recall meeting
13 with Mr. Holmes?

14 A Probably around five, between five to
15 seven.

16 Q And you recall getting all of your
17 Brady and Rule 5 in this case?

18 A We got most of it initially, although
19 there was one part that we did not receive very
20 early on and it kind of held the case up. There
21 was a question as to whether or not the bullets
22 that entered the vests for the security officers
23 were fired from my client's weapon and, of course,
24 South Carolina Law Enforcement Division had taken
25 possession of those items of evidence and they

RW- W. BRUNSON - DIRECT

1 were backlogged and so they had not produced any
2 results because, quite frankly, I don't think they
3 had gotten around to testing them. And so the
4 prosecutor and I had engaged in talks regarding a
5 resolution, but of course, we couldn't enter a
6 plea until we had received all the discovery. And
7 so to answer your question, we received a very
8 substantial amount of it, but we were still
9 waiting on the results from the analysis at SLED.

10 Q So I'll stick on that for a second.
11 Do you recall Mr. Holmes, the weapon he used, a
12 38?

13 A That is correct.

14 Q And do you recall the SLED report
15 saying that the bullet coming from a .38 Special
16 Rug Magnum, there were no other weapons out there
17 except a .38 and a Glock?

18 A Yeah, that is the one piece of
19 evidence that we were waiting on; and as indicated
20 by Mr. Holmes from the stand, the prosecution was
21 able to obtain this document from SLED which was
22 the analysis of the fragments that were recovered
23 from the bullet proof vests. And yes, it was, it
24 did indicate that the fragments removed from the
25 vest of Officer Kason was, in fact, consistent

1 with a .38 or a .357 Magnum as that bullet is
2 interchangeable between both weapons and that the
3 only other weapons that were present on the scene
4 were .40 caliber automatic weapons that were used
5 by the security officers.

6 Q Yes, sir.

7 MR. LIMBAUGH: Your Honor, I was
8 referencing beginning on page 10 into page 11 of
9 the plea transcript where the solicitor is reading
10 over the facts and reciting from for referencing
11 that SLED report.

12 THE COURT: Yes, sir.

13 BY MR. LIMBAUGH:

14 Q So your opinion -- strike that. Did
15 you do any investigation in this case?

16 A I did. In fact, I obtained the
17 services of a private investigator. I used
18 Investigator Davis. He and I both interviewed a
19 number of witnesses. He and I both interviewed my
20 client Mr. Holmes collecting information from him.
21 Based on what we collected, we did a thorough
22 investigation as we could.

23 Q Follow any leads, or did Mr. Holmes
24 give you any leads to follow? Did you follow
25 them?

RW- W. BRUNSON - DIRECT

1 A Yes, he did give us leads. He spoke
2 about meeting with people at a party prior to
3 going to this nightclub, told us who they were.
4 We reached out to those people and interviewed
5 them as well. He also, he gave us several leads
6 and we followed all of them.

7 Q Just briefly, talking about the
8 State's case against Mr. Holmes, how strong did
9 you feel that their case was?

10 A It was very strong.

11 Q Were there multiple witnesses that saw
12 the shooting?

13 A There were a number of witnesses.

14 Q A number? Did you go over any
15 potential defenses with Mr. Holmes, any strategy?

16 A We did. Although Mr. Holmes did not
17 recall much about what happened so we had to rely
18 on the information provided by the other
19 witnesses. One of the witnesses I thought that
20 was very compelling was a young lady who was, who
21 would be what I consider a third party, someone
22 neutral and detached who just happened to be out
23 there and her recollection of the facts was very
24 compelling.

25 Q And was that helpful to your client or

1 hurtful?

2 A It was not helpful.

3 Q Did you discuss the elements of the
4 charges against your client with him?

5 A Yes.

6 Q Did he seem to understand those
7 charges?

8 A Yes.

9 Q Okay. Did you go over the plea with
10 Mr. Holmes?

11 A Yes.

12 Q Did he seem to understand the terms of
13 the plea?

14 A He understood that there was a very
15 broad range.

16 Q Do you think that the plea -- was the
17 plea good mitigation for the risk that Mr. Holmes
18 was facing?

19 A Absolutely.

20 Q Was it knowing and voluntary? Was it
21 of his own free will?

22 A It was.

23 Q So you or anyone else did not force
24 Mr. Holmes to take this plea?

25 A Did not.

1 Q Were there any other offers conveyed
2 or was this the only offer to Mr. Holmes?

3 A This was the only offer.

4 MR. LIMBAUGH: That's all I have, Your
5 Honor.

6 THE COURT: Mr. Griffith.

7 MR. GRIFFITH: May it please the
8 Court.

9 **CROSS-EXAMINATION**

10 BY MR. GRIFFITH:

11 Q Attorney Brunson.

12 A Yes, sir.

13 Q Thank you for coming. In your
14 representation of Mr. Holmes you testified that
15 you received some of the discovery later on. Was
16 this prior, just prior to his plea; is that
17 correct?

18 A That is correct.

19 Q The piece of evidence he's speaking
20 about, he believes that you were misinformed or
21 didn't understand that piece of evidence that it
22 stated that it was a weapon that was not his
23 weapon, that from which pieces were found in the
24 vest of one of the officers. Did you tell him
25 that there was not -- that it was his weapon?

RW - W. BRUNSON - CROSS

1 A If you will give me a moment I can
2 refer to that document and answer your question
3 precisely. I think had we collected all of the
4 discovery in the case, and of course, Mr. Holmes
5 and I reviewed it in great detail, every aspect of
6 it. We reviewed it with just he and I. Then we
7 also reviewed it again with the investigator. The
8 one piece that we did not have that I thought was
9 very critical was the ballistics results from the
10 fragments that were removed from the vest of the
11 security officers. The reason we thought that
12 that was extremely important is because there were
13 a number of -- well, actually there were three
14 weapons being fired that evening. And based on
15 the facts there were two .40 caliber weapons that
16 were being fired, one by each security officer;
17 and the allegation was that Mr. Holmes, my client,
18 was firing a .38 revolver which there was a .38
19 revolver recovered from the floorboard of the
20 vehicle that he was found in. And so, we found it
21 very, very important to discover that information
22 and so we pressed upon the prosecution to provide
23 it. And so the prosecution provided the results
24 from that SLED analysis on July 19th and what it
25 was is, it was basically fragments of the lead

1 that came from the projectile that was removed
2 from the vest of Officer Carson. Now this is very
3 important because Officer Carson was the first
4 officer that made contact with Mr. Holmes. The
5 allegation was that Mr. Holmes held his revolver,
6 placed it point blank range in Mr. Carson's chest
7 and squeezed the trigger, thereby, discharging the
8 projectile and causing it to lodge in the vest.
9 And so, that's the specific items that were tested
10 by SLED and that the results from that test
11 indicated that the physical and microscopic
12 examinations of the item eight bullet revealed
13 that it's most consistent with bullets loaded into
14 some .38 special or .357 Magnum. And obviously
15 since our client, my client was found with a .38
16 in his possession and the officers were firing a
17 .40 caliber, we thought that that evidence was
18 harmful and conclusive.

19 Q And did you explain that to
20 Mr. Holmes?

21 A Upon receiving it and explaining it to
22 Mr. Holmes, that's when we decided to enter our
23 guilty plea, or he decided to enter his guilty
24 plea.

25 Q Why would you think that Mr. Holmes

RW - W. BRUNSON - REDIRECT

1 didn't understand that that was from the same gun
2 or believes that it's from a different gun?

3 A I don't know.

4 Q I have no further questions. Thank
5 you, Mr. Brunson.

6 A Yes, sir.

7 THE COURT: Mr. Limbaugh.

8 MR. LIMBAUGH: Just briefly, Your
9 Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. LIMBAUGH:

12 Q So as far as you're aware from
13 investigating this case, there were three weapons
14 on the scene, two .40 caliber, one, the
15 applicant's gun, a .38?

16 A Correct.

17 Q And the SLED test showed that the
18 bullet fragments either came from a -- well, it
19 came from a bullet that's typically loaded into a
20 .38 or .357; is that correct?

21 A A bullet that's interchangeable
22 between those two weapons.

23 Q And the only person with a .38 was the
24 applicant?

25 A As far as the evidence ---

1 Q Evidence shows.

2 A ---revealed.

3 Q Thank you.

4 MR. LIMBAUGH: That's all I have,
5 Your Honor.

6 THE COURT: Mr. Griffith.

7 MR. GRIFFITH: No redirect, Your
8 Honor.

9 THE COURT: Thank you, Mr. Brunson.
10 Anything else, Mr. Limbaugh?

11 MR. LIMBAUGH: Nothing, Your Honor,
12 the State rests.

13 THE COURT: All right. Mr. Griffith,
14 I'll be glad to hear from you, sir.

15 MR. GRIFFITH: Your Honor, my client
16 believes that the evidence that he has shows it
17 was not from a .38 caliber, but rather, from -- it
18 was inconclusive, in that they were fragments or
19 other, from another type of gun and therefore he
20 asks that his PCR be granted.

21 THE COURT: Yes, sir.

22 Mr. Limbaugh.

23 MR. LIMBAUGH: Your Honor, the State
24 would contend that the plea process is a solid
25 judicial admission. Applicant was sworn where he

1 had admitted to the facts; he said he agreed with
2 them. He said he was satisfied with his attorney,
3 had enough time, went over the discovery, told the
4 judge that he, in fact, thought he had all of the
5 discovery that he was entitled to. And just for
6 the record, Your Honor, to address one allegation
7 that we did not seem to cover today was the
8 sentence on possibility of actuality. I don't
9 believe any evidence was presented to support that
10 and so I would ask that be dismissed. That's all,
11 Your Honor.

12 THE COURT: Yes, sir. All right, I do
13 dismiss that one, about the last issue actuality
14 versus possibility. As to the forensic ballistic
15 information, I've listened carefully to both
16 parties here today and I find that the petitioner
17 failed to carry his burden of proof today. I
18 don't blame him for bringing this action.
19 Mr. Griffith, you did your usual good job, I just
20 don't find he met his burden of proof today under
21 Strickland and Cherry. Thank y'all very much.

22
23 * * * END OF TRANSCRIPT OF RECORD * * *
24
25

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 20th day of July, 2020.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Jamison D. Holmes, #216587,	)	2018-CP-43-00806
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the December 2016 term of the Sumter County Grand Jury for two counts of attempted murder, unlawful carrying of a pistol, and possession of a weapon during the commission of a violent crime (2016-GS-43-1237). The charges stem from an incident on July 17, 2016, when Applicant got into an altercation with a female in the parking lot of Studio 378, a private club in Sumter County. After the fight, Applicant attempted to go inside the club, but he was denied access by the security guards at the door. Applicant then returned to his vehicle, pull what witnesses believed to be a gun from his glove box, went back to the door of the club, and shot the security guards. The victim was wearing a bullet proof vest. The guards returned fire on Applicant as he got in his car and drove away from the scene, ultimately crashing his car into a building and he was taken to the hospital. Tr. 7-11.

William H. Brunson, Esquire, represented Applicant on the charges. Assistant Solicitor John P. Meadors, Esquire, prosecuted the case. On July 21, 2017, Applicant pled guilty as indicted to both counts of attempted murder before the Honorable R. Ferrell Cothran, Jr. The weapons charges were dismissed in exchange for his guilty plea. Judge Cothran sentenced Applicant to



imprisonment for eighteen years for both charges, to run concurrently. Applicant did not appeal his guilty plea or his sentence.

II.

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

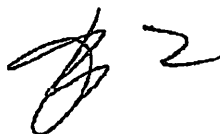
1. Ineffective Assistance of Counsel
 - a. "Misinformed by counsel of rights and evidence"
2. Bias Sentencing
 - a. Sentenced on possibility instead of actuality

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

SUMMARY OF TESTIMONY PRESENTED

Applicant

Applicant testified that his attorney told him about the plea, but that he was incorrect in his advice. Applicant testified that if the advice had been correct, he would have wanted to proceed to trial. Applicant testified that he would not have plead guilty if he knew more information. Applicant testified that he met with counsel five times prior to pleading. Applicant testified that counsel reviewed the discovery with him. Applicant testified that counsel did not review defense strategies with him, basically felt this was not a case that would be good for a trial. Applicant testified that he remembered his plea hearing, but needed to be refreshed on what all he said at the hearing. Applicant was refreshed on the plea colloquy and agreeing to the facts as they were presented. Applicant testified that he remembered speaking at the end of his plea



hearing and taking responsibility for what happened, though he does not remember the events.

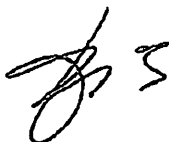
Applicant testified that he was sworn in before his plea hearing.

Counsel

Counsel testified that Applicant was found in his car, which he had crashed into a building. Counsel testified that the Applicant had been shot several times. Counsel testified that he received the report concerning which weapons were used during the crime, but that one part was missing early on in the investigation. Counsel testified that early in the investigation it was still unclear if both shots were fired from Applicant's gun. Counsel testified that the weapon Applicant used was a .38 caliber and that the report indicated that the fragments were from a .38 caliber or a .357 caliber handgun. Counsel testified that the .38 and the .357 were interchangeable rounds and that Applicant did have a .38 caliber handgun. Counsel testified that he hired a private investigator. Counsel testified that the private investigator provided him with leads of people who were at the same party as Applicant prior to the incident and that he followed up on all of these leads. Counsel testified that the plea was made knowingly and voluntarily and that the plea offer accepted was the only one offered. Counsel testified that three weapons were fired at the scene, two of which were .40 calibers and one was a .38 caliber. Counsel testified that the report showed that the bullet fragments were consistent with a .357 or a .38 caliber weapon. Counsel testified that he reviewed and explained the results of the ballistic report with Applicant, which is when Applicant decided to plead guilty. Counsel testified that Applicant was the only person in possession of a gun of that caliber at the scene of the crime.

Findings of Facts and Conclusions of Law

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented,

A handwritten signature in black ink, appearing to be "J. S.", is located at the bottom center of the page.

which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, Michael Nelson and Melisa Gay. Each allegation is addressed fully below.

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.

Strickland does not guarantee perfect representation, only a "reasonably competent attorney." " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625

(1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286, 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.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U.S. at 526-527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A

reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” Id. at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” Id. at 687; Harrington, 562 U.S. 86.

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel’s representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Strickland, 466 U.S. at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is “reasonably likely” the result would have been different. Id. at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between Strickland’s prejudice standard



and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

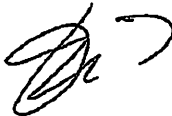
Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Applicant's allegation is addressed fully below:

Misinformed by counsel of rights and evidence

This court finds that Applicant has failed to show deficiency on the part of plea counsel concerning this allegation. Applicant contends that counsel misinformed applicant of his rights and of the evidence against him. This Court does not find Applicant's testimony credible in regards to this allegation and finds counsel's testimony to be credible. Counsel testified that he met with Applicant and explained to the process. Counsel also testified that he had in-depth conversations with Applicant concerning the evidence, specifically, the initial issue of the ballistics report. It appears from Counsel's testimony that Applicant was engaged throughout the process and understood his conversations with counsel regarding his case and the evidence against him. Therefore, this court dismisses this allegation.

Sentenced on possibility instead of actuality

This court dismissed this allegation on the record at the evidentiary hearing, however, the court feels it necessary to elaborate its reasoning in this order. Applicant's allegation of biased sentencing by the plea judge raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, this Court summarily dismisses this allegation.



CONCLUSION

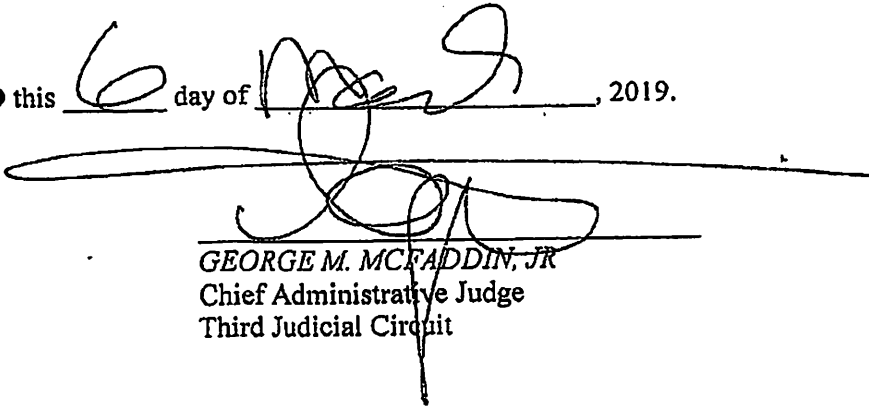
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes 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. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), 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 South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 6 day of March, 2019.



GEORGE M. MCFADDIN, JR.
Chief Administrative Judge
Third Judicial Circuit

WITNESSES

W. Dubose

Sumter County Sheriff

Capt Robert Burnish

DOCKET NO. 2016-GS-43-1237

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

December

TERM

2016

THE STATE

vs.

JAMISON DAUDI HOLMES

ARREST WARRANT NUMBER

2016A4310100494

2016A4310100495

2016A4310100496

2016A4310100497

Indictment for

Unlawful carrying of pistol

Attempted Murder (2 counts)

Possession of a Weapon During a Violent Crime

ACTION OF GRAND JURY

TRUE BILL

Robert E. Halloran
Foreperson of Grand Jury
Date: 12-1-16

Ernest A. Finney III

VERDICT

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

Unlawful carrying of pistol
 Attempted Murder (2 counts)
 Possession of a Weapon During a Violent Crime

**CERTIFIED TRUE COPY
 OF ORIGINAL FILE**
B. A. Harper
**DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA**

At a Court of General Sessions, convened on December 1, 2016 the Grand Jurors of
 SUMTER County present upon their oath:

COUNT ONE - UNLAWFUL CARRYING OF PISTOL

That Jamison Daudi Holmes did in Sumter County on or about July 17, 2016, carry about the person a pistol, such carrying not being authorized by law, in violation of Section 16-23-0020, S. C. Code of Laws, 1976, as amended.

COUNT TWO - ATTEMPTED MURDER

That Jamison Daudi Holmes did in Sumter on or about July 17, 2016, violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Jamison Daudi Holmes did with intent to kill, attempt to kill another person, James McLeod, with malice aforethought, either express or implied, by shooting the victim in the chest with a handgun.

COUNT THREE - ATTEMPTED MURDER

That Jamison Daudi Holmes did in Sumter on or about July 17, 2016, violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Jamison Daudi Holmes did with intent to kill, attempt to kill another person, Richard Cason, with malice aforethought, either express or implied, by shooting at the victim with a handgun.

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

That Jamison Daudi Holmes did in Sumter County, on or about July 17, 2016, 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, 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

Ernest A. Fin III