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**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable G. Thomas Cooper, Circuit Court Judge

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MONQUEZ J. YOUNG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-001053

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APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	
 The State,	)	
	)	TRANSCRIPT OF RECORD
-vs-	)	2017-GS-42-5574;5576;5577
	)	
Monquez Jamone Young,	)	
	)	March 13, 2018
Defendant.	)	Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

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

SPENSER HOLLORAN SMITH, ESQUIRE  
Attorney for the State

CHARLES WILLIAM SNYDER, III, ESQUIRE  
JAMES A. CHEEK, ESQUIRE  
Attorney for the Defendant

Linda D. Moffitt  
Circuit Court Reporter

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Guilty plea -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 MR. SMITH: Your Honor, before you is Monquez Jamone  
2 Young. He's here to plead guilty on five charges on four  
3 indictments.

4 The first is 2017-GS-42-5577. That's a true-billed  
5 indictment for attempted murder, as to count one, and  
6 possession of a weapon during a violent crime, as to count  
7 two. He's pleading guilty to both without a  
8 recommendation.

9 Next is 2017-GS-42-5576. That's a true-billed  
10 indictment for discharging firearms into a dwelling. He's  
11 pleading as charged.

12 Next is 2017-GS-42-5574. It's a true-billed  
13 indictment for use of a firearm while under the influence  
14 of alcohol. He's pleading guilty as charged.

15 Next is 2017-GS-42-5575. That's a true-billed  
16 indictment for throwing of bodily fluids by a prisoner on  
17 an officer. He's pleading to that as charged.

18 There's no recommendation in any of the cases.

19 The victim is present. She doesn't wish to address  
20 the Court.

21 He's represented by, I think, Mr. Snyder and  
22 Mr. Cheek.

23 THE COURT: You are Monquez Jamone Young.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you know why you're here?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: why are you here?

3 THE DEFENDANT: Attempted murder and possession of a  
4 firearm during a violent crime.

5 THE COURT: well, we've got some more indictments.

6 THE DEFENDANT: Throwing bodily fluids toward to  
7 officers.

8 THE COURT: I'll go through them.

9 Indictment 2017-5574 charges you with the use of a  
10 firearm while under the influence.

11 The state alleges on June the 30th of 2017 you  
12 discharged a firearm while you were under the influence of  
13 alcohol or some controlled substance in violation of the  
14 law.

15 Use of a firearm while under the influence carries a  
16 sentence of up to two years in jail and a fine of \$2,000.

17 Do you understand the charge and the potential  
18 sentence?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Indictment 2017-5575 charges you with  
21 violation of Section 24-13-0470.

22 They allege that you did on June the 30th of 2017 spit  
23 saliva on Officer Za Kirra Smith who was a law  
24 enforcement officer while you were in custody or under  
25 arrest.

1           That offense is referred to as throwing bodily fluids,  
2 and that carries a potential sentence -- by a prisoner.  
3 That means somebody in custody or under arrest. And that  
4 carries a potential sentence of up to 15 years in jail.

5           Did you know you could get 15 years in jail for  
6 spitting on a police officer?

7           THE DEFENDANT: No, sir.

8           THE COURT: Yeah. Most people don't, but you can.

9           Indictment 2017-5576 charges you with discharging a  
10 firearm into a dwelling.

11           The state alleges on June the 30th of 2017 you did  
12 discharge or cause to be discharged unlawfully a firearm at  
13 or into a dwelling located on Highland Avenue, in some  
14 someone's apartment there.

15           Discharging a firearm into a dwelling carries a  
16 potential sentence of up to ten years in jail.

17           Do you understand that charge and the potential  
18 sentence?

19           THE DEFENDANT: Yes, sir.

20           THE COURT: And the remaining indictment is Indictment  
21 2017-5577, and it charges you with attempted murder, the  
22 state alleging on June the 30th of 2017 you did with malice  
23 aforethought attempt to kill Tiffany Powell by shooting her  
24 with a firearm with the intent to kill her. And count two  
25 of the indictment alleges that you possessed a firearm

1 during the commission or attempted commission of a violent  
2 crime, that violent crime being the attempted murder of  
3 Tiffany Powell set forth in count one.

4 So there are two charges in that indictment. One  
5 charges you with attempted murder, which carries up to 30  
6 years in jail. The other count charges you with possession  
7 of a weapon during the commission of a violent crime. And  
8 that carries up to five years in jail.

9 Do you understand that indictment, those charges and  
10 the potential punishment?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Cheek and Mr. Snyder are your lawyers.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And how long have they been representing  
15 you on these charges?

16 THE DEFENDANT: Mr. Cheek has been representing me,  
17 say, like three months, me being incarcerated.

18 THE COURT: Okay. What about Mr. Snyder?

19 THE DEFENDANT: Mr. Snyder -- he's been representing  
20 me since November the 1st or the 6th.

21 THE COURT: Of 2017?

22 THE DEFENDANT: Correct.

23 THE COURT: All right. And since that time have you  
24 had plenty of time and opportunity to talk with Mr. Cheek  
25 and Mr. Snyder about your cases?

1 THE DEFENDANT: I've been seen three, maybe four,  
2 times by Snyder -- Mr. Snyder -- beginning of this year.

3 THE COURT: Well, do you need more time to talk to him  
4 about your cases?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. So have you had plenty of time  
7 to talk to your lawyers about these cases?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did they go over the indictments with you?

10 THE DEFENDANT: I didn't know I was indicted, no, sir.

11 THE COURT: You didn't know you were indicted? Did  
12 you say you did not know you were indicted?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You didn't know you were charged with  
15 these crimes?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You were arrested and put in jail, weren't  
18 you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Well, were you aware that the  
21 state was accusing you of the attempted murder and  
22 possession of a firearm that I just read?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And were you aware that the state was  
25 charging you with discharging a firearm into a dwelling on

1 Highland Avenue?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You were aware of it? I've already read  
4 these indictments to you.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: So you are aware that they claim you  
7 discharged a firearm into a dwelling?

8 THE DEFENDANT: I guess so.

9 THE COURT: Are you aware that they accused you of  
10 throwing bodily fluids, spitting on a police officer?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And are you aware that they claim you used  
13 a firearm while you were under the influence of some  
14 intoxicating substance?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. So did your lawyers talk to  
17 you about those charges?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And do you understand what the state has  
20 to prove in court before you could be found guilty of each  
21 of these charges?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And your lawyer has told you what kind of  
24 sentences could be imposed if you were convicted of these  
25 charges?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did you tell them everything you know  
3 about the allegations made against you in these  
4 indictments?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And after you discussed with them  
7 everything you know did y'all determine whether or not you  
8 had a defense to any of these charges?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you know what a defense is?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that if you have a  
13 defense that when you plead guilty you waive your right to  
14 assert it? In other words, you give it up.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you know of any defense you have to any  
17 of these charges?

18 THE DEFENDANT: No, sir.

19 THE COURT: Did your lawyers explain to you each of  
20 the constitutional rights you have that you must give up if  
21 you want to plead guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Did they explain to you that you have a  
24 right to remain silent?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do you understand that means you don't  
2 have to say anything?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You don't have to take the witness stand  
5 and testify even during a trial.

6 You don't have to make any statement and you don't  
7 have to answer any questions about these charges.

8 You don't have to answer my questions that I'm asking  
9 you right now unless you want to plead guilty, because if  
10 you want to plead guilty you have to give up your right to  
11 remain silent because I have to determine whether or not  
12 your decision to plead guilty is freely and voluntarily  
13 made, that you know what you're charged with, that you know  
14 what the state claims you did, that you know what the  
15 punishment is if you are convicted, that you understand the  
16 consequences of pleading guilty and that you understand  
17 what rights you give up when you plead guilty.

18 And so in order for me to make that determination,  
19 I've got to ask you questions. In order for me to get the  
20 information, you've got to answer the questions. But you  
21 don't have to unless you want to. You have the right to  
22 remain silent, an absolute, constitutional rights to remain  
23 silent. And only you can give it up.

24 Do you understand your right to remain silent?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you wish to give it up in order to  
2 plead guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did your lawyers explain to you that you  
5 have a right to have a jury trial and to confront and to  
6 examine witnesses in court during that trial?

7 In other words, anybody who offers testimony or other  
8 evidence tending to prove you guilty of these charges would  
9 have to come to court and take the witness stand and  
10 testify in your presence under oath.

11 You could see who they are; you could hear what they  
12 have to say. Your lawyers could ask them questions in  
13 order to test their credibility and the reliability of the  
14 information that they're providing to the Court.

15 When you plead guilty that process doesn't occur. The  
16 witnesses don't testify. They're not under oath and they  
17 don't get to be examined by your lawyers.

18 Do you understand your right to confront and to  
19 examine those people who provide evidence against you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that when you plead  
22 guilty you have to give that right up?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is that what you want to do?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And did your lawyers explain that you have  
2 a right to have a jury trial and to have a jury decide if  
3 you're guilty or not of anything the state claims you  
4 committed?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand how the jury is  
7 selected?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How is it selected?

10 THE DEFENDANT: I pick six and the state picks six.

11 THE COURT: Say that again. I'm having a little bit  
12 of trouble hearing you, and the court reporter probably is  
13 too. So you've to got speak loudly.

14 THE DEFENDANT: I plead, strike, struck.

15 THE COURT: You do what? I just can't hear what  
16 you're saying. Just tell me what you said.

17 THE DEFENDANT: I said I pick and strike.

18 THE COURT: You help pick the jury with striking  
19 jurors? Well, you can strike some jurors. You get to do  
20 that.

21 We have a large panel of people selected randomly by a  
22 computer from Spartanburg. And they come in here, and you  
23 and your lawyers and the solicitor pick 12 of those to sit  
24 over there in that jury box to listen to the testimony, to  
25 consider all of the evidence from the state, and from you

1 if you want to. But you still have a right to remain  
2 silent. But you could call others witnesses if you want  
3 to, even if you don't take the witness stand.

4 But the jury decides what the facts are as they relate  
5 to these allegations, and then the jury applies the law  
6 that I provide them as it relates to each of the separate  
7 charges. And then the jury in deciding the facts and  
8 applying the law, they determine whether or not you've been  
9 proven guilty of some crime alleged in each of these  
10 indictments.

11 If they are convinced unanimously, all 12 convinced  
12 beyond a reasonable doubt that you're guilty of a crime,  
13 they can find you guilty.

14 If they're not convinced beyond a reasonable doubt of  
15 your guilt, they must find you not guilty.

16 If they don't know, then they can't make a decision.

17 Do you understand your right to have a jury trial?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you wish to give that right up in order  
20 to plead guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has anybody promised you anything that  
23 caused you to make that decision?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anybody threatened you in any way that

1 caused you to make that decision?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anybody forced you, coerced you or  
4 pressured you in any fashion that caused you to make that  
5 decision?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you pleading guilty freely and  
8 voluntarily?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: It was your decision?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You're satisfied with it?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And do you wish to plead guilty to each of  
15 the charges just as they are described in the indictments  
16 that I have read to you?

17 THE DEFENDANT: Not the bodily fluid because I didn't  
18 spit on no officer.

19 THE COURT: All right. So the bodily fluid charge --

20 THE DEFENDANT: When I was talking to the officer, it  
21 fell on, came on the leg, pants leg.

22 THE COURT: When you were talking to the officer what  
23 fell on a pants leg?

24 THE DEFENDANT: Saliva.

25 THE COURT: Saliva?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And-but you didn't intentionally or  
3 purposefully spit on the officer?

4 THE DEFENDANT: No, sir. I didn't.

5 THE COURT: How did that happen? Have you got any  
6 explanation for it?

7 THE DEFENDANT: I was intoxicated. I didn't spit.

8 THE COURT: All right. So you're saying you didn't do  
9 it purposefully and if it happened it was accidental.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: well, do you understand an accident is not  
12 a crime?

13 In other words, the state has to prove that you  
14 intentionally did it. Now, they may be able to; they may  
15 not. But you have to understand when you decide to plead  
16 guilty to something, what you're pleading guilty to is that  
17 you intended to do it. Or you can plead guilty to it with  
18 the idea that you prefer to plead guilty as opposed to  
19 pleading not guilty and you don't want to have a trial  
20 because you don't want to expose yourself to potentially  
21 greater punishment that you might get if you plead guilty  
22 and not put the state to the expense of a trial and accept  
23 some degree of responsibility.

24 But it's up to you. So what do you want to do about  
25 that indictment? Do you want to plead guilty to it or do

1 you want to plead not guilty to it and have a trial?

2 THE DEFENDANT: Not guilty to it.

3 THE COURT: You want to plead not guilty to bodily  
4 fluids?

5 THE DEFENDANT: I plead guilty.

6 THE COURT: well, I tell you what.

7 we'll let the solicitor tell me about the facts, and  
8 I'll come back to that.

9 what about the other charges, the use of a firearm  
10 while under the influence, the discharging a firearm into a  
11 dwelling and the attempted murder? Do you admit those  
12 facts as stated in the -- as alleged in the indictments?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you wish to plead guilty to each of  
15 those?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You're 27 years old?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: How far did you go in school?

20 THE DEFENDANT: To the tenth grade.

21 THE COURT: why did you quit?

22 THE DEFENDANT: I thought...

23 THE COURT: well, have you gone back and gotten your  
24 G.E.D.?

25 THE DEFENDANT: I was in the G.E.D. program here at

1 the county.

2 THE COURT: while you were in jail?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: How long have you been in jail?

5 THE DEFENDANT: 257 days.

6 THE COURT: Have you ever been married?

7 THE DEFENDANT: I've been engaged.

8 THE COURT: Have you ever been married?

9 THE DEFENDANT: No, sir.

10 THE COURT: Have you ever had a child?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you ever had a job?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: what kind?

15 THE DEFENDANT: Plants. I've been working at plants.

16 THE COURT: Doing what?

17 THE DEFENDANT: Dealing with shoes, clothes, car  
18 parts, saws.

19 THE COURT: Have you ever been treated for any type of  
20 substance abuse or addiction?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you suffer from any such a condition  
23 like that today?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you ever been treated for any type of

1 mental illness or emotional disturbance?

2 THE DEFENDANT: Yeah. I been up to mental health.

3 THE COURT: What was that for?

4 THE DEFENDANT: At the time with me being three years  
5 old I seen my daddy get killed in front of me.

6 THE COURT: And how long have you been treated for  
7 that emotional trauma?

8 THE DEFENDANT: I can't get over it. I getting  
9 treatment for it.

10 THE COURT: Right. And so you still suffer from that  
11 experience?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Does that experience or that fact in any  
14 way interfere with your ability to understand fully what  
15 you're doing right now? If you don't understand the  
16 question, tell me.

17 THE DEFENDANT: I understand it. What --

18 THE COURT: My question is does -- does your personal  
19 experience with that impair your ability or affect your  
20 ability to understand fully what you're doing right now  
21 today?

22 THE DEFENDANT: I understand.

23 THE COURT: You understand what you're doing today in  
24 entering these guilty pleas?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Was that a yes or a no?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: That was a yes?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Listen to what the solicitor tells  
6 me about the facts that relate to these cases.

7 MR. SMITH: Your Honor, this incident occurred on the  
8 evening of June 30th of 2017. The victim, Tiffany Powell,  
9 was at Highland Crossing at her apartment.

10 She actually is friends with Mr. Young's sister,  
11 Ms. Wilkins, who is present for this. She also lives in  
12 that apartment complex. She'd come over for a  
13 get-together, and Monquez was invited.

14 He was drinking beer, I guess, while he was there in  
15 the apartment with them. Present also was Ms. Powell's  
16 child, and also I believe Ms. Wilkins' children were also  
17 there.

18 Some sort of -- for whatever reason, Mr. Young became,  
19 I guess, angry and started saying things towards  
20 Ms. Powell. Ms. Powell's son tried to tell him not to talk  
21 that way, and then he insulted the 10-year-old son.

22 At that point she asked Mr. Young to leave and was  
23 escorting him out of the house in the foyer of the  
24 apartment, opened the door. He walked out. And then as  
25 she was closing the door there was a gunshot that went

1 through the door.

2 Your Honor, it went through her forearm, which caused  
3 a pretty significant damage, and then passed into her  
4 abdomen, which I'll hand up a picture when I'm done, Your  
5 Honor, of the damage that was done.

6 She still is undergoing effects from that, I believe,  
7 in her forearm. It caused damage to muscle and a nerve  
8 type thing where she doesn't have full mobility of that  
9 hand any more. And she also had significant scarring.

10 while she was in the hospital she found out she was  
11 about two months pregnant. She since has delivered the  
12 baby. It's about a month old. From what I'm told, I think  
13 born in February.

14 She is here in the courtroom. She's got a statement  
15 that she'd like for me to read.

16 Your Honor, he then fled the scene. They do a canine  
17 track. They were able to see there's a bullet hole through  
18 the door, significant bleeding inside the apartment. All  
19 of the kids were aware of what happened.

20 They do a canine track to the Metro P.C.S. on John B.  
21 White, and they find Mr. Young hiding in the bushes and a  
22 pistol, a .380 Smith & Wesson, in the nearby bushes.

23 He's very, very intoxicated when they -- when they  
24 talk with him. They take him into custody. When they get  
25 him to city hall for a potential interview he spits on

1 Officer Smith and Officer Adams, and then they ended up  
2 putting a spit mask on him. And there's video of him with  
3 that on there, and he shakes his head back and forth until  
4 he gets that off prior to the investigators coming to talk.  
5 And he didn't really give any explanation for why he did  
6 what he did. He just said he wanted to talk to his mom.

7 That would be the facts of the case, Your Honor. I do  
8 have the statement I'd like to read and a picture to show  
9 you and his prior record at the appropriate time.

10 THE COURT: Yeah.

11 MR. SMITH: Ms. Powell said that, "My son was in the  
12 room when this happened. He's had to go to therapy for  
13 it."

14 THE COURT: This is the 10-year-old?

15 MR. SMITH: This is -- that's referring to the son,  
16 but this is Ms. Powell's statement.

17 THE COURT: I know. But she's referring to the  
18 10-year-old?

19 MR. SMITH: Yes, Your Honor.

20 "This was my dominant hand. I'll never be able to use  
21 it the same way, and I do C.W.A. work line. The defendant  
22 almost took me from my kids, and I do not forgive him. I  
23 would like to see him do the max. I have to have two more  
24 surgeries to get tissue from my hip and put it into my  
25 hand, and they will have to then take the pins and screws

1 out of my hand."

2 Your Honor, this picture shows the damage to her  
3 stomach, as well as the injury to her forearm.

4 His prior record is a 2010 simple possession of  
5 marijuana and a 2014 unlawful carrying.

6 THE COURT: All right. Mr. Young, you heard what the  
7 solicitor told me about the facts that relate to the cases.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you agree or disagree with what he  
10 stated?

11 THE DEFENDANT: Agree.

12 THE COURT: Do you agree with what he stated about the  
13 bodily-fluids allegation?

14 THE DEFENDANT: I agree.

15 THE COURT: Okay. And you still wish for me to accept  
16 your pleas of guilty?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: One other thing, Mr. Young, I failed to  
19 address with you is that the attempted murder charge that  
20 carries up to 30 years -- attempted murder is also  
21 designated and classified as a violent offense under the  
22 law.

23 Did you discuss that significance with your lawyers?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Attempted murder is also designated and

1 classified as a most serious offense under the law.

2 Did you discuss that significance with your lawyers?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you understand that attempted  
5 murder is also designated and classified as a no-parole  
6 offense under the law?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And did you discuss that significance with  
9 your lawyers?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And do you understand it?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you still wish for me to accept your  
14 pleas of guilty?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. I'll accept them and hear from  
17 you and Mr. Snyder and Mr. Cheek.

18 MR. SNYDER: Thank you, Judge.

19 As you heard, Monquez is 27. He went through tenth  
20 grade and never got his G.E.D., but he wants to get that in  
21 the Department of Corrections.

22 He -- and he's also worked at various warehouses --  
23 Adidas and Delta -- something.

24 Regarding this incident, the defendant and Tiffany  
25 Powell have known each other for about ten years. They --

1 they were together with Monquez's sister. They were all  
2 hanging out. They were all consuming alcohol.

3 Monquez got to the point where he -- he became a  
4 little belligerent and started to make comments towards  
5 Ms. Powell and Ms. Powell's child, at which point he was  
6 told to leave.

7 She, Ms. Powell, pushed him a couple of times. Due to  
8 his intoxication he stumbled. He hit his head on the door,  
9 was forced out, was upset, and shot.

10 It was extremely reckless. He did not intend to hit  
11 Ms. Powell, but that's what happened. We were very lucky  
12 it was not worse. He expresses regret. He hates that it  
13 happened.

14 Like I said, they were friends and acquaintances for  
15 ten years. He did not want to harm her, but he did  
16 something pretty reckless while intoxicated and these  
17 injuries resulted.

18 Judge, he -- he has no record, nothing that rises to  
19 the level of even having been placed on probation. We're  
20 asking for a sentence in the 10-year range.

21 I know he has some people here that would like to  
22 address Your Honor.

23 THE COURT: Okay. Mr. Cheek, do you want to add  
24 anything?

25 MR. CHEEK: Your Honor, just that this has always been

1 a plea.

2 We explained to Mr. Young that we've done the best we  
3 could to bargain with the state in this matter, that the  
4 state is not offering any lesser charge. He's always been  
5 interested in trying to plead to a lesser charge than he  
6 was originally charged with. We've done the best we could  
7 with that that there's not going to be any bargaining, any  
8 bargaining coming, and we accept that, Your Honor.

9 And I've asked him to address the Court for himself.  
10 In learning he had that traumatic experience as a child  
11 being present while his father was murdered in front of him  
12 because another adult had assaulted him and his father took  
13 up the defense of his son, and his son was there when his  
14 father got killed, Your Honor, I'm not a psychologist, but,  
15 as I explained to him and his mother, seeing his father,  
16 posttraumatic stress disorder and understand why he reacts  
17 the way he does under certain instances, which it's not an  
18 excuse, Your Honor. It's by way of explanation. But he  
19 regrets he didn't push to get more help to kind of cover up  
20 things for himself.

21 Your Honor, this all started out that day. As I  
22 understand, his sister can better address it, but they were  
23 all guests there. He came over. He had his money. He had  
24 gotten paid. He bought pizza for all of the children.  
25 He'd went out and bought a bottle of Hennessy. They drove

1 him to the liquor store and came back. He brought a beer  
2 with him when he came over there, but he went out and got  
3 additional liquor. There'd been some additional other  
4 activity going on that would have further contributed to  
5 any kind of lack of good judgment he had that night.

6 We'd ask the Court to take all of that into  
7 consideration when the Court fashions a sentence in the  
8 matter.

9 He's done very good work. As Mr. Snyder said, he  
10 worked for at least three companies. So he wasn't a person  
11 who was out here in the community not contributing.

12 He's told the Court he does not have any children. He  
13 did suffer the death of one child that was born  
14 prematurely.

15 We'd ask the Court to consider all of that as the  
16 Court fashions a sentence. He tried, but he was dealing  
17 with a lot more serious emotional state. And I think he  
18 appreciated and that under the drunken state he was to be  
19 pushed out and assaulted by the victim in this case in  
20 front of the children was certainly demeaning, but he was  
21 drunk. And what he said, he was not taken seriously, but  
22 one thing led to another and here we are today.

23 We just plead mercy, Your Honor, for him. That's all  
24 I have to say on that, Your Honor.

25 THE COURT: All right. Who else do you want to have

1 talk?

2 All right. You are?

3 ASINIA WILKINS: I am Asinia Wilkins [sic], Monquez  
4 Young's sister.

5 THE COURT: All right. What would you like to tell  
6 me?

7 ASINIA WILKINS: I would like to say I been walking on  
8 eggshells since this happened. I've lost my brother. But  
9 not only have I lost my brother. I've lost my best friend.  
10 And I -- like my family's been messed up since this has  
11 been going on.

12 My brother has had this mental issue since he was  
13 three years old that my mother's done tried everything that  
14 she could to get him into counseling and everything, but  
15 it's not working with him.

16 I just want my brother to be home and everybody be  
17 safe and back how everything was going before this  
18 happened. I do not believe that my brother tried to harm  
19 her in any type of way.

20 THE COURT: What would be your explanation then why he  
21 shot the gun into the house at her? What would be the  
22 explanation for that -- an accident?

23 ASINIA WILKINS: An accident.

24 THE COURT: An accident?

25 ASINIA WILKINS: Yes, sir.

1 THE COURT: Were you there?

2 ASINIA WILKINS: Yes, sir, I was there.

3 THE COURT: You were there?

4 ASINIA WILKINS: Yes, sir.

5 THE COURT: Could you explain to me how that was an  
6 accident?

7 ASINIA WILKINS: The reason why I feel like it was an  
8 accident is because he was under the influence.

9 THE COURT: Oh.

10 ASINIA WILKINS: He doesn't know that he shot her  
11 through that door or shot through the door. And I don't  
12 feel -- he was too -- he was too under intoxicated.  
13 Everybody was. And I hate to say this, but not only was  
14 we -- we were in there drinking, but we were also in there  
15 smoking marijuana.

16 THE COURT: Smoking marijuana?

17 ASINIA WILKINS: Yes, sir.

18 THE COURT: Well, you know, that's -- that's an issue.  
19 That's what happens when you do those kind of things.  
20 Sometimes it alters your behavior and makes you do things  
21 you might not do when you're sober. But voluntary  
22 intoxication is never a defense to a criminal charge,  
23 because you voluntarily do that.

24 You know, it's kind of like if you voluntarily get in  
25 a car drunk and drive a hundred miles an hour into a crowd

1 of people at a parade somewhere and kill a bunch of people,  
2 you're responsible for it. You don't get -- it's not just  
3 say, well, don't worry about it. He -- if he won't get  
4 drunk again it won't happen again. You see, you have to  
5 accept responsibility for what you do and all the  
6 consequences therefrom.

7 You would agree with that, wouldn't you?

8 ASINIA WILKINS: Yes, sir.

9 THE COURT: Okay. What else would you like to tell  
10 me?

11 ASINIA WILKINS: I just want my family back how it was  
12 before.

13 THE COURT: Well, it'll never be like it was before  
14 because it's all changed now, just like when Mr. Young's  
15 father was killed. It's never going to be like it was  
16 before. It changes.

17 That's why you have to think about what you're doing  
18 for the future and behave, do the right thing instead of  
19 the wrong thing. And then things will be good for the  
20 future. If you continue down the path that he's on, then  
21 things will always be bad. But y'all are the only people  
22 that can put your family back together and correct it. We  
23 can't do it. You can appreciate that, can't you?

24 ASINIA WILKINS: Yes, sir.

25 THE COURT: Is there anything else you'd like to tell

1 me?

2 ASINIA WILKINS: No, sir.

3 THE COURT: Okay. Thank you.

4 Anybody else?

5 MR. CHEEK: I don't think so, Your Honor.

6 THE COURT: All right. Mr. Young, what would you like  
7 to tell me?

8 THE DEFENDANT: Sir?

9 THE COURT: Do you have anything you'd like to add to  
10 what's been said?

11 THE DEFENDANT: Yeah. I'd like to apologize to  
12 Tiffany Powell and her mother, and most of all her  
13 children, because the accident that occurred on June the  
14 30th could have took the life. And I want to apologize for  
15 that.

16 THE COURT: well, Mr. Young, that's the thing I'm  
17 trying to understand.

18 As Mr. Cheek says, I'm not a psychologist or a  
19 psychiatrist either, and even if I were or he was, we still  
20 might not have an explanation.

21 But one thing that always bothers me, and I have a  
22 question about, is, obviously, when your father was killed  
23 in your presence it had a tremendous emotional impact upon  
24 you. You haven't forgotten it, and you're today emotional  
25 thinking about it and talking about it. And I can

1 certainly understand that and appreciate that.

2 But what I can't understand is how that experience  
3 that you had would not educate you and cause you to do  
4 differently, because your conduct on this day, what it  
5 resulted in was almost the same circumstance you had when  
6 you were three except it was going to be this 10-year-old  
7 boy's mother who would be killed in front of him by you.

8 So he would have had the same exact experience that  
9 you had and it would be because of you who's had that  
10 experience, and, obviously, it affected you. And it  
11 bothers you and it upsets you. So why would you engage in  
12 the same conduct that had such a detrimental impact upon  
13 you?

14 THE DEFENDANT: I didn't know that. All I did is I  
15 was --

16 THE COURT: You didn't know you did it?

17 THE DEFENDANT: Yeah. I didn't know that that's  
18 what -- I didn't know I had done that. I didn't know that  
19 I had shot, like, I would have -- I was nervous whenever  
20 the gun had went off. But if I'd've known that I had  
21 intentionally hit her I would have stayed to make sure she  
22 was okay.

23 THE COURT: You're saying you were so high and drunk  
24 you didn't --

25 THE DEFENDANT: I was -- and I was forced out, so, you

1 know what I'm saying, as her putting her hands on me, I  
2 wasn't going to go back because I don't -- I don't like to  
3 argue with people and I don't hit people, so I just kept  
4 going.

5 THE COURT: well, I know, but you shot one. You shot  
6 one. In other words, you were already out. You said you  
7 weren't going to go back or argue, but you were already  
8 gone when you fired the shot.

9 THE DEFENDANT: And I didn't intentionally mean to.  
10 It was an accident.

11 THE COURT: It was an accident.

12 well, do you understand that going to the liquor store  
13 and buying that Hennessy and putting the bullets in that  
14 gun and carrying it over to a house and getting drunk that  
15 that always results, is people get made and get in an  
16 argument and pull out a gun and shoot somebody, and  
17 sometimes they kill somebody.

18 Do you understand that your voluntary intoxication is  
19 not a defense to a criminal charge? Do you understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: In other words, when you say it's an  
22 accident, I assume that you're not saying that the gun just  
23 somehow went off, that you didn't intend to pull any  
24 trigger. You just think it just went off, it was just  
25 there and just went off and just happened to go through the

1 door and strike Ms. Powell? Are you saying you intended to  
2 fire the shot when you shot through the door? You just  
3 didn't necessarily intend that it would strike her and  
4 cause all of the damage that it did.

5 THE DEFENDANT: I didn't know that I had shot through  
6 the door.

7 THE COURT: Okay. Well, are you just saying you were  
8 so intoxicated you didn't know what happened that day?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Well, as I say, you know that's not  
11 a defense, and so you're responsible for your actions.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have anything else you would like  
14 to tell me?

15 THE DEFENDANT: No, sir.

16 THE COURT: On Indictment 2017-05577 -- that's the  
17 indictment for attempted murder and possession of a firearm  
18 during the commission of that crime -- Sentence of the  
19 Court is you, Monquez Jamone Young, be confined to the  
20 South Carolina Department of Corrections for a period of 30  
21 years.

22 That sentence is suspended upon the service of 15  
23 years and you're placed on probation for five years.

24 Conditions of that probation, you're to get your  
25 G.E.D., participate in substance abuse counseling, submit

1 to random drug and alcohol testing.

2 You're to have no contact with any victim or family  
3 member.

4 You are to participate in a mental health evaluation  
5 and follow all treatment recommendations.

6 You are to pay \$500 for your appointed counsel.

7 Count two, possession of a firearm, five years.

8 Indictment 2017-5576, discharging a firearm, ten  
9 years.

10 2017-5574, use of a firearm while under the influence,  
11 two years.

12 Indictment 2017-5575, throwing bodily fluids, five  
13 years.

14 Those sentences are concurrent. Give him credit for  
15 any time he's entitled to pursuant to 24-13-40.

16 MR. CHEEK: Thank you, Your Honor.

17 MR. SMITH: Thank you, Your Honor.

18 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 13th day of March 2018.

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

November 20, 2018

Linda D. Moffitt

\_\_\_\_\_  
Linda D. Moffitt  
Circuit Court Reporter

2018CP4203000

FORM 5

STATE OF SOUTH CAROLINA

County of Spartanburg S.C.

Monquez Young 375637  
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

CLERK OF COURT  
JUDICIAL DISTRICT OF SPARTANBURG COUNTY  
2018 SEP -4 AM 11:02  
THOMAS M. ACHLEY

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 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 Lee Correctional Institution
2. Name and location of Court which imposed sentence 180 Magnolia Street, P.O. Box 3483-29304, Spartanburg S.C. 29304
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2017GS4205577A, 2017GS4205577, 2017GS4205576
  - (b) 2017GS4205575, 2017GS4205574

- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 13, 2018
- (b) Service of 15 Years
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Yes
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I wasn't Informed of My Application Ability
- (b) lack of Counsel Ineffectiveness

2018 SEP -4 AM 11:02  
 H. HERRERA-BLANCOLEY

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Counsel Fail To give vital instruction On The Nolo-Contender
  - (b) Failed Investigation dependent Intoxication Exclude question
  - (c) procedural default, preclude them from raising claims
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) By pleading guilty Morant thereafter pre
- (b) Baker v. United States, 781 F.2d 85, 90 (1986)
- (c) United State v. French, 714 F.2d 387, 390 (1983)

12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
  - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
  - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
  - (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

2018 SEP -4 AM 11:02  
 H. HOPE SLACKLEY  
 CLERK OF COURT

(c) the disposition thereof:  
 i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_

(d) the date of each such disposition:  
 i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:  
 i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_

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

15. If you answered "yes" to (14) identify:  
 (a) which grounds have been presented:  
 i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 (b) the proceedings in which each ground was raised:  
 i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

2018 SEP -4 AM 11:02  
 M. HOPE BLACKBERRY

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) NIA
- (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? NIA
- (c) your sentencing? 15 years
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Motion to Grant Rehearing
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NIA

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. Chad Snyder, 366 N. Church Street, Spartanburg, SC 29306
  - ii. James Cheeks, 366 N. Church Street, Spartanburg, SC 29306
  - iii. \_\_\_\_\_

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

- i. Plea Agreement
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

2018 SEP -4 AM 11:02  
M. HOPE STACKLEY

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

I Ask The Court to grant Removal of 10 years  
And probation

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

N/A

STATE OF SOUTH CAROLINA )

County of Spartanburg )

VERIFICATION

I, Monquez D Young, 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.

Monquez Young

SWORN to and subscribed before me this 24 day of Aug, 2018.

Delma Eastwood (L.S.)  
Notary Public

My Commission Expires: 3/3/2026

2018 SEP -4 AM 11:02  
M. HOPE BLACKLEY

Revised 1/1/11

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

I, Monique J. Young 375637, 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.

Monique J. Young  
Applicant

SWORN or affirmed to and subscribed before me this  
24 day of Aug, 2018.

John Estrada  
Notary Public

My Commission Expires: 3/3/2024

2018 SEP -4 AM 11:03  
M. HOPK BLACKLEY

I, Monquez J. Young SCDC #375637.  
Hereby, Supreme Court Rules Authorize the Court  
to Appoint Counsel to Represent Litigant.  
Appointing Counsel to Represent petitioner. Herrera Vs  
Collins, 506 U.S 809 (1992)

FILED  
CLERK OF COURT  
SOUTH CAROLINA  
2018 SEP -4 AM 11:02  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Monquez Jamone Young,	)	Case No.: 2018-CP-42-03066
S.C.D.C. No. 375637,	)	
	)	
Applicant,	)	
	)	<b>RETURN AND MOTION FOR A MORE</b>
v.	)	<b>DEFINITE STATEMENT</b>
	)	<b>(Counsel Appointed)</b>
State of South Carolina,	)	
	)	
Respondent.	)	

---

In response to the application for post-conviction relief filed by Monquez Jamone Young (Applicant) on September 4, 2018, Respondent would show this Court:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the October 2017 term of the Spartanburg County Grand Jury for use of a firearm while under the influence (2017-GS-42-05574), throwing bodily fluids (17-GS-42-05575), discharging firearm at or into a dwelling (2017-GS-42-05576), attempted murder and possession of a weapon during violent crime (2017-GS-42-05577). Charles William Snyder, III, and James A. Cheek, Esqs., represented Applicant. Spenser H. Smith, Esq., of the Seventh Circuit Solicitor’s Office, prosecuted the case. On March 13, 2018, Applicant pled guilty as indicted. The Honorable J. Derham Cole sentenced Applicant to imprisonment for concurrent terms of:

- Two years for shooting under the influence;
- Five years for throwing bodily fluids;
- Ten years for discharging a firearm into a dwelling;
- Thirty years for attempted murder, provided that upon service of fifteen years the balance would be suspended upon five years of probation; and
- Five years for possession of a weapon during the commission of a violent crime.

CLERK OF COURT  
 SPARTANBURG COUNTY  
 2019 AUG 12 PM 3:09

Applicant did not appeal his plea or sentence.

**II. STATEMENT OF THE FACTS**

The underlying facts of the crimes for which Applicant is incarcerated were articulated by the State during the plea proceeding as follows:

The incident occurred on the evening of June 30<sup>th</sup>, 2017. The victim, Tiffany Powell, was at Highland crossing at her apartment. She actually is friends with Mr. Young's sister, Ms. Wilkins, who is present for this. She also lives in that apartment complex. She'd come over for a get-together, and [Applicant] was invited. He was drinking beer, I guess, while he was there in the apartment with them. Present also was Ms. Powell's child, and also I believe Ms. Wilkins' children were also there.

Some sort of – for whatever reason, Mr. Young became, I guess, angry and started saying things towards Ms. Powell. Ms. Powell's son tried to tell him not to talk that way, and then he insulted the 10-year old son. At that point she asked Mr. Young to leave and was escorting him out of the house in the foyer of the apartment, opened the door. He walked out. And then as she was closing the door there was a gunshot that went through the door.

Your Honor, it went through her forearm, which caused a pretty significant damage, and then passed into her abdomen... She still is undergoing effects from that, I believe, in her forearm. It caused damage to muscle and a nerve type thing where she doesn't have full mobility of that hand any more. And she also had significant scarring. While she was in the hospital she found out she was two months pregnant. She since has delivered the baby. It's about a month old. From what I'm told, I think born in February. She is here in the courtroom. She's got a statement that she'd like for me to read.

Your honor, he then fled the scene. They do a canine track. They were able to see there's a bullet hole through the door, significant bleeding inside the apartment. All of the kids were aware of what happened. They do a canine track to Metro P.C.S. on John B. White, and they find Mr. Young hiding in the bushes and a pistol, a .380 Smith & Wesson, in the nearby bushes. He's very intoxicated when they talk with him. They take him into custody.

When they get him to city hall for a potential interview he spits on Officer Smith and Officer Adams, and then they ended up putting a spit mask on him. And there's video of him with that on there, and he shakes his head back and forth until he gets that off prior to the investigators coming to talk. And he didn't really give any explanation for why he did what he did. He just said he wanted to talk to his mom.

2019 AUG 12 PM 4:49  
CLERK OF COURT  
SPARTANBURG COUNTY

(Tr. 19-21). Upon inquiry by the Court, Applicant confirmed the above articulated facts. (Tr. 22, ll. 6-14).

### III. CURRENT APPLICATION

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

1. "Counsel fail to give vital instruction on the [nolo contendere]"
  - a. "By pleading guilty Movant thereafter pre"
2. "[Flawed] investigation defendant intoxication exclude question"
  - a. Applicant cites to Baker v. United States, 781 F.2d 85, 90 (6th Cir. 1986)
3. "procedural default, [preclude] them from [pursuing] claims"
  - a. Applicant cites to United States v. French, 719 F.2d 387, 390 (11th Cir. 1983)

Applicant requests relief as follows:

- "I ask the court to grant removal of 10 years and probation"

Attached to and incorporated herein are the records of the Spartanburg 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.

### IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

#### Ineffective Assistance of Plea Counsel, Generally

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The

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prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

#### **Failure to Advise Regarding Nolo Contendere**

Respondent submits plea counsel’s failure to instruct Applicant of a nolo contendere plea is without merit. For all practical purposes a plea of nolo contendere “is a plea of guilty in so far as the consequences in the particular case in which it is pled.” Kibler v. State, 267 S.C. 250, 254, 227 S.E.2d 199, 201 (1976). Where a “defendant intelligently concludes that his interests require the entry of a guilty plea and the record before the judge contains strong evidence of actual guilt” and no material difference exists “between a plea that refuses to admit commission of the criminal act

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and a plea containing a protestation of innocence." North Carolina v. Alford, 400 U.S. 25, 37, 91 S. Ct. 160, 167, 27 L. Ed. 2d 162 (1970).

In this instance, Applicant affirmed the facts the State presented during the plea hearing and subsequently pled guilty to all charges. Nothing in the record indicates Applicant would have proceeded to trial if he had knowledge of a nolo contendere plea. Thus, Applicant was not prejudiced by trial counsel allegedly failing to instruct him of a nolo contendere plea.

### Conclusion and Action Requested

Applicant can satisfy neither requirement of the Hill test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

### V. MOTION FOR MORE DEFINITE STATEMENT

Respondent also hereby moves for a more definite statement. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50. It is incumbent upon Applicant *through counsel*, to amend his application where necessary to set forth *specific facts* upon which his allegations are based. See Rule 71.1(d), SCRCP ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.") see also Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974) ("[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial

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under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of adequate and effective assistance of counsel is insufficient.”). Where an applicant fails to adequately set forth the grounds upon which he seeks relief, the court may at any time prior to entry of judgment “issue orders for amendment of the application or any pleading or motion[.]” S.C. Code Ann. § 17-27-70(a); see also Rule 12(e), SCRCP (permitting a circuit court judge to require a more definite statement when vague or ambiguous pleadings are filed).

Applicant has failed to set forth sufficient facts to “support each ground” or to explain with sufficient specificity the facts upon which his second and third claims are based. Respondent simply cannot ascertain precisely what it is Applicant intends to argue by way of his citations to Baker and French—neither case appears favorable to any possible basis for relief. Applicant appears to have put forth an effort to a claim of ineffective assistance, but the meaning of his writing is not clear.

Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

#### VI. APPLICANT’S RELIEF REQUESTED IS NOT AVAILABLE

In his prayer for relief, Applicant requests the Court reduce his sentence. This relief is unavailable in a post-conviction relief action. If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on the original indictments. Gilstrap v. State, 252 S.C. 625, 168 S.E.2d 88 (1969); see also Smith v. State, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (“We now clarify the proper remedy is a new trial.”) Grant v. MacDougall, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964) (relief of absolute release not available). Where an applicant seeks only relief to which he or she is not entitled, “it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance,

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entitled to.” Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968). For these reasons, if the application is not otherwise amended before the evidentiary hearing to reflect a desire for appropriate relief, Respondent would respectfully request this Court engage in a *thorough* colloquy with Applicant to apprise him of the relief available in a PCR. If at the evidentiary hearing Applicant indicates no desire in appropriate relief but a desire to proceed, Respondent will at that time move to dismiss the application.

#### VII. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

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

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

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request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

**VIII. GENERAL DENIAL**

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

**IX. CONCLUSION**

WHEREFORE, Respondent respectfully requests that this Court grant its motion for a more definite statement as set forth in Section V, above, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

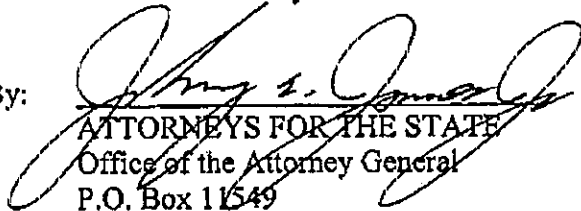
ALAN WILSON  
Attorney General


W. JEFFREY YOUNG  
Chief Deputy Attorney General

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Senior Assistant Deputy Attorney General

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By:

  
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STATE OF SOUTH CAROLINA )  
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 COUNTY OF SPARTANBURG )  
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 MONQUEZ YOUNG, #375637 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent, )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

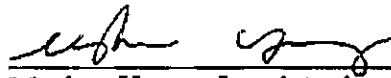
2019-CP-42-03066

AFFIDAVIT OF SERVICE BY MAIL

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:

Rodney Wade Richey, Esquire  
 Richey & Richey, PA  
 PO Box 10916  
 Greenville, SC 29603-0916

DATED this the 8<sup>th</sup> day of August, 2019.

  
 \_\_\_\_\_  
 Meghan Young, Legal Assistant  
 For Respondent

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1 STATE OF SOUTH CAROLINA ) IN THE COURT OF  
 2 ) COMMON PLEAS  
 3 COUNTY OF SPARTANBURG ) OF THE SEVENTH  
 4 ) JUDICIAL CIRCUIT  
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MONQUEZ YOUNG,  
 Applicant,  
 vs.  
 THE STATE OF SOUTH CAROLINA,  
 Respondent.

TRANSCRIPT OF RECORD  
 2018-CP-42-03066

October 11, 2019  
 Spartanburg, South Carolina

B E F O R E:

HONORABLE G. THOMAS COOPER, Judge.

A P P E A R A N C E S

RODNEY W. RICHEY, ESQUIRE  
 For The Applicant

JACOB A. ISENBERG, ASSISTANT ATTORNEY GENERAL  
 For The State

Julie A. Cendroski,  
 Circuit Court Reporter  
 Seventh Judicial Circuit

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EXHIBITS

MARKED      ENTERED

NO EXHIBITS PROFFERED

1                   MONQUEZ YOUNG VERSUS STATE OF SOUTH CAROLINA

2                   THE COURT: Attorney General, you may proceed.

3                   MR. ISENBERG: Good morning, Your Honor. The  
4 next or the first case of the day is Monquez Young  
5 versus the State of South Carolina. This is Case Number  
6 2018-CP-42-03066. This case is based upon an  
7 application filed by Mr. Young on September 4th, 2018,  
8 for postconviction relief. He's confined in the South  
9 Caroline Department of Corrections pursuant to the  
10 orders of the Spartanburg County Clerk of Court.

11                   He was indicted at the October 2017 term of the  
12 Spartanburg County grand jury for use of a firearm while  
13 under the influence, throwing bodily fluids, discharging  
14 a firearm at or into a dwelling, attempted murder and  
15 possession of a weapon during a violent crime.

16                   On March 13, 2018, he pled guilty as indicted.  
17 The Honorable J. Derham Cole sentenced him to  
18 imprisonment for concurrent terms of up to 30 years for  
19 -- that would be the attempted murder charge, but that  
20 would be suspended upon the service of 15 years,  
21 followed by five years probation on those. He did not  
22 appeal his plea or sentence. And with that, I'll let  
23 opposing counsel call his case.

24                   THE COURT: Mr. Richey?

25                   MR. RICHEY: Thank you, Your Honor. We call

1 Mr. Young.

2 (Witness comes forward.)

3 THE COURT: Stand right there. Put your left  
4 hand on the Bible and raise your right hand as far as  
5 you can. (Complies.)

6 Do you solemnly swear or affirm the testimony  
7 you're about to give in this hearing to be the truth,  
8 the whole truth, and nothing but the truth so help you  
9 God?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Have a seat.

12 MONQUEZ YOUNG,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. RICHEY:

16 Q. Sir, would you state your name, please.

17 A. Monquez Young.

18 Q. And, Mr. Young, are you currently in the  
19 Department of Corrections?

20 A. Yes, sir.

21 Q. And what are you in there for?

22 A. Attempted murder and possession of a firearm.

23 Q. Okay. And you, you were charged in Spartanburg  
24 County; is that correct?

25 A. Yes, sir.

## DIRECT EXAMINATION OF MONQUEZ YOUNG BY MR. RICHEY

1 Q. And who represented you on those charges?

2 A. Mr. Chad Snyder and James cheek.

3 Q. Okay. And, and you filed an application for  
4 postconviction relief because you believe they did not  
5 effectively represent you; is that correct?

6 A. Yes, sir.

7 Q. And, and this occurred -- briefly, the incident  
8 occurred -- can you tell me briefly what happened in the  
9 incident, just briefly?

10 A. What do you mean?

11 Q. Can you briefly tell me what happened in this  
12 incident?

13 A. The gun, firearm went off and hit Tiffany Powell.

14 Q. Okay. And prior to the gun going off, was there  
15 any kind of scuffle between you and her?

16 A. Yeah, she put her hands on me.

17 Q. Okay. And, and you received this 15-year  
18 suspended sentence; is that correct?

19 A. Yes, sir.

20 Q. And you're asking this Court to grant you a new  
21 trial, correct?

22 A. Yes, sir.

23 Q. And one of the issues you had is that your  
24 preliminary hearing was waived?

25 A. Yes, sir.

1 Q. And did you ask the lawyers to have the hearing?

2 A. Yes, sir.

3 Q. And who did you ask?

4 A. Chad Snyder.

5 Q. And what happened with that request?

6 A. He said that he would set me up another schedule  
7 and I got the envelope but I was never on the docket --

8 Q. Okay.

9 A. -- to go.

10 Q. I'm sorry?

11 A. I was never on the docket to show.

12 Q. And you made that request more than one time?

13 A. Yes, sir.

14 Q. Okay. Did you and -- did you and your attorney  
15 go over the discovery?

16 A. No, sir.

17 Q. Okay. Did you, did you get the discovery?

18 A. Yes, sir.

19 Q. But did you have an opportunity to sit down and  
20 discuss it with them?

21 A. They came ---

22 Q. Or visit with them.

23 A. They came to visit me three times and out of  
24 those three times they never opened my discovery up and  
25 spoke with me about it.

## DIRECT EXAMINATION OF MONQUEZ YOUNG BY MR. RICHEY

1 Q. You say they never opened it up. They just ---

2 A. They just came and was telling me that you're  
3 looking at 15 years and if you don't take the 15 you're  
4 going to trial, you're getting 30.

5 Q. Okay. Did you, did you know what the evidence  
6 was against you?

7 A. As far as me reading my discovery I know what I  
8 was being charged as reading discovery, but them sitting  
9 down and talking to me about it, no.

10 Q. Was there any investigation done in the case that  
11 you're aware of?

12 A. No, sir.

13 Q. None?

14 A. No.

15 Q. And if an investigation was done, do you believe  
16 they would have uncovered stuff to help your case?

17 A. Yes, sir.

18 Q. And what would that be?

19 A. I don't know.

20 Q. Okay. But you, you did want them to investigate  
21 your case, correct?

22 A. Yes, sir.

23 Q. Okay. All right. And, and the indictment  
24 process, it's your position, that these cases, the  
25 indictments were not proper; is that correct?

1 A. Correct.

2 Q. Okay. And why is that?

3 A. It doesn't have a true bill stamp or a no bill  
4 stamp and it doesn't have a John Hancock signature as  
5 far as the grand jury that have initials.

6 Q. And I'm gonna go -- you have seen this plea  
7 transcript, correct? You've seen this?

8 A. Yes, sir.

9 Q. And you answered these questions in a, in a way  
10 that you were satisfied and all this stuff. Can you  
11 tell me why you answered these questions the way you  
12 did?

13 A. Because when I started to speak up, whenever the  
14 solicitor had told the judge that I've been true billed  
15 on the indictments I was told that I wasn't making  
16 myself look good. And from then on out I was telling  
17 the Judge yes, sir, to the question that was being  
18 asked.

19 Q. Okay. And so ---

20 A. Because I didn't want to make myself look bad, as  
21 was said I was looking bad.

22 Q. Who said you were looking bad?

23 A. Mr. James Cheek.

24 Q. And you understand that in this new trial that  
25 you could, in theory you could get more time on the way

1 back, you understand that?

2 A. Yes, sir.

3 Q. Okay. Thank you. Answer any questions the  
4 Attorney General will have for you.

5 MR. ISENBERG: May it please the Court?

6 THE COURT: Yes, sir, you may proceed.

7 MR. ISENBERG: Thank you.

8 CROSS-EXAMINATION

9 BY MR. ISENBERG:

10 Q. Good morning, Mr. Young.

11 A. Good morning.

12 Q. How are you doing today?

13 A. I'm doing all right.

14 Q. You testified on direct that you wanted an  
15 investigation, correct?

16 A. Yes, sir.

17 Q. Okay. But you also testified that you didn't  
18 know what you wanted investigated, correct?

19 A. Yes, sir.

20 Q. So you had nothing to offer your attorneys to  
21 investigate?

22 THE COURT: You've got to answer the question.

23 BY MR. ISENBERG:

24 Q. Yes or no?

25 A. Yeah. I don't know.

1 Q. You don't know? You still don't know if there's  
2 anything to investigate?

3 A. Oh, yes, sir.

4 Q. Okay. All right. So now that we know that there  
5 was nothing to investigate, let's move on to discovery.  
6 You testified that your attorneys visited you three  
7 times.

8 A. Yes, sir.

9 Q. And they never went over discovery with you,  
10 correct?

11 A. Yes, sir.

12 Q. Okay. Now, did you ever go over discovery on  
13 your own?

14 A. Yes, sir.

15 Q. Okay. So you did review the discovery, correct?

16 A. Yes, sir.

17 Q. Okay. And you also testified that there was a  
18 plea offer for 15 years, correct?

19 A. Yes, sir.

20 Q. Okay. Are you now saying that you wish you would  
21 have gone to trial instead of accepting that 15 years?

22 A. Yes, sir.

23 Q. Then why did you agree with the facts that the  
24 solicitor stated at the plea hearing?

25 A. Because my attorneys was telling me that I'm

## CROSS-EXAMINATION OF MONQUEZ YOUNG BY MR. ISENBERG

1 looking at 15 years and if I did not take the 15 years I  
2 was going to trial and it was giving me 30. So when I  
3 went in an open plea, I pled guilty to the 15 years.

4 Q. So you agreed to the facts because you didn't  
5 want to go to trial, correct?

6 A. No, I agreed. Yeah, I took the 15 years instead  
7 of going to trial and getting the 30 because I was told  
8 if I go to trial I'm getting 30 years. So I agreed to  
9 take the 15 years.

10 Q. Okay. And why is it that you want to go to trial  
11 now?

12 A. Because I just I feel like that was too much  
13 time.

14 Q. So you want to go to trial now because the  
15 sentence that you received was too much in your opinion?

16 A. And ---

17 Q. Yes or no?

18 A. Yes.

19 Q. No further questions.

20 MR. RICHEY: No other questions.

21 THE COURT: Nothing else? All right, you may  
22 come down. Thank you.

23 (Witness leaves witness stand.)

24 MR. RICHEY: I call James Cheek.

25 (Witness comes forward.)

1 THE COURT: Put your left hand on the Bible, sir,  
2 raise your right hand. (Complies.)

3 Do you solemnly swear or affirm the testimony  
4 you're about to give in this hearing will be the truth,  
5 the whole truth, and nothing but the truth?

6 THE WITNESS: I do.

7 THE COURT: All right. Proceed.

8 JAMES CHEEK,  
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. RICHEY:

12 Q. Sir, would you state your name, please.

13 A. James Cheek.

14 Q. And, Mr. Cheek, are you an attorney in  
15 Spartanburg?

16 A. I am.

17 Q. And where are you employed?

18 A. I'm employed for the last 15 years with the  
19 Spartanburg County Public Defender Office.

20 Q. And during your employment did you represent Mr.  
21 Young?

22 A. I assisted in the representation of Mr. Young.  
23 The lead attorney would have been Mr. Chad Snyder.

24 Q. Okay. And did -- and I'm gonna go through these  
25 issues with you. In terms of the investigation, did you

## DIRECT EXAMINATION OF JAMES CHEEK BY MR. RICHEY

1 have any participation in that?

2 A. I don't understand the term investigation.

3 That's usually relying upon --

4 Q. Well ---

5 A. -- what the law enforcement investigates. What  
6 does he mean by investigate?

7 Q. Did you, did you look into any of the facts and  
8 evidence of the case with Mr. Young?

9 A. I did.

10 Q. Okay. And did you, did you review any discovery  
11 with him?

12 A. All of it.

13 Q. Okay. And did you -- where did you review that,  
14 at the jail?

15 A. At the Spartanburg County Detention Facility, as  
16 well as here at the courthouse.

17 Q. From your discussions with him, do you believe he  
18 understood what was in the discovery?

19 A. I do believe that he did understand what was in  
20 the discovery. He had opportunity to review it himself  
21 on his own. We had at least two or three different  
22 conversations with him. He never indicated he didn't  
23 understand what he was charged with, what the  
24 allegations were, law enforcement, the victims in the  
25 case, about any witnesses, one of whom would have been

1 his sister.

2 Q. And, and you -- the indictment process, were you  
3 satisfied with the indictments in this case?

4 A. I am.

5 Q. Do you believe that they were, in fact, true  
6 billed?

7 A. I do.

8 Q. Okay. And did you have any discuss -- you've  
9 heard the testimony. Did you have any discussions with  
10 him during the plea about what to say and not to say?

11 A. No, I did not.

12 Q. Okay. And you were not involved with the waiver  
13 of the preliminary hearing; is that correct?

14 A. No, I don't -- I do not participate generally in  
15 the preliminary hearing process.

16 Q. You participate more after there was a decision  
17 made whether to plead or not?

18 A. No.

19 Q. Okay.

20 A. I participate in the generation of a plea by  
21 having conversations with the clients prior to a final  
22 decision for the entering of a plea.

23 Q. And in terms of a case, is it your position that  
24 this was a favorable outcome for him?

25 A. I think it was quite a favor outcome. I've heard

## CROSS-EXAMINATION OF JAMES CHEEK BY MR. ISENBERG

1 the discussion and testimony here today. I would have  
2 never said give him 30 years because there was  
3 significantly more time he was facing given the  
4 aggregate of the charges and the sentences that he could  
5 have been facing had he gone to trial.

6 Q. And, and do you believe if he had gone to trial,  
7 what is your opinion about it being successful?

8 A. Success for the trial?

9 Q. Yes, sir.

10 A. Oh, I think that there would have been absolutely  
11 no chance of a guilty verdict not being rendered by the  
12 jury.

13 Q. Thank you. Answer the questions the State has  
14 for you.

15 MR. ISENBERG: May it please the Court?

16 THE COURT: Yes, sir. Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. ISENBERG:

19 Q. Good morning, Mr. Cheek.

20 A. Good morning.

21 Q. How are you doing today?

22 A. Doing well, thank you.

23 Q. Good. Good. You testified that you weren't his  
24 attorney during the preliminary hearing, correct?

25 A. No, I did not attend the preliminary hearing.

1 Q. Okay. And you testified you went over discovery  
2 with him.

3 A. I did.

4 Q. Okay. And you testified that the only potential  
5 investigation you could have done was two on his sister;  
6 is that correct?

7 A. I don't think I test -- I don't think I said  
8 that.

9 Q. Okay. I -- Okay, that's fine. You testified  
10 that ---

11 A. I said that given that one of the witnesses would  
12 have been his sister --

13 Q. Okay.

14 A. -- and he was aware of that --

15 Q. Uh-huh.

16 A. -- had he gone to trial, his own sister would  
17 have been testifying as to what involvement he had and  
18 the injuries that were inflicted upon her from him.

19 Q. Okay. Did that factor in to his decision to  
20 plead?

21 A. I don't know what factored in. I think mostly  
22 the fact that there was significant credible evidence  
23 would have been given that he was found with a gun at  
24 another location from the incident still in an  
25 intoxicated state that his sister and the victim had

## CROSS-EXAMINATION OF JAMES CHEEK BY MR. ISENBERG

1 told law enforcement he was under at the time of the  
2 commission of the acts that led to his arrest and  
3 prosecution.

4 Q. Right. And his sister and the victim were both  
5 likely gonna testify that he fired that gun, correct?

6 A. Well, I think they would have testified that  
7 almost simultaneous with him being pushed out of the  
8 door --

9 Q. Uh-huh.

10 A. -- that a gun that they knew he had in his  
11 possession was discharged through the door and that he  
12 was the only person in the hallway at the time of the  
13 discharging of the firearm that result in the injury to  
14 Ms. Powell.

15 Q. So the State's case would have essentially been  
16 he's the only person who could have fired that shot?

17 A. Absolutely.

18 Q. And you discussed that with him, correct?

19 A. Absolutely.

20 Q. Okay. And so he knew that the State had a pretty  
21 good case against him when he pled guilty, right?

22 A. He knew that the State had almost iron clad.

23 Q. Okay. And you also testified on direct that you  
24 didn't direct him to answer any of the questions in a  
25 specific way during the plea hearing, correct?

1 A. I may have told him to calm down --

2 Q. Okay.

3 A. -- and not interrupt and to listen and be  
4 responsive at the time. That the Court would give him  
5 an opportunity to respond to any inquiries from the  
6 Court.

7 Q. And is that something you normally tell your  
8 clients during a plea hearing?

9 A. Absolutely. Be respectful. You ask them for  
10 leniency and mercy. You've got to show respect to the  
11 Court.

12 Q. And that, that's because you also told him the  
13 judge has the discretion to sentence them to whatever  
14 they want to with the statutory limits, correct?

15 A. Well, the Court in its own decision in entering  
16 the sentence, I felt especially since there was a degree  
17 of emotionalism alleged at the time of the incident,  
18 that it was not a good idea for Mr. Young to get in  
19 front of the Court and just demonstrate that he was out  
20 of control.

21 Q. Right.

22 A. To be in control. To be respectful and to ask  
23 the questions to his best of his ability.

24 Q. Right. Okay. I have no further questions.

25 A. Thank you.

## DIRECT EXAMINATION OF CHARLES SNYDER BY MR. RICHEY

1 Q. Thank you.

2 THE COURT: Any redirect?

3 MR. RICHEY: No questions.

4 THE COURT: All right. You may come down.

5 THE WITNESS: Thank you.

6 (Witness leaves witness stand.)

7 MR. RICHEY: We call Mr. Smith (sic), please.

8 THE COURT: Snyder, you mean?

9 MR. RICHEY: Yeah.

10 (Witness comes forward.)

11 THE WITNESS: Judge, I apologize. I was over  
12 across the hall doing motions, so I was a little bit  
13 late.

14 THE COURT: You're here now. Place your left  
15 hand on the Bible, raise your right hand. (Complies).

16 Solemnly swear or affirm the testimony you're  
17 about to give in this case will be the truth, the whole  
18 truth, and nothing but the truth so help you God?

19 THE WITNESS: I do.

20 THE COURT: Thank you. Be seated.

21 CHARLES SNYDER,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. RICHEY:

25 Q. Sir, would you state your name, please.

1 A. Charles Snyder.

2 Q. And where are you employed?

3 A. Spartanburg County Public Defender's Office.

4 Q. And during your employment there, did you  
5 represent Mr. Young?

6 A. I did.

7 Q. And you did some of that representation with Mr.  
8 Cheek; is that correct?

9 A. During the plea, yes, sir.

10 Q. Okay. And the initial part -- and so the case  
11 was essentially your case originate was your case,  
12 correct?

13 A. It was actually originally assigned to Matt  
14 Shealy with our office.

15 Q. Yeah.

16 A. He left and then I took over his representation.

17 Q. Okay. And so at the time you took over, in terms  
18 of the preliminary hearing and all that stuff, did you  
19 -- do you -- did you waive that prelim or do you know?

20 A. I was going through my records trying to figure  
21 that out. I looks like a letter was sent to Mr. Young  
22 September 21st of 2017, from Matt Shealy, notifying him  
23 that his preliminary hearing was set for October 9th,  
24 2017. I have a letter here November 1st, 2017,  
25 informing him that Mr. Shealy left the office and that I

1 was taking over, so that would have been after his  
2 preliminary hearing. I have no notice from that  
3 hearing.

4 Q. Okay. And do you -- okay. And do you know where  
5 the -- so he actually requested one; is that correct?

6 A. We request preliminary hearings for all of our  
7 clients.

8 Q. Okay. In terms of the discovery, did you have an  
9 opportunity to discuss that with him?

10 A. I did. I actually, as soon as I get everybody's  
11 representation I send him his discovery. And then I  
12 know that we met several times and went over it every  
13 time.

14 Q. So it wasn't a situation where you went down and  
15 just talked to him and not go over the discovery?

16 A. We -- I can't remember every conversation we had,  
17 but I go there, we talk about discovery, we talk about  
18 other things, so... But we, we did go over discovery  
19 numerous times.

20 Q. And in terms of, in terms of an investigation,  
21 was there any information in the discovery that you felt  
22 like you need to go deeper into?

23 A. It was pretty cut and dry.

24 Q. Well, what do you mean by that?

25 A. As Mr. Cheek just told the Court, essentially

1 they were, he and his sister and friend and child were  
2 all just having a good time. They were drinking. I  
3 think there was some evidence presented at the guilty  
4 plea. There was also marijuana intake.

5 And then they, I know Monquez made some comments  
6 directed towards the friend and then towards the  
7 friend's son, ten-year-old son. That's when he was  
8 asked to leave and things began, escalated a little bit.  
9 I know that he stumbled when he was -- and he was mad  
10 and embarrassed. And when the door -- and when he was  
11 outside, the door shut and she shot through on them.  
12 And that's when the injury happened.

13 Q. Okay. And, and the indictments, did you have any  
14 opportunity to review those prior to the guilty plea?

15 A. I did.

16 Q. And did you see any defects in those indictments?

17 A. Repeat the question.

18 Q. Was there any defects in them, in the  
19 indictments?

20 A. Defects?

21 Q. Yeah.

22 A. I'm sorry, I thought you said facts. No. They  
23 all were true billed and they all seemed straight  
24 forward.

25 Q. And what do you believe -- and you, you know that

## DIRECT EXAMINATION OF CHARLES SNYDER BY MR. RICHEY

1 Mr. Young is requesting a new trial on this case. Do  
2 you understand that?

3 A. I do.

4 Q. And, and do you believe that at a new trial he  
5 would have an opportunity to get out of his sentence?  
6 Does he have an opportunity to win a new trial?

7 A. As I stated, the facts are pretty cut and dry. I  
8 mean, I don't -- this case was never going to be a  
9 trial. I mean, it was always -- it was one person  
10 always. He had a pistol and shot through the door.  
11 Someone was shot. I mean, there was little doubt as to  
12 what happened.

13 Q. Thank you. Answer the questions the Attorney  
14 General has.

15 MR. ISENBERG: I have no questions for this  
16 witness, Your Honor.

17 THE COURT: All right. You may come down.

18 (Witness leaves witness stand.)

19 MR. ISENBERG: Your Honor, we'd ask the witness  
20 be excused.

21 THE COURT: Any objection?

22 MR. RICHEY: None, Your Honor.

23 THE COURT: The witness is excused.

24 (Witness leaves courtroom.)

25 MR. RICHEY: We have no other witnesses.

1 THE COURT: Anything further from the State?

2 MR. ISENBERG: Your Honor, nothing from the  
3 State.

4 THE COURT: All right. That will conclude this  
5 hearing.

6 MR. ISENBERG: Thank you, Your Honor.

7 (Court takes matter under advisement.)

8 (Hearing concluded at 9:59 a.m.)

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10 --- THIS ENDS REQUESTED TRANSCRIPT ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the court of Common Pleas for Spartanburg County, South Carolina, on the 11th day of October, 2019.

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

s/Julie A. Cendroski  
Julie A. Cendroski  
Circuit Court Reporter  
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Monquez J. Young, SCDC #375637

Applicant,

v.

State of South Carolina,

Respondent.

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

) Case No.: 2018-CP-42-03066

) **ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (hereafter "PCR") application, filed by Applicant Monquez J. Young on September 4, 2018. Respondent made its return on August 8, 2019. An evidentiary hearing convened on October 11, 2019, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Assistant Attorney General Jacob A. Isenberg, of the South Carolina Attorney General's Office, represented Respondent.

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Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counselors Charles W. Snyder and James A. Cheek (hereafter "Counsel") also testified. After a thorough review of all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof in establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law are set forth below.

**Procedural History**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. During the October 2017 term, Applicant was indicted by the Spartanburg County Grand Jury for use of a firearm while under

the influence (2017-GS-42-05574), throwing bodily fluids (2017-GS-42-05575), discharging a firearm at or into dwelling (2017-GS-42-05576), attempted murder (count one), and possession of a weapon during a violent crime (count two) (2017-GS-42-05577). Counselors Snyder and Cheek represented Applicant. Assistant Solicitor Spenser H. Smith of the Seventh Circuit Solicitor's Office, prosecuted the case. On March 13, 2018, Applicant pled guilty as indicted before the Honorable J. Derham Cole. Judge Cole sentenced Applicant to thirty years imprisonment, suspended to fifteen years with five years' probation for attempted murder, plus five years' imprisonment for possession of a firearm during the commission of a crime charge, ten years for discharging a firearm, two years for using a firearm under the influence and five years for throwing bodily fluids, with all sentences running concurrently. Applicant did not appeal his plea or sentence.

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Statement of Facts

On June 30, 2017, the victim, Tiffany Powell, was at her apartment. (Plea Tr. 19). Applicant's sister and the victim are friends and both live at the same apartment complex. (Plea Tr. 19). They, along with Applicant, had a get-together at one of their apartments. (Plea Tr. 19). The victim's child and Applicant's sister's children were also there. (Plea Tr. 19). Applicant was drinking beer while in the apartment. (Plea Tr. 19). Applicant became angry and started verbally disparaging the victim. (Plea Tr. 19). Her ten-year old son tried to tell him to stop and then Applicant started insulting him instead. (Plea Tr. 19). Applicant was asked to leave and the victim began escorting him out, opening the door. (Plea Tr. 19). He walked out, but as she was closing the door a gunshot went through the door. (Plea Tr. 19-20). The gunshot went through her forearm, causing significant damage, and then passed into her abdomen, causing long-term muscle and nerve damage, a loss of mobility in her hand, and significant scarring. (Plea Tr. 20).

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While treated at the hospital, the victim discovered she was two months pregnant. (Plea Tr. 20).

Applicant fled the scene. (Plea Tr. 20). The police did a canine track and saw there was a bullet hole through the door and a lot of blood inside the apartment. (Plea Tr. 20). All of the children were present during the incident and witnessed what happened. (Plea Tr. 20). Police did a canine track to a nearby Metro P.C.S. store and found Applicant in the bushes and a pistol nearby. (Plea Tr. 20). He was very intoxicated when they approached him and took him into custody. (Plea Tr. 20). When Applicant was transported to city hall for a potential interview, he spat on Officers Smith and Adams, and they had to put a spit mask on him. (Plea Tr. 21). Applicant was recorded on video shaking his head until he got the mask off. (Plea Tr. 21). Applicant never gave an explanation for his behavior, other than saying he wanted to talk to his mother. (Plea Tr. 21). Upon inquiry by the Court, Applicant confirmed the above-articulated facts. (Plea Tr. 22).

**Current Action before this Court**

In his PCR application, Applicant alleges he is being detained unlawfully for the following reasons:

1. "Counsel fail[ed] to give vital instruction on the [nolo contendre]."
  - a. "By pleading guilty movant thereafter [sic]."
2. "[Flawed] investigation defendant intoxication exclude question."
  - a. Applicant cites to *Baker v. United States*, 781 F. 2d 85, 90 (6th Cir. 1986).
3. "Procedural default, [preclude] them from [pursuing] claims."
  - a. Applicant cites to *United States v. French*, 719 F. 2d 387, 390 (11th Cir. 1983).

Applicant requests relief as follows: "removal of 10 years and probation."

At the PCR hearing, Applicant proceeded forward on the following claims: the plea was involuntary because he believes fifteen years is too long of a sentence; there were flaws in the

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indictment process; Counsel were ineffective when they waived the preliminary hearing after Applicant requested one; Counsel were ineffective for failure to investigate; and Counsel were ineffective for failure to review discovery.

Summary of Testimony Presented at the Evidentiary Hearing

*Applicant's Testimony*

Applicant alleged Counsel were ineffective for failing to request a preliminary hearing after Applicant specifically requested one several times. (PCR Tr. 6). Applicant stated Counsel gave Applicant the discovery in his case, but they never discussed it with him during any of their meetings. (PCR Tr. 7). Instead, according to Applicant, the only thing Counsel did at the meetings was tell him if he pled guilty he would receive fifteen years' imprisonment, but if he went to trial he would receive thirty years. (PCR Tr. 8). Applicant stated he knew what the charges were and the evidence against him by reading the discovery, but Counsel never discussed it with him. (PCR Tr. 8). Applicant explained he wanted Counsel to investigate the evidence against him and alleged it would have helped his case if they did, but he did not articulate any specific issue or witnesses he believes Counsel should have investigated. (PCR Tr. 8, 10-11).

Applicant testified he believed the indictment process was improper because the indictments did not have a true-bill stamp or no-bill stamp and did not have grand jury initials on them. (PCR Tr. 9). Applicant admitted he answered the questions from the plea judge at the plea hearing in a way that signified to the judge that he was satisfied with the process, but he claimed he did this only because he was told by Cheek it did not look good if he spoke up. (PCR Tr. 9).

On cross-examination, Applicant stated he pled guilty because otherwise he would have been sentenced to thirty years, instead of fifteen. (PCR Tr. 12). However, at the PCR hearing,

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Applicant stated he would have rather gone to trial instead of entering a plea, because he felt he received too much time at the plea hearing. (PCR Tr. 12).

***Plea Counsel Testimony – James Cheek***

Cheek testified he has been employed for the last fifteen years with the Spartanburg County Public Defender's Office. (PCR Tr. 13). He explained he assisted in the representation of Applicant, but Snyder was the lead attorney on the case. (PCR Tr. 13).

Cheek stated he discussed the evidence with Applicant and reviewed all of the discovery with him at the detention center. (PCR Tr. 14). Cheek testified he thought Applicant understood the discovery. (PCR Tr. 14). Cheek explained Applicant reviewed the discovery by himself, and then talked with Counsel about it at least two or three times. (PCR Tr. 14). According to Cheek, Applicant never indicated he did not understand what he was charged with, what the allegations were, the actions taken by law enforcement, or the potential testimonies from the victims or witnesses. (PCR Tr. 14-15). Cheek further testified he never spoke with Applicant about what to say at the plea hearing; he was not involved in the waiver of the preliminary hearing; and he did not have any further involvement in the case after Applicant entered a guilty plea. (PCR Tr. 15).

Cheek stated he thought the plea deal was favorable to Applicant because Applicant would have faced a significantly longer sentence if he went to trial. (PCR Tr. 15-16). Cheek stated he believed there was no chance Applicant would be found not guilty at trial, and he discussed with Applicant his belief the State had an "almost iron clad" case against Applicant. (PCR Tr. 16). On cross-examination, Cheek testified he thought Applicant decided to plead guilty because there was significant evidence that Applicant was guilty, including multiple witnesses likely willing to testify. (PCR Tr. 17-18). Cheek testified he did not direct Applicant's answers during the plea hearing, but he likely told Applicant to remain calm, not to interrupt,

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listen, and be responsive when the court provided him with a time to respond. (PCR Tr. 15, 18-19). Cheek explained he normally tells clients to do this, to ensure they are respectful before the court. (PCR Tr. 19). Cheek further stated it was especially important here because, given the emotional nature of the case, it would look bad if Applicant seemed out of control. (PCR Tr. 19).

***Plea Counsel Testimony - Charles Snyder***

Snyder testified he works for the Spartanburg County Public Defender's Office and represented Applicant leading up to the plea hearing. (PCR Tr. 21). Snyder testified Applicant's previous counsel, Matt Shealy, sent a letter to Applicant on September 21, 2017, notifying Applicant that his preliminary hearing was set for October 9, 2017. (PCR Tr. 21). Snyder explained Applicant then received a letter on November 1, 2017, presumably after a preliminary hearing had occurred, informing Applicant that Shealy had left the office, and Snyder would take over the case. (PCR Tr. 22). Snyder stated the office has a policy of requesting preliminary hearings for all of their clients. (PCR Tr. 22).

Snyder stated he met with Applicant several times, and every time they met they discussed the discovery. (PCR Tr. 22). Snyder testified the evidence in this case was "cut and dry," and there was nothing he thought needed further investigation. (PCR Tr. 22). Snyder further testified he did not find any defects with the indictments, and stated they were true-billed and straightforward. (PCR Tr. 23). Snyder stated he never thought Applicant would want to go to trial on the case because the facts were so clear, there was little doubt about what happened. (PCR Tr. 24).

**Findings of Fact and Conclusions of Law**

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Before this Court are the Spartanburg County Clerk of Court Records,

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Applicant's South Carolina Department of Corrections Records, the plea transcript, and the records for this PCR action. Pursuant to sections 17-27-70 and -80 of the South Carolina Code of Laws, this Court dismisses the application based upon the following findings:

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 147 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny

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of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

The court makes this determination based upon the totality of the evidence. *Id.* at 695.

Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111 (2010) (quoting *Strickland*, 466 U.S. at 697).

Regarding guilty pleas specifically, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

However, the applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness inherently included in the plea's judicial procession. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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These standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

### *Involuntary Guilty Plea*

Applicant claims his plea was invalid because he feels the sentence he received is too lengthy, and Counsel failed to advise him that he could enter a *nolo contendere* plea instead of a guilty plea. For a guilty plea to be valid, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Boykin v. Alabama*, 398 U.S. 238, 242 (1969)). Further, an applicant can attack the voluntary, knowing and intelligent character of a guilty plea entered with advice of counsel by showing counsel's advice in taking the plea fell below an objective standard of reasonableness. *Porter v. State*, 368 S.C. 378, 629 S.E.2d 353 (2006). "That a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." *McMann v. Richardson*, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." *Id.* at 771.

Practically, a plea of *nolo contendere* "is a plea of guilty in so far as the consequences in the particular case in which it is pled." *Kibler v. State*, 267 S.C. 250, 254, 227 S.E.2d 199, 201

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(1976). In South Carolina, *nolo contendere* pleas are only allowed in misdemeanor cases. S.C. Code Ann. § 17-23-40 (2006); *Kibler*, 267 S.C. at 254, 227 S.E.2d at 201.

Here, Applicant alleges the plea was invalid because he was not told he could enter a *nolo contendere* plea, and he is dissatisfied with the amount of time he was sentenced to serve. Applicant was charged with commission of multiple felonies; not misdemeanors. Thus, because *nolo contendere* pleas are only permissible in misdemeanor cases, not felonies, he was not entitled to enter such a plea in this case. *Id.* Accordingly, this Court finds Counsel was not deficient, and Applicant not prejudiced because the *nolo contendere* plea was not an option available to Applicant.

Additionally, Applicant testified he and Counsel discussed a fifteen-year sentence would be imposed if Applicant entered a plea, instead of a possible thirty-year sentence if the case proceeded to trial. (PCR Tr. 8). At the plea hearing, the plea judge confirmed Applicant knew the possible sentences that could be imposed for each charge he pled guilty to. (Plea Tr. 4-5). Thus, this Court finds Applicant knew the sentences that could be imposed before entering the plea and, accordingly, the plea was entered voluntarily, knowingly, and intelligently. Accordingly, Applicant is not entitled to relief based upon his current dissatisfaction with the sentence imposed, because this Court finds he willingly pled guilty to the charges knowing the sentence which would be imposed. Further, Applicant is not entitled to a new trial or resentencing simply because he changed his mind. *See Edmonds v. Lewis*, 546 F.2d 566, 568 (4th Cir. 1976) (citing *Martinez v. United States* 411 F.Supp. 1352, 1359-60 (D.N.J. 1976)) (allowing a defendant to withdraw a plea without a valid reason for doing so "would seriously undermine respect for the oath, and ultimately for the judicial process itself") (quotations omitted). Accordingly, this Court find Applicant has not met his burden of proof and relief is denied based

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on this allegation.

*Ineffective Assistance of Counsel*

"[G]uilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea."

*Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

This Court finds Applicant's allegations concerning Counsels' failure to investigate, failure to review discovery, and failure to challenge defects in the indictments were waived when Applicant entered an otherwise valid plea. These allegations are addressed, in more detail, below.

*Failure to Investigate*

Applicant stated Counsel were ineffective for failure to investigate. However, when pressed on this point, Applicant could not explain what issues or defenses he wanted Counsel to investigate, how further investigation would have helped his case, or what information further investigation would have uncovered. (PCR Tr. 8, 10-11). However, in his application Applicant stated that Counsel failed to investigate a voluntary intoxication defense. *State v. Vaughn*, 268 S.C.119, 125, 232 S.E.2d 328, 330 (1977) (stating that "voluntary intoxication, where it has not produced permanent insanity, is never an excuse for or a defense to crime"). Snyder credibly testified the discovery was clear, and there was nothing he felt he needed to investigate further. (PCR Tr. 22). Moreover, at the plea hearing, Applicant clearly waived his right to assert a defense. (Plea Tr. 9). This Court therefore finds Applicant has failed to meet his burden of proving Counsel were in any way deficient.

This Court further finds Applicant has not presented any evidence to prove his allegation that Counsel should have conducted further investigation. Therefore, Applicant has failed to

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meet his burden of proving he was prejudiced by the lack of an investigation. *See Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009) (whether an applicant is prejudiced by counsel's failure to investigate depends on whether evidence discovered after the plea would have led counsel to change his recommendation as to the plea).

This Court concludes Applicant entered into the plea fully aware of the discovery and evidence against him, as well as the status of any potential defenses, and he waived his right to demand Counsel investigate further or present a defense. Accordingly, this Court finds Counsel were not deficient, nor was Applicant prejudiced by the lack of investigation. Thus, this claim is dismissed and relief accordingly denied.

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*Failure to Review Discovery*

Applicant also contends Counsel failed to review discovery with him. Applicant conceded Counsel gave him a copy of the discovery in this case and stated he knew the charges and the evidence against him by reading the discovery. At the plea hearing, Applicant confirmed that he knew the charges, indictments, and potential punishments. (Plea Tr. 6). However, Applicant claims Counsel never discussed the materials with him. (PCR Tr. 7-8). At the PCR hearing, Check credibly testified he reviewed all of the discovery with Applicant at the detention center several times, and he opined Applicant understood what was in the discovery. (PCR Tr. 14). Additionally, Snyder also credibly testified he met with Applicant several times and every time they met they discussed the discovery. (PCR Tr. 22). At the plea hearing, Applicant never indicated he did not understand the evidence against him. (PCR Tr. 14-15).

Thus, based on the combined record of the plea hearing and the credible testimony of Check and Snyder, this Court finds Applicant reviewed discovery with Counsel and was fully aware of the evidence against him. Applicant has not met his burden of proof as to either

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deficiency or prejudice, and accordingly, this claim is dismissed and relief denied on this issue.

*Flaws in Indictment Process*

Applicant alleged he is entitled to PCR because of "flaws in the indictment process" – specifically that it does not have a "true bill or no bill stamp" or a signature from the grand jury. (PCR Tr. p. 9). Although Counsel testified the indictments were true-billed and neither found any defects, the documents included in the records before this Court are lacking a true-bill stamp. However, this Court takes judicial notice of the entry on the Spartanburg County Public Index indicating these indictments were true-billed on October 27, 2017,<sup>1</sup> and for the reasons explained below, denies relief as to this issue.

Challenges to the indictment must be raised before a jury is sworn. S.C. Code Ann. § 17-19-90 (2003). If non-jurisdictional defects apparent on the face of the document are not raised before then, they are waived. *Hooks v. State*, 353 S.C. 48, 577 S.E.2d 211, (2003), overruled on other grounds by *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *State v. Young*, 243 S.C.

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<sup>1</sup> Additionally, the entries on the public index indicates the indictments at issue were true-billed on October 27, 2017, which matches the date on the clerk's records. Public Index records are available at <https://publicindex.sccourts.org/Spartanburg/PublicIndex/CaseDetails.aspx?County=42&CourtAgency=42001&Casenum=2017A4210102582&CaseType=C&HKey=11774106116115817655114103771011105411912183118105121431005611376698853871004849815175836679798911610673>; [https://publicindex.sccourts.org/Spartanburg/PublicIndex/CaseDetails.aspx?County=42&CourtAgency=42001&Casenum=2017A4210202069&CaseType=C&HKey=57113479712085113117116801067011082756510847708880866788122657510276717669113116115114106526875848369](https://publicindex.sccourts.org/Spartanburg/PublicIndex/CaseDetails.aspx?County=42&CourtAgency=42001&Casenum=2017A4210202070&CaseType=C&HKey=55110525210097119839049665784564949101811221117310154106845412189997611689100841205010675521191194352); <https://publicindex.sccourts.org/Spartanburg/PublicIndex/CaseDetails.aspx?County=42&CourtAgency=42001&Casenum=2017A4210102584&CaseType=C&HKey=10710972971018753895381116755176111112434910210010851731025110183491101091031045369115766976120901108456>; <https://publicindex.sccourts.org/Spartanburg/PublicIndex/CaseDetails.aspx?County=42&CourtAgency=42001&Casenum=2017A4210102583&CaseType=C&HKey=491031164355110791101107650721185485791117952695411077767470120116991177055514911378749955701024856>.



S.C. at 102, 610 S.E.2d at 499, n.6 (2005). See also *State v. Pollard*, 255 S.C. 339, 179 S.E.2d 21 (1971) (holding that an individual can waive any provision of the Constitution intended for his benefit).

This Court therefore finds, although the indictment was not stamped, any allegations concerning indictment defects were waived by Applicant's entry of the guilty plea. There is no indication in the record Applicant asserted there were flaws in the indictments prior to entering the plea. Further, any flaws asserted now are not substantive and do not affect the notice to Applicant as to the crimes charges and the specifics of the allegations against him. Instead, his allegations deal with procedural defects that have no impact upon the requisite notice of the crimes Applicant was accused of and to which he pleaded guilty. Moreover, any defects did not deprive the court of jurisdiction when hearing and accepting an otherwise valid plea.

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SOUTH CAROLINA

Regarding the signature issue specifically, this Court reviewed the documents, and finds the indictments are signed and dated. The fact that the signature appears to be initials rather than a full signature is not an issue. See *Pringle*, 287 S.C. at 410-11, 339 S.E.2d at 128 ("[W]hile it is preferable for the grand jury foreman to sign the true bill, the foreman's signature is not essential to the validity of the indictment when the indictment is in writing and published by the clerk.").

Accordingly, this claim is dismissed and relief based upon this allegation is denied.

***Waiver of Preliminary Hearing without Applicant's Consent***

Applicant also claims Counsel were ineffective for waiving the preliminary hearing. In South Carolina, there is no constitutionally protected right to a preliminary hearing. *State v. Keenan*, 278 S.C. 361, 296 S.E.2d 676 (1982). Additionally, a preliminary hearing is not held if the defendant is indicted by a grand jury or waives presentment before the preliminary hearing occurs. Rule 2(b) SCRCrimP. Further, a preliminary hearing can be waived through "[p]lea

negotiations and silence before the trial court regarding the desire for a preliminary hearing when entering a guilty plea. *O'Neil v. State*, 277 S.C. 230, 231, 285 S.E.2d 352, 353 (1981) (citing *Bonnette v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981)).

Applicant was not entitled to a preliminary hearing to begin with, and this hearing rendered moot when Applicant was indicted by the grand jury. Further, the right to a hearing was waived when Applicant entered his plea without informing the plea court that he still wanted a preliminary hearing. Consequently, Counsel were not deficient for failing to request such a hearing, and in any event, Applicant has offered no evidence he was prejudiced by the lack of a preliminary hearing. Accordingly, this Court declines to grant relief on this ground.

**Conclusion**

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty days from the receipt by PCR counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 454, 309 S.E.2d 395 (1991); Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. PCR Counsel's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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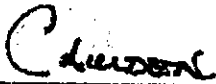
**IT IS THEREFORE ORDERED:**

1. That the application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must remain in the custody of the South Carolina Department of Corrections.

**AND IT IS SO ORDERED** this 11 day of May, 2020.



G. THOMAS COOPER JR.  
Presiding Judge  
Seventh Judicial Circuit



South Carolina

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WITNESSES

CR

Spartanburg Public Safety

M. NURUNGOLO

CR

*[Handwritten signature]*

SP

ARREST WARRANT NUMBER

2017A4210102583

ACTION OF GRAND JURY

*QE*  
Foreperson of Grand Jury  
Date: OCT 27 2017

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO.

17-03-12-5574

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 30 2017 TERM

THE STATE

vs.

Monquez Jamone Young

Indictment for  
DISCHARGING FIREARM  
AT OR INTO A DWELLING

SC Code:16-23-440(A)  
CDR Code: 52  
Class FEL/E

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Spartanburg County

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF SPARTANBURG )

INDICTMENT

At a Court of General Sessions, convened on 06/27/2017 the

Grand Jurors of Spartanburg County present upon their oath:

**DISCHARGING A FIREARM AT OR INTO A DWELLING**

That Monquez Jamone Young did in Spartanburg County on or about June 30, 2017 discharge or cause to be discharged unlawfully a firearm at or into a dwelling located at 201 Highland Ave. Apt. 201-C Spartanburg, SC, in violation of §16-23-440(B) of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

\_\_\_\_\_  
ASSISTANT SOLICITOR

\_\_\_\_\_

WITNESSES

CR

Spartanburg Public Safety

M. Norwood CR  
[Signature]

ARREST WARRANT NUMBER

2017A4210102582

ACTION OF GRAND JURY

OE  
Foreperson of Grand Jury OCT 27 2017  
Date:

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. -

17-03-12-5575

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 30 2017

TERM

THE STATE

vs.

Monquez Jamone Young

Indictment for

THROWING BODILY FLUIDS

SC Code: 24-13-0470

CDR Code: 2526

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Spartanburg County  
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WITNESSES *CR*

Spartanburg Public Safety */*

*M. NORUNGO* *CR*

*MP*

ARREST WARRANT NUMBER

2017A4210102584

ACTION OF GRAND JURY

*AE*  
Foreperson of Grand Jury *OCT 27 2017*  
Date:

VERDICT

Foreperson of Petit Jury  
Date:

*4*

DOCKET NO. -  
*17-33-12-5574*

The State of South Carolina

County of Spartanburg

*Barry Barnette, Solicitor*

COURT OF GENERAL SESSIONS

OCT 30 2017

TERM

THE STATE  
vs.

Monquez Jamone Young

Indictment for

Use of a Firearm while under the  
Influence

SC Code: 23-31-400

CDR Code: 2506

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