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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Roger E. Henderson, Circuit Court Judge

SHAWN BETHEA,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000602

APPENDIX

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State of South Carolina) In the Court of General Sessions
) Fifth Judicial Circuit
County of Richland) 2014-GS-47-014

The State of South Carolina,)
)
Plaintiff,)
)
vs.) Transcript of Record
)
Shawn Bethea,)
)
Defendant.)
)
)

June 8, 2015
Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, III, Judge

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

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Circuit Court Reporter

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No.	Description	I.D.	Ev.

No Exhibits Introduced.

(PRIOR TO THE HEARING, THE DEFENDANT IS SWORN.)

CLERK OF COURT: Please state your full name.

DEFENDANT: Shawn Bethea.

EXAMINATION BY THE COURT:

Q. All right, Mr. Bethea, you are twenty-four years of age?

A. Yes, sir.

Q. And you're from Richland County?

A. Yes, sir.

Q. And are you married?

A. No, sir.

Q. You have any children?

A. Yes, sir.

Q. How many children do you have?

A. One.

Q. And how old is your child?

A. Two.

Q. And how -- two years old?

A. Two.

Q. All right. How far did you go in school?

A. Eleventh grade.

Q. Where did you go?

A. Columbia High School.

Q. And who were you living with at the time you were incarcerated?

A. My mother.
Q. And were you working?
A. I had -- I was on and off. I had a couple of jobs in high school.
Q. What kind of work have you done in the past?
A. I was working at ---
Q. Don't get too close to the mic. That's what Mr. Rose -- because it...
A. I was working at Fred's and Zaxby's on Bush River.
Q. All right. So, you were in the food and beverage industry?
A. Yes, sir.
Q. All right, and you, you have been indicted, the State Grand Jury, for four counts of armed robbery and one count of -- what is it, possession of a weapon during the commission of a violent crime. Do you understand that?
A. Yes, sir.
Q. And on each of the armed robbery charges, you could have gotten up to thirty years. You understand that?
A. Yes, sir.
Q. And on the weapon charge, I think you can get up to five years. You understand that?
A. Yes, sir.
Q. And apparently you're going to enter a plea on one of the armed robbery charges. Is that correct?

A. Yes, sir.
Q. And the other three armed robbery charges are going to be nolle prossed, dismissed, and the new weapons charge will be dismissed. You understand that?
MR. WEKEKIND: There's actually two of those weapon charges.
THE COURT: There's two weapon charges?
BY THE COURT:
Q. All right, both of those will be dismissed. Do you understand that?
A. Yes, sir.
Q. And that's part of the negotiations that you have had through your attorney, Mr. Rose, and with the attorney general. Is that correct?
A. Yes, sir.
Q. All right. Now, you've had a chance to talk to Mr. Rose about this matter?
A. Yes, sir.
Q. And you've told him everything you know about it?
A. Yes, sir.
Q. Has he answered all your questions?
A. Yes, sir.
Q. Done everything you've asked him to do?
A. Yes, sir.
Q. You satisfied with his services?

A. Yes, sir.

THE COURT: And, Mr. Rose, do you concur with your client entering a guilty plea to the one charge of armed robbery?

MR. ROSE: I do, Your Honor.

THE COURT: You think it's in his best interest to do so?

MR. ROSE: Yes, sir, Your Honor.

THE COURT: And you think the state most probably would prevail if it went forward with a trial?

MR. ROSE: I do, Your Honor.

BY THE COURT:

Q. All right now, Mr. Bethea, there is a recommendation of twenty years, cap of twenty years in this matter. Do you understand that?

A. Yes, sir.

Q. All right. You understand I don't have to accept that recommendation. I can do as I deem appropriate under the facts and under the law. Do you understand that?

A. Yes, sir.

Q. All right. Now, you realize you do not have to plead guilty? I think, in fact, your lawyer's been preparing for trial. That you are presumed to be innocent, and the state would have to prove you guilty and prove you guilty beyond a reasonable doubt, but by pleading guilty, you remove that

burden from the state. You understand?
A. Yes, sir.
Q. And by pleading guilty, you're waiving some of your constitutional rights. You have a constitutional right to a jury trial, let twelve citizens of this county hear the evidence, and they would ultimately determine whether you're guilty or not. But by pleading guilty, you give up your right to a jury trial. You understand that?
A. Yes, sir.
Q. And you have a constitutional right to confront any witnesses the state may have. State would have to bring their witnesses in. You and Mr. Rose could see who they were. Mr. Rose would have an opportunity to examine them if the state elected to put them on the witness stand, but you give up your right to plead -- to confront those witnesses with this guilty pleas. Do you understand that?
A. Yes, sir.
Q. And you have a constitutional right to remain silent. You would not to say anything, do anything, help the state in any way. You wouldn't have to testify at a trial if you elected not to testify. In fact, the court would instruct the jury they couldn't even consider the fact that you did not testify in the course of their deliberations. But by giving -- and entering this plea, you're giving up your right to remain silent. Do you understand that?

A. Yes, sir.
Q. And by giving up your right to a trial, you are giving up your right to testify at the trial, to tell your side of the story. Do you understand that?
A. Yes, sir.
Q. Excuse me, and by giving up your right to a trial, you're giving up your right to put up any defenses you may have for this charge. Do you understand that?
A. Yes, sir.
Q. And by giving up your right to a trial, you're giving up your right to contest any evidence the state may have through any motions *in limine* or motions to suppress. Do you understand that?
A. Yes, sir.
Q. Knowing all that, you still wish to go forward with the guilty plea. Is that correct?
A. Yes, sir.
Q. All right. Now, other than the state's willingness to dismiss a number of charges against you, and we've gone over those -- unlawful possession of a weapon charge during the commission of a violent crime and three armed robberies -- has the state or anyone else offered or promised you anything to get you to plead guilty?
A. No, sir.
Q. In addition, they are making a recommendation of a cap

of twenty years. Have they promised you anything else to get you to plead guilty?

A. No, sir.

Q. Has anybody threatened you, coerced you, forced you, or pressured you into pleading guilty?

A. No, sir.

Q. You're pleading guilty freely and voluntarily?

A. Yes, sir.

Q. And you're pleading guilty because you are guilty?

A. Yes, sir.

Q. You're admitting as true the allegations in the indictment?

A. Yes, sir.

Q. You've reviewed the indictment with Mr. Rose?

A. Yes, sir.

Q. All right. Have you had any alcoholic beverages in the last twenty-four hours?

A. No, sir.

Q. Have you taken any drugs or had any medication in the last twenty-four hours?

A. No, sir.

Q. Are you under the influence of any kind of substance here today?

A. No, sir.

Q. Are you being treated by a psychiatrist or other

professional for any mental illness or emotional problems?
A. No, sir.
Q. Do you have any complaints with the solicitor -- I mean, with the attorney general's office?
A. No, sir.
Q. Any complaints with law enforcement?
A. No, sir.
Q. Any complaints with anybody at the Alvin S. Glenn Detention Center?
A. No, sir.
Q. All right. Do you understand when I sentence you here today, you will have ten days to appeal this sentence if that's what you and Mr. Rose elect to do?
A. Yes, sir.
Q. All right. Have you understood all my questions, Mr. Bethea?
A. Yes, sir.
Q. Have your answers been truthful and complete?
A. Yes, sir.
Q. All right, Mr. Bethea, as to indictment 2014-GS-47-014 -- I mean, yeah, 014, count five, which is an armed robbery charge where it's alleged that you did in Richland County on or about July 24, 2012, while armed with a deadly weapon commit a robbery in that you did feloniously take from the person or presence of Olin Ballentine at 330 Bush River

Road in Richland County, South Carolina, while armed with a firearm and by means of force, violence, or intimidation the goods or monies of Bank of America, you did so with the intent to deprive the owner permanently of such property in direct violation of the statutes of this state. How is it you plead?

A. Guilty.

THE COURT: I find this defendant to be represented by competent counsel. He's satisfied with the services of his attorney. I further find the defendant is pleading guilty freely and voluntarily, and his guilty plea is entered knowingly and intelligently, and I will accept his guilty plea to the charge.

All right, Mr. Wekekind.

MR. WEKEKIND: Yes, sir. If I may add one factor to this? This will be a most serious conviction. It will also be an 85 percent charge level that he's facing under the statute. It would be a ten to -- a minimum sentence of ten years with a cap of twenty recommendation by the state. As you articulated to him, Your Honor, we will be dropping the other three armed robberies and the two use of a weapon during a violent crime charges.

There has also been a -- tangential negotiations with the defense regarding an unsolved homicide case, and just want to put this on the record with specificity. There is

no -- nobody's been charged on that, but there is no deal that's any way, shape, form touching upon any charges that may come out of that homicide investigation.

BY THE COURT:

Q. You understand that, Mr. Bethea?

A. Yes, sir. Yes, sir.

THE COURT: Mr. Rose?

MR. ROSE: Yes, Your Honor.

THE COURT: You've discussed that with your client?

MR. ROSE: I, I have.

BY THE COURT:

Q. All right, do you understand what he means when he says it's most serious? This can be used to enhance any future crimes which might involve your not being eligible for parole some time in the future. If you commit some -- or, or convicted of some serious offense in the future, another violent crime, those could be used to -- these, these things could be enhanced. You might not have eligibility for parole. Do you understand that?

A. Yes, sir.

Q. All right, and of course you understand you are going to have to do 85 percent of whatever sentence the court imposes here today?

A. Yes, sir.

Q. All right. Now, you have been in jail for how long?

MR. ROSE: Your Honor, it's a total time served of two years, four months -- I'm sorry, two years, four months, and twenty-one days.

THE COURT: Did you add up the number of days there, Mr. Rose?

MR. ROSE: Yes, sir, Your Honor.

THE COURT: How many days is it?

MR. ROSE: Oh, I'm sorry. Not, not the exact.

THE COURT: All right, 365. 730. Four months. What months were they?

MR. ROSE: I'd have to go back.

THE COURT: When did he get arrested?

MR. ROSE: Check the documentation.

MR. WEKEKIND: 26th, the 28th of July 2012 is when the first arrest took place. He made bond. Then I think there was a revocation period, so there's a little broken time for the calculation.

THE COURT: All right.

MR. ROSE: Yes, sir.

THE COURT: Okay.

MR. WEKEKIND: Yes, sir. I'm sorry. The facts alleged by the state are that on July 24, 2012, 2012 at about 10:30 in the evening, Mr. Olin Ballentine, who is an employee of Diebold that services ATM machines -- and in this particular case that of a Bank of America branch

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located at 330 Bush River Road in Columbia, which is in Richland County. He received a phone notice telling him that there was a fault on an ATM machine at that location. He responded to that location and began doing a diagnostic check, but to do that, he had to take the front down off the face of the ATM machine.

The camera remained active, and you can see Mr. Ballentine, who's here present in the court, servicing the machine. And then in the background while he has his back turned -- if this was the ATM machine, you could see a person approaching from out of the shadows behind the ATM -- behind the bank branch. As he comes forward, you can notice a discernible object in his hand. Closer and closer you can actually see that it's a revolver. He's wearing a blue bandanna, dark clothing. The state would submit it, it appears to be Mr. Bethea, but that was the, the gist of it.

He said -- demanded -- I've, I've got a gun. Give me the cash or I'll shoot you or words to those effect. Mr. Ballentine complied with that. The machine just doesn't have stacks of cash laying in plain sight. They're in cartridges, so he removed -- to comply with Mr. Bethea's demand, he removed the four money cartridges that were in the machine and laid them on the ground. Mr. Bethea for a second didn't know what it was, and Mr. Ballentine informed

him that the cash is in there. So, he could only get his arms around three of the four. He left one cartridge behind, but contained in the three that he did abscond with, he took $60,000 in cash from that bank location.

He then ran off with the money cartridges. Mr. Ballentine backed away from the scene, went out to the street, which is towards Dutch Square Mall, flagged down a vehicle, got some assistance. The police responded and they took the description. He gave a description that is pretty accurate of Mr. Bethea: 5 foot 6 and 160 pounds. He described the weapon as a .22 or .32 revolver. When the revolver was located, it was a .32 H&R Magnum, so he was -- did an astoundingly accurate job as, as, as a victim in his report.

The passage of time took place, and on the previous charges that are being dismissed, there was arrest warrants for Mr. Bethea. They, they tracked him down because they found a, a fellow gang member of his at the Red Roof Inn is where he was located to be. He had reserved or had taken three rooms and -- under a false name. They, they figured out it was Mr. Bethea. They were moving in take him down, and they found an associate of Mr. Bethea, a guy by the name of McCoy who had a weapon on him.

As they searched him for that, it turned out to be a very strikingly close appearance to the weapon that was

used in the bank ATM. So, they, they held on to that weapon. Then when they searched him, Mr. McCoy, further, they found that he had a hotel key to one of the rooms that Mr. Bethea had reserved or, or purchased for that evening.

Then after he was taken into custody, there was some recordings made at the jail with all the requisite warnings like these are subject to monitoring. But what really made the case as far as the state's concerned was Mr. Bethea's bragging to an associate requesting -- or telling him that he had hit that man for 60 bands, meaning -- a band being $1000. $60,000. He talks about doing a lick.

The reason why they wanted the money was to deal with placating the victims from the other armed robbery, and he was explaining to him that, that this cash would be available because he had had that successful robbery at the ATM machine.

And if the court would, at the appropriate time I will bring Mr. Ballentine up to tell him of his ---

THE COURT: Sure.

MR. WEKEKIND: Or tell the court. Also I will play for you the tape wherein he talks about his involvement.

(WHEREUPON, RECORDING IS PLAYED FOR THE COURT. AUDIO NOT TRANSCRIBED.)

MR. WEKEKIND: That would be the relevant portion of the recording pertaining to this robbery, Your Honor.

THE COURT: All right, let me hear from the victim in this matter. Tell me your name, please, sir.

MR. BALLENTINE: Your Honor, my name is Olin Ballentine.

THE COURT: All right. What you want to tell me?

MR. BALLENTINE: Basically just like Mr. Wekekind said, I was working on the ATM machine. Someone came up behind. Was dressed in dark clothes, approximately 5-6, 5-8, 160 pounds, brandished a revolver. Advised me if I did not give up the money, I was, I was going to be shot, at which time I told him it's been waiting for him all day. And he looked down and didn't recognize where the money was at. At that point, I had moved the cartridges out and he kind of looked at me like what is this, and I said that's it. That's all the money, and he was able to grab three. As he backed away, I backed away, and I called 911.

THE COURT: All right. Thank you, sir.

(A PAUSE.)

MR. BALLENTINE: I, I do not work at Diebold anymore. It was very hard to go back to the position afterward. I did go back, but I had many a time people would come up from behind and, and I -- it was -- I, I couldn't handle people coming up from behind at that point. It was very sketchy for approximately six months to a year. Been able to put that behind me, but I, I wish him luck.

And the true victim here is this gentleman right here. He doesn't realize what he's done to himself. If he would care to look at his feet, he would see he's standing in a courtroom giving up twenty years of his life for $60,000, and that's quite a shame, especially having a two-year-old child. Thank you.

THE COURT: I don't know what he's giving up in his life.

MR. BALLENTINE: Well, whatever. Yes, sir.

THE COURT: Tell, tell me what his record is, Mr. Wekekind.

MR. WEKEKIND: Yes, sir. Let me go to his rap sheet. He had a carry of a pistol, a weapon on school property from 2006. There was a 2008 ---

THE COURT: Wait a minute. So, that would be nine years ago. How old are you? Twenty-four?

MR. ROSE: Twenty-four, Your Honor.

THE COURT: So, you were fifteen at that time?

DEFENDANT: Yes, sir.

THE COURT: That was at Columbia High?

DEFENDANT: Yes, sir.

MR. WEKEKIND: Yes, sir, in January of 2008, he did a burglary second in Lexington County and received two years suspended on eighteen months' probation. He then was charged with a -- let's see. It looks like armed robbery

pled down to a common law strong-arm robbery for which he received six years and a three years YOA sentence.

THE COURT: When was that?

MR. WEKEKIND: That was 2008. It was -- no, 2000 and -- yeah, September 2008 was the charge and it was pled on January 2010.

THE COURT: So, you were seventeen when you did that?

DEFENDANT: Yes, sir.

MR. WEKEKIND: Then there is a lynching and a CDV charge from August of 2 -- 2010. Looks like he got six months concurrent to the time he got on that. Pled down to a criminal domestic violence second, and that would be the extent of his record, Your Honor.

THE COURT: All right, Mr. Rose.

MR. ROSE: Your Honor, I've gotten to know Shawn since my involvement, which was several months ago. We've had numerous meetings at the jail. You know, we've had some very good conversations. We've had some difficult conversations about the evidence in this case.

First and foremost, I do want to say there's other individuals that are charged with this armed robbery and Shawn -- and we're maintaining here today that he was not the individual that went across that parking lot with the weapon and robbed Mr. Ballentine. We are pleading guilty under the hand of one, hand of all. We are saying he was a

look out. He was in the vehicle, but there is no eyewitnesses that would say -- I mean, even in the video the individual that committed this crime has his face obscured, and there is nobody that can point him out. But we are saying that our involvement -- I mean, like I said, there are other individuals that are charged with this crime that I believe have not come to court yet. But we are here to say that in the one hand of, hand of one, hand of all, we are guilty of this offense. However, we are not the individual who actually committed it.

I do want to say, you know ---

THE COURT: Well, you are ---

MR. ROSE: Commit, actually ---

THE COURT: --- one of the individuals ---

MR. ROSE: --- physically held the weapon.

THE COURT: --- that actually committed it because he was there. You're saying he's ---

MR. ROSE: Yes.

THE COURT: --- not the one that went and approached the victim with the pistol.

MR. ROSE: That's right. That's right.

THE COURT: But you're acknowledging that he was ---

MR. ROSE: Yes, sir.

THE COURT: --- involved in the matter. He was there and ---

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MR. ROSE: Yes, sir.

THE COURT: --- participated in some manner in order to accomplish the, the ---

MR. ROSE: Yes, sir.

THE COURT: --- the robbery.

MR. ROSE: Yes, sir. Yes, sir, Your Honor, and, you know, Shawn, in talking with him about his past, from an early age -- and I believe the age of fourteen, he really hasn't had much of a family life. His father was never around. Mother was, was in and out. The age of fourteen, he found himself on the streets, just little or no guidance, and I think that's an increasing problem that we're seeing.

You know, we've got law enforcement that's always coming on the back end and does a great job, but more and more we're losing youth on the front end who are running with the wrong crowd, don't have positive influence in their life. And that's not an excuse for, for some of the things that occurred in his life, Your Honor. That's just the fact.

I, I can't imagine -- you know, growing up I had -- I never knew my father, but I had my grandmother and my grandfather and my mom who were there for me, and if I got in trouble in school, they'd grab me by the ear and tell me here's what you got to do. But Shawn didn't have that, and

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he found -- you know, at an early age started hanging out with older kids and just got on the wrong path.

But I can until you he stands here now. He's twenty-four years old and he's basically, for these offenses, been in jail since he was twenty-one, and we've talked about the things that he wants to do when he gets out of jail. He wants to make things right. He doesn't ever want to, want to be back, and I genuinely in my heart -- and I was telling my wife this over the weekend. I genuinely think that there's hope for him when this is all behind him and that he can turn it around. And I've told him that, and I've shared that with him. You know, he's here today to take responsibility for his portion of what transpired, and he wants to get out. He wants to be a father to his child who he hasn't been able to see because of this incident.

And, Your Honor I really need -- and I believe the sheriff's department is here as well to mention. There is another situation, you know, when I've -- essentially, Shawn has been cooperating with the sheriff's department on an unsolved murder. He has -- we have given some proffers to the sheriff's department, and you don't have to take this from Seth Rose. At the appropriate time, Chief Wilson, who's extremely high ranking at the Richland County Sheriff's Department, is going to address the court, Your

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Honor. So, you can hear it straight from him that he has given forth -- forthcoming. Based on forensics and other things, the sheriff's department has accurate information as to who the individual is that committed a heinous murder on a young lady by the name of Natasha Warren, who's a cold case murder from 2008. Shawn has been cooperating to bring the individual who actually murdered Ms. Warren to justice. And essentially it would be our position that based on his cooperation that he's done -- I mean, he could have, could have done nothing. But based on his cooperation, this case is moving forward in an investigative fashion, and I think the sheriff's department is very pleased with his cooperation. And, and essentially he's vital to the case if this individual is to be brought to court and charged for this offense.

And I share this because this is part of the discussions that Shawn and I have had about making things right, moving forward in his life. He wants to get out at some point and, and move forward.

But additionally, Your Honor, based on his cooperation, this other individual who committed the murder of Ms., of Ms. Warren, we believe that there is some safety concerns to Shawn based on, on his cooperation with the sheriff's department, and I think the sheriff's department would, would, would agree to that. This other person has

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been approached with his, his statement. There is another individual who is also cooperating and not related to this case, but he is doing this.

It's, it's a very big case he's basically breaking open and has put his, his self and perhaps his family in harm's way in doing so. And at the appropriate time, Your Honor, I'd like for Chief Wilson and Investigator Coggins to please come and address the court as ---

THE COURT: That would be now.

MR. ROSE: --- to that, Your Honor.

THE COURT: Good morning.

DEPUTY CHIEF WILSON: Good morning, Your Honor. I'm Deputy Chief Wilson, Richland County Sheriff's Department. I'm over the Investigative Division. Lieutenant Coggins is over our gang unit.

The case we're investigating is a gang-related case from 2008. A young lady had a flat tire. Pulled off the Interstate right there at the Bush River Road Exit. Subsequent to that she was sexually assaulted, robbed, and killed right there on the exit. It's been a dormant case, a cold case for a number of years.

Through our investigation, we've come up with new information. Mr. Bethea is a cooperating witness, and we would not oppose a sentence at the lower end of that ten to twenty-year range, but obviously that's up to Your Honor.

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Vince, do you want to say anything?

LIEUTENANT COGGINS: I think you've pretty much covered it all.

Your Honor, I would just like to add that initially only in the investigation back in 2008, there was some recanting of statements, and that was based off of threats that were made by gang members of higher rank. Therefore, I think that is what took us a long time to get to the point to where we are now where we actually have some of the ones that are coming, along with Mr. Bethea, to cooperate with the investigation.

THE COURT: Well, has he been helpful?

DEPUTY CHIEF WILSON: Yes, he has and, of course, we will need his testimony at the trial. We expect to charge within a month.

MR. ROSE: And ---

THE COURT: All right.

MR. WEKEKIND: And, and, Your Honor, that's coming.

THE COURT: Does he understand, far as y'all are concerned, that he's going to have further involvement in this case?

DEPUTY CHIEF WILSON: Yes, sir. It's been made very, very clear to him.

THE COURT: You understand that, Mr. Bethea?

DEFENDANT: Yes, sir.

THE COURT: All right.

MR. ROSE: And, and so we wanted to bring that to the court's attention. This is extremely significant, and, you know, it's not every day that you have chief of the sheriff's department coming in and, and -- to court and speaking on behalf of the defendant. But what he has done is put himself in harm's way, but he knows that and he's going to see this through.

And you've heard from the sheriff's department, not from, from defense attorney Seth Rose requesting the lower end, but from the sheriff's department themselves based on his cooperation in this very big matter. And given that, Your Honor, we, too, obviously are requesting the lower end, and I'd respectfully request ten years.

THE COURT: All right, your client want to say anything?

DEFENDANT: Yes, sir.

THE COURT: All right.

DEFENDANT: First, I want to say thank you for giving me the opportunity to speak, Your Honor. And, I mean, like my attorney, Seth Rose, say, I, I'm pleading guilty under the hands of one, the hands of all. I, I, I wasn't the guy who had the gun. I wasn't the guy who actually committed the crime, but under the hands of one, the hands of all, I am guilty because I did stay in the car. I also want to

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apologize to the victim.

And, Your Honor, like Seth say, I -- just, just coming up I, I really ain't have too much people that I, I really could confide in. Like, I was looking for love in the wrong people and over the, over the years of my time at Alvin S. Glenn, I've really had a lot of time to think, and I really don't want to live that life no more. I got a son two years old. I, I, I really just, I want to get this over so I can be there for my son. And I just don't want to live this life no more. I just want to move on and do better. So, that's just part ---

THE COURT: What did you tell me with respect to the victim?

DEFENDANT: Excuse, excuse me, sir?

THE COURT: Say you apologized to the victim?

DEFENDANT: Yes, sir.

THE COURT: When did you do that?

MR. ROSE: Today he's apologizing.

THE COURT: Sir?

MR. ROSE: He, he said he was -- in his remarks he's apologizing.

THE COURT: Oh, he's apologizing now? Well, he's right back there.

DEFENDANT: Apologize. I just want to say I'm sorry. I want to say I'm sorry, and I want to say I'm sorry.

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MR. BALLENTINE: I forgive you.

DEFENDANT: Thank you.

THE COURT: Tell me what the status of his -- he's been revoked on a YOA. Is that right?

MR. ROSE: Previously, Your Honor.

THE COURT: Who revoked him?

MR. ROSE: It was Lexington County probation, I guess.

THE COURT: They had to take him in front of a judge. Do we have a probation agent in here?

MR. ROSE: Your Honor, I talked ---

THE COURT: Can y'all go get me somebody from probation and bring them? Tell them to bring their computer.

What did they -- they revoke the ---

MR. ROSE: Yeah, for seven months, Your Honor. For, for the charges that we're in court today, they found probable cause. They served the search warrant when he bonded out for the charges that we're coming before you today. He was given a warrant in Lexington County for a Youthful Offender violation. He goes and he's booked ---

THE COURT: Normally when you get revoked on a YOA, you have to do -- the court doesn't have the ability to revoke anything but the whole sentence, which in his instance would be up to six years.

MR. ROSE: Well, he did seven months, Your Honor.

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THE COURT: All right. So, when did that end?

MR. ROSE: That ended ---

THE COURT: He's no longer on a YOA active sentence?

MR. ROSE: Your Honor, he was -- he went to court on January 30th of 2013, and he was revoked and ended up getting out in -- on August 30th of 2013, which is a total of thirty months. That's from the Department of Corrections.

THE COURT: Is he still on YOA probation or parole?

MR. ROSE: Your Honor, I talked to -- I made a phone call when I was calculating his time served, and I talked to an individual who is over the Youthful Offender program in Lexington County, and he said that he believed his Youthful Offender status would have timed out and that given the time that we're talking about ---

THE COURT: How much probation were you given?

DEFENDANT: I was given a one to six in 2010.

THE COURT: I know, but then you were put on probation for some period of time, right?

DEFENDANT: No, sir. No, sir.

THE COURT: You did an -- you were given an active YOA?

MR. ROSE: Yes, Your Honor. I think, I think he was given an active YOA and was paroled, and so it was a, basically a parole revocation.

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THE COURT: All right. So, it was a parole and not a -- so ---

MR. ROSE: Yes.

PROBATION AGENT: Good morning, Your Honor.

THE COURT: I need you to see what information you -- this is Mr. Shawn Bethea.

PROBATION AGENT: Okay.

THE COURT: And he had an active YOA. I thought initially he was -- it was suspended upon probation, but then now he may have just been given an active YOA, and you need a Social Security number?

PROBATION AGENT: No, Your Honor. If you'll give me one moment just get my program up and running.

THE COURT: He's just entered a guilty plea to an armed robbery.

(A PAUSE.)

THE COURT: What's happened to the other codefendants? None of them have been tried?

MR. WEKEKIND: No, sir.

THE COURT: Or pled?

MR. WEKEKIND: None of them apparently had as big a mouth as he did at jail either, so.

THE COURT: Well, I know.

MR. WEKEKIND: Yes, sir, that's, that's why ---

THE COURT: But assuming you're going to do something

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with them?

MR. WEKEKIND: I think I might, Judge.

(A PAUSE.)

PROBATION AGENT: All right, Your Honor, I've got him up right now. Are you trying to find out the information from his YOA?

THE COURT: What's the status of his YOA?

PROBATION AGENT: His YOA was closed as of January 22, 2013, where he had a revocation done.

THE COURT: All right. So, that was a parole?

PROBATION AGENT: Yeah. That was a YOA parole was revoked.

THE COURT: All right. So, and he completed. So, there's nothing to run consecutive to anything or concurrent to anything at the present time? He has ---

PROBATION AGENT: At the present time, no, Your Honor. He wouldn't have anything with our department.

THE COURT: All right. Has he been on any kind of probation before this?

PROBATION AGENT: One moment. He has been on probation before. He had a probation case out of Lexington County that began on ---

THE COURT: Well, was that the same one as this? Was that the parole violation?

PROBATION AGENT: No, Your Honor. That's a different

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one. He had a different YOA, which was indictment number 2008-GS-32-2441 which is the probation case that was revoked back in 2010. He then -- he had that probation case from this YOA that was revoked back in 2010 as well. And then he had the YOA stemming from the revocation which was revoked in 2013, Your Honor.

THE COURT: When his YOA parole was revoked, that was -- he served some active time and that, that ran -- I mean, so he's still entitled to time served here, huh?

MR. ROSE: Yes, Your Honor. That's where his -- his total time served is two years, the four months, twenty-one days.

SENTENCE OF THE COURT:

THE COURT: All right, Mr. Bethea, unfortunately you can't run from that record, and that has to factor into my thinking here today. I would say that your attorney has done a pretty admirable job getting you a -- well, you had all these charges -- with your record, getting it down to one charge and a cap of twenty, and his having the good fortune of being able to get somebody from law enforcement to come in and speak for you and what you have done. Plus, whatever we do here today, you're getting credit on your prior sentence that you should have probably done some additional time just on that for having violated your parole.

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Anyway, sentence of this court you be committed to the Department of Corrections for a term of fourteen years, plus costs and assessments as applicable. You will get credit for two years, four months, and twenty-one days of that time. Good luck to you.

MR. ROSE: Thank you, Your Honor.

--- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 8TH DAY OF JUNE, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

MARCH 29TH, 2017

FORM 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
SHAWN BETHEA #338877)
Full name and prison number (if any) of Applicant.)
)
v.)
)
State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2016CP4003525

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY FILED
2016 JUL -8 PM 4:48
JEANETTE W. McBRIDE C.C.P. & G.S.

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 Kershaw Correctional Institution, 4848 Goldmine Hwy., Kershaw, SC 29067

2. Name and location of Court which imposed sentence Richland County General Sessions, 1701 Main Street, Columbia, SC 29202

3. Name(s) of co-defendant(s) (if any) _____

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

   (a) 2014-GS-47-014 - Armed Robbery

   (b) _____

   (c) _____

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

(a) June 9, 2015 - fourteen (14) years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty x

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
No

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(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) _____

(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? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. _____

ii. _____

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? _____

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. _____

ii. _____

iii. _____

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

i. Plea and sentencing

ii. _____

iii. _____

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

New Trial

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

No

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

I, Tommy A. Thomas for Shawn Bethea, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant for the Applicant

SWORN or affirmed to and subscribed before me this 8th day of June, 2012.

Notary Public

My Commission Expires: 3/3/26

STATE OF SOUTH CAROLINA)
)
County of Lexington)

VERIFICATION

I, Tommy A. Thomas for Shawn Bethea, 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.

for the applicant

SWORN to and subscribed before me this 8th day of June, 2016.

(L.S.)
Notary Public

My Commission Expires: 3/3/26

RICHLAND COUNTY
FILED
2016 JUN -8 PM 4:48
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Revised 3/2003

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Shawn Bethea, #338877, Applicant, v. State of South Carolina, Respondent.	2016-CP-40-003525 **RETURN AND MOTION FOR MORE DEFINITE STATEMENT**

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on June 8, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the State Grand Jury Clerk of Court. Applicant was indicted on July 15, 2014, by the State Grand Jury for four counts of armed robbery and two counts of possessing a weapon during the commission of a violent crime (2014-GS-47-14). Applicant was represented by Seth C. Rose, Esquire. On June 8, 2015, Applicant pleaded guilty before the Honorable James R. Barber to armed robbery, count 5, with the State recommending a cap of twenty (20) years' imprisonment. Judge Barber sentenced Applicant to fourteen (14) years' imprisonment. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the State Grand Jury Clerk of Court regarding the subject conviction(s), the transcript, and Applicant's records from the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel

III.

Applicant alleged that he received ineffective assistance of counsel. This allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his 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), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Question 11 of the PCR application asks Applicant to state concisely the supporting facts for each of his grounds for relief. In response to that question, Applicant fails to set forth any specific facts to explain his allegations. Respondent submits Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter.

IV.

Without waiving its motion for a more definite statement in Part III, supra, Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their

application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S.at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption 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 trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial 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.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. 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 this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

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

VII.

WHEREFORE, having made its Return, Respondent requests Applicant provide a more definite statement of his claims, and as evidentiary hearing be held on any claims so requiring one.

Respectfully submitted,

ALAN WILSON
Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By:_____
ATTORNEYS FOR RESPONDENT

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

2/8, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2016-CP-40-03525
Shawn Bethea, #338877,	)	
	)	
Applicant,	)	
	)	
Vs		AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

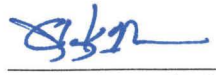
1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Tommy A. Thomas, Esquire
PO Box 88
Irmo, SC 29732

DATED this 8th day of February, 2017.



J. Clayton Mitchell
For Respondent

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	
	DOCKET NO.: 2016-CP-40-003525
Shawn Bethea #338877,)	
)	
Applicant,)	
v.)	AMENDMENT TO APPLICATION FOR POST CONVICTION RELIEF
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent,)	
)	

RICHLAND COUNTY CLERK OF COURT 2017 MAY 15 PM 1

Pursuant to the Respondent's Return and Motion for More Definite Statement, the Applicant by and through his attorney, Tommy A. Thomas, would respectfully amend and supplement his original application for Post-Conviction Relief filed June 8, 2016, by adding the following:

1. That the Applicant specifically re-alleges his claim of ineffective assistance of counsel.

2. That trial Counsel was ineffective for the following additional reasons:

   a. Failure to properly investigate the case.

   b. Failure to use the fact that the victim identified a suspect that did not match the Applicant.

   c. Failure to use the fact that Applicant was told that if he cooperated with a police investigation that he would receive a five (5) year sentence.

      1. The Applicant cooperated with the police and accepted the plea offer of five (5) years. However, he received a fourteen (14) year sentence at sentencing.

2. That the Applicant has witnesses to corroborate the fact of his cooperation.

3. The Applicant plead under hand of one, hand of all accomplice liability and Co-Defendant's charges were dropped.

3. That the Applicant is informed and believes that his guilty plea was not freely, voluntarily, intelligently and knowingly given for the following reasons.

a. The Applicant was told that if he entered into a plea before Judge Barber that a Post-Trial Motion would be filed and that he would receive the five (5) year deal before a different Judge.

b. That the Applicant was forced by counsel into a plea before Judge Barber. That it was not freely and voluntarily given.

Respectfully submitted,

Tommy A. Thomas
Attorney for the Applicant
Post Office Box 88
Irmo, SC 29063
(803) 732-5507

May 11, 2017
Irmo, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
		DOCKET NO.: 2016-CP-40-003525
Shawn Bethea #338877,	)	
	)	
Applicant,	)	
v.	)	CERTIFICATE OF SERVICE
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
	)	

2017 MAY 15 PM 1:21
RICHLAND CO.

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Esq., certify that I have served a copy of the Amendment to Application for Post Conviction Relief by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Jacquelyn E. Miller
Tommy A. Thomas, Esq.
Attorney at Law
7588 Woodrow Street
P.O. Box 88
Irmo, S.C. 29063
(803) 732-5507

May 11, 2017

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS NONJURY
COUNTY OF RICHLAND)	
SHAWN BETHEA,)	TRANSCRIPT
)	
APPLICANT,)	OF
)	
vs.)	RECORD
)	
STATE OF SOUTH CAROLINA,)	2016-CP-40-3525
)	
RESPONDENT.)	

August 20th, 2019
Columbia, South Carolina

B E F O R E:

THE HONORABLE ROGER E. HENDERSON, Judge.

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

TOMMY A. THOMAS
ESQ.
Attorney for the Applicant

JOHNNY ELLIS JAMES, JR.
ASSISTANT ATTORNEY GENERAL
Attorney for the State

Transcribed by Pamela E. Green, from
DCRP, Digital Courtroom Recorder Project

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P R O C E E D I N G S

MR. JAMES: If it may please the Court?

THE COURT: Yes, sir.

MR. JAMES: Your Honor, this is the matter of Shawn Bethea versus State of South Carolina. Docket number 2016-CP-40-03525. Mr. Bethea is present here in the courtroom today, and is represented by Mr. Tommy Thomas, Esquire.

Mr. Bethea was indicted at the July, 2014 term of the South Carolina State Grand Jury for four counts of armed robbery, and two counts of possessing a weapon during the commission of a violent crime. On June 8th, 2015, he pled guilty before the Honorable James R. Barber to a single count of armed robbery. The State recommended a sentencing cap of 20 years imprisonment, and Judge Barber sentenced Mr. Bethea to 14 years imprisonment. He did not appeal his plea or his sentence.

Your Honor, in the packet that has been provided to you, you should have, in addition to the original application and the State's return, a document titled Amendment to Application for Post-Conviction Relief that is signed by Attorney Tommy Thomas, and it is the State's understanding that those allegations set forth in that amendment are the allegations we are proceeding forward on

today.

With that set forth, I will give the floor over to Mr. Thomas.

THE COURT: Mr. Thomas.

MR. THOMAS: Your Honor, if it please the Court?

THE COURT: Yes, sir.

MR. THOMAS: Good afternoon, Your Honor.

Your Honor, if it please the Court.

We would call Mr. Shawn Bethea to the stand.

THE COURT: Okay.

SHAWN BETHEA, being first duly sworn, testified as follows:

THE CLERK: Thank you. Just have a seat in the witness stand please.

THE COURT: Mr. Bethea, I want you to speak loudly and clearly when you respond to the questions. I also want you to say yes or no, not and hu huh or uh-huh, when you're answering these questions.

You understand?

THE WITNESS: Yes, sir, Your Honor.

THE COURT: All right.

THE CLERK: State---

THE COURT: Counsel.

MR. THOMAS: Thank you, Your Honor.

THE CLERK: State your name for the record please.

THE COURT: Sorry.

THE WITNESS: Shawn Bethea.

THE CLERK: Thank you.

MR. THOMAS: Your Honor, please the Court.

May I approach?

(WHEREUPON, there was no audible response.)

DIRECT EXAMINATION

BY MR. THOMAS:

Q Shawn, you're very nervous today?

A Yes, sir.

Q I noticed you were shaking. Well, maybe that will help you.

Mr. Bethea, you're serving time in the Department of Corrections?

A Yes, sir.

Q And you're serving time for what?

A An armed robbery.

Q And what type of sentence did you receive for that?

A 14, 85, sir.

Q Okay. And is it fair to categorize your case was hand of one hand of all?

Is that what the allegations were?

A Yes, sir.

Q Okay. Now, you had certain other cases that were dismissed as a result of your plea.

A Yes, sir.
Q And you're asking today that you be -- that your conviction be set aside?
A Yes, sir.
Q Okay. You understand that, if your conviction is set aside, that anything that was dismissed -- you go back in the position that you were to begin with?
A Yes, sir, I do.
Q You and I've talked about this. You may have certain exposure over and above 14 years that you received.
A Yes, sir.
Q And you understand that?
A Yes, sir.
Q You're willing -- you want to go forward today?
A Yes, sir.
Q Okay. Now, Mr. Bethea, you were arrested when?
Just roughly.
July of 2012?
A 2000---
Q Okay. All right.
A '12, '13.
Q All right. And did you, did you make bond or were you in the detention center?
A I was in the detention center, sir.
Q And how long were you in the detention center?

A I got time served for 29 months.
Q How many?
A Twenty-nine months.
Q Twenty-nine months.
Okay. And I asked that question because your ability -- so you were in the, in the jail.
You couldn't go see your lawyer, could you?
A No, sir.
Q They had to come see you?
A Yes, sir.
Q Okay. Now, in regards to representation, who represented you?
A I had Victor Lee and Seth Rose.
Q Okay. And what part did Mr. Lee have in this?
How -- what did he do for you?
A Nothing at all, sir.
Q What do you mean by nothing?
A He -- we -- he never once went over my case. Never talked about my case or anything. So, I had talked to my family and we end up hiring Seth Rose.
Q Okay. Now timeframe wise, how long did Mr. Lee represent you?
A He had my case for over a year, sir.
Q Okay. And who was Mr. Lee?
Was he with the Public Defender's Office or was he a

private lawyer or what?
A A paid lawyer, yes, sir.
Q He was a paid lawyer?
A Yes, sir.
Q Okay. Now, in preparing this case, you said you retained Mr. Seth Rose?
A Yes, sir.
Q And he basically represented you up and through the, the plea?
A Yes, sir.
Q Okay. Now, you also considered a trial of this case?
A Yes, sir.
Q Okay. And that was based upon your belief that you were not guilty of this crime?
A Yes, sir. Correct.
Q Okay. Now, there's discovery which we've talked about which is the State's evidence.
You understand what that term is?
A Yes, sir.
Q The discovery?
A Yes, sir.
Q Did you have an opportunity to go through the discovery with Mr. Rose?
A No, sir, we, we actually didn't go over the -- actually the, the charge that I was -- the crime that I was charged

with, we never really went over that.
Q Okay. All right. And I guess the charge or charges because you had a number of counts of the armed robbery?
A Well, apart -- excuse me. We---
Q Okay.
A Me and Seth Rose, we did have conversations about the crime, but at -- he, he wasn't trying to prove my innocence in the case, and he knew I was -- he knew I was innocent, and, and that I, I didn't commit the crime, but he wasn't trying to prove my innocence.
Q So, you were comfortable or uncomfortable with his representation?
A I was comfortable at first cause he, he was talking good. He come see me on a regular -- even at nighttime sometimes, and -- but it just, it just -- I don't know. It just -- he just -- it just went off track. He just went --.
Q Okay. All right. So, you had, you had a number of meetings with him?
A Yes, sir.
Q And we talked about this concept as well, the theory of defense.
How was he gonna defend you?
What was, what was he gonna do?
A Well, see, see that's the thing. He -- when I first hired Seth Rose, and I told him about the case as far as

that I knew, he was suppose to be getting me a deal. He suppose to be getting me a deal, and --.

Q Okay. Well, let me ask you this and maybe this is a good time to, to talk about that.

There was some situation where the Sheriff's Department or whatever thought that you could provide them information about another crime?

A Yes, sir.

Q And what was that other crime?

A A murder charge.

Q Okay. And were you, in fact, able to provide them information?

A I was, sir, with the help of Seth Rose.

Q Okay. And kind of take us through that a little bit.

I mean how did that play in, in this whole period of representation about you providing information?

A Well, when I -- well, that was part of the reason why I fire Victor Lee because he -- every time Victor Lee use to come see me, he use to always want to talk about this -- a murder charge, a charge that I wasn't charged with instead of what I hire him for, and it went on for, for over a year, and -- all right. That's when I hire Seth Rose, and Seth Rose had came to see me prior to my family taking him the money, and, and we talked about the case.

We talked about the case. That's -- he say he was

gonna get me a deal. He say he was gonna try to get the case throwed out, but there's -- like, like right after that, he, he came -- he started coming back seeing me talking about the same cold case that Victor Lee use to talk to me about.

Q Okay. Let me stop you there then.

So, in other words, you were never charged with this murder investigation?

A No, sir.

Q Okay. But they thought that you had maybe information about it that could help them, help the police?

A Yes, sir.

Q Okay. And what was your understanding?

You felt -- did you under -- did you think this was gonna help you with the charges that you had?

A Apparently Seth Rose, if I, if I did it, then, yes, sir.

Q Okay. What did -- what, if anything, did Mr. Rose tell you about this?

A Pretty much everything, sir. I, I really didn't have no facts in the case or whatsoever in that case until I was talking to Seth Rose.

Q Okay. Did you, in fact, meet with law enforcement?

A Yes, sir, a couple friends of Seths.

Q And you, in fact, provided them information?

A Yes, sir.
Q Okay. And the purpose of this was to assist law enforcement?
A Yes, sir.
Q And to assist you?
A Yes, sir.
Q In getting a better deal?
A Yes, sir.
Q Okay. Now, what was your understanding about what was gonna happen if you provided this assistance?
A Well, Seth Rose told me if I did what he wanted me to do that he would get me time served and I'll go home.
Q Okay. And, and that was what you believed, what you understood?
A Yes, sir. Yes, sir.
Q Okay. And you said that you provided this information to law enforcement with the help of Mr. Rose.
What do you mean about -- by that?
A Well, like I said, in that case I, I didn't know anything about the case. I had no evidence in the case. I didn't know nothing about it, and I told Seth that. When Seth came to me, I was in lockup at Alvin S. Glenn Detention Center. He came to see me and that's when he asked me about the cold case, and, and I put my head down because I, I had heard so much about it over the years, and I just thought it

was over with.

Like that was the reason why I got rid of Victor Lee and to have Seth Rose come visit me just to talk about the same case, I just didn't understand, and I told Seth that I didn't know anything about that case, and, and he just like try to make me say that I, that I knew, but I didn't. I told Seth about a hundred times that I didn't know anything about the case, that I don't know nothing about it, and that's when he told me that we have to give him something, and I'm -- and I was confused.

I ain't -- I, I ain't have anything to give them cause I ain't knew nothing about the case, but over the time Seth Rose use to come see me, and I use to get pieces of information about the case of what really happened, and I knew, I knew he was saying certain things for me to grab it, you know, for me to pick up on it, and that's how I really got information about the case, you know, just listening to him talk.

Q Okay. So, at that point, it was your thought that, if you cooperated in some manner with law enforcement, that you could get a better deal?

A Well, according to Seth Rose, that was the only way I was gonna get any deal.

Q Okay. All right. And all of this kind of -- well, let me, let me ask you another question.

So, at that point in time, you were, you were thinking that you were gonna get a, a time served?

A Yes, sir, I -- cause I was -- I had had over two years credit in the county. So, yes, sir, five years time served, I would of took that just because I would of been going home.

Q Okay. Now, did you ever receive any plea offers?

A No, sir.

Q Okay. Did -- how did that -- were you concerned that you didn't receive any plea offers?

A Well, yes, sir, I -- actually I was because in the case, the evidence that's in the case, really ain't have anything to do with me, and like I didn't fit the description of the case, and, you know, nothing really points me to that case, and it was other -- it was other individuals charged with the same crime as I was charged with, and I pointed all that out to Seth, that I did not fit the description of the crime -- I mean of the person.

But -- and, at that point, I, I was telling Seth -- well, Seth told me that, that they didn't, they didn't care that if I did it or not cause I told Seth I didn't do the crime. Seth knew I didn't do -- he knew I didn't commit this crime. Seth use to come see me nine o'clock at night, man, at Alvin S. Glenn Detention Center and lawyers don't even do that. He use to tell me that he can't sleep at

night, and his law -- he's talking to his wife. He can't sleep at night. He use to come see me telling me how he got to get me off the -- how he trying to get me home, and I -- that's why I ain't understand because it wasn't like that.

They had evidence towards me. Like they didn't have no evidence towards me, you know, for, for, for him to be doing that. But he was telling me that they wanted me for the crime, that they didn't care who really committed the crime, and they wasn't in there investigating cause I told him to tell the prosecutor to -- just to investigate a little more. Maybe they'll find out who really did it cause it was three people who was charged with the same crime. But he was telling me that they wasn't interested in it, that they wanted me for the crime.

Q Okay. So, this kind of was, was running in the background in regards to what you thought was gonna happen to you at Court?

A Yes, sir.

Q Okay. And so what happened, if anything, after that?

You were thinking, if you cooperated with the State, you were gonna get maybe time served.

What was the next step in all of this?

A Yes, sir, he, he told me -- after I did everything Seth told me, like right after I did everything he told me, that's when he came -- he came to the county jail and pulled

me out and it was June 6th. It was two days before I -- before my trial date. My trial date was that Monday on the 8th. He came June 6th, that Friday, and told me that the five year deal was off the market, that, that I have to go up on the 10 to 20 plea, and---

Q All right. Let's, let's back up a little bit.

A Okay.

Q Cause you were testifying you said something about a time served, and you---

A Yeah.

Q ---just said something about five years.

Did something change between the times when you thought about time, time served and five years?

What happened in there?

A Well, the five years was the time served. He was gonna get me five years time served for what I already did.

Q I got you.

Five years suspended to---

A You know, five years---

Q ---time served?

A ---credit for time served, yes, sir.

Q Got you. Got you.

Okay. So, so, you had this understanding that the worst thing that was gonna happen to you was five years or five suspended to time served?

A Yes, sir.
Q Okay. And had you also tried to prepare yourself for trial of this case?
A Yes, sir, I use to do it every day. We have kiosk machine -- they, they installed kiosks in Alvin S. Glenn Detention Center, and I use to go in their law work -- and do my law work every day.

I have motions. I use to walk around with a green folder. Every time Seth come see me I use to have my green folder with my motions in them ready to prepare for trial, but I just had that just in case. But I was under impression that I was gonna get the five years.

Q Okay.
A But I still use to work on my case.
Q Okay. All right. So, as far as the timeline, where, where are we now in this timeline as far as coming up for trial?
A Excuse me?
Q Was this right -- was this -- where you are now, where your testimony is now, how many days or how many weeks is this prior to your, your potential trial date?

Close?

Far?

A I'm not sure if I understand the question.
Q Okay. Just kind of -- okay. So, at this point in time

you're, you're how far from being taken to trial?
You're close to trial?
A Yes, I --.
Q Okay. Okay. Cause what I'm trying to, what I'm trying to ask you is that at what point in time, prior to your trial, did you still think you were gonna get five years or five suspended?
A Oh, two days.
Q Two days.
So, we're now two days prior to a trial date?
A To get -- yes, sir.
Q All right. So, what happens then, if anything?
A Yeah, Seth Rose came to see me and pulled me out, and he told me that, that the five years was off the table, that I have to go on the 10 to 20 plea, and I denied, I denied several times cause I wasn't gonna take no 10 to 20 plea on a crime that I didn't commit, and Seth knew I didn't commit that crime, and -- when Seth told me that well, that's the, that's the only thing that we can do, I, I kept my green folder with me. That's where I had all my motions in.
So, I opened my green folder and was giving Seth my motions while I was telling him well, I'm not taking the 10 to 20 plea for a crime I didn't commit. So, I'll take my chances at trial, and I, and I told him -- and I gave him my motions.

Q All right. What kind of motions are you talking about?
A They was just -- I, I really can't remember exactly the name of them.
Q Right.
A I was just use to going to the law, the law computer and just print out different motions that fits my case --
Q Okay.
A -- as far as me not fitting the description, and, you know, things in that area.
Q So, you were active and involved in, in preparing your case?
A Yes, sir.
Q Okay. Now, did -- was there any explanation from Seth as to why you couldn't get the five years of the five suspended?
A Yes, sir, he, he -- I -- and I ain't understand why he, why he told me that. But he told me that Judge Barber, the judge I was going in front of, was the judge who had swore him in county councilman, and that, if he was to take my -- if he was to take me to trial and file my motions in trial that the judge would get mad at him, and take it out on me, and he don't want to see me with all that time.
Q Okay. All right. Did you understand that?
A No, I asked him. I said how, how the judge get mad at you for representing your client. That's what I paid you

for and he was like that's the game they play. Them was his exact words.

Q Okay. So, we're, we're a couple of days prior to trial and things start to change?

A Yes, sir, two days right before my trial.

Q Two days prior to trial, and your -- your plea offer now is what?

A He was telling -- he said 10 to 20.

Q Ten to 20 and you received how much?

A Fourteen---

Q What was your sentence?

A ---85.

Q 14, 85.

Okay.

A Yes, sir.

Q All right. And what about your cooperation with the Sheriff's Department?

Did, did that benefit you or did any of, any of that come out?

A No, not at all. He actually tricked me into doing what he wanted me to do, and, after I did it, he just went back on every word that he told me.

Q So, did you get any benefit from attempting to cooperate with the Sheriff's Department?

A No, sir.

Q Okay. But you never really got anything from the Solicitor's Office in regards to a deal for that, did you?
A No, sir.
Q Okay. So all that just came from Seth?
A Yes, sir.
Q All right. Now, you -- so, we're two days out from trial and how did you make a decision to plead guilty to this charge?
A Cause, at that -- at that time, when Seth was talking to me and telling me that he wasn't gonna represent me in trial, it kind of threw me off cause I---
Q All right. Explain that. I don't really understand that.
A Well, he, he told me that, when he, when he was telling me that he couldn't represent me in trial, that Judge Barber was gonna be mad at him and take it out on me, that he didn't want to see me with all that time, he was telling me, if I go to trial, cause my, my case is the hands of one the hands of all, and, and that's another reason why I -- that's, that's the only reason I pleded (sic) guilty also cause Seth -- he told me, yeah, that if I go to trial, that the Judge get mad at him and take it out on me.
Q Okay. So, what -- okay. Let me stop you there and make sure I understand.
So, your understanding at this point in time was what

were your options?

Was, was your option to try the case still on the table?

A Well, I, I, I thought about it, but he was telling -- and, and after I told him that I didn't -- that I wasn't taking that plea, he left. He left and, Seth, he came back like 15 minutes later.

Q Left from where?

A I thought he was leaving.

Q Oh, well, where were you?

A The jail. I was at---

Q Oh, okay.

A ---Alvin S. Glenn Detention Center.

Q You were in the detention center.

A But he had just stepped outside the jail to -- just to make a phone call to the judge. That's what he told me. When he came back, 15 minutes later, and told me that -- I guess he was trying to get a continuance, and he told me Judge Barber told him that I can't get a continuance, that my case was old, that I was going forth that Monday with or without him. I have to go pro se, I think that's how you say it. He say I have to represent myself if I don't, if I don't want him because, at the time when he was telling me he couldn't file -- he couldn't represent me at trial, he wasn't gonna file my motions, I then try to get some of my

money back cause my family gave him a lot -- a large, a, a large bit of money.
Q Yes, sir.
A So, I was trying to get some of my money back so I can get another lawyer because everything was just not going the way he had it planned. You know, he, he -- but he told me that, that the judge wasn't gonna continue my case, and that he can't get off my case, and, if I didn't want him representing me, that I have to represent myself.
Q Okay. So, your understanding, at that point in time, was that, if you went to trial, you had to try it yourself?
A Yes, sir, and I'm, I'm looking at it like I was gonna get found guilty because I know I'm not a lawyer, and I can't, you know, I can't really quote laws --
Q Right. I understand.
A -- like that. So, I was looking at it that if I was to go to trial by myself, then I was gonna get the max of -- because not knowing how to represent myself.
Q Not knowing how to represent yourself.
Okay.
A So, I was feeling like my back -- really my back was against the wall.
Q So, your option, at that point in time, was to take a plea?
I mean that was really your only option?

A Yeah, he told -- yeah, Seth -- he told me that -- and, and this -- and this is the only reason why I took that plea. I never would of still took the 10 to 20 plea, but the only reason why I accepted Seth offer on taking that deal because he told me I -- he told me about Judge Barber and him not being able to get me a good deal. Seth Rose, he told me well, he was like well, what if I do this Shawn. He said what if I put in there -- he said what if I bring you back on the appeal in front of a different judge, in front of one of my judges was his exacts words, he said -- cause he say he couldn't get me a deal in front of Judge Barber cause that's the judge who swore him in, and the judge wasn't gonna give me a good deal.

Q Okay.

A He said the only way he get me a deal, if I take his, take his advice, and go up on the plea, then he'll bring me back up on my appeal in front of one of his judges and get me the time that I wanted, and, at that time, I had -- at that time, I done seen he, he done lied to me so much -- so many times already that I couldn't believe him. So, I still wasn't gonna do it, but then he told me what if he put it in writing, would I do it.

So I'm thinking well, Seth is a high powered lawyer. He's respected. So, I'm thinking if he's putting in writing, and dating it and sign it, then I was under

impression that he have to do what he say he gonna do, and that's when I went with the deal. I told Seth well, if you put it in writing, and you gave it to sign that you gonna bring me back up for my appeal, then that's the only reason -- that's the only way I would take that deal, and he say he would, and I told him I want it before I go in front of the judge. He said that will be no problem.

That Monday, before I went in front of the judge, he called me in the bull pen, and he gave me the contract in the manila envelope. He opened it. I seen where he say he gonna bring me back up for my appeal. I seen his signature. I seen it dated the same day I went to Court, and he told me to hold on to it. But he told me do not tell the judge that he gave me that. Do not tell the judge that he made me any promises. Just hold on to it and he got me.

Q All right. Now, what day did you go to do your plea? Do you remember what date it was?

A Yes, June 8th, 2000, and---

Q June 8th?

A Yeah, June 8th---

Q All right.

A ---2015.

MR. THOMAS: May I approach, Your Honor?

THE COURT: Yes, sir.

Q Okay. Let me ask you if you could identify that

document for me please.
A Yes, that's the same document that Seth Rose gave me in a manila envelope.
Q All right. And that was given to you by Mr.---
A June---
Q ---Rose?
A Yes, sir, and---
Q And what is the date on that document?
A June 8th, 2015.
MR. THOMAS: Okay. Your Honor, we'd like to move this as Applicant's 1 if we may.
MR. JAMES: Without objection.
THE COURT: All right. Received into evidence without objection.
MR. THOMAS: Thank you.
THE COURT: Applicant's No. 1.
(WHEREUPON, the document was marked as Applicant's Exhibit No. 1, and received into evidence at this time.)
MR. THOMAS: Your Honor, after 30 years I have learned not to speak while the reporter is marking the document as hard as it may be.
THE COURT: It takes a while.
MR. THOMAS: Yes, sir.
I'm gonna show you what's been marked as Applicant's 1, and does it say anything there about he's gonna bring you

back to Court?
A It says motion to reconsider sentencing.
Q What did you under -- what was your understanding of that language?
A I thought he was gonna bring me back up on my appeal after I pleaded guilty.
Q Which involved what?
Was that bringing you back in front of another judge?
A Yes, sir, I was under impression that's what he told me.
Q All right. How was that gonna happen?
Did he explain that to you?
A No, he just told me that, that he was gonna bring me back up in front of one of his judges to get me a time, and I didn't ask him no more questions after that because I seen the contract. So I was thinking that it was legit.
Q Okay. So, in your mind, what did that do for you, that document?
It reassured you---
A Yes, sir.
Q ---or what did it do?
A I mean I felt -- I still, even though I, I -- even though I didn't still want to take the plea, I just felt like I had some assurance like --
Q Okay.

A -- he was gonna bring me back up.
Q That you were---
A I mean---
Q ---going to go back to this original thought or idea of five and five suspended---
A Yes, cause he---
Q ---to time---
A ---told me that's -- this was the only way he'll be able to get me that deal that I wanted.
Q Okay. And was a motion for reconsideration ever filed?
A No, sir.
Q All right. Did -- was an appeal filed?
A No, sir.
Q And were you ever brought in front of another judge to reduce your sentence?
A No, sir.
MR. THOMAS: Your Honor, if I can beg the Court's indulgence just for a second?
THE COURT: Yes, sir.
(Pause.)
Q Okay. Shawn, we've talked about this.
Do you feel like your plea was freely and voluntarily given?
A No.
Q Okay. Now, you know the Court asked you whether or not

you're pleaing freely, your -- you're pleaing voluntarily and all of that, and I assume you answered yes.

Why did you tell him yes?

A Seth Rose told me to.

Q Okay. And do you feel like your plea was knowingly and intelligently given?

A No.

Q Okay. I'm sure the Court asked you that as well, and I am sure that you responded yes.

Why did you say yes?

A Seth Rose told me that the only way his plan was gonna work unless I don't tell the judge what was going on.

Q Okay. And that all of this was gonna happen after the fact?

A Yes, sir.

Q Okay.

A And this---

Q And did---

A Yes, sir.

Q Did any of it happen?

A No, sir.

Q Did you get five or five suspended to time served?

A No, sir.

Q Okay. And you got 14, 85 percent?

A Yes, sir.

Q And you've served how much time so far?
A Six and a half going on seven years.
Q Okay. Now, you and I talked about this as well. I don't think I have forgotten anything, and I don't think that I've failed to bring some -- something up that's important to you, but you've waited a long time to be in this courtroom today.
A Yes, sir.
Q Is there anything else that you would like to bring to the Court's attention?
A Yes, sir. And another, another thing -- like I -- in my case, like I didn't fit the description. Seth knew I didn't commit this crime, but I was on -- I pleded (sic) guilty. It was the hands of one the hands of all case, and I told the judge that in my transcript, that I was only pleading guilty under the hands of one, the hands of all.
Q Right.
A But I guess I was the first one to plea (sic), and the judge asked the prosecutor about my codefendants after I, after I told the judge that I would only plead guilty of the hands of one the hands of all. The judge asked the prosecutor was my codefendants gonna be heard and they said yes. But after I pleded (sic) guilty, everybody charges had got dropped and went home from the county. I'm the only one who went to prison with them stating that I didn't commit

the crime, that I wasn't the one who actually committed the crime, that I was only pleading guilty under the hands of one the hands of all. But I'm the only one had got -- had came to prison. Everybody else charges got dropped after I pleded (sic).

Q Okay. All right. Anything else?

A No, sir.

MR. THOMAS: Okay. Your Honor, I have no further questions.

THE COURT: All right. Thank you, sir.

MR. THOMAS: Yes, sir.

CROSS-EXAMINATION

BY MR. JAMES:

Q Mr. Bethea?

A Yes, sir.

Q How are you doing this afternoon?

A I'm doing all right, sir.

How are you?

Q I'm doing all right.

Feeling a little bit better now we got some momemtum going?

A Yes, sir.

Q All right. Do you recall precisely how many times you met with your attorney?

A Seth Rose?

Q Yes, sir.
A I met with him a lot.
Q Okay. And you said communication was good?
A Till it, till it got to the end.
Q Okay. On direct examination you testified that you didn't really go over the discovery. It's not clear to me what you mean by that.
Did you go over the discovery at all?
Did you go over some of the discovery?
Did you go over all of the discovery?
A No, we didn't go over the discovery at, at all with Seth Rose. We just mainly talking about the, the other case that he was trying to get me to do.
Q Which other case are you referring to?
A The cold case.
Q But you indicated at first that communication was good with Mr. Rose, correct?
A Yes, sir.
Q All right. But y'all weren't talking about this case?
A No, sir, see at first when I first hired him he told me don't worry about that case, that that case really wasn't a factor and---
Q Now, when you say that case, which case are you referring to, the cold case or this one?
A This case.

Q This case?
A Yes, the case---
Q Okay.
A ---that I'm charged with.
MR. JAMES: Your Honor, may I relocate to the podium here?
THE COURT: Yes, sir.
MR. JAMES: Thank you.
And were you facing charges only for this incident, and discussing the cold case or were there any other instance what you were facing charges?
A Yes, it was other charges, sir.
Q All right. And did you discuss those charges with your attorney, Mr. Rose?
A No, sir.
Q Okay. So, you only discussed that cold case?
A Yes, sir, I tried to discuss the case we was charged with. But he told me that they really wasn't interested in, in that case as far as who did it and who didn't do it.
Q You said they just now.
Are you, are you referring to the State?
A Yes, sir, the -- yes, sir.
Q Now, you explained at length, on direct examination, your position that the State didn't have any evidence show you matched the description of whoever perpetrated this

crime, correct?
A Yes, sir.
Q And that you were only pleading guilty under hand of one hand of all?
A Yes, sir.
Q All right. Did you explain your version of events to your attorney, Mr. Seth Rose?
A Can you repeat that?
Q Did you explain your version of events---
A Yes, sir.
Q ---your recollection of what happened to Mr. Rose?
A Well, no, sir. We never---
Q You didn't tell him?
A We never talked about it.
Q Okay. You didn't, you didn't tell him what happened?
A No, sir, he said that they didn't care what happened, who did it.
Q And you were charged with four counts of armed robbery, correct?
A Yes, sir.
Q Okay. Are you familiar with the elements of armed robbery?
A Sir?
Q Are you familiar with the elements of armed robbery?
A Yes, sir.

Q Okay. Were you aware of any defenses that might be available to you to, to try and defend your case in Court?
A Excuse me?
Q Did -- did you have any defenses in mind if you were to take this case to trial?
A The case that I'm charged with now, the case --?
Q Yes, the armed, the armed robbery of Mr. Ballentine.
A I -- at, at that -- like I -- it's been so long ago I can't actually remember what all motions that I have.
Q Okay.
A But I use to have a green folder with a lot of motions and different stuff in the case, but I, I can't remember.
Q And that's understandable. Time has passed.
But you do recall you had that green folder---
A Yes, sir.
Q ---full of motions that you wanted to introduce at trial?
A Yes, sir.
Q And this may seem like a silly question cause you've talked about it so much already. I would -- between myself and Mr. Thomas, but you were familiar with the concept of hand of one hand of all, correct?
A Yes, sir.
Q And so you were familiar with the concept of accomplice liability?

A Yes, sir.
Q And that's being there and helping out with the, the crime that caused you to also plead guilty of that same crime, correct?
A Yes, sir.
Q All right. I know you indicated already that you did not have -- you did not tell Mr. Rose your version of what happened that evening.
Did you give him any leads or witnesses to go speak to?
A No, sir.
Q All right.
A It was other individuals charged with the same crime that could of fit the description if they would of investigate (sic) it.
Q You said they could of fit the description or they would have fit the, the description?
A Well, I don't know. I'm saying they could of. It was three of us charged. I'm, I'm, I'm -- I know I didn't fit the description, but it was other two people still charged with the crime.
Q All right.
A Like I didn't know if they -- if anybody had look at their height and weight or you know.
Q Were you familiar with the other two people charged with the crime?

A I knew them.
Q You knew them?
A (WHEREUPON, there was no audible response.)
Q Were you friends or just acquaintances or --?
A Yeah, just from -- just went to high school with them.
Q So, you had some idea of what they looked like, correct?
A Yes, sir.
Q So, you had some idea, not necessarily the exact number, but about how tall they might be, correct?
A Yes, sir.
Q And about how heavy they might be?
A Yes, sir.
Q And you knew what the description of the perpetrator was, correct?
A Yes, sir, from Mr. Ballentine statement, sir.
Q All right. And did you get that statement from your discovery?
A Yes, sir.
Q In your testimony you indicated that -- indicated that two days before your trial was set to start is when Mr. Rose came to you and said five years is off the table, correct?
A Yes, sir.
Q How did that conversation go?
Did you bring up the question to him or did he come

into the room and declare it to you or --?
A Nah, he -- nah, he, he brought it to me. Told me that the five years was off the table, that now they wanting me to plead to a 10 to 20.
Q You also testified that you never actually received any plea offers.
Is that correct?
A That's correct.
Q You mean written plea offers or any kind of plea offer?
A Any kind except---
Q Any.
A ---when he told me the five years was off the table that I got to go to a 10 to 20. That's the only, that's the only plea I ever heard.
Q When did the five years get on the table?
A Since -- basically since the very first time I hired him.
Q So was it already in your mind---
A Yeah, he told me---
Q ---or on the table before you -- he---
A When I---
Q ---you hired Mr. Rose?
A When I, when I first hired Mr. Rose, then we talked. At first he was telling me that's what he was pushing for. He was gonna get me the five years, and then it turns into

well, the only way I'm gonna get the five years if I help him solve the case.

Q You testified just now that it was your understanding that you could get five years if you help solve this other cold case?

A Yeah, that's what it turned into, sir.

Q Did you cooperate with law enforcement?

A Yes, sir.

Q Did you go give a statement to law enforcement?

A Yes, sir.

Q All right. Did you give any statements to a Grand Jury?

A No, sir.

Q All right. Did you ever testify at a trial?

A No, sir.

Q Are you aware if that unrelated killing was ever resolved?

A No, sir.

Q Did you do anything after your plea in relation to that cold case?

A No, sir. See law, law enforcement knew I was -- knew I wasn't telling the truth.

Q Are you saying you were lying to law enforcement?

A Yes, sir.

Q And you were lying to try and get a better deal?

A Yes, sir, I was just doing what Seth Rose told me to do.
Q Well, did he come out and just say it just like that, Mr. -- say Mr. Bethea go in there and lie to these cops or, or---
A No.
Q ---did he say you have to give them something?
A Yeah, he, he always say I have to give him something, but I, I never had anything to give him because I never knew anything about the case. It was -- I got my information like, for one, his, his friend, one of Seth Rose friend from Richland County, he, he, he, he had told me -- he was like -- he was like so let me get this -- well, he was like so let me get this right, Mr. Bethea. So, when you came out of Lexington Green, you made a right at the light. Then you made a U-turn at the other light, and you came up, and you came, and you jumped off the interstate, and jumped right behind her.

Now, I never knew how all that occur. But I knew that he was trying to tell me what to say.

Q So, it wasn't explicit, explicit, but you were picking up what he was putting down so to speak?
A Yeah, I'm just picking up, you know, as he was speaking.
Q But, ultimately, at least two days before your trial,

he did tell you that it was this other plea offer for 10 to 20, correct?
A Yes, right before my trial he was telling me that he couldn't get me the five years, that I got to go on the 10 to 20.
Q So, you knew before you went into that plea that you were looking at 10 to 20?
A Yes, sir. I just didn't knew (sic) I was gonna be stuck with it. I was under the impression that he was gonna bring me back up on my appeal after I pleded (sic) guilty. That was the deal. That's the only reason why I went up on the plea because he told me that he was gonna bring me back up for my appeal in front of one of his judges to get me my five years.
Q Mr. Bethea, some of this was touched on in direct examination, but do you recall the Plea Court asking you if you'd been promised anything in exchange for your plea?
A Yes, sir, but, at that time, Seth Rose told me that I couldn't tell the judge that I been promised anything. He said he's -- his plan wouldn't of worked. He tell me to not mention the contract to the judge, and don't tell the judge that he promised me anything. I had the contract in my hand the whole time while I was talking to the judge. I just never told the judge that he promised me anything cause he told me it wasn't gonna work if I tell the judge that.

Q So you didn't tell the judge?
A No, sir.
Q You told him you haven't been promised anything?
A I told him I haven't. When they asked me if I been promised anything, I said no.
Q So you were lying to that Court?
A Yes, sir.
Q And, in fact, the Court asked you twice if you had been promised anything other than a plea deal in front of him, correct?
A Seth Rose told me the deal wasn't -- it, it wasn't gonna work if I told the judge yes. He say he wasn't gonna be able to -- it wasn't gonna work, and I didn't want to take the plea in the beginning. So, I just gave -- put my faith in him once again hoping that his plan was gonna work. So, I told the judge no, he made me no promises because he was suppose to have brought me right, right back up.
Q At the time of the plea, were you still happy with Mr. Rose or---
A No, sir.
Q ---you'd got suspicious?
A No, sir.
Q Okay.
A It just was -- it was out of my hands. Wasn't nothing I could do. I couldn't get -- I tried to get some of my

money back so I could get a new lawyer. Once he -- once I knew he had tricked me, and lied to me, I tried to get some of my money back, and see if I can get a new lawyer. But that's when he stepped outside the jail and he came back and told me that he had placed the call to the judge, and the judge told him that I couldn't get no more continuances, that I was going forth that Monday with or without him.

Q And I know it's likely the same answer that you've given to me, and you've given here trying a few times now, but you told the Court that you were happy with Mr. Rose, correct?

A Yes, sir.

Q If Mr. Rose was telling you about this plan, and if you felt so uncomfortable with him, why not tell the Court, Your Honor, this, this attorney client tricked---

A Because---

Q ---me?

A Cause he was already telling me -- cause at that time when we was talking, when I was telling him -- like he knew I didn't commit the crime. When I was telling him well, if you know I'm innocent, well just -- why you don't prove my innocence. How -- why you can't fight for me in trial if you know I'm innocent, and this other people charged with this crime. But he was -- right then he had told me that they didn't care who did the crime, that they just wanted me

for it, and Judge Barber was gonna give me so much time, and it was like him and Judge Barber was on the same team.

He told me that Judge Barber was the one who swore him county councilman, and---

Q Well, we're -- if I may interrupt you here just briefly we're talking about the State not caring who did it, correct?

A Yes. Correct.

Q And we're talking about the judge imposing sentencing, correct?

A Yes, sir.

Q Well, you understand that it's the jury who finds guilt, correct?

A Yes, sir.

Q Okay. Did he tell you the jury was gonna convict you?

A No, he was just saying we was gonna lose.

Q And that you'd lose because of hand of one hand of all, correct?

A Well, not necessary. He ain't necessarily said that. But he said if I do go to trial, that they was gonna -- that we was gonna all be tried together, and that's when I told him too -- I was, I was asking him well, why he can't try me separate by myself. But he was saying that they was gonna work like that, that if I go to trial, that they was gonna charge -- they was gonna try all three of us together. And

even though I didn't commit the crime, that I was gonna be found guilty under the hands of one hands of all.

Q But ultimately you decided to tell the Court what you told the Court to plead guilty?

A (WHEREUPON, there was no audible response.)

MR. JAMES: If the record may show that he nodded his head in affirmation.

THE COURT: Answer the question yes or no---

THE WITNESS: Yes, sir.

THE COURT: ---please.

THE WITNESS: Yes, sir.

MR. JAMES: Beg a moment of the Court's indulgence.

THE COURT: Yes, sir.

(Pause.)

Q Mr. Bethea, you indicated that you got no benefit from your cooperation.

Is that a correct---

A Yes, sir.

Q ---recollection of your direct---

A Yes, sir.

Q ---testimony?

Okay. But the police chief came and made some statements at your plea proceeding.

Isn't that correct?

A Yes, sir.

Q And you did get all but one of those armed robbery charges dropped, correct?
A Yes, sir.
Q And those possession of a weapon charge, correct?
A Yes, sir, but that -- it was -- I had codefendants in them, in them charges that I, I didn't commit those charges, those crimes.
Q And ultimately you got that recommendation of a sentence of less than 20 years, correct?
A Sir?
Q You received from the State---
A Yes.
Q ---a recommendation---
A Yes.
Q ---of less than 20 years, correct?
A Yes, I got 14, 85.
Q So, it might not have been that five years, but you did receive some benefit, correct?
A I mean I wouldn't call 14, 85 a benefit.
Q Well, let's look at it as a point of comparison, sir.
You were facing four charges of armed robbery, correct?
A For a crime I didn't commit, sir.
Q Well, were you charged with four counts of armed robbery?
A Yes, sir.

Q All right. And were you charged with two other counts of weapons crimes?
A Yes, sir.
Q All right. Do you understand that the maximum potential sentence for armed robbery is 30 years, correct?
A Yes, sir.
Q And you understand that Court or any Court, if you were convicted for each of those counts, could of sentence you to 30 years on each of those counts of armed robbery, correct?
A If Mr. Rose would of represented me in trial, sir, I would of beat this charge. I would of beat those charges.
Q Let's, let's answer the question yes or no where I can---
THE COURT: Listen to---
THE WITNESS: Yes, sir.
THE COURT: Listen to his question and answer it.
Q You understand that you could of received 30 years, if convicted, for each of those counts of armed robbery, correct?
A Yes, sir.
Q And so you understand that the Court could of run those sentences together or they could of run them consecutive, line them up one after the other, correct?
A Yes, sir.
Q All right. So, you understand that you could of been

facing in excess of 120 years if you were convicted on all four of those charges, correct?
A Yes, sir.
Q And you understand that those arose out of two different incidents, correct?
A Yes, sir.
Q All right. So, you understand that you could of been tried not once, but twice, correct?
A Yes, I guess. Yes, sir.
Q One trial from one incident, and one trial for the other incident, correct?
A Yes, sir.
Q Okay. So, the State got two swings at the pinata as it were, correct?
A Yes, sir.
Q So instead of a possible 120 plus years, you got 14, correct?
A Yes, sir, I'm the only one got any time period.
Q All right.
A Nobody else caught no time but me.
Q Well, Mr. Bethea, this isn't their day. Today is your day in Court.
A But even in the statements, even in the statements of my other armed robberies, the victims had stated that I didn't -- the victims had stated in their statements that I

didn't rob them, that another person had did it, and they had the person that the victim said had did it in custody. The victim stated in they (sic) statements that I didn't rob them on the, on the, on the three armed robberies that got dropped.

Q Did you give any statements to law enforcement about --

A No, sir.

Q -- your role or proximity to this robbery of Mr. Ballentine?

A No, sir.

Q You didn't give any statements to inculpate yourself?

A No, sir.

Q Okay. Did you understand that the minimum possible sentence for armed robbery was 10 years?

A Yes, sir.

MR. JAMES: Beg a moment of the Court's indulgence.

THE COURT: Sure.

(Pause.)

MR. JAMES: I have no further questions for this witness.

THE COURT: Mr. Thomas.

MR. THOMAS: Your Honor, if it please the Court. Just one or two.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q Mr. Bethea, in essence, this whole case was about some sort of unsolved murder case, wasn't it?
A Yes, sir.
Q That's what was going on?
A Yes, sir.
Q And you actually met with investigators --
A Yes, sir.
Q -- and discussed it with them?
A Yes, sir.
Q Okay. Now, the Attorney General asked you about that you -- the benefit of this bargain. You were facing 120 years if they tried you -- if you got separate sentences on all these different armed robberies.
A Yes, sir.
Q I asked you when we started you understand that, if you win your post-conviction and your sentence is set aside, you're still facing 120 years?
A Yes, sir.
Q You willing to accept that risk today?
A Yes, sir, if I can -- if I have a lawyer who will represent me.
Q Okay. All right. Now, we've heard a lot about descriptions of the perpetrator of this crime.
How did the description of you and this, this perpetrator, how did they -- how do they differ?

A Well, the victim said that the, the, the person that -- who robbed him was like 5'8", 5'9", like 150 pounds. And like it was three of us charged with the same crime, and I, I didn't fit that description. I, I weigh more than that and I was shorter than 5'8", 5'9".

Q Okay. So, you thought there was a significant difference in the description between you and what the, what the victim had said the perpetrator looked like?

A Yes, sir.

Q Okay. Just one last question.

When you got up to this plea, what was your option in regards to a jury trial?

A Sir?

Q All right. When you, when you appeared in Court to, to enter this plea in front of the Court, did you have an option to try your case?

You didn't have an attorney, did you?

A No, sir.

Q Okay.

A Not for trial.

Q Cause Mr. Rose has said he wasn't gonna represent you.

A Yes, he say (sic) he wasn't gonna represent me at trial.

Q And the judge had said that he wasn't gonna continue your case?

A Yes, sir.
Q And if you went to trial you were gonna have to represent yourself?
A Yes, according to Seth, that's what the judge said.
Q Okay. So, in your mind, did they give you any option other than accept the plea?
A No, sir.
MR. THOMAS: Okay. I have no further questions, Your Honor.
THE COURT: Mr. James.
MR. JAMES: Nothing further from the State, Your Honor.
THE COURT: All right. You can step down, Mr. Bethea.
MR. THOMAS: Your Honor, if it please the Court, I have one further witness.
THE COURT: Yes, sir.

JAMIE MOSES, being first duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand please.
(WHEREUPON, the witness complies.)
THE CLERK: State your name for the record.
THE WITNESS: Jamie Moses.
THE COURT: All right, ma'am. As I told Mr. Bethea, speak loudly and clearly. Answer questions with a yes or no response, not a nod of the head, or a uh hu or a hu-huh.

You understand?

THE WITNESS: Yes.

THE COURT: Okay.

DIRECT EXAMINATION

BY MR. THOMAS:

Q Ms. Moses, I want to thank you for being here today. You understand that you're here to tell the truth?

A Yes.

Q You're not here to reward anybody?

A No.

Q Okay. Are you related to Shawn Bethea?

A No.

Q Okay. And I, and I ask you these questions about what you knew, of your own knowledge, what you know. Did you have knowledge of Mr. Bethea entering into a plea to these charges? Did you know about that?

A No.

Q Did you have a conversation with Mr. Rose after the plea?

A Yes.

Q Okay.

THE COURT: Speak up there, ma'am.

THE WITNESS: Yes.

Q Okay. Now -- in that conver -- what was your

understanding from that conversation with Mr. Rose?
A He called me after the -- Shawn went to Court and he told me not to worry, it wouldn't be long, and that he was gonna take Shawn back up in front of another---
MR. JAMES: Objection. Hearsay.
A ---judge.
THE COURT: Well, I'll, I'll let it go in. I'll -- it, it may be, but I'm -- I don't think it's that harmful.
Go ahead.
MR. JAMES: Okay. Thank you, Your Honor.
THE COURT: She can answer the question.
MR. THOMAS: Okay.
If you would please.
A He told me that he would bring Shawn back up in front of another judge to get a lesser amount of time.
Q Okay. And that was to your understanding of what he said to you?
A Yes.
Q Okay. And why would he call you?
A Because, at the time, Shawn and I were in a relationship.
Q Okay. You were girlfriend/boyfriend?
A Correct.
Q Okay. And, again, you understand that you're here to tell the truth?

A Yes.
Q And you're telling the truth?
A Yes.
MR. THOMAS: Okay. I have no further questions, Your Honor.
THE COURT: Mr. James.

CROSS-EXAMINATION

BY MR. JAMES:

Q Are you still in a relationship with Mr. Bethea?
A No.
MR. JAMES: Beg a moment of the Court's indulgence.
(Pause.)
MR. JAMES: No further questions, Your Honor.
MR. THOMAS: Nothing further, Your Honor.
THE COURT: All right. You can step down, ma'am. Thank you.
MR. THOMAS: Your Honor, if it please the Court, that's the Applicant's case.
THE COURT: All right. Thank you, Mr. Thomas.
MR. THOMAS: Yes, sir.
THE COURT: All right. Mr. James.
MR. JAMES: State calls Mr. Seth Rose.

SETH ROSE, being first duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the witness

stand please.

(WHEREUPON, the witness complies.)

THE CLERK: State your name for the record.

THE WITNESS: Seth Rose.

DIRECT EXAMINATION

BY MR. JAMES:

Q Good afternoon, Mr. Rose.

A Good afternoon.

Q Do you have an attorney license to practice in the State of South Carolina?

A I am.

Q All right. Do you practice here in Columbia?

A I do.

Q And did you have occasion to represent Mr. Shawn Bethea?

A I did.

Q How did you come to represent Mr. Bethea?

A I was receiving -- it's been -- it's been some time now. It's been several years. But I was receiving some phone calls. I, I believe it was from a, a girlfriend of his that was wanting to hire me for representation. It wasn't the person that just testified.

Q So, it was not Ms. Moses?

A That is correct.

Q All right.

A This lady was in I -- roughly probably in her fifties. I think she might of been a postal worker, and I, I did meet with her on occasion. She's the one that, that ended up retaining me.

I did meet with him once before. I received a phone call at one point in time where he was, I believe, was scheduled for trial with Victor Lee, and the judge granted a continuance cause he had said that he wasn't happy with Mr. Lee, and, ultimately, I was retained by this other person. And so that's how it, it came to be.

Q How long have you been practicing law in this state?

A Since 2007.

Q And what portion of your practice has been criminal?

A Ninety-five percent.

Q Do you recall about how many times you met with Mr. Bethea?

A I've actually made meticulous notes every time I drove down to the jail to see him, and I actually, at one point even before this plea, sent myself an email with notes because it -- the writing was on the wall honestly from the first day I met him.

I went -- when I was first retained, I called Larry Wedekind, who was the Attorney General handling the case. Mr. Wedekind told me that they -- law enforcement had a good reason to believe that he was a high ranking gang member,

and that he had been involved in a murder/rape. There had been a -- I believe a single mother that had been driving to the post office on Assembly Street. Her car was found on the side of the interstate. They had her on surveillance at I believe it's the Sunoco, and she was later found killed, and had been sexually assaulted. And they had reason to believe, it's my understanding before I was ever representing, representing him, there was some type of statements that were given to law enforcement in which he had essentially said he had been on scene that night.

Q And when you say on scene that night, are you referring to the cold case---

A The cold case.

Q ---or the---

A The cold case.

Q Okay.

A But this is what Mr. Wedekind was telling me because he's like, look -- the first thing he said to me was listen. I've been through this with Victor Lee. This guy's a very dangerous person, and I just want you to know we're not -- we're, we're, we're coming for him, and there's gonna be no breaks given to him. And I went down to meet with Shawn after -- and basically relayed to him what Mr. Wedekind had told me. And during the course of that conversation, I mean this is what, this is -- might of been the first time we

met.

During that conversation, he had told me he had filed a -- some type of complaint or grievance against Mr. Lee, and this was when the case was starting off. And I was like okay, I need to be very meticulous in my case notes here because he had two different armed robberies. There was two different incidents that he was charged in. There was one that had to do with the ATM where $60,000 had been stolen from an ATM.

There was a witness in that case that had ID'd Mr. Mo -- Mr. Bethea, and although he says there's no evidence against him, he was caught on tape, while in jail on another charge, bragging about robbing and scoring $60,000 in a robbery. And so that was all on tape from the jailhouse calls.

So, there was -- in that case, there was an eye, an eye witness who was gonna testify that it was him that did this, and there was a recording before I was ever hired. One of the first things I always tell my clients is the jailhouse calls are recorded. But before I was ever retained, he had made this statement I believe when he was, if memory serves me correct, he was actually trying, when the statement was given, he was trying to get his friends to go and get some money that he had stashed away to bribe these other witnesses or victims in the other armed robbery that he had

been charged on to say hey, go get them some money, take them some money, tell them to drop the charges, and his friends said hey, man, where did you, where did you get all that money, and he said -- he basically bragged about having stolen $60,000 in a robbery, which---

Q Mr., Mr. Rose, I hate to break your, your rhythm here, but a moment ago you nodded towards the gallery when you were mentioning a witness.

Are you referring to the victim, Mr. Olin Ballentine?

A Yes, that's who gave the ID.

Q Okay.

A The photo ID.

Q Okay. Right.

A But from that, from that moment on, that's when I started once I knew -- you know, and he, in, in conversations, had also mentioned to me prosecutorial misconduct on behalf of the prosecutor handling the case, and I just knew that, unless I was able to get two, not one, but two not guilty verdicts in a case where they're gonna bring in this, this tape recording, have an eye witness point him out, that he was never gonna be happy. And obviously I can't force the Attorney General's Office to give an offer, which I explained to him numerous times.

And, you know, it's very upsetting to hear some of the things that were said on his direct examination, which was

simply not true. The one thing that he did say that was true was that I would visit him constantly, at night, and, yes, I told him I was working very hard for him. It was a very stressful case to me because I care about my clients, and I work very, very hard for them, for them. And I worked very hard for Shawn, and it was very hurtful to hear some of the things that were just, quite honestly, just not truthful at all.

Q And we're gonna get into some of those things in just a moment.

But to go back to the two separate incidents here, it, it was two separate incidences, correct?

A That's, that's correct, and---

Q All right. And you touched on the 60 bands from an ATM.

What, generally and in summary, were the facts of the other incident?

A The other incident had to do with a robbery, which I'm -- this has been several years ago. But the victim in the case or victims had gone to high school with Shawn, and somebody else -- I think -- someone else had gotten outside the car with a gun, and they had seen Shawn in the car when the car pulled up, and I can't remember. But there -- if -- basically it was the hand -- on that one it was the hand of one hand of all.

But it's my understanding on the ATM it was not the hand of one hand of all, and that's the one he actually pled to was where we had the recording at the jail, and an eye witness saying it was Shawn. It was the theory of the State that he actually performed this, and, yeah, and -- so that was essentially it.

And, additionally, Larry Wedekind, as I told you, from the moment that I, I talked to Larry Wedekind, he had told me about this other crime, and he actually sent me an email, which was in the file, that said that they would try the first armed robbery first, and then given -- and then would seek like life without parole if they secured a conviction on that, which I shared with, with Shawn, and I didn't go -- I didn't burn up the roads going to the jail countless times that I've documented here to not go over the discovery. In fact, one time I went to the detention center, and because I wanted to show him the video and have him hear the recorded phone calls in my presence, which was part of me doing my due diligence for him, and we actually sat -- they actually took us in the detention center to a room where we could use the computer, and watch the surveillance tape of, of the robbery. And also we were able to listen to the phone calls on the ATM.

So, not only did we go over it extensively ourselves, but, additionally, at one point in time, we even went to a

separate room so we could listen to the phone calls cause you can't -- you don't have the ability in the pod to watch a video or to listen to a tape.

So, I actually was able to get permission from the lieutenant because I needed him to be able to see the video and listen to the jailhouse calls himself.

Additionally, on the second armed robbery with the, the individual that had gone to, to high school with Shawn, I took it upon myself to try to locate these people, and I was able to locate on my -- of my own volition one, one of the victims. And I was trying to see if at, at all he would have any -- what his feelings were on the case, and if he'd be willing to have this dropped down to a strong armed robbery, and basically, in my conversation with him, it was basically an absolutely not, that he was afraid of Shawn, and that he was coming to Court, and he would not be okay with it being lowered to strong armed robbery. Of course, the significance of that is that -- if you -- if it doesn't get lowered to a strong armed robbery, the mandatory minimum is 10 years. But I share that to say that no stone went unturned.

I was really working extremely hard for Shawn, extremely hard, and I visited him numerous times, and numerous times we went over discovery, which has been documented by my own writings here including emails, and, as

I said, when I, when I knew, from our initial conversations that he was maybe pursuing allegations against the prosecutor, and he had just fired an attorney that he was doing some type of complaint on, I was like the writing's on the wall here. Let's make sure we document our file every time we meet with Mr., Mr. Bethea, which is what I did.

And it's particularly upsetting for me because I know how hard I worked for him. Even after this case was closed there was messages that were sent to me that he felt that he was in danger at a certain institution, and I went above and beyond, even after my representation, to help get him moved. I worked extremely hard for him, and it's, it's particularly upsetting because knowing that I have an email from a prosecutor saying, at some point, he's gonna seek life without parole potentially against my client, and to sit here and know that, given everything we were against, I got him 14, 14 years, credit for 2.9, which was a questionable time served credits, he was---

Q Why was that a questionable, questionable time---

A Some---

Q ---served credit?

A Some of them were revocations for YOAs as I recall. I'm going off memory here cause this was a long time ago. But some of that time I got him credit for was not time that he was in jail on bond for this offense. And so I was able

to get him close to three years that, quite frankly, the Attorney General could of objected to.

So, close -- 2.9 time credit on the 14 when I felt there was a good possibility we could lose, and then he could get life without parole notice, and I had already talked to one of the victims who said yes, we're coming, absolutely not, I'm not okay with telling the prosecutor I'm okay with lowering this, and, honestly, based on my conversations with Larry Wedekind, even if the prosecutor -- the, the listed victim in that case had done that, like based on what he had told me he believed about Shawn, and his criminal history, that he, you know, this was just part of me leaving no stone unturned for him.

Q So, the State was motivated in this case?

A Oh, I mean the first conversation I had, I mean -- and it, and it stemmed from his prior record, their belief that he was a high ranking gang member, and there had been some statements before I was ever involved where he had put himself on scene at this murder/rape that was unsolved and is still unsolved today.

Q We're going to come back to that here in just a few moments.

But did Mr. Bethea ever tell you his version of events of what occurred at the two incidents?

A Yes.

Q Okay.
A Yeah.
Q What did he tell you?
A As to the ATM, he was adamant that he was not the person who actually did the robbery. But, as I recall, he did share with me that he had been one of the individuals in the car. And so he felt comfortable under a hand of one hand of all.

Of course, I explained to him that this is going to be one of those things where a jury makes a decision, and that's the other thing.

First of all, let me just say I can prove that Judge Barber never swore me on the County Council.

Okay. That's first and foremost. So, that just didn't happen factually. But we showed up. We had a drop dead date because he had been on the eve of trial or at trial, and I was getting -- and he said look, I'm gonna give you one chance to hire another attorney, whether that's Mr. Rose or anybody else, but that's it, and they had been through -- I don't know if he had a Public Defender before Victor. I don't know.

But it was a point in time where Judge, Judge Barber said this case is going forward, and I was never being allowed off the case. I showed up. I, I had motions ready to file, pretrial motions. I was ready to try the case. It

was his decision to not go forward. We, we -- there was no -- never -- Judge Barber was never going to agree to a continuance. It was we're going forward that day.

Now, there was discussions that morning that, when they said look, we're, we're willing -- I believe -- you know, he said there wasn't a plea offer. There was -- when he -- well, I guess I'd have to go back. I mean essentially his whole thing was he always wanted under 10 years, which I told him clearly I can't make the State, meaning the prosecutor, offer something they're unwilling to do, but I said here's the evidence against you. We went over it. Here's an email saying he's gonna seek life without parole. If we lose the first trial, and they want to talk to you about this cold case murder, which there's been some type of statement in, in the murder/rape of this single mother, they want to talk to you about that, and I asked him if that's something he wanted to explore.

It was his decision. I never forced him to do anything. I did tell him that that was probably, if there was ever an arrest made or our hope would be that they would be willing to help him out in some regard. But that was never a guarantee.

I have that in -- again, I was being so meticulous in my documentation, I have time stamped emails to that effect to myself because, from the first time I met with him, and

he said about the misconduct, and he was coming after this other attorney who he had fired, I felt like the writing was on the wall, but I still did my job, and I worked very hard for him.

Q We touched on what he told you about -- actually scratch that question.

You explained to him what the State would have to prove in order to convict him of armed robbery, correct?

A Absolutely.

Q And of the weapons charges, correct?

A Yes.

Q And obviously the concept of hand of one hand of all, correct?

A Yes. But, at the plea, the, the day of the plea, he actually had the second armed robbery. As I recall, those charges were dismissed. He had three armed robberies dismissed.

When he showed up to Court, he's facing 125 years, and the possibility of being LWOP'ed if we lose, Mr. Wedekind said I'm gonna try my best case, what I believe is my best case first, which was the one where there was a statement where he's bragging about being a part of a robbery of $60,000, which was the -- and there was a, a witness that was gonna point him out in Court. But all that had been explained to him. He was facing 125 years.

And so I, I would say that's quite significant of a plea offer there, and---

Q Taking a step back, did Mr. Bethea speak to law enforcement?

A Yes. Yes.

Q Did he -- and you said subject to a proffer agreement?

A Yes, I got a proffer agreement done, which is something that's really more widely done in Federal Court. But essentially what that says is that anything he tells law enforcement that they don't know can't be used against him in his criminal prosecution. It also says in there, which is typically standard, that if he's untruthful, he can be polygraphed. And if he's polygraphed, and he fails a polygraph, that's out the window, and it can then be used. But we went over it. I did that to protect him, and that's what happened. It was his decision.

Q Was he ever polygraphed?

A No.

Q Mr. Rose, you've indicated the degree to which you take offense to some of the things that have been said by Mr. Bethea today, but I do have to ask you plainly and simply, did you ever direct Mr. Bethea to lie?

A Absolutely not.

Q Did you direct him to lie to law enforcement?

A Absolutely not.

Q Did you direct him to lie to the Court?
A Absolutely not. In fact, I had conversations with him about how lying could have drastic ramifications for him where he could be subject to being polygraphed, and I had conversations with him about whether or not the things that he was gonna say to law enforcement was true, and he looked me in the eye and said yes.
Q Did you ever tell him what to say to law enforcement?
A Absolutely not, and I wouldn't have known what to say. I wasn't representing him on that charge. I was working for his benefit to see if -- whether or not they'd be willing to assist in any, any way. But it was clear to him as well that, just as in Federal Court, his -- you know, there was conflicting statements that he had given to law enforcement about this incident. So, law enforcement's concern was that he wasn't that truthful or would -- his voracity and his prior record and these things wouldn't make him the best witness.

And so that was one of the concerns, but it was made clear to him, just as in Federal Court, that if something -- if law enforcement was gonna come to bat for him in a drastic way, that there would have to be some type of substantial assistance meaning an arrest of the person who actually pulled the trigger for that cold case murder, which there never was an arrest.

Q You indicated that he had already given conflicting statements as to the cold case murder.

Was that before your representation began?

A That -- that's correct.

Q Did Mr. Bethea give you any lead to witnesses to follow-up on?

A On his cases?

Q On his cases.

A No, in, in the ATM, which is the one that we were scheduled to go to trial on, he was the only person, as I recall, that had a jailhouse recording implicating himself, and he was the only person in the discovery that also had an eye witness that was going to be coming to Court, pointing him out saying there he is, and then they're gonna play the tape, and as I had shared with him, pursuant to an email, if we lost that trial, he was gonna be served life without parole notice, and that was in writing.

Q That would have been along with the second incidents?

A Yes. And if we had somehow won that trial, he was gonna be given a new trial date on the other armed robberies where I had already spoken to a witness that said absolutely we're going forward, I saw him, he was a part of it. I will not be okay with dropping this down to strong armed.

So, it wasn't -- it's like if lightning struck and we got around the jailhouse call, and the eye witness, and all

this on the ATM, and we got 12 people to say, beyond a reasonable -- that they didn't meet the burden, we were gonna then be going to trial. It's not over for Shawn. We're now going to trial on another armed robbery where I've personally gone above and beyond to track down a witness. I'm not an investigator, and there were no funds available to hire an investigator. But I tracked down the, the alleged victim in that second one, and he said absolutely not. I'm coming.

Q Did you ever receive, from, from the State, any offer to any lesser included offense?

A Oh, no, and I worked -- I mean, again, it always came back to -- from them -- I mean, as, as I told Shawn, I can't force them to offer me something. The Court is bound statutorily. If it's an armed robbery, it's mandatory minimum 10 years. I mean I explored all kinds of different options. I was trying to get something higher, and get it to a 65 percent.

They were -- there was -- because they perceived that he had been involved in this heinous crime, and you know his statements to law enforcement through cooperation under the proffer, back that up, and because he -- they believed that he was a high ranking gang member, his bad violent criminal history, and the charges before them, you know, this is why this was -- I was led to believe this is why this was at the

Attorney General's Office, and not being prosecuted by the Solicitor's Office was that he was considered a, a danger to the community in a large way.

And so at the -- the answer to your question is that's every time I went and tried to see if they would go lower, that's all I would ever get was absolutely not, absolutely not.

Q And did you tell your client that he could not get less than 10 years based on the---

A Yes.

Q ---charges?

A Yes, I mean that's -- armed robbery's a mandatory minimum of 10. But I could never force them -- I mean I can't force Larry Wedekind, who's a very difficult prosecutor to begin with, and then when he has what he perceived -- Larry Wedekind perceived that his case in the ATM was a slam dunk. He's like I sat down with him for -- I mean I have notes in here where I, you know, called Larry Wedekind, met with him for two hours, went over -- we listened to the tape together, and he's like look, there's where he confesses, and, you know, I mean they were never willing to go below it, and, and, in fact -- well, go ahead.

Q Did you agree with Mr. Wedekind's assessment that it was a slam dunk case?

A I thought that there were some -- the one thing he

didn't say in his confession, he didn't say when, how, where, what. He didn't say on X date I robbed an ATM. He said that he got the funds, that he was trying to get his friends to go buy off the alleged victims in the other armed robbery, tell those -- tell them to drop the charges, give them whatever, you know, I can't remember. I think he said a couple bands or -- and they were like where -- man, where did you get that money, kind of laughing, and they were passing the phone back and forth, and he just bragged that he had robbed, and been in -- I think called it a lick.

He'd been involved in a lick where 60 bands, for 60 bands, which just so happened to be it was $60,000 taken in the armed robbery where the eye witness said it was Shawn. And so, you know, obviously I was prepared at trial, before he made the decision to plead based on a plea offer we received, to drop the other armed robberies, and, and two gun charges.

I felt that there was a great possibility we were going to lose. But I, I did show up to Court that day knowing Judge Barber, Judge Barber was not gonna continue that case, and there was no way he was gonna let me off the case. And one other thing I wanted to, wanted to correct was that at no time did Shawn ask me for any money back. I actually offered to get off his case. I -- and it's in my notes. I offered to get off his case, and he told me quote, as I

documented, "he didn't want me to get off his case."
Q When did you offer to drop it?
A I mean it was at one point where he was just -- you know, every time I'd go down he'd want me to file some type of frivolous motion that had no bearing on the case. He had been doing some type of legal research, and he believed that I needed to do this or do that, and I just told him that those didn't -- weren't -- you know, at one point, he was upset with the prosecutor, and he wanted to file some type of prosecutorial misconduct, which I didn't believe existed, things like that, and let me see. I've got -- I visited him so much. I have to go through these notes to find exactly when I --
Q Well, let's speak broadly.
Was it early in representation, near the time of trial, or somewhere in-between?
A I mean it, it was leading up to the trial. I can't remember the exact date, but it was basically -- the, the whole crux of it was listen, I don't have a magic wand. I can't make Larry Wedekind reduce these down to strong armed robbery to make you eligible. I can't. Nobody can. I can't do it. No magic wand. And, you know, he was upset about that. And I just said listen, man, like, you know, and I was always going down to see him repeatedly, but --.
Q Did you ever tell Mr. Bethea that you would file a

motion for reconsideration after his plea?

A Here's, here's how -- what, what is up with that. He, through the proffer agreement, it was said that if he provided substantial assistance, and this is documented in my file in time stamped emails, that if the -- somebody was arrested on that murder, which by his statement he was present at, the murder/rape, if the person was charged and Shawn continued to cooperate, and stood ready to testify, that they would talk about possibly doing some type of a reduction in sentence, and I told Shawn that I -- if that ever occurred, I would -- if he had to testify, that I would still stay on his case and show up, and be in the courtroom if he was testifying at that murder trial. And that, once he completed that, I would stay on to talk to Mr. Wedekind and law enforcement to say hey, Shawn did all this, let's consider doing a motion to reconsider his sentence cause you can do anything by consent.

That's something, when I was a prosecutor, Barney Giese told me. He said you can do anything by consent. And so that's the same way it works in the Federal system. If you provide substantial assistance, and someone gets charged, and you stand ready to testify, and you go through with it, at that point they can say, you know what, and there was never gonna be a promise on the front end because they don't want him to testify to say hey, I was promised.

The whole point was that, if somebody was charged and he stood ready to testify, that -- and once that ran its course, we could talk about what that cooperation would do for him. But even still, without that, he received a plea offer. He said he didn't receive any plea offers. He received a plea offer -- the day we came and showed up for Court, I came in with a big box cause I didn't know what he was gonna do, and, you know, that -- the, the chief of Sheriff -- I'm going off memory. This was years -- four -- over four years ago now I think.

The chief of the Sheriff's Department, who was involved in looking into this cold case, this terrible, heinous, cold case murder, and was involved in the interviews of Shawn, came and spoke on his behalf at the plea, and said, because I felt Larry Wedekind was gonna come in and, and make him sound horrible with his record and all these other things, and the chief, one of the top people in the Richland County Sheriff's Department, came in here and asked Judge Barber to give him to the lower end of the 10 to 20, which is pretty significant. And I felt that, had that not taken place, he probably would of gotten closer to the 20, if not the 20, in my opinion, but --

Q You've listened---

A -- you know, it's, it's just -- it's really -- you know, I've never been PCR'd before, and it's just upsetting

because I would have thought that if I was PCR'd I'd sit here and be like man, the judge, we didn't -- couldn't see it. The judge really dropped the hammer on us unexpectedly. But it's weird to sit here and be like I actually did, based on what I had to deal with, and work with, and what the prosecutor was coming from, send emails about life without parole notices, to think that I got him 14 years, credit for a questionable 2.9 that could of potentially -- been objected to, I think he's gonna be parole eligible within -- I mean inside of 10 years he's gonna be parole eligible.

I mean he's a young man. He's probably gonna have the opportunity to get out in probably his mid to early thirties. To think he could of spent his whole life behind bars, and that I'm sitting here, I feel like it's weird to be PCR'd for the first time in a case that I truly believe I did a phenomenal job for him, and, quite honestly, saved his life.

Q A moment ago you listed off a number of ifs, a number of conditions.

Did he ever testify at any subsequent trial?

A No, because no one was ever charged. But it was made clear to him -- again, just like I can't make Larry Wedekind make an offer, I can't -- I'm not law enforcement. I can't have someone be charged. It was if he's charged.

But even though he wasn't charged -- even though the

person wasn't charged, the chief of the Sheriff's Department came in and said that he was cooperating in a cold case murder, and because of that, we would ask for the lower end of the spectrum, which was huge for him, which was a huge benefit that that cooperation under a proffer that protected him from being prosecuted for that was a huge benefit.

MR. JAMES: Beg a moment of the Court's indulgence.

THE COURT: Yes, sir.

(Pause.)

A But I will say this. I mean at -- I met with Shawn a lot, and that's why it's shocking to know that I made special arrangements to listen to the tapes, to watch the tape, to go over the evidence, all the time. I was down there at night. I was always going down there, which I have documented, and to hear him say that I never went over discovery with him, I mean that's the first one that I'm just like that's absolutely not true. It's just not true, and, you know -- but I will say this. I never once felt he was -- you know, for him to have the past -- I mean I saw his record. I knew what law enforcements was saying about him. I knew about this other situation that was a scary -- was -- honestly it was a, a case that was disturbing to a lot of people in the community that this lady had gone missed -- missing, been raped. I think she was killed. Her car was burned.

I mean given that background, having gotten to know Shawn like I did, I never once felt physically threatened by him. He never raised his voice to me. But it is hurtful to know that I truly, in my heart, don't believe anyone would of worked as hard as I did for him. No stone went unturned for him. No stone. But, as I told him, I, I can't make law enforcement charge somebody. I can't make law enforcement give me an offer that they're not willing to give. But everything was always his decision.

Q These are my last two questions, Mr. Rose, and they're very to the point.

You explained to Mr. Bethea that he had a right to a jury trial, right?

A Yes, I mean that was, that was obvious. I mean we've showed up for a jury trial date.

Q And that you---

A I mean this was, this was not a plea date. This was a day of trial.

Q And that he was going to confront his witnesses if he went to trial?

A Absolutely.

Q And that he had the right to testify at that trial if he so chose to?

A Absolutely.

Q And that he had the right to remain silent?

A Absolutely.
MR. JAMES: I beg a moment of the Court's indulgence.
THE COURT: Yes, sir.
(Pause.)
A And another thing that probably didn't help -- I mean he asked me about spelling Mr. Wedekind's name. Larry Wedekind's right there, not along after, left the Attorney General's Office. He ran for solicitor of Lexington County. I think he's in private practice now, and it's interesting cause, when I run into him -- that was really the only case we ever had together. I'd always known that he was known to be extremely difficult to deal with at -- from -- as a prosecutor. But I mean he actually brings up that I did a really good job for Shawn.
Q Did you ever tell your client that there was a possibility that he could plead and be sentenced effectively to time served?
A No, that's factually impossible.
MR. JAMES: I have no further questions.
THE COURT: All right. Let's take a very short break before we --.
MR. THOMAS: Okay. Thank you, Your Honor.
THE COURT: -- conduct cross-examination.
(WHEREUPON, a short recess was taken at this time.)
MR. THOMAS: Your Honor?

THE COURT: All right. Mr. Thomas.
MR. THOMAS: May it please Court.
May we approach very briefly?
THE COURT: Yes, sir.
MR. THOMAS: Okay.
(WHEREUPON, a bench conference was held at this time.)

CROSS-EXAMINATION

BY MR. THOMAS:

Q Mr. Rose, good afternoon.
A Hey, sir.
Q Yes, sir. I've just got a few questions for you. I think we're all very familiar with Larry Wedekind, and his file of prosecution.
Very aggressive?
A Yes, that was---
Q Yes.
A ---his reputation.
Q Very aggressive and is not shy from attempting to LWOP individuals?
A I mean I just -- all I can relay, I don't know -- have any information about him LWOP'ing other people. I just know he sent me an email saying---
Q Okay.
A ---he was gonna do it in this case.
Q All right. Now, with the LWOP, did you, did you take

the time to determine whether or not that was actually a possibility?

I mean did he have -- was he able to enhance him prior?

A No, he was saying he was gonna try the best armed robbery first.

Q Right.

A And that if -- it's in the e -- it's been, it's been a long time. If he obtained a conviction to the one -- to an armed robbery, he was gonna seek LWOP on the others.

Q So, he was gonna have to try him one by one, get two most serious crimes --

A Yes.

Q -- and try to seek some sort of---

A That's---

Q ---LWOP?

A That's what he relayed to me.

Q Okay.

A And it's, and it's in an email he sent.

Q All right. So, it was not an immanent possibility. It was just a possibility---

A I can't---

Q ---if he was successful?

A I can't re -- it's been years ago. I think he sent an email -- it's in the file that -- I, I gave you everything.

Q Okay.

A But I just -- I think -- if I'm -- as I recollect, he was saying, in the email, and I'm going off memory, that that was his intent.
Q Okay. All right.
A That it wasn't like I'm gonna think about this. It was I'm going to do this because of his past and I'm -- yeah.
Q Okay.
A That's my recollection, but the email was in the file.
Q But that possibility would, of course, have to go into the weight of whether or not you would make a recommendation to your client for a plea or trial?
I mean cause you're -- you're testifying that LWOP was a large concern for you.
A I didn't -- I just said -- I said that that was a possibility.
Q Okay.
A Yeah, I said that was a possibility. But, at the end of the day, we have to look at the evidence.
Q Right.
A There's a statement on a jailhouse call, and there was an eye witness that was gonna come and point out Shawn, and even---
Q When was that?
Who was the eye witness?
I don't remember that. I've looked at the file.

A I believe it was Mr. Ballentine that was gonna come in and testify, and he had ID'd Shawn is my understanding.
Q But---
A But I -- again, this was 2015.
Q Okay.
A This has been -- it's been a while.
Q Cause in my looking at the, the file, and just the information that I had, it appeared to me that the identification by Mr. Ballentine was weak---
A I don't---
Q ---in regards to the -- cause in that---
A I can't---
Q ---photo cause you couldn't really tell who was who on the photos?
A I can't recall.
Q Okay. All right. Now, you started your testimony by your conversation with Larry, and Larry saying you are -- you're dealing with a really bad dude.
A More or less that's what he said, yeah.
Q Okay. And you're dealing with someone who went out and killed this lady.
A I don't know that he, he said it like that. I mean I think he, he said he was involved in it---
Q Okay.
A ---with it, the cold case murder.

Q Did it give you concern at the time about the safety of representing your client, your safety?
A Yeah, it actually did.
Q Okay.
A But as I said, he never -- he was always nice and respectfully, and that was honestly something I was kind of blindsided by---
Q Yeah.
A ---cause I was unaware of that situation, and I -- but when they told me which one it was, I remember from the media reports about---
Q Cause, at the end of your testimony---
A ---about it, but---
Q ---you did come back around and you said that you were not fearful of him, and that he was always nothing but nice to you. That was kind of my perception of it.
A No, that was after my interactions with him.
Q After your interactions?
A Yeah.
Q Okay.
A After my interactions, he never was -- he never raised his voice. But with his criminal history and everything and, you know, I -- what I said was throughout my, my representation -- the concern was initially. But throughout my representation, I never felt threatened. When we went

over the discovery and watched the tapes --
Q Yeah.
A -- I don't remember him even being handcuffed. We were together in a room by ourselves like in one of those classrooms --
Q Yes, sir.
A -- where we watched the tape, went over the phone call. They said there was a confession. Even though he said we never went over discovery, we had been -- we did and I never once felt threatened in any way.
Q Okay. Did you believe him to be some high ranking gang member?
A I didn't really. I was just communicating what I was told. I didn't---
Q What you were told by Larry?
A Yes.
Q Briefly---
A Yes.
Q Okay. All right.
A I never really broached that subject with him cause --.
Q And I didn't really understand, and I've got a copy of it, and I've read the proffer agreement. Mr. Bethea was never, and still as of today, has never been charged with this murder.
Is that right?

A Yeah, that's correct.
Q Okay.
A No one has --
Q So---
A -- which is -- which is why there was never any possibility of doing a motion to reconsider at any level because law enforcement apparently deemed there was no substantial assistance.
Q Okay. But the---
A Yeah.
Q To me, the proffer agreement, and that whole thing kind of is different than what you said that Larry told you, was that Shawn Bethea's a bad dude. He, he, he killed this woman, did these horrible things to her, and this horrible crime.
A I don't -- I don't know -- again, I'm going off memory. I don't remember him phrasing anything like that. Just he was---
Q Okay.
A ---involved. Not that he---
Q Okay.
A ---actually killed. I don't think they believed that he was the one. He was just present.
Q And, and that fits more with the proffer agreement would be that they thought he had knowledge of it.

A Yes.
Q Okay.
A Yes. And per his statement he didn't.
Q All right. And according to the proffer agreement, from what your testimony is, he could have confessed to that, to that crime and have not been prosecuted?
A No. Anything -- as I said -- as -- anything he tells law enforcement that they don't know or anything in his statement couldn't be used as evidence against him. They could of used other evidence to charge him.
Q Right.
A But if he says something that they don't know, his statements, as long as he was never polygraphed and failed the polygraph, and deemed to be untruthful, would never come in as evidence against him. Not that he wouldn't ever be charged.
Q And you assisted him basically in, in attempting to offer any, any information that he may of found?
A Under the proffer agreement --
Q Yes, sir.
A -- and with his agreement to do so, yes.
Q Okay. And you felt like that that was a, a good avenue to try to help him with these armed robbery charges?
A Well, I mean essentially law enforcement had said they would go to bat for him to some degree if it rose to the

level of substantial assistance.
Q All right.
A The same way it would work in the Federal system.
Q Yeah.
A And so, with his willingness to do so, which he said he was willing to do so, we pursued that avenue of doing the proffer agreement, and, and even though no one was charged, it did prove to be fruitful --
Q Okay.
A -- because we had three armed robberies dropped, two gun charges dropped, and the chief of the Sheriff's Department asking for the lower end of the range.
Q Okay.
A So, even without the charges, it was fruitful. But, but it was clear that if and when somebody was to be charged, if that happened, and he stood ready to continue cooperating and testify, that they would come back and analyze his situation. But that -- but that was only if somebody was ever charged --
Q Okay.
A -- which is similar to the same way the federal system works.
Q All right. And, and that was kind of the other thing that, that I didn't really understand, and I understand your statement about you could do anything as long as somebody

doesn't complain, but---
A I said -- I said you can -- I didn't say it that way. I said with -- by consent.
Q By, by consent. Exactly.
A If law enforcement came in and said hey, he solved this heinous murder/rape, and he testified, and this terrible person's -- this, this lady's -- the single mother's the person who was raped, and shot her, and burned her car, has been brought to justice, and this family can now sleep at night, if he went through that entire process, they could come in and say judge, by consent, we're gonna do X, Y, Z. That's -- and that's legally factual.
Q But we don't have any kind of situation in our State Court akin to the Federal Court where you can come back and do some sort of deviation of the sentencing?
A You can consent to modifying a sentence. You could consent to basically---
Q How does a Court have jurisdiction to do that?
That's always been my question is that, after the 10 days, if you don't file the motion for reconsideration, the Court loses the jurisdiction to do anything on the, on the case.
A It's -- it was my understanding and experience that, by and through consent, you can do anything.
Q Okay. All right.

A But it never came into play anyway cause no one was ever charged, which was clear that someone had to be charged. We're not here with someone being charged, he's testified, and now they're -- nothing's happening.
Q Right.
A No one was ever charged, but --.
Q But your, your letter that you had signed, and, and sent to my client says, in number two, motion to reconsider the sentencing and---
A That---
Q ---that was never possible?
A What that -- that was done -- that was only to be filed if and when somebody was charged. I told him that I would stay on for him, that if he had -- if someone was charged, and he needed to come to Court and testify, that I would be there to help walk him -- I wasn't just gonna abandon him and say see you later because they had gone through this process of, of, of taking statements from him, and his concern was well, I won't have an attorney then, and I said you know what? I'm not gonna do that by you.
If that -- if and when someone's charged and it comes to a point that you have to testify, I'll be there to sit in the courtroom while you testify as your lawyer, and after you finish your cooperation, I'm willing to go to law enforcement and say, look, he's done all this. He's brought

this, this person, helped bring this person to justice. Now, what can we do, by consent, to reconsider where he's at.

Q All right.

A But that never came to play because no one was ever charged.

Q So, theoretically, that could still happen --

A If someone was to be charged---

Q -- under that proffer agreement?

A Yeah.

Q Yeah.

A I mean I would say, at this point in time, I mean I don't know that I would feel comfortable continuing to represent him at any level.

Q Right. I understand that.

A But if someone was charged, and he was called to testify, I would assume so.

Q And, and this is the last question on that point, and I apologize for continuing to ask.

Wouldn't it have been prudent to have filed the motion for reconsideration to preserve the Court's jurisdiction of that issue prior to the expiration of the 10 days?

A No, because we were gonna do it -- if law enforcement -- there was never promises from law enforcement other than we will -- cause I don't -- in the Federal

system, they don't want somebody to testify and say I've been promised X, Y, Z when they're getting cross-examined by a defense attorney as to why they gave a statement.

So, there never was a promise. So, there was no reason, reason to reconsider a sentence, and that letter was -- that thing was something that I gave to him to -- so that he knew that I wasn't going to abandon him if and when someone was to be charged.

Q Okay. But, but it is true this letter was given to him prior to entering into the plea?

A I don't remember the exact time that I gave that to him, but it was---

Q Okay.

A ---on the plea date because---

Q So, so---

A ---again, we showed up ready for trial, and it was his decision to take the plea offer to have three armed robberies dropped, two gun charges, yeah.

Q Okay.

A So, I can't remember the exact time. That was, you know---

Q Yes, sir.

A ---it's been years. But, honestly, I went above and beyond, and that was part of me trying to leave no stone unturned to try to help him.

Q Did you ever convey to Mr. Bethea any idea or your thoughts about what kind of time range he was looking at if he cooperated with this ongoing murder investigation?
A I, I told him that obviously there was gonna be no guarantees.
Q Uh-huh. (Affirmative).
A But if someone was charged, and he continued to cooperate, I believe, by and through consent, that law enforcement would do something to help him.
Q Did he ask you or did you ever tell him what you thought that help would be?
Five years?
A No, I never gave a number because I couldn't.
Q Okay.
A I couldn't. I mean I didn't know if someone was gonna be charged, and I made it clear that someone had to be charged for that to happen.
Q Do you remember if he ever asked you how much time, a number?
A He, he -- you know, I'm going off recollection. He was always adamant about something under 10, which I told him was factually impossible unless Larry Wedekind reduced it or we got a not guilty verdict on this armed robbery, and then came back and got not guilty verdicts on the other armed robberies. So, basically -- absent -- you know, that's my

recollection. I mean it's been four and a half years now. But he was always adamant about that, and I pursued that for him. I worked very, very hard for him.

Q And Larry had told you that, that they thought that he was a ranking -- high ranking member of some sort of gang?

A Something to that effect. That was like -- cause -- you know, when I get hired on a case, you know before I, I -- I don't want to just file something and not -- part of what I try to do is communicate to a prosecutor hey, and he had kind of been through the process. I don't recall -- cause I wasn't involved. He may of had a Public Defender before he fired Victor Lee. But Larry felt like he had been through this process, and he was ready to move forward with the case. And, as I recall, there was, you know, every time it came time to, to move the case or go to trial or whatever, Shawn had an issue with his, his representation --

Q Okay.

A -- who I was representing him. But as I recall, I called to say listen, I'm going to be filing a motion of discovery to get involved. I'd like to come by and talk with you, and that's when he, he said listen, I just want you to know this is who I think and believe -- and -- well, this, this is who I know Shawn Bethea is.

Q Yes, sir.

Now, I think one last question. You said that, towards

the end of your testimony, you said he's parole eligible, and you thought that he'd do about 10 years to be eligible for parole.

A I can't, I can't recall. What I'm saying is he got 14 years. He got credit for three.

Q Right.

A So, at 85 -- well, it's 85 percent of 14, plus the three. What -- you take where he's at now with the time served, and just calculate 85 percent on the armed -- of the 14. But what I'm saying is he could of gotten -- we walked into the courtroom that day, and he had 125 years of total time we were facing.

Q Okay. So --.

A And we did get him the three years -- 2.9, whatever it was, time served, which was a huge benefit.

Q I'm a little bit confused.

Are you talking about an actual parole hearing?

A No, I was -- you know, I'm going off of memory. This isn't -- what I'm saying is it's my understanding, on an armed robbery, you do 85 percent of the time, which is something I had extensive conversations with Shawn about and he knew that. What I'm saying is I don't know when his parole eligibility is. But given the amount of time that he was facing, he still has the opportunity to, to live a long life and get out as a young man.

Q So you're talking about community service or---
A No.
Q ---community supervision---
A I'm---
Q ---or as---
A I'm saying from the time that he is no longer incarcerated --
Q Right.
A -- that he can still get out and be a young man in his thirties --
Q Okay.
A -- and I think that's based on when I first got involved in the case. I mean Larry Wedekind didn't want Shawn Bethea to ever see the light of day again, and for me to have been his attorney and come into this difficult situation where other attorneys had had him at trial, and, and all these things were going off, and everything over here, and his prior record, for me to have him at a place where he's gonna have a chance to get out and be a free man in his, his early thirties, given what we were dealing with, is a good job.

MR. THOMAS: Your Honor, if I can beg the Court's indulgence just one second?

THE COURT: Sure.

(Pause.)

MR. THOMAS: Your Honor, I have no further questions.
A And I, and I do want to say that I don't -- I'm sorry, Mr. Thomas.
Q No, no. That's all right.
A I don't wish Shawn any bad will at all. Honestly, our conversations were cordial. He never was combative or, you know, it is -- it's hurtful to know how hard I worked for him, and to think that -- I don't, I don't know of many attorneys that would of done all I did for him, and it's hurtful to have him say some of the things that he said today knowing that I know they're not true.

But I don't wish him any ill will, and it -- and as I said earlier, I'm sorry but it's weird to be sitting here when I truly believe that I saved his life with my representation. But all decisions that he made were his decisions. Judge Barber, I -- nobody tells Judge Barber what to do, and we showed up that day, and this case had already been continued at trial. Judge Barber was moving this case.

There was -- Seth Rose can't order a continuance. Judge Barber made it clear we're going forward. And so, yes, as being a prepared attorney, I showed up ready to go because Shawn sometimes -- one time I met with him, and he was here, and the other time I mean he's there. And so I didn't know what, what I was gonna show up that day and what

was gonna happen. Nobody did. Larry Wedekind had his witnesses present because the trial could be going forward.

But it's weird for me to sit here and know in my heart that I did an excellent job for him and worked extremely hard, and hear some of the things that said -- were said today that just are not true.

MR. THOMAS: Thank you.

THE COURT: Anything else, Mr. James?

MR. JAMES: No redirect from the State.

THE COURT: All right. Step down, Mr. Rose. Thank you, sir.

MR. THOMAS: Your Honor, if it please the Court, we would have a very short rebuttal witness.

THE COURT: Is that all your witnesses, Mr. James?

MR. JAMES: That's all from the State, Your Honor.

THE COURT: Yes, sir, Mr. Thomas.

MR. THOMAS: Okay. Thank you, Your Honor.

Your Honor, please the Court.

We'd call our client to the stand.

MR. JAMES: Your Honor, may the State's witness be excused?

THE COURT: Any objection, Mr. Thomas?

MR. THOMAS: No objection, Your Honor.

THE COURT: You may be excused, sir. Thank you.

All right. Mr. Bethea, you're still under oath. Have

a seat in the witness chair.

SHAWN BETHEA, having been previously sworn, testified as follows:

MR. THOMAS: Please the Court?

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. THOMAS:

Q Mr. Bethea, you were never charged for the murder charge, were you?

A No, sir.

Q Okay. And you heard testimony that you were potentially a high ranking gang member?

A Yes, sir.

Q Is that true?

A No, sir.

Q Do you have any gang tattoos?

A No, sir.

Q Corrections screens individuals for a gang membership?

A No, sir.

Q No, corrections.

They, they, they try to identify gang members from tattoos?

A Oh, yes, sir.

Q Okay. Have you ever been classified as a gang member---

A No, sir.
Q ---for corrections?
Okay. And did Mr. Rose ever tell you that you were being considered as the perpetrator of this murder, murder charge, that you did the murder?
A No, sir.
Q Okay. Now, let me ask you.
The testimony about the, the ATM, the robbery, there -- did you ever confess to that?
A No, sir.
Q Did you ever confess to Mr. Rose about that?
A No, sir, not at all.
Q Okay. And did -- was there any kind of -- he said that there was an eye witness identification.
Were you aware of any eye witness identification?
A No, sir, as far as my knowledge, it wasn't no eye witness, sir. The -- it was only one statement in my case, and that was from the victim, Ballentine, and he -- the only description he gave -- he say he couldn't, he couldn't pick -- we -- it wasn't no photo lineup in my case at all. No photo lineup. He said he couldn't identify the person that robbed him because the person had on the mask and it was dark. He couldn't.
So, I don't see how that he could of pointed anybody out if we -- if I was to go to trial.

Q Okay. And Mr. Rose testified that there was this thing about some sort of recorded conversation from the jail.
A Yes, sir, it was a recorded conversation. But it, it was a -- in, in the conversation, it was -- I never once said that I robbed a bank. I never once said that I was there at the bank. I never once said anything that he said, and, if he had the tape, he could of played it so everybody could hear.
Q So, did you consider that to be crucial, and, and that it was gonna convict you?
A Yes, sir.
Q No. I apologize. That was kind of an odd question.
So, this -- the statement, the recorded statement, did it prove that you were guilty of this crime?
A Oh, no, sir.
Q Okay. Okay. And was there any mention about a robbery in that conversation?
A No, sir, it was, it was just a, a friend saying that he heard that somebody had, had took $60,000. But he never said where it come from, and I pretty much just confirmed what he said that I heard the same thing.
Q Okay.
A That was all that was said.
Q It wasn't, it wasn't you admitting to the $60,000 robbery?

A No, sir, I never said that I was there, that I robbed anything, or nothing, sir. I just said that I heard the same thing that he told me he heard.
Q All right. And you heard Mr. Rose testify that he never told you what to say.
Is that correct?
A No, that's not correct, sir. Seth Rose told me everything to say, and -- yeah, Seth Rose told me everything to say.
Q Okay. Did Mr. Rose---
A And so he, he, he -- and, for the record, he was, he was just saying that -- he was just saying that the conversations me and him have, that -- the case that I actually was pleded (sic) to that it wasn't the hands of one the hands of all, he said that that was for the other case. But in, in my transcripts that we have today right now, it clearly shows Seth Rose telling the judge that we, he said we, he didn't say me, he didn't say him, he say we only pleading guilty under the hands of one the hands of all. But he just sat here and told everybody in this courtroom that he -- that was -- that he didn't say that, that that was for the other case.
Q Okay. And did he ever offer to give you your money back?
A No, sir, not at all. I asked him for my money back.

Once he told me that, that, that, that I couldn't get the plea that I was getting, and he say he stepped outside the -- and try to get a continuance from Judge Barber, but I couldn't, and I tried to get a -- some of my money back so I could get another lawyer, but he said I couldn't.

He -- matter of fact, I think the only thing he said I could get was like a thousand dollars. I gave him -- Seth Rose had got $14,000 cash, and he say the only thing I could be able to get back was like a thousand dollars of that, and at that time when he told me that, it wasn't enough money for me to get another lawyer. So, I tried to stroke his ego by telling him how good of a lawyer I thought he was so I could get him to represent me at trial, but it didn't work.

Q Okay. Now, you heard him testify that he stayed in touch with your family, I guess stayed in touch with you.

Is that -- is that truthful?

A Sir?

Q You heard Mr. Rose testify that he said that he stayed, during this time of representation, he stayed in touch with your family, kept them advised as to what was going on.

A That, that, that wasn't true at all. My -- actually I had, I had people calling him to see about my motion to consider sentencing cause, after my 10 days was up, I, I was trying to call Seth Rose. I had my family call Seth Rose, and -- but he, he was just telling me that he got me. He

was saying that he got me or that -- just trust him and, you know, stuff in that nature, but he---

Q Okay.

A He never did brought me back up for my motion to reconsider sentencing, and not once have he told me that the only way I get my motion to reconsider sentencing if somebody was to get charged. Not once did he say that.

That motion to reconsider sentencing came in when I told him I did not want to take that 10 to 20 plea. I was not comfortable taking the 10 to 20 plea for a crime that I didn't commit, and that's when that motion to reconsider sentencing came in. He told me he'll bring me back up in front of a different judge. That has nothing to do with the cold case, and clearly in the contract that he says -- he, he, he said three. He, he said three motions.

And if the motion to reconsider sentencing was for the cold case, how he said, then you -- why did he not put them together?

Why did he separated (sic) them?

MR. THOMAS: I have no further questions, Your Honor.

THE COURT: Thank you, sir.

MR. THOMAS: Yes, sir.

THE COURT: Mr. James.

MR. JAMES: No questions, Your Honor.

THE COURT: All right. You can step down, Mr. Bethea.

MR. THOMAS: Nothing further from the Applicant, Your Honor.

THE COURT: Okay.

MR. JAMES: Nothing further from the State, Your Honor.

THE COURT: All right. Gentlemen, I'm gonna take this matter under advisement. I'll let you hear from me in a day---

MR. THOMAS: Okay.

THE COURT: ---or two.

MR. THOMAS: Yes, sir. Thank you, Your Honor.

THE COURT: Okay.

MR. JAMES: Thank you, Your Honor.

THE COURT: All right. Thank you.

All right.

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

CERTIFICATE

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 20th day of August, 2019.

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

July 28th, 2020

Pamela E. Green

PAMELA E. GREEN, Court Reporter

VIA HAND DELIVERY TO SHAWN BETHEA 6-8-15

To Whom It May Concern:

This document is to serve as a record/receipt that I have agreed to extend my legal representation for Shawn Bethea to include any future:

1. *YOA revocation proceeding*
2. *Motion to reconsider sentencing*
3. *Legal Counsel as relates to a RCSD Pending Murder Investigation.*

My representation will carry on for the three (3) aforementioned reasons only and will be at no additional charge to Mr. Bethea as a professional courtesy.

I WILL NOT AND HAVE NOT AGREED TO REPRESENT MR. BETHEA ON ANY FUTURE CRIMINAL OR CIVIL CHARGES IF BROUGHT BY LAW ENFORCEMENT OR ANY OTHER ENTITY.

Most sincerely,

Seth C. Rose, Esq.

Seth C. Rose, Esq. 6-8-15

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Shawn Bethea, S.C.D.C. No. 338877,	)	Case No.: 2016-CP-40-03525
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

RICHLAND COUNTY FILED
2020 MAR 25 AM 9:34
JEANETTE W. McBRIDE C.C.P., G.S., & F.C.

This matter comes before the Court by way of an application for post-conviction relief filed by Shawn Bethea ("Applicant") on June 8, 2016. Respondent made its return on or about February 8, 2017. The Court convened an evidentiary hearing into the matter on August 20, 2019, at the Richland County Judicial Center in Columbia, South Carolina. Applicant was present at the hearing and represented by Tommy A. Thomas, Esq. Johnny Ellis James Jr., Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Seth C. Rose, Esq. ("Counsel"), and an associate of Applicant's, Jamie Moses, also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the South Carolina State Grand Jury Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the evidentiary hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the South Carolina State Grand Jury Clerk of Court. Applicant was indicted at

SCANNED

the July 2014 term of the South Carolina State Grand Jury for four counts of armed robbery, and two counts of possession of a weapon during the commission of a violent crime (2014-GS-47-00014). Seth C. Rose, Esq. represented Applicant. Lawrence G. Wedekind, Esq., of the South Carolina Attorney General's Office, prosecuted the case. On June 8, 2015, Applicant pled guilty to one count of armed robbery.[1] Consistent with the State's recommendation of a sentence of no more than twenty years, the Honorable James R. Barber, III sentenced Applicant to imprisonment for a term of fourteen years. Applicant did not appeal the plea or sentence.

Present Application

In his post-conviction relief application, as amended by filing on May 15, 2017, Applicant alleges by and through PCR counsel that he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel, for:
    a. "Failure to properly investigate the case."
    b. "Failure to use the fact that the victim identified a suspect that did not match the Applicant."
    c. "Failure to use the fact that Applicant was told that if he cooperated with a police investigation that he would receive a five (5) year sentence."
        i. "The Applicant cooperated with the police and accepted the plea offer of five (5) years. However, he received a fourteen (14) year sentence at sentencing."
        ii. "That the Applicant has witnesses to corroborate the fact of his cooperation."
        iii. "The Applicant plead under hand of one, hand of all accomplice liability and Co-Defendant's charges were dropped."
2. Involuntary guilty plea, in that:
    a. "The Applicant was told that if he entered into a plea before Judge Barber that a Post-Trial Motion would be filed and that he would receive the five (5) year deal before a different Judge."
    b. "That the Applicant was forced by counsel into a plea before Judge Barber. That it was not freely and voluntarily given."

[1] The remaining counts were dismissed as part of Applicant's plea.

Applicant requests relief as follows:

- "New Trial"

At the evidentiary hearing, Applicant proceeded forward on the allegations as set forth in the May 15, 2017, amendment.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Summation of Record and Credibility Findings

The Court notes the below portions of the record and the testimony presented as particularly relevant to the allegations presented and passes upon its credibility and probative weight as follows:

1. Plea Proceeding

Near the outset of the plea colloquy, the plea court confirmed that Applicant understood the potential sentence for each armed robbery charge was thirty years, and the potential sentence for each weapon charge was five years. (Tr. 4, ll. 13-23). Upon further inquiry, Applicant confirmed he understood he was entering a plea to a single count of armed robbery and that the remaining charges would be dismissed *nolle prosequi*. (Tr. 4-5). Applicant affirmed to the court that he had spoken with Counsel about the matter, told Counsel everything he knew about it, that Counsel had answered all of Applicant's questions and done everything he was asked to do, and that Applicant was satisfied with Counsel's services. (Tr. 5-6). Applicant further affirmed he

understood the State's recommendation was a sentencing cap of twenty years, and that the plea court was not bound by the recommendation. (Tr. 6, ll. 13-20).

After appraising Applicant of his various rights, the plea court inquired:

> Q. All right. Now, other than the state's willingness to dismiss a number of charges against you, and we've gone over those – unlawful possession of a weapon charge during the commission of a violent crime and three armed robberies – has the state or anyone else offered or promised you anything to get you to plead guilty?
>
> A. No, sir.
>
> Q. In addition, they are making a recommendation of a cap of twenty years. Have they promised you anything else to get you to plead guilty?
>
> A. No, sir.
>
> Q. Has anybody threatened you, coerced you, forced you, or pressured you into pleading guilty?
>
> A. No, sir.
>
> Q. You're pleading guilty freely and voluntarily?
>
> A. Yes, sir.
>
> Q. And you're pleading guilty because you are guilty?
>
> A. Yes, sir.

(Tr. 8-9). Applicant affirmed his answers were truthful and complete. (Tr. 10, ll. 18-19).

After the plea court read the indictment and elicited Applicant's "guilty" plea, the Assistant Attorney General further clarified that armed robbery would constitute a most serious conviction and bore a statutory minimum sentence of ten years. (Tr. 10-11). The prosecutor noted that there had been "tangential negotiations with the defense regarding an unsolved homicide case," but that there was "no deal that's any way, shape, form touching upon any charges that may come out of the homicide investigation." (Tr. 11-12). The plea court

confirmed Applicant understood the import of the "most serious" classification. (Tr. 12, ll. 12-24).

Counsel offered extensive and factually specific mitigation near the close of the plea proceeding. (Tr. 19-24). Counsel emphasized that there were other individuals charged with the robbery and asserted that Applicant "was not the individual that went across that parking lot with the weapon and robbed Mr. Ballentine. We are pleading guilty under the hand of one, hand of all." (Tr. 19, ll. 22-25). Counsel described Applicant as a lookout, and asserted that there were no eyewitnesses who could point Applicant out. (Tr. 19-20). Counsel discussed Applicant's unfortunate upbringing: no paternal presence, frequently absent mother, and an unguided life on the streets. (Tr. 21-22).

Counsel explained to the plea court that Applicant was "cooperating with the sheriff's department on an unsolved murder" and had given proffers as part of that unrelated investigation. (Tr. 22, ll. 17-23). Counsel framed Applicant's cooperation as sufficient to break open the case, and presented Deputy Chief David Wilson, of the Richland County Sheriff's Department. (Tr. 22-24). Wilson summarized the 2008 cold case, that Applicant was a cooperating witness, and testified "we would not oppose a sentence at the lower end of that ten to twenty-year range, but obviously that's up to Your Honor." (Tr. 24, ll. 12-25). After brief additional remarks by Lt. Vince Coggins, the plea court asked if Applicant had been helpful, to which Wilson replied in the affirmative and that he expected to bring charges within a month. (Tr. 25, ll. 1-18). The plea court inquired if Applicant understood that his continued cooperation was expected, to which Applicant answered that he understood. (Tr. 25, ll. 19-25).

Applicant directly addressed the plea court and echoed Counsel's statement that he was "pleading guilty under the hands of one, the hands of all[,]" and that he was not the man who had

held the gun, but rather had remained in the car. (Tr. 26, ll. 19-25). Applicant apologized to the victim. (Tr. 26-27). After an assertion of personal growth, the plea court noted the victim's presence in the courtroom, and Applicant more directly apologized to Olin Ballentine, who forgave him. (Tr. 27-28).

2. Evidentiary Hearing

At the evidentiary hearing, Applicant explained that he initially retained attorney Victor Li to represent him on the charges, but fired him because Li always wanted to talk about the cold case murder, which was not what Applicant hired him to do. Applicant testified he considered going to trial because he believed he was not guilty, but also asserted he never really went over discovery with Counsel and wasn't trying to prove his innocence. After reliving Li, Applicant hired Counsel, and enjoyed a good relationship with him initially—Counsel and Applicant shared productive conversations and Counsel would even come visit Applicant at night. Counsel told Applicant he would get him a deal.

Applicant claimed he did not actually know anything about the cold case murder until he talked to Counsel and that Counsel had told him everything he knew about the matter. Applicant testified he nonetheless spoke with law enforcement in an effort to get a better deal. Applicant testified that Counsel told him that if Applicant did as Counsel directed, Applicant would receive a sentence for time-served. Applicant explained that he had heard about the cold case but did not possess any personal knowledge about it, and that Counsel would tell him things about the case for Applicant to pick up on.

Applicant testified he never received any plea offers. Applicant explained that the evidence in the case had nothing to do with him, that he did not fit the description of the perpetrator, and that the State possessed no evidence to convict him. Applicant asserted he did

everything Counsel told him to do, but that a couple of days before trial Counsel informed him that the five-year plea offer was no longer available and that the State would only offer a sentence of between ten and twenty years. Applicant testified he rejected the ten-to-twenty offer and that he wished to take his chances at trial. Applicant claimed Counsel tricked him into cooperating with law enforcement and that Applicant never received any benefit. Applicant further claimed Counsel refused to represent him in any trial proceeding, and that if he proceeded to trial, Judge Barber would become angry and take it out on Applicant in sentencing. Applicant testified he only pled guilty because the case was one of "hand of one, hand of all," and that pleading was his only option.

Applicant asserted Counsel advised him that if he accepted the plea offer and entered a guilty plea before Judge Barber, that Counsel would file a motion and bring him back later for a better sentence. On the day of the plea, Counsel produced a letter establishing that he would continue to represent Applicant through any future "1. YOA revocation proceeding[,] 2. Motion to reconsider sentencing[,] 3. Legal Counsel as relates to a RCSD Pending Murder Investigation." (Applicant's Exhibit #1). Applicant accepted Counsel's letter as an assurance, and read it to mean that Counsel had already filed a motion to reconsider, and so he entered the guilty plea. Applicant testified no motion or appeal was filed and he was never brought back before another judge.

On cross-examination, Applicant acknowledged he met "a lot" with Counsel prior to the plea, and that communication with Counsel was good until the end. Applicant denied ever going over his discovery with Counsel, and asserted they only discussed the cold case. Nonetheless, Applicant recalled that communication was good, and that Counsel advised him not to worry about his charges, and that the State was not interested in the case. Applicant admitted he did not

tell Counsel what occurred on the night of the robbery and gave Counsel no leads or potential witnesses to follow up upon. Applicant asserted he knew his co-defendants could have fit the description of the perpetrator because he knew his co-defendants personally and had attended high school with them. Applicant knew the description of the perpetrators from his discovery.

Applicant testified Counsel said he was pushing for five years at their first meeting. Applicant subsequently learned he could only get the five years if he cooperated with the cold case. Applicant admitted he had been lying to law enforcement, and opined that law enforcement knew he was lying. Applicant acknowledged he knew the sentencing range was ten to twenty years going into his plea, but he did not believe he would actually be stuck with that sentence. Applicant claimed Counsel told him not to reveal the promise of a lesser sentence to the court, and so Applicant lied to Judge Barber. Applicant testified he was not happy with Counsel at the plea, but hoped that his plan would work. Counsel had told Applicant he would have been tried alongside his co-defendants and that he believed they would lose at trial. Applicant acknowledged he had been facing in excess of one-hundred-and-twenty years if he were convicted on all counts at trial, and that he ultimately received a fourteen year sentence.

On redirect examination, Applicant explained that he weighed more and was shorter than the description of the perpetrator that was given by the victim. Applicant reasserted his claim that Counsel refused to represent him at trial.

Jamie Moses, Applicant's then-girlfriend, also testified on Applicant's behalf. Moses testified she was not related to Applicant and had known nothing about Applicant's plea. Moses testified she talked to Counsel after the plea and that he told her he would have Applicant brought back to court in front of another judge. On cross-examination, Moses clarified that she and Applicant were no longer together.

Counsel testified that he represented Applicant on his charges. Counsel recalled that he received calls from a girlfriend, but not Moses, who he met once and who retained him on Applicant's behalf. Counsel explained he had practiced primarily criminal law since 2007. Counsel stated he took meticulous notes as the "writing was on the wall" at the outset of the representation, as Applicant openly admitted from the start that he had filed a grievance against another attorney. Counsel recalled he spoke to the Attorney General prosecuting the case, who expressed his belief that Applicant was a gang member, had been involved in a gang-rape and murder, and was a dangerous individual who would get no breaks.

Counsel recalled that the charges arose from two different robberies that wound up linked by some common evidence. Counsel explained that Applicant was alleged to have stolen $60,000 from an ATM, and that the State's case was supported primarily by one witness to the crime and recordings of Applicant's jail phone calls, in which Applicant attempted to bribe witnesses of the prior armed robbery with the proceeds he bragged of taking from the ATM. Counsel noted that Applicant robbed victims who knew him from high school. Counsel opined that Applicant would have only been satisfied if he received acquittals on all of his charges, and recalled telling Applicant that he could not force the Attorney General's Office to give offers. Counsel was concerned that Applicant would be tried twice—once for each of the armed robberies—and end up with a life-without-parole sentence, as the prosecution desired.

Counsel testified he received and shared with Applicant video recordings provided in discovery, as well as the recordings of the jail calls. Counsel asserted he and Applicant reviewed all of the evidence. Counsel recalled he managed to locate one of the victims from one of the robberies in the hope of testing his amenability to letting Applicant plead down to strong-arm robbery, but the victim was afraid of Applicant and was opposed. Counsel asserted he left no

stone unturned. Counsel recalled Applicant did give his version of events, and that he had remained in the car during the robbery of the ATM and the ATM attendant. Applicant provided Counsel with no leads or witnesses to investigate and no funds were provided for any private investigator.

Counsel testified it had been Applicant's decision to cooperate with respect to the cold case murder, and that Applicant understood there was no associated guarantee because of his history as a gang member. Counsel denied he ever told Applicant to lie, but to the contrary warned him against lying. Counsel additionally denied telling Applicant what to say to law enforcement, and noted that Applicant had already provided conflicting statements to law enforcement before Counsel was retained. Counsel never received any offer for Applicant to plead to any lesser offense. Counsel recalled that the State felt the case was a slam dunk, even though Applicant never said in the jail calls precisely when, where, or how he obtained the $60,000, only that he had stolen sixty bands. Counsel testified he had been prepared to proceed to trial before Applicant decided to plead guilty, but that there was a great possibility Applicant would be convicted. Applicant was upset with Counsel because he could not get the charges reduced, and because he would not file a series of frivolous motions Applicant had prepared, and so Counsel offered to withdraw from representation.

As to the question of filing a motion for reconsideration, Counsel explained that *if* Applicant provided substantial assistance to law enforcement, and *if* charges were brought based thereon, and *if* Applicant testified at the resulting trial, there could be a potential reduction in his sentence. Counsel cavalierly opined that anything could be achieved so long as there was consent between the parties. Counsel denied there was any promise of reconsideration on the

front end. No charges ever resulted from Applicant's cooperation and thus no trial ever came to pass in which Applicant could have testified.

Counsel testified Applicant received the ten-to-twenty offer the day of trial, and that Counsel managed to obtain the assistance of the Richland County Sheriff's Office for mitigation. Counsel opined that without the RCSO assistance in mitigation, Applicant would have received closer to a twenty year sentence. Counsel mused in frustration that he had always expected his first PCR would be the result of "getting hammered" in a difficult trial. Counsel denied he ever told Applicant he would receive an ultimate sentence of five years, and that such a sentence was impossible.

On cross-examination, Counsel explained that the prosecutor for the case was reported to him to be very aggressive, and keen to pursue LWOP cases and sentences. Counsel recalled that one of the victims was expected to identify Applicant if the case proceeded to trial. Counsel admitted he was initially concerned about his safety with Applicant, but that the feeling dissipated after dealing with Applicant for a while. Counsel never broached the subject of gang affiliation with Applicant. As to the cold case murder, Counsel explained that the State never went so far as to accuse Applicant of killing anybody, but merely that he was somehow involved. Law enforcement deemed Applicant's assistance to not be substantial, but Counsel noted that Applicant still got all but one of his armed robberies dropped and received the benefit of the recommended sentencing cap. Counsel testified he would have remained Applicant's attorney in the event that somebody was charged based on Applicant's assistance, and that Applicant had been concerned about the subject. Counsel noted that, theoretically, Applicant could still assist with the cold case. Counsel denied law enforcement ever promised any specific benefit or number, and testified that there was no basis to file any motion for reconsideration. Counsel

testified he wished Applicant no ill will, but was hurt by Applicant's testimony, and opined that he had saved Applicant's life.

Applicant testified again in rebuttal. Applicant denied he was ever charged for murder, denied he was a high ranking gang member, denied he had any gang tattoos, and asserted that SCDC had never classified him as a gang member. Applicant testified Counsel never told him he was suspected of being a perpetrator or participant in the cold case murder. Applicant denied he ever confessed to anything to Counsel. Applicant asserted there were no eyewitnesses to the robbery because the victim could not have identified the perpetrator, who was wearing a mask. Applicant denied he ever admitted to robbing the bank in the jail calls, denied the calls provided as Counsel described, and asserted the calls did not prove his guilt. Applicant testified he demanded his money back from Counsel, but Counsel only offered to return a small amount, so Applicant stroked Counsel's ego instead in order to ensure Counsel would stay on through trial.

3. Credibility and Weight

The Court finds that the present matter represents an appropriate circumstance to issue broad credibility findings as to the testimony of each of the witnesses at the evidentiary hearing, rather than attempt to parse out in detail which portions of each witness' testimony are credible and which portions are not.

The Court finds Applicant's testimony to not be credible in its entirety and affords it zero probative weight. While in many post-conviction relief actions less-than-credible witnesses can be said to be truthful in at least some respects or as to certain details, Applicant's testimony affords few such opportunities to give credit. Applicant freely and cavalierly admits to lying to law enforcement and to the plea court, and endeavors to pull Counsel into his morass of falsehoods in an obvious and self-serving effort to try and obtain an offer never made and force a

bargain to which no party has ever agreed. In his effort to do so, Applicant dissolves not only his own credibility before this Court, but potentially debases the viability of the cold case investigation that at one point sought to rely upon him. Applicant's pervasive dishonesty is to be condemned.

The Court finds the testimony provided by Jamie Moses is not credible or probative in light of its scant detail. The Court is without sufficient information to meaningfully compare the substance of Moses' testimony to anything else. Moses did not offer what it was she said to Counsel, or the conditions of their conversation so as to elicit Counsel's alleged answer. Without further detail, and in light of the facts and circumstances provided by the record as a whole, Moses' testimony does not materially address any of the allegations. The Court affords Moses' testimony no probative weight.

The Court finds the testimony provided by Counsel to be highly credible and affords it substantial probative weight. Counsel was thorough and forthright in each of his answers, and eagerly offered information beyond the narrower scope of the questions asked of him. Counsel's candor to the Court was palpable and informative.

B. Ineffective Assistance of Counsel & Involuntary Guilty Plea

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." Id. at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

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

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. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient

before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

1. Failure to Investigate

Applicant broadly alleges Counsel was ineffective in failing to adequately investigate his case. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information."

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the

alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant offers nothing that Counsel could have or should have investigated in furtherance of his defense. Counsel, on the other hand, demonstrated through his testimony a thorough command of the facts and circumstances of Applicant's charges, and credibly testified to fully reviewing the evidence against Applicant in its entirety. Applicant at no point offered any testimony to establish that *but for* Counsel's failure to investigate any particular thing, he would not have pled guilty but would have insisted upon going to trial. Applicant has produced no probative evidence towards meeting his burden as to either prong of Hill, and accordingly his demand for relief by way of this allegation is **DENIED**.

2. Failure to Utilize Identification

Applicant alleges Counsel was ineffective in failing to use "the fact that the victim identified a suspect that did not match the Applicant." Applicant repeatedly acknowledged both at the plea and the evidentiary hearing that he pled guilty under a theory of hand of one, hand of all, such that the victim's identification of his assailant was of limited import. Applicant indicated he was aware of the identification issue prior to choosing to plead guilty. Counsel utilized the argument that Applicant was only a lookout and was not the person who pointed a gun at the victim in mitigation. This Court finds Counsel did utilize the identification, and Applicant presents no evidence to show any relation between Counsel's use of the identification and his decision whether to plead guilty. Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of Hill, and his claim for relief by way of this allegation is **DENIED**.

3. Misadvice as to Expected Sentence, Coercion to Scheme

Applicant alleges Counsel was ineffective, and his guilty plea was not voluntarily entered, because Counsel misadvised him that he would be able to receive a sentence of five years in exchange for his plea and cooperation, and thereafter forced him to plead before Judge Barber as part of a scheme to effectuate as much. This allegation is resolved by the Court's credibility findings as set forth in Section II.A., above, and by the record: Applicant was never promised five years by Counsel. The State never offered Applicant the opportunity to plead down to any lesser offenses and never offered any recommendations other than the ten-to-twenty range that Applicant ultimately accepted. Applicant denied during the plea he was ever promised anything other than the sentence recommendation he ultimately received. Counsel advised Applicant correctly that if he provided substantial assistance, and if it resulted in charges against the perpetrators of the cold case murder, and if Applicant continued to cooperate through testimony, he could receive an undefined benefit. Counsel never advised Applicant of any scheme to resentence him before another judge, never advised Applicant to keep the scheme under wraps, and never advised Applicant to lie to the plea court. Counsel did not force Applicant to plead guilty before Judge Barber. Applicant did not plead guilty because he was swindled by false promises, but rather (1) because he was guilty, as he stated at the plea proceeding, and (2) because he wished to accept the State's offer to drop all but one of the charges and recommend a sentencing cap which would provide for his eventual release from custody during his prime years of life. Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of Hill, and his claim for relief by way of this allegation is **DENIED.**

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 12th **day of** March, **2020.**

ROGER E. HENDERSON
Presiding Judge
Fifth Judicial Circuit

Chesterfield, South Carolina

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

FILED

JUL 15 2014

JAMES R. PARKS
CLERK, STATE GRAND JURY

2014GS 47 14

CASE NO._____

VS.

SHAWN BETHEA,
JEFFREY CURRY (AKA JEFFREY CURRY-PRESCOTT),
KERRY TAYLOR,
MARVIN MCCOY,

DEFENDANTS.

INDICTMENT FOR CRIMINAL GANGS

Armed Robbery
S.C. Code Ann. §16-11-330(A)
(4 Counts)

Possession of a Weapon During the Commission of a Violent Crime
S.C. Code Ann. §16-23-490
(2 Counts)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina on July 15, 2014, the State Grand Jurors present upon their oath:

COUNT ONE
ARMED ROBBERY
S.C. Code Ann. §16-11-330(A)

That SHAWN BETHEA and JEFFREY CURRY (AKA JEFFREY CURRY-PRESCOTT) in Richland County on or about July 9, 2012, while armed with a deadly weapon, did commit a robbery. To wit: SHAWN BETHEA and JEFFREY CURRY (AKA JEFFREY CURRY-PRESCOTT) did feloniously take from the person or presence of Tyrone Golson at 3522 River Drive in Richland County, South Carolina, while armed with a firearm, the goods or monies of Tyrone Golson with intent to deprive the owner permanently of such property, in direct violation of Section 16-l l-330(A), of the South Carolina Code of Laws (1976) as amended. Such conduct arising out of, or involving, a criminal gang or a pattern of criminal gang activity pursuant to the

provisions of Section 14-7-1630(A)(2) of the South Carolina Code of Laws (1976), as amended.

COUNT TWO
ARMED ROBBERY
S.C. Code Ann. §16-11-330(A)

That SHAWN BETHEA and JEFFREY CURRY (AKA JEFFREY CURRY-PRESCOTT) in Richland County on or about July 9, 2012, while armed with a deadly weapon, did commit a robbery. To wit: SHAWN BETHEA and JEFFREY-CURRY did feloniously take from the person or presence of Willie Brunson at 3522 River Drive in Richland County, South Carolina, while armed with a firearm, the goods or monies of Willie Brunson with intent to deprive the owner permanently of such property, in direct violation of Section 16-l l-330(A), of the South Carolina Code of Laws (1976) as amended. Such conduct arising out of, or involving, a criminal gang or a pattern of criminal gang activity pursuant to the provisions of Section 14-7-1630(A)(2) of the South Carolina Code of Laws (1976), as amended.

COUNT THREE
ARMED ROBBERY
S.C. Code Ann. §16-11-330(A)

That SHAWN BETHEA and JEFFREY CURRY (AKA JEFFREY CURRY-PRESCOTT) in Richland County on or about July 9, 2012, while armed with a deadly weapon, did commit a robbery. To wit: SHAWN BETHEA and JEFFREY CURRY (AKA JEFFREY CURRY-PRESCOTT) did feloniously take from the person or presence of Brandon Glover at 3522 River Drive in Richland County, South Carolina, while armed with a firearm, the goods or monies of Brandon Glover with intent to

deprive the owner permanently of such property, in direct violation of Section 16-11-330(A), of the South Carolina Code of Laws (1976) as amended. Such conduct arising out of, or involving, a criminal gang or a pattern of criminal gang activity pursuant to the provisions of Section 14-7-1630(A)(2) of the South Carolina Code of Laws (1976), as amended.

COUNT FOUR
POSSESSION OF A WEAPON DURING THE COMMISSION OF AVIOLENT CRIME
S.C. Code Ann. §16-23-490

That SHAWN BETHEA and JEFFREY CURRY (AKA JEFFREY CURRY-PRESCOTT) did in Richland County, South Carolina, on or about July 9, 2012, possess or visibly display a firearm during the commission or attempted commission of a violent crime. To-wit: Armed Robbery in violation of Section 16-23-490 of the South Carolina Code of Laws (1976), as amended. Such conduct arising out of, or involving, a criminal gang or a pattern of criminal gang activity pursuant to the provisions of Section 14-7-1630(A)(2) of the South Carolina Code of Laws (1976), as amended.

COUNT FIVE
ARMED ROBBERY
S.C. Code Ann. §16-11-330(A)

That SHAWN BETHEA, KERRY TAYLOR, and MARVIN MCCOY did in Richland County on or about July 24, 2012, while armed with a deadly weapon, commit a robbery. To wit: SHAWN BETHEA, KERRY TAYLOR, and MARVIN MCCOY did feloniously take from the person or presence of Olin Ballentine at 330 Bush River ~~Broad River~~ Road in Richland County, South Carolina, while armed with a firearm and by means of force, violence, and/or intimidation, the goods or monies of Bank of America with intent to deprive the owner permanently of such property, in direct violation of Section 16-11-330(A), of the South Carolina Code of Laws (1976) as amended. Such conduct arising out of, or involving, a criminal gang or a pattern of criminal gang activity pursuant to the provisions of Section 14-7-1630(A)(2) of the South Carolina Code of Laws (1976) as amended.

COUNT SIX
POSSESSION OF A WEAPON DURING THE COMMISSION OF AVIOLENT CRIME
S.C. Code Ann. §16-23-490

That SHAWN BETHEA, KERRY TAYLOR, and MARVIN MCCOY did in Richland County, South Carolina, on or about July 24, 2012, possess or visibly display a firearm during the commission or attempted commission of a violent crime. To-wit, SHAWN BETHEA, KERRY TAYLOR, and MARVIN MCCOY did possess or visibly display a firearm during the commission of an Armed Robbery, in violation of Section 16-23-490 of the South Carolina Code of Laws (1976), as amended. Such conduct arising

out of, or involving, a criminal gang or a pattern of criminal gang activity pursuant to the provisions of Section 14-7-1630(A)(2) of the South Carolina Code of Laws (1976), as amended.

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

A True Bill

[redacted]

FOREMAN

Alan Wilson
ALAN WILSON (jru) by JM
ATTORNEY GENERAL

FILED

JUN 08 2015

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA
COUNTY OF Richland
STATE
Shaun VS. Bethea
AKA:
Race: B Sex: M Age:
DOB: [redacted] SS#: [redacted]
Address:
City, State, Zip:
DL# * SID#
*CDL Yes ☐ No ☑ CMV Yes ☐ No ☑ Hazmat Yes ☐ No ☑

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#: 2014 -GS- 47. 014 (count 5
A/W#: Direct Presentment
Date of Offense: 24 July 2012
S.C. Code §: 16-11-330(A)
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 § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: Cnb 4/20
Tamm Weddard 13984 — Defendant — Attorney for Defendant 74932
Assistant Attorney General SC Bar # SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,**
for a determinate term of 18 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____ ; provided that upon the service of _____ days/months/years and or payment
of $ _____ ; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
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: _____
☒ 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. (2 years, 4 months & 21 days)
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered** **PTUP** _____

Total: $ _____ plus 20% fee: _____ $ _____ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Recipient: _____ Substance Abuse Counseling ☐

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$ 150.00
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 8.40
TOTAL		$ 288.40

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly pmts. of $ _____ Beginning _____
$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: James R. Parks
Court Reporter: Elizabeth Harris

Presiding Judge: John F. Hayes
Judge Code: 2110
Sentence Date: 6/8/15

SCCA/217 (03/2011)