

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

DONETELLE D. CANNON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002067

APPENDIX

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INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED JANUARY 21, 2016	1
ORDER DISMISSING APPEAL FILED AUGUST 15, 2016	36
REMITTITUR DATED SEPTEMBER 1, 2016.....	38
APPLICATION FOR POST-CONVICTION RELIEF FILED NOVEMBER 28, 2016	39
RETURN.....	47
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 1, 2018.....	54
COURT’S EXHIBIT NO. 1 (AFFIDAVIT OF DEFENDANT FOR GUILTY PLEA).....	113
ORDER OF DISMISSAL FILED OCTOBER 18, 2018.....	121
INDICTMENT.....	134

1 State of South Carolina) Court of General Sessions
2 County of Florence) 2015-GS-21-00048

3
4 Donetelle D. Cannon)
5 vs.) Transcript of Record
6 State of South Carolina)
7

8 January 21st, 2016
9 Florence, South Carolina

10 ORIGINAL

11 BEFORE:

12 Honorable D. Craig Brown, Judge.

13 APPEARANCES:

14 John Jepertinger, Esq.
15 Attorney for the State

16 Vick Meetze, Esq.
17 Attorneys for the Defendant

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19

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21 Teresa J. F. Bautz, RPR
Official Court Reporter

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1 (The hearing commenced at approximately
2 10:38 a.m.)

3 THE COURT: Yes, sir.

4 MR. JEPERTINGER: May it please the Court,
5 standing in front of you is Donetelle Demetrius Cannon,
6 2015-48, pleading to two counts of attempted murder.
7 The accompanying count of possession of a weapon during
8 the commission of a violent crime will be dismissed
9 upon your acceptance of this plea.

10 Your Honor, in the courtroom today we have
11 investigator Ashley Anderson of the Florence Police
12 Department who investigated this case as well as the
13 victims Mr. Darwin Hamm, if you would please raise your
14 right hand, Mr. Hamm. And Mr. Jimmy King, if you
15 please raise your right hand as well. Mr. Cannon is
16 represented by Mr. Meetze.

17 THE COURT: Sir, if you'll raise your right
18 hand -- well, I'll remind you, you're still under oath.
19 I placed you under oath earlier today; do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 DONETELLE D. CANNON, after previously having been
23 duly sworn, testified as follows:

24 THE COURT: And you are Donetelle Demetrius
25 Cannon?

1 THE DEFENDANT: No, sir.

2 THE COURT: Sir?

3 THE DEFENDANT: My name is Dōnetelle.

4 THE COURT: You ever been treated for alcohol
5 abuse, drug abuse or mental illness?

6 THE DEFENDANT: No, sir.

7 THE COURT: Within the last 24 hours, have you
8 taken any medication, drugs or alcohol?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you aware of any physical,
11 emotional or nervous problem that would prevent you or
12 keep you from understanding what's going on here today?

13 THE DEFENDANT: No, sir.

14 THE COURT: The State indicates you're pleading
15 guilty to two counts of attempted murder; is that
16 correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand each of these
19 offenses carries up to 30 years?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: It appears that these pleas are being
22 entered into without recommendation or negotiation; is
23 that correct, Mr. Jepertinger?

24 MR. JEPERTINGER: Yes, sir.

25 THE COURT: Mr. Meetze?

1 MR. MEETZE: Yes, Your Honor.

2 THE COURT: Is that your understanding,
3 Mr. Cannon?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that I could give
6 you up to 60 years today in the penitentiary; do you
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that -- do you
10 understand that each of these offenses are also, under
11 South Carolina law, considered to be violent offenses?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Furthermore, you understand that each
16 of these offenses are considered under South Carolina
17 law to be most serious offenses; you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that upon release
20 from the Department of Corrections, if you are
21 convicted by plea or trial of another most serious
22 offense and the State has properly noticed you of their
23 intent to seek life without parole, the Court would
24 have no alternative but to give you life; do you
25 understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Furthermore, do you understand
3 whatever sentence this Court imposes upon you pursuant
4 to your pleas here today, that you can count on doing
5 day for day of that sentence pretty much; do you
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Understanding all of what I've just
9 explained to you, is it still your desire to plead
10 guilty to each of those two charges?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, I went through everyone's
13 Constitutional rights with them earlier, but I'm going
14 to go over those rights again with you.

15 You were in here or in the courtroom when I went
16 over your trial rights earlier; is that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, you understand that you have a
19 right to a jury trial. At a jury trial, I would tell
20 the jury that you are presumed innocent, that you're
21 presumed not guilty. The State would be required to
22 prove your guilt beyond a reasonable doubt.

23 You would have the right to question any witnesses
24 against you, you would have the right to remain silent,
25 and if you did remain silent, I'd tell the jury that

1 they could not hold that against you. You'd have the
2 right to present a defense, although you're not
3 required to do so. If you made any incriminating
4 statement, you'd have a right to challenge the
5 admissibility of those statements. Do you understand
6 those rights?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand when you plead
9 guilty, you give up those rights?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Understanding your rights and
12 understanding that when you plead guilty you give them
13 up --

14 THE DEFENDANT: Yes, sir.

15 THE COURT: -- how do you plead here today, guilty
16 or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: You're represented by Mr. Meetze. You
19 satisfied with his representation?

20 THE DEFENDANT: No, sir, as I stated earlier.

21 THE COURT: Tell me why you're dissatisfied with
22 his representation, if there's anything other than what
23 you said earlier, that you didn't like the deal that
24 had been offered to you by the State.

25 THE DEFENDANT: It wasn't so much as the deal, but

1 so much as things I was asking. And he always say no
2 to me. I never knew about the conversations that they
3 had, I only knew about the conversations we had. Every
4 time I asked him something, he always said no, they're
5 not going to take it, no, they are not going to take
6 it. So I never knew about their conversations.

7 But as you stated earlier, he's good. You said
8 he's good.

9 THE COURT: Does that have anything to do with why
10 you're pleading guilty here today?

11 THE DEFENDANT: I feel like they forcing my hand,
12 I don't know.

13 THE COURT: Tell me what you've asked Mr. Meetze
14 to do that he hasn't done.

15 THE DEFENDANT: I asked him for certain -- I asked
16 him for certain pleas, and he always telling me no, he
17 never -- he always telling me, no, they're not going to
18 take it, no, they're not going to take it, he's not
19 going to take it, I don't think. They are going to
20 come with a better offer than this, better offer than
21 that or better offer than that, every time I asked him.

22 So I never knew that he was asking him that. He
23 was asking him actually what I was telling him. I only
24 knew what he was telling me, and he was always telling
25 me no.

1 THE COURT: Now, Mr. Jepertinger has told you
2 today that Mr. Meetze has talked to him numerous times
3 about this case asking, and if I remember correctly
4 from what Mr. Jepertinger phrased it, begging on your
5 behalf. Do you understand that?

6 THE DEFENDANT: I understand that.

7 THE COURT: But all of which you're saying is that
8 you don't think he asked Mr. Jepertinger to do certain
9 things.

10 THE DEFENDANT: I don't know what he asked
11 Mr. Jepertinger, I know. But if that's what
12 Mr. Jepertinger said, I mean, I have to take his word
13 for it, I guess. I don't know what -- I can only say
14 what he was telling me, and he was telling me no. He
15 was always telling me no.

16 THE COURT: Mr. Meetze, you want to say anything
17 at this point?

18 MR. MEETZE: Judge, I asked him as well, and he
19 voiced his concerns to me speaking up to him leading up
20 to this. And I asked for any specific examples. And
21 all I can say, Your Honor, is that if he asked me to
22 ask Mr. Jepertinger about a particular sentence or a
23 particular plea or anything like that, I'm sure I did
24 tell him, I have asked for that, and he has indicated
25 to me he's not going to do that.

1 THE COURT: All right.

2 MR. MEETZE: So but that would be -- me telling
3 him no would have been no in that context. Those
4 things have been asked on your behalf, and I've already
5 been informed by the prosecutor that they're not
6 willing to make that offer.

7 THE COURT: Well, let me ask this question.
8 Mr. Cannon, you were up here yesterday along with
9 Mr. Meetze and Mr. Jepertinger. You've been here since
10 what time, Mr. Belflower?

11 MR. BELFLOWER: About 8:30 this morning.

12 THE COURT: Okay. I'm not sure what time Mr.
13 Meetze got up here, but when I came on the bench about
14 9:35, 9:40 this morning, Mr. Meetze was already in here
15 and Mr. Jepertinger.

16 Assuming for argument sake that Mr. Meetze didn't
17 ask Mr. Jepertinger, you've had yesterday and today
18 with Mr. Jepertinger up here to ask the very thing that
19 you say Mr. Meetze didn't do or didn't ask. Do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you asked Mr. Jepertinger the
23 thing that you are concerned about?

24 THE DEFENDANT: No, sir, I have not.

25 THE COURT: Mr. Jepertinger, y'all want to step

1 back and let him ask you --

2 MR. JEPERTINGER: Judge, I think it's improper for
3 the State to talk to a represented Defendant, even
4 though the Court's asking me to do it.

5 THE COURT: Well, y'all do it all the time with
6 defendants back there with their lawyers present.

7 MR. JEPERTINGER: With their lawyers present.

8 THE COURT: And that's what I want you to do, step
9 back there and let Mr. Meetze, see if there's anything
10 that Mr. Meetze hasn't asked you.

11 MR. JEPERTINGER: Judge, it's getting to the
12 point, and I'm going to respect the Court's decision,
13 but I've put everything on the record.

14 THE COURT: I understand. And I trust you have.

15 MR. JEPERTINGER: All right, I will do it.

16 THE COURT: I trust you have, there's no question
17 about that.

18 (Discussion off the record.)

19 MR. JEPERTINGER: Judge, we've had a conversation
20 in the back room, and my mind has not changed one iota.

21 THE COURT: All right. All right, thank you. And
22 you say the back room, it was a jury room, for the
23 record. Mr. Cannon, I asked you whether or not you
24 were satisfied with the representation of Mr. Meetze,
25 stood down to give you an opportunity to talk with the

1 prosecutor and with your lawyer. Do you have any
2 complaints about Mr. Meetze?

3 THE DEFENDANT: No, sir.

4 THE COURT: Sir?

5 THE DEFENDANT: Not other than what I stated.

6 THE COURT: Is there anything else you want
7 Mr. Meetze to do for you?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you need any more time to talk to
10 Mr. Meetze?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you understood all of your talks
13 with him?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any other complaints about
18 Mr. Meetze?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Has anyone promised you
21 anything or held out any hope of reward to get you to
22 plead guilty here today?

23 THE DEFENDANT: No, sir.

24 THE COURT: Has anyone used any threats, force,
25 pressure or intimidation to get you to plead?

1 THE DEFENDANT: No, sir.

2 THE COURT: Has anyone mistreated you in any way,
3 whether it be law enforcement or solicitor's office?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you had enough time to make up
6 your mind as to whether or not you want to plead guilty
7 or go to trial?

8 THE DEFENDANT: No, sir. I feel like my hand is
9 being forced and just pushing me to trial.

10 THE COURT: Well, I mean, you're not allowed to
11 sit out there in jail --

12 THE DEFENDANT: I understand.

13 THE COURT: -- for an indefinite period of time.

14 THE DEFENDANT: I understand that.

15 THE COURT: At some point it comes to this, either
16 a trial or a guilty plea. You've been in jail since
17 October 2014; was that correct, Mr. Jepertinger?

18 MR. JEPERTINGER: Yes, sir.

19 THE COURT: October 2014. You've had from
20 October 2014 until January 21st of 2016 to make up your
21 mind as to whether or not you want a trial or whether
22 or not you want to plead guilty.

23 If you have not made up your mind as to what you
24 want to do at this point, we'll pick a jury Monday and
25 go forward from there. That's up to you. But I want

1 it clear that nobody's forcing you to plead guilty here
2 today. Is that correct? I mean, nobody's forcing you
3 to plead guilty.

4 The reality is you can plead guilty of your
5 decision, or you can go to trial. Those are your only
6 two options. And the question becomes, do you want to
7 plead guilty or do you want a trial? That's the
8 question.

9 THE DEFENDANT: I want to plead guilty.

10 THE COURT: Are you doing so of your own free
11 will?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you understood all of my
14 questions?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Mr. Jepertinger.

17 MR. JEPERTINGER: Your Honor, the crime happened
18 on October 2nd, 2014, but I need to back date it a
19 little bit to the end of September, the last day of
20 September. October the 2nd was a Thursday, I got to
21 back date it to Tuesday which would be, I believe,
22 September the 30th, 2014.

23 On September the 30th, 2014, Mr. Darwin Hamm, who
24 is the victim, runs a barber shop here on West Evans
25 Street. On the outside of the barber shop was

1 Mr. Donetelle Cannon and a female. And they just
2 waited in the parking lot for about four to five hours.
3 A neighboring businessman by the name of Robert Frost,
4 who also has a barber shop, noticed the gentleman out
5 there and is just wondering what he was doing out
6 there, if he had car trouble, so on and so forth.

7 Mr. Frost walked down to what was then known as
8 the Gate Service Station on West Evans and saw the
9 gentleman there. And the guy began complaining, when I
10 say the guy would be Donetelle Cannon, about Mr. Hamm.
11 And the basis of the complaint which eventually wound
12 up back at the barber shop of Mr. Hamm was that ten
13 years ago Mr. Hamm gave Mr. Cannon a haircut.

14 The haircut cost \$10, and Mr. Cannon basically
15 stiffed Mr. Hamm, the barber. And for those ten years
16 Mr. Cannon got it in his head that Mr. Hamm had a
17 grudge against him. Mr. Cannon apparently moved out to
18 Texas. Apparently he checked Mr. Hamm's Facebook page
19 out and saw that Mr. Hamm had gone out to Texas. Mr.
20 Hamm had gone out to Texas to visit his brother who's
21 in the military.

22 Mr. Cannon got it in his head that Mr. Hamm put
23 out a hit on him over a \$10 haircut from ten years
24 previously. So he went to the barber shop there, and
25 Mr. Frost was kind of being an intermediary. They got

1 on the phone, he called Mr. Hamm's barber shop,
2 Mr. Cannon did. And Frost said, you better get out
3 here. And they began talking.

4 So he went outside. And the guy said, I owed you
5 \$10, you tried to put a hit on me, and all that sort of
6 stuff. And Mr. Hamm is saying, I don't know what
7 you're talking about.

8 Eventually he took the \$10 from Mr. Cannon just to
9 calm the waters, so to speak. At that point Mr. Cannon
10 had him write a note saying basically, I have no beef
11 with you. He made him sign it and then he signed it.
12 He gave him the piece of paper saying, I have no beef
13 with you. Then he said, I want you to swear on your
14 mother that you have no beef with me. Mr. Cannon's
15 mother had died about -- excuse me, Mr. Hamm's mother
16 died about three years previously.

17 He said, look, my mom's dead, but I'll swear on
18 her grave I have no beef with you. He's trying to get
19 him out of there. And then when the comment about the
20 mother came up, the woman that Mr. Cannon was with
21 saying, Donetelle, that's enough. And she asked him to
22 go. So he left. And Mr. Hamm thought it's over, okay,
23 no problems, you know, just good luck.

24 The next day, which would be October the 1st, I
25 would say maybe about half an hour before closing time,

1 Mr. Cannon shows back up to the barber shop with the
2 same woman. He gets in the shop. Now, there was a
3 woman by the name of Tina Gabbison who is also a
4 stylist at the barber shop. She saw him and she
5 told -- in my conversations with her, she saw him and
6 she talked to Mr. Hamm and said, something ain't right
7 here.

8 But trying to make peace, he got in there. And
9 his purpose was, he said, I want a haircut. Well,
10 Frost, the guy that seen him the day before, came over
11 and truthful basically cussed him out saying, what are
12 you doing here, you made the guy swear on his mother's
13 grave and all that sort of business, wrote you a note
14 and all that, and what are you doing back here. And
15 Hamm was trying to play the peacemaker saying, no, no,
16 I'll give him a haircut. So he gave him a haircut.

17 He found out that Mr. Cannon was trying to be an
18 aspiring rap artist and that he was putting out CDs
19 about rap. And just to make conversation in normal
20 barber shop conversation, well, if you got CDs, you
21 know, maybe we can sell them from here. So he gave him
22 his haircut, Cannon paid him for the haircut, and he
23 left. And he thought, that's the last I'm going to see
24 Mr. Cannon.

25 The next morning, probably about 9:30-ish, would

1 you say --

2 MR. ANDERSON: Yes, sir.

3 MR. JEPERTINGER: -- Investigator Anderson?

4 Cannon comes back, and this is October the 2nd. At
5 that point, he's got Mr. Jimmy King in his chair, and
6 he's giving Mr. King, the second victim in this case,
7 the old gentleman in the middle there, he's giving him
8 a haircut. There's several people in there. It's not
9 only a barber shop, you have women doing hair styling
10 as well. There are small children in there, it was
11 pretty packed.

12 He comes in, and Hamm sees him. And he thought he
13 was coming back with CDs. He turns his back to point
14 to a shelf where he could put the CDs. At that point
15 Mr. Cannon pulls a handgun and begins firing. He hits
16 Hamm five times. At that point Mr. King thinks this is
17 going to be it for Mr. Hamm. He gets out of the chair
18 and tries to grab the gun. And as a result of him
19 trying to grab the gun, he turns the gun on Mr. King
20 and shoots him in the head.

21 As you could imagine, it is chaos. You got kids
22 in there, you got women in there, you got people under
23 dryers. It is absolute insanity. You got people
24 running to the back of the store. He leaves through
25 the front, gets in a car and leaves.

1 One of my witnesses would have testified that he
2 saw -- she saw him get into the passenger side and
3 leave with a woman in a sedan, I think it was a Cobalt.
4 And people are locked in rooms, they are going to
5 businesses, and it's just -- then they get Mr. Hamm out
6 and Mr. King out, EMS comes, and these are the results.
7 Here are some pictures that have been provided the
8 Defense of the two.

9 No gun was recovered, but I think it was a small
10 caliber handgun. If not, I'm sure -- if it had been a
11 large caliber, I'm sure as many times as he'd been
12 shot, we wouldn't be here for an attempted murder nor
13 for Mr. King attempted murder, I think it would have
14 been something worse than that, judge. But by the
15 grace of God that they're here today, and that's pretty
16 much it.

17 Now, how did the police get to know who this
18 gentleman was. Someone provided a nickname of, was it
19 Michi Mich? Michi Mich. Well, they looked up on
20 Facebook the name Michi Mich and found Mr. Cannon's
21 Facebook page, and someone identified him as that was
22 the guy. He did lineups for Mr. Hamm, Mr. Frost and
23 one of the witnesses, I believe, Ms. Grady, who got a
24 good look at him and said, that's the guy. They picked
25 him out of a lineup.

1 Ultimately, Darren Yarborough of the sheriff's
2 department knew the Defendant's family, and they picked
3 him up here in Florence on that same day. And he did
4 not want to speak without a lawyer.

5 MR. ANDERSON: Yes, sir.

6 MR. JEPERTINGER: I don't know if Investigator
7 Anderson has anything else to offer in terms of the
8 facts, and I'll just go over his record a little bit.

9 MR. ANDERSON: The only thing I'd have to add,
10 Your Honor, was we were told that he had a hair -- I
11 think he had some dreads or something, if I'm not
12 mistaken. And whenever we made the arrest when he came
13 into our office, you could tell that he had hair on his
14 shoulders of his shirt. And he has some gaps in his
15 hair where either he or somebody shaved his head for
16 him. And that's all I have, Your Honor.

17 THE COURT: All right.

18 MR. JEPERTINGER: And that was after the
19 haircut --

20 MR. ANDERSON: Yes.

21 MR. JEPERTINGER: -- that he had given him. So he
22 tried to further, I guess, change his appearance. Your
23 Honor, surprisingly, the only record that we have for
24 him, looks like a possession of cocaine base here. He
25 got a YOA sentence not to exceed three years.

1 Excuse me. Go back. It was three years suspended
2 to jail, 13, doesn't say in court costs and probation
3 18 months. Looks like he was received into the
4 Department of Corrections. Looks likes he had another
5 possession of cocaine base. And then he had a record
6 for possession of marijuana out in the state of Texas.

7 And so there are no crimes of violence in his
8 past. This would be the first one. But the crime is
9 horrendous in and of itself, and I would ask that you
10 would hear from the victims whenever you choose.

11 THE COURT: Mr. Cannon, you heard the facts as
12 stated by the prosecutor as it relates to each of these
13 charges. Do you agree with those facts?

14 THE DEFENDANT: Most of them, Your Honor.

15 THE COURT: You agree that you shot Mr. Hamm as
16 well as Mr. King?

17 THE DEFENDANT: Not Mr. King, but Mr. Hamm, yes,
18 sir.

19 THE COURT: So you don't agree that you shot both
20 of them?

21 THE DEFENDANT: No.

22 THE COURT: Mr. Meetze, anything you want to add
23 on that?

24 MR. MEETZE: Let me, if I may beg the Court's
25 indulgence just a second.

1 THE COURT: All right.

2 (Discussion off the record.)

3 MR. MEETZE: Your Honor, I think what Mr. Cannon
4 means with regards to Mr. King is that it wasn't his
5 intent to shoot Mr. King, but that he does believe in
6 his mind that in the shooting of the gun that he did
7 do, that he was intending to do, that one of those
8 bullets did hit Mr. King. But I think what he meant by
9 he did not shoot him was that was not the intent.

10 But he does think that that was a result of his
11 actions. So I think that based on that his plea can be
12 accepted.

13 THE COURT: All right. Mr. Cannon, you heard what
14 your lawyer said here today. Whether you specifically
15 intended to shoot Mr. King or not, do you agree that
16 your actions resulted in Mr. King being shot?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. And how do you plead to
19 each of these charges here today, guilty or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: Sir?

22 THE DEFENDANT: Guilty.

23 THE COURT: All right, I find that there is a
24 substantial factual basis for this Defendant's plea as
25 to each of those charges and his decision to plead

1 guilty to each of these charges has been entered into
2 freely, voluntarily, knowingly and intelligently, that
3 he's had the advice and counsel of an attorney with
4 whom he's indicated he's completely satisfied, or that
5 he's satisfied with. And I'll accept the plea.

6 Happy to hear from you, Mr. Meetze. Well, let me
7 hear from the victims first.

8 MR. JEPERTINGER: Okay. Mr. Hamm or Mr. King, now
9 is your time to speak.

10 THE COURT: Tell me your name for the record,
11 please.

12 MR. HAMM: Darwin Hamm.

13 THE COURT: Yes, sir Mr. Hamm. Please direct your
14 comments to me.

15 MR. HAMM: Okay. I was just wanting to ask you,
16 Your Honor, that he gets a stiff penalty because I
17 don't want to be living where he get out of jail. This
18 whole thing could have been avoided. Like you said, he
19 came prior days before the shooting and stuff, and I
20 talked to this man and talked to him. It's not even in
21 my character to have a disagreement with anybody.

22 Anybody that knows me, they know I don't bother no
23 one. I have three kids in college, I take care of a
24 disabled brother, I'm a military veteran, Desert Storm,
25 I dodged bullets over there. And then to come back

1 here in the homeland, in my place of business, and for
2 this guy to have -- do such a senseless crime. And I
3 never did anything to this guy. But he owed me \$10.

4 And when he did that, you know, I was out to get
5 him, I don't know. I never thought about it that day
6 after he left, walked out of the \$10, till he called me
7 on that phone. I didn't know that he looked like
8 anymore, and this is a whole ten years later.

9 When he was outside and we went to lunch and I
10 seen him down there, you know, they were just hanging
11 around in the parking lot, I paid him no mind, went
12 back in my place of business and ate, went back to
13 work. So I think this was kind of like premeditated
14 for him to even just hang around for two days like that
15 and then come and do something just senseless to me.
16 And I don't bother nobody. I don't do nothing to
17 nobody.

18 THE COURT: Have you -- Mr. Hamm, physically have
19 you recovered?

20 MR. HAMM: No. I have four bullets in me, and I
21 got one in my head, I've got one in my face, one in my
22 chest and one in my back. If they get removed, it will
23 cause more damage. They take the one out my face, I
24 can't smile. It's cold outside, I'm in pain. I don't
25 have feeling in these two fingers right here

1 (indicating). And I work cutting hair. I thank the
2 Lord I can still cut hair, but this hand right here is
3 numb (indicating). So I still deal with it, I still
4 deal with it.

5 THE COURT: All right.

6 MR. HAMM: I have a bacterial blood infection
7 because of the lead that was in me. A couple of months
8 ago I had to go to the hospital, stay at the hospital
9 again. And I just ask that he get what he got coming
10 to him.

11 THE COURT: Thank you, sir.

12 MR. HAMM: And I still -- and I still pray for
13 this dude when I pray for myself at night. And I still
14 like I told him that night, I still ain't got no beef
15 with him, still.

16 THE COURT: Thank you, Mr. Hamm. Mr. King,
17 anything you want to tell me, sir? State your full
18 name for the record.

19 MR. KING: Bennie King.

20 THE COURT: Okay. Yes, sir, Mr. King.

21 MR. KING: I come up to the barber shop to get me
22 a haircut. And about 10 or 15 minutes, he walked in
23 there and he wanted -- I got to -- and he started
24 walking to the door, I'd say about three or four steps,
25 then he turn around and start shooting. And down on

1 the floor, anybody by them, and he run and run and run
2 around the barber shop and he start shooting him again.

3 So I jump up trying to hit -- and I grabbed the
4 gun, and one bullet went into the ceiling. Then when I
5 was in there, then I don't look. And he shot me
6 directly in the head right there, the bullet right
7 there now (indicating). It's a scar, they couldn't
8 take the bullet out. So I was lucky. That's what I
9 have to say, judge.

10 THE COURT: Thank you, sir. Mr. King, can I ask
11 you something.

12 MR. KING: Yes, sir.

13 THE COURT: My mom always told me, never ask
14 someone their age or their weight. Do you mind if I
15 ask your age?

16 MR. KING: I don't mind saying my age, 73 years
17 old.

18 THE COURT: How old are you?

19 MR. KING: 73.

20 THE COURT: 73?

21 MR. KING: Yes, sir.

22 THE COURT: All right. Thank you, Mr. King. All
23 right, Mr. Meetze.

24 MR. MEETZE: Thank you, Your Honor, may it please
25 the Court. Your Honor, if I may approach, I would like

1 to hand forward a guilty plea affidavit that I've been
2 over with Mr. Cannon that I ask to be made part of the
3 record. It reflects answers to his questions on those
4 things to include the concerns that he has had and
5 voiced in this matter, primarily the concerns with
6 regards to me in his mind having not acted in his best
7 interest, and in doing so, his example of that being
8 not getting an offer that he feels like is an
9 appropriate and fair offer.

10 And also, as he has expressed to the Court, he
11 feels like he's sort of being forced, his hand is being
12 forced. And, you know, certainly, and I've explained
13 to him the State's indicated they are calling your case
14 to trial. So it is forcing a choice between one of two
15 options. And I've told him from the start, I agree
16 with the choice that he has made here today to enter
17 his plea.

18 Your Honor, as Mr. Jepertinger indicated, his only
19 prior record is some drug possession charges. We
20 have -- I have represented him since October of 2014.
21 We have talked about his case. He's had discovery that
22 he's been able to review and we've reviewed together.
23 And, again, I do agree with his decision to enter his
24 plea here today.

25 Your Honor, I spoke with his mother on the phone

1 yesterday. We hope to have some relatives. She is up
2 in Pennsylvania or in that general area and was not
3 able to be here. But he's got a sister that I think is
4 a nurse or works at McLeod in some fashion and a
5 brother that's -- his mother indicated is a medical
6 student. And we were hoping that one or both of them
7 would be able to be here.

8 But I don't think they are here. At least he had
9 indicated that they had not seen -- he had not seen
10 anybody, so -- but in any event, Your Honor, this has
11 been a difficult case. Your Honor, we've worked, I
12 think, hard on this case, Mr. Jepertinger and myself,
13 although in adversarial roles. We've had -- he and I
14 have had numerous conversations about the case, and
15 we're at the point that we are.

16 Obviously these cases are very, very difficult
17 from all standpoints. You know, I don't know what was
18 going through Mr. Cannon's mind. But I do know that if
19 you do believe and you truly believe that someone is
20 out to get you, then that's what we have law
21 enforcement for, that kind of thing. It's not to
22 certainly take things into your own hands.

23 I know that certainly he's had the last 477 days
24 to think about that. And I know that -- and I believe
25 that if he had it to do all over again, I don't think

1 that he would have. But he doesn't have that luxury,
2 and unfortunately, Mr. Hamm and Mr. King had to go
3 through what they went through and are continue going
4 to through, and it's been very difficult for everybody.

5 Your Honor, I've talked to Mr. Cannon, as I said,
6 and he's talked to me about what he hopes would happen
7 in this matter, Your Honor. And talking to him about
8 that, he's indicated that what he hopes for is that the
9 Court would fashion some kind of a split sentence with
10 an active portion of ten years and supervision after
11 that. And certainly on his behalf, I would ask the
12 Court for that.

13 Otherwise, Your Honor, we would certainly ask for
14 whatever mercy you believe is appropriate. These are
15 very difficult issues to resolve and to deal with and
16 difficult decisions to make. However, Mr. Cannon does
17 understand the seriousness of what brings us here today
18 and that these kind of actions also bring about
19 consequences that are also serious.

20 So whatever the Court rules in this matter, we
21 certainly respect that. But on Mr. Cannon's behalf,
22 we're asking for any mercy that the Court could extend.

23 THE COURT: All right. Thank you, Mr. Meetze.
24 Mr. Cannon, anything you wish to tell me, sir?

25 THE DEFENDANT: I would like to, first of all,

1 apologize to the victims. I actually -- what I
2 actually thought was he was out to get me because I
3 asked him about the situation, and he said he didn't
4 remember it. But he recalled every fact of that day
5 towards me -- he recalled every fact of that day right
6 on the hand.

7 So I actually thought he was giving me the
8 runaround and playing, and I felt like he was out for
9 my life. But if he says he wasn't, then I apologize,
10 the mistake should have never happened. And I would
11 like to say I'm sorry.

12 THE COURT: All right. I want to stand down for
13 just a minute, I want to go over what Mr. Meetze has
14 handed up here.

15 MR. JEPERTINGER: Yes, sir.

16 THE COURT: Stand down for just a minute.

17 (WHEREUPON, a brief recess was taken at
18 11:14 a.m.)

19 THE COURT: Thank you, be seated, please.
20 Anything further from the State at this time?

21 MR. JEPERTINGER: No, sir.

22 THE COURT: Now, Mr. Cannon, let me ask you a
23 couple questions. Your lawyer handed up this affidavit
24 of Defendant for a guilty plea which appears to have
25 your signature on page seven; is that correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, it appears that Mr. Meetze filled
3 this document out; is that correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And he did so as he went through each
6 of those questions individually with you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And he read these questions to you, or
9 either you read them yourself prior to Mr. Meetze
10 filling out this form as you went through it?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. And you understood
13 everything on this form?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And, again, it appears that you signed
18 this document on page seven on today's date; is that
19 correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And it appears that Mr. Meetze filled
22 out and signed this certificate of counsel on page
23 eight; is that correct, Mr. Meetze?

24 MR. MEETZE: That's correct.

25 THE COURT: Now, one of the questions that I have

1 and one of the reasons I stood down and called
2 Mr. Meetze and Mr. Jepertinger back in my office, I had
3 a question as to whether or not Mr. Cannon had ever
4 been evaluated. Would you address that issue for me,
5 Mr. Meetze.

6 MR. MEETZE: Your Honor, certainly I've asked him
7 that question as part of that affidavit. And he
8 indicated he had not ever been evaluated or had never
9 been ordered by a Court to go through an evaluation.

10 I asked him whether or not he had ever been
11 diagnosed or had any kind of mental health issues, and
12 of course the answer to that question was no. During
13 our conversations since I have represented him, he has
14 never come across to me as having any kind of concerns
15 with regard to his competence in any way.

16 Had this case gone to trial, there's no indication
17 at all that he would be able to aid in his defense.
18 He's never given me any indication that he's not
19 capable of understanding what's going on.

20 Also, like I said, I spoke with his mother
21 yesterday who, in talking with her, certainly comes
22 across as a very intelligence lady. Our conversation
23 yesterday, she did not indicate to me any kind of a
24 history that would cause this -- she didn't indicate
25 any kind of history at all of mental health issues,

1 much less anything that would cause me to have any kind
2 of concern regarding his competency. There was nothing
3 like that that she brought up or mentioned. So I don't
4 think that there is anything like that in his
5 background.

6 So from a standpoint of moving forward today with
7 this plea, I do not have any reservations based on my
8 conversations with him. There's never been anything
9 that has registered with me that caused me any concern
10 to where I even considered making a motion to have him
11 evaluated. I never felt like that was an appropriate
12 thing in this case. So I'll put all that on the
13 record, and I'll stand by that.

14 THE COURT: Well, based upon my observations of
15 the Defendant, based upon his responses to me and his
16 conduct in courtroom during yesterday and today, there
17 is nothing that gives me any concern about his ability
18 to know and understand what's going on here today but
19 certainly wanted to ask that question and have it
20 placed on the record.

21 Any objection by the State or Defense counsel to
22 the affidavit being made an exhibit, Mr. Jepertinger?

23 MR. JEPERTINGER: Not from the State, Your Honor.

24 THE COURT: Mr. Meetze?

25 MR. MEETZE: No, Your Honor.

1 (WHEREUPON, Court's Exhibit No. 1 was marked for
2 identification only.)

3 THE COURT: On Indictment 2015-GS-21-0048, on the
4 offense of attempted murder, Defendant's hereby
5 committed to the State Department of Corrections for a
6 period of 15 years. Second count of attempted murder,
7 Defendant's hereby committed to the State Department of
8 Corrections for a period of ten years. Each of the
9 offenses are to run consecutive, consecutive.

10 MR. JEPERTINGER: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. MEETZE: Your Honor, with regard to any
13 credit?

14 THE COURT: Credit for 477 days, yes. Thank you.

15 (The hearing concluded at approximately
16 11:44 a.m.)

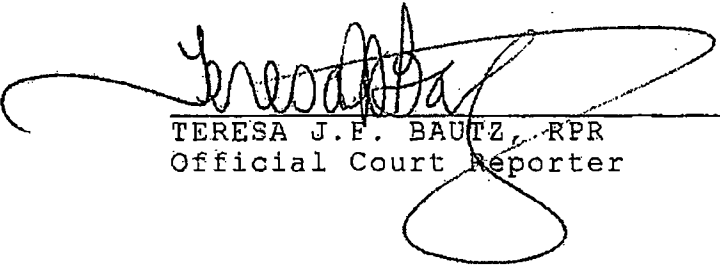
17 (End of Transcript of Record.)
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)
5

6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of General Sessions for
13 Florence County, South Carolina, on the 9th day of
14 February, 2017.

15
16 I FURTHER CERTIFY that I am neither of
17 kin, counsel nor interest to any party hereto.

18
19
20
21 
22 TERESA J.F. BAUTZ, RPR
23 Official Court Reporter
24
25

The South Carolina Court of Appeals

RECEIVED
AUG 16 2016

The State, Respondent,

v.

ATTORNEY GENERALS
OFFICE

Dontelle Demetrius Cannon, Appellant.

Appellate Case No. 2016-000200

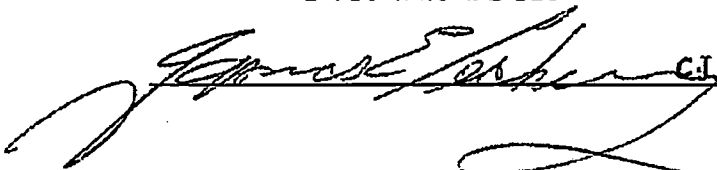
The Honorable D. Craig Brown
Florence County
Trial Court Case No. 2015GS2100048

ORDER

FILED
2016 SEP 19 AM 11:36
CONNIE HILL-SUGARH
CCCP & GS
FLORENCE COUNTY, SC

The appellant filed a pro se notice of appeal dated February 2, 2016. No proof of service was provided. Two deficiency letters were sent to trial counsel in an effort to obtain a proof of service and a guilty plea explanation pursuant to Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). On June 6, 2016, counsel provided a "notice of intent to appeal" stating sentence was imposed on January 21, 2016, and there was no issue he could identify under Rule 203, SCACR. The proof of service upon the Deputy Solicitor stated a hand delivery date of May 31, 2016. Under the proof of service provided by counsel, the appeal is untimely under Rule 203(b)(2), SCACR (notice of appeal shall be served within ten days after the sentence is imposed). The appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT



FILED

August 15, 2016

Columbia, South Carolina

cc:

William Vickery Meetze, Esquire

Robert Michael Dudek, Esquire

John Charles Jepertinger, Esquire

Alan McCrory Wilson, Esquire

John Benjamin Aplin, Esquire

Dontelle Demetrius Cannon



RECEIVED

SEP - 2 2016

The South Carolina Court of Appeals
ATTORNEY GENERALS
OFFICE

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 01, 2016

The Honorable Connie Reel-Shearin
180 N Irby St MSC-E Rm B11
Florence SC 29501-3456

REMITTITUR

Re: The State v. Dontelle D. Cannon
Lower Court Case No. 2015GS2100048
Appellate Case No. 2016-000200

FILED
2016 SEP 19 AM 11:36
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

J. A. Kitchings
CLERK

Enclosure

cc: Dontelle Demetrius Cannon, 317657
William Vickery Meetze, Esquire
Robert Michael Dudek, Esquire
John Charles Jepertinger, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire

FILED FORM 5

STATE OF SOUTH CAROLINA

2016 NOV 28 PM 1:48

IN THE COURT OF COMMON PLEAS

COUNTY OF

CONNIE DEEL SHEARIN
CCCP & GS
FLORENCE COUNTY, SC20 16 CP 21 2950

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

Doretelle D. Cannon
v. 317657

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Pfaffingham Florence County Detention Center
2. Name and location of Court which imposed sentence Florence County Court House (complex)
180 N. Ivy
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 16-23-29 (16-23-29)
 - (b) 16-23-29 (16-23-29)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 01/21/2014 15 plus 10 consecutive
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____ The Court of Appeals in Columbia
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____ They say my timing was wrong even tho' it was correct
- ii. _____ going by the business days rule.
- iii. _____
- (c) the date of each such result:
- i. _____ It was dismissed on 4/6/2016
- 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 Counsel (Strickland vs state)
 (b) _____
 (c) _____

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

- (a) _____ -Failure To investigate
 (b) _____ Also being Prejudice
 (c) _____ also for giving erroneous advice

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?

NO

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) _____ *Tried but it was dismissed for ineffective timing.*

(b) _____

(c) _____

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

71.

A. Failure to do an full investigation on accident of attempted murders, by doctor reports shown he brought me a CD with vitamins speaking to whom I do not know, I ask him for the doctor reports and he brought a cd & pictures, but that prove's nothing the vitamin could hit himself, pumped his head extra.

B. Also for being Prejudice, when the Judge ask ~~do you think~~ Mr. Cannon, needs to be psychological evaluated, he stated no, even tho I was seeing the psych doctor in the county and taking medicine he failed to get a Report, therefore perform as a doctor.

C. erroneous advice, he lead me to believe that the sentence was being ran con-current by stating zero to 30 & I-P don't take zero to thirty today 01/21/2016 they was going take it off the table and give me 0-60 which was going to be charge as consecutive for both attempts. But fail to object in court

- (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? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

- (a) the name and address of each attorney who represented you:
- i. Victory Meete, Florence County Public Def. Office
- ii. City - County Complex
- iii. 180 N. Irby St. MSC E
Florence, SC 29501
- (b) the proceedings at which each such attorney represented you:
- i. In court at City-County Complex
- ii.
- iii.

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

For Reconsideration of sentence ~~for reconsideration of sentence~~

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

NO

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

I, _____, 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.

Donetell D. Canon
Donetell D. Canon Applicant

SWORN or affirmed to and subscribed before me this

21st day of November, 2016.

Dany C. Muehler
Notary Public

My Commission Expires: 1-23-2022

2016 NOV 28 PM 1:48
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED



ALAN WILSON
ATTORNEY GENERAL

April 19, 2017

The Honorable Doris Poulos O'Hara
Clerk of Court, Florence County
180 N Irby St MSC-E Rm B11
Florence, SC 29501-3456

Re: Dontelle D. Cannon, #317657 v. State of South Carolina
2016-CP-21-2950

Dear Ms. O'Hara:

Enclosed please find the original Return of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Lindsey A. McCallister
Assistant Attorney General

LAM/dgr
Enclosure

cc: Jonathan D. Waller, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Donetelle D. Cannon, #317657,

2016-CP-21-2950

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on November 28, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted by the January 2015 term of the Florence County Grand Jury for two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime (2015-GS-21-00048). Vick Meetze, Esquire, represented him. On January 21, 2016, Applicant appeared before the Honorable D. Craig Brown, and pleaded guilty as indicted to two counts of attempted murder. The charge for possession of a weapon during the commission of a violent crime was dismissed. The sentencing was without negotiations or recommendations. Judge Brown sentenced Applicant to fifteen years in prison for the first charge of attempted murder and ten years for the second charge, to be run consecutively.

Applicant filed a *pro se* notice of appeal, which was ultimately dismissed as untimely by the South Carolina Court of Appeals by Order filed August 15, 2016. The Remittitur was returned on September 1, 2016.

Attached hereto and incorporated herein by reference are the Clerk of Court records regarding the subject conviction, Applicant's records from South Carolina Department of Corrections, the guilty plea transcript, Applicant's appellate records, and the application.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Failure to Investigate"
 - i. Failure to investigate a defense of "accident"
 - b. Failure to have Applicant evaluated for competency
 - c. Incorrect advice
 - i. Counsel lead Applicant to believe the sentences would be run concurrent, rather than consecutive, and did not object during the plea.

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

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective

assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant can satisfy neither 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).

IV.

Respondent construes Applicant's third claim as an allegation his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray,

310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, an inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant’s plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. 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.

Each and every allegation not expressly admitted, qualified, or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests that an evidentiary hearing be held solely for the purpose of determining whether the Applicant’s guilty plea counsel was ineffective.

Respectfully submitted,

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Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
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4.19.17, 2017

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

DONTELLE D. CANNON, #317657

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

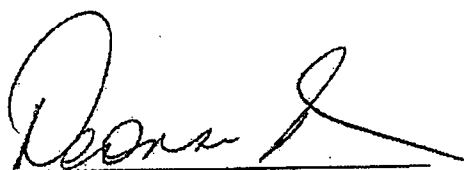
2016-CP-21-2950

AFFIDAVIT OF SERVICE BY MAIL

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

Mr. Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 19th day of April, 2017.


Deonna Rogers, Legal Assistant
For Respondent

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2016-CP-21-02950
	)	
Donetelle D. Cannon,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

February 1, 2018
 Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Jonathan Waller, Esquire
 Attorney for the Plaintiff

Lindsey McCallister, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Circuit Court Reporter

I N D E X

	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
4	Donetelle Cannon	
5	Direct by Mr. Waller.....	7
6	Cross by Ms. McCallister.....	16
7	Elizabeth Evans	
8	Direct by Mr. Waller.....	19
9	Applicant Rests.....	26
10	William "Vick" Meetze	
11	Direct by Ms. McCallister.....	27
12	Cross by Mr. Waller.....	43
13	State Rests.....	48
14	Arguments of Counsel.....	49
15	Ruling.....	55
16	Court Reporter Certification.....	59

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Guilty Plea Affidavit		43

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 FEBRUARY 1, 2018

2 (WHEREUPON, the proceedings began at 10:19 a.m.)

3 THE COURT: All right. Ms. McCallister, when you're
4 ready to proceed, you're recognized.

5 MS. MCCALLISTER: Thank you, Your Honor.

6 Your Honor, this is Donetelle Cannon versus the State of
7 South Carolina, 2016-CP-21-2950. Mr. Cannon was indicted in
8 January of 2015 by the Florence County Grand Jury for two
9 counts of attempted murder and one count of possession of a
10 weapon during the commission of a violent crime. He was
11 represented by Vick Meetze on those charges.

12 On January 21st, 2016, he appeared before the Honorable
13 D. Craig Brown and pleaded guilty as indicted to the two
14 counts of attempted murder, and the charge for possession of
15 a weapon was dismissed. The sentencing was without
16 negotiation or recommendation, and Judge Brown sentenced Mr.
17 Cannon to 15 years in prison on the first charge of attempted
18 murder and 10 years on the second charge, to be run
19 consecutively.

20 Mr. Cannon filed a pro se notice of appeal, which was
21 ultimately dismissed as untimely by the South Carolina Court
22 of Appeals by order filed August 15th, 2016. He filed this
23 application for post-conviction relief on November 28th, 2016,
24 and he is represented in this matter by Mr. Jonathan Waller.
25 Both Mr. Cannon and Mr. Waller are present in the courtroom

1 this morning, Your Honor.

2 THE COURT: Mr. Waller, you're recognized.

3 MR. WALLER: Thank you, Your Honor. Mr. Cannon filed
4 his application for post-conviction relief. After meeting
5 with him and conducting my own investigation, I filed some
6 amendments to that application.

7 Your Honor, the grounds that we are proceeding forward
8 on today are allegations that counsel was ineffective for
9 failing to adequately prepare for applicant's trial, which
10 was scheduled, unbeknownst to him, for January 21st, 2016,
11 which caused the applicant to plead guilty under the threat
12 of proceeding with unprepared counsel, rendering his plea
13 involuntary.

14 An allegation that counsel was ineffective for failing
15 to conduct a complete investigation into the facts and
16 circumstances of the applicant's case, particularly the
17 history, as well as the injuries suffered by the victims.

18 An allegation that counsel was ineffective for failure
19 to develop a mitigation of diminished capacity.

20 That counsel was ineffective for failure to provide
21 applicant with a complete copy of discovery materials for
22 applicant's review, thus rendering his guilty plea
23 involuntarily entered into.

24 And finally, that counsel was ineffective for failure to
25 file a direct appeal from applicant's plea when asked to do

1 so immediately following the plea.

2 THE COURT: You may call your first witness.

3 MR. WALLER: Thank you, Your Honor. I would call
4 Donetelle Cannon.

5 THE COURT: All right. Mr. Cannon, please come forward
6 and place your left hand on the Bible and raise your right
7 hand as the clerk administers the oath. You can have a --
8 you can stand right there and place your left hand on the
9 Bible and raise your right hand.

10 THE CLERK: Do you swear or affirm that the testimony
11 you give will be the truth, the whole truth, and nothing but
12 the truth, so help you God?

13 THE APPLICANT: Yes, ma'am.

14 THE CLERK: Thank you.

15 THE COURT: Have a seat in the witness chair right here.
16 Take your time. Pull the seat out and have a seat. I'm
17 going to ask you, if you could, to pull up real close to that
18 microphone and speak loudly, clearly, and slowly in order
19 that I can hear everything that you have to say, and let's
20 start with your full name, please.

21 THE APPLICANT: Donetelle Demetrius Cannon.

22 THE COURT: Spell that last name.

23 THE APPLICANT: C-a-n-n-o-n.

24 THE COURT: Very good. Mr. Waller?

25 MR. WALLER: Thank you, Your Honor. May it please the

DONETELLE CANNON - DIRECT BY MR. WALLER

1 Court.

2 DONETELLE CANNON, being first
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. WALLER:

6 Q: Good morning, Mr. Cannon. How are you today?

7 A: I'm doing fine.

8 Q: Okay. Mr. Cannon, I want to take you back to when you
9 were -- when you were first arrested on these two attempted
10 murder charges. Do you remember that?

11 A: Yes, sir.

12 Q: Okay. Were you arrested or did you turn yourself in?

13 A: I turned myself in.

14 Q: And it was very, very fast you turned yourself in; is
15 that right?

16 A: Yes, sir.

17 Q: Did the officer at the police department even know they
18 were looking for you at the time?

19 A: No, sir. Not that I -- not that I know of.

20 Q: Okay. Who was your lawyer on these charges?

21 A: Vick Meetze.

22 Q: Okay. How long from when you turned yourself in to law
23 enforcement until you ended up pleading guilty -- how long --
24 how long were you -- did Mr. Meetze represent you?

25 A: Maybe eight months to a year.

DONETELLE CANNON - DIRECT BY MR. WALLER

1 Q: Okay.

2 A: Something like that, I think.

3 Q: Okay. During that time period, how often do you think
4 you met with Mr. Meetze?

5 A: Maybe twice.

6 Q: Okay. What did y'all talk about during those meetings?

7 A: We always -- he -- I always asked him questions and he
8 said such and such or he'll say no or I asked him to check
9 questions about the victims and about evidence about the
10 shooting and he'd always say I'm going to bring it, I'm going
11 to bring it, I'm going to bring it, but I never see it.

12 And then all of a sudden, we showed up. He showed up.
13 He brought a CD. I was like I ain't asked you for that.
14 That ain't what I asked you for. And I was asking about
15 sentencing pleas and he'll tell me, no, we're not going do
16 it. And he'll start saying he asked them, but ain't no way
17 you asked them. If you tell me -- if you're telling me no
18 right then and there, I mean ain't no way, unless you tell it
19 backwards or something.

20 Q: Okay. Hold on. I want to back up to a couple things
21 you said there. So when you met with Mr. -- Mr. Meetze,
22 y'all -- you asked him to get some more information about
23 some stuff; is that right?

24 A: Yes, sir.

25 Q: Okay. What did you ask him to get more information

DONETELLE CANNON - DIRECT BY MR. WALLER

1 about?

2 A: I asked him to get information about the victims at the
3 -- the hospital and get medical reports on it, and I never
4 seen it.

5 Q: Okay. Do you know whether he looked into that or you
6 just never saw it?

7 A: I never saw it.

8 Q: Did you all ever talk about any -- what he had done to
9 try to get any medical records or anything like that?

10 A: No, sir.

11 Q: Okay. Did y'all talk about any of the background
12 information about this case?

13 A: No, sir. Not really.

14 Q: Okay. Did he ask any questions about it?

15 A: No, sir. He'd always tell me might as well plea and
16 this is all I can get you. That's all he ever tells me.

17 Q: Okay. This incident -- you know, what ultimately ended
18 in this incident was not -- was not the beginning of the
19 story, was it?

20 A: No, sir.

21 Q: Okay. How long had there been, I guess, an issue
22 between you and the victim?

23 A: I'd say since about '07, something like that.

24 Q: Okay.

25 A: At the end of '07.

DONETELLE CANNON - DIRECT BY MR. WALLER

1 Q: Okay. And it says a little bit in the transcript, but
2 the whole thing started over a haircut; is that right?

3 A: Yes, sir.

4 Q: Okay. The victim -- one of the victims in the case had
5 a barbershop and you got your hair cut?

6 A: Yes, sir.

7 Q: How old were you at the time?

8 A: I quite don't remember, but in 2007 -- I'm 31 now; so --

9 Q: Okay. 20s? Early 20s?

10 A: 20s, something like that.

11 Q: Okay. And you didn't like the haircut; is that right?

12 A: Yes, sir.

13 Q: Okay. And you left without paying for the haircut?

14 A: Yeah. But I didn't really notice that I left without
15 paying for the haircut. That's why I say why you ain't never
16 got back to me or why whenever I got up you ain't tried to
17 stop me or nothing. You know what I'm saying?

18 Q: Okay. After you left, after that day back in 2007, did
19 you have any problems with the victim or the one victim?

20 A: We -- we talked a couple times and he always stated it
21 was no problem, but, you know, he thought hearing wordplay
22 and hearsay, hearsay, and stuff like that. I feel like --
23 you know, I just felt kind of threatened by him, you know.

24 Q: Okay. So you were threatened by him. Did you -- were
25 you in fear of him?

DONETELLE CANNON - DIRECT BY MR. WALLER

1 A: A little so and not so.

2 Q: Okay. Well, if you weren't in fear, was he just
3 bothering you?

4 A: Yes, sir. For me, it felt like that.

5 Q: Okay. And did you ultimately leave the state of South
6 Carolina because of that for a while?

7 A: Yes, sir.

8 Q: Okay. How long were you gone?

9 A: From '08 to 2014.

10 Q: Okay. Right before this incident; is that right?

11 A: Yes, sir.

12 Q: Okay. Well, while you were gone, did you have any more
13 contact with the victim?

14 A: We -- we talked on Facebook and such and I seen him in
15 -- what you call it because he -- we followed each other. So
16 his time -- well, whatever he posted on his timeline would
17 pop up on my timeline, you know.

18 Q: Okay.

19 A: So --

20 Q: Was there a situation when you were in Texas at some
21 point when you thought you saw him?

22 A: Yes, sir.

23 Q: Okay. Did -- did you -- did that stress you out a
24 little bit?

25 A: Yes, sir.

DONETELLE CANNON - DIRECT BY MR. WALLER

1 Q: Okay. Did you and Mr. Meetze ever talk about this kind
2 of history you had?

3 A: No, sir.

4 Q: Okay. What did you tell him about the incident so that
5 he could try to defend you?

6 A: I tell him -- I tell him the issue what I thought and he
7 thought -- well, he's saying, well, basically, all the
8 evidence what they got stands up against you, but I'm telling
9 him to look, look underneath because it's more than what
10 meets the eye. You know what I'm saying?

11 Q: Okay. And when you say look underneath, is that some of
12 the stuff we've just been talking about?

13 A: Yes, sir.

14 Q: Okay. Did you know to tell Mr. Meetze any of that
15 stuff?

16 A: Yes, sir, a little bit.

17 Q: Okay. Did you -- did you share any of that information
18 with him?

19 A: Yes, sir. Well, I shared it with the -- the -- the
20 public defender investigator.

21 Q: Okay. You shared it with the investigator?

22 A: Uh-huh.

23 Q: That works with Mr. Meetze?

24 A: Uh-huh.

25 Q: Okay. Do you recall his name?

DONETELLE CANNON - DIRECT BY MR. WALLER

1 A: I don't remember his name.

2 Q: Is it Mr. McKenzie?

3 A: I know he's -- yeah. I know he was African-American.

4 Q: Okay. After providing that information, do you know if

5 Mr. Meetze conducted any further investigation about that?

6 A: No, sir.

7 Q: Okay. Ultimately, you came back to South Carolina?

8 A: Yes, sir.

9 Q: Okay. Did the -- the situation kind of continue?

10 A: Yes, sir. To me, it kind of continued. We talked and

11 we -- we kind of settled most of the -- and a lot of the

12 stuff that was placed in the Rule 5, I didn't -- I don't

13 recall none of that. So --

14 Q: Okay. Okay. When was your trial scheduled for, if you

15 recall?

16 A: They was putting me on the pretrial list either the next

17 day and they was telling me I should be ready. I should be

18 sentenced and -- I should be sentenced and in the

19 penitentiary by -- by that Monday, and that's when I was,

20 like, well, ain't no way you -- you're ready for trial

21 because you -- basically, you're telling me it's a -- I'm

22 going to lose.

23 Q: Okay. And what -- you said your trial was scheduled for

24 that Monday?

25 A: I think so.

DONETELLE CANNON - DIRECT BY MR. WALLER

1 Q: Okay. And what day did you ultimately plead?

2 A: I plead on the 21st -- the 21st.

3 Q: The same day your trial was scheduled?

4 A: Yes, sir.

5 Q: Okay. Did you have any notice that your trial was
6 coming -- coming up?

7 A: No, sir.

8 Q: Okay. Had you and Mr. Meetze talked and discussed
9 getting ready for the trial?

10 A: No, sir.

11 Q: Okay. Were you -- did you ever make bond while these
12 charges were pending?

13 A: No, sir. I asked him. I asked him about bond. It
14 never came up.

15 Q: Okay. So you were in the detention center the whole
16 time?

17 A: Yes, sir.

18 Q: Okay. Did you want to go to trial?

19 A: Yes, sir. On certain merits of the -- of the case, yes,
20 sir.

21 Q: Okay. So you did want to go to trial. Why did you end
22 up pleading guilty then?

23 A: I pleaded guilty under duress because I felt like I'm
24 looking at 60 years and he's basically telling me that's what
25 I'm going to get because he's not trying to fight for me.

DONETELLE CANNON - DIRECT BY MR. WALLER

1 Q: Okay. Did you think he was prepared to start your trial
2 that day?

3 A: No, sir.

4 Q: Okay. Is that part of why you pled guilty?

5 A: Yes, sir.

6 Q: Okay. Did you -- you mentioned before that you were
7 asking him for some discovery materials. Did you ever
8 receive a complete copy of those?

9 A: No, sir, not that I know of.

10 Q: Okay.

11 A: But I guess I got a complete copy from you and it was
12 kind of a little different.

13 Q: Okay. Some of the stuff you were saying you looked at
14 your Rule 5 that you didn't remember or you didn't agree
15 with?

16 A: Uh-huh.

17 Q: Did you and Mr. Meetze have a chance to talk about those
18 issues?

19 A: No, sir.

20 Q: Okay. After you pled guilty, did you and Mr. Meetze
21 have any conversations about an appeal?

22 A: No, sir.

23 Q: Okay. Did you ever ask him to file an appeal?

24 A: Yes, sir. I sent a letter to the -- to the complex.

25 Q: Okay.

DONETELLE CANNON - DIRECT BY MR. WALLER

1 A: And I sent the letter off to General Sessions, whatever.

2 Q: Okay. When did you send that?

3 A: February the 2nd.

4 Q: Okay.

5 A: I think February the 2nd.

6 Q: Okay. Had you and Mr. Meetze ever discussed filing an
7 appeal before you pled guilty?

8 A: He says -- he said I can do an appeal.

9 Q: Okay. What did you say when he said that?

10 A: Yes.

11 Q: Okay. That was before you pled guilty?

12 A: Uh-huh.

13 Q: Okay. All right. Mr. Cannon, I've asked you all the
14 questions that I have for you. Is there anything that you
15 think I've left out that the judge needs to be aware of?

16 A: No, sir.

17 Q: Okay.

18 MR. WALLER: Please answer any questions Ms. McCallister
19 has.

20 THE COURT: Ms. McCallister.

21 MS. MCCALLISTER: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. MCCALLISTER:

24 Q: Okay. Mr. Cannon, you did -- you did ultimately end up
25 pleading guilty in front of the judge; correct?

DONETELLE CANNON - CROSS BY MS. MCCALLISTER

1 A: Yes, sir. Yes, ma'am.

2 Q: And do you -- do you remember that happening? Do you
3 remember the conversation that you had with the judge on that
4 day of your plea?

5 A: Yes, ma'am.

6 Q: Okay. And do you remember the judge talking to you
7 about some of these issues at that time?

8 A: Yes, ma'am.

9 Q: Okay. Do you remember telling the judge that -- that
10 you understood what you were doing and that you wanted to
11 enter into the plea agreement?

12 A: Yes, ma'am. I did that right after I asked him about
13 firing Mr. Meetze in the courtroom.

14 Q: Right. So you put your issues up there, that you
15 thought Mr. Meetze was telling you no too much and he wasn't
16 -- he wasn't doing something that you asked him to do that
17 had to do with talking to the solicitor; correct?

18 A: Yes, ma'am.

19 Q: And Judge Brown actually recessed the hearing and let
20 you and the solicitor and Mr. Meetze go talk for a little
21 bit; correct?

22 A: Yes, ma'am.

23 Q: And then you came back and you told the judge you were
24 ready to go forward and you wanted to plead guilty; correct?

25 A: Yes, ma'am.

DONETELLE CANNON - CROSS BY MS. MCCALLISTER

1 Q: Okay. And you told the judge that nobody was
2 threatening you or promising you anything, you hadn't been
3 mistreated in any way, and that this was your decision;
4 correct?

5 A: Yes, ma'am.

6 Q: And you told -- you told the judge -- and the judge told
7 you that you didn't have to do that, you could have a trial
8 starting on the next Monday if you wanted one; correct?

9 A: Yes, ma'am.

10 Q: Okay. And you still decided and told the judge that
11 your decision was to -- was to accept the plea; correct?

12 A: Yes, ma'am.

13 Q: Okay.

14 MS. MCCALLISTER: I have no further questions, Your
15 Honor.

16 THE COURT: Any redirect?

17 MR. WALLER: No redirect, Your Honor.

18 THE COURT: All right. You may step down. Thank you,
19 sir.

20 You may call your next witness, Mr. Waller.

21 MR. WALLER: Thank you, Your Honor. I would call
22 Elizabeth Evans.

23 THE COURT: All right. Very good.

24 Ms. Evans, please, come up, if you could. I'm going to
25 ask you if you could place your left hand on the Bible and

ELIZABETH EVANS - DIRECT BY MR. WALLER

1 raise your right hand as the clerk administers the oath.

2 THE CLERK: Do you swear or affirm that the testimony
3 you give will be the truth, the whole truth, and nothing but
4 the truth, so help you God?

5 THE WITNESS: Yes.

6 THE CLERK: Thank you.

7 THE COURT: I'm going to ask you if you could come
8 around and have a seat in that witness chair. Pull up real
9 close to that microphone and speak loudly, clearly, and
10 slowly in order that we can hear everything that you have to
11 say, and let's start with your full name.

12 THE WITNESS: Elizabeth Evans.

13 THE COURT: All right. Mr. Waller?

14 MR. WALLER: Thank you, Your Honor.

15 ELIZABETH EVANS, being first
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WALLER:

19 Q: Good morning, Ms. Evans. How are you today?

20 A: Good morning.

21 Q: Ms. Evans, where are you coming from today?

22 A: Maryland.

23 Q: Okay.

24 A: Northeast Maryland.

25 Q: All right. And what's your relation to Mr. Cannon?

ELIZABETH EVANS - DIRECT BY MR. WALLER

1 A: He's my son.

2 Q: Okay. Ms. Evans, I want to ask you a few questions
3 about the incident and kind of the background, if I can.
4 Tell -- tell the Court, if you can, what -- what led up to
5 this whole incident, kind of the background from your
6 perspective in dealing with your son?

7 A: I heard it was about a haircut.

8 MS. MCCALLISTER: Your Honor, I object on the basis of
9 hearsay. I think he's got to lay a little bit more
10 foundation about what she actually knew.

11 THE COURT: All right. I'll sustain. I'll sustain the
12 objection. I'll give you some leeway, but you might need to
13 ask her what she knows about it.

14 MR. WALLER: All right.

15 BY MR. WALLER:

16 Q: Ms. Evans, did you --

17 THE COURT: It's already been entered. All of the 'stuff
18 about the haircut is already into evidence anyway. You might
19 want to ask her perception of all of that.

20 THE WITNESS: I could tell you how I know it was about a
21 haircut, if you want me to.

22 MR. WALLER: Well, Ms. Evans --

23 THE COURT: Why don't you listen to the question and
24 answer it.

25 MR. WALLER: Let me ask it this way.

ELIZABETH EVANS - DIRECT BY MR. WALLER

1 BY MR. WALLER:

2 Q: Did your -- did you perceive your son starting in 2007
3 being under some sort of duress and fearful?

4 A: Yes.

5 Q: Okay. How was he acting, your son, that you saw?

6 A: He wouldn't go outside. He wouldn't leave home at all
7 unless he was -- he was in the car. My truck has dark tinted
8 windows; so he would just jump in the back and slide down in
9 the seat, and he was doing that for about six months. And so
10 I asked what was going on, like, why are you hiding, why are
11 you so scared, and that's when he proceeded to tell me about
12 the guy at the barbershop and about the haircut, the guy
13 thinking -- saying that he didn't pay for the haircut.

14 Q: Okay.

15 A: So I then asked my husband will he go into the
16 barbershop and talk to the guy and say -- ask what do he want
17 to stop this, and -- and the guy said it was nothing.

18 MS. MCCALLISTER: Objection. Hearsay.

19 THE COURT: Sustained.

20 MR. WALLER: Okay.

21 BY MR. WALLER:

22 Q: And, Ms. Evans, you're not allowed to say what anyone
23 else said.

24 A: Okay. Okay.

25 Q: Based on what you saw of your son, did your son

ELIZABETH EVANS - DIRECT BY MR. WALLER

1 ultimately end up leaving South Carolina for a while?

2 A: Yes.

3 Q: Okay. Was that something that you and your son talked
4 about?

5 A: Yes.

6 Q: What did you tell him?

7 A: Because he was so scared, I felt like I needed to
8 protect him in some way. So I put him on the bus at night
9 and I sent him to Texas.

10 Q: Okay. Was there ever a time when he was in Texas that
11 he became fearful again?

12 A: Yes.

13 Q: Okay. What do you remember of that incident?

14 A: He called me, panicking. Mama, he's here, he's here,
15 he's here. Mama, he's going to get me. He's here, he's
16 here, and I'm, like, calm down. It -- it really -- I -- I
17 don't know. I just -- I was just baffled by the whole thing.
18 He was just in a big panic and I was, like, just calm down.
19 I was, like, he's not going to bother you. Just calm down.
20 Stay away. Just stay in the house. Don't go anywhere. It
21 was just hard for me to fathom a grown man being this scared.

22 Q: Okay. And ultimately, your son came back to South
23 Carolina?

24 A: Yes.

25 Q: Okay. How long was he back before the incident took

ELIZABETH EVANS - DIRECT BY MR. WALLER

1 place?

2 A: Maybe a day or two.

3 Q: Okay. And did you -- did you talk to him around the
4 time of the incident?

5 A: I did.

6 Q: Okay.

7 A: I did.

8 Q: What did you all talk about? Was it before or after?

9 A: I talked to him. I talked to him before. And he was
10 still scared and I was, like, just go back. Just go back.

11 Q: When you say go back, go back?

12 A: Go back to Texas.

13 Q: Okay.

14 A: And then I -- after the -- afterwards, I talked to him
15 on the phone after the incident and I was, like, okay, this
16 is what we're going to do. You're going to turn yourself in.
17 We're going to fix this. You're going to turn yourself in.
18 I'm on my way. I'll see you when I get there, but you need
19 to turn yourself in and turn yourself in now.

20 Q: Okay. Did you ultimately take him to the police
21 station?

22 A: While he was on the phone, I was on the phone. While he
23 was on the phone with me, his dad was on the phone with the
24 police department.

25 Q: Okay.

ELIZABETH EVANS - DIRECT BY MR. WALLER

1 A: Saying hey, I'm going to tell him to go some --

2 MS. MCCALLISTER: Objection again to what --

3 THE WITNESS: Okay.

4 MS. MCCALLISTER: -- the father was saying.

5 THE WITNESS: I'm --

6 THE COURT: All right. Sustained as to that. You can
7 say what you -- what you said.

8 THE WITNESS: Okay.

9 THE COURT: But --

10 THE WITNESS: I'm talking --

11 THE COURT: You can't say what the other people said.

12 THE WITNESS: Okay.

13 MR. WALLER: All right.

14 BY MR. WALLER:

15 Q: And, Ms. Evans, did you ever have any conversations with
16 Mr. Meetze while he was representing your son?

17 A: Yes.

18 Q: Okay. Did you give him some of the information that you
19 just relayed to the Court?

20 A: Yes.

21 Q: Okay. What was your purpose in talking to him and
22 giving him that background information?

23 A: To let him know that this was an ongoing process for a
24 very long time and that it -- he was just terrified. He was
25 terrified. He was not saying he was terrified, but he was

ELIZABETH EVANS - DIRECT BY MR. WALLER

1 terrified.

2 Q: Okay.

3 MR. WALLER: Thank you, Ms. Evans. Thank you for being
4 here. Please answer any questions Ms. McCallister might
5 have.

6 THE WITNESS: Okay.

7 THE COURT: Nobody has actually said what actually
8 transpired that gave rise to this -- these criminal -- tell
9 me what happened.

10 MR. WALLER: Your Honor, there was an incident where Mr.
11 -- Mr. Cannon allegedly shot at this gentleman who owned a
12 barbershop. There were multiple other individuals in the
13 barbershop. That's what led to the other charge. And --

14 THE COURT: Nobody was hit? He just shot into the
15 barbershop?

16 MR. WALLER: I believe that there were some injuries,
17 but not -- I don't believe there were any life-threatening or
18 anything like that. But there were certainly some injuries,
19 Your Honor.

20 THE COURT: Okay. Very good. Was the barber shot?

21 MR. WALLER: I believe he was.

22 MS. MCCALLISTER: Yes.

23 MR. WALLER: And one other individual was shot as well.

24 MS. MCCALLISTER: The barber and the guy that was in his
25 chair at the time were both shot. I think they were both

1 struck.

2 MR. WALLER: I think they were.

3 THE COURT: Okay. Very good. All right. Cross-
4 examination?

5 MS. MCCALLISTER: I don't have any questions, Your
6 Honor.

7 THE COURT: You may step down. Thank you.

8 You may call your next witness, Mr. Waller.

9 MR. WALLER: Nothing further from the applicant, Your
10 Honor.

11 THE COURT: All right. Ms. McCallister, you're
12 recognized.

13 MS. MCCALLISTER: Thank you, Your Honor. I'd call Vick
14 Meetze.

15 THE COURT: All right. Mr. Meetze, please come forward.
16 I'm going to ask you, if you could, to place your left hand
17 on the Bible and raise your right hand as the clerk
18 administers the oath.

19 THE CLERK: Do you swear or affirm to tell the truth,
20 the whole truth, and nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Thank you.

23 THE COURT: Mr. Meetze, pull up real close to that
24 microphone and speak loudly, clearly, and slowly, and let's
25 start with your full name and let's spell that last one.

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 THE WITNESS: William Vickery Meetze, M-e-e-t-z-e.

2 THE COURT: Very good. It's three Es.

3 THE WITNESS: Just not all right together.

4 THE COURT: That's right. Very good.

5 WILLIAM "VICK" MEETZE, being
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MCCALLISTER:

9 Q: Mr. Meetze, were you appointed on this case?

10 A: I was.

11 Q: Okay. And do you recall the length of your
12 representation, how long from when you were appointed until
13 the plea?

14 A: He was charged, I think, October of 2014 and pled, I
15 think, December -- excuse me -- January 21st of '16.

16 Q: Okay.

17 A: So I mean he would have been appointed right around the
18 time he turned himself in. So we would have -- I would have
19 had the paperwork and the file and been aware that I
20 represented him --

21 Q: Okay.

22 A: -- probably about November something, the early part of
23 November, I would guess.

24 Q: So approximately a year? Maybe a little longer?

25 A: Probably a little longer, uh-huh.

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 Q: Okay. And during that -- during that time, did you meet
2 with Mr. Cannon?

3 A: I did.

4 Q: And was he in jail that entire time?

5 A: He was.

6 Q: At the detention center? Okay. Do you recall how many
7 times you met with him?

8 A: I don't recall a specific number, but we met a number of
9 times.

10 Q: Okay. Were -- did all of those meetings take place at
11 the detention center or did he ever come up to court to meet
12 with you?

13 A: I don't recall if I ever -- sometimes, when I represent
14 folks, I'll ask the State to have somebody brought over
15 during a particular term of court to be able to speak to
16 them. I don't recall if I did that any with Mr. Cannon.

17 Q: Okay.

18 A: But I certainly met him at the jail.

19 Q: Okay.

20 A: And I know that he was brought up to court, obviously,
21 when he pled. I don't recall if I asked him to be brought
22 over specifically for me to talk to him or not.

23 Q: Okay. And do you have an investigator or somebody who
24 works with you on your cases?

25 A: We do.

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 Q: Okay. And did somebody work with you on this case in
2 particular?

3 A: Well, it's not necessarily that he was working with me.
4 Thomas Mackenzie in our office is an investigator. And with
5 folks that are in the jail, Thomas gets those files first and
6 those names of folks we been appointed to prior to us getting
7 the discovery or anything, and he sort of goes down to the
8 jail and makes first contact with those folks.

9 Q: Okay.

10 A: So it's not that he was necessarily working with me in
11 the case, but he would have -- would have been the first
12 person to talk with Mr. Cannon.

13 Q: Okay. So during the course of your representation
14 though, Mr. Cannon had the opportunity to meet with both you
15 and Mr. McKenzie at least one time?

16 A: Certainly.

17 Q: Okay. And you've heard the testimony here today about
18 kind of the background and the history of this incident.
19 Were you aware of that history during the course of your
20 representation?

21 A: Mr. McKenzie did make notes to that effect in the file,
22 just sort of brief, not overly detailed, just sort of points
23 from, I guess, the conversation he had with Mr. Cannon. Mr.
24 Cannon never went into any of that with me when I met with
25 him.

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 Q: Okay. And just can you summarize kind of what the
2 evidence would have been for the State had Mr. Cannon gone to
3 trial?

4 A: Essentially, on the day of the incident, the evidence
5 would have been that Mr. Cannon went to the barbershop, asked
6 the proprietor's name or the barber a question -- there's a
7 number of folks that worked there. I think that Mr. Ham, who
8 is one of the victims, was the owner of the barbershop, but
9 anyway, he went there, asked Mr. Ham if he was going to buy
10 some CDs from him, and Mr. Ham indicated that he would and
11 was sort of reaching in his pocket to get some money to buy
12 the CDs, at which point in time Mr. Cannon pulled out a gun
13 and started shooting.

14 And there was a Mr. King, a Jimmy King, who was
15 currently getting a beard trim, I think, a haircut or some
16 sort of services there at the barbershop. He was in the
17 chair. He got up in an attempt to sort of wrestle with Mr.
18 Cannon. He was also shot. I think he was shot maybe in the
19 head. Mr. Ham was shot in the chest. I think that was his
20 -- his wound, but I don't think that he had more than that,
21 although they noticed bleeding from different areas on him.
22 But when the police asked him where he was shot, he indicated
23 he was shot in the chest.

24 Q: Okay.

25 A: And Mr. Cannon had been a customer, they indicated had

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 gotten a haircut the previous day. He was identified by, I
2 think, a number of folks there. Mr. King was not focused on
3 a face. So he had indicated to police he would not be able
4 to make an identification, but there were a number of others
5 that were able to because he had been in there before and
6 everything.

7 Q: Okay. Was there also some testimony that maybe even --
8 or there were some witnesses who could ID him on the day of
9 the shooting from the -- like, just the customers who were
10 waiting in there; is that right?

11 A: Right.

12 Q: Okay. And then --

13 A: At least I believe so.

14 Q: Okay. And do you recall that there were witnesses who
15 had seen Mr. Cannon at the barbershop maybe a day or two
16 before?

17 A: Yes. Like I said --

18 Q: Before the incident?

19 A: Excuse me. I'm sorry. There were witnesses and there
20 were folks that worked there that said he had been in the day
21 before getting a haircut.

22 Q: Okay. So this incident really kind of unfolded over the
23 course of maybe one or two days, not just the -- not just Mr.
24 Cannon showing up and shooting; is that correct?

25 A: Right. There would be evidence that he was there, like,

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 the day before getting a haircut.

2 Q: Okay.

3 A: But no other -- nothing else extraordinary about that
4 visit.

5 Q: Okay.

6 A: And then the next day would have been the day he
7 returned, asked about buying CDs, and ended up taking a gun
8 out and firing shots.

9 Q: Okay.

10 A: Which ended up hitting two people.

11 Q: Do you recall --

12 THE COURT: Was there any -- any -- in the discovery,
13 was there anything that indicated that Mr. Cannon attempted
14 to take any money or anything like that?

15 THE WITNESS: There's no indication of that in the
16 discovery.

17 THE COURT: All right. In the discovery, did they say
18 what the motive of all this was?

19 THE WITNESS: I don't believe so. I'm not sure off the
20 top of my head.

21 THE COURT: All right. Very good.

22 MR. WALLER: Your Honor, I believe the transcript
23 reflects that it was acknowledged by both sides that there
24 was this kind of long-standing friction between the owner of
25 the barbershop and Mr. Cannon.

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 THE COURT: Okay.

2 THE WITNESS: Yeah.

3 MR. WALLER: Even in the Solicitor's recitation of the
4 facts.

5 THE COURT: Okay. Very good.

6 MS. MCCALLISTER: And so that's sort of where I'm going
7 with it.

8 BY MS. MCCALLISTER:

9 Q: Do you recall that sort of the State's case or the
10 State's spin on this was that this guy, this barber, didn't
11 really remember this incident until Mr. Cannon started
12 showing back up at his shop and brought it up to him?

13 A: Right. Yes.

14 Q: Okay.

15 A: I certainly remember that as Mr. Jepertinger's
16 presentation, but as far as the question was in the discovery
17 materials, I don't -- I didn't recall whether it -- whether
18 it was or not.

19 Q: Okay.

20 A: But I certainly recall that being the State's position
21 on things.

22 Q: That would have been the State's theory that this --
23 this victim didn't really remember anything about this
24 incident that had happened 10 years earlier until Mr. Cannon
25 started showing up the day or two before the shooting; is

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 that correct?

2 A: That is correct.

3 Q: Okay. Okay. So I think you said that Mr. McKenzie had
4 made some notes about the issue that there was maybe this
5 history going on, but Mr. Cannon never specifically brought
6 it up to you?

7 A: No, he did not.

8 Q: Okay. Did he ask you to -- did he give you anything to
9 investigate in terms of a defense or an alibi or anything
10 like that?

11 A: I don't recall him saying anything like that. He didn't
12 talk a whole lot. I mean whenever I meet with clients,
13 particularly the first time, I go over what I have in the
14 file. If I've got all the discovery, I'll go over that with
15 them, and then I'll always ask them if there's anything they
16 want to tell me about the case. And certainly, he had an
17 opportunity, but he never -- never had a whole lot to say --

18 Q: Okay.

19 A: -- about it one way or another, but anyway, he -- he did
20 not go through -- go over all that with me.

21 Q: Okay. And so how did this -- how did this plea come
22 about then? Do you recall your plea negotiations with the
23 Solicitor's Office, if there were any?

24 A: Early on, Mr. Jepertinger had made an offer. I think it
25 was an offer for 25 years. It was certainly in the 20- to

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 25-year range. That wasn't -- normally or a lot of times in
2 cases when we get the discovery, there will be a written
3 offer at that point in time.

4 He did not have a written offer to begin with. That was
5 something we sort of negotiated as we went, I guess, but he
6 eventually made an offer. I think it was 25 years, but it
7 was in that 20 to 25 range. Mr. Cannon was not interested in
8 that. And so -- and I don't recall how long before the case
9 was put on the trial list that -- that that offer was turned
10 down.

11 Q: Okay.

12 A: But subsequent to that offer being turned down, Mr.
13 Jepertinger did put it on the trial list and that's when we
14 -- we got to the point where he ended up entering his plea.

15 Q: Okay. And so you were notified that this case was --
16 was being put on the list for the next term; is that correct?

17 A: I can't recall if it was the next term or not.

18 Q: Okay.

19 A: I know that about 10 days prior to a term of court,
20 normally, like, the Friday -- like, if we -- a particular
21 Friday when we would have court roughly 10 days out, we'll
22 get the list from the solicitor of everything that's eligible
23 to be called for trial. That trial -- that list is usually
24 three to four pages long.

25 Q: Okay.

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 A: It's not a really realistic trial list. But anyway, we
2 get that list and, when we get that list, we notify our
3 clients that they are on the trial list and that kind of
4 thing. With regards to Mr. Cannon, I would've gone down
5 there the week prior to everything and let him know that he's
6 on the trial list and eligible to be called for trial.

7 Q: Okay.

8 A: And if Mr. Jepertinger had told me anything after that
9 that -- you know, any sort of priority, I would've let him
10 know that as well.

11 Q: Okay. And so at that point, were you preparing the case
12 for trial, since he had turned down an offer -- a plea offer?

13 A: Once it got on there, yeah. I mean we go down. I
14 talked to him, and, you know, his position was with me, at
15 least what I recall, that he did want a trial and it was sort
16 of in that position of I don't want a trial, but I don't want
17 the 25 years kind of thing, and looking for the magic door
18 number three, which I can certainly understand that being the
19 position, but unfortunately, that -- that door doesn't exist.
20 And so the State put it on the trial list to sort of, I
21 guess, force his hand.

22 Q: Okay.

23 A: And he ended up pleading at that point in time.

24 Q: Okay. Did you -- after -- after he turned down the
25 first offer but then you kind of got this impression that he

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 didn't really want a trial either, did you -- did you
2 continue to engage in negotiations with the solicitor?
3 A: I don't recall. I mean Mr. Jepertinger was dug in
4 pretty good --
5 Q: Okay.
6 A: -- on the case as far as what he was willing to do.
7 Q: Okay. Did Mr. Cannon ever give you a number of what he
8 wanted or what he would accept?
9 A: I don't recall whether he did or not.
10 Q: Okay.
11 A: To be honest with you.
12 Q: And so how -- how did the plea come about then? Did he
13 -- go ahead.
14 A: Well, I mean like I said, once he was notified that his
15 case was on the trial list when I went out there to speak
16 with him and just let him know that it was up for trial and
17 that essentially it was either going to go to trial or he was
18 going to enter a plea at that point in time, he indicated he
19 wished to plea.
20 Q: Okay. And do you recall at the plea taking a break to
21 go and speak with Mr. Cannon and Mr. Jepertinger?
22 A: I recall that from the transcript. I don't know that I
23 recall exactly what -- I don't recall the details of that,
24 no.
25 Q: Okay. That didn't change anybody's position though from

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 -- from what you recollect?

2 A: No, I don't believe so.

3 Q: Okay. Okay. In terms of preparing for trial or
4 preparing for a plea and the victims' injuries, can you tell
5 me what you did to investigate the victims' injuries or -- or
6 their -- yeah. Just can you tell me what you did to
7 investigate the victims' injuries?

8 A: I don't think there was any -- anything really done.. I
9 never got any sort of medical records from the State. We
10 didn't ask for any kind of medical records in that regard. I
11 don't recall Mr. Cannon asking me to try to retrieve any of
12 that evidence.

13 Q: Okay.

14 A: From a -- from a factual standpoint with the case
15 itself, it's not -- you know, there's no element of an injury
16 in attempted murder with regards to -- to the case from a
17 factual standpoint. So I didn't --

18 Q: Okay.

19 A: -- do much of anything with regards to investigating the
20 injury.

21 Q: So in terms of preparing a potential defense at trial,
22 looking at the victims' injuries is not an avenue that you
23 would take in terms of a defense to attempted murder?

24 A: That's not -- I mean as far as looking into the
25 injuries, yeah, we probably would have done that had -- when

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 I went down to the jail to meet with him if he had said, yes,
2 I want to go forward with a trial. Then we might've looked
3 further into that.

4 Q: Okay.

5 A: And certainly would've been able to cross-examine the
6 witnesses as far as treatments they got from the doctor at
7 trial and how long, if any, time they stayed in the hospital,
8 was it an outpatient situation, did they spend the night, you
9 know, what all happened to sort of get -- to get -- size up
10 the injuries from that standpoint in an effort to ask for any
11 kind of a lesser-included offense or something like that.

12 Q: Okay.

13 A: But as far as factually from the charge that he was
14 charged with, there's -- there's no requirement of any kind
15 of serious injury or great bodily injury for --

16 Q: Okay.

17 A: -- attempted murder.

18 Q: Okay. So I think I'm understanding you to say that once
19 he indicated he wanted to plead guilty, then the fact of an
20 injury or no injury or the extent of injuries would not make
21 a difference to a plea for a plea of attempted murder?

22 A: I don't think that it would have in this case.

23 Q: Okay. And he --

24 A: I mean I -- that would be a question more for the judge
25 and --

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 Q: Okay.

2 A: -- all that, but --

3 Q: And he didn't bring up you investigating the injuries as
4 some sort of something that he asked for you to do in terms
5 of preparing for his case?

6 A: I don't recall him doing that.

7 Q: Okay.

8 A: No.

9 Q: Did you -- I think you -- I think you testified that you
10 would go -- you went -- you would go down to the jail and you
11 would bring him discovery as --

12 A: I don't have any letters with him asking for discovery
13 in the file and I don't recall specifically him asking for
14 it. I know he testified about bringing a disk or whatever.
15 I'm sure I was going down there to show him the evidence in
16 the case and anything that we had in there, but I -- if he
17 asked for it, I would have -- I imagine I would have sent it,
18 but I don't -- I don't recall and I didn't get a good feel
19 for his testimony as to whether he got some stuff, but he
20 doesn't think he had everything or whether he got nothing
21 from me at all. I don't recall.

22 Q: Okay. I think there's also been an allegation raised
23 about preparing perhaps for some mitigation on the basis of
24 diminished capacity. Do you recall that being an issue or
25 what you did to address that?

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 A: I -- I didn't do anything to address diminished capacity
2 with regards to Mr. -- Mr. Cannon. In my conversations with
3 him, I didn't believe there was any issue with regard to
4 competency. Maybe that's something I should have looked
5 into. I don't know.

6 I know that, you know, after the shooting, his actions
7 were -- you know, was to flee, actions that are consistent
8 with somebody who understands what they've done was wrong and
9 all of that. So that's not something that entered my mind to
10 really look into and so maybe -- maybe I should have, maybe I
11 shouldn't have. I don't know.

12 Q: Okay.

13 A: But certainly, his actions were of someone who has a
14 consciousness of what they had done was wrong.

15 Q: Okay. And in your conversations with him, did he ever
16 give you any indication that he didn't understand something
17 that was happening in his case or what you guys were talking
18 about?

19 A: Not that I can recall.

20 Q: Okay. If he had indicated some kind of confusion or you
21 felt like he wasn't understanding, what would you have done?

22 A: If I had got any indication that, yeah, that he didn't
23 have an understanding or that there was any concerns with
24 regards to his capacity to -- to stand trial or whatever, I
25 would have asked for an order to have him evaluated.

WILLIAM "VICK" MEETZE - DIRECT BY MS. MCCALLISTER

1 Q: Okay. And Mr. Cannon testified that the two of you did
2 discuss his rights to appeal. Do you recall that
3 conversation?

4 A: I -- you know, you had -- I think in the transcripts it
5 indicates that I handed up a plea affidavit maybe, and
6 certainly that's part of that, but that's certainly something
7 that you go over with -- with clients prior to their
8 pleading, their right to appeal and time frame for that.

9 Q: Okay. So the right to appeal and the time frames
10 would've been included in the guilty plea affidavit?

11 A: Correct.

12 Q: Okay. Do you -- but you just -- you don't specifically
13 recall the conversation that Mr. Cannon testified to?

14 A: Mr. Cannon did not ask me to appeal his case.

15 Q: Okay. If he had asked you to appeal, what would you
16 have done?

17 A: I would have filed the notice of an intent to appeal.

18 Q: Did you see -- did you see any basis for an appeal?

19 A: I did not.

20 MS. MCCALLISTER: I beg the Court's indulgence, Your
21 Honor, for a moment. I think I'm done.

22 THE COURT: Do you have that affidavit?

23 THE WITNESS: I do not. I'm trying to --

24 MS. MCCALLISTER: Let me see. Your Honor, I believe it
25 is in the -- in the clerk's records that were part of Your

WILLIAM "VICK" MEETZE - CROSS BY MR. WALLER

1 Honor's packet --

2 THE COURT: All right. Let me see the --

3 MS. MCCALLISTER: -- according to this case file.

4 THE COURT: Let me see the affidavit itself.

5 Very good. Make that a part of the record as a Court's
6 exhibit, the affidavit.

7 (WHEREUPON, the guilty plea affidavit was marked as
8 Court's Exhibit Number 1.)

9 THE COURT: Anything further, Ms. McCallister?

10 MS. MCCALLISTER: I don't think so, Your Honor.

11 THE COURT: All right.

12 MS. MCCALLISTER: Thank you.

13 THE COURT: Mr. Waller?

14 MR. WALLER: Briefly, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. WALLER:

17 Q: Mr. Meetze, you testified that you had gotten a big,
18 long trial list, you said three or four pages long, about 10
19 days before the term of court starts?

20 A: I said that -- that's the normal procedure of the
21 solicitor. I can only assume that that's the same thing that
22 happened here, but after he had turned down his -- his offer,
23 then certainly he was on notice at that point in time that at
24 some point in time in the near future his case would be --
25 would be called for trial.

WILLIAM "VICK" MEETZE - CROSS BY MR. WALLER

1 Q: Would be called for trial?

2 A: Uh-huh.

3 Q: Okay. You don't remember anything specific that -- that
4 your notice would've been different than the normal procedure
5 in this case? You don't remember getting a list with just
6 one -- his name on it? You remember the same -- you don't
7 remember anything out of the ordinary in this case?

8 A: I don't remember anything out of the ordinary. Now,
9 there are -- there are times and there are cases where the
10 State will go before whoever the current chief administrative
11 judge is and ask that certain cases be set for a date certain
12 for trial. I don't recall and I don't believe that happened
13 with Mr. Cannon, but I don't recall whether it did or not.
14 But when that happens, we do get a shorter list of names and
15 more focused, but it can be for multiple terms of court when
16 we get one of those. So --

17 Q: Okay.

18 A: I don't recall anything like that happening. I don't
19 recall Mr. Jepertinger giving me a list with just Mr.
20 Cannon's name on it.

21 Q: Okay. And you testified I believe that sometime in that
22 next week you would have gone down to the jail and told him
23 that he was on a list subject to being called the next term
24 of court, even if it's multiple weeks?

25 A: Right.

WILLIAM "VICK" MEETZE - CROSS BY MR. WALLER

1 Q: Is that right?

2 A: Well, in this case, it would have been, like, we get the
3 jail list. Typically, it's on a Friday, maybe Thursday,
4 sometime a particular week, and the week after that would be
5 basically the week leading up to trial or -- excuse me -- the
6 week leading up to court. And so sometime in that week, I
7 would have gone down to the jail to let him know and anybody
8 else on the list -- trial list know that they were up for
9 trial.

10 Then we would have a plea week and then the trials would
11 start after that. So essentially, the list we would get
12 would be two weeks to 17 -- 18 days prior to actual trials
13 being called because we have that plea week that's always the
14 first week of any term of court.

15 Q: Okay. Specifically related to Mr. Cannon, at the time
16 you would have received the notice list, do you have any
17 specific recollection of what you had done to prepare for any
18 trial at that point?

19 A: I don't have any specific recollection as to what --
20 outside of meeting with Mr. Cannon and going over the
21 evidence in my office and things like that, but certainly at
22 that point in time I was familiar with the facts and evidence
23 that was in the case file. But as far as sitting down and
24 having prepared cross examinations or opening statements or
25 anything like that, I had not done anything of that nature.

WILLIAM "VICK" MEETZE - CROSS BY MR. WALLER

1 Q: Okay. I believe you testified that had it gone to
2 trial, you would have questioned the victims about the
3 treatment they received and things like that?

4 A: That certainly would have been something that would have
5 been up for cross-examination and that kind of thing.

6 Q: Okay. In your -- in your career, have you subpoenaed
7 medical records before?

8 A: Yes.

9 Q: Okay. Would you have had enough time to subpoena
10 medical records, being 16 to 18 days out from trial?

11 A: I think so.

12 Q: Okay. Mr. Meetze, did you ever speak with Mr. Cannon's
13 mother?

14 A: I did.

15 Q: Do you recall when in your representation you spoke with
16 her?

17 A: I think I spoke with her not long before he ended up
18 pleading, and I think she called me after the plea as well.

19 Q: Okay. Do you recall what you and Mrs. Evans discussed?

20 THE WITNESS: I beg the Court's indulgence.

21 A: The only thing I recall about -- at least when she
22 called me afterwards, I think she asked me if I thought that
23 we should appeal the sentence, and I think that's the way it
24 was put. Do you think we should appeal? And, of course,
25 from a guilty plea, only being able to appeal errors of law

WILLIAM "VICK" MEETZE - CROSS BY MR. WALLER

1 and the fact that any time we appeal from a guilty plea, we
2 have to put in the notice that we do not see any appealable
3 issues in this case. Essentially, we're doing this because
4 our clients -- my client asked me to, but I don't know of any
5 appellate issues. When she asked me if I thought that we
6 should appeal the case, I told her I didn't think we should
7 appeal the case.

8 Q: Okay. You testified earlier that it was your
9 understanding that the victim, the owner of the barbershop,
10 did remember the incident that started this whole thing. He
11 just didn't recall it. It wasn't a big deal to him like it
12 was to Mr. Cannon?

13 A: That was the State's presentation of the facts at his
14 plea on all that, yes.

15 Q: Okay. And if you have a transcript, can I get -- if I
16 can get you to turn to page 28? The paragraph begins on line
17 16. You seem to acknowledge that Mr. Cannon truly believed
18 that someone was out to get him.

19 A: I'm sorry. Line 16?

20 Q: Yes, sir.

21 A: Yes. I see that.

22 Q: Did you ever attempt to use Mr. Cannon's belief to
23 develop any defense, either mitigation only or even
24 potentially to defend against the required malice for
25 attempted murder?

WILLIAM "VICK" MEETZE - CROSS BY MR. WALLER

1 A: Of course, at this point in time, he pled. I mean I
2 can't testify as to what I would have done had he gone to
3 trial, but outside of what I stated to the Court as far as
4 mitigation goes is what was done. Anything extra, I guess,
5 to prepare with regard to that for mitigation as part of his
6 plea, I didn't. I didn't do anything overly to develop that
7 as mitigation on the plea.

8 Q: Okay. Did you ever discuss that with him as a potential
9 defense, not overall defense but possibly a defense to the
10 finding of actual malice that's needed for the attempted
11 murder?

12 A: I -- I don't think I did. I don't recall doing that. I
13 don't think that I did.

14 Q: Okay.

15 MR. WALLER: Thank you, Mr. Meetze. No further --
16 nothing further.

17 THE COURT: Any redirect?

18 MS. MCCALLISTER: No, Your Honor.

19 THE COURT: All right.

20 MS. MCCALLISTER: Thank you.

21 THE COURT: Very good. You may step down.

22 Anything further from the State?

23 MS. MCCALLISTER: No, Your Honor.

24 THE COURT: Very good. Anything further from the
25 applicant?

1 MR. WALLER: Your Honor, if I could make some brief
2 argument?

3 THE COURT: Yes. I'd be glad to hear from you.

4 MR. WALLER: Thank you.

5 THE COURT: Let's start -- let's start with the first
6 one about -- the preparing for trial was the first exception.

7 MR. WALLER: Your Honor, the testimony from both Mr.
8 Cannon and Mr. Meetze was that there wasn't a lot of
9 preparation done for trial. Mr. Meetze certainly testified
10 that he had reviewed the discovery and met with Mr. Cannon,
11 but it was his understanding that Mr. Cannon did not want to
12 proceed to trial.

13 However, Mr. Cannon had turned down several pleas at
14 that point or at least one plea offer at that point, and Mr.
15 Cannon testified that he did want to go to trial because he
16 disputed some of the issues. However, he did not feel that
17 Mr. Meetze could be prepared for the trial because of the
18 short notice.

19 Mr. Meetze testified that they would've gotten a long
20 list of cases subject to being called during the term of
21 court approximately 10 days in advance and, at that point, he
22 had not done any investigation into the actual injuries of
23 the victims. And certainly, that wouldn't -- certainly, that
24 wouldn't be a defense for the attempted murder.

25 However, if they are going to testify that they had

1 undergone certain treatments that didn't actually take place,
2 they could certainly be impeached with that if they had
3 records that indicated otherwise. I think that's a valid
4 preparation that would have needed to take place. I don't
5 think there was time to do that, given the relatively short
6 nature of trial.

7 THE COURT: Very good. What do you have to say about
8 that, Ms. McCallister?

9 MS. MCCALLISTER: Your Honor, Mr. Meetze's testimony is
10 that, you know, obviously, he was aware that this case was --
11 was coming up when it was called. It was on, you know, a
12 list for trial. He would have conveyed that to Mr. Cannon
13 and that, you know, at that point, he was familiar with the
14 facts and the discovery, the State's evidence, and he had
15 discussed that with Mr. Cannon.

16 And his testimony is he felt he did have time to
17 prepare. He had 16 to 18 days. He felt that was enough time
18 to subpoena -- issue subpoenas and get potential records.

19 And I also think, Your Honor, you know, in terms of the
20 victims' medical records, we don't have those here today and
21 so if that's an important element, you know, to Mr. Cannon,
22 then it's incumbent upon him to have those here and present
23 that evidence and to show, you know, why that evidence would
24 have been important.

25 THE COURT: Exactly what are -- what import do you

1 attach to the medical records?

2 MR. WALLER: Your Honor, I think it's preparation for
3 trial. Mr. Cannon indicated that he -- or testified that he
4 asked Mr. Meetze to go get that.

5 THE COURT: Do you have to have -- do you even have to
6 have injuries for an attempted murder?

7 MR. WALLER: Your Honor, I don't know that you do.

8 THE COURT: Okay.

9 MR. WALLER: I certainly think shooting somebody with a
10 gun is enough to --

11 THE COURT: Do it.

12 MR. WALLER: Correct. To sustain that charge.

13 THE COURT: Yeah. Shoot somebody in the chest and in
14 the head.

15 MR. WALLER: But I certainly think that if there was
16 testimony about the injuries they suffered that was different
17 from what they actually suffered --

18 THE COURT: Oh, okay.

19 MR. WALLER: I think that's something that needed to be
20 looked into.

21 THE COURT: Very good. All right.

22 MR. WALLER: And, Your Honor, I think I kind of lumped
23 one and two together when I was making my arguments there.

24 THE COURT: All right. That's all right.

25 And, Ms. McCallister, I imagine you would crave

1 reference to the plea transcript and the affidavit perhaps on
2 those issues?

3 MS. MCCALLISTER: Yes, Your Honor, I would.

4 THE COURT: Very good.

5 MS. MCCALLISTER: Thank you.

6 THE COURT: All right. And lack of investigation I
7 think is the next one. I think you've sort of mentioned
8 that.

9 MR. WALLER: That's why I believe I kind of lumped them
10 all together.

11 THE COURT: All right. And the direct appeal. Mr.
12 Meetze said that he didn't ask him to appeal. What do you
13 have to say about that?

14 MR. WALLER: Your Honor, Mr. Meetze says he didn't. Mr.
15 Cannon testified that they had a discussion about it
16 beforehand, and I believe it was a little unclear from the
17 testimony whether he affirmatively asked him to or not.

18 THE COURT: All right.

19 MR. WALLER: I've seen the plea affidavit and it informs
20 him of his right to appeal.

21 THE COURT: Right.

22 MR. WALLER: But I don't know if it tells -- if it asked
23 him whether he specifically wants to or not.

24 THE COURT: Right.

25 MR. WALLER: Mr. Cannon testified that he wrote a letter

1 to Mr. Meetze, and he actually tried to file it on his own,
2 Your Honor, but he filed it -- I believe he was a day past
3 the 10 days.

4 THE COURT: All right. I imagine the operative question
5 is -- for the purposes of this hearing is whether or not he
6 actually did. Mr. Meetze said he didn't. His testimony was
7 not real clear in that regard, but above and beyond that,
8 there would have to be some legal issue. That's an awfully
9 stiff sentence for what had been alleged, but can you point
10 to any legal error in the -- in the plea itself?

11 MR. WALLER: Your Honor, I can't. However, I don't
12 believe that's the standard for post-conviction relief in the
13 matter.

14 THE COURT: All right. I know that. The issue before
15 me now is whether or not there was actually a request for it.

16 MR. WALLER: Correct.

17 THE COURT: But my question to you is the overall
18 question is if he did have an appeal, would it be effective.
19 I'm just asking.

20 MR. WALLER: I didn't see any appealable issues in the
21 transcript, Your Honor.

22 THE COURT: Okay. That's kind of what I was getting at.
23 I think that's probably the most -- that's not really what
24 we're dealing with here. The question we're dealing with
25 here is whether or not he asked for it, but the practical

1 effect of it is it would -- it would make really -- it really
2 would make no difference because of the fact the plea
3 transcript really stands on its own in that regard.

4 Anything further as far as argument?

5 MR. WALLER: Your Honor, it had been mentioned about the
6 history of this case and I had used the term diminished
7 capacity several times, but I don't want it to be
8 misconstrued when I use that term. I certainly am not
9 contending that Mr. Cannon had any sort of mental
10 deficiencies or anything like that that would have inhibited
11 his ability to help Mr. Meetze.

12 And South Carolina does not recognize the defense of
13 diminished capacity, except that we do. Battered spouse
14 syndrome is something that is recognized in South Carolina,
15 and I think this case is very much akin to that. The case
16 law does not, such that outside of a battered spouse this
17 type of diminished capacity is recognized.

18 So I don't believe it would have been an affirmative
19 defense. However, I think it might've been able to have been
20 used as a defense to the malice involved in an attempted
21 murder, as well as used for mitigation purposes.

22 If Mr. Cannon has an almost decade-long fear of this
23 other individual, perceived or not perceived, that's
24 certainly affected his thinking and affected his move to out
25 of state for several years. His mother testified that he was

1 so terrified he wouldn't go outside. She testified she
2 passed all those things on to Mr. Meetze. So I certainly
3 think that --

4 THE COURT: There's a big question of fact about exactly
5 how fearful he was of him because -- and I know you probably
6 don't contend this, but at least in the transcript and what's
7 been testified to here today, they contend that he went by
8 and got a haircut the day before, which would seem to
9 indicate that flies contrary to your perception that he was
10 scared when he left this area and he was scared in Texas and
11 then he goes and sits down in a chair where they have razors
12 and everything else and had a haircut the day before. So
13 there's a question of fact about that obviously.

14 MR. WALLER: I believe so, Your Honor.

15 THE COURT: Yeah. All right. Anything further from
16 anybody?

17 MR. WALLER: Nothing further, Your Honor.

18 THE COURT: Let me -- I want to once again review the
19 transcript. Just give me just a brief moment. I want to
20 look at this transcript here and I want to take a look at
21 this very lengthy affidavit.

22 (WHEREUPON, there was a pause in the proceedings, after
23 which the proceedings resumed as follows.)

24 RULING

25 THE COURT: Okay. After reviewing the plea transcript,

1 hearing the testimony here today, and the plea affidavit, I'm
2 going to deny the application for post-conviction relief and
3 specifically find that Mr. Meetze had prepared for trial in
4 this case. He had met with the defendant on more than one
5 occasion. His investigator had gone by to speak with him.

6 There has been a contention that the plea was
7 involuntary. I would just make reference to the plea
8 transcript where it indicated that no one put any pressure on
9 him, threatened him, promised him anything. It was his
10 decision to plead guilty and that it was a voluntary
11 decision.

12 All of those questions are covered very clearly in the
13 plea transcript. He indicated that he understood all of the
14 questions and answered truthfully. And if you -- with regard
15 to the voluntariness, the plea transcript addresses that
16 squarely.

17 As far as the investigation goes, it's clear that he had
18 all of the discovery materials. He indicated that he went
19 over the discovery materials with the defendant to the extent
20 that he was allowed to do so. There's some indication that
21 the defendant did not request, nor did he want to look at the
22 video. However, that was indeed submitted to him.

23 As far as the appeal goes, there's no question -- and I
24 specifically find that from the transcript, the plea
25 affidavit, and the testimony of Mr. Meetze, he was informed

1 of his right to a direct appeal. The operative question here
2 today is whether or not he specifically asked Mr. Meetze to
3 appeal it.

4 Mr. Meetze testified that he did not, and I believe his
5 testimony. The applicant's testimony in this regard was --
6 was equivocal. So I do indeed find that he was informed of
7 his right and he did not request an appeal.

8 And I think that addresses all of the issues. Ms.
9 McCallister, I'm going to ask that you prepare that order.
10 Send a copy to Mr. Waller and, before you submit it to me,
11 make sure that he has no objection as to the language. If
12 there is any objections, I would ask that y'all get on a
13 conference call with me and we'll address the language. And
14 --

15 MR. WALLER: Your Honor, just to be clear as to your
16 ruling, I don't believe you addressed my argument about the
17 diminished capacity.

18 THE COURT: Right. I think the issue of diminished
19 capacity is without merit. There's no question and you even
20 contend that you don't believe that his capacity was such
21 that he was incapable or he was not competent to enter the
22 plea or that he's not competent to assist you in this civil
23 action.

24 And the issue with regard to diminished capacity is not
25 established -- in the context that you are alleging is not

1 established in the law. It's not the state of the law here
2 today, and I anticipate if the matter had gone to trial,
3 those issues would have been brought out.

4 But most importantly, the applicant did not talk to Mr.
5 Meetze about this ongoing problem. There's no way Mr. Meetze
6 can -- can read the applicant's mind. And Mr. Meetze made it
7 very clear that that had not even been told to him and that
8 he said that he always gives a defendant an opportunity to
9 say is there anything you want to tell me, what is your
10 theory of the case, what are your defenses.

11 So the argument with regard to diminished capacity is
12 without merit, given those circumstances.

13 MR. WALLER: Thank you, Your Honor.

14 (WHEREUPON, the proceedings ended at 11:29 a.m.)

15

16 --- END REQUESTED TRANSCRIPT ---

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1 State of South Carolina)
2) Certificate
3 County of Florence)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 58, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Florence County, South Carolina, on the 1st.
13 day of February, 2018.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.
16

17 s/Krystal J. Smith

18 Court Reporter
19

20 Florence, South Carolina

21 April 16, 2019
22
23
24
25

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE)

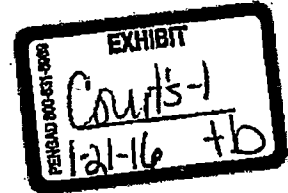
State of South Carolina)

AFFIDAVIT OF DEFENDANT FOR
GUILTY PLEA

-VS-)

Darrell Cannon)

Defendant)



The Defendant states to the Court that the Defendant wants to plead guilty to the following charge(s):

2 County of Attempted Murder

In connection with the plea, I certify that the answers to the following questions are true:

BACKGROUND OF DEFENDANT

- 1) How old are you? 29
- 2) How far did you go in school? GED
- 3) (a) Can you read and write the English language? ☒ YES ☐ NO
- (b) Are you able to read and understand this form? ☒ YES ☐ NO
- (c) If not, who is explaining it to you and filling out your answers?

Name of person: _____

- 4) What kind of work do you do? Welding
- 5) Have you ever been treated for abuse of alcohol or drugs or for mental illness?
☒ YES ☐ NO

If so, when? 2014

For How long? 6 months

Did you successfully complete the program? ☐ YES ☒ NO

- 6) Have you taken any medication, drugs or alcohol in the last 24 hours?
☐ YES ☒ NO

If yes, What? _____

How much? _____

When? _____

Does this affect your ability to know and understand what you are doing here today? _____ YES _____ NO

- 7) Are you today under the influence of any medications, drugs or alcohol?
_____ YES ☒ NO
- 8) Are you today aware of any physical, emotional or nervous problem that might keep you from understanding what you are doing?
_____ YES ☒ NO
- 9) Have you ever been ordered by a Judge to submit to a mental evaluation to determine your competency to stand trial?
_____ YES ☒ NO

WAIVER OF CONSTITUTIONAL RIGHTS

- 1) Do you understand that you have a right to remain silent, that is your rights against self incrimination? You cannot be compelled or forced to testify or give evidence against yourself. Do you understand this right?
☒ YES _____ NO

Do you wish to give up this right and plead guilty?

☒ YES _____ NO

- 2) Do you understand that you have right to a jury trial; you have a right to have a jury decide whether or not you are guilty beyond a reasonable doubt? They would base their decision upon evidence which the state presents and on any evidence you might wish to introduce. In a trial, you would be presumed innocent, and the state would have to produce evidence that would convince all 12 members of the jury that you were guilty beyond a reasonable doubt. Do you understand this right?

☒ YES _____ NO

Do you wish to give up your right to a jury trial and plead guilty?

☒ YES _____ NO

- 3) Do you understand that you have the right to confront and be confronted by the witnesses against you, that is, the right to see, hear and cross examine any witness that may be called against you during the trial and the right to subpoena and call witnesses in your own behalf? Do you understand these rights?

☒ YES _____ NO

Do you wish to give up these rights and plead guilty? ☒ YES _____ NO

- 4) If your case has not been before the grand jury, you have the right to have the case presented to the grand jury. After hearing evidence, 12 of the 18 people on the grand jury would have to agree that you were probably guilty before the charge(s) against you could be reported out as a True Bill ready for trial. A grand jury might return a No Bill, which would mean that the charge(s) would be dismissed. Do you understand this right?

_____ YES _____ NO

Do you wish to give up your right to have the grand jury examine your case?
☐ YES ☐ NO

5) Do you understand that when you plead guilty you give up these constitutional rights?
☒ YES ☐ NO

Is that what you want to do? ☒ YES ☐ NO

Do you understand that you will not get a jury trial if you plead guilty?
☒ YES ☐ NO

NATURE OF THE CHARGE(S) AND CONSEQUENCES OF PLEADING GUILTY

1) Has your attorney discussed with you the charge(s) and possible punishment for the charge(s)?
☒ YES ☐ NO

2) What acts did you do which causes you to think that you are guilty of the charge(s) to which you now want to plead guilty?
Agrees with the allegations contained
on the incident report

3) Are you pleading guilty for any reason other than the fact that you are guilty?
☒ YES ☐ NO

If so, what is the other reason? Feels like he is being
forced into court to sign.

4) As you understand, the maximum possible punishment for this charge is:
0-30 years on both

5) N/A If an offense with graduated penalties: Do you understand that if you plead guilty to this offense and you are convicted at a later time of the same crime, the punishment will be higher the next time?
☐ YES ☐ NO

6) Do you have any questions about the nature of the charge(s) against you and the possible punishment?
☐ YES ☒ NO

If so, please write your question(s) here: _____

7) Do you understand that when you plead guilty you admit the truth of the charge(s) against you?
☒ YES ☐ NO

- 8) You may have defenses to the charge(s) against you. The Judge does not know whether you do or not. Do you understand that if you plead guilty you will waive or give up any defense to the charge(s)?
☒ YES ☐ NO
- 9) You may have given an incriminating statement in this case. Do you understand that if you plead guilty you waive or give up the right to contest or challenge whether such a statement was freely and voluntarily given in accordance with your constitutional rights?
☒ YES ☐ NO
- 10) Understanding the nature of the charge(s) against you and the consequences of a guilty plea, do you still wish to plead guilty?
☒ YES ☐ NO

TWO AND THREE STRIKES RULE AND NO PAROLE OFFENSES

- 1) Do you understand that the charge(s) you are pleading to is/are considered a serious most serious offenses under South Carolina's laws?
☒ YES ☐ NO
- 2) Do you understand that that means they are considered strikes in South Carolina's two and three strikes laws?
☒ YES ☐ NO
- 3) Do you understand that under the two strikes law, if you were to be convicted of two most serious offenses in your lifetime then you would face a mandatory sentence of life in prison without parole?
☒ YES ☐ NO
- 4) Do you understand that under the three strikes law that if you were convicted of three serious offenses or a combination of three serious and most serious offenses, that you would then face a mandatory sentence of life in prison without parole?
☒ YES ☐ NO
- 5) Do you understand that the charge(s) you are pleading guilty to is/are considered no parole offense(s) under South Carolina law?
☒ YES ☐ NO
- 6) Do you understand that means that any sentence you receive in this case you would have to serve at least 85% of that sentence before you would be eligible for release and that you may have to do everyday of the sentence day for day?
☒ YES ☐ NO
- 8) Do you understand that if you are pleading guilty to murder, then any sentence you get will have to be done day for day. In other words if you receive a thirty

N/A

(30) year sentence then you will be required to do all thirty years before you can be released.

_____ YES _____ NO

- 7) Do you understand that upon your release from that sentence you would be required to serve a two year period under community supervision and if you violated the conditions of that program you could have that supervision revoked and be required to serve up to one year in prison as a result?

☒ YES _____ NO

- 8) Do you understand the charge(s) you are pleading guilty to are also considered violent offenses under South Carolina law?

☒ YES _____ NO

- 9) Do you understand that the violent distinction affects parole eligibility?

☒ YES _____ NO

- 10) Do you understand that a second conviction for a violent offense would render you ineligible for parole?

☒ YES _____ NO

- 11) Understanding all of that, do you still wish to plead guilty?

☒ YES _____ NO

PLEA NEGOTIATIONS

- 1) Has any plea agreement been made by you with the Solicitor's Office?

_____ YES ☒ NO

If so, exactly what do you understand the agreement to be? _____

- 2) Do you understand that the recommendation of the attorneys is not binding on the court and that the Judge could still sentence you up to the maximum if he/she felt it appropriate?

_____ YES _____ NO

- 3) Do you still wish to plead guilty? ☒ YES _____ NO

VOLUNTARINESS OF PLEA

- 1) Has anyone promised you anything or held out any hope of reward to get you to plead guilty?

_____ YES ☒ NO

If yes, explain: _____

- 2) Has anyone threatened you or used force to get you to plead guilty?
 _____ YES ☒ NO
- 3) Has anyone used any pressure or intimidation to cause you to plead guilty?
 ☒ YES _____ NO
- 4) *Feels like he is being forced to conf. to son.*
 Have you had enough time to make up your mind as to whether or not you want to plead guilty?
 _____ YES ☒ NO
- 5) Are you pleading guilty of your own free will and accord?
 ☒ YES _____ NO

SATISFACTION WITH ATTORNEY

- 1) Has your attorney reviewed this form with you and answered any questions you have about it?
 ☒ YES _____ NO
- 2) Are you satisfied with the manner in which your attorney has advised and represented you?
 _____ YES ☒ NO
- 3) Have you talked with your attorney as often and for as long as you feel necessary for him/her to properly represent you?
 _____ YES ☒ NO
- 4) Do you need more time to talk with your attorney?
 _____ YES ☒ NO
- 5) Have you understood your talks with your attorney?
 _____ YES ☒ NO
- 6) *Says he does not think I have acted in his best interest*
 Has your attorney done everything for you that you feel he/she could have done or should have done?
 _____ YES ☒ NO
- 7) *Says I should have gotten a better offer*
 Has your attorney done anything in this case that you feel he/she should not have done?
 _____ YES ☒ NO

If yes, explain: _____

- 8) Are you completely satisfied with your attorneys services?
 _____ YES ☒ NO

- 9) Do you have any complaints you want to make about your attorney, the solicitor or any of the police officers? ☒ YES ☐ NO
Doesn't feel like I have acted in his best interest and feels
- 10) Do you understand that you have a right to appeal your guilty plea and the sentence of the court and you must do so within 10 days of the sentence? ☒ YES ☐ NO
like the state should have made a better offer.

CONCLUDING QUESTIONS

- 1) Do you understand all of these questions? ☒ YES ☐ NO

If not, which ones do you not understand? _____

- 2) Do you now want to plead guilty? ☒ YES ☐ NO

SIGNED BY ME IN THE PRESENCE OF MY ATTORNEY, this 21st

Day of January, 20 11.

Ronelle D. Carow
 DEFENDANT

CERTIFICATE OF COUNSEL

- 1) Print your name and telephone number. Vick Meertze
843-665-3055
- 2) I represent the Defendant in this case.
- 3) I have read and fully explained to the Defendant the allegations contained in the indictment(s) in this case.
- 4) To the best of my knowledge and belief the statements, representations and declarations made by the Defendant in the foregoing petition are in all respects accurate and true.
- 5) I have explained to the Defendant the charge(s) contained in the indictment(s), the possible punishment and his/her constitutional rights including his/her right to a jury trial.
- 6) I have explained to the Defendant the right to have this case submitted to the grand jury for its consideration.
- 7) In my opinion, the Defendant understands the charge, the punishment and the constitutional rights in this case.
- 8) The defendant has indicated to me that he/she wishes to plead guilty.
- 9) The plea of guilty offered by the Defendant to count(s) 2 Counts of attempted murder accords with my understanding of the facts that the Defendant has related to me, is consistent with my advice to the Defendant, and, in my opinion, is voluntarily and understandingly made.

SIGNERD BY ME IN PRESENCE of the Defendant and after full discussion of the contents of this certificate with the Defendant, this 21st day of January, 2016.

Vick Meertze
ATTORNEY FOR THE DEFENDANT

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Donetelle D. Cannon, #317657,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

C.A. No. 2016-CP-21-2950

ORDER OF DISMISSAL

2018 OCT 18 AM 11:14
DORIS POULOS GRARA
C.C.P. & S.S.
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Donetelle D. Cannon (Applicant) on November 28, 2016, and amended January 25, 2018. Respondent made its Return on April 19, 2017. An evidentiary hearing into the matter was convened on February 1, 2018, at the Florence County Courthouse before the undersigned. Jonathan Waller, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf, and his mother, Elizabeth Evans, also testified. Vick Meetze, Esquire, (Counsel) Applicant's plea counsel testified for the State. This Court also had before it a copy of the records of the Florence County Clerk of Court regarding these convictions, records from the South Carolina Department of Corrections, Applicant's appellate records, the application, Respondent's Return, and the plea transcript.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the January 2015 term of the Florence County Grand Jury for two counts of attempted murder and one count

of possession of a weapon during the commission of a violent crime (2015-GS-21-00048). Vick Meetze, Esquire, represented him. On January 21, 2016, Applicant appeared before the Honorable D. Craig Brown, and pleaded guilty as indicted to two counts of attempted murder. The charge for possession of a weapon during the commission of a violent crime was dismissed. The sentencing was without negotiations or recommendations. Judge Brown sentenced Applicant to fifteen years in prison for the first charge of attempted murder and ten years for the second charge, to be run consecutively.

Applicant filed a *pro se* notice of appeal, which was ultimately dismissed as untimely by the South Carolina Court of Appeals by Order filed August 15, 2016. The Remittitur was returned on September 1, 2016.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Failure to Investigate"
 - i. Failure to investigate a defense of "accident"
 - b. Failure to have Applicant evaluated for competency
 - c. "Incorrect advice"
 - i. Counsel led Applicant to believe the sentences would be run concurrent, rather than consecutive, and did not object during the plea.

Through counsel, Applicant amended the application on January 25, 2018, alleging as follows:

1. As to representation rendered by William Vickery Meetze, Esquire:
 - a. Counsel was ineffective for failing to adequately prepare for Applicant's trial, scheduled, unbeknownst to Applicant, for January 21, 2016, causing Applicant to plead guilty under the threat of unprepared counsel, rendering Applicant's plea of guilty involuntarily entered;
 - b. Counsel was ineffective for failing to conduct a complete investigation into the facts and circumstances of Applicant's case, particularly the injuries

- suffered by victims;
- c. Counsel was ineffective for failure to develop the mitigation of diminished capacity;
- d. Counsel was ineffective for failure to provide Applicant with a complete copy of discovery materials for Applicant's review, thus rendering Applicant's plea of guilty involuntarily entered;
- e. Counsel was ineffective for failure to file a direct appeal from Applicant's plea of guilt when asked to do so immediately following Applicant's plea.

At the evidentiary hearing, counsel for Applicant informed the court Applicant wished to proceed only on the allegations in the amended application. Therefore, construing the claims in Applicant's original, *pro se* application as separate allegations from those contained in the amendment, all allegations listed in the original application are deemed abandoned and dismissed.

FACTS ADDUCED AT GUILTY PLEA

Although the shooting took place on October 2, 2014, the events leading up to it began on September 30, 2014, when the victim, Darwin Hamm, noticed Applicant and a female companion sitting in a car in the parking lot of his barbershop for several hours. Tr. pp. 14-15. A neighboring businessman, Robert Frost, also noticed Applicant waiting in the parking lot and later spoke to him at a convenience store down the road. Tr. p. 15. Applicant began complaining to Mr. Frost about the victim, Mr. Hamm. Tr. p. 15. Several years ago, Applicant got a haircut from Mr. Hamm, but refused to pay him the ten dollars he owed, and Applicant believed Mr. Hamm held a grudge against him for it. Tr. p. 15. Applicant then moved to Texas, but continued to keep tabs on Mr. Hamm, and in checking Mr. Hamm's Facebook page, Applicant learned Mr. Hamm had been to visit Texas. Tr. p. 15. Applicant told Mr. Frost he believed Mr. Hamm had put a hit out on him over the ten-dollar haircut. Tr. p. 15.

Mr. Frost and Applicant returned to the parking lot, and Mr. Frost called Mr. Hamm to come outside and talk to them. Tr. pp. 15-16. Applicant explained his memory of the haircut to

Mr. Hamm, and implored Mr. Hamm to take ten dollars from him, which Mr. Hamm did, although he told Applicant he did not remember the incident at all. Tr. p. 16. Applicant then wrote out a statement, which Mr. Hamm signed, attesting he had "no beef" with Applicant. Tr. p. 16. Applicant then asked Mr. Hamm to swear on his mother's grave that he had "no beef" with Applicant, at which point Applicant's female companion intervened, and they left. Tr. p. 16.

The next day, Applicant return to the barber shop and requested a haircut. Tr. p. 17. One of the stylists in the shop, Tina Gabbison, saw and spoke to Applicant and then told Mr. Hamm she felt something was off with the situation. Tr. p. 17. Mr. Frost also saw Applicant had returned and confronted him. Tr. p. 17. Mr. Hamm, in an attempt to keep the peace, gave Applicant a haircut. Tr. p. 17. During the course of cutting Applicant's hair, Mr. Hamm learned Applicant was an aspiring rapper and offered to put some of his CDs out in the shop. Tr. p. 17. Applicant paid for his haircut and left without any further incident. Tr. p. 17.

The next day, October 2, 2014, around 9:30 a.m., Applicant returned to Mr. Hamm's shop for the third time. Tr. pp. 17-18. At that time, the shop was crowded with customers, both men and women, and several small children. Tr. p. 18. Mr. Hamm was cutting the hair of another customer, Mr. King, and, thinking Applicant was returning with the CDs, pointed to where Applicant could put them. Tr. p. 18. Instead, Applicant drew a gun and shot Mr. Hamm, striking him five times. Tr. p. 18. Mr. King jumped out of the barber chair and attempted to take the gun from Applicant, but Applicant turned the gun on Mr. King and shot him in the head. Tr. p. 18. Applicant left via the front door and drove off in a car driven by a woman. Tr. pp. 18-19.

Witnesses gave police Applicant's nickname, Michi Mich, through which they found Applicant's Facebook profile. Tr. p. 19. Mr. Hamm, Mr. Frost, and another witness all identified

Applicant as the perpetrator in a photo lineup. Tr. p. 19. Applicant was apprehended later the same day. Tr. p. 20.

SUMMARY OF TESTIMONY

Applicant testified he had problems with the victim starting in 2007. According to Applicant, the bad blood started when the victim gave him a haircut he did not like, and he refused to pay. Applicant testified he spoke with the victim afterwards, and although the victim always told him it was a problem, he felt threatened anyway. Applicant testified he was afraid, but the incident bothered him. According to Applicant, he left South Carolina for Texas from 2008 until right before the incident in 2014, but he had some contact with the victim on Facebook during that time, and once thought he saw the victim in Texas.

Applicant testified he turned himself in to law enforcement shortly after this incident, and Counsel was appointed to represent him. According to Applicant, he and Counsel met twice during the eight-to-twelve month period of Counsel's representation. Applicant testified he had questions about the victim's injuries and the evidence against him, but he never saw any of it. Applicant testified Counsel brought him a CD, but not the items he asked for. Applicant also testified Counsel never asked for any background on the case or the history between Applicant and the victims. However, Applicant testified he told his side of the story to the investigator from the Public Defender's Office, though he did not know if Counsel did any further investigation. Applicant testified Counsel told him the State had a good case.

Applicant testified he remained in jail while awaiting trial, but he did not have notice of the trial beforehand. According to Applicant, he only found out his trial was scheduled the day before he ultimately pleaded guilty. Applicant testified he wanted a trial and only agreed to the

plea under duress because he was facing a sentence of up to sixty years, and he did not feel prepared to start a trial. Applicant testified he had not received a full copy of the discovery materials at that time.

Finally, Applicant testified he and Counsel discussed his right to appeal prior to the plea, and he told Counsel he wanted to do so. According to Applicant, that was the only conversation he had with Counsel about an appeal. However, Applicant also testified he and Counsel never discussed his right to appeal. Applicant testified he sent a letter to the Court of Appeals on February 2nd asking for an appeal.

Elizabeth Evans, Applicant's mother, also testified on his behalf and confirmed his version of events. Ms. Evans testified she noticed her son was acting strangely, like he was scared, starting in 2007 when he would refuse to leave the house. Ms. Evans testified when she asked Applicant what was going on, he told her about refusing to pay for the haircut. Ms. Evans further testified she helped send Applicant to Texas, and while he was there, he called her in a panic saying the victim was there as well. Ms. Evans testified Applicant returned to South Carolina a day or two before the incident, and she advised him to go back to Texas because he was still scared. Ms. Evans also testified she spoke with Counsel and gave him this same information.

Counsel testified he was appointed on this case in October 2014 until Applicant's plea in January 2016. Counsel testified he sent an investigator, Thomas McKenzie (McKenzie), to the jail to make the first contact with Applicant. Counsel further testified McKenzie took notes regarding the background and history between Applicant and the victim, which Counsel reviewed. Counsel testified Applicant told him a different story – that he had gone to the barber shop, asked the barber to buy some CDs from him, and shot the barber and a customer. Counsel testified the

first victim, the barber, was shot in the chest, and the second victim, the customer, was shot in the head. According to Counsel, Applicant had gone into the barbershop the previous day for a haircut, and he was identified by several witnesses.

Counsel further testified Applicant never gave an alibi or offered any defense to the shooting. Counsel testified he reviewed discovery with Applicant and asked for his version of the story, but Applicant did not have much to say about the incident. Counsel testified Applicant never asked to see any further discovery, and if Applicant had asked for something, Counsel would have gone to the jail and shown him whatever he wanted to see. He could not recall whether he and Applicant ever discussed a lack of malice as a potential defense. Additionally, Counsel testified he did not believe there was any issue regarding Applicant's competency based on their conversations and because Applicant's flight after the shooting indicating his understanding of the wrongfulness of his conduct.

Counsel testified the State made a plea offer of twenty or twenty-five years, which Applicant was not interested in, so the case was added to the trial list. Counsel testified Applicant did not want a trial, and also did not want to accept an offer of twenty-five years. Counsel testified he typically receives notice of all eligible cases ten days prior to the start of the term, and he would have gone to the jail to tell Applicant his case was on the list. Counsel further testified the term starts with guilty pleas, so in total there would have been seventeen to eighteen days before a trial could start. Counsel testified he was familiar with the facts and the evidence, but he would not have started preparing specific questions at that point. Counsel also testified he still had enough time to subpoena witnesses, if needed.

Counsel agreed he spoke with Applicant's mother around the time of the plea and once on the phone afterwards. Counsel testified, to the best of his recollection, Ms. Evans called to ask if Applicant should file an appeal, and he told her no because the plea narrows potential issues to errors of law, and he would have to put in the notice that he did not see any meritorious issues. Counsel testified the right to appeal and the time frame was included in the guilty plea affidavit he completed with Applicant. According to Counsel, Applicant did not ask him to file an appeal, and if Applicant had, he would have done so. Counsel also testified he did not believe there was any basis for an appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety, particularly the transcript and the guilty plea affidavit, and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

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

exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). 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." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). Additionally, to establish counsel failed to adequately prepare for trial, Petitioner must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E. 2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to

depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985).

This Court finds Applicant has failed to prove Counsel's performance was deficient or Applicant was prejudiced in any way. Counsel and his investigator met with Applicant, and Counsel reviewed the discovery with Applicant. Further, this Court finds credible Counsel's testimony Applicant did not request any additional information or investigation, as Applicant himself admitted he did not want to watch the video Counsel provided to him. This Court finds Counsel's investigation and preparation was reasonable, and Counsel would have been prepared to take the case to trial. Therefore, Applicant has failed to prove Counsel's assistance was ineffective regarding the investigation or preparation for trial.

Further, this Court finds the plea colloquy is determinative as to all of Applicant's issues regarding an allegedly involuntary plea. Applicant chose to plead guilty in order to decrease the possibility of being sentenced to sixty years imprisonment, which is a reasonable and valid reason to enter a guilty plea. This Court also finds the decision to plead guilty was freely and voluntarily made. During the guilty plea, Applicant testified he understood the plea was without any negotiation or recommendation from the State, and he could receive up to sixty years. Tr. pp. 4-5. After the plea court recessed the plea hearing in order to allow Applicant, Counsel, and the assistant solicitor to meet so Applicant could ask for the sentence he wanted, Applicant testified he was satisfied with the services of his attorney, and there was nothing else he wished Counsel to do for him. Tr. pp. 11-12. Applicant also told the plea court he wished to plead guilty and was doing so voluntarily, and no one had made any threats or promises in order to induce his plea. Tr. pp. 12-14. Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id.

(citing Crawford, 519 F.2d at 347); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). This Court finds Applicant failed to present any such reason in this case, and Applicant's guilty plea was freely and voluntarily given. Therefore, Counsel's assistance was not deficient, nor was Applicant prejudiced by the entry of a guilty plea.

As to the issue of an appeal, this Court finds Applicant was informed of his rights three times – by Counsel, in the guilty plea affidavit, and by the plea court during the plea hearing. On the issue of whether Applicant specifically asked Counsel to file a notice of appeal, this Court finds Counsel's testimony credible. Applicant's testimony was equivocal and is insufficient to meet his burden of proof. This Court therefore finds Counsel was not deficient for not filing a notice of appeal as he unequivocally testified he saw no meritorious reason to do so.

Finally, this Court finds the record reflects Applicant was clearly competent at the time of the plea and during this evidentiary hearing. There is no established law regarding "diminished capacity" in this context in South Carolina, but it likely would have been brought out at trial had Applicant chosen that option. Further, the Court finds credible Counsel's testimony that Applicant was asked about defenses and his side of the story, and Applicant did not bring up this ongoing issue when given the chance. Therefore, this Court finds no deficiency in Counsel's handling of mitigation at the guilty plea.

Accordingly, for all of the forgoing reasons, these allegations are denied and dismissed.

CONCLUSION

This Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel's representation was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.


 MICHAEL G. NETTLES
 Presiding Circuit Court Judge
 Twelfth Judicial Circuit

Oct 18, 2018

F.M.E.D.
 2018 OCT 18 AM 11:14
 BARRIS POLICE DEPT
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

WITNESSES

Ashley Anderson Florence Police Department

DOCKET NO. 2015-GS-21-00048

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

THE STATE

vs.

DONTELLE DEMETRIUS CANNON

John C Jeperfinger

ARREST WARRANT NUMBER

2014A2120201425 2014A2120201426

2014A2120201427

ACTION OF GRAND JURY

TRUE BILL

Verdict: Guilty

Foreperson of Grand Jury

Date: 1-8-15

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

**ATTEMPTED MURDER
(TWO COUNTS)**

AND

**POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME**

FILED
2015 JAN -8 PM 2:26
COUNTY REPOSITORY
FLORENCE, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 ATTEMPTED MURDER
 (TWO COUNTS)
 AND
 POSSESSION OF A WEAPON DURING THE
 COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on JANUARY 8, 2015 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ATTEMPTED MURDER

That DONTELLE DEMETRIUS CANNON did in Florence County, on or about October 2, 2014, with malice aforethought attempt to murder Darwin Ham, Sr., by shooting him repeatedly with a handgun, causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT TWO- ATTEMPTED MURDER

That DONTELLE DEMETRIUS CANNON did in Florence County, on or about October 2, 2014, with malice aforethought attempt to murder Jimmy King, by shooting him with a handgun, causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

**COUNT THREE - POSSESSION OF A WEAPON DURING THE
 COMMISSION OF A VIOLENT CRIME**

That DONTELLE DEMETRIUS CANNON did in Florence County, on or about October 2, 2014, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime to wit: Attempted Murder, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR