

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Colleton County

Honorable R. Lawton McIntosh, Circuit Court Judge

ANTHONY TEREZ BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-000103

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF COLLETON) FOURTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
VS.) Indictment No.:
ANTHONY TEREZ BROWN,) 2004-GS-15-419
DEFENDANT.)

ORIGINAL

STATE OF SOUTH CAROLINA)
VS.) Indictment No.:
APRIL HAMPTON) 2004-GS-15-415
DEFENDANT.) 2006-GS-15-472

STATE OF SOUTH CAROLINA)
VS.) Indictment No.:
RAY NELSON,) 2004-GS-15-417
DEFENDANT.)

PLEA

held before the Honorable Carmen T. Mullen
Mia Perron, Official Court Reporter, 14th Judicial Circuit
in the Colleton County Courthouse
Walterboro, South Carolina
on Tuesday, March 13, 2007, Commencing at 12:08 p.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 14th Judicial Circuit
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EXHIBITS

[None]

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MR. ALEXANDER: I need Anthony Terez Brown, Ray Nelson, April Hampton.

[Off the record momentarily]

MR. ALEXANDER: Please the Court, Your Honor.

THE COURT: Yes, sir.

MR. ALEXANDER: Your Honor, let me get them all in place here.

Before you on the far end, standing next to Mr. E.W. Bennett, who is her attorney, is April Hampton and she is entering a plea to indictment 04-GS-15-0415, which is an indictment for armed robbery. She is also entering a plea to indictment 06-GS-15-0472, which is a charge of forgery. I'm also dismissing -- if the plea is accepted, I am nol-prossing indictment 04-GS-15-0414, which is an indictment for murder, and indictment 06-GS-15-0531, which is another count of forgery.

Standing next to Ms. Hampton is Ray Nelson with his attorney, Guy Vitetta, and Mr. Nelson's father. He is entering a plea to indictment 04-GS-15-0417, a count of armed robbery. And if the plea is accepted, I am dismissing or nol-prossing indictment 04-GS-15-416, indictment for murder.

Standing next to Mr. Vitetta is Anthony Terez

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1 Brown, Anthony T. Brown, next to his attorney, Mr.
2 James Wegmann, W-E-G-M-A-N-N, from the Beaufort County
3 Bar, who is entering a plea to indictment 04-GS-15-
4 0419, an indictment for armed robbery. And if the
5 plea is accepted, I will be nol-prossing indictment
6 04-GS-15-0418 on a count -- indictment for murder.

7 THE COURT: All right. Solicitor, it is my
8 understanding we are going to go ahead and accept the
9 pleas today and --

10 MR. ALEXANDER: The only one that has requested
11 deferment of sentencing has been on behalf of Ms.
12 April Hampton.

13 THE COURT: Okay. So we'll go forward with the
14 other ones?

15 MR. VITETTA: Judge, Mr. Nelson would like to
16 defer sentence, although I can't -- I can't be here.
17 Friday afternoon is the only time available for me the
18 rest of the week. I -- so I just --

19 THE COURT: Mr. Vitetta, you need to defer
20 sentence or --

21 MR. VITETTA: I don't. He wants to defer
22 sentencing, but I cannot be here past today so -- I
23 can come Friday afternoon.

24 MR. ALEXANDER: There is no guarantee we'll be
25 here, Your Honor, I mean, the way things normally

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1 work.

2 [Off the record momentarily]

3 THE COURT: Can y'all be here at 8:30?

4 MR. VITETTA: I can be. That will be on the
5 20th?

6 THE COURT: That will be Wednesday morning.
7 Yes.

8 MR. VITETTA: That's the 21st.

9 THE COURT: Can y'all do that? Mr. Alexander,
10 it's pretty early. 8:30? Can we do that?

11 MR. ALEXANDER: My only concern, Your Honor, is
12 that Carol Maple, the deceased's daughter, has come
13 from Georgia. And I believe another one has come from
14 North Carolina; is that correct? Georgia. And I just
15 point that out to the Court.

16 I understand -- I don't know the reason. Mr.
17 Bennett offered me an explanation for the delay on Ms.
18 Hampton, but I don't know what Mr. Nelson's needs are.
19 But I defer on that.

20 THE COURT: Mr. Vitetta, is it that you need to
21 put some facts together for mitigation? Is that
22 correct, sir?

23 MR. VITETTA: Judge, I was -- yes. I did not
24 anticipate going forward with the sentencing today. I
25 thought we were going to go forward with his testimony

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1 and the trial, and so I would like to prepare for
2 sentencing and present to the Court mitigation
3 documents, you know, a sentencing proposal and a
4 memorandum and photographs and --

5 THE COURT: Okay. We'll go ahead and we will
6 set it for 8:30 next Wednesday morning.

7 I will tell the family, Mr. Alexander, this
8 way: ladies and gentlemen, one of the reasons why I
9 am accepting this plea here today, as opposed to
10 waiting, is to go ahead and accept their plea of
11 guilty. I will sentence the two of them next
12 Wednesday, if not all of them. And I haven't heard
13 from Mr. Wegmann yet. I don't know what his position
14 is. But I wanted to go ahead and put on the record
15 for you, because you are here --

16 And I understand some of you have come from far
17 away. I will certainly listen to you today in regards
18 to sentencing if you would like to speak to me and
19 don't believe you are going to be able to come back on
20 Wednesday. So if you do wish to speak and you do want
21 me to consider it, I am happy to hear from you today.
22 You can certainly tell me what your position is and
23 your beliefs on the sentences, if you are inclined to.
24 Of course, you are always welcome to come back next
25 Wednesday at 8:30 in the morning. But if that just

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1 does not work with your schedule, I don't want you
2 concerned about that. I understand. And I have seen
3 y'all here, you know, from the very beginning of this
4 case, obviously, and I certainly know your position.
5 But, again, if you would like to speak today, I am
6 happy to hear from you. Okay?

7 [Off the record momentarily]

8 THE COURT: Mr. Wegmann, what is your position?
9 Do you want me to go ahead and sentence your client
10 today or --

11 MR. WEGMANN: Yes, Your Honor.

12 THE COURT: -- do you want to come back
13 Wednesday?

14 MR. WEGMANN: No, Your Honor. My client's
15 parents are here, his fiance is here, so --

16 THE COURT: His family is here, and he is ready
17 to go forward. All right, sir. I appreciate that.

18 All right. What I am going to do, ladies and
19 gentlemen, is I'm going down the list. I am going to
20 ask certain questions of the attorneys and certain
21 questions, certainly, of the defendants. What I am
22 just going to respectfully ask is that we just go in
23 order. That way, the record will be as clear and
24 clean as possible.

25 So if I need a response from the attorneys, if

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1 we'll just start over here from Mr. Bennett on down.
2 And, again, if I need a response from the defendants
3 in this case, Ms. Hampton will go first, then Mr.
4 Nelson, of course, and then Mr. Brown. I appreciate
5 that. It is just to keep the record completely clean.

6 All right. This is a question for the
7 attorneys. Have you explained, and do your clients
8 understand, the charges against them, the possible
9 punishment, and their constitutional rights? Mr.
10 Bennett?

11 MR. BENNETT: Yes, I have, Your Honor.

12 THE COURT: All right. Mr. Vitetta?

13 MR. VITETTA: Yes.

14 THE COURT: And Mr. Wegmann?

15 MR. WEGMANN: Yes, ma'am.

16 THE COURT: Y'all can jump in the next time
17 around.

18 And how do your clients wish to plead? guilty,
19 or not guilty?

20 MR. BENNETT: Guilty on behalf of April
21 Hampton, Your Honor.

22 THE COURT: Thank you.

23 MR. VITETTA: Guilty, Your Honor.

24 MR. WEGMANN: Guilty, Your Honor.

25 THE COURT: Based on your investigation -- this

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1 is for the attorneys -- do you believe the State has
2 adequate evidence to prove your client's guilt on
3 these charges or charge beyond a reasonable doubt?

4 MR. BENNETT: Yes, I do, Your Honor.

5 MR. VITETTA: Yes.

6 MR. WEGMANN: Yes, ma'am.

7 THE COURT: This is for the defendants.

8 Have any of you taken any medication or drank
9 any alcohol in the last twenty-four hours?

10 MS. HAMPTON: No, ma'am.

11 THE COURT: Mr. Nelson?

12 MR. NELSON: No, ma'am.

13 THE COURT: All right. Mr. Brown?

14 MR. BROWN: No, ma'am.

15 THE COURT: All right. Do any of you suffer
16 from any physical or mental infirmity that would
17 prevent you from understanding what we are doing here
18 today? Ms. Hampton?

19 MS. HAMPTON: No, ma'am.

20 THE COURT: Mr. Nelson?

21 MR. NELSON: No, ma'am.

22 MR. BROWN: No, ma'am.

23 THE COURT: All right. Thank you.

24 Ms. Hampton, to begin with you: you are
25 charged in indictment number 2006-GS-15-472. The

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1 first charge is for forgery. Ma'am, this indictment
2 states that you did in Colleton County on May 26th of
3 2006 did present a counterfeit 50-dollar bill to a
4 clerk at the Taco Bell and that you did receive, I'm
5 going to assume, change as a result of that
6 transaction.

7 Ma'am, do you understand the charge contained
8 in the indictment?

9 MS. HAMPTON: Yes, ma'am.

10 THE COURT: How do you wish to plead to it?

11 MS. HAMPTON: Guilty.

12 THE COURT: Ma'am, are you pleading guilty
13 because you are, in fact, guilty?

14 MS. HAMPTON: Yes, ma'am.

15 THE COURT: Ms. Hampton, do you understand that
16 by pleading guilty to this charge that I could
17 sentence you up to five years in prison for this
18 forgery charge?

19 MS. HAMPTON: Yes, ma'am.

20 THE COURT: And understanding that, ma'am, do
21 you still wish to plead guilty?

22 MS. HAMPTON: Yes, ma'am.

23 THE COURT: Ma'am, you are also charged in
24 indictment 2004-GS-15-415. It's for armed robbery.
25 This indictment states that you did in Colleton County

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1 on April 13th of 2004, while armed with a deadly
2 weapon or in a group that someone was armed with a
3 deadly weapon, specifically a gun, did feloniously
4 take from the victim in this case, Ms. Carolyn
5 Maloney, by means of force or intimidation, a purse, a
6 bank bag, and a diaper bag.

7 Ma'am, do you understand the charge contained
8 in the indictment?

9 MS. HAMPTON: Yes, ma'am.

10 THE COURT: How do you wish to plead to it,
11 ma'am?

12 MS. HAMPTON: Guilty.

13 THE COURT: Are you pleading guilty because you
14 are, in fact, guilty?

15 MS. HAMPTON: Yes, ma'am.

16 THE COURT: Ma'am, do you understand that I
17 could sentence you from a minimum of ten years and up
18 to thirty years in prison on this charge?

19 MS. HAMPTON: Yes, ma'am.

20 THE COURT: And understanding that, ma'am, do
21 you still wish to plead guilty?

22 MS. HAMPTON: Yes, ma'am.

23 THE COURT: Ma'am, do you also understand that
24 by pleading guilty to this charge I could run these
25 two sentences consecutively, which means one after the

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1 other, so you are looking at a maximum possible
2 sentence of thirty-five years? Do you understand
3 that, ma'am?

4 MS. HAMPTON: Yes, ma'am.

5 THE COURT: Additionally, solicitor, these are
6 both most serious or violent offenses -- or not both,
7 I'm sorry.

8 But the armed robbery is; is that correct?

9 MR. ALEXANDER: That is correct, Your Honor.

10 THE COURT: Ma'am, what you need to understand
11 is that this armed robbery constitutes a most-serious
12 offense, which means that if you are convicted of a
13 second most-serious offense, you are going to be
14 looking at life without parole. Do you understand
15 that?

16 MS. HAMPTON: Yes, ma'am.

17 THE COURT: And do you understand a life
18 sentence without parole is just that? It means you
19 would get a life sentence, and you would never be
20 eligible for parole and never be released. Do you
21 understand that?

22 MS. HAMPTON: Yes, ma'am.

23 THE COURT: And understanding that, ma'am, do
24 you still wish to plead guilty?

25 MS. HAMPTON: Yes, ma'am.

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1 THE COURT: Mr. Nelson, you are charged, in
2 indictment number 2004-GS-15-417, with armed robbery.
3 Sir, this indictment states that you did in Colleton
4 County on April 13th of 2004, while armed with a
5 deadly weapon, or with someone else -- and I
6 understand your attorney -- I'm sure he has explained
7 to you the theory of the hand of one is the hand of
8 all -- that you did, along with your codefendants,
9 feloniously take from Ms. Carolyn Maloney, by means of
10 force or intimidation, a purse, a bank bag and a
11 diaper bag.

12 Sir, do you understand the charge contained in
13 the indictment?

14 MR. NELSON: Yes, ma'am.

15 THE COURT: How do you wish to plead to it, Mr.
16 Nelson?

17 MR. NELSON: Guilty.

18 THE COURT: And are you pleading guilty because
19 you are in fact guilty, sir?

20 MR. NELSON: Yes, ma'am.

21 THE COURT: Sir, you also need to understand
22 that this charge for armed robbery carries a minimum
23 of ten years and up to thirty years. And, again, this
24 is not suspendable, sir, so a minimum sentence on this
25 charge would be a ten-year sentence -- and up to

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1 thirty years. Additionally, sir, do you understand
2 that, again, this is a most-serious offense and a
3 violent offense, which just means that if you are
4 convicted of another most-serious or violent offense
5 that you would be looking, again, at life imprisonment
6 without parole? Do you understand that, sir?

7 MR. NELSON: Yes, ma'am.

8 THE COURT: And understanding that, sir, do you
9 still wish to plead guilty to the charge?

10 MR. NELSON: Yes, ma'am.

11 THE COURT: Mr. Brown, you are, again, like the
12 others, charged with armed robbery. Yours is
13 indictment number 2004-GS-15-419. Sir, your
14 indictment states that you did in Colleton County on
15 April 13th of 2004, while armed with a deadly weapon,
16 a handgun, did feloniously take from Ms. Carolyn
17 Maloney a purse, a bank bag, and a diaper bag.

18 Mr. Brown, do you understand the charge
19 contained in this indictment?

20 MR. BROWN: Yes, ma'am.

21 THE COURT: And how do you wish to plead to it,
22 sir?

23 MR. BROWN: Guilty.

24 THE COURT: And are you pleading guilty to this
25 charge, sir, because you are in fact guilty?

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1 MR. BROWN: Yes, ma'am.

2 THE COURT: Sir, do you also understand that
3 this charge carries a mandatory minimum of ten years
4 and up to thirty years in prison? Do you understand
5 that, sir?

6 MR. BROWN: Yes, ma'am.

7 THE COURT: Additionally, sir, this case is
8 both a -- this charge is both a most-serious and a
9 violent offense, which means, sir, that if you are
10 convicted of another most-serious offense, that you
11 would be looking at a prison sentence of life without
12 the possibility of parole. Do you understand that,
13 sir?

14 MR. BROWN: Yes, ma'am.

15 THE COURT: And understanding that, sir, do you
16 still wish to plead guilty?

17 MR. BROWN: Yes, ma'am.

18 THE COURT: All right. Ladies and gentlemen, I
19 know you all were here today to testify in the case of
20 a codefendant, a Mr. Lamar Brown, Anthony Lamar Brown.
21 But you all need to understand that when you plead
22 guilty, you are giving up your constitutional right to
23 a jury trial. And I understand your attorneys have
24 probably explained that to you, because you were going
25 to testify in Mr. Lamar Brown's jury trial. But what

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1 you all need to understand is at a jury trial you
2 would be presumed innocent until a jury, in fact,
3 found you guilty.

4 Additionally, at a jury trial you have the
5 right to remain silent. No one can compel you to
6 testify, and if you chose not to testify at a jury
7 trial I would tell the jury that they couldn't hold it
8 against you. Additionally, at a jury trial, the State
9 is required to prove your guilt on this charge -- for
10 these charges, for you, Ms. Hampton -- beyond a
11 reasonable doubt, which is a very high mark.
12 Understanding that, ladies and gentlemen, also at a
13 jury trial your attorneys would have the opportunity
14 to cross-examine the State's witnesses, as well as
15 present witnesses in your defense.

16 Additionally, if you have made any statements
17 possibly about these charges, or if there were any
18 evidence that possibly could be suppressed, your
19 attorneys could make the appropriate motions at a
20 trial to attempt to suppress that. Ladies and
21 gentlemen, you need to understand that by pleading
22 guilty here today you are not going to get a jury
23 trial, and you are waiving these constitutional
24 rights.

25 Do you understand that, Ms. Hampton?

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1 MS. HAMPTON: Yes, ma'am.

2 THE COURT: Mr. Nelson?

3 MR. NELSON: Yes, ma'am.

4 THE COURT: Mr. Brown?

5 MR. BROWN: Yes, ma'am.

6 THE COURT: All right. And you understand that
7 you are all going to have convictions on your record,
8 Ms. Hampton for forgery and armed robbery, just as if
9 twelve people on a jury convicted you. Do you
10 understand that?

11 MS. HAMPTON: Yes, ma'am.

12 THE COURT: Mr. Nelson, the same for you. You
13 are going to have a conviction on your record for
14 armed robbery, just as if a jury of twelve people have
15 convicted you. Do you understand that?

16 MR. NELSON: Yes, ma'am.

17 THE COURT: And, finally, Mr. Brown, again, do
18 you understand that? that you are going to have a
19 conviction on your record just as if twelve people on
20 a jury had convicted you? Do you understand that?

21 MR. BROWN: Yes, ma'am.

22 THE COURT: All right, sir. Other than the
23 plea negotiations you have put on the record,
24 solicitor, is there anything else that we need to put
25 down?

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1 MR. ALEXANDER: Only that, Your Honor, when
2 they cooperated -- it's not a part of the plea
3 negotiation, but I had always emphasized to them that
4 I would in detail inform the Court of their
5 cooperation so that that could be taken into
6 consideration with their sentencing.

7 THE COURT: Okay. I also understand, as well,
8 sir, that you are dismissing the murder charges
9 against each one of them --

10 MR. ALEXANDER: As of now. Yes, ma'am.

11 THE COURT: -- as part of this plea? Okay. If
12 it goes through. Thank you, sir.

13 MR. VITETTA: Your Honor, just in case -- Eddie
14 Bennett, on behalf of April Hampton.

15 In case it wasn't stated on the record, the
16 State also agreed that her sentence on forgery would
17 run concurrent with whatever she receives on the armed
18 robbery.

19 MR. ALEXANDER: That is correct, Judge.

20 MR. VITETTA: I just wanted to make sure that
21 was clear on the record.

22 THE COURT: Thank you, Mr. Vitetta. I
23 appreciate that, sir.

24 All right. This is for the defendants. Are
25 each of you completely satisfied with how your

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1 attorneys have represented you? Ms. Hampton?

2 MS. HAMPTON: Yes, ma'am.

3 THE COURT: Mr. Nelson?

4 MR. NELSON: Yes, ma'am.

5 THE COURT: Mr. Brown?

6 MR. BROWN: Yes, ma'am.

7 THE COURT: Have each of your attorneys done
8 everything you have asked them to do to defend you in
9 this case? Ms. Hampton?

10 MS. HAMPTON: Yes, ma'am.

11 THE COURT: Mr. Nelson?

12 MR. NELSON: Yes, ma'am.

13 THE COURT: Mr. Brown?

14 MR. BROWN: Yes, ma'am.

15 THE COURT: Have you understood all of your
16 conversations with your attorneys? Ms. Hampton?

17 MS. HAMPTON: Yes, ma'am.

18 THE COURT: Mr. Nelson?

19 MR. NELSON: Yes, ma'am.

20 THE COURT: And Mr. Brown?

21 MR. BROWN: Yes, ma'am.

22 THE COURT: All right. Do any of you need any
23 additional time to speak with your attorneys before I
24 accept your plea? And, of course, we're going to
25 defer sentence on Ms. Hampton and Mr. Nelson. Does

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1 anyone need to speak with their attorney right now
2 before I accept the plea? Ms. Hampton?

3 MS. HAMPTON: No, ma'am.

4 THE COURT: Mr. Nelson?

5 MR. NELSON: No, ma'am.

6 THE COURT: Mr. Brown?

7 MR. BROWN: No, ma'am.

8 THE COURT: Do any of you have any complaints
9 whatsoever against your attorneys? Ms. Hampton?

10 MS. HAMPTON: No, ma'am.

11 THE COURT: Mr. Nelson?

12 MR. NELSON: No, ma'am.

13 THE COURT: Mr. Brown?

14 MR. BROWN: No, ma'am.

15 THE COURT: Has anyone promised you anything or
16 held out any hope of reward to get you to plead
17 guilty?

18 MS. HAMPTON: No, ma'am.

19 MR. NELSON: No, ma'am.

20 MR. BROWN: No, ma'am.

21 THE COURT: Has anyone threatened you, or
22 pressured you, or told you you had to plead guilty
23 here today?

24 MS. HAMPTON: No, ma'am.

25 MR. NELSON: No, ma'am.

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1 MR. BROWN: No, ma'am.

2 THE COURT: Has anyone from law enforcement or
3 the solicitor's office mistreated you in any way
4 concerning these charges?

5 MS. HAMPTON: No, ma'am.

6 MR. NELSON: No, ma'am.

7 MR. BROWN: No, ma'am.

8 THE COURT: Have you all understood my
9 questions?

10 MS. HAMPTON: Yes, ma'am.

11 MR. NELSON: Yes, ma'am.

12 MR. BROWN: Yes, ma'am.

13 THE COURT: And have you been truthful in your
14 responses to the Court?

15 MS. HAMPTON: Yes, ma'am.

16 MR. NELSON: Yes, ma'am.

17 MR. BROWN: Yes, ma'am.

18 THE COURT: You all have a right to appeal this
19 guilty plea and any sentence I give you, but you must
20 do so within ten days of today's date. If you can't
21 afford an attorney for an appeal, one will be
22 appointed for you if you request it. Do you
23 understand that?

24 MS. HAMPTON: Yes, ma'am.

25 MR. NELSON: Yes, ma'am.

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1 MR. BROWN: Yes, ma'am.

2 THE COURT: All right. Solicitor?

3 MR. ALEXANDER: Please the Court, Your Honor.

4 The first thing I want to deal with is the forgery
5 indictment on April Hampton. This involved a
6 counterfeit 50-dollar bill that was passed at Taco
7 Bell. I've got a full report by Secret Service Agent
8 Phil Carter in regard to this. He went into it. He
9 found out where she had originally gotten the bill and
10 all. But that's the basis of the forgery charge. And
11 it was uttered at the Taco Bell here in Colleton
12 County.

13 Your Honor, in regards to each one of the
14 defendants in regard to the armed robbery charge, they
15 have all cooperated with the solicitor's office. The
16 longest-running cooperation has been with April
17 Hampton and Ray Nelson. Went through the typical
18 period of where the person tries to exculpate
19 themselves by not admitting to their involvement in
20 the matter, but gradually they came around and it
21 became clear to me that they knew that they were
22 involved in an armed robbery. I am firmly convinced
23 that neither one of the three of them realized what
24 was going to happen to Ms. Maloney.

25 To give you the facts -- and then I'm going to

1 go back and give you the differences in it, because I
2 told them all I was interested in was the truth. And
3 I said I don't know what the truth was because I
4 wasn't there. I said, I know what times certain
5 things happened and all but as far as the intricacies
6 and the time frame of the day, I didn't.

7 But basically, on the morning of April the
8 13th, Banks Anthony Lamar Brown and April Hampton and
9 Ray Nelson got together at a place in town called the
10 Chase. As a result of that, they went to get Anthony
11 Terez Brown. In getting Anthony Terez Brown, he
12 provided a .380 pistol, which was ultimately shown to
13 be the murder weapon.

14 They either went back to the Chase and did some
15 drugs or they proceeded to the concrete company, at
16 which time Anthony Lamar Brown and Anthony Terez Brown
17 went into the concrete company. Two of them attest to
18 hearing shots. Everyone agrees that Anthony Terez
19 Brown came out of the building first, Banks came out
20 of the building second and that's when the shot was
21 heard. Taken from there was a purse, a diaper bag,
22 and a money bag. There was money distributed. And,
23 again, we get to some differences in who got what
24 money and all.

25 Early on, Anthony Terez Brown tried to talk

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1 with me. But he was nineteen years old and in his
2 effort to exercise counsel and all, he didn't get to
3 talk with me, so early on he didn't get to make a
4 deal. And then he went through a number of lawyers,
5 and he finally ended up with an excellent lawyer in
6 Mr. Wegmann. Mr. Wegmann came to me and brought to my
7 attention some inconsistencies in the case. And
8 unfortunately, in this case the individual who was the
9 head of the criminal investigation division of the
10 sheriff's department is now medically retired, and
11 because of complications with his medication a lot and
12 all, he basically has memory loss. If you get into
13 anything outside the four corners of the report, he
14 cannot -- and a lot of the things -- he was the
15 initial contact with Anthony Terez Brown. He has a
16 written report saying that he took him into his
17 office, he Mirandized him, and Mr. Brown began
18 cooperating. Mr. Brown took them to recover the gun.
19 He made a statement to Detective Gerald [phonetic],
20 who he was left in the safekeeping of while Mr. Watson
21 was gathering some people to go obtain the gun and
22 all. The photographs of where the gun recovered and
23 all are gone. We don't know whether they were lost on
24 a hard drive, or what, in the sheriff's department.
25 There were other things. But that gives you an idea

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1 of some of the problems.

2 But his attorney emphasized to me that Mr.
3 Brown wanted to do the right thing so I agreed prior
4 to the end of this last week to let Mr. Brown plead
5 just to the armed robbery, straight up to the armed
6 robbery, and I would dismiss the murder charge.

7 And the other two defendants have continued to
8 cooperate, having both charges hanging over their
9 heads, both the murders and the armed robberies. In
10 fact, I had a discussion with them yesterday because I
11 had learned things from Mr. Terez Brown that were
12 inconsistent with some of the things that they had
13 told me. And as I told him, my effort was to try to
14 find out the facts, the truth. And they were adamant
15 in their recollections. And some things they were
16 able to clarify for me, like Mr. Nelson had indicated
17 that he had expected to get gas money and he was
18 handled [phonetic] an undisclosed amount of money.
19 And he said it could have been as much as -- Mr. Terez
20 Brown told me the amount of money that he received.
21 Mr. Brown also told me that April Hampton received
22 money. April Hampton assures me she didn't; she
23 turned down any money; she didn't want money.

24 Mr. Brown says that there was one gun, and that
25 was the .380. The other two defendants tell me there

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1 were two guns but the other gun was a large, silver
2 revolver. There is absolutely nothing in the
3 sheriff's records to indicate there was any effort
4 made to find another gun, and Mr. Brown assured me
5 that he had told Mr. Watson that. Mr. Watson doesn't
6 independently remember that, so there was no way I
7 could corroborate that or pursue further. But as I
8 indicated, there was no effort on the sheriff's
9 department's part to find any other gun. And it was a
10 good while before they knew that the gun recovered,
11 you know, matched. The only thing they knew was it
12 was the same caliber.

13 Mr. Brown indicated that he didn't use any
14 drugs on that day. The other two defendants said they
15 went to Chase Lounge and they did drugs until the rain
16 stopped, and then they went to the concrete plant.
17 Mr. Brown readily admitted to me that he had provided
18 two bags of cocaine to Banks, to Anthony Lamar Brown,
19 and he got \$15. And he said back then, you know, he
20 had dealt some drugs. So he was open about that.

21 Mr. Brown indicated to me April Hampton -- he
22 indicated that she was involved in trying to obtain
23 the gun, not only from him to borrow his gun when they
24 came to his girlfriend's house, but they also went to
25 another house. And he named the individual and gave

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1 the location. Said she tried to obtain a gun there.
2 April denies that. Mr. Nelson has no recollection of
3 that.

4 There is a variation from each of them as to
5 when they gained knowledge that there was going to be
6 a robbery, but ultimately all -- they all admitted
7 that there was going to be a robbery and there wasn't
8 any way they could withdraw.

9 As I said earlier, I'm firmly convinced they
10 did not have any idea what was going to occur to Ms.
11 Maloney. That's why I didn't have any difficulty in
12 dismissing the murder charges against them. And I do
13 that because of their cooperation. But for their
14 cooperation, I don't believe that Anthony Lamar Brown
15 would have ever testified, especially with some of the
16 other cases in --

17 They have all agreed on who went into the
18 place, who came out first, who had the murder weapon.
19 Mr. Nelson is the only one that doesn't recall hearing
20 a shot but April Hampton, who was all the way out the
21 gate, heard the shot; Mr. Brown heard the shot, Terez
22 Brown. So I'm confident that the right person has
23 pled to the murder.

24 I have discussed with them, and I think they
25 all know, the vicarious liability of the hand of one

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1 is the hand of all. We have talked about that a great
2 deal.

3 I've told the family what my plans were in
4 regard to this case, and I told them that each one of
5 these individuals would be exposed to ten to thirty
6 years and because of their involvement.

7 I have seen true remorse from these individuals
8 about what happened to Ms. Maloney. I think if they
9 could wish it not to have happened, that it would be
10 so.

11 I ask you to give whatever consideration you
12 can to them. I do not feel like I can make a
13 recommendation in the case except to assure you of
14 their cooperation. I'm going to have to rely on your
15 wisdom. They have cooperated. I think I've done what
16 I've done by dismissing the murder charge, and then
17 I'll let you deal with the rest of it. Thank you,
18 Your Honor.

19 THE COURT: Thank you, Mr. Alexander.

20 Do any of the victim's families want to speak
21 now? members?

22 MR. ALEXANDER: Your Honor, this is Carol
23 Maple. This is Ms. Maloney's daughter.

24 THE COURT: Okay. Thank you, sir.

25 MR. ALEXANDER: Step right up here to the

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1 microphone.

2 MS. MAPLE: Good morning.

3 THE COURT: Good morning.

4 MS. MAPLE: I live in Atlanta, Georgia, and I
5 have four children that my husband is taking care of.
6 So I probably will not be here next week, so I'm going
7 to go ahead and talk today.

8 None of the actual victims [phonetic] have
9 shown any remorse to any members of the family. Their
10 family members have come forward but they, themselves,
11 have not; therefore, I don't feel like they've learned
12 their lesson and serving a minimum sentence isn't
13 going to -- isn't going to give them enough time to be
14 able to get that remorse.

15 I believe the concession that they no longer
16 have the murder charge against them is enough for
17 their cooperation. And for the armed robbery charge,
18 and the hand of one is the hand of all: since Anthony
19 L. Brown got thirty years, I believe the rest of them
20 should get the maximum sentence of thirty years, as
21 well.

22 Also, in addition, my twenty-month-old
23 daughter, at that time she was wide awake during the
24 entire incident. And she was awake when I got there.
25 Over the past two and a half years, she has given me

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1 verbal accounts of different situations that happened
2 during that time. So she does remember. And it's
3 taken her two and a half years to get to the point
4 where she can actually interact with people outside of
5 the immediate family as a four-year-old should. Thank
6 you.

7 THE COURT: Thank you, ma'am.

8 MR. VITETTA: Your Honor, I would -- just one
9 thing, is my client has shown a lot of remorse. But I
10 would like it to be pointed out, because I know this
11 family, that they are prohibited from contacting the
12 victims. You know what I'm saying? I mean, if my
13 client could have, I think she would have. But could
14 the Judge point that out? You know, I didn't know if
15 the victims understood that they're prohibited under
16 their bond from having any contact.

17 THE COURT: This is for the Maloney family.
18 And as I'm sure, as you stated to me, some family
19 members on behalf of the defendants have contacted
20 you, and I understand, apologized and showed some
21 remorse. I will tell you this: a defendant, if they
22 have a charge pending against them, are not allowed to
23 contact you. There is to be no contact, because in
24 some cases it's not welcomed and the family does not
25 want to have to deal with them. So any type of

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1 typical bond, one of the requirements is that they
2 have absolutely no contact with you. Certainly they
3 can go through their attorney if they want to somehow
4 address that, but their attorney is typically going to
5 tell them, again, that until this case is over with
6 and we come to a stage that they are actually either
7 pleading guilty or convicted and you are at a
8 sentencing, they are not permitted to address you,
9 quite frankly, and come forward to you. So I want you
10 to understand that, ma'am, and appreciate that, as
11 being the reason that they did not. So please don't
12 take that to heart. Again, they are just following
13 their bond and certainly their lawyer's orders, and
14 that is not directed at the family in any way, shape
15 or form, or having anything to do with the amount of
16 remorse. And I do think it is significant that their
17 family members came to you because, of course, that is
18 -- quite frankly, they probably shouldn't even do
19 that, either. But it's not strictly prohibited. A
20 bond, it is prohibited against these defendants. They
21 cannot do it. Okay? Thank you, y'all.

22 Did anyone like -- would anyone else like to
23 speak from the family today? And certainly you are
24 welcome to come back on Wednesday, as well. But if
25 anyone else would like to speak now, I'm happy to hear

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1 from you.

2 [Whereupon, there is no response]

3 THE COURT: All right. Each of you have heard
4 the facts as stated by the solicitor. Is that
5 correct, Ms. Hampton?

6 MS. HAMPTON: Yes, ma'am.

7 THE COURT: Mr. Nelson?

8 MR. NELSON: Yes, ma'am.

9 MR. BROWN: Yes, ma'am.

10 THE COURT: Mr. Brown?

11 All right. Do each of you readily admit that
12 you did go in and arm-rob Ms. Maloney? Ms. Hampton?

13 MS. HAMPTON: Yes, ma'am.

14 THE COURT: And do you also, ma'am, admit that
15 you actually are guilty of the forgery charge, as
16 well, ma'am?

17 MS. HAMPTON: Yes, ma'am.

18 THE COURT: All right. Mr. Nelson, do you
19 admit that y'all went in to arm-rob Ms. Maloney? Is
20 that correct?

21 MR. NELSON: Yes, ma'am.

22 THE COURT: All right. And then Mr. Brown, the
23 same thing, sir.

24 MR. BROWN: Yes, ma'am.

25 THE COURT: All right. I do find there is a

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1 substantial factual basis for your pleas, that your
2 decision to plead guilty has been made freely and
3 voluntarily, willingly, and intelligently, with the
4 consent of competent counsel with whom you-all tell me
5 you are satisfied, and I am going to accept your
6 pleas.

7 At this time I'll go ahead and ask Mr. Bennett,
8 Mr. Vitetta, and your clients, to step down.

9 [Whereupon, Mr. Bennett, Mr. Vitetta, Ms.
10 Hampton and Mr. Nelson comply]

11 THE COURT: Mr. Alexander, come forward for a
12 minute and let me ask you a question.

13 MR. ALEXANDER: Did I understand you are going
14 to do them both next Wednesday?

15 THE COURT: We are going to do them next
16 Wednesday morning at 8:30, here in this courtroom.

17 [Whereupon, a bench conference is held]

18 THE COURT: All right. It is my understanding,
19 Mr. Wegmann, your client would like to go forward with
20 sentencing today, sir?

21 MR. WEGMANN: Yes, ma'am.

22 THE COURT: All right. I'm ready to hear from
23 you.

24 MR. WEGMANN: Yes, ma'am.

25 In order to understand my client, as the

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1 solicitor said, you have to understand that he was
2 nineteen years old at the time. My client entered
3 into the foster-care program at the time he was about
4 twelve. He came out of the foster-care program just
5 prior to turning seventeen because at that point in
6 time he was full-time employed by his father, Silas
7 Weider White [phonetic] Construction. His father, his
8 mother, his fiance, are all here today to support him.

9 My client has a ninth-grade education. He
10 never went any further than that in school; however,
11 once he started to work with his father and started to
12 put his life back together, he was taking his GED and
13 working toward getting a high-school equivalency at
14 that time up until the incident here.

15 He was also working with his dad to try and
16 learn a trade in construction and trying to better
17 himself for not only himself but his fiance. And at
18 the time of the incident his fiance was pregnant, and
19 they now have an almost three-year-old child. My
20 client has been incarcerated since April 28th, has not
21 had the ability much to see his child -- nor will he,
22 and he understands that -- over the next several
23 years.

24 What I would like you to know about my client,
25 Your Honor, is that he turned himself in on April

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1 28th. His dad drove him over to the sheriff's
2 department, and he turned himself in. He cooperated
3 with Lieutenant Watson that night. He led them to the
4 pistol in question, the .380, that was later confirmed
5 was the murder weapon. He also made some statements
6 to Detective Gerald [phonetic], that I'm going to talk
7 about in a minute, along with the statements to
8 Lieutenant Watson.

9 And as the solicitor pointed out, he did invoke
10 his rights -- and I know Your Honor won't hold that
11 against him -- after he made the statements. But he
12 hasn't had, really, any legal advise until two years
13 when I was appointed. And I'm not picking on my
14 brethren. The first two were conflicted out
15 immediately because they had either dealt with the
16 Maloneys or had dealt with the concrete company or had
17 represented them in some fashion. The third one moved
18 to Georgia, and I understand from the solicitor's
19 office they had difficulty getting him in contact for
20 roll calls and other things.

21 So what I can tell you, Your Honor, is from the
22 moment I got in a little over a year ago, and the
23 first day I met Mr. Brown, he has told me the same
24 story and has been consistent. It's the same story he
25 told on the night he turned himself in, it's the same

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1 story he's told me consistently for a year, and it's
2 the same story he told Mr. Alexander after we
3 negotiated this plea. And what you need to know about
4 that story is the statements he made to Lieutenant
5 Watson and Detective Gerald [phonetic] do give you
6 some insight as to what was going through my client's
7 mind at the time. And as the solicitor told you, he
8 didn't know Banks was going to shoot anybody. He had
9 gotten tied up because he lent a fellow his pistol.
10 Understand that the three of them came to him.

11 You know, I was telling somebody earlier: as
12 long as I've been doing this both in the military and
13 out of the military, I relate these things to airplane
14 accidents, which I used to investigate. There's
15 always a little chain of events and if one of those
16 little chains is broken, the event may not have
17 happened. In this particular case it rained that
18 morning. And I know his father -- and I know he
19 doesn't want me to say this, but I'm going to anyway.
20 I know his father feels that part of this is his fault
21 because he called his son that morning and said it
22 rained, don't come to work. They work construction.

23 So he happened to be at home when Ms. Hampton
24 called him and said he needed -- she needed to come
25 over and talk to him. And my client made his mistake

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1 that morning when he placed the value of the gun and
2 where his gun was going that they wanted to borrow --
3 when he placed the value of his gun over what may
4 happen or could happen with the gun in the wrong
5 person's hands. And he went along.

6 He has told exactly what his partition --
7 participation was in that. And if you want a little
8 bit more insight: if you look at what he told
9 Detective Gerald [phonetic] when they were in the
10 room, he said when he read about the homicide in the
11 paper, he got sick to his stomach. He has had
12 remorse. He's had it all the way from when I talked
13 to him all the way through today. He did not know
14 that Banks intended -- what Banks intended to do with
15 that pistol.

16 And he understands, because we've had long
17 talks about it, that he's let himself, his family, the
18 community, and most of all his fiance and his son,
19 down here. He understands and has owned up to his
20 participation, and he understands there are
21 consequences as a result of his participation, and
22 that's why he is standing in front of you here today
23 ready to accept those consequences.

24 I don't do this lightly, and I don't do this in
25 any disrespect to the Maloney family, but I am going

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1 to ask Your Honor to consider a ten-year sentence and
2 I'm going to ask you to consider the minimum sentence
3 on the robbery charge. And I don't make it lightly
4 for a number of reasons, some of which I have already
5 mentioned: the first of which his age at the time of
6 the incident, and his progression from twelve years
7 old through the foster-care system, is trying to get
8 himself back on track, and then how this incident came
9 about, his immediate remorse for his actions. He told
10 Detective Gerald [phonetic] when he read it in the
11 paper, it absolutely made him sick to his stomach at
12 that particular time. He has cooperated with the
13 Lieutenant; he cooperated with Detective Gerald
14 [phonetic]; he's cooperated with the solicitor's
15 office; and, you know, he agreed to cooperate in any
16 trials that may have happened as a result of this; and
17 the fact that he turned himself in at the very
18 beginning.

19 I think Detective Gerald's [phonetic] statement
20 is very telling, that it made him sick to his stomach
21 when he read it in the paper. He didn't understand
22 what was going to happen that day. Most nineteen year
23 olds wouldn't understand what was going to happen that
24 day. And I think he's done -- I think he's done, up
25 until that incident, a very fine job of trying to get

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1 his life back on track by going to work each and every
2 day with his father from almost age seventeen,
3 actually living with his fiancée, supporting his child,
4 and working hard to try and get his GED and get his
5 life back on track.

6 I'm asking Your Honor to leave a crack of light
7 open so that some day he may become a productive
8 member of society. And that's what he wants to be.
9 He wants to atone for his mistake in this case and his
10 part in this case, but he would like to be a
11 productive member of society at some point. And that,
12 of course, is in Your Honor's hands at this point.

13 I do believe that Mr. Brown would like to
14 address the Court and I do believe he would also like
15 to address his parents, his fiancée, as well as the
16 Maloneys.

17 THE COURT: Okay.

18 MR. WEGMANN: Thank you for your time, Your
19 Honor.

20 THE COURT: All right, Mr. Wegmann. Thank you.

21 Sir, just for clarification: I understand he
22 was nineteen when this crime was committed. Did he
23 have any prior record?

24 MR. ALEXANDER: Your Honor, he has a juvenile
25 matter that involved a fight at the school.

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1 MR. WEGMANN: When he was twelve, Your Honor, I
2 believe, in Beaufort County.

3 MR. ALEXANDER: Twelve or thirteen years old.
4 And that was the only thing.

5 THE COURT: Okay. Mr. Brown, what would you
6 like to tell me, sir?

7 MR. BENNETT: Yes, ma'am.

8 Ms. Mullen, I have a little list. Your Honor,
9 if you don't mind, I would like to address the
10 Maloneys.

11 THE COURT: You may.

12 MR. BROWN: All right. First of all, I would
13 like to apologize to the Maloneys. There isn't
14 anything I can say to make what I did right, because
15 it was wrong. I had no intentions of causing harm to
16 Ms. Maloney, nor did I have any knowledge that she
17 would be -- harmed caused to her. If I could turn
18 back the hand of time, I would. If I could bring Ms.
19 Maloney back, I would. Unfortunately, I can't. But I
20 can accept responsibility for what I have done. And
21 to my family, I apologize for what I'm putting y'all
22 through. I know this is a complicated situation to
23 watch me in, and I would like to thank y'all for being
24 with me throughout this ordeal. It really means a
25 lot. To my fiance and my son, all I can do is

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1 apologize for putting myself in a situation that I
2 can't be a loving husband and father like I'm supposed
3 to be. Your Honor, to you, I want the Court to know,
4 yes, I'm accepting responsibility for what I did. I
5 only ask the Court to punish me for what I did, and
6 not for the heinous act my codefendant did. That's
7 all I have to say, Your Honor. Thank you.

8 THE COURT: Thank you, Mr. Brown.

9 MR. WEGMANN: I would note for the Court, Your
10 Honor, if I may, please, that my client has been
11 incarcerated since April 28th of 2004, and I ask that
12 you take that into consideration in sentencing.

13 THE COURT: Mr. Wegmann, let me be absolutely
14 clear on your client's participation in this case. He
15 provided the murder weapon; is that correct?

16 MR. WEGMANN: Yes, ma'am.

17 THE COURT: And he, additionally, went with Mr.
18 Lamar Brown into the building; is that correct?

19 MR. WEGMANN: He did, Your Honor.

20 THE COURT: There is no issue that he was in
21 there while the robbery occurred. And it's my
22 understanding from the codefendant's testimony that he
23 came out before; is that correct? Or he came out
24 first; is that correct?

25 MR. WEGMANN: He came out first, before the

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1 shot, was my understanding, Your Honor.

2 MR. ALEXANDER: That's correct, Judge.

3 MR. WEGMANN: And he did have in his hands --
4 and he has admitted that -- that he had the purse in
5 his hands when he came out and that -- I know there's
6 been some back-and-forth on it, but he did fill in the
7 blanks for the solicitor to include that, yes, there
8 was money taken, and, yes, it was divvied up among all
9 four of them.

10 You know, they haven't asked for any
11 restitution. I have talked to my client about it, and
12 he's happy to provide it if that's what the Court
13 likes. It wasn't part of anything that we talked
14 about or anything else, but it's my understanding that
15 about \$900 was taken so -- and that it had been split
16 up between the four of them.

17 THE COURT: Thank you, Mr. Wegmann.

18 MR. ALEXANDER: Your Honor, I didn't presume --
19 there was a civil claim for funeral expenses. I have
20 that in the file.

21 MR. WEGMANN: And, again, my client has told me
22 since day one whatever restitution for his part that's
23 out there, you know, he will endeavor to make it
24 right.

25 THE COURT: All right. Mr. Brown, what

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1 concerns me, sir, is is that while you tell me that
2 you certainly didn't know that someone was going to be
3 shot and killed in this robbery, you did participate
4 in it. And, quite frankly, you provided the murder
5 weapon and had you not provided it, there is a chance
6 that Ms. Maloney would be living today. And that's
7 part of the concern we have with guns, and guns being
8 out on the street, sir.

9 I do think the solicitor has given you a great
10 break because the truth is, the hand of one is the
11 hand of all. Sir, you were actually in the building
12 and you actually participated in the armed robbery of
13 Ms. Maloney.

14 With that said, the solicitor, again, he has
15 given you a great concession by not requiring you to
16 plead to the murder charge and dismissing it. And I
17 do recognize, sir, that you were of a very young age
18 when this occurred. You certainly didn't even have an
19 opportunity to have a prior record. And you are going
20 to learn a very hard lesson, sir, because you are
21 going to pay for this dearly. And certainly you are
22 going to miss the opportunity to watch your son grow
23 up. And certainly, again, you are going to miss the
24 opportunity to be a husband to your wife.

25 But additionally, sir, what I am concerned with

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1 is that you-all did plan to do this, you did go
2 forward with it, and as a result of it family members
3 lost, you know, a wife, they lost a mother, they lost
4 sisters.

5 Mr. Wegmann, is there anything you would like
6 to say, sir?

7 MR. WEGMANN: It's just, Your Honor, that he
8 mentioned that there really wasn't a plan. It's not
9 like they sat down and said, we're going over here on
10 this particular day.

11 THE COURT: Well, Mr. Wegmann, it's my
12 understanding that Ms. Hampton contacted him first to
13 get the gun.

14 MR. WEGMANN: Yes, ma'am.

15 THE COURT: Is that correct?

16 And obviously there had to have been some type
17 of proof that they actually got in the car together
18 and drove to the concrete plant. And he did, in fact,
19 go in. And it's my understanding --

20 MR. WEGMANN: That's right.

21 THE COURT: -- that while Mr. Nelson remained
22 in the car --

23 And I don't know. Where was Ms. Hampton during
24 all of this?

25 MR. ALEXANDER: She was out on the roadway as a

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1 lookout, Your Honor.

2 THE COURT: But he actually did willfully go in
3 with Mr. Lamar Brown; is that correct?

4 MR. WEGMANN: Yes, ma'am.

5 THE COURT: So as far as a plan is concerned,
6 you don't have to sit and hatch it over a five-day
7 period. This is something that you obviously got
8 together, decided, you gave them the gun, and you went
9 with them. It's my understanding from your own
10 testimony that y'all split up the money. So certainly
11 you are a part of that, and you are a part of the
12 group, sir.

13 With all due respect, is there anything further
14 from anyone?

15 MR. WEGMANN: No, Your Honor.

16 THE COURT: Anything else you would like to
17 say, Mr. Brown?

18 MR. BROWN: No, ma'am.

19 THE COURT: On indictment number 2004-GS-15-419
20 -- it's a charge for armed robbery -- the sentence of
21 this Court is that you be committed to the Department
22 of Corrections for a period of thirty years, sir.
23 Good luck to you.

24 [HEARING CONCLUDES AT 12:53 P.M.]

25

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

I, the undersigned Mia Perron, Circuit Court Reporter for the 14th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the plea held hearing before the Honorable Carmen T. Mullen, on Tuesday, March 13, 2007.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 11th day of March, 2008.

Mia Perron
Mia Perron, CCR, CVR-CM
Circuit Court Reporter
14th Judicial Circuit

MIA PERRON, CCR, CVR-CM

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FORM 5

STATE OF SOUTH CAROLINA)

County of Colleton)Anthony Brown # 320539)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

14-C.P.-15-373

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 McCormick
2. Name and location of Court which imposed sentence Colleton County Court of General Session
3. Name(s) of co-defendant(s) (if any) Roy Nelson, April Hampton, Anthony Brown
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2004-GS-15-00419
 - (b) _____

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PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MARCH 13th, 2007 "30 yrs"
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒ _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. Trial Judge Circuit Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal dismissed for failure to timely serve the notice
- ii. of appeal.
- iii. Denied
- (c) the date of each such result:
- i. March 13th 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of Counsel
- (b) Involuntary guilty Plea
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (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? _____
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. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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?

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

(a) which grounds have been presented:

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

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

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

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

(a) _____
 (b) _____
 (c) _____

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

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

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. JAMES Wegmann/6 Professional Village Circle Beaufort, SC
29907
 ii. GERALD A. MOREE/P.O. Box 1202 Walterboro, SC 29488
 iii. _____

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

i. Motion to reconsider Sentence, Plea hearing!
 ii. First P.C.R. before it was dismissed As
premature
 iii. _____

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

REVERSE & Remand

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

No

STATE OF SOUTH CAROLINA)

County of Colleton)

VERIFICATION

I, Anthony Brown, 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.

Anthony Brown

SWORN to and subscribed before me this 18
day of April, 2014.

J. Frankler (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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

I, Anthony Brown #320539, 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.

Anthony Brown
Applicant

SWORN or affirmed to and subscribed before me this
18 day of April, 2014.

[Signature]
Notary Public

My Commission Expires: 12-16-2019

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2014 MAY -6 AM 9:53

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Anthony Terez Brown #320539,	)	Case No.: 2014-CP-15-373
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR MORE
	)	DEFINITE STATEMENT TO THE
v.	)	APPLICATION FOR
	)	POST-CONVICTION RELIEF
State of South Carolina,	)	(Counsel Already Appointed)
	)	
Respondent.	)	
_____	)	

Respondent the State of South Carolina, making its return to the application for post-conviction relief filed by Applicant Anthony Terez Brown on May 6, 2014, and received by the State on February 7, 2019, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections following his guilty plea in Colleton County. On April 13, 2004, Applicant and three co-defendants, armed with handguns, entered a business in Walterboro, South Carolina, where they proceeded to rob then fatally shoot the victim. Applicant was subsequently arrested, and, during its July 2004 term, the Colleton County Grand Jury indicted Applicant for murder (2004-GS-15-418) and armed robbery (2004-GS-15-419). Applicant was represented by James J. Wegmann, Esquire. Assistant Solicitor Terry K. Alexander of the Fourteenth Circuit Solicitor's Office prosecuted the case. Applicant cooperated with the State, including agreeing to plead guilty and testify against a co-defendant. In exchange for his cooperation, the State agreed to dismiss the murder indictment against Applicant.

On March 13, 2007, Applicant appeared before the Honorable Carmen T. Mullen, circuit

court judge, and pled guilty to armed robbery pursuant to his plea agreement with the State. After a thorough colloquy, including findings his plea was knowing, voluntary, and intelligent and that he was satisfied with the services of his counsel, Judge Mullen accepted Applicant's guilty plea and sentenced him to thirty years of confinement. As per the plea agreement, the State dismissed Applicant's murder indictment.

Thereafter, on March 21, 2007, Applicant, through counsel, filed a motion to reconsider his sentence. In this motion, Applicant argued Judge Mullen improperly considered the dismissed murder charge when sentencing Applicant to the maximum term of imprisonment for armed robbery. Judge Mullen denied the motion to reconsider on September 25, 2009, without a hearing.

Applicant sought appellate review from his guilty plea and filed a notice of appeal on September 28, 2009. In an order filed on March 13, 2014, the South Carolina Court of Appeals dismissed the appeal for failure to provide proof of service of the appeal on the State. The remittitur was issued on March 31, 2014.

While his motion to reconsider his sentence was pending, Applicant prematurely filed an application for post-conviction relief (2008-CP-15-0078) on January 23, 2008, alleging the following grounds for relief:

1. Ineffective assistance of counsel in that counsel refused to file an appeal.
2. Involuntary guilty plea.

In response, Respondent filed its return on March 4, 2009. An evidentiary hearing into the matter was convened on September 4, 2009, before the Honorable Alexander S. Macaulay, circuit court judge. Applicant was present at hearing and was represented by Gerald Maree, Esquire. Assistant Attorney General Matthew J. Friedman of the South Carolina Attorney General's Office appeared on behalf of Respondent. Because the motion to reconsider his sentence was still pending, Judge Macaulay dismissed the application without prejudice.

II. CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

Applicant failed to state any specific claims or provide any factual support for these vague claims.

For the relief sought, Applicant states he is seeking, “Reverse and Remand.”

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

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL AND INVOLUNTARY GUILTY PLEA

Applicant alleges he was denied the right to effective counsel and his plea was involuntary. However, Applicant wholly fails to state with any specificity facts to support these general allegations. Based on this, it is impossible for Respondent to discern how exactly Applicant believes counsel was ineffective or how his plea was involuntary. Respondent moves for Applicant, through his appointed counsel, to amend this allegation to include sufficient, specific facts to support his claims of ineffective assistance of counsel and involuntary guilty plea.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466

U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this

presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” Id. The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance 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. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he

would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result

is being challenged.” Id. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999).

To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him or her and the consequences of his or her plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant’s choice. Id. at 755; see also United States v. Smith, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one’s accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243. Additionally, in order to knowingly

and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived. Pittman, 337 S.C. at 599, 524 S.E.2d at 624.

However, it is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (citing Brady, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, Brady, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. North Carolina v. Alford, 400 U.S. 25, 37 (1970). The standard for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” Id. at 31.

A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); see also Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his or her guilty plea, the trial judge “usually questions the defendant about the facts surrounding the crime and punishment that could be imposed.” Dover v. State, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the trial judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” Carter v.

State, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” Harres, 282 S.C. at 133, 318 S.E.2d at 361. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe, 326 S.C. at 165, 485 S.E.2d at 370; *cf.* Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , 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); *see also* 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”). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf.* Blackledge, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting

the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

In the present case, Applicant’s guilty pleas were entered knowingly, intelligently, and voluntarily with the advice of competent counsel. Respondent submits Applicant cannot satisfy either requirement of the Strickland test for any of this various claims of ineffective assistance of counsel. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve these allegations of ineffective assistance of counsel. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

As discussed above, it is impossible for Respondent to adequately respond to Applicant’s allegation of ineffective assistance of counsel because Applicant has completely failed to provide any specific allegations or facts to support such claims. Respondent requests Applicant, through counsel, provide specific claims and facts to support this vague allegation.

IV. MOTION FOR MORE DEFINITE STATEMENT

In his application, Applicant fails to set forth with specificity the facts and circumstances upon which his claims of ineffective assistance of counsel and involuntary guilty plea are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant

to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

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

V. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. 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, SCRCF. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. See Id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly

prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, 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. Further, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State 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 the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VI. RESPONSE TO ANY AND ALL OTHER ALLEGATIONS

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII. REQUEST FOR APPLICANT TO FILE AN AMENDED APPLICATION

WHEREFORE, having made its return, the State requests applicant, through his counsel, amend the application to provide the required specificity for his allegation of ineffective assistance of counsel. Until Applicant files an amended application, Applicant has not shown sufficient cause to warrant an evidentiary hearing on this application and requests a hearing not be schedule until after an amended application is so filed.

Respectfully submitted,

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July 8, 2020

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Anthony Terez Brown,	)	CASE NO. 2014-cp-15-0373
	)	
APPLICANT,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	ORIGINAL
	)	
State of South Carolina,	)	
	)	
RESPONDENT.	)	
	)	

August 28, 2020, via WebEx

Beaufort, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh

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

Timothy Lee Griffith, Esquire
For the Applicant

Benjamin H. Limbaugh, Esquire
For the Respondent

Certified Transcript Provided For: SCCID

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
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I N D E X

(AW) - DENOTES APPLICANT WITNESS

(RW) - DENOTES RESPONDENT WITNESS

Post-Conviction Relief Hearing -- 04

WITNESSES(AW) Anthony Brown Terez:

Direct Examination by Mr. Griffith -- 08

Cross-Examination by Mr. Limbaugh -- 16

(AW) James Wegmann:

Direct Examination by Mr. Griffith -- 20

Cross-Examination by Mr. Limbaugh -- 21

Redirect Examination by Mr. Griffith -- 25

CERTIFICATION OF TRANSCRIPT -- 31

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

A P P L I C A N T E X H I B I T

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
Exh. A	Medical Records (6 pgs)	30	30

R E S P O N D E N T E X H I B I T

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Rights Advisement Form	17	18

1 THE COURT: All right, so you are Anthony Terez Brown?

2 APPLICANT BROWN: That is me, sir.

3 THE COURT: Okay, sir. If you will just pull your mask
4 down so we can hear you. Mr. Brown, before we get started I
5 am going to swear you in.

6 (WHEREUPON, Mr. Brown was duly sworn.)

7 THE COURT: All right. Mr. Griffith, according to the
8 documents I have it looks like Mr. Brown has alleged an
9 ineffective assistance of counsel and an involuntary guilty
10 plea; is that correct?

11 If you would click on the mute button.

12 MR. GRIFFITH: That is correct, Your Honor.

13 THE COURT: All right. Any other grounds other than
14 those?

15 MR. GRIFFITH: No, Your Honor. We expanded upon the
16 involuntary guilty plea in the -- when we had a status
17 conference recently, and so Mr. Limbaugh is aware of what he
18 is alleging in his application.

19 THE COURT: Okay. So are you ready to proceed?

20 MR. GRIFFITH: I am, Your Honor.

21 THE COURT: Mr. Limbaugh, are you ready to proceed?

22 MR. LIMBAUGH: Yes, sir, Your Honor. And just before we
23 get completely into everything, there was a murder indictment
24 and charge that was null processed; so if Your Honor wouldn't
25 mind just running through what actually happened. It was

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Post-Conviction Relief Hearing

1 successful. I would appreciate that.

2 THE COURT: Mr. Brown, according to the transcript that
3 I am reading you pled guilty on all three of the murder ---

4 THE COURT REPORTER: Just a minute, Judge. I am sorry
5 to interrupt. We are getting a lot of feedback. Maybe Mr.
6 Griffith, if you would turn your mic off that would help.

7 We are not hearing what you are saying. You are getting
8 a lot of feedback.

9 THE COURT: Okay. Thank you.

10 THE COURT REPORTER: Let's try again. Thank you.

11 THE COURT: Thank you, Phyllis.

12 Mr. Brown, can you hear me now?

13 APPLICANT BROWN: I can hear you, sir.

14 THE COURT: All right, sir. You were indicted and
15 charged with two counts one being murder, one being armed
16 robbery, but allegedly because of your cooperation they
17 dismissed the murder charge and you pled to the armed robbery
18 charge; is that correct?

19 APPLICANT BROWN: That is correct.

20 THE COURT: Now do you understand, Mr. Brown, that if
21 you are successful then you will be subject to being retried
22 again for the murder charge ---

23 APPLICANT BROWN: I understand that.

24 THE COURT: --- as well as the armed robbery? Sir?

25 APPLICANT BROWN: I understand that. But I had a

1 question also.

2 THE COURT: Okay, hand -- okay, well, let me go over
3 this with you first and you can -- probably might want to
4 talk to Mr. Griffith. But, Mr. Brown, if you come back, as I
5 am sure you are aware, murder carries up to life in prison
6 and you will serve day for day any prison -- any sentence you
7 receive for murder; right?

8 APPLICANT BROWN: I understand.

9 THE COURT: Do you need to ask Mr. Griffith a question?

10 APPLICANT BROWN: I do.

11 THE COURT: Okay.

12 Can you call him on a private line, Mr. Griffith, and
13 mute yourselves. Both of you need to hit mute.

14 Mr. Griffith, do you have a number that you can call
15 him?

16 MR. GRIFFITH: Yes, Your Honor, that number is 803 ---

17 THE COURT: Well, just call it. That is all I'm saying,
18 to call it if you would. Y'all have an off-the-record
19 conversation.

20 MR. GRIFFITH: Yes, Your Honor.

21 Mr. Brown, can you hear me?

22 APPLICANT BROWN: I can hear you.

23 MR. GRIFFITH: Okay. 803-499-2012. Did you get that?

24 APPLICANT BROWN: Yes. Okay.

25 MR. GRIFFITH: Have them have you call me on the phone.

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1 APPLICANT BROWN: And the reason why I say that is
2 because ---

3 MR. GRIFFITH: Mute your -- go ahead and mute yourself
4 and then call me on the phone. Okay.

5 APPLICANT BROWN: I have to make sure I have permission
6 to use this phone first.

7 (WHEREUPON, pause for Mr. Griffith to mute and confer with
8 Mr. Brown)

9 THE COURT: All right. Mr. Griffith, are you ready to
10 proceed?

11 MR. GRIFFITH: Your Honor, Mr. Brown has asked if we can
12 ask for a continuance.

13 THE COURT: No, we are going forward today.

14 APPLICANT BROWN: The reason why we ask for a
15 continuance is because I just met my attorney two weeks ago
16 and I have never had an opportunity to get the paperwork to
17 him to be able to even present in court. So how could I be
18 possibly be ready.

19 THE COURT: Well, we are going to go forward today.
20 This case is a 2014 case. I am not continuing this matter at
21 all.

22 APPLICANT BROWN: But I just spoke to my attorney ---

23 THE COURT: Mr. -- Mr. Brown, I am not going to quarrel
24 with you. It is not going to be continued, okay.

25 APPLICANT BROWN: So basically I don't have the

1 opportunity to ---

2 THE COURT: Mr. Brown -- Mr. Griffith, call your first
3 witness, please, sir.

4 MR. GRIFFITH: Your Honor, I would call Mr. Brown.

5 THE COURT: Okay. Mr. Brown, you are still under oath.

6 **DIRECT EXAMINATION BY MR. GRIFFITH OF ANTHONY BROWN:**

7 Q. Please -- Mr. Brown, where are you currently
8 incarcerated?

9 A. At Ridgeland Correctional Institution.

10 Q. And how long have you been incarcerated?

11 A. I want to stay close to 16 years.

12 Q. Okay. And you were convicted of armed robbery; isn't
13 that correct?

14 A. Correct.

15 Q. And you pled guilty; is that correct?

16 A. That is correct.

17 Q. But you cooperated with the solicitor and you basically
18 testified against your codefendants; isn't that correct?

19 A. I did not testify against nobody. There was no trial.

20 Q. Okay. That is to say you were willing to testify?

21 A. If they might take me.

22 Q. Okay. But so the murder conviction was dismissed?

23 A. Correct.

24 Q. In order to basically reward you for pleading guilty and
25 cooperating?

1 A. Correct.

2 Q. Okay. And now at the time you had asked your attorney
3 to file an appeal; is that correct?

4 A. No, sir, he took it upon himself and did so.

5 Q. Okay, but he filed an appeal; is that correct?

6 A. That is correct.

7 Q. Okay. But you are saying ineffective assistance of
8 counsel in that he did not inform the solicitor that you had
9 a mental deficiency; isn't that correct?

10 A. That is correct.

11 Q. And because of that you were unfairly allowed to plead
12 guilty even though you did not understand the proceedings; is
13 that correct?

14 A. That is correct.

15 Q. And the reason you didn't understand the proceedings,
16 you have had mental difficulties all of your life; isn't that
17 correct?

18 A. That is correct.

19 Q. Now when you were a juvenile were you convicted of
20 something?

21 A. I was convicted being a juvenile, and part of my parole
22 it was criteria that I must maintain mental health
23 counseling.

24 Q. You were also evaluated; isn't that correct?

25 A. That is correct.

1 Q. And you were ordered to have counseling as part of your
2 probation; isn't that correct?

3 A. I was -- yes, sir, that was. Or I will be violated.

4 Q. Okay. And in the meantime you have been in -- under a
5 doctor's care for mental incapacitation under different -- at
6 different times during your life; isn't that correct?

7 A. Yes, sir, Charter, MUSC, etcetera.

8 Q. So how many -- how many times do you think maybe you
9 were treated for that; do you remember or could you say?

10 A. All of my life I was going to counseling, since I was
11 younger. I was -- I couldn't think of the years. I was in
12 MUSC Charleston twice I believe, Charter of Augusta, and
13 Charter of Charleston.

14 Also like they kind of rushed me in -- I didn't even
15 know that we was having this proceeding thing. And all of
16 my -- was in my -- was in my cell. And if I had have known
17 that I would have (inaudible) ---

18 THE COURT REPORTER: I'm sorry. I am not -- if you
19 could slow down a little bit.

20 It is we are getting a lot of feedback on the last
21 couple of things he said.

22 APPLICANT BROWN: Can you hear me now?

23 THE COURT REPORTER: Yes.

24 A. I say I apologize but they kind of rushed me in here. I
25 didn't even know we had a court date today. And I was in

1 school, so I left all of my legal documents in my room. And
2 it is like -- it is like how can I be -- I can't speak when
3 everything is in my folder, my law work. And it is like that
4 is so unfair. Like if they told me that it was -- before
5 that, I would have been properly prepared for that to the
6 best of my ability. Just like this is -- this is like
7 confusion.

8 Q. Mr. -- Mr. Brown, are you currently under some kind of
9 medication for your mental problems?

10 A. No, I refuse to take medication.

11 Q. Okay, but have you been having problems while you are in
12 the prison there?

13 A. Since I have been in prison I have had problems. Since
14 I have been in prison my record will show you that I have
15 problems. And it is like if I -- politics -- like -- it is
16 like just different.

17 Q. Did you inform your attorney Mr. Wegmann that you had
18 difficulty understanding?

19 A. I did not.

20 Q. Okay. Did you have a lot of opportunity to talk to Mr.
21 Wegmann ahead of your plea?

22 A. I did not. It was the same situation where I was kind
23 of rushed in. It was kind of a rushed situation. Because I
24 had like four or five different attorneys. And when I did
25 get Mr. Wegmann he came and spoke several times. He did.

1 Several times. Not like a lot of times. Several -- maybe
2 three -- three times or so. But I wouldn't base that upon
3 the times he was with me, I would base it up upon permission
4 that he had to defend the position.

5 Q. Okay, I am muting myself now I mean so I can hear you
6 better. But -- but you never had the opportunity to tell Mr.
7 Wegmann about your mental issues; isn't that correct?

8 A. I never had an opportunity to tell Mr. Wegmann about my
9 mental records.

10 Q. Okay. Did he ever -- did he have you evaluated?

11 A. No, he did not.

12 Q. Okay. Did you ever have -- give him any questions about
13 what was going on; did you ever explain to him that you
14 sometimes did not understand what was happening?

15 A. I didn't know how to say that at that moment.

16 Q. And so you are asking that you be given a new
17 opportunity for trial. Now you know that that would mean ---

18 A. That the murder charge come back too. I understand.

19 Q. Okay. And as well, if you had been evaluated and he had
20 been aware and you knew the condition that you were in, would
21 you have gone to trial rather than pleading guilty?

22 A. Most definitely. Well, upon -- upon me speaking to my
23 attorney he sent me the criteria of the murder versus meaning
24 the statute, the ten to thirty. But he said that he highly
25 unlikely see me getting more than 15. So I kind of sort of

1 took that and ran with it and assumed that that will be the
2 outcome. Because that is all I had to know. I'd never been
3 to law school or I don't know the situation. I know what he
4 mean by the ten to thirty. I knew what he meant.

5 But when someone tell you and they are your advisor that
6 you -- they can't see you getting more than 15 years I
7 felt like okay. But at the same time it is just -- I am
8 feeling -- I feel discombobulated because I don't even have
9 my paperwork.

10 Q. So, Mr. Brown, were you under the impression that you
11 would be given a good bit lighter sentence; is that what you
12 were thinking?

13 A. Yes, sir, I was under the impression I wouldn't get no
14 more than 15.

15 Q. Did you talk about that with your attorney?

16 A. That is who -- that is who told me -- that is who said
17 that to me. My attorney told me that he couldn't see me
18 getting more than 15 years. But he said -- I asked for 10.
19 And he said no way, they will probably give me 10 but could
20 not see me getting 15. And I took that literal; instead of
21 just like assuming that he was just trying to tell me that it
22 is possible, I took that literally.

23 And when we went to court and through the proceedings I
24 tried -- yes, yes, yes, yes, to speed the process to get
25 through instead of speaking my mind. Like now I am going to

1 speak my mind because

2 Q. Okay, Mr. Brown, is there anything else you can tell us
3 to help the Court understand that you did not understand what
4 was happening when you gave your plea?

5 A. Okay. Well, from my words is this, murder, I -- I
6 understand the hand of one is the hand of all; but if I -- if
7 I -- I knew in my heart that the truth would set me free. I
8 mean so it is like basically I understand that -- I wouldn't
9 have mind going to trial, for the simple fact of the proof,
10 the proof would be -- would show I didn't do this. And as
11 well as the fact that they have got me charged with armed
12 robbery and I didn't even have a gun. So it was -- it would
13 all come out in proof.

14 Nobody asked about -- nobody ever asked about -- there
15 were certain facts that when you go to trial and you can
16 prove. But since I didn't go to trial they tried to
17 basically punch me. And that is not fair man. That is not
18 right.

19 And the way that I -- the way that I was raised, right
20 is right and wrong is wrong. If I did something wrong I
21 would be prosecuted for my consequences. But at the same
22 time though I don't feel like I should be punished for
23 something that someone else did. But I can understand the
24 hand of one is the hand of all situation; where how are
25 y'all going to, quote, unquote, call it a law. So that is

1 all to -- on that matter.

2 Q. Well, Mr. Brown, can you help us understand, give us any
3 more information about your mental problem; what exactly do
4 you know about that?

5 A. I have mental record here -- I have a mental record here
6 at Ridgeland Correctional Institution or at SCDC. It is
7 documented. It is in the computer. It is in the system.
8 However, I'm not currently seeing them. But at that time I
9 was. And I do have records. And they do have those -- the
10 records in medical.

11 MR. GRIFFITH: Okay. I have no further questions, Your
12 Honor. But I would say that I had contacted Mr. Brown's
13 father and asked for some of the records that he -- he just
14 hasn't had the opportunity to get them back to me yet. We
15 would ask the Court to consider.

16 APPLICANT BROWN: If he has it -- in the beginning --
17 either -- if you had wrote the letter, that letter would have
18 came that you say was coming. So I never got your address.
19 However, like if that was the case I could have had someone
20 brought the records and take care of that.

21 But he can't -- everybody -- my father is a very busy
22 man. He take care -- he take care of the family. And I
23 don't -- just I don't involve him because he is too busy.
24 And it is like my parents are old now. My mother -- so
25 therefore it is like I have got to do everything myself. I

1 have people that will do that for me, but I couldn't expect
2 them to do it. That is how come I know that our
3 communication is not even there. If ---

4 THE COURT: Mr. Brown, would you please stop. I want
5 you to stop.

6 All right. Mr. Wegmann (sic), would you go ahead and
7 cross-examine Mr. Brown, please.

8 MR. LIMBAUGH: May it please the Court, Your Honor.

9 THE COURT: Yes, sir, Mr. Limbaugh.

10 **CROSS-EXAMINATION BY MR. LIMBAUGH OF ANTHONY BROWN:**

11 Q. Mr. Brown, do you remember telling the Court during your
12 plea that there was no mental infirmity or anything else
13 preventing you from understanding what was going on?

14 A. I remember answering yes to every question to get the
15 proceeding through.

16 Q. You did answer yes though, correct?

17 A. Ah -- yes. Yes, yes -- I don't know. If that was one
18 of the questions, yes. I don't know -- I can't remember. I
19 can't tell you. I can't remember if that was a question or
20 not.

21 MR. LIMBAUGH: That is Page 10 of the transcript, Your
22 Honor.

23 A. I don't have that. I don't even -- I don't even had it.
24 This is -- this is -- Court don't know what is going on here.

25 Q. Then do you remember the Court going over with you that

1 the charge you were pleading guilty to was a minimum 10
2 years, max 30 years?

3 A. I stated that previously, sir, that I -- that they said
4 that; however, I felt that because of what he said was why I
5 said that about 10 or 15 years.

6 Q. And do you remember going over a document that I have
7 here called a rights advisement with your attorney Mr.
8 Wegmann?

9 A. Mr. Wegmann did go through that with me.

10 Q. Okay.

11 MR. LIMBAUGH: And I would like to enter that into the
12 Court's record, however you would like me to do it. I can
13 email it now so you can consider it now; but I will also file
14 it with the Clerk of Court, Your Honor.

15 THE COURT: All right, just if you would just make it --
16 send it in to the court reporter and let her mark it and make
17 an exhibit.

18 Any objection to that, Mr. Griffith?

19 MR. GRIFFITH: No objection, Your Honor.

20 THE COURT: Okay. Very good. And that will be admitted
21 as Exhibit Number 1.

22 MR. LIMBAUGH: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 (WHEREUPON, Respondent's Exhibit Number 1, rights advisement
25 form, was marked for identification.)

1 (WHEREUPON, Respondent's Exhibit Number 1 was admitted into
2 evidence.)

3 MR. LIMBAUGH: Thank you, Your Honor.

4 Q. And on that advisement it goes over a number of things.
5 The rights that you were giving up to accept the plea, do you
6 remembering initialing that you had gotten those from your
7 attorney?

8 A. I am not -- yeah -- say again.

9 Q. The initials where it stated that your attorney Mr.
10 Wegmann had gone over your constitutional rights that you
11 were waiving in order to plead guilty; do you remember that?

12 A. Okay. Yes, sir.

13 Q. Okay. And on that advisement sheet again it states that
14 you can get the same punishment as if you had been convicted
15 by a jury. Do you remember reading that and initialing it?

16 A. But it -- yes, sir. The incident we are going through
17 preceding that -- we done -- I have already previously
18 answered. Yes, I did -- I did. However, I wasn't
19 comprehending what he said because of the fact of I have a
20 comprehension problem. In school -- there are no school
21 records. Ever since -- ever since ten years old I just don't
22 comprehend.

23 Q. And you stated you didn't have an opportunity to bring
24 up any of your concerns about your mental health with Mr.
25 Wegmann. But you did in fact meet with him, correct?

1 A. Yes. But why would I bring it up? He would have had
2 that. Because they don't want nobody to know.

3 Q. It just seems like if you want to bring it up now and
4 find it important that it would be something that you would
5 have wanted to have talked with him about then; is that
6 correct?

7 A. You say now that what?

8 Q. I understand your allegations that he was ineffective
9 for not raising an alleged ---

10 A. He was not aware ---

11 Q. --- incompetence or you not understanding the
12 proceedings; but if you appeared to be understanding them,
13 initialing that you were understanding everything and you
14 never brought up any comprehension issues why would he bring
15 them up himself?

16 A. Okay, if a person don't know no better and this is my
17 attorney who is the one who is advising me and who is --
18 who was observing me and who was investigating me, I have
19 cases -- case laws on my -- that I had to do research to
20 learn about that is certainly required of. But I can't do
21 this because y'all won't allow me paperwork or either allow
22 me to have time for properly to build. And that's like not
23 fair to me but my fair bite at the apple. That is just so
24 unfair. Like I've never heard this before. And

25 MR. LIMBAUGH: Your Honor, that is my case.

1 THE COURT: Is that all you have, Mr. Limbaugh?

2 MR. LIMBAUGH: Yes, sir, Your Honor.

3 THE COURT: All right.

4 Redirect, Mr. Griffith.

5 MR. GRIFFITH: No questions, Your Honor.

6 THE COURT: Very good. Call your next -- call your next
7 witness, please.

8 MR. GRIFFITH: Your Honor, I would call Mr. Wegmann,
9 Attorney Mr. Wegmann.

10 THE COURT: Okay.

11 (WHEREUPON, the witness was duly sworn.)

12 **DIRECT EXAMINATION BY MR. GRIFFITH OF JAMES WEGMANN:**

13 Q. Mr. Wegmann, you represented Mr. Brown during his plea
14 and before; isn't that correct?

15 A. Yes, sir.

16 Q. And did you notice that Mr. Brown had some problems
17 comprehending what you were saying at times?

18 A. No, sir. Not that I recall. I mean you have to
19 understand this is in the 2006, 2007 timeframe. I know it
20 has got a 2014 case number now; but this case actually took
21 place back in 2006, 2007.

22 THE COURT REPORTER: Excuse me, if we could get before
23 the next question if we could the jail to mute on that end
24 that would help us better with not getting the feedback.
25 Thank you.

1 They did it. Thank you.

2 A. To answer your question, no, I don't recall that.

3 Q. Okay. So you can't recall whether or not he was
4 comprehending what you were saying?

5 A. I don't recall that he wasn't comprehending what I was
6 saying. We had a number of discussions and met roughly -- I
7 was appointed back on February 2nd of 2006. And I believe
8 the plea took place sometime in March of 2007. So I had met
9 with him a number of times in between period, gone through a
10 good bit of his background, education, talked to a number of
11 people, went through all of the records; and I don't recall
12 him ever having difficulty understanding what I was telling
13 him.

14 Q. Did you ask for a mental evaluation?

15 A. I did not.

16 Q. I have no further questions, Your Honor.

17 THE COURT: Mr. Limbaugh.

18 MR. LIMBAUGH: May it please the Court, Your Honor.

19 **CROSS-EXAMINATION BY MR. LIMBAUGH OF JAMES WEGMANN:**

20 Q. Mr. Wegmann, is it your usual practice that if you have
21 some suspicion that there is a mental deficiency or mental
22 incompetence you would request a mental evaluation?

23 A. I have done that before, yes.

24 Q. Okay. And would that be in your normal practice is --
25 would you expect that would be the reason you didn't request
26

1 one here is because you didn't have any suspicions of mental
2 incompetence?

3 A. That would be a correct statement.

4 Q. Okay. And going back to that right's advice form that
5 you sent me, there is an acknowledgment on there that Mr.
6 Brown completed the ninth grade but that he also can read,
7 write, and understand English; is that correct?

8 A. Yeah, and some of that I take from -- so when I first
9 meet with a client I take notes and go through a lot of
10 detail. And as I recall it and my notes indicate, he had
11 finished the ninth grade.

12 It goes on further in my notes to talk about he had
13 entered the foster care program at age 12, came out at 17,
14 went to work for his father full-time. And I -- and some
15 other -- he had a fiancé at the time, a son, etcetera.

16 But I don't recall -- and there is nothing in my
17 notes -- and I'm -- I was the fourth attorney I think in his
18 case. And but I don't have anything in my notes dealing with
19 any mental health issues, any medications or anything like
20 that.

21 Q. Okay. And is it your general practice to I will say
22 tailor your counseling of a client based on their education
23 level or their perceived understanding?

24 A. Okay, yeah, I mean it -- some of them are very
25 knowledgeable, some of them are not so knowledgeable; and so

1 you just kind of -- you have to work with them based on what
2 you are seeing, what they're telling you and what your
3 perception of them is so.

4 Q. And either of those cases that you just outlined
5 ultimately you would make sure that they fully understand
6 what they were doing, the consequences of accepting the plea,
7 the nature of the charges, things of that nature; is that
8 correct?

9 A. Yeah, and that is a practice I have had for a long time,
10 even back when I was in active duty. And that is where the
11 right's advisement statement came from. It is a practice I
12 had back in the early '90's when I first started so. The
13 purpose of it.

14 Q. So just ultimately on that issue, you didn't have any
15 suspicions, professional or otherwise, that you needed to
16 request a mental evaluation from Mr. Brown, did you?

17 A. No.

18 Q. Okay. Second point that was raised on direct of Mr.
19 Brown was this discussion about him believing just in the 15
20 years. Can you speak a little bit to the advisement form and
21 the Court's colloquy as to what he was potentially facing as
22 a sentence?

23 A. So, again, within the advisement form it states what --
24 with armed robbery what that is, 10 to 30. And essentially,
25 like most clients, you know, they ask over and over and over

1 again what do you think, what do you think I'm going to get.
2 And the answer is I don't know; they can go between here and
3 there; you have some positive things going for you in that no
4 record, first-time offense, wasn't the gunman, you know,
5 etcetera, etcetera. And more importantly, kind of a wrong
6 place at wrong time. As I told the Court back then, if it
7 hadn't have rained that morning he wouldn't have been there;
8 he would have been at work.

9 So he had a number of things going for him. And I was a
10 little surprised, quite frankly, when Judge Mullen gave him
11 30 years. But to say that I would have told him that he is
12 going to get no more than 15, no, I wouldn't have said that.
13 And I certainly didn't put that in the right's advisement.

14 Q. Okay. And just a note on that last point. You did
15 actually file a motion to reconsider the sentence, did you
16 not?

17 A. I did. And I actually filed the notice of appeal, which
18 was another subject. But and it was based on Judge Mullins'
19 discussion with him at sentencing in that she said
20 essentially in court that he had gotten his deal. So he --
21 when murder was taken off the table.

22 So, you know, my thought was that's not necessarily an
23 appropriate comment to be taking into consideration something
24 that wasn't part of the plea; and so that was part of the
25 notice of intent to appeal.

1 Q. Okay. But ultimately you believe he understood what he
2 was doing, the sentence he was facing, and his decision to
3 plead guilty?

4 A. I do.

5 MR. LIMBAUGH: Nothing further, Your Honor.

6 MR. GRIFFITH: I would redirect, Your Honor, if it
7 please the Court.

8 **REDIRECT EXAMINATION BY MR. GRIFFITH OF JAMES WEGMANN:**

9 Q. Mr. Wegmann, you testified that you were his fourth
10 attorney. Is that what you said, or did I miss something?

11 A. So, no, it is fine. I just I was looking back at my
12 notes. It is not something that I had remembered; but my
13 notes indicate from when I first met with him the first two
14 attorneys that had been assigned to him had conflicts. And I
15 don't even know if they met with him. They very shortly
16 thereafter got out.

17 The third one had the case the longest. And my notes
18 indicate that the Solicitor's Office had difficulty getting
19 him to respond to various hearings because he filed to --
20 because he moved to Georgia.

21 So I was the fourth one, you know, and in a chain coming
22 out of there. And, frankly, I was a little surprise because
23 it was a Colleton County case and I am a Beaufort County
24 lawyer that they reached down into Beaufort County and
25 grabbed a lawyer.

1 So but notes indicate that, yeah, he had had a number of
2 our attorneys before he got to me.

3 Q. Were you working for the Public Defender's Office or as
4 a private attorney?

5 A. Private attorney. They -- I was told -- I don't know
6 this for sure, that they were aware of my background in the
7 Marine Corps as a defense counsel and that is why they
8 reached down I guess and grabbed me. I don't know for sure.
9 All I know is I got a letter that says you have now been
10 appointed to this case up in Colleton County.

11 Q. Okay. Actually I asked the question wrong. Really I
12 wanted to know if you were appointed or retained. So you
13 were appointed?

14 A. I was appointed by Patricia C. Grant, Clerk of Court,
15 for 14th Judicial Circuit, General Sessions.

16 Q. Okay. And so would you say that generally speaking in
17 your experience that if you're the second, third or fourth
18 attorney that there may have been some issues with the client
19 dealing with his prior attorneys?

20 A. I don't know. Other than the third one I think it was
21 noted, I don't know what the conflicts were with the first
22 two ones at all. I didn't go back and see if they were
23 orders issued as to why or anything else.

24 I know the third one I had been told that there were
25 issues getting in touch with him and that he had moved to

1 Georgia. That is really all I know.

2 It wasn't something I was overly concerned with.
3 Because with every case I start at Ground Zero, met with the
4 client, went and pulled all of the records up in the County,
5 with the Solicitor's Office, with the Sheriff's Office,
6 etcetera, and just moved forward. There were no records from
7 any of those three lawyers that were given over to me or
8 anything else.

9 So I don't know how much time if any they spent with
10 him. I just know the third one had -- they had had
11 difficulties and he had been on the case a while I believe.
12 Had difficulties getting in touch with him until they found
13 out he moved to Georgia.

14 MR. GRIFFITH: Okay. No further questions, Your Honor.

15 THE COURT: Okay.

16 APPLICANT BROWN: I would like the Court to know that I
17 want on the record that I was never afforded to be able to
18 have my legal documentations or was able to allow an attorney
19 to get ---

20 THE COURT: Mr. Brown ---

21 APPLICANT BROWN: That y'all need ---

22 THE COURT: Mr. Brown, you are not -- you are going to
23 be quiet.

24 APPLICANT BROWN: I must ---

25 THE COURT: Represent ---

1 APPLICANT BROWN: Therefore -- this is my case. I am
2 going speak up.

3 THE COURT: Well, I will tell you what; here is the
4 deal. You are going to be quiet and you are going to testify
5 when you are supposed to, and you are not going to interrupt
6 these proceedings or I will have you removed -- or have you
7 muted.

8 Now, Mr. Limbaugh, do you have any witnesses?

9 MR. LIMBAUGH: No -- no redirect on Mr. Wegmann. And
10 the State rests, Your Honor.

11 THE COURT: Okay. Very good.

12 All right. Any reason why Mr. Wegmann can't be
13 dismissed and go -- leave at this juncture?

14 MR. LIMBAUGH: None from the State, Your Honor.

15 MR. GRIFFITH: I have no objection, Your Honor.

16 THE COURT: Mr. Wegmann, you are free to stay or you are
17 free to go. Whatever you want to do.

18 All right. For the record let me say this, that there
19 is no -- absolutely no evidence has been presented that had
20 anything to do with the applicant's mental health at the time
21 of his plea. By his own admission he said that he didn't
22 even bring it up to Mr. Wegmann or make that known to him at
23 all. They ---

24 APPLICANT BROWN: I have the records at the institution
25 right now. They can pull them up.

1 THE COURT: You -- Mr. Brown ---

2 APPLICANT BROWN: I will file an appeal -- I pay for own
3 attorney.

4 THE COURT: You will be quiet.

5 Now, Mr. Wegmann -- I mean Mr. Griffith, to the extent
6 that there are medical -- mental health records that go back
7 to his condition at the time of his plea - not subsequent
8 mental health records, at the time of his plea - give you 30
9 days to admit it. Okay.

10 MR. GRIFFITH: Thank you, Your Honor.

11 THE COURT: That being said, this case has been pending
12 since 2014. Mr. Griffith, you should have had that stuff
13 ready before today. I am presently denying your petition for
14 post-conviction relief. You have not shown that anything is
15 ineffective on behalf of Mr. Wegmann. There is nothing to
16 show that the plea was anything but voluntary.

17 Mr. Wegmann has no control over what the trial judge
18 assigned to you. And I find that your statement that he said
19 you would get 15 -- no more than 15 is not credible. I find
20 that your testimony is not credible. With that being said I
21 reserve the right to change my mind once I see those mental
22 health records if at all.

23 APPLICANT BROWN: Thank you.

24 THE COURT: But 30 days from today, Mr. Griffith, okay?

25 MR. GRIFFITH: Thank you, Your Honor.

1 THE COURT: Prepare an order, please.

2 MR. LIMBAUGH: Yes, sir. Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. GRIFFITH: Thank you.

5 APPLICANT BROWN: Your Honor, thank you.

6 (WHEREUPON, hearing recessed.)

7 (WHEREUPON, per email from Judge to court reporter dated
8 9/23/20, Applicant Exhibit A, medical records, is marked for
9 identification)

10 (WHEREUPON, Applicant's Exhibit A, was admitted into
11 evidence)

12 (WHEREUPON, the hearing recessed.)

(*NOTE:* Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on August 28, 2020.

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

A handwritten signature in black ink that reads "Phyllis Norton". The signature is written in a cursive, flowing style.

PHYLLIS NORTON, CVR

Date: February 11, 2021

Certified Transcript Provided For: SCCID

Certification Reference #2021-0211 Original

CONFIDENTIAL

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Patient Info		FAC: 3R		OFC: K30	LOC: 092	CC: 3RK00	
CID: 9444838							
Name: ANTHONY T. BROWN				Admission Date: 03/19/2002			
				Discharge Date: 06/24/2002			
Maiden:		Alias:					
Resident Address:		Mailing Address:					
[REDACTED]		[REDACTED]					
Home Phone:	[REDACTED]	Work Phone:	000-000-0000	SSN:	[REDACTED]		
Cell Phone:		Other Phone:					
County (Res):	BERKELEY	(Adm):	CALHOUN	EDC:	GRADE 9		
Date of Birth:	[REDACTED]	Age:	35	Sex:	Male	Race:	BLACK/AFRICAN AMERICAN
Date of Death:							
How well does client speak english:				Language Preference:			
Marital Status:	Never Married	Children in family:	4	Family Size: 6			
Employment Type:	Not Applicable or Unknown	Annual Income:	0.00				
Next of kin:	RONALD HOLMAN	Address:	[REDACTED]	Home Phone:	[REDACTED]		
Other Contact:	R	[REDACTED]		Work Phone:			
				Cell Phone:			
School:							

Clinical Info					
Last Psych Svc:		Date:		For:	Outpatient
Referral:	SOCIAL SERVICES	Problem(s):	PSYCHIATRIC		
Referring MD:		UPIN#:			
Living Arrangement:					
Household:	LIVES WITH SIGNIFICANT OTHER(S)				
Admission Type:	VOLUNTARY	Date:	03/19/2002		
Spec Popn:	NONE	Program:	OUTPATIENT	Family Case:	N
Legacy Spec Popn:	EMOTIONALLY DISTURBED				
mGAF (from DLA20):	no completed DLA20				
Employment Status:	STUDENT UNDER 18 YEARS OLD	Employment Level:	NOT EMPLOYED		
Employed Date:		Termination Date:		Wages:	\$0.00
Job Classification:		Doctor Assigned:	()		
Case Manager:	ANNETTE DINGLE-NELSON	Intake Staff:	ANNETTE DINGLE-NELSON		
DSM-IV Psych Diagnoses:		Handicaps:		Vision:	Hearing: N
312.81-Conduct Disorder Childhood-Onset Type (New Code As		Speech:		Ambulatory:	
Limited Contact:		Chart Loc:	ST. MATTHEWS	Printed:	08/31/2020 By Staff:

2020 OCT 15 AM 9:19

COLLETON COUNTY
COMMON PLEAS COURT

Financial Info		***** Financial Review Date: 03/19/2003 *****	
HMO:	Eff Dates:	Thru	Limits: Updated By:
Medicare: Name:			
MDCR #:	Effective Dates:	Thru	
ABNS Date:	ABNS Expire:	ABNS Option:	
Medicaid: Name:	ANTHONY BROWN		
MDCD #:	7154393203	Effective Dates:	07/01/1994 Thru
Tricare: Sponsor:			
CHMP #:	Effective Dates:	Thru	
Private Insurance:	Effective Dates:	Thru	

Patient Info			
CID: 9444838	FAC: 3W	OFC: 27	LOC: B CC:
Name: ANTHONY T. BROWN		Admission Date: 02/27/2002 Discharge Date: 03/04/2002	
Maiden:	Alias:		
Resident Address:	Mailing Address:		
[REDACTED]		[REDACTED]	
Home Phone: [REDACTED]	Work Phone: 000-000-0000	SSN: [REDACTED]	
Cell Phone:	Other Phone:		
County (Res): BERKELEY	(Adm): BERKELEY	EDC: GRADE 9	
Date of Birth: [REDACTED]	Age: 35	Sex: Male	Race: BLACK/AFRICAN AMERICAN
Date of Death:			
How well does client speak english:	Language Preference:		
Marital Status: Never Married	Children in family: 4	Family Size: 6	
Employment Type: Not Applicable or Unknown	Annual Income: 0.00		
Next of kin: RONALD HOLMAN	Address:	Home Phone: [REDACTED]	
Other Contact: R	[REDACTED]	Work Phone:	
		Cell Phone:	
School: TIMBERLAND HIGH			
Clinical Info			
Last Psych Svc: NN NN	Date:	For: Outpatient	
Referral: SOCIAL SERVICES		Problem(s): PSYCHIATRIC	
Referring MD:	IIPIN#:		
Living Arrangement:			
Household: LIVES ALONE			
Admission Type: VOLUNTARY	Date: 02/27/2002		
Spec Popn: NONE	Program: COMMUNITY SUPPORT	Family Case:	
Legacy Spec Popn: NONE			
mGAF (from DLA20): no completed DLA20			
Employment Status: STUDENT UNDER 18 YEARS OLD	Employment Level: NOT EMPLOYED		
Employed Date:	Termination Date:	Wages: \$0.00	
Job Classification:	Doctor Assigned: ()		
Case Manager:	Intake Staff: JOHNETTE OWENS		
DSM-IV Psych Diagnoses:	Handicaps:	Vision:	Hearing: N
312.89-Conduct Disorder Unspecified Onset (New Code As Of		Speech:	Ambulatory:
Limited Contact:	Chart Loc:	Printed: 08/31/2020 By Staff:	
Financial Info			
***** Financial Review Date: 03/19/2003 *****			
HMO:	Eff Dates:	Thru	Limits: Updated By:
Medicare: Name:			
MDCR #:	Effective Dates:	Thru	
ABNS Date:	ABNS Expire:	ABNS Option:	
Medicaid: Name: ANTHONY BROWN			
MDCD #: 7154393203	Effective Dates: 07/01/1994	Thru	
Tricare: Sponsor:			
CHMP #:	Effective Dates:	Thru	
Private Insurance:	Effective Dates:	Thru	

CONFIDENTIAL

Patient Info				
CID: 9444838	FAC: 3K	OFC: 210	LOC: B	CC:
Name: ANTHONY T. BROWN		Admission Date: 10/28/1998		
		Discharge Date: 10/28/1998		
Maiden:	Alias:			
Resident Address:	Mailing Address:			
[REDACTED]		[REDACTED]		
Home Phone:	Work Phone: 000-000-0000	SSN: [REDACTED]		
Cell Phone:	Other Phone:			
County (Res): BERKELEY	(Adm): AIKEN	EDC: GRADE 9		
Date of Birth: [REDACTED]	Age: 35	Sex: Male	Race: BLACK/AFRICAN AMERICAN	
Date of Death:				
How well does client speak english:		Language Preference:		
Marital Status: Never Married	Children in family: 4	Family Size: 6		
Employment Type: Not Applicable or Unknown	Annual Income: 0.00			
Next of kin: RONALD HOLMAN	Address:	Home Phone: [REDACTED]		
Other Contact: R	[REDACTED]	Work Phone:		
		Cell Phone:		
School:				
Clinical Info				
Last Psych Svc: 3K	Date: 10/28/1998	For: Outpatient		
Referral: GENERAL HOSPITAL	Problem(s): ALL OTHERS			
Referring MD:	UPIN#:			
Living Arrangement:				
Household: LIVES ALONE				
Admission Type: VOLUNTARY	Date: 10/28/1998			
Spec Popn: NONE	Program: OUTPATIENT	Family Case: N		
Legacy Spec Popn: NONE				
mGAF (from DLA20): no completed DLA20				
Employment Status: STUDENT UNDER 18 YEARS OLD	Employment Level: FULL TIME			
Employed Date:	Termination Date:	Wages: \$0.00		
Job Classification:	Doctor Assigned: ()			
Case Manager: SUSAN RIVERS	Intake Staff: SUSAN RIVERS			
DSM-IV Psych Diagnoses:	Handicaps:	Vision:	Hearing: N	
V71.09-No Diagnosis On Axis II		Speech:	Ambulatory:	
Limited Contact: Y	Chart Loc: AIKEN MHC MAIN CENTER	Printed: 08/31/2020	By Staff:	
Financial Info				
***** Financial Review Date: 03/19/2003 *****				
HMO:	Eff Dates:	Thru	Limits:	Updated By:
Medicare: Name:				
MDCR #:	Effective Dates:	Thru		
ABNS Date:	ABNS Expire:	ABNS Option:		
Medicaid: Name: ANTHONY BROWN				
MDCD #: 7154393203	Effective Dates: 07/01/1994	Thru		
Tricare: Sponsor:				
CHMP #:	Effective Dates:	Thru		
Private Insurance:	Effective Dates:	Thru		

CONFIDENTIAL

Patient Info		FAC: 3R	OFC: 901	LOC: 090	CC: 3RA00
CID: 9444838					
Name: ANTHONY T. BROWN		Admission Date: 06/03/1998 Discharge Date: 10/27/1998			
Maiden:	Alias:				
Resident Address:	Mailing Address:				
Home Phone:	Work Phone: 000-000-0000	SSN:			
Cell Phone:	Other Phone:				
County (Res): BERKELEY	(Adm): ORANGEBURG	EDC: GRADE 9			
Date of Birth:	Age: 35	Sex: Male	Race: BLACK/AFRICAN AMERICAN		
Date of Death:			Language Preference:		
How well does client speak english:	Children in family: 4	Family Size: 6			
Marital Status: Never Married	Employment Type: Not Applicable or Unknown	Annual Income: 0.00			
Next of kin: RONALD HOLMAN	Address:	Home Phone:			
Other Contact: R		Work Phone:			
		Cell Phone:			
School:					

Clinical Info		For: Outpatient	
Last Psych Svc:	Date:	Problem(s): PSYCHIATRIC	
Referral: OTHER REFERRALS	UPIN#:		
Referring MD:			
Living Arrangement:			
Household: NOT APPLICABLE			
Admission Type: VOLUNTARY	Date: 06/03/1998	Family Case:	
Spec Popn: NONE	Program: OUTPATIENT		
Legacy Spec Popn: NONE			
mGAF (from DLA20): no completed DLA20			
Employment Status: HOMEMAKER	Employment Level: NOT EMPLOYED		
Employed Date:	Termination Date:	Wages: \$0.00	
Job Classification:	Doctor Assigned: ()		
Case Manager: RENEE HAMPTON	Intake Staff: RITA HAIGLER		
DSM-IV Psych Diagnoses:	Handicaps:	Vision:	Hearing: N
313.81-Oppositional Defiant Disorder		Speech:	Ambulatory:
311.-			
Limited Contact:	Chart Loc:	Printed: 08/31/2020	By Staff:

Financial Info			
***** Financial Review Date: 03/19/2003 *****			
HMO:	Eff Dates:	Thru	Limits: Updated By:
Medicare: Name:			
MDCR #:	Effective Dates:	Thru	
ABNS Date:	ABNS Expire:	ABNS Option:	
Medicaid: Name: ANTHONY BROWN			
MDCD #: 7154393203	Effective Dates: 07/01/1994	Thru	
Tricare: Sponsor:			
CHMP #:	Effective Dates:	Thru	

CONFIDENTIAL

Patient Info			
CID: 9444838	FAC: 3M	OFC: 034	LOC: 001 CC: 3MBAA
Name: ANTHONY T. BROWN,		Admission Date: 08/10/1997	
		Discharge Date: 05/20/1998	
Maiden:	Alias:		
Resident Address:	Mailing Address:		
[REDACTED]		[REDACTED]	
Home Phone: [REDACTED]	Work Phone: 000-000-0000	SSN: [REDACTED]	
Cell Phone:	Other Phone:		
County (Res): BERKELEY	(Adm): COLLETON	EDC: GRADE 9	
Date of Birth: [REDACTED]	Age: 35	Sex: Male	Race: BLACK/AFRICAN AMERICAN
Date of Death:			
How well does client speak english:	Language Preference:		
Marital Status: Never Married	Children in family: 4	Family Size: 6	
Employment Type: Not Employed	Annual Income: 0.00		
Next of kin: RONALD HOLMAN	Address:	Home Phone: [REDACTED]	
Other Contact: R	[REDACTED]	Work Phone:	
		Cell Phone:	
School:			
Clinical Info			
Last Psych Svc: NN 3M	Date: 08/05/1997	For: Outpatient	
Referral: SOCIAL SERVICES	UPIN#:	Problem(s): 0	
Referring MD:			
Living Arrangement:			
Household: UNKNOWN			
Admission Type: VOLUNTARY	Date: 08/11/1997		
Spec Popn: NONE	Program: OUTPATIENT	Family Case: N	
Legacy Spec Popn: PSYCHIATRICALY DISABLED			
mGAF (from DLA20): no completed DLA20			
Employment Status: UNEMPLOYED, ADULT	Employment Level: NOT EMPLOYED		
Employed Date:	Termination Date:	Wages: \$0.00	
Job Classification:	Doctor Assigned: DAVID MCCRAY (0709)		
Case Manager: DONNIE CAMPBELL	Intake Staff: CANDACE CREEL		
DSM-IV Psych Diagnoses:	Handicaps:	Vision:	Hearing: N
313.81-Oppositional Defiant Disorder		Speech:	Ambulatory:
Limited Contact: Y	Chart Loc: WALTERBORO CLINIC	Printed: 08/31/2020	By Staff:
Financial Info			
***** Financial Review Date: 03/19/2003 *****			
HMO:	Eff Dates:	Thru	Limits: Updated By:
Medicare: Name:			
MDCR #:	Effective Dates:	Thru	
ABNS Date:	ABNS Expire:	ABNS Option:	
Medicaid: Name: ANTHONY BROWN			
MDCD #: 7154393203	Effective Dates: 07/01/1994	Thru	
Tricare: Sponsor:			
CHMP #:	Effective Dates:	Thru	
Private Insurance:	Effective Dates:	Thru	

CONFIDENTIAL

Patient Info			
CID: 9444838	FAC: 3M	OFC: 032	LOC: 002
Name: ANTHONY T. BROWN		Admission Date: 10/05/1994	
		Discharge Date: 08/05/1997	
Maiden:	Alias:		
Resident Address:	Mailing Address:		
Home Phone:	Work Phone: 000-000-0000	SSN:	
Cell Phone:	Other Phone:		
County (Res): BERKELEY	(Adm): COLLETON	EDC: GRADE 9	
Date of Birth:	Age: 35	Sex: Male	Race: BLACK/AFRICAN AMERICAN
Date of Death:			
How well does client speak english:	Language Preference:		
Marital Status: Never Married	Children in family: 4	Family Size: 6	
Employment Type: Not Employed	Annual Income: 0.00		
Next of kin: RONALD HOLMAN	Address:	Home Phone:	
Other Contact: R		Work Phone:	
		Cell Phone:	
School:			
Clinical Info			
Last Psych Svc: IP	Date: 10/05/1994	For: Outpatient	
Referral: OTHER REFERRALS	Problem(s):		
Referring MD:	UPIN#:		
Living Arrangement:			
Household: LIVES WITH FAMILY/RELATIVES			
Admission Type: VOLUNTARY	Date: 10/05/1994		
Spec Popn: NONE	Program: OUTPATIENT	Family Case: N	
Legacy Spec Popn: EMOTIONALLY DISTURBED			
mGAF (from DLA20): no completed DLA20			
Employment Status:	Employment Level: NOT APPLICABLE OR UNKNOWN		
Employed Date:	Termination Date:	Wages: \$0.00	
Job Classification:	Doctor Assigned: ()		
Case Manager: CANDACE CREEL	Intake Staff: CANDACE CREEL		
DSM-IV Psych Diagnoses:	Handicaps:	Vision:	Hearing: N
313.81-		Speech:	Ambulatory:
309.0-			
Limited Contact: N	Chart Loc:	Printed: 08/31/2020	By Staff:
Financial Info			
***** Financial Review Date: 03/19/2003 *****			
HMO:	Eff Dates:	Thru	Limits: Updated By:
Medicare: Name:			
MDCR #:	Effective Dates:	Thru	
ABNS Date:	ABNS Expire:	ABNS Option:	
Medicaid: Name: ANTHONY BROWN			
MDCD #: 7154393203	Effective Dates: 07/01/1994	Thru	
Tricare: Sponsor:			

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF COLLETON	)	CASE NO:
	)	
STATE OF SOUTH CAROLINA,	)	
Plaintiff,	)	
	)	RIGHTS ADVISEMENT
v.	)	
	)	
ANTHONY TEREZ BROWN,	)	
Defendant.	)	
_____	)	

COMES NOW the Defendant in the above-styled cause and represent to the Court as follows:

(1) My true name is Anthony Brown, and I am 21 years of age.

(2) I completed the 9th grade in school and I can read and write and understand the English language.

(3) I am represented by my attorney James J. Wegmann, and he discussed my case at length with me. I have had enough time to talk with him, and I have discussed with him the facts in my case, and I have discussed my Constitutional Rights with him. I am satisfied with the services of my attorney and I have no complaints as to the way he has handled my case.

(4) I understand the charge(s), Murder & Armed Robbery, and my lawyer has explained to me the elements of (each) charge and the punishment thereof.

(5) I understand that as to each offense charged against me, I have a right to answer or plead (a) I am not guilty; or (b) I am guilty as charged.

(6) I further understand and my lawyer has explained to me that if I enter a plea of not guilty, I have the following Constitutional Rights:

- a. The right to be tried by a jury of 12 citizens selected according to law.
- b. The right to face all witnesses or accusers who testify against me and have them cross examined by my attorney while they testify under oath.
- c. The right to have witnesses subpoenaed to give evidence in my favor and to testify myself or remain silent at my own choosing. Should I elect to remain silent, no inference of my guilt may be drawn from my silence.

Initials AB/aw

- d. The right to present all defenses available to me at law and present all evidence in favor of mitigation where available at law.
- e. The right to require the State of South Carolina to prove my guilt beyond a reasonable doubt to the satisfaction of all 12 jurors before I can be adjudged guilty.
- f. The right to be presumed innocent of the offense charged until the State proves my guilt beyond a reasonable doubt.
- g. The right to challenge the composition of the Grand Jury which indicted me or the Venire from which a petit jury will be selected to try me.
- h. The right to appeal a conviction within ten (10) days.

(7) I further understand that if I advise the Court that I am guilty and enter a plea of guilty, that I am surrendering all of the above rights.

(8) I understand that if I plead guilty based upon an agreement with the Solicitor's Office as to what sentence will be recommended, the Court is not obligated to accept the recommendation.

I further understand that if I plead blind (the Solicitor's Office having entered into no agreement regarding a recommended sentence) the Court can sentence me to the same punishment as if I had been convicted by a Jury.

(9) I understand that the Solicitor has offered to dismiss the Murder charge in exchange for my truthful testimony and preparation for trial, if necessary, in any companion case that results from the events of April 13th, 2004 at the Maloney Concrete Plant. No one has threatened me or used force to get me to plead guilty. No one has used any pressure or intimidation to cause me to enter a guilty plea. I understand that the Solicitor is not going to make a recommendation as to a sentence on my plea of guilty to armed robbery.

(10) I wish to enter my plea of guilty, to armed robbery, because I am guilty, and I believe it is in my best interest to enter such a plea.

(11) I understand that if I plead guilty and the crime to which I am pleading guilty has resulted in pecuniary damages or loss to a victim, the Court will order me to make restitution or otherwise compensate the victim for any pecuniary damage or loss. If the amount of restitution cannot be agreed upon, then I am entitled to a hearing where the amount of restitution will be determined.

(12) I further understand that after I am sentenced on my guilty plea that I still have a right to appeal from such guilty plea and sentence within ten (10) days.

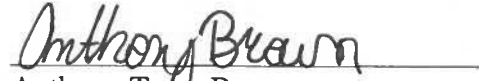
(13) My lawyer has explained all plea negotiations in this case and I have read and

Initials AB/ear

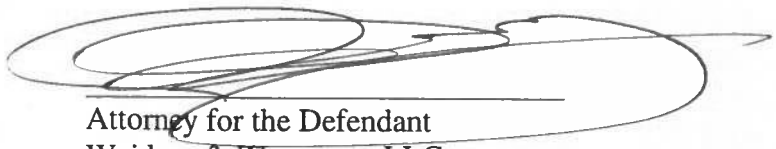
understand the written plea offer made by the Solicitor.

(14) I understand that armed robbery statute entails a minimum sentence of 10 years and a maximum sentence of 30 years. I further understand that Armed Robbery is a Class A Felony and is subject to the 85% rule for parole and is also considered a "most serious" offense for classifications of the two and three strike rules currently contained within our statutes.

I have read and understand the above rights advisement, and my lawyer has explained each of the foregoing point to me.


Anthony Terez Brown

I have assisted my client in the completion of the foregoing and have satisfied myself that the plea he wishes to enter is in his best interest and, therefore, recommend it to him and to the Court based on my professional judgment.


Attorney for the Defendant
Weidner & Wegmann, LLC
James J. Wegmann, Esquire

Initials

AB/ew

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-15-00373

Anthony Terez Brown
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

PETITION IS DENIED. APPLICANT HAS 30 DAYS TO SUBMIT MEDICAL RECORDS REGARDING HIS MENTAL HEALTH AT THE TIME OF HIS GUILTY PLEA. COURT RESERVES THE RIGHT TO AMEND THIS ORDER BASED ON ANY RECORDS THAT ARE PRODUCED. MR. LIMBAUGH TO PREPARE A FORMAL ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Anthony Terez Brown #320539,

Case No.: 2014-CP-15-373

Applicant,

Order of Dismissal

v.

State of South Carolina,

Respondent.

2021 JAN 25 PM 2:38

COLLETON COUNTY
COMMON PLEAS COURT

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections following his guilty plea in Colleton County. On April 13, 2004, Applicant and three co-defendants, armed with handguns, entered a business in Walterboro, South Carolina, where they proceeded to rob then fatally shoot the victim. Applicant was subsequently arrested, and, during its July 2004 term, the Colleton County Grand Jury indicted Applicant for murder (2004-GS-15-418) and armed robbery (2004-GS-15-419). Applicant was represented by James J. Wegmann, Esquire. Assistant Solicitor Terry K. Alexander of the Fourteenth Circuit Solicitor's Office prosecuted the case. Applicant cooperated with the State, including agreeing to plead guilty and testify against a co-defendant. In exchange for his cooperation, the State agreed to dismiss the murder indictment against Applicant.

On March 13, 2007, Applicant appeared before the Honorable Carmen T. Mullen, circuit court judge, and pled guilty to armed robbery pursuant to his plea agreement with the State. After a thorough colloquy, including findings his plea was knowing, voluntary, and intelligent and that he was satisfied with the services of his counsel, Judge Mullen accepted Applicant's guilty plea and sentenced him to thirty years of confinement. As per the plea agreement, the State dismissed

Applicant's murder indictment.

Thereafter, on March 21, 2007, Applicant, through counsel, filed a motion to reconsider his sentence. In this motion, Applicant argued Judge Mullen improperly considered the dismissed murder charge when sentencing Applicant to the maximum term of imprisonment for armed robbery. Judge Mullen denied the motion to reconsider on September 25, 2009, without a hearing.

Applicant sought appellate review from his guilty plea and filed a notice of appeal on September 28, 2009. In an order filed on March 13, 2014, the South Carolina Court of Appeals dismissed the appeal for failure to provide proof of service of the appeal on the State. The remittitur was issued on March 31, 2014.

While his motion to reconsider his sentence was pending, Applicant prematurely filed an application for post-conviction relief (2008-CP-15-0078) on January 23, 2008, alleging the following grounds for relief:

1. Ineffective assistance of counsel in that counsel refused to file an appeal.
2. Involuntary guilty plea.

In response, Respondent filed its return on March 4, 2009. An evidentiary hearing into the matter was convened on September 4, 2009, before the Honorable Alexander S. Macaulay, circuit court judge. Applicant was present at hearing and was represented by Gerald Maree, Esquire. Assistant Attorney General Matthew J. Friedman of the South Carolina Attorney General's Office appeared on behalf of Respondent. Because the motion to reconsider his sentence was still pending, Judge Macaulay dismissed the application without prejudice.

II. CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel

2. Involuntary Guilty Plea

Applicant failed to state any specific claims or provide any factual support for these vague claims. For the relief sought, Applicant states he is seeking, "Reverse and Remand."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the evidence presented at the evidentiary hearing, observed the witnesses, passed upon their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, as well as the plea transcript. This Court finds the combined record of the plea transcript and the testimony and evidence presented the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code of Laws.

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

S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

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

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

Ineffective assistance of counsel and involuntary guilty plea

Applicant alleges plea counsel was generally ineffective and that his guilty plea was

entered involuntarily. However, Applicant has wholly failed to produce any evidence of the alleged deficiency of plea counsel or that his plea was entered involuntarily.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v.

United States, 582 U.S., 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 582 U.S. 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Lee, 582 U.S. 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Id. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not

determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999).

To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him or her and the consequences of his or her plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. Id. at 755; see also United States v. Smith, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243. Additionally, in order to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived. Pittman,

337 S.C. at 599, 524 S.E.2d at 624.

However, it is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (citing Brady, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, Brady, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. North Carolina v. Alford, 400 U.S. 25, 37 (1970). The standard for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” Id. at 31.

A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); see also Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his or her guilty plea, the trial judge “usually questions the defendant about the facts surrounding the crime and punishment that could be imposed.” Dover v. State, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the trial judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made

at the time of the entry of the guilty plea and the record of the post-conviction hearing.” Harres, 282 S.C. at 133, 318 S.E.2d at 361. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe, 326 S.C. at 165, 485 S.E.2d at 370; cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , 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); see also 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”). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. Blackledge, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell

below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

In the present case, Applicant's guilty pleas were entered knowingly, intelligently, and voluntarily with the advice of competent counsel. This Court reviewed a signed Rights Advisement form signed by Applicant. Applicant acknowledged his counsel discussed the case at length with him prior to the plea, he understood his Constitutional rights, and he was satisfied with the services of his counsel. Applicant acknowledged he understood the charges he was facing and that he could either plead guilty or not guilty. Applicant acknowledged the Constitutional rights he would have if he proceeded to trial and that he would be surrendering those rights if he plead guilty. Applicant acknowledged he understood what pleading guilty with a recommendation would mean and what pleading guilty without a recommendation would mean. Applicant acknowledged that he wished to enter a plea of guilty to armed robbery because he was guilty and believes it was in his best interest. Applicant acknowledged that he understood that he had ten days to appeal after entering his plea. Applicant acknowledged that his counsel explained all plea negotiations with him and he understood those negotiations. Applicant finally acknowledged that armed robbery carries a minimum sentence of ten years and a maximum sentence of thirty years and is considered a most serious offense (85%). Therefore, combined with his statements to the court during his guilty plea, this Court finds that Applicant entered his plea voluntarily and counsel was not deficient in any way. This allegation is dismissed with prejudice.

Did not knowingly enter the plea due to mental incompetence

Applicant amended his application to include an allegation that he was mental incompetent at the time of the plea and therefore did not knowingly enter his guilty plea.

However, the evidence Applicant ultimately presented of his medical records did not indicate any mental incompetence at the time of the plea and therefore Applicant has failed to meet his burden.

To sustain a claim of incompetency in fact at a plea, applicant in a PCR proceeding must show by the preponderance of the evidence he was incompetent at the time of plea. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). To sustain a claim counsel was ineffective for failing to request a competency hearing, an applicant must show a reasonable probability petitioner would have been found incompetent. Id. Counsel may reasonably rely on his own perceptions in deciding a client is competent to stand trial. Id. Applicant submitted medical records after the hearing for the Court's review. First, the records pre-date the date of Applicant's guilty plea by a number of years. The medical records date back to 2002 and his plea was on March 13, 2007. Nothing in the records address the state of Applicant's mental health at the time of his plea. Further, although the records to indicate that Applicant was experiencing mental health difficulty, nothing specifies what the difficulty was and to a reasonable degree of medical certainty explains if or how the prior difficulties prevented him from being able to knowingly and intelligently plead guilty on March 13, 2007. Therefore, Applicant has failed to meet his burden of proof required of him. This allegation is dismissed with prejudice.

Conclusion

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate

review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 15th day of January, 2020. (RU)

Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina

STATE OF SOUTH CAROLINA)
)
County of Colleton) **INDICTMENT #04GS15-0418**

At a Court of General Sessions, convened on July 19, 2004,
the Grand Jurors of Colleton County present upon their oath:

COUNT:

MURDER
16-3-20

That Anthony T. Brown did in Colleton County on or about April 13, 2004,
feloniously, wilfully and with malice aforethought, kill one Carolyn Maloney by
means of shooting her and that the said Carolyn Maloney did die in Colleton
County as a proximate result thereof on or about the 13th day of April, 2004.

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

SOLICITOR

Randolph M. Munday

WITNESSES

Det. Hampton Jenkins

SSgt. Lesley Jamison ✓

ARREST WARRANT #:

G308168

Arrested on May 12, 2004

ACTION OF GRAND JURY

True Bill

Foreman:

Virginia C. Cobb
Grand Jury

VERDICT

Foreman:

Petit Jury
Date: _____

DOCKET #: 04GS15-0418

THE STATE OF SOUTH CAROLINA
County of Colleton

COURT OF GENERAL SESSIONS

Term: July, 2004

THE STATE

vs.

Anthony T. Brown

INDICTMENT FOR

0116

MURDER

16-3-20

*not pro
3-13-07
JH/G*

STATE OF SOUTH CAROLINA)
)
County of Colleton)

INDICTMENT #04GS15-0419

At a Court of General Sessions, convened on July 19, 2004,
the Grand Jurors of Colleton County present upon their oath:

COUNT:

**ARMED ROBBERY
(16-11-330)**

That Anthony T. Brown did in Colleton County on or about April 13, 2004,
while armed with a deadly weapon, or while alleging or representing, by action
or words, that he/she was armed with a deadly weapon, or other object that a
person present, reasonably believed to be a deadly weapon, to wit: a handgun,
feloniously take from the person or presence of the victim, Carolyn Maloney, by
means of force or intimidation goods or monies of said victim, such goods or
monies being described as follows: purse, bank bag, diaper bag (VNC) ?

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

SOLICITOR

Randolph M. Mendenhall

WITNESSES

Det. Hampton Jenkins

SSgt. Lesley Jamison ✓

ARREST WARRANT #:

G308169

Arrested on May 12, 2004

ACTION OF GRAND JURY

June Beil

Foreman:

Virginia C. Cobb
Grand Jury

VERDICT

Foreman:

Petit Jury

Date: _____

DOCKET #: 04GS15-0419

THE STATE OF SOUTH CAROLINA
County of Colleton

COURT OF GENERAL SESSIONS

Term: July, 2004

THE STATE

vs.

Anthony T. Brown

INDICTMENT FOR

0139

ARMED ROBBERY

(16-11-330)

STATE OF SOUTH CAROLINA

COUNTY OF Colleton
 STATE VS.
ANTHONY TERESA BRAUN
 AKA: ANTA
 Race: B Sex: M Age: 21
 DOB: [REDACTED] SSN: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: [REDACTED]
 DL# [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 04-08-15-0419
 AWW: G-308169
 Date of Offense: 4-13-04
 S.C. Code #: 16-11-520
 CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: ARMED ROBBERY

In violation of § 16-11-530 of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CBC) ☐ §17-25-45
 w/minor 1st or Lowd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. AB (Defendant Initial)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature]
 Solicitor

[Signature]
 Defendant

[Signature]
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, ☐ County Detention Center, for a determinate term of 0 days/months/years or ☐ under the Youthful Offender Act not to exceed 0 years and/or to pay a fine of \$ 0; provided that upon the service of 0 days/months/years and/or payment of \$ 0; plus costs and assessments as applicable; the balance is suspended with probation for 0 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: 0
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. since April 28, 2004
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ 0 plus 20% fee: \$ 0
 Payment Terms: 0
☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$100	<u>100.00</u>
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	
\$14-1-211(A)(2) (DUI Surcharge)	\$12	
\$55-5-2906 (DUI Assessment)	\$500	
\$35.13 (Public Def Prob)	\$25	<u>25.00</u>
\$73.3, 1B TP (Law Enforce. Funding)	\$100	
\$33.7, 1B TP (Drug Court Surcharge)	\$50	
\$50-21-114(BUI Breath Test Fee)	\$40/ea	
\$55-5-2942(J) (Vehicle Assessment)		
3% to County (if paid in installments)		
TOTAL		<u>128.75</u>

PTUP

0 days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve WVE beginning 0
 Substance Abuse Counseling
 Random Drug/Alcohol Testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ 0 beginning 0
 \$ 0 paid to Public Defender Fund
 Other: 0

☐ Appointed PO or appointed other counsel, §35-13 TP
 Requires \$500 be paid to Clerk during probation.

Patricia C. Grant
 Clerk of Court/Deputy Clerk

Court Reporter: Mia Person

PRESIDING JUDGE

Judge Code: 2

Sentence Date: 3-12-07