

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Aiken County

Honorable Courtney Clyburn Pope, Circuit Court Judge

JOHNNY CAMPBELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000073

APPENDIX

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State of South Carolina) In the Court
County of Aiken) Of General Sessions

Indictment Number: 2017GS0201912

State of South Carolina,)
Plaintiff,)
vs.) Transcript of Record
Johnny Ray Campbell,)
Defendant.)

February 22, 2019
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, Judge.

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

Paige E. Tiffany, Assistant Solicitor
Attorney for the State

P. Andrew Anderson, Esquire
Attorney for the Defendant

Brenda J. Sigwald, Circuit Court Reporter
To The Honorable Doyet A. Early III
P.O. Box 206, Jackson, South Carolina 29831

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

GUILTY PLEA

1
2 MS. TIFFANY: Johnny Ray Campbell.

3 JOHNNY RAY CAMPBELL was duly sworn.

4 THE CLERK: He's sworn, Your Honor.

5 THE COURT: All right. This is Mr. Campbell charged
6 with felony driving under the influence with great bodily
7 injury?

8 MR. ANDERSON: Yes, sir, Your Honor.

9 THE COURT: Have you advised him of the charges,
10 the possible sentence and that it carries up to a mandatory
11 minimum of 30 days up to 15 years, and a fine between \$5
12 and \$10,000?

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

14 THE COURT: How bad were the people hurt?

15 MS. TIFFANY: Your Honor, the victim is present --

16 (A phone rang.)

17 -- Your Honor, the victim is present. She spent --

18 THE COURT: Where is she?

19 MS. TIFFANY: It's Ms. DeAnne, and at the time of
20 the accident, she was Henderson, and now she is married and
21 it's Williams.

22 THE COURT: Have you discussed this negotiation
23 with her?

24 MS. TIFFANY: Yes, we did.

25 THE COURT: She in agreement with it?

1 MS. TIFFANY: Yes, Your Honor.

2 She spent several weeks in the hospital, several
3 months rehabbing. She's had five surgeries, about \$200,000
4 in medical bills, over \$200,000 in medical bills and --

5 THE COURT: The negotiation is 15 years suspended
6 to anywhere between 5 and 8?

7 MR. ANDERSON: Yes, sir, Your Honor.

8 THE COURT: What kind of driving record does he
9 have?

10 MR. ANDERSON: Not bad.

11 THE COURT: What kind of record does he have?

12 MR. ANDERSON: When he was 16 he had a felony and
13 other than that, just --

14 THE COURT: Give me the facts, please, ma'am.

15 MS. TIFFANY: Sure. On December 17th, 2016, at
16 approximately 7:30 p.m., Aiken County Sheriff's Department
17 received a complaint about a vehicle driving recklessly and
18 at a high rate of speed near May Royal Road in Aiken
19 County. Deputy Sullivan observed the defendant's pick-up
20 truck on Wire Road and reached up to 80 miles an hour in an
21 attempt the catch up with him. Once he approached the
22 intersection of Wire Road and Rudy Mason Parkway, he
23 observed smoke rising from a two car accident.

24 The defendant, Mr. Campbell, who had a passenger,
25 Ms. Tiffany McGee, had lost control of his vehicle and

1 crossed the median, striking a Nissan Maxima driven by
2 Mr. Dwayne Williams and had passengers in his vehicle that
3 were DeAnne Henderson and her daughter Aniana. Trooper
4 Vargo with South Carolina Highway Patrol was dispatched to
5 the scene. All involved were transported to MCG for
6 treatment. Ms. McGee and Ms. Henderson both received great
7 bodily injuries.

8 Ms. Henderson is present today. She'd like to
9 address the Court about her injuries at the appropriate
10 time. She was in the hospital for several weeks, required
11 rehabilitation and surgery.

12 Trooper Vargo with South Carolina Highway Patrol
13 obtained a blood sample from Mr. Campbell, which was
14 analyzed by SLED and it was determined to be three times
15 the legal limit at a .24.

16 He was charged with a grand larceny --

17 THE COURT: What was his B C at?

18 MS. TIFFANY: .24, Your Honor.

19 He was convicted of grand larceny in 1982; a CDV in
20 2/9 in 2011; and reckless driving in 2012.

21 THE COURT: And you've advised him of the charges,
22 the possible sentence, what the negotiations are, his right
23 to trial; is that correct?

24 MR. ANDERSON: Yes, sir.

25 THE COURT: All right. Mr. Campbell, you're

1 charged with felony driving, driving under the influence
2 where this lady is horribly injured. As I said that
3 carries a minimum of 30 days, up to 15 years. You wish the
4 plead guilty?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: When you do that, you'll give up your
7 right to remain silent and right to trial; do you
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: It carries a negotiated sentence, where
11 I assume you're lawyer and the State, as well as the
12 victim, as well as you, have reached a negotiation and I
13 will give you a 15 year sentence suspended to between 5 and
14 8 years, with probation after that. You understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you satisfied with your lawyer?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you today under the influence of
19 alcohol or drugs?

20 THE DEFENDANT: No, sir.

21 THE COURT: Are you pleading guilty of your own
22 free will?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you heard the solicitor describe
25 what happened here in Aiken County on December 17 of 2016

1 wherein you drove your car while under the influence of
2 alcohol, which resulted in the wreck which injured
3 Ms. DeAnna Henderson; is that correct.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is that what you're pleading guilty to?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I'll accept the plea. I think you've
8 given me the facts, his prior record.

9 Mr. Anderson?

10 MR. ANDERSON: Your Honor, if it please the Court,
11 first and foremost, we would like to apologize to the
12 victim and her family. I hope she understands that he's
13 not allowed to communicate with her, but the facts have
14 never been in dispute in this case, Judge. And I do think
15 one of the problems with this case that's kind of delayed
16 it a little bit was that neither Ms. Tiffany, nor I were
17 involved at the beginning of it. Johnny went for a long
18 time without an attorney and then a former solicitor, who
19 is now a magistrate was handling it initially. And I do
20 find it hard to get in on the middle of a case.

21 Johnny is 54. The other victim of this felony DUI,
22 Judge, is in the courtroom, Ms. Tiffany, his wife.

23 If you could just raise your hand.

24 Judge, like the victim, married after this
25 accident. They got married after this accident. Tiffany

1 was also hurt very badly, but, Judge, she bears -- in our
2 discussions, and we've had many, some of the responsibility
3 for that and she wanted me to inform the Court, she used
4 terrible judgment that night as well. Johnny used terrible
5 judgment that night. They didn't go out with the intent of
6 hurting anybody, but they certainly did and he understands
7 that there are going to be repercussions for that.

8 Judge, he's got six kids, or he's had six kids, one
9 passed, three adult kids, two young kids. And I, in my
10 terrible time management, did not think that this would
11 happen today. I told him I thought we might do it next
12 week during the civil term, found out that's not going to
13 happen. And he -- you know, I told him I thought he might
14 have the weekend to say goodbye to everybody and he didn't.
15 But he came here, Judge. And he's terrified about going to
16 the department of corrections. But he's here taking
17 responsibility for what he did.

18 Judge, he's disabled. He gets about \$1600 a month
19 SSI. He works part time, he's allowed to work some for
20 Parkers Body Shop and he's very involved with his family.

21 When this wreck happened, he went to the hospital
22 as well, Judge. And my delay has been not the facts and
23 not him taking responsibility, but me trying to assert
24 legal issues. And again, it's my fault that it's taken so
25 long in that regard. Not to try to get somebody guilty out

1 of it, but, Judge, I was trying to assert these legal
2 issues to try to use it for mitigation.

3 Judge, there are some weird circumstances in this
4 case and I think you might remember we chatted about it.
5 They actually got a search warrant in Georgia. Implied
6 consent was not done and we had some video-taping issues.
7 There were, had to have been twenty officers there. We
8 don't have a lot of things on video because of all the
9 emergency vehicles and whatnot. My client was actually
10 trapped in the vehicle for a long time.

11 I think I've asserted these legal issues to the
12 best of my ability. And he's waiving those issues today in
13 this guilty plea. And I think that's how the negotiation
14 happened, probably because there are issues. So by
15 pleading guilty, those issues are gone.

16 Judge, my client and his wife, then girlfriend,
17 they'd been at a cookout, they'd both been drinking.

18 (There was a pause in the proceedings.)

19 THE COURT: Go ahead, I'm listening.

20 MR. ANDERSON: They'd both been drinking and they
21 just used horrible, horrible judgment in getting behind the
22 wheel and driving, Judge.

23 My client's insurance was through USAA. There was
24 only \$50,000 in coverage. All that money was paid to these
25 victims. Tiffany did not seek any money, she did not get

1 any money. I know that that money was not nearly enough.
2 And one of the things we tried to do in this case was to
3 try to offer up restitution as an alternative to
4 incarceration, but with my client's very, very limited
5 income, it wasn't going to be an amazing amount of money.

6 Judge, my client informs me that when Trooper Vargo
7 -- he went to the hospital. When he got out of the
8 hospital, he received a call from Trooper Vargo. He
9 returned that call, turned himself in to the jail. He got
10 out on bond. He's come to court every time he's supposed
11 to come. While he was terrified and not excited about
12 doing this today, he is here, Judge. And he needs to be
13 here. So because it's not an intentional crime and because
14 he is waiving these legal issues, Judge, I'd ask Your Honor
15 to consider the minimum in this. He's going to have to max
16 that out. He's not going to be able to get parole because
17 of that 15 years on top. Whatever he gets, he's going to
18 have to max out. He's never been to prison, but he
19 understands that he deserves to go the prison. And his
20 wife is, you know, there's a lot of repercussions on him,
21 but as to consequences, he's here to take those -- take
22 that responsibility, Judge. And I know that he feels
23 remorse for hurting these people. He had no intention of
24 doing that, Judge.

25 THE COURT: Anything you want to tell me?

1 THE DEFENDANT: I'd just like to apologize and say
2 that I'm, I'm sorry from the bottom of my heart.

3 THE COURT: I know you are.

4 Ms. Henderson, how are you doing?

5 THE VICTIM: I'm coming along, but I endure quite a
6 lot of pain on a daily basis.

7 THE COURT: Where were the most of your injuries?

8 THE VICTIM: In my ankles. Both of my ankles were
9 broken. The two toes on my right foot, and my left elbow
10 was broken, Your Honor.

11 THE COURT: But no internal injuries and no head
12 injuries?

13 THE VICTIM: Correct, Your Honor.

14 THE COURT: Thank goodness. Even though it's
15 bones, it can be painful.

16 THE VICTIM: My right ankle was actually crushed,
17 Your Honor.

18 THE COURT: They try to reconstruct it or how are
19 they doing it?

20 THE VICTIM: Think did have to reconstruct it
21 and --

22 THE COURT: You have to go the physical therapy?

23 THE VICTIM: Yes, sir, Your Honor.

24 THE COURT: What do you want to tell me? I mean
25 y'all negotiated it, a low of 5 years incarcerated and a

1 high of 8.

2 THE VICTIM: I just want to say, Your Honor, I pray
3 that you give Mr. Campbell the maximum sentence allowed, or
4 up to the 8 years, due to the fact that I'm going to have
5 to endure this pain --

6 THE COURT: Absolutely.

7 THE VICTIM: -- pretty much for the rest of my
8 life.

9 THE COURT: I understand.

10 THE VICTIM: My daughter, she's fearful, really, of
11 riding in the car, due to what happened. He could have
12 killed me, my husband, and my child. And I feel as though
13 if he get out easy on this, then it'll just be a moment in
14 time, Your Honor, he could injure anybody in this
15 courtroom's family member. They may not even be as lucky
16 as myself and my family. And he could possibly kill them.

17 THE COURT: I agree 100 percent. So here's what
18 I'm going to do. Obviously, his lawyer's asking me to give
19 him the 5 years and you're asking me to give him the 8
20 years.

21 THE VICTIM: Yes, sir, Your Honor.

22 THE COURT: So the sentence of the Court is this:
23 He's committed to the department of corrections for 15
24 years. I'll suspend that upon the service of 78 months,
25 which is splitting the difference; 5 years probation.

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Conditions of probation: Random alcohol and drug testing, substance abuse counseling, and he's given credit for any time he's served. Good luck.

MR. ANDERSON: Thank you, Your Honor.

MS. TIFFANY: Thank you.

MR. ANDERSON: Judge, can I ask a quick question? Is there any chance he could turn himself in on Monday?

THE COURT: No.

MR. ANDERSON: Okay.

* * * * * END OF TRANSCRIPT * * * * *

1	State of South Carolina)	
2	County of Aiken)	Certificate of Reporter
3			
4			
5			
6	I, Brenda J. Sigwald, Official Court Reporter for		
7	the Second Judicial Circuit of the State of South Carolina,		
8	do hereby certify that the foregoing is a true, accurate,		
9	and complete Transcript of Record of the proceedings had		
10	and evidence introduced in the trial of the captioned case,		
11	relative to appeal, in the Court of General Sessions in and		
12	for the State of South Carolina on 22nd day of February		
13	2019.		
14	I FURTHER CERTIFY that I am neither kin, counsel,		
15	nor of interest to any party hereto.		
16	IN WITNESS WHEREOF, I have hereunto set my hand and		
17	seal at Aiken County, this 20th day of April 2019.		
18			
19			
20			
21			
22	<i>Brenda J. Sigwald</i>		
23	Brenda J. Sigwald,		
24	Court Reporter and Notary Public		
25	For the State of South Carolina		
	My commission expires		
	January 4, 2020		

WITNESSES

DOCKET NO. 2017GS0201912

SC Dept. of Public Safety (SCHP)

The State of South Carolina

J Vargo

County of Aiken

Law Enforcement Case #:

COURT OF GENERAL SESSIONS

YAR

ARREST WARRANT NUMBER

OCTOBER TERM 2017

2016A0210201875

FILED 301.28 2017

[Signature]
Clerk of Court
[Signature]
Deputy Clerk

THE STATE
vs.

JOHNNY RAY CAMPBELL

ACTION OF GRAND JURY

True bill

CDR #: 0406

[Signature]
Foreperson of Grand Jury
Date: September 28, 2017

Indictment for

VERDICT

CAUSING GREAT BODILY INJURY BY
OPERATING A MOTOR VEHICLE
WHILE UNDER THE INFLUENCE OF
ALCOHOL OR DRUGS

§ 56-05-2945(A)(1)

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
**CAUSING GREAT BODILY INJURY BY
OPERATING A MOTOR VEHICLE
WHILE UNDER THE INFLUENCE OF
ALCOHOL OR DRUGS**

§ 56-05-2945(A)(1)

At a Court of General Sessions, convened on October 2, 2017, the Grand Jurors of Aiken County present upon their oath:

That **JOHNNY RAY CAMPBELL** did in Aiken County on or about December 17, 2016, while driving a vehicle under the influence of alcohol, drugs, or a combination thereof do an act forbidden by law or neglect a duty imposed by law in driving of said vehicle, by failing to operate vehicle in a safe and reasonable manner and failure to maintain proper control of vehicle, which act or neglect proximately caused great bodily injury to [REDACTED] All in violation of §56-5-2945(A)(1) 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.

Elizabeth S. Young

J. STROM THURMOND, SOLICITOR

3

STATE OF SOUTH CAROLINA)
 COUNTY OF Aiken)
 STATE VS.)
Johnny Ray Campbell)
 AKA:)
 Race: White Sex: M Age: 53)
 DOB: 1965 SS#: [REDACTED])
 Address:)
 City/State/Zip: Aiken, SC 29803)
 DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS0201912
 A/W#: 2016A0210201875
 Date of Offense: 12/17/2016
 S.C. Code §: 56-05-2945(A)(1)
 CDR Code #: 0406

SENTENCE SHEET

30 days
15 years
\$5,000
\$10,000

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Felony driving under the influence, great bodily injury results

CONVICTED OF or PLEADS

in violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC withinor 1st or CSC withinor 3rd)

15 years suspended to 5-8 year

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTORNEY: [Signature] SC 5916 [Signature] PA Anderson 6431
 SC 1307H Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of 78 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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

CONCURRENT or CONSECUTIVE to sentence on.
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDJOC.

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
 Payment Terms: Obtain GED
 Set by SCDPPS Attend Voc. Rehab. or Job Corp _____
 May serve W/I: beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 200.00
§ 56-5-2995 (DUI Assessment)	\$12	\$ 12.00
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$10/ea	\$
3% to County (if paid in installments)		\$ 3.00 3.36

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

TOTAL: \$ 103.00 115.36
 Clerk of Court/Deputy Clerk: Sharon Skipper LPH
 Court Reporter: Brenda Sigwald
 SCCA-217 (04/2018)

Appointed PD or appointed other counsel. Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
 Presiding Judge: [Signature]
 Judge Code: 2136
 Sentence Date: Feb 23, 2019

STATE OF SOUTH CAROLINA)

County of AIKEN)

JOHNNY CAMPBELL)

Full name and prison number (if any) of Applicant)
379280)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

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 KIRKLAND CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence AIKEN COUNTY SECOND JUDICIAL CIRCUIT
3. Name(s) of co-defendant(s) (if any) IV-A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a)	<u>2017-GS-02-01912</u>	<u>2016A0210201875</u>
(b)	<u>2017-GS-02-01913</u>	<u>2016A0210201876</u>

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- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) SENTENCE DATE 02-22-2019
 - (b) 78 MONTH INCARCERATION IN SCDC
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty
 - (b) after a plea of not guilty N/A
 - (c) after a plea of nolo contendere N/A

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. _____
 - ii. N/A
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. N/A
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. N/A
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. N/A
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) I told my lawyer I was not satisfied
 - (b) _____

90
9a. with the sentence after I was not told that with a 15 year suspended sentence, I was not eligible for parole. I wanted to file a sentence reconsideration or an appeal. Nither was filed?

(c) _____

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

- (a) Illegal search and seizure.
- (b) Ineffective assistance of council.
- (c) Threatend and coerced into plea.

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

- (a) I did not give consent or permission to
- (b) on back / on reverse
- (c) on back / on reverse

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
 - i. _____
 - ii. N/A _____
 - iii. _____
 - iv. _____

- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. N/A _____
 - iii. _____
 - iv. _____

- Att. draw my blood while I was unconscious,
- b. My lawyer did not file a motion to suppress the blood drawn without my permission. He did not explain to me what it meant to have a 15 year suspended sentence, (NO Parole), He did not attempt to file a sentence reconsideration, or an appeal.
- c. I was threatened that if I did not take the plea I would be charged with multiple felonies and given 30 years.

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

NONE

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) My lawyer did not attempt to suppress
- (b) I feel he did not work to his full capabilities
- (c) my lawyer stated to me that the solicitor over →

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Andy Anderson at Anderson and Anderson in Aiken, S.C.
 - ii. _____
 - iii. [Signature]
- (b) the proceedings at which each such attorney represented you:
 - i. plea
 - ii. Sentencing
 - iii. [Signature]

16.c was threatening to charge me with multiple felonies and give me more time if I did not accept the plea

↕
16.b by not explaining to me about the suspended sentence or by not trying to suppress the blood test I did not consent to

- 19. State clearly the relief you seek in filing this application:
To have my plea retracted and have a new lawyer appointed to me, for a new trial. To have this case overturned and retried.
- 20. Are you now under sentence from any other court that you have not challenged?
NO - NONE

STATE OF SOUTH CAROLINA)
 County of Aiken)

VERIFICATION

I, Johnny Campbell, 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.

Johnny Campbell

SWORN to and subscribed before me this 18th day of March, 2019.

Beth A. Mangold (L.S.)
 Notary Public

My Commission Expires: _____
 BETH A. MANGOLD
 Notary Public, State of South Carolina
 My Commission Expires 8/10/2028

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


1. Johnny Campbell, 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.


Applicant

SWORN or affirmed to and subscribed before me this

18th day of March, 2019.


Notary Public

BETH A. MANGOLD

Notary Public, State of South Carolina

My Commission Expires 8/10/2028

My Commission Expires: _____

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	FOR THE SECOND JUDICIAL CIRCUIT
)	
Johnny Campbell,)	
SCDC # 379280,)	Case No.: 2019-CP-02-00683
)	
Applicant,)	
)	RETURN AND PARTIAL MOTION
v.)	TO DISMISS
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the Post-Conviction Relief application filed March 20, 2019, Respondent (the State) would show this Court:

I. Procedural History

Johnny Campbell (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted during the October 2017 term of the Aiken County Grand Jury for felony driving under the influence, great bodily injury results (2017-GS-02-01912). Applicant was represented by P. Andrew Anderson, Esquire. The case was prosecuted by Paige E. Tiffany, Assistant Solicitor of the Second Circuit. On February 22, 2019, Applicant pled guilty before The Honorable Doyet A. Early. Judge Early sentenced Applicant to 15 years’ imprisonment suspended upon service of 78 months, and to five years of probation. Applicant did not appeal his plea or sentence.

II. Factual Summary

The following facts were presented by Assistant Solicitor Tiffany at the hearing. Aiken County Sheriff’s Department received a complaint about a vehicle driving recklessly and at a high rate of speed near May Royal Road in Aiken County. (GP Tr. 4). Deputy Sullivan observed the defendant’s pick-up truck on Wire Road and attempted to catch up with Applicant. (GP Tr. 4).

Once he approached the intersection of Wire Road and Rudy Mason Parkway, Sullivan observed smoke rising from a two car accident. (GP Tr. 4). Applicant, who had a passenger, Ms. Tiffany McGee, had lost control of his vehicle crossed the median, striking a Nissan Maxima driven by Mr. Dwayne Williams. (GP Tr. 4). Henderson and her daughter Aniana were in the vehicle with Williams. (GP Tr. 4). Trooper Vargo of the South Carolina Highway Patrol was dispatched to the scene. (GP TR. 4). All involved were transported to MCG for treatment. (GP Tr. 4). Ms. McGee and Ms. Henderson both received great bodily injuries. (GP Tr. 4). Vargo obtained a blood sample from Applicant. (GP Tr. 4). Applicant's blood alcohol content was .24. (GP Tr. 4).

III. Current Application

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

1. Illegal Search and Seizure

a. "Drawing my blood while I was unconscious."

2. Ineffective Assistance of Counsel

a. "The lawyer did not file a motion to suppress the blood drawn without my permission. He did not explain to me what it meant to have a 15 year suspended sentence, (No parole)..."

b. Failure to file a motion for reconsideration or an appeal.

3. Involuntary Guilty Plea

a. "I was threatened that if I did not take the plea I would be charged with multiple felonies and given 30 years."

As requested relief, Applicant states that he wants the Court to "have my plea retracted and have a new lawyer appointed to me, for a new trial. To have this case overturned and retried."

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject plea challenged in this application including pertinent

transcripts, the application, and Applicant's file from the South Carolina Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

IV. Response to Allegations of Ineffective Assistance of Counsel

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

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness

under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test for any of his allegations. In the present case, Applicant agreed with the facts as presented by the State and informed the court he wished to waive his constitutional rights to enter a guilty plea. (GP Tr. 6-7). Applicant testified that he was satisfied by the legal representation he received from Anderson. (GP Tr. 6). Anderson testified that he advised applicant of the charges, the possible sentence, and information pertaining to the plea negotiation. (GP Tr. 5).

Additionally, Anderson testified at Applicant’s guilty plea hearing that Applicant “was not going to be able to get parole because of that 15 years on top.” (GP Tr. 10). Furthermore, in Randall, the South Carolina Supreme Court held that counsel had no affirmative obligation to advise defendant of the collateral consequences regarding parole eligibility prior to entering a guilty plea. See Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004). The Court further held in Smith that unless counsel gives erroneous parole advice, parole information is not a ground for collateral attack of a guilty plea. See Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997).

However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Response to Allegations of Involuntary Guilty Plea

Applicant asserts his guilty plea was involuntarily entered, however the records from Applicant's plea proceeding fully support that Applicant's guilty plea was entered freely, voluntarily, and knowingly. This allegation is without merit.

In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging his or her guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985).

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases"

and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). Statements made during the plea should be considered conclusive unless the defendant presents reasons why she should be allowed to depart from the truth of those statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

In Applicant’s case, the record fully supports the knowing and voluntary nature of Applicant’s plea. Applicant testified that he was pleading guilty “on [his] own free will.” (GP Tr. 6). Furthermore, Applicant testified that he agreed with the facts as stated by Assistant Solicitor Tiffany. (GP Tr. 6).

Accordingly, the record conclusively refutes Applicant’s allegation his plea was involuntary. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Failure to State a Cognizable Claim

Respondent submits Applicant’s “illegal search and seizure” allegation should be summarily dismissed for failing to state claims cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. Applicant alleges that he is being detained unlawfully because officers “dr[e]w [his] blood while [he] was unconscious.” This is not a proper issue for post-conviction relief. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

S.C. Code Ann. § 17-27-20. Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Rather, these allegations constitute direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The failure to do so has waived this allegation as grounds for relief. Therefore, Respondent submits Applicant's illegal search and seizure claim should be summarily dismissed.

VII. Any Future Amendments and Invocation of Discovery Process

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

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

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

VIII. Response to Any and All Other Allegations

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

IX. Request for an Evidentiary Hearing

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea.

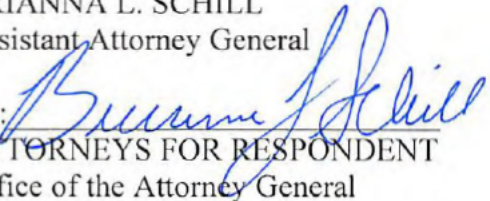
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

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

May 9, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
)
)
)
 Johnny Ray Campbell, #379280)
)
 Applicant,)
)
)
 v.)
)
 State of South Carolina)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT
 C/A NO. 2019-CP-02-00683

AMENDMENT TO PCR APPLICATION

The Applicant, by and through appointed counsel below, hereby amends his PCR application filed on March 20, 2019, to add the following grounds and/or facts on which Applicant bases his allegations that he is being held in custody unlawfully:

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

Ineffective assistance of counsel for failing to file a motion to suppress the blood sample evidence related to Applicant's blood alcohol level.

Ineffective assistance of counsel for failing to inform Applicant of available defenses.

Ineffective assistance of counsel for failing to file a motion for reconsideration.

Ineffective assistance of counsel for failing to file a direct appeal.

Ineffective assistance of counsel for failing to advocate for Applicant during sentencing.

Ineffective assistance of counsel for failing to explain to Applicant the range of possible sentences.

FILED 9/23 20 19
Robert J. White 1245
 C.C.P. & G.S.
Charlea Griffing Plautz
 Deputy Clerk

Respectfully submitted,

A handwritten signature in black ink that reads "Nancy C. Fennell". The signature is written in a cursive style with a horizontal line underneath it.

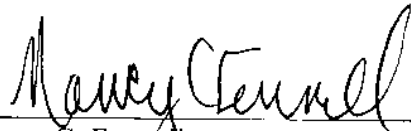
Nancy C. Fennell
Law Office of Nancy C. Fennell, LLC
P.O. Box 2176
Irmo, South Carolina 29063
(803) 553-1772
nancyfennell@gmail.com
SC Bar No. 69729
Attorney for Applicant

Columbia, SC
September 19, 2019

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Amendment to PCR Application was served upon the following this 20th day of September, 2019 via email and First Class Mail, postage prepaid, to:

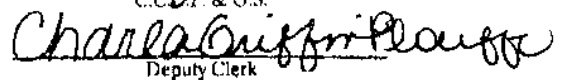
Brianna Schill
Assistant Attorney General
briannaschill@scag.gov
P.O. Box 11549
Columbia, SC 29211



Nancy C. Fennell
Attorney for Applicant

FILED 9123 20 19


C.C.P. & G.S.


Deputy Clerk

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

-----x

JOHNNY RAY CAMPBELL,)

)

Applicant,)

)

vs.)

Transcript of Record
2019-CP-02-00683

STATE OF SOUTH CAROLINA,)

)

Respondent.)

-----x

October 3, 2019

POST-CONVICTION RELIEF HEARING

B E F O R E:

The Honorable Courtney Clyburn Pope, Presiding Judge

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

Nancy Fennell, Esq.
Attorney for the Applicant

Brianna L. Schill, Esq.
Attorney for the Respondent

Court Reporter: Bonnie Kelly

Transcribed by Bobbi Fisher, RPR, CET

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I N D E X

WITNESS	PAGE
JOHNNY RAY CAMPBELL	
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Redirect by Ms. Fennell	26
ANDREW "ANDY" ANDERSON	
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Cross by Ms. Fennell	40
Redirect by Ms. Schill	45

E X H I B I T S

(None.)

P R O C E E D I N G S

(Whereupon, the following proceedings started at 10:27 a.m.)

MS. SCHILL: May it please the Court. The next case is Johnny Ray Campbell versus the State of South Carolina. That's Case No. 2019-CP-02-00683. The applicant is presently confined to the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted during the October 2017 term of the Aiken County Grand Jury for two counts of felony driving under the influence, great bodily injury results. Applicant was represented by P. Andrew Anderson, Esquire. The case was prosecuted by H.E. Tiffany, assistant solicitor of the second circuit.

On February 22, 2019, Applicant pled guilty before the Honorable W.A. Early, III. Judge Early sentenced Applicant to 15 years' imprisonment, suspended upon service of 78 months and five years of probation. Applicant did not appeal his sentence or plead.

On March 20, 2019, Applicant filed this PCR application, alleging violation of his Fourth Amendment rights, one claim of ineffective assistance of counsel for failure to file a motion to reconsider, order a direct appeal, and one point of involuntary guilty plea.

On September 19th, 2019, Applicant filed an amended application alleging (1) ineffective assistance of counsel for

1 failing to file a motion to suppress the blood sample evidence
2 related to Applicant's blood alcohol level; (2) failure to
3 file a motion for reconsideration; (3) ineffective assistance
4 of counsel for failing to file a direct appeal; (4)
5 ineffective assistance of counsel for failing to advocate for
6 Applicant during sentencing; and (5) ineffective assistance of
7 counsel for failing to explain to Applicant the range of
8 possible sentences.

9 Applicant is present today and represented by Ms. Nancy
10 Fennell, Esquire. And, Your Honor, from my understanding,
11 they intend to go forward on allegations 1, 2, 3, and 5 of the
12 amended application, and I would just ask Ms. Fennell to
13 verify that that is the case and that they are not going
14 forward on any of the allegations in the original application
15 and, also, they are not going forward on Allegation No. 4 on
16 their current application.

17 MS. FENNEL: Thank you, Your Honor. Good morning.

18 There was one allegation included in the amendment that
19 you did not read out.

20 MS. SCHILL: Oh, I'm sorry.

21 MS. FENNEL: It was the ineffective assistance for
22 failing to inform Applicant of available defenses.

23 THE COURT: You're going forward on that one?

24 MS. FENNEL: Yes. And we are not going forward on the
25 ineffective assistance for failing to advocate during

1 sentencing.

2 THE COURT: All right. So just quickly, we are going
3 forward on the failure to file a motion to suppress a blood
4 sample; is that correct?

5 MS. FENNEL: Yes.

6 THE COURT: Okay. As well as available defenses and
7 motion for reconsideration and failing to explain possible
8 sentences.

9 MS. FENNEL: Yes, Your Honor.

10 THE COURT: Is there anything that I --

11 MS. FENNEL: And the failure to file a direct appeal.

12 THE COURT: Okay.

13 MS. FENNEL: Okay. Thank you, Your Honor. Applicant
14 calls Mr. Johnny Ray Campbell to the stand.

15 THE CLERK: If you'll place your hand on the Bible and
16 raise your right hand.

17 JOHNNY RAY CAMPBELL,
18 the witness, after having been duly sworn, was examined and
19 testified to as follows:

20 THE CLERK: Please take a seat in the witness box and
21 state your full name for the Court.

22 THE WITNESS: Johnny Ray Campbell.

23 DIRECT EXAMINATION

24 BY MS. FENNEL:

25 Q Mr. Campbell, where are you currently housed?

1 **A** Department of (Indiscernible).

2 **Q** Okay. And what sentence are you serving?

3 **A** Over 15 years, suspended to six and a half years plus
4 five years' probation.

5 **Q** Okay. And was that sentence a result of a guilty plea?

6 **A** Yes, ma'am. I was kind of persuaded into taking it
7 because I was told that, if I didn't take it, I would serve 30
8 years ago.

9 MS. SCHILL: I'm going to object to that, Your Honor. I
10 don't think that was part of the allegations we laid out --
11 part of the allegations that we discussed in the beginning.

12 THE COURT: Sustained.

13 BY MS. FENNELL:

14 **Q** And when did you plead guilty and receive the sentence?

15 **A** The 22nd of February, 2019.

16 **Q** Okay. And what did you plead guilty to?

17 **A** A DUI felony.

18 **Q** Okay. And did you file an application for
19 post-conviction relief?

20 **A** No, ma'am. I filed -- the only thing I filed was the
21 PCR.

22 **Q** Okay.

23 (Pause in the proceedings due to microphone
24 interference.)

25 THE COURT: Mr. Campbell, if you could just speak --

1 project your voice. I'm having trouble hearing you as well.

2 THE WITNESS: Okay.

3 THE COURT: If you could just speak up a little bit
4 louder to make sure everyone can hear you.

5 BY MS. FENNEL:

6 Q So you said that you did file an application for
7 post-conviction relief?

8 A Yes, ma'am.

9 Q Okay. And I just want to make sure: Do you understand
10 the consequences of going forward with an application for
11 post-conviction relief?

12 A Yes, ma'am.

13 Q And do you understand that, if you are successful in your
14 application, you could be facing a greater sentence than what
15 you have already received?

16 A Yes, ma'am.

17 Q Okay. And knowing that, you want to move forward with
18 your application?

19 A Yes, ma'am.

20 Q Okay. Who was the attorney who represented you on the
21 charges against you?

22 A Mr. Andy Anderson.

23 Q Okay. Did you hire Mr. Anderson?

24 A Yes, I did.

25 Q Okay. So he was not appointed to you?

1 **A** No, ma'am.

2 **Q** Okay. And how many times did you meet with Mr. Anderson
3 during his representation of you?

4 **A** I really don't know a number, but it was a few times we
5 met and discussed it. And especially the same thing. We --
6 every time we met, he didn't know what to do. He didn't know
7 what to do. He was at a standstill, and the best thing for me
8 to do was to take a plea bargain so I wouldn't have to face 30
9 years in two counts.

10 **Q** Okay. So did you meet with him in person?

11 **A** At his office.

12 **Q** Okay. And so you were out on bond awaiting trial; is
13 that correct?

14 **A** Yes, ma'am. I got out on the bond. I got locked up on
15 that Saturday -- that -- I turned myself in on a Thursday. It
16 was the 22nd, I believe it was. Somewhere around in there.
17 The 22nd, I believe it was. And I bonded out on that Friday.
18 And I was out for two years and two months --

19 **Q** Okay.

20 **A** -- on bond.

21 **Q** Okay. And during that two years and two months, when did
22 Mr. Anderson start representing you?

23 **A** It was -- and I think he had the last eight months -- six
24 to eight months of my time out that he started representing
25 me.

1 Q Okay. Did you have an attorney representing you before
2 that?

3 A No. They kept telling me they would get one appointed,
4 but I make -- I got too much money on my disability so I had
5 to hire one. And, at the time, I was having problems hiring
6 one.

7 Q Okay. Okay. And so during the times that you met with
8 Mr. Anderson, did you discuss the option of going to trial?

9 A Yes, a couple of times.

10 Q Okay. And did you discuss with him any defenses you
11 would have if you went to trial?

12 A He had -- he had a couple of legal things that he said
13 that were legal issues and that was, I guess, the illegal seek
14 and search and the blood work. Other than that, that's the
15 only thing we discussed.

16 Q Okay. And when you discussed that issue, what was the
17 content of your discussions?

18 A Well, we'd do a bench trial or a regular trial. I
19 just -- I didn't know a whole lot about that and it was just
20 best -- he told me that it would be best if I took a plea
21 bargain instead of going to trial, that I could get more time
22 if I went to trial.

23 Q Okay. And how much time did he tell you you could get if
24 you went to trial?

25 A Anywhere from 15 to 30 years.

1 Q Okay. And did you ever tell him -- well, strike that.

2 Going back to the illegal search and seizure that he told
3 you about, what did he tell you about that?

4 A He just -- all he said was he got some legal issues about
5 it. That's the only thing he really said about it.

6 Q So he never explained to you what the legal issues were
7 involved with the search and seizure in your case?

8 A No.

9 Q Okay.

10 A Not that I can recall.

11 Q Okay. Did his failure to go over that issue with you
12 influence your decision to enter into a guilty plea?

13 A Like I said, I didn't -- this is the first time I have
14 ever been in trouble. I'm not fighting the law. And I felt
15 like I was -- needed to take the plea bargain. I could have
16 went to trial and got a better deal. I don't know.

17 Q Okay. Do you feel like -- on the day that you went in
18 and pled guilty, do you feel like you had all of the legal
19 advice that you needed to voluntarily enter into that plea?

20 A No, ma'am. Once I got to where I was going and talked
21 with people that was working that knew all about it, I found
22 out a lot more stuff.

23 Q Okay. So during the conversations that you had with him,
24 did you ever work towards preparing to go to trial?

25 A No, ma'am.

1 Q Okay. And did your attorney ever discuss with you the
2 merits of any potential defenses you could raise?

3 A The only thing he had was, like I said, the illegal seek
4 and search and blood work.

5 Q Okay. Did you tell Mr. Anderson that you wanted to go to
6 trial?

7 A No, ma'am.

8 Q No?

9 A No, ma'am.

10 Q Did he ever discuss with you a strategy for trial?

11 A He just said, if we go to -- if we did a bench trial, if
12 one of the people that -- with the blood or with the sheriff
13 or highway trooper didn't show up, then it would be probably
14 thrown out of court because they didn't show up and offer in
15 all the evidence. So that's the only thing we discussed.

16 Q Okay. Do you know what a bench trial is?

17 A Not really.

18 Q Okay. So your attorney never discussed what a bench
19 trial is?

20 A Well, they told me it just included the people that
21 was -- like the highway trooper that arrested me, the people
22 that was drawing blood, and somebody -- I don't know who that
23 other person would have been, but it wasn't but a few people
24 that would have showed up at a bench trial.

25 Q Okay. Did you and Mr. Anderson ever discuss what

1 evidence the State had against you?

2 **A** Yes, ma'am.

3 **Q** Okay. And what did you discuss about that evidence?

4 **A** Just telling me that, you know, only discussed my alcohol
5 level. That was it.

6 **Q** Okay. What did he tell you was the evidence against you?

7 **A** My alcohol level.

8 **Q** Okay. Did he ever discuss with you any attempts you
9 could make to have that evidence suppressed?

10 **A** Not that I can recall.

11 **Q** Okay. Was there any other evidence that you-all
12 discussed that the State had against you?

13 **A** No, ma'am, not that I can recall.

14 **Q** Okay. And what is your issue with the toxicology reports
15 that the State had against you? What do you believe is wrong
16 with those reports?

17 **A** (Indiscernible). I mean, I was unconscious. I don't
18 even know what happened. I wasn't aware of it.

19 **Q** Okay. So tell us about how it came that your blood was
20 drawn.

21 **A** Ma'am, I couldn't tell you. I was unconscious.

22 **Q** Okay. So your blood was drawn when you were unconscious?

23 **A** Yes, ma'am.

24 **Q** And where was your blood drawn?

25 **A** At NCG Hospital.

1 Q And NCG is located in Georgia?

2 A In Georgia.

3 Q Okay. And where did the accident occur?

4 A South Carolina.

5 Q Okay. So you were transported to Georgia after the
6 accident?

7 A Yes, ma'am.

8 Q Okay. And your blood was drawn there?

9 A As far as I know. I mean, I think it had been drawn in
10 the ambulance but I was unconscious. I was out for quite a
11 while.

12 Q Okay. Did you ever discuss this with your attorney?

13 A Not really. I mean, he had the facts from the hospital.
14 I mean, that might be in the records from the hospital.

15 Q Okay. And this accident occurred on what date?

16 A I want to say it was either the 16th or the 17th of
17 December.

18 Q And when were you actually arrested?

19 A That following Thursday. So that would have been I think
20 the 22nd is when -- my warrant has got a date on it. The
21 22nd. It's on a Thursday. I turned myself in. I talked to
22 the highway trooper, and he asked me if I would meet him at
23 the county jail, and I went and met him at the county jail.

24 Q Okay. So you weren't under arrest at the time your blood
25 was drawn?

1 **A** No, ma'am.

2 **Q** Okay. Now, when you -- prior to entering into the guilty
3 plea, did you talk about, with your attorney, the potential
4 sentences that you could anticipate receiving if you pled
5 guilty?

6 **A** I don't understand that question.

7 **Q** Let me rephrase that question. Did you talk to
8 Mr. Anderson about the potential sentences you could receive
9 if you pled guilty to the charges?

10 **A** Yes, ma'am.

11 **Q** Okay. And what did he tell you?

12 **A** He told me each one carried a sentence of 15 years.

13 **Q** Okay. And did you talk to him about what that -- the
14 sentence that you pled guilty to, did you talk to him about
15 what that meant?

16 **A** Well, the only thing he said was that's going to be the
17 best was I could get, was anywhere in between five and eight
18 years, with a five-year probation. That's the only thing on
19 the table. They didn't throw no other -- no other, you know,
20 time on it. And I was told that that would probably be the
21 best that I was going to get.

22 **Q** Okay.

23 **A** So...

24 **Q** And was this your first offense?

25 **A** Yes, ma'am.

1 Q Okay. And did you explain to Mr. Anderson what sentence
2 that you thought was fair?

3 A I mean, I asked him, you know, to make an offer. I give
4 him the offer of, you know, doing maximum weekend time, doing
5 fines, classes, probation. Paying \$500 restitution for the
6 vehicle. And I was on probation doing community service where
7 I ain't (indiscernible).

8 Q Okay. And do you know if he advocated for those things
9 for you?

10 A He said he'd talk to the judge and the Solicitor, but I
11 wasn't in the room when they talked about it, and I -- I
12 cannot verify that.

13 Q Okay. So did the fact that Mr. Anderson told you, if you
14 went to trial, that you would get 30 years, did that impact
15 your decision to plead guilty?

16 A It kind of made me -- it kind of did. I didn't know a
17 whole lot about the law at the time. Like I said, I had never
18 been in trouble with the law like this. Never hurt nobody.
19 So I kind of decided, you know, maybe I need to take the plea
20 bargain because I don't know what's going to happen if I don't
21 plead.

22 Q Okay. And what is your level of education?

23 A 10th grade.

24 Q Okay. So when you pled guilty, did you have a full
25 understanding of the consequences of your plea?

1 **A** Can you repeat that?

2 **Q** When you plead guilty, did you have a full understanding,
3 based on the conversations you had had with Mr. Anderson, of
4 the consequences of entering into a guilty plea?

5 **A** I mean, I know that I was going to get anywhere from five
6 to eight years and that a five-year probation attached to it.

7 **Q** Okay. Did Mr. Anderson tell you that you would get a six
8 months' furlough?

9 **A** After the fact.

10 MS. SCHILL: I'm going to object to the extent that
11 they're trying to make a new allegation that wasn't part of
12 the allegations, so...

13 THE COURT: All right. Rephrase.

14 MS. FENNELL: Yes, Your Honor. Thank you.

15 BY MS. FENNELL:

16 **Q** When you were discussing with Mr. Anderson the range of
17 sentences that you could receive, did he discuss with you any
18 options of furlough?

19 **A** No, ma'am. I would say -- I would like to say that he --
20 he discussed that part to me after I (indiscernible) in the
21 back of the courthouse when they had me handcuffed and was
22 taking me to the holding cell.

23 **Q** Okay. And so it wasn't until after the guilty plea,
24 after you received your sentence that you had the opportunity
25 to discuss with Mr. Anderson what actually that meant?

1 **A** Yes, ma'am. That's when he explained that I have 15
2 years suspended to six -- 78 months is what they had on their
3 papers, with a five-year probation. He said you're going
4 to -- you're going to go -- you're going to get -- you're
5 going to max out when you parole out. He said you'll get a
6 six-month furlough.

7 And the lady that was sitting behind the desk back there
8 said the same thing, that I'd get a six-month furlough. Well,
9 come to find out, I paroled out or I maxed out and I don't get
10 a six-month furlough because I have got a five-year probation
11 attached to it. They don't allow you to have the -- you don't
12 get the furlough when you have got five years' probation.

13 **Q** Okay. And you didn't have that knowledge --

14 **A** No, ma'am.

15 **Q** -- at the time of the guilty plea?

16 **A** No, ma'am.

17 **Q** Okay. If you had had that information, would that have
18 impacted your decision to plead guilty?

19 **A** It might have changed -- it might have changed it a
20 little bit. I'll probably tried to go with a bench trial.
21 I'm not sure. That's -- that's been a while now, so...

22 **Q** Okay. And do you feel like your attorney should have
23 told you that before letting you plead guilty?

24 **A** I would have liked to have knowed that because -- to know
25 that I was not going to need this because of this, you know,

1 being on the sentence and I didn't find that out until I got
2 in there that you don't get that if you have got a probation
3 at the end of your sentence.

4 **Q** Okay. And going back to the day of the guilty plea,
5 start -- what happened that day?

6 **A** I just got called a couple of times where I was at the
7 house before because they thought it was going to be held over
8 to the next week. That was the day after Judge Early's
9 retirement party, on a Thursday night. And Friday, I had
10 court. Because they told me I needed to be there at 12:00,
11 and I got -- he did. And I got a phone call from his wife.
12 She said you need to be there at 12:00. Are you going to make
13 it? And I said, Yeah. And she also told me that I needed to
14 take my plea bargain because that was the best I was going to
15 get. So that's what I did. I took the plea bargain.

16 **Q** Okay. And so, prior to receiving the call that morning,
17 you didn't know you were going to court that day?

18 **A** Well, he said I had a chance -- we had a chance to go to
19 court, but he would call me and let me know, verify we was
20 going to go to court. So they did let me know we was going --
21 you know, where he had a chance, but he would call me if I had
22 to show up for court because I was trying to get it put off
23 for the next week.

24 **Q** Okay. And did you get to speak with him prior to the
25 sentencing and the hearing that day?

1 **A** Before we went into court, yes, ma'am.

2 **Q** Okay. Had you had any difficulties in communicating with
3 your attorney during his representation of you?

4 **A** Just a couple of times, I thought I, you know, I had to
5 wait a few days for him to call me back. But, other than
6 that, I mean, it was -- they're pretty good about talking to
7 me if they needed to talk with me.

8 **Q** Okay. Now, after you pled guilty and after you were
9 sentenced, did Mr. Anderson ever advise you of your right to
10 file an appeal?

11 **A** No, ma'am.

12 **Q** And during the hearing, did the Court ever advise you of
13 your right to appeal?

14 **A** Not that I know of.

15 **Q** Okay. And you have read over the transcript of that day.
16 Did you see anything in the transcript where the judge was
17 advising you that you had the right to appeal?

18 **A** No. I have read it but I didn't see anything like that.

19 **Q** Okay. And were you aware -- or strike that.
20 When did you become aware that you could file an appeal?

21 **A** When I was -- got (indiscernible) and I got her.

22 **Q** And how did you become aware that you could file an
23 appeal?

24 **A** One of the inmates does law up there and does a lot of
25 law work for a lot of the inmates who come in to file these

1 motions and stuff, and he told me, you know, he said you could
2 have filed an appeal but you have ten days to file it. He
3 said, Did your lawyer get to file one? I said, No. So he
4 said it's too late to file an appeal so you can file a PCR.
5 So that's the reason why I filed a PCR on March 20th.

6 **Q** Okay. And so Mr. Anderson never advised you of your
7 right to file an appeal?

8 **A** No, ma'am.

9 **Q** Okay. So you never had an opportunity to ask him to file
10 an appeal?

11 **A** No, ma'am.

12 **Q** And based on the discussions that you had with
13 Mr. Anderson while he was representing you, do you think he
14 should have known that you were not happy with the sentence
15 that you received?

16 **A** Yes.

17 **Q** Okay. Do you think that Mr. Anderson's failure to advise
18 you of your right to appeal deprived you of your right to file
19 an appeal?

20 **A** I think it did. He's the one, I think, that represents
21 me, and I still had to be represented 100 percent of what he
22 should have done.

23 **Q** And had you known that you had the right to appeal within
24 ten days, would you have taken advantage of that?

25 **A** Yes, ma'am, I probably would have filed an appeal.

1 Q Okay. And did Mr. Anderson ever discuss with you the
2 option of filing a motion for reconsideration?

3 A No, ma'am.

4 Q Okay. Were you aware of what a motion for
5 reconsideration was?

6 A No, ma'am.

7 Q Do you understand what that -- what a motion for
8 reconsideration is as we sit here today?

9 A No, ma'am.

10 Q Okay. If you had had the option to make a motion for the
11 judge to reconsider the sentence you had received, would you
12 have asked your attorney to do that?

13 A Could you repeat that?

14 Q If you had known of your ability to file a motion to ask
15 the judge to reconsider the sentence you received, would you
16 have asked your attorney to file that motion?

17 A Yes, ma'am.

18 Q Is there anything that we discussed that we were going to
19 bring forward today that we have not talked about today?

20 A Ma'am, I believe we discussed everything.

21 Q Okay. Is there anything else you would like to tell the
22 Court?

23 A No.

24 Q I have no further questions. Thank you.

25 THE COURT: Yes, ma'am?

1 CROSS-EXAMINATION

2 BY MS. SCHILL:

3 Q All right, Mr. Campbell. How many times did you meet
4 with Mr. Anderson prior to your guilty plea hearing?

5 A Prior?

6 Q Prior to your plea hearing.

7 A Before I pled guilty?

8 Q Yes.

9 A I don't know exactly how many times but it was a few
10 times.11 Q Were they all in person or was it a mixture of in person
12 and --13 A A couple of times on the phone and then I'd go see him a
14 couple of times.15 Q Okay. And so your first allegation is that Mr. Anderson
16 was ineffective for failing to suppress your blood sample in
17 your case. Do you recall your counsel discussing the legal
18 issues regarding your blood sample at the guilty plea hearing?

19 A At the hearing?

20 Q Yeah, at the hearing where you pled guilty. Do you
21 remember him --22 A All I remember hearing him say was he's got a couple of
23 issues and that was it, if you're talking about when I was
24 standing up in front of the judge.

25 Q Okay. And, at that point, you ultimately decided to

1 plead guilty; is that correct?

2 **A** (Indiscernible) ask nothing about it and he didn't say
3 nothing about it.

4 **Q** Okay. Do you recall being told -- being advised of your
5 constitutional rights and waiving them at that guilty plea
6 hearing?

7 **A** Yes, because I was told that I persuaded into taking the
8 plea bargain.

9 **Q** And do you recall the Solicitor knowing about the facts
10 of your case of the guilty plea hearing and you agreeing to
11 the pleading under those facts presented by the Solicitor?

12 **A** I recall her saying a few things, reading my background.

13 **Q** Okay. But do you recall the Solicitor going through the
14 facts -- the events of what occurred in that (indiscernible)
15 incident?

16 **A** I believe I do.

17 **Q** Okay. And you recall agreeing to those facts?

18 **A** Yes, ma'am, but I'm still -- still the same.

19 **Q** Okay. And do you recall telling the Court about your
20 plea hearing, that you were happy with your representation
21 from Mr. Anderson?

22 **A** That's -- I was until after I got to where I found out
23 that there were some things that he could have done and filed
24 and he didn't file, so that's the reason why I'm here today,
25 because I found out differently. What he done, I guess you

1 could say I'm happy, but he persuaded me into taking a plea
2 bargain and he could have filed some motions and appealed.
3 That's got me bugged.

4 Q So are you now say you're happy -- you were happy with
5 his --

6 A I'm not happy with the way he done, no.

7 Q Okay. You just mentioned that you were happy about
8 his -- how he represented you up until after your plea hearing
9 regarding --

10 A No, I was persuaded into taking the plea bargain.

11 Q Okay. Do you recall telling the Court at your plea
12 hearing that you were satisfied with the representation?

13 A Yes, I do recall that.

14 Q Okay. And your next allegation is that he --
15 Mr. Anderson should have filed a motion to reconsider your
16 sentence. On what basis did you want to appeal your sentence?

17 A I really don't -- I really don't know how to answer that.

18 Q Okay. So you don't know why you would have appealed your
19 sentence?

20 A No, I would have liked to have appeal it. I didn't know
21 nothing about it at all. I had never been in trouble, so he's
22 the one that I paid to represent me. So he should have -- if
23 there was a chance that he could have filed an appeal for
24 reconsideration on my sentence, he should have done that.
25 He's the one that I paid for.

1 Q Okay. But, as you sit here today, you don't know why you
2 would have wanted him to file --

3 A Yes, I mean, I would have tried to get some of time back.
4 I mean, I feel like that I got a little too much time for my
5 first time being in trouble like this, is what I feel like.

6 Q Okay. So -- okay. So, basically, you just weren't happy
7 with your sentence.

8 A No, ma'am, I wasn't.

9 Q Okay. So regarding your direct appeal, I believe you
10 testified you didn't have any conversations with Mr. Anderson
11 regarding your right to appeal, didn't mention appeal to him
12 or anything; is that correct?

13 A That's correct. Like I say, once I done that, I couldn't
14 get in touch with him.

15 Q Okay. And do you recall the judge asking Mr. Anderson on
16 the record at your guilty plea hearing whether he advised you
17 of the possible sentences? Do you recall that?

18 A No.

19 Q All right.

20 MS. SCHILL: May I approach, Your Honor?

21 BY MS. SCHILL:

22 Q I'm just going to give you a copy of your transcript.
23 I'd ask you to turn to page -- it's 5. Yes, page 5, lines 21
24 through 24. The Court asks Mr. Anderson, "Have you advised
25 him of the charges, the possible sentence, what the

1 negotiations are, and his right to trial; is that correct?"

2 And Mr. Anderson replied, "Yes, sir."

3 Do you see that?

4 **A** Yes, I do.

5 **Q** Okay. And you didn't say anything at any time to let the
6 Court know --

7 **A** Ma'am, I didn't even say -- I didn't say nothing to the
8 Court.

9 **Q** Okay. And then -- but you later, at the hearing,
10 testified that you were satisfied with counsel's
11 representation of you; is that correct?

12 **A** If that's what I stated in here, that's correct.

13 **Q** Okay.

14 **MS. SCHILL:** Beg the Court's indulgence, Your Honor.
15 Those are all the questions I have.

16 **THE COURT:** Any redirect?

17 **MS. FENNEL:** Thank you, Your Honor.

18 **REDIRECT EXAMINATION**

19 **BY MS. FENNEL:**

20 **Q** Now, Mr. Campbell, when the Court asked you if you were
21 satisfied with your attorney, did you have the knowledge --
22 the legal knowledge that you have today?

23 **A** No, ma'am.

24 **Q** Okay. If you had known then what you know now about the
25 potential legal issues that you could have asserted, would

1 your answer have been different?

2 **A** Yes, ma'am.

3 **Q** And you mentioned that you couldn't get in touch with
4 your attorney after your sentencing. Did you attempt to reach
5 out to your attorney?

6 **A** Well, I asked -- I asked my wife to call him, but I tried
7 to give her the number, but it was hard for me. Once I got
8 shipped to (indiscernible), I had (indiscernible). There was
9 no way I could have got in touch with him before then.

10 **Q** Okay.

11 **A** Here in (indiscernible), you're in lockup, and you don't
12 get to come out of the room, just to eat and shower.

13 **Q** Okay. So you didn't have the opportunity to get in touch
14 with him within ten days to ask him to file an appeal?

15 **A** No, ma'am.

16 **Q** And you also had not been advised by him that you had
17 that option to file an appeal?

18 **A** No, ma'am.

19 **Q** Okay. I have no further questions. Thank you.

20 THE COURT: Any cross?

21 MS. SCHILL: No, Your Honor.

22 THE COURT: The witness may step down. Thank you.

23 Do y'all have any further witnesses?

24 MS. FENNELL: We don't, Your Honor.

25 THE COURT: Do you rest then?

1 MS. FENNEL: Yes.

2 THE COURT: Do you have any witnesses?

3 MS. SCHILL: Yes, Your Honor. The State would call
4 Mr. Andy Anderson.

5 THE CLERK: Place your hand on the Bible and raise your
6 right hand.

7 ANDREW ANDERSON,
8 the witness, after having been duly sworn, was examined and
9 testified to as follows:

10 THE CLERK: Please take a seat in the witness box and
11 state your full name for the Court.

12 THE WITNESS: G. Andrew Anderson. I go by Andy,
13 A-n-d-y. Andy Anderson.

14 MS. SCHILL: If it please the Court.

15 THE COURT: Absolutely.

16 Bonnie, can you hear? Okay.

17 DIRECT EXAMINATION

18 BY MS. SCHILL:

19 Q Thanks for being here today, Mr. Anderson.

20 How long have you been practicing law?

21 A Since 1991.

22 Q How much of that has been criminal law?

23 A I have done criminal the whole time.

24 Q How did you become involved in the Applicant's case?

25 A Johnny came in and hired me. I stayed probably about a

1 year into his case, ballpark.

2 Q Okay. How many times did you meet with Mr. Campbell?

3 A I met with him several times in the office. I met with
4 he and his nice wife several times in the office, and we had
5 numerous phone calls.

6 Q Do you recall the facts of Mr. Campbell's case?

7 A I do.

8 Q Do you mind giving the Court a synopsis?

9 A Sure. Judge, there was an officer on Wire (ph) Road. Do
10 you know where they get their gas? Okay. So there's an
11 officer there. They get a call for a reckless driving on the
12 Wire (ph) Road area. I'm not sure exactly where. And
13 somebody speeding. The officer says he sees the car go
14 speeding on Wire (ph) Road towards the big bypass. So the
15 officer gets behind him pretty quickly. It was kind of hard
16 to believe he could get behind him that quickly, but the video
17 comes on and you see taillights and you see the person hit the
18 stop sign at the bypass, right past Rosslyn (ph) Park, and you
19 see the car kind of hesitate and go left. And then the
20 officer goes left and pulls up in front of the wreck.

21 So what had happened is, Johnny hit the car on left of
22 center and hit another car head-on (indiscernible). That car
23 would have been going towards York Street in the middle lane
24 or the second lane in from the right. Hit them head-on. And
25 you can see the smoke and it was -- it looked pretty tragic.

1 It looked pretty serious.

2 So then what ends up happening is the police came
3 rolling -- the car was rolling. You see several bystanders
4 scrambling to help the officer, scrambles to help, and then
5 the ambulance pulled right in front of the camera and, in
6 essence, it blocks whatever happens at the scene. And by the
7 end, there's got to be -- got to be 20, 30 police cars there
8 probably and lots of people. But you don't really see
9 anything.

10 And the microphone would go on and off. You see various
11 law enforcement officers walking around. But really
12 nothing -- nothing very helpful on the video other than that.

13 So then they take -- they take Johnny to the hospital in
14 Augusta, and he's hurt. His wife, who is in the courtroom,
15 Tiffany, was a passenger. She was hurt probably worse than he
16 was. And then this is the part that was -- that just screwed
17 us. So there's a guy over there in Augusta, a DUI guy, a
18 Georgia police officer who is very gung ho, and you can see --
19 I can't remember if you see or hear a trooper calls over there
20 to Augusta and says, "We got this DUI situation. The guy was
21 going to Georgia. You have helped us before on a case" -- and
22 I'm paraphrasing, okay? I don't remember the exact verbiage.
23 "But you have helped us before. Can you help us?"

24 So this guy, named Floyd, I believe his name was.

25 Q Floyd? F-l-o-y-d?

1 **A** I want to say Floyd Darling. (Indiscernible). And they
2 trained the former solicitor, the DA from Augusta, who is now
3 a judge over there. They (indiscernible) Hospital and does a
4 search warrant and they take Johnny's blood. And it turns out
5 it was a .24.

6 So, in essence, that's the case. So when I meet with --
7 the first time we ever met, we wanted to check on the
8 insurance and make sure that all that insurance money was
9 paid. And to her credit, Tiffany was entitled to some of that
10 money, and she waived any money from that wreck. So the
11 victims got all of it. It was only \$50,000.

12 So the lady had several surgeries. You know, she seemed
13 like a nice lady, but she had been hurt. But we made sure all
14 that money was paid and there was nothing else to be divided.
15 We talked to his son (indiscernible), who was a very nice
16 young man.

17 So, then, obviously, we couldn't prove he wasn't driving
18 because he was driving. The blood alcohol was .24. So we --
19 I got Johnny and Tiffany to go get his medical records. Well,
20 that didn't help because his blood alcohol at the hospital was
21 .35. So we sure didn't want the solicitor to get that. But
22 that kind of confirmed the .24 that SLED ended up coming up
23 with. We liked the .24 better than the .35.

24 So, then, I don't remember how I found out about it -- I
25 think I stumbled across it. There was this huge controversy

1 in Augusta where they were doing these search warrants at the
2 hospital but the judge wasn't coming and doing them himself.
3 A clerk was executing the search warrants. So I thought this
4 is our lucky break. You know, we're going to -- this is it.
5 That was (indiscernible) then we're just screwed.

6 So I checked and it appeared, actually, Danny Craig did
7 it. So then I got Bill Sussman, a friend of mine in Augusta,
8 to go to the clerk's office and just check around. And,
9 apparently, in Augusta, there's a (indiscernible) search
10 warrants, and this was in there.

11 I also had Bill Sussman talk to the Troy (ph) fellow just
12 to see. And Troy (ph) remembered it. And my recollection is
13 that the boy said it was legit, so I thought that was a lost
14 cause.

15 So then Johnny and I are talking, and it's like, why
16 would we have a jury trial? Because if the jury hears these
17 numbers, they're not going to like us. And then the judge is
18 going to be more mad that we wasted jury time and probably
19 give you more time.

20 And what I said is, You probably will get the 15 and
21 then, if the judge is really mad, he really could run it
22 consecutive. So Tiffany, the whole time, wanted to drop it.
23 And she never -- she was mad because she wanted her case
24 dropped, but the prosecutor kept using Tiffany as a bargaining
25 chip, essentially, threatening us with Tiffany, unless you

1 wanted it dropped, she would prosecute both cases.

2 So when the search warrant -- and you couldn't beat that.
3 I felt like this -- and I don't know if it was a wrong or
4 right decision; it was strategy. But I felt like the only
5 leverage I had was that search warrant issue, so I pitched it.
6 I pitched it to Judge Early. He didn't care. And I said, If
7 we pled, what would you give him? And it was me and
8 Ms. Tiffany and I in the back, talking to Judge Early. He
9 said at that first meeting that he would give him between five
10 and 15. More than five, less than 15. I related that to
11 Johnny, and he wasn't excited about it, and neither was I.
12 But, you know, I said it was -- what about the search warrant?
13 He didn't care.

14 And then every time we met with anybody about the case --
15 and it used to make Johnny so mad, and I agreed with him --
16 Ms. Tiffany would say he's got a prior DUI. And I said, No,
17 he doesn't. He had a prior reckless driving.

18 So when it happened in that case, Brett Lancer, who
19 represented him, got him a reckless driving. So then because
20 it kept coming up with Ms. Tiffany, I talked with Brett
21 Lancer, and Brett pulled the file and was like, Well, how did
22 you win the case? Was it a -- did he win because he wasn't
23 guilty or was there a problem? What was it? And he, you
24 know, said, I don't know. Eventually, he told me, I don't
25 know how we got a deal. I think the prosecutor was just being

1 nice to us. There was no smoking gun to cause him to be not
2 guilty.

3 So that didn't hurt us but it didn't help us. I was
4 hoping that the evidence would reveal the trial
5 (indiscernible) in 04 or something. But it was just -- he
6 didn't know how he got the deal.

7 So, then, anyways, Johnny didn't like that number. I
8 didn't like that either, frankly. So then we had a visiting
9 judge, and it was Judge Dickson. Judge Dickson is a very nice
10 judge. And I'll say Ms. Tiffany was kind enough to let me
11 pitch this a few times. So we went and talked to Judge
12 Dickson in October of '18. Judge Dickson said he'd probably
13 do about seven. And Judge Dickson didn't hear about the
14 search warrant issue. He didn't think that was wrong. But
15 Johnny didn't like it.

16 Then I meet with Judge Maddox. Ms. Tiffany and I meet
17 with Judge Maddox. And I had Johnny come up to court that day
18 so, if he liked the number, we could do it. That term of
19 court, Judge Maddox was under the weather and his time here
20 was rather short and sporadic. Judge Maddox said he can
21 probably do about five years. And Johnny didn't want to do
22 that.

23 So then we went and had another meeting with Judge Early,
24 and this other meeting --

25 And, by the way -- I see my notes -- it was Floyd

1 Darling, was the officer in Augusta.

2 THE COURT: D-a-r-l-i-n-g?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: (Indiscernible)?

5 THE WITNESS: Yes, ma'am.

6 So me, Strom Thurmond, and H. Tiffany meet with Judge
7 Early in January of '19, and Judge Early says he'd probably do
8 somewhere between eight and twelve. Well, that's worse than
9 before. And, again, he still didn't hear about the search
10 warrant. My thought was, if I filed a motion for the search
11 warrant, we're going to lose because none of the judges care
12 about it. And then once we lose the motion, we really have
13 nothing to battle. So that's why I didn't file a motion.
14 Maybe that was a mistake. If I had filed a motion and we won,
15 obviously, it would have been great.

16 If any one of those judges had said, "I agree with you;
17 that doesn't sound right," I would have, obviously, filed a
18 motion. Now, I did research, I talked to other lawyers. I
19 put it on LISTSERV because it didn't seem like you could do a
20 search warrant in Georgia on a South Carolina case. But I got
21 nothing. I found nothing that says you could not do that.
22 Now, I'll say this: I found nothing that says you could do
23 it. But they did it. And the blood killed us.

24 So I called a couple of lawyers just to pitch, just to
25 get a second opinion, and got nothing. No help there. So

1 that's where we got down to the wire.

2 Now, Johnny's boss -- Johnny's had a part-time job on the
3 side. His boss is a connected fellow and has some connections
4 to the Solicitor's Office, and he thought he might could help,
5 and that didn't help.

6 And we just ran out of time. So, on that Friday --
7 indeed it was the Friday after the judge's retirement party,
8 and we were kind of excited to do it on that Friday. We were
9 hoping that we'd get past that term. And Johnny was very --
10 you know, he was on standby, reluctantly. And I was actually
11 at a CLE seminar in USC Aiken with my wife, and I got a text
12 from Ms. Tiffany that, if you don't come over here now, the
13 deal's off the table. And I was frustrated by that.

14 So we got a hold of Johnny. It was actually probably
15 Jamie in my office had called him. But he showed up. He
16 manned up on that. I was concerned that he might not come.
17 He showed up. Tiffany was with him. And, you know, we
18 decided to transfer -- we had some notes about the party and
19 about the CLE, and I thought that that made Judge Early -- he
20 seemed to be in a better mood. I don't want to say better
21 like he's in a bad mood. Sometimes, we all have our moods.
22 He seemed to be in a jocular mood that day. I felt like that
23 was going to be the best chance we had.

24 So I did tell him he needs to take the deal, and if we
25 did the plea, I thought the plea went pretty well. The victim

1 was there. She was very sympathetic. I thought -- I thought
2 that the judge went right in the middle. It was five to
3 eight, gave him six and a half. And the best part of it --
4 and that's what I told Johnny in the afterwards was there was
5 no fine. And that was one of the things that I told him was,
6 if you go to court on both, the fines are huge. You're going
7 to get double fined. And those fines -- I thought it was
8 mandatory, but Judge Early didn't fine him. And I thought
9 that was something. So I guess that was the little kernel of
10 sunshine.

11 So nobody wants to get six and a half years. I felt bad
12 for Johnny. I liked Johnny. I liked his wife. I felt bad
13 for him. I never -- it never entered my mind to do an appeal
14 based on the numbers that Judge Early had said before. This
15 was actually pretty good, from what he said. And he wasn't --
16 I didn't believe he could do anything better, and there was
17 nothing to appeal. If I filed a motion and lost on the blood,
18 we could have appealed that. But I didn't file a motion. I
19 was going to lose that motion.

20 So that's the case. I did tell Johnny in the back, if he
21 needed something, call, but he couldn't get a hold of me, I
22 guess. So that's it.

23 Q Okay. Just a couple of questions just to clarify for the
24 record. So did you discuss the elements of defenses of the
25 charge he was facing?

1 **A** Well, yes. Yes.

2 **Q** Okay. And did you discuss the possible sentence for the
3 charges he was facing?

4 **A** Yes.

5 **Q** Okay. Could you tell me a little bit about that
6 conversation you had with him.

7 **A** Well, he told you himself each one carried up to 15
8 years. So, generally, you don't get two consecutive sentences
9 unless it's egregious, but sometimes judges will give you
10 consecutive sentences. I didn't really think he would get
11 that, unless you really, really upset the system. But it's a
12 possibility.

13 And I did just have something off the top of my brain.
14 What he said about the chain of custody was actually true.
15 Our best chance was just -- to win was to settle it. And I
16 really thought we should do it as a bench trial and the State
17 may have objected to that. But then if somebody doesn't show
18 up, we might get very lucky.

19 I don't Facebook, but I had my secretary go on Facebook
20 and we checked on the nurse, and the nurse is still here.
21 She's on Facebook. That's the nurse at the hospital. So I
22 was kind of hopeful maybe she'd be gone, but she wasn't.

23 So I felt like we did everything we could. On one hand,
24 it's a very simple case, so there's not a whole lot going on,
25 but then with the issues with blood (indiscernible), so...

1 Sorry to digress.

2 **Q** Okay. So, just to be clear, the sentence he received,
3 although not favorable or what he would have loved to have,
4 was that an illegal sentence in any way or improper?

5 **A** No.

6 **Q** Okay.

7 **A** What Johnny wanted was probation, which everybody hands
8 you. I wanted to get him probation, and I really thought the
9 issue with the blood, that somebody might do it. I had some
10 issue whether they (indiscernible) a very light sentence, but
11 (indiscernible) by that.

12 **Q** Okay. Did you think it was in the Applicant's best
13 interest to plead guilty?

14 **A** Yes.

15 **Q** And whose decision is it ultimately to plead guilty or to
16 proceed with trial?

17 **A** Well, it's his, but, I mean, I did recommend him to do
18 it. I mean, I urged him. I told him he should do it.

19 **Q** Okay.

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

21 THE COURT: Certainly.

22 BY MS. SCHILL:

23 **Q** I'm sorry; one last question. You might have touched on
24 this. Did you see any meritorious claims for appeal?

25 **A** No.

1 Q Okay. So none whatsoever?

2 A No.

3 Q Okay. That's all the questions I have. Thank you.

4 THE COURT: Ms. Fennell?

5 CROSS-EXAMINATION

6 BY MS. FENNELL:

7 Q Mr. Anderson, I'm Nancy Fennell. We have met and spoken
8 on the phone. I just have a few questions for you.

9 First, just to clarify: The reference to Ms. Tiffany
10 through the meetings that you had with these judges, you're
11 not referring to Mr. Campbell's wife; you're referring to the
12 solicitor?

13 A Yes.

14 Q Okay.

15 A I didn't think about that, so yes.

16 Q Okay. I was a little confused for a while but I
17 realized.

18 A Sorry.

19 Q And so she is also Ms. Tiffany.

20 A Page Tiffany is the prosecutor and Tiffany Campbell is
21 the wife. They weren't married at the time of the wreck, but
22 they got married later.

23 Q Okay. And you indicated that Ms. Tiffany kept referring
24 to a DUI.

25 A Which one?

1 Q The solicitor.

2 But Mr. Campbell didn't have a DUI on his record.

3 A So she constantly -- and she did -- and I'll say this:
4 Johnny would get mad at me because then I would repeat what
5 she said, and he would get frustrated at me. And I'm, like,
6 going "You're right."

7 And so it happened so many times. That's when I decided
8 to call Mr. Lancer and just say get this to me. So Brett
9 pulled the file and said, you know, I really don't know how I
10 got a reckless on this.

11 But she would. She would tell the judge. I will say
12 this, the law enforcement generally hasn't had an idea. If
13 you get charged with DUI and then it ends up in a reckless, if
14 you, quote, "got away with it," and, you know, prosecutors say
15 that stuff and then defense attorneys say, "Well, no, it's a
16 reckless driving."

17 But it did frustrate Johnny because it happened so many
18 times. And I'll say this: The judges -- all three judges
19 that we talked to were kind of on Ms. Tiffany's side in that
20 regard. You know, they were like, "Oh, so he got a reckless."
21 So it does resonate in their minds that he's been through this
22 before. And that was just a DUI first, but he did get
23 convicted of it.

24 Q Okay. And did you discuss with Mr. Campbell any other
25 evidence that the State had against him beyond the toxicology

1 results?

2 **A** Well, just -- I mean, you're talking about driving. He
3 was driving. They got him out from behind the wheel. His
4 wife was the passenger. There's no way we can say he wasn't
5 driving.

6 There was a wreck. There's an issue about great bodily
7 injury. Were the lady's injuries great bodily injury? And
8 she had several surgeries. I mean, I feel like that was great
9 bodily injury. So the only thing left was the toxicology.
10 And that was our case. That's why I didn't think we needed a
11 jury trial because the jury, if they hear that 24 -- even
12 worse, the 35 -- you know, he was driving and the nice lady
13 was hurt, I don't see that as being sympathetic, whereas the
14 judge can be more -- you know, more neutral on the emotional
15 aspects and just focus on the legalities of really the chain
16 if somebody didn't show up or the motion to exclude it if they
17 did show up.

18 **Q** Okay. And knowing that that was really the clincher in
19 his case, you chose not to file the motion to suppress that.

20 **A** And that's -- that sounded like a good idea to wrestle
21 with because I felt like, if I filed the motion, I lose the
22 leverage of the issue. If I file that motion and lose, I have
23 lost that issue. So I suppose I could have filed a motion,
24 lost, appealed that, but then what was happening was Page
25 Tiffany, the prosecutor; Tiffany Campbell, his wife; Judge

1 Early; Strom Thurmond, the boss, anxieties were rising. Okay?
2 So it was getting more and more urgent that we do something,
3 to the point that, very late in the game, I met with Johnny
4 and Tiffany, his wife, and said this is the best it's going to
5 be.

6 So he said, "Well, you need to try one more time." So I
7 remember I said, "Well, they're going to be so mad." And he
8 says, "You need to try one more time."

9 So I sent another email and, man, Strom Thurmond and
10 Ms. Tiffany were mad. He was just like, we bent over
11 backwards, we let you talk to these judges, we have made this
12 offer, and then you have the nerve to ask for one more time.
13 You know, it wasn't helping things that they were getting
14 riled up. And then that's why -- truthfully, that's where
15 I -- we were hoping we'd get past that week because Johnny
16 knew he was going go to prison for some time, and he really
17 wasn't ready. I don't know if anybody that's really ready,
18 but he wasn't ready. And we were hopeful that the party and
19 me being in that CLE, maybe he wouldn't have to. But it was a
20 very tense Friday when we did the plea. I mean, tensions were
21 high on both sides.

22 With that being said, Judge Early was in a really good
23 mood, and I felt -- at that moment, I felt like that was the
24 best sentence he was going to get ever with Judge Early.

25 Q Okay. And I think, before, you had discussed that, each

1 time you went to speak with Judge Early, Judge Dickson, and
2 Judge Maddox, you went back to Mr. Campbell and let him know
3 what they said that they thought a reasonable sentence would
4 be; is that right?

5 **A** Yes, ma'am.

6 **Q** Okay. And so then each time I think you said it was five
7 to 15 years, about seven years, eight to 12 years. Were those
8 the ranges that you discussed with him?

9 **A** Yes, ma'am.

10 **Q** Okay. And he told you he wasn't happy with that and go
11 back and keep working at it?

12 **A** Right.

13 **Q** Okay. So knowing that and after the sentence that he did
14 receive, you didn't discuss with him the option of filing a
15 motion to reconsider?

16 **A** I don't think I did. I really don't.

17 **Q** Okay.

18 **A** I sure don't remember it.

19 **Q** Okay. And you didn't discuss with him his option of
20 filing a notice of appeal?

21 **A** It was never -- it honestly never entered my mind because
22 I didn't think there was nothing to appeal.

23 **Q** Okay.

24 **A** So I'm 99 percent sure I didn't tell him anything about
25 an appeal. And I say this, reading the transcript, I don't

1 think Judge Early did either.

2 Q Okay. I was going to ask you that, if you recall Judge
3 Early advising him of his right to appeal.

4 A I would assume it was done in colloquy, but in reading
5 it, I didn't see it in there.

6 Q So you can't pinpoint anywhere in the transcript that
7 Judge Early advised him of that?

8 A I don't think he did.

9 Q Okay. Have you ever filed a notice of appeal for a
10 client even though you didn't think they had a meritorious
11 claim?

12 A I have, and that's one of those awkward things, but I
13 have.

14 Q Okay. I don't have any further questions. Thank you.

15 A Okay.

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

17 THE COURT: Yes.

18 MS. SCHILL: Just a couple of questions. Sorry.

19 REDIRECT EXAMINATION

20 BY MS. SCHILL:

21 Q Going back to the motion to suppress blood evidence, is
22 it fair to say that your decision not to file the motion was
23 sort of a strategic move or it would have been kind of a
24 third-year strategy there?

25 A Yes.

1 Q Okay. Because all -- I believe you testified, all the
2 judges you had spoken with were aware of your argument and
3 seemed to disregard it and thought that they'd let the blood
4 evidence come in; is that correct?

5 A That's correct. I even spoke with magistrates just to
6 see what they would think. And basically, what they all said,
7 they think that's the right way to do it. That, to do it,
8 would be a certain harm. I got no sympathy. Nobody thought
9 there was an issue with it.

10 Q Okay. And I believe you had said -- so if you had filed
11 the motion and lost, you would have lost your leverage to get
12 your client a better deal at the plea stage; is that right?
13 Is that what you were --

14 A That's what I was thinking.

15 Q Okay. All right. And then just one more question. Just
16 to go back to the motion to reconsider, just to be clear for
17 the record, did you have any possible arguments legally to
18 file a motion to reconsider a sentence?

19 A Truthfully, that moment, I felt lucky that the judge put
20 it in the middle. We were hopeful he would do the five,
21 obviously. But with the victim there -- and the victim was
22 sympathetic -- I felt we were lucky to get right dead -- you
23 know, slap in the middle, and it really was kind of better
24 than he had indicated before.

25 Q Okay. That's all the questions I have. Thank you.

1 THE COURT: Any further questions?

2 MS. FENNELL: No, Your Honor.

3 THE COURT: All right. Do you have anymore witnesses?

4 MS. SCHILL: No, Your Honor. We ask that Mr. Anderson be
5 released, and the State would rest.

6 THE COURT: The witness may step down. Thank you.

7 Are you-all doing closing or --

8 MS. SCHILL: Your Honor, not unless you would require
9 them.

10 THE COURT: I don't.

11 MS. SCHILL: Okay.

12 MS. FENNELL: I'm fine with that.

13 MS. SCHILL: Okay. I'm fine with that. Thank you.

14 THE COURT: Anything further from either side?

15 MS. FENNELL: No, Your Honor.

16 MS. SCHILL: No, Your Honor.

17 THE COURT: All right. I'm going to take this under
18 consideration, and I'll have you some information by the end
19 of the week with regards to my decision.

20 MS. FENNELL: Thank you, Your Honor.

21 MS. SCHILL: Thank you, Your Honor.

22 THE COURT: Thank you very much.

23 (The above proceeding concluded at 11:40 a.m.)

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CERTIFICATE OF TRANSCRIBER

CASE/NO.: Johnny Ray Campbell vs. The State

2019-CP-02-00683

DATE OF PROCEEDING: October 3, 2019

I, Bobbi J. Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were **transcribed to the best of my ability from the audio recording** and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

Bobbi J. Fisher, RPR, CET

NCRA Registered Professional Reporter (RPR)

AAERT Certified Electronic Transcriber No. CET-1148

Prepared: July 1, 2020

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Johnny Campbell,
SCDC # 379280,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No.: 2019-CP-02-00683

ORDER OF DISMISSAL

RECEIVED
JAN 21 2020
S.C. SUPREME COURT

The matter before this Court is an action for post-conviction relief (PCR). Johnny Campbell (Applicant) commenced this PCR action March 20, 2019. The State made its return on May 9, 2019. This Court held an evidentiary hearing October 2, 2019, at the Aiken County Courthouse before the undersigned. Applicant was present and represented by Nancy C. Fennell, Esquire. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office represented the State.

At the PCR hearing, Applicant testified on his own behalf. P. Andrew Anderson, Esquire, (Counsel) also testified at the hearing. After reviewing the testimony presented and reviewing the relevant portions of the record before the Court, for the reasons discussed below, this Court finds Applicant's allegations are without merit and concludes Applicant failed to meet his burden. Therefore, this Court denies relief and dismisses the action with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted during the October 2017 term of the Aiken County Grand Jury for felony driving under the influence, great bodily injury results (2017-GS-02-01912). Applicant was represented by Counsel. Assistant

Solicitor Paige E. Tiffany of the Second Circuit Solicitor's Office prosecuted the case. On February 22, 2019, Applicant pled guilty before The Honorable Doyet A. Early. At the conclusion of the guilty plea hearing, Judge Early sentenced Applicant to fifteen years' imprisonment suspended upon service of seventy-eight months, and five years of probation. Applicant did not appeal his plea or sentence.

II. SUMMARY OF FACTS

Aiken County Sheriff's Department received a complaint about a vehicle driving recklessly and at a high rate of speed near May Royal Road in Aiken County. (GP Tr. 4). Deputy Sullivan observed Applicant's pick-up truck on Wire Road and attempted to catch up with Applicant. (GP Tr. 4). Once he approached the intersection of Wire Road and Rudy Mason Parkway, Sullivan observed smoke rising from a two car accident. (GP Tr. 4). Applicant, who had a passenger, Ms. Tiffany McGee, had lost control of his vehicle and crossed the median, striking a Nissan Maxima driven by Mr. Dwayne Williams. (GP Tr. 4). Henderson and her daughter Ariana were in the vehicle with Williams. (GP Tr. 4). Trooper Vargo of the South Carolina Highway Patrol was dispatched to the scene. (GP TR. 4). All involved were transported to MCG Hospital in August, Georgia for treatment. (GP Tr. 4). Ms. McGee and Ms. Henderson both received great bodily injuries. (GP Tr. 4). Vargo obtained a blood sample from Applicant after obtaining a search warrant. (GP Tr. 4). Applicant's blood alcohol content was .24. (GP Tr. 4).

III. ISSUES RAISED

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

Illegal Search and Seizure

1. "Drawing my blood while I was unconscious."

Ineffective Assistance of Counsel

1. "The lawyer did not file a motion to suppress the blood drawn without my permission. He did not explain to me what it meant to have a 15 year suspended sentence, (No parole)..."
2. Failure to file a motion for reconsideration or an appeal.

Involuntary Guilty Plea

1. "I was threatened that if I did not take the plea I would be charged with multiple felonies and given 30 years."

On September 19, 2019, Applicant sent Respondent an amended application alleging the following claims:

Ineffective Assistance of Counsel

1. Failing to file a motion to suppress the blood sample evidence related to Applicant's blood alcohol level
2. Failing to inform Applicant of available defenses
3. Failing to file a motion for reconsideration
4. Failing to file a direct appeal
5. Failing to advocate for Applicant during sentencing
6. Failing to explain to Applicant the range of possible sentences

At the commencement of the hearing, Applicant indicated he was not going forward with his fifth amended allegation: failure to advocate for Applicant during sentencing. Applicant also indicated he was only going forward with the remaining amended allegations and was waiving the allegations in his original application. Therefore, this Court finds all other allegations raised in Applicant's original application, as well as issue number five in Applicant's amended application, are waived and abandoned, and those allegations are denied and dismissed with prejudice.

IV. SUMMARY OF TESTIMONY***Applicant's Testimony***

Applicant testified he was sentenced to fifteen years' imprisonment suspended upon seventy-eight months, and to five years' probation. Applicant confirmed he pleaded guilty to DUI felony and subsequently filed a PCR application. Applicant also confirmed he understood the consequences of going forward with his PCR application, including the possibility of receiving a

greater sentence if his application was granted.

Applicant testified he hired Counsel to represent him. Applicant testified he met with Counsel a few times, but that Counsel did not know what to do each time they met. Applicant testified Counsel advised him the best thing to do was to take a plea. Applicant testified Counsel represented him for approximately six-to-eight months prior to his plea, and that he and Counsel discussed the possibility of going to trial a few times.

Applicant testified he was involved in an accident which resulted in law enforcement taking his blood. Applicant testified he was not under arrest at the time his blood was drawn. Applicant testified he believed the toxicology report had been tampered with because his blood alcohol level was taken when he was unconscious. Applicant testified he initially recalled discussing with Counsel a few potential legal issues as it relates to the blood sample that was obtained to determine his BAC level. Applicant later testified he and Counsel did not discuss how the toxicology report could potentially be suppressed. Applicant also later testified Counsel told him he could receive up to fifteen years' imprisonment.

Applicant testified he recalled Counsel advising him once more that he might be better off taking a plea offer because if he went to trial he would be facing fifteen-to-thirty years. Applicant testified Counsel advised him their trial strategy would have been to proceed with a bench trial. Applicant testified Counsel told him if law enforcement failed to show up to his bench trial that his case would be dismissed because the evidence could not be explained. Applicant testified he believed there was a chance he would have received a lower sentence at trial, but he could not say for certain.

Regarding plea negotiations, Applicant testified Counsel informed him the maximum sentence he would receive was weekend jail time, fines, community service, and ankle bracelet

monitoring. Applicant also stated Counsel advised him he could receive sentence consisting of work furloughs. Applicant testified he received a sentence of fifteen years' imprisonment suspended upon seventy-eight months and to five years of probation, and did not receive an option for furloughs. Applicant testified if he had known that he would not receive any furlough opportunities, he would not have plead guilty.

Applicant testified he had "never been in trouble before"¹ and subsequently found out information from the law library that he did not understand at the time of his guilty plea. Applicant testified he learned about his right to appeal from a fellow inmate at Kirkland Correctional Institution. Applicant testified he was not aware of his right to appeal prior to the discussion with his fellow inmate because the plea court did not inform him of his right to appeal. Applicant later testified he "probably" would have filed an appeal. Applicant testified he recalled telling the plea court he was satisfied with his representation from Counsel, but also testified that he decided he was not satisfied with Counsel when he found out about his right to appeal. Applicant also testified he did not attempt to contact Counsel about an appeal because he did not have the opportunity to use the phone at Kirkland Correctional Institution.

Applicant testified he recalled agreeing with the facts of his case as they were presented by the prosecution at his guilty plea hearing. After being provided a copy of the guilty plea transcript, Applicant recalled Counsel advising the court Counsel discussed Applicant's possible sentences with Applicant. Applicant testified he would have filed a motion to reconsider his sentence because he felt he received "too much" time and he was not happy with his sentence.

¹ Applicant's plea trial transcript indicates Applicant was charged with a felony offense at the age of sixteen. (GP Tr. 4).

Counsel's Testimony

Counsel testified he has been practicing law since 1991, and all of his experience has been in criminal law. Counsel testified Applicant retained him approximately one-year after the commencement of Applicant's case. Counsel testified he met with Applicant several times at Counsel's office. Counsel further testified he met with Applicant's wife on several occasions. Counsel testified he explained the elements of the offense and any possible defenses with Applicant. Counsel also testified he advised his client of the possible sentence he could receive.

Counsel testified Applicant's charges arose out of an automobile accident which occurred in Aiken County, South Carolina. Counsel testified Applicant was brought to a hospital in Georgia, where the hospital obtained a blood sample to perform a toxicology test pursuant to a search warrant, consistent with Georgia law. Counsel testified Applicant's Counsel testified he needed to get the blood evidence and toxicology report suppressed, or otherwise his client would be found guilty if he were to go to trial.

Counsel testified he initially thought of two ways he could get the toxicology report suppressed: (1) if the Clerk of Court issued the search warrant, as opposed to a judge,² and (2) on a jurisdictional issue based on the fact that the accident occurred in South Carolina and Applicant was taken to Georgia, where a search warrant was obtained to collect Applicant's blood sample. However, Counsel testified he verified that the search warrant was in fact issued by a judge, eliminating the possibility of suppressing the evidence based on the first issue. Counsel testified he consulted with other attorneys and determined that it was unlikely that the evidence would be suppressed. Additionally, Counsel testified he spoke with Judge Early, Judge Maddox, and Judge

² Counsel cited to the fact that several search warrants issued in the State of Georgia were found improper because the Clerk of Court issued the warrants, as opposed to a judge.

Dixon about the jurisdictional/search warrant issue, but each judge indicated they would not suppress the toxicology report or blood evidence. During Counsel's first meeting with Judge Early, the judge indicated he would sentence Applicant to five-to-fifteen years' imprisonment. Counsel testified Judge Early indicated at a later meeting he would sentence Applicant to imprisonment for eight-to-twelve years. Counsel testified he discussed all plea offers with Applicant.

Counsel testified that based on this information, he believed he would lose a motion to suppress the toxicology report and blood evidence. Furthermore, Counsel testified if he still pursued a motion to suppress the evidence and lost, Applicant could not use the potential issue as leverage to obtain a better plea offer. Counsel testified he believed forgoing a motion to suppress the evidence gave Applicant the best chance at a favorable plea offer.

Counsel testified he did not see any possible meritorious claims for appeal. Counsel testified he did not believe he discussed Applicant's right to appeal with Applicant because Applicant plead guilty and Counsel did not see any possible meritorious claims for appeal. Counsel testified he did not recall Judge Early advising Applicant of his right to appeal. Counsel further testified the sentence Applicant received was not an improper or illegal sentence. Counsel testified he was surprised because Judge Early imposed a more favorable sentence than he originally indicated he would. Counsel testified he believed it was in Applicant's best interest to plead guilty, and that it was ultimately Applicant's decision to plead guilty.

V. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove

“counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness

claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

1. Failure to File a Motion to Suppress the Toxicology Report

Applicant alleges Counsel was ineffective for failing to file a motion to suppress the toxicology report.

Counsel testified he made the decision not to file the motion to suppress strategically because if he filed the motion and lost, Applicant would lose all leverage he had to obtain a favorable plea deal. Counsel testified he consulted with other lawyers and determined that it was unlikely the evidence would be suppressed. Furthermore, Counsel consulted with several judges, and each judge indicated to Counsel they were not persuaded by Counsel's arguments and would allow the toxicology report to come in at trial. Based on this, Counsel made his strategic decision to not file the motion.

This Court finds the testimony of Counsel as to this allegation very credible. This Court finds Applicant has failed to show any deficiency on behalf of Counsel as Counsel articulated a

valid trial strategy for not filing the motion to suppress the toxicology report. See *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (“[W]here counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.”). As Counsel testified, he did not file the motion because doing so could have prevented Applicant from receiving a favorable plea offer. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel’s alleged deficiency. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

2. Failure to Inform Applicant of Any Available Defenses

Applicant alleges Counsel was ineffective for failing to inform Applicant of any possible defenses.

As Counsel credibly testified, Counsel discussed the possible defenses with Applicant to the extent he had any defenses. Counsel testified he discussed the potential issues regarding the toxicology report with Applicant. However, as Counsel testified, Applicant’s defenses were limited to the arguments in favor of suppressing the evidence. If the evidence came in at trial, Applicant would not have any other viable defenses. Applicant also testified at one point during his PCR hearing that he recalled Counsel discussing the potential legal issues regarding the toxicology report.

This Court finds Counsel’s testimony on this issue very credible. This Court also finds Applicant’s testimony on this issue credible only to the extent Applicant testified he recalled Counsel discussing the potential legal issues regarding the toxicology report with him prior to the guilty plea hearing. This Court further finds Applicant has failed to establish how Counsel was

deficient in any way regarding Applicant's defenses, as Counsel discussed with Applicant the available defenses to the extent Applicant had any. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

3. Failing to File a Motion for Reconsideration

Applicant alleges Counsel was ineffective for failing to file a motion to reconsider his sentence.

Counsel testified the sentence imposed on Applicant was not an illegal sentence, nor was there any allegation the trial court acted with partiality, prejudice, oppression or corrupt motive when sentencing Applicant. Accordingly, Counsel testified he did not believe there was a valid legal basis to file a motion to reconsider his sentence. Applicant testified he merely believed he received "too much" time.

This Court finds Counsel's testimony regarding this allegation credible, and finds Applicant's allegation on this issue credible only to the extent Applicant testified he wanted to file a motion to reconsider his sentence because he believed he received "too much" time. This Court finds Applicant has failed to establish how Counsel was deficient in any way by failing to file a motion to reconsider his sentence. There is no professional obligation to file a motion for reconsideration of a sentence absent a specific legal reason to do so. *See Shraitar v. U.S.*, 736 F.2d 817, 818 (1st Cir. 1984) ("No court has held that failure to file a [motion to reduce sentence] automatically constitutes ineffective assistance of counsel."). Counsel credibly testified the sentence imposed was not illegal or imposed based on prejudice, corruption, or any other improper

motive. Additionally, Counsel credibly testified he was “surprised” because Judge Early ultimately sentenced Applicant to a shorter sentence than he previously indicated he would impose. Accordingly, Counsel was not deficient.

Furthermore, Applicant fails to establish he was prejudiced by Counsel’s alleged failure to file a motion to reconsider Applicant’s sentence. In the context of a motion to reconsider sentence, Applicant must establish a reasonable probability his sentence would have been reduced if the motion had been filed. Applicant provided no testimony or evidence suggesting his sentence would have been reduced by way of a motion to reconsider. Applicant merely hoped the Court would have imposed a shorter sentence if he filed a motion to reconsider. Accordingly, Applicant has failed to provide support for either prong of the *Strickland* test and, accordingly, this claim is denied and dismissed with prejudice.

4. Failure to File a Direct Appeal

Applicant asserts Counsel was ineffective for failing to file a direct appeal, and Applicant asserts he wanted to appeal his convictions and sentence.

While trial counsel is required to make certain the defendant is made fully aware of the right to appeal a conviction at trial, the standard for a guilty plea is different. *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Id.* at 225, 670 S.E.2d at 374 (citing *Roe v. Flores-Ortega*, 528 U.S. 470 (2000); *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995)).

Counsel testified he did not discuss Applicant's right to an appeal because Applicant did not have any possible meritorious issues for appeal. Applicant testified he would have "probably" filed an appeal, but he did not attempt to contact Counsel about an appeal because he did not have the opportunity to use the phone at Kirkland Correctional Institution.

This Court finds Counsel's testimony on this issue credible, while also finding Applicant's testimony not credible. This Court finds Applicant has failed to establish how Counsel was deficient in any way for not filing a notice of appeal. Counsel credibly testified there were no meritorious claims for appeal in Applicant's case. Furthermore, Applicant ultimately chose to give up his constitutional rights, including the possibility of asserting any argument that the blood sample was illegally obtained, by pleading guilty.

Furthermore, Applicant fails to establish he was prejudiced by Counsel's alleged failure to appeal Applicant's case. As previously discussed, Counsel credibly testified there were no possible meritorious issues for appeal. Accordingly, this claim is denied and dismissed with prejudice.

5. Failure to Advise Applicant of the Possible Ranges of His Sentence

Applicant alleges Counsel was ineffective for failing to advise Applicant of his possible sentences.

Counsel testified he advised his client of the possible sentence he was facing, which was a maximum of fifteen years' imprisonment. Counsel also testified he discussed the terms of the final plea offer with Applicant, which consisted of a negotiated fifteen year sentence suspended upon service of five-to-eight years.

This Court finds Counsel's testimony on this issue credible. This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding advising Applicant of his

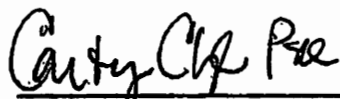
was prejudiced by any alleged failure to file a direct appeal. Finally, this Court finds Counsel properly advised Applicant of his possible sentences, and therefore was not deficient. This Court further finds Applicant has not shown any prejudice resulting from any alleged failure to discuss Applicant's possible sentences.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Rule 71.1(g), SCRCF, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 11 day of December, 2019.



COURTNEY CLYBURN POPE
Presiding Circuit Court Judge
Second Judicial Circuit

December 11, 2019