

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable R. Kirk Griffin, Circuit Court Judge

BRANDON MCFADDEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000482

APPENDIX

ADAM SINCLAIR RUFFIN
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
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ATTORNEY FOR PETITIONER

RECEIVED

Sep 24 2021

S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER)

STATE OF SOUTH CAROLINA)
STATE,)

TRANSCRIPT OF RECORD
16-GS-43-1238

v.)

BRANDON MCFADDEN,)

DEFENDANT.)

November 12, 2019
Sumter, South Carolina

BEFORE :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE

APPEARANCES:

JOHN P. MEADORS, ESQ.
Assistant Solicitor

KATARZYNA TIMMONS, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MR. MEADORS: May it please the Court.
2 Judge, before you is Brandon McFadden, Sumter
3 County true billed indictment 2016-GS-43-1238.
4 It's an indictment for armed robbery. He is here
5 with Ms. Timmons. He is entering a plea to armed
6 robbery. There are other charges associated this,
7 with this charge that we are dismissing, and there
8 is a negotiated sentence if you would so consider.

9 THE CLERK: Sir, raise your right
10 hand. State your name.

11 THE DEFENDANT: Brandon McFadden.

12 WHEREUPON,

13 **BRANDON MCFADDEN,**
14 having been duly sworn by the clerk, testified
15 as follows:

16 THE COURT: Mr. McFadden, you want to
17 plead guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you had enough time
20 to talk to your lawyer about this?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has she explained the
23 nature of the charges you're facing and your
24 constitutional rights ---

25 THE DEFENDANT: Yes, sir.

1 THE COURT: —and the possible
2 punishment you can get?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: She told you all that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You understand armed
7 robbery carries from 10 to 30 years in prison?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: It is a no parolable
10 offense. You understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: It is a most serious
13 offense and a violent offense. If you get another
14 most serious, you're gonna be looking at life
15 without the possibility of parole. You understand
16 that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Outside of negotiations
19 that the State and your attorney has entered into,
20 has anybody promised you anything or threatened
21 you in any way?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you under the
24 influence of alcohol or drugs today?

25 THE DEFENDANT: No, sir.

1 THE COURT: You got any mental
2 diseases that would keep you from understanding
3 what you're doing?

4 THE DEFENDANT: No, sir.

5 THE COURT: By pleading you're giving
6 up your constitutional right to remain silent
7 because you're telling me you're guilty, you
8 understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you're also giving up
11 your constitutional right to a jury trial. In
12 that trial you would be presumed innocent, the
13 State would have the burden of proving you guilty
14 beyond a reasonable doubt to all 12 jurors. You
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You could sit in this
18 courtroom and confront each witness that would
19 testify against you. Your lawyer can
20 cross-examine those witnesses. She could subpoena
21 witnesses to testify on your behalf. She could
22 put up any defenses you have; but when you plead
23 guilty, you give all that up. You understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: If you want to appeal this

1 guilty plea, you or your lawyer must file it with
2 the Clerk's Office within ten days or you give
3 that up. You understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You got any questions you
6 want to ask me concerning your rights?

7 THE DEFENDANT: No, sir.

8 THE COURT: Okay.

9 Solicitor.

10 MR. MEADORS: Your Honor, if it please
11 the Court, it happened on August 21st of 2016. He
12 has been out on a bench warrant. Failure to
13 appear is one reason this is on it also, Judge.
14 It happened at the Young's on ■■■ Broad Street.
15 Judge, Mr. Derrick — Lee Derrick, stand up if you
16 will — was working behind the counter that day at
17 Youngs. There's his mom.

18 Mom, stand up. She's here in the
19 courtroom of him just so the judge can see you.
20 Thank you.

21 He was working at Young's. It was
22 early morning shortly after 6 a.m., I think, 6:15
23 when the police were called. There's also a
24 Mr. Barwick, Joseph Barwick there who was a
25 customer. The defendant comes in, has a .45,

1 Hi-point .45 automatic, points it at Mr. Lee,
2 demands the money, gets approximately \$80, he
3 flees. Law enforcement is called, Judge. I think
4 it's near Saratoga and another street, Marshal I
5 believe, the defendant was found in the area near
6 the store. There were also some items of clothing
7 that matched the description that the defendant—
8 victims gave, of the perpetrator also near where
9 the defendant was apprehended. Detective McFadden
10 talked to the defendant, read him his Miranda
11 rights. He asked him why he'd done it and he
12 said, I just, I needed the money, I needed the
13 money. He said, I'll tell y'all where the money
14 is. Took him on several different streets. Then
15 he says, well, the money is back at my house at my
16 grand momma's. Then he said, well, I didn't rob
17 it, but I'll be happy to give the money back to
18 Young's. And then he gave a statement he knew the
19 judge was gonna max him out and this wasn't gonna
20 be a trial.

21 Judge, the items of clothing that were
22 found near there were sent to SLED. There's a
23 swab of a bandana which the defendant was a major
24 contributor on and was approximately one in
25 40 octillion in that case. Also, the swab of a

1 collar in the underarm under, part of a T-shirt,
2 he was a major contributor, one in 63 trillion.
3 And there was hair from a hat that also matched
4 the defendant's DNA profile. Judge, the Hi-point
5 was also found mixed with these clothes.

6 Judge, he's got a terrible record and
7 had two armed robberies and a burglary and a grand
8 larceny in family court. When he got out he
9 committed another armed robbery in 2009, got ten
10 years on that. Also had a criminal conspiracy and
11 a forgery, gets out of that and commits this armed
12 robbery. Obviously we had several different
13 options. After talking with the victim and law
14 enforcement, Ms. Timmons and I, we have negotiated
15 and I offered a 20 year sentence, Your Honor.
16 It's negotiated. If you would respectfully
17 consider that, we'd ask you to sentence him to 20
18 years.

19 THE COURT: Okay. Thank you, sir.

20 MR. MEADORS: Your Honor, I don't know
21 if Mr. Lee or his mom have anything to say, but
22 there were four loaded -- it was loaded. And his
23 mom just talked to him back there and said, I'm
24 glad he's alive so. Thank you.

25 THE COURT: I appreciate y'all coming.

1 Thank you.

2 Mr. McFadden, those facts correct?

3 (There was no response.)

4 THE COURT: What the Solicitor told
5 me. You guilty of armed robbery?

6 (Attorney confers with defendant.)

7 THE DEFENDANT: I apologize, yes, sir,
8 Judge.

9 THE COURT: So you're guilty? You
10 robbed the convenience store, Young's?

11 THE DEFENDANT: (No verbal response.)

12 THE COURT: Huh? You got to answer
13 out loud. This lady is taking it down.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. So you're guilty of
16 this?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You want me to accept your
19 plea?

20 THE DEFENDANT: I can say something,
21 Your Honor?

22 THE COURT: Yeah.

23 THE DEFENDANT: I know I've done some
24 things in my life that ain't been right, you know.
25 Time has passed since the charge; I'm, like, three

1 years older. And I apologize to the victim due to
2 the situation. I'm a changed man today to speak
3 and so I hope that you can take this in
4 consideration as, but...

5 THE COURT: Okay. So you're here
6 pleading guilty to this crime and you, in fact,
7 are guilty is what you're telling me?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Then I find there's
10 a factual basis for your plea. It is freely and
11 voluntarily entered into. You've had advice of
12 competent counsel with whom you tell me you're
13 satisfied; I'll accept your plea.

14 Yes, ma'am.

15 MS. TIMMONS: Yes, Your Honor, thank
16 you. Mr. McFadden, he's 30 years old. He lives
17 here in Sumter with his mother. She's present
18 here in the courtroom. Yes, we realize that he
19 has a criminal history; however, since that
20 incident he has been working. He did not pick up
21 any new charges. He's just been picked up on a
22 bench warrant. He's been living at the same
23 address. Yes, Your Honor.

24 THE COURT: Okay. I'll accept the
25 negotiation. The sentence the Court is you're

1 committed to the State Department of Corrections
2 for a term of 20 years. Good luck.

3

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

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 5th day of August, 2020.

Frances B. Ray

FRANCES B. RAY, RPR

FORM 5

STATE OF SOUTH CAROLINA)

County of Sumter

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IN THE COURT OF COMMON PLEAS

Brandon McFadden, 217040

2020 JUL 13 P 2:35

Full name and prison number (if any) of Applicant

JAMES
CLERK
SUMTER

2020 CP-43-990

v.

CERTIFIED TRUE COPY
OF APPLICATION FOR

State of South Carolina)

Barbara Shaver
POST-CONVICTION RELIEF
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
990 Wiscacky Hwy, Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Sumter County
Court of General Sessions, Sumter, South Carolina
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-43-1238; arm-robbery
 - (b) _____

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JUL 20 2020

Referred to B. Welch
Answered _____

(c) _____

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

(a) November 12, 2019 20 years for the charge of arm-robbery

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty xxx

(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 South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Appeal dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. not known

ii. _____

iii. _____

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

i. Not known

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) Violation of 6th Amend. right to effective assistance of counsel

(b) Violation of 14th Amend. right to due process + equal protection

(c) _____

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

(a) _____

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? No

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

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

(d) any other petitions, motions or applications in this or any other Court? _____

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) This is the first per filing
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (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. Katarzyna K. Timmons, Sumter County Public Defenders Office
215 N. Harvin Street Room 151 Sumter, Sc. 29150
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea arraignment
appeal
 - ii. _____
 - iii. _____

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

Time reduction, sentence modification, & charge included to
lesser offense.

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

NO

STATE OF SOUTH CAROLINA)
County of Sumter)

VERIFICATION

I, Brandon McFadden, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Brandon J. McFadden

SWORN to and subscribed before me this 21st
day of June 2020

Gene M. Mike (L.S.)
Notary Public

My Commission Expires: 09/04/2029

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

I, Brandon J. McFadden, 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.

Brandon J. McFadden
Applicant

SWORN or affirmed to and subscribed before me this

21st day of June, 2020

James M. Yuke
Notary Public

My Commission Expires: 09/04/2029

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)
)
 Brandon McFadden, SCDC # 313848)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
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IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2020-CP-43-990

**RETURN AND MOTION FOR A MORE
 DEFINITE STATEMENT**

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on July 13, 2020, by Branden McFadden (Applicant), would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its December 2016 term, the Sumter County Grand Jury indicted Applicant for armed robbery, possession of a weapon during the commission of a violent crime, unlawful carrying of a pistol, and possession of a firearm by person convicted of a violent felony (2016-GS-43-1238). Ms. Katarzyna Timmons, Esquire (Counsel) represented Applicant. Then-Assistant Solicitor John P. Meadors of the Third Circuit Solicitor’s Office prosecuted the case. On November 12, 2019, Applicant pleaded guilty to armed robbery before the Honorable R. Ferrell Cothran. The remaining charges were dismissed pursuant to the terms of the plea agreement. On November 12, 2019, Judge Cothran sentenced Applicant to twenty years of imprisonment pursuant to the plea negotiation between the defense and the State.

Applicant subsequently filed a Notice of Appeal. By Order, the South Carolina Court of Appeals dismissed Applicant’s appeal for failure to provide a sufficient explanation as required by

Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. *State v. McFadden*, Case No. 2019-001938 (S.C. Ct. App. filed April 15, 2020). The remittitur was sent May 29, 2020.

II. Factual Background

At approximately 6:00 a.m. on August 21, 2016, Applicant entered Young's convenience store in Sumter, at which time Victim and a customer were present. Applicant, armed with a .45 automatic Hi-Point gun, pointed the gun at Victim and demanded money. Applicant obtained \$80.00 from Victim and fled the scene. Shortly thereafter, Applicant was spotted in an area near the scene. Articles of clothing identified by Victim were found in the immediate area where Applicant was apprehended. When law enforcement questioned Applicant, he admitted he committed the offense because he needed money. (GP Tr. 6-7).

III. Current Application

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

1. Ineffective Assistance of Counsel
 - a. "Violation of 6th Amendment, Right to Effective Assistance of Counsel."

As requested relief, Applicant requests "time reduction, sentence modification, and charge included to lesser offense."¹ Attached to this return and incorporated herein are the Sumter County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the records pertaining to this current PCR action. Respondent reserves the right to amend this pleading upon receipt of additional documents.

¹ Respondent submits this is not a proper form of post-conviction relief.

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant asserts a general claim of ineffective assistance of counsel. 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 “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, 466 U.S. 668. First, Applicant must prove 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). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. 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 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test regarding his claims of ineffective assistance of counsel. However, without specific allegations of ineffective assistance of counsel, it is impossible to respond to the claim of ineffective assistance of counsel. Accordingly, Respondent requests Applicant, through his appointed counsel, amends his application to include the specificity required to support an allegation of ineffective assistance of counsel.

V. Motion for More Definite Statement

In his Application, Applicant wholly fails to set forth with specificity the facts and circumstances upon which his allegation of ineffective assistance of counsel is based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant fails to provide supporting information for this claim such as what specifically Counsel could have and should have done with respect to his defense in this case. Accordingly, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has 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. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

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

VIII. Response to Any and All Other Allegations

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

IX. Request for an Amended Return

WHEREFORE, having made its return, Respondent requests that an evidentiary hearing be held only after Applicant, through his counsel, amends the application to provide required specificity for the aforementioned allegation of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By: s/ Brianna L. Schill
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

January 15, 2021

STATE OF SOUTH CAROLINA)
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 COUNTY OF SUMTER)
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 BRANDON MCFADDEN, #313848,)
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 Applicant,)
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 vs)
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 STATE OF SOUTH CAROLINA,)
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 Respondent.)
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IN THE COURT OF COMMON PLEAS

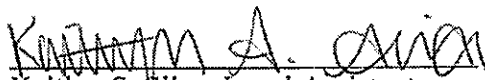
2020-CP-43-990

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 and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Timothy L. Griffith, Esquire
Timothy L. Griffith,
2338 Mount Vernon Drive
Sumter, South Carolina 29154

DATED this the 19th day of January, 2021.


 Kaitlyn S. Slice, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)
)
 Brandon McFadden ,)
 Applicant,)
)
 v.)
)
 STATE OF SOUTH CAROLINA,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 2020-CP-43-0990
 AMENDED APPLICATION

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended TO INCLUDE as follows:

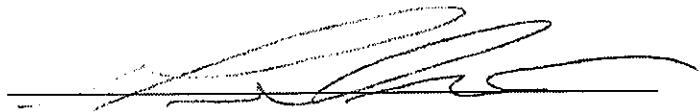
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

Mr. McFadden was told by his attorney that the recommendation of the Solicitor was 10 years. He then saw in writing an offer from the Solicitor for the 10 year recommendation.

Mr. McFadden’s attorney DID NOT tell him that the Judge could sentence without consideration of the recommendation of the Solicitor.

Mr. McFadden was coerced into making the Plea. He was told he had to Plea or a bench warrant would be issued for him (according to Mr. McFadden). He was under pressure and was told he would get the 10 years.

Mr. McFadden did not have discovery until the day before the Plea and his attorney DID NOT go over the discovery with him.



Timothy L. Griffith
 Attorney for Applicant
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Sumter, South Carolina
 This 25th day of February 2021

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SUMTER

-----x

BRANDON McFADDEN,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)

-----x

Transcript of Record
2020-CP-43-0990

March 10, 2021
Conducted Virtually

B E F O R E:

The Honorable R. Kirk Griffin, Presiding Judge

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

Timothy Griffith, Esq.
Attorney for the Plaintiff

Michael J. Neubauer, Esq.
Attorney for the Defendant

Transcribed by Bobbi Fisher, RPR, for DCRP, Digital
Courtroom Project

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I N D E X

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E X H I B I T S

(None.)

P R O C E E D I N G S

(Whereupon, the following proceedings started at 2:01 p.m.)

THE COURT: Before we get started, I'm going to handle the video conferencing rights with Mr. McFadden.

Mr. McFadden, can you hear me, sir?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Raise your right hand for me.

BRANDON McFADDEN,

the defendant, after having been duly sworn, was examined and testified to as follows:

THE COURT: All right. You can put your hand down.

Mr. McFadden, as you can see, we are proposing to conduct your PCR hearing via video conferencing. Do you consent to video conferencing and waive your right to appear before this Court in person?

THE DEFENDANT: Yes.

THE COURT: Is that a "yes," sir?

THE DEFENDANT: Yes, sir.

THE COURT: And, Mr. McFadden, do you also consent to all other parties who will appear before this Court in your PCR hearing? Do you consent to them appearing before this Court via video conference and waive their right -- or waive your right to have them appear before the Court in person?

THE DEFENDANT: Could I ask a question?

THE COURT: Yes, sir.

1 THE DEFENDANT: You said I could appear in court in
2 person?

3 THE COURT: Well, you could. Yeah, the options are we
4 could conduct your hearing this afternoon or you could wait
5 until in-person court appearances start again and have your
6 PCR held that way. It would just delay -- delay when your
7 hearing would be held.

8 THE DEFENDANT: Can I make that decision now?

9 THE COURT: Well, I need you to make it now. We're all
10 convened and ready to go forward with your post-conviction
11 relief, and the only difference -- there's really no
12 difference between an in-person court appearance and via video
13 conferencing. You know, I can see and hear everybody who will
14 address this Court. The only difference is we aren't all
15 physically in the same location.

16 THE DEFENDANT: Yes, sir. The reason being, I've been
17 having issues -- correspondence issues a little bit because
18 the pandemic, things like that, it's kind of hard with mail
19 and all that stuff. So I believe that probably would give me
20 a little extra time really. My attorney had gotten a brief,
21 an attachment to my PCR. I don't know if he had got it in the
22 mail yet because he's kind of been prolonged with that, my
23 mail and all that stuff, too.

24 So I wondered, if possible, if I could, you know,
25 in-person.

1 THE COURT: All right. Let me hear from your lawyer
2 first, Mr. McFadden.

3 Mr. Griffith, have you had difficulty corresponding with
4 Mr. McFadden as a result of the limitations caused by the
5 pandemic?

6 MR. GRIFFITH: Your Honor, as usual, it takes a while to
7 get things back and forth from the court. He and I discussed
8 it over the phone at quite some length just not long ago.
9 Actually, it was February 2nd. But I do have all the
10 information here, ready, and of course he's present. I hope
11 he's ready to give his statement.

12 THE COURT: Okay. So, Mr. Griffith, you don't have any
13 motions before the Court at this time?

14 MR. GRIFFITH: No, Your Honor.

15 THE COURT: Okay. I think the law is relatively clear on
16 the matter. Mr. McFadden, it's up to you as to whether you
17 would like to proceed with your hearing today or appear before
18 the Court in person. Like I said, there's no real practical
19 difference other than we aren't all located in the courtroom
20 here in Sumter County, but, you know, requesting in-person
21 appearance would likely delay your hearing at least a matter
22 of months. So nobody can make the decision for you. So I
23 need you to tell me whether you want to waive your right to
24 in-person court appearance and have your matter held via video
25 conference.

1 THE DEFENDANT: Can I ask my attorney a question, please,
2 sir? I didn't mean to hold the time up. I had sent a
3 (indiscernible). I wondered did he get it.

4 THE COURT: Okay. Tell me when you -- what you sent him
5 and when it was dated.

6 THE DEFENDANT: I believe it's -- the mail, it got sent
7 out I think on the 9th. So I don't know if it's the 10th,
8 so...

9 It was kind of a like prolonged with the mail a little
10 bit.

11 THE COURT: So you're saying it was -- you asked that it
12 be sent out on the 9th of what month?

13 THE DEFENDANT: It was yesterday. I sent it out Monday
14 but it didn't get sent out until yesterday.

15 THE COURT: Okay. Well, if you sent it out -- if you
16 sent some correspondence that had some bearing on your case
17 Monday, it's highly likely that Mr. Griffith has not received
18 that yet.

19 And without revealing any of the contents of what you
20 sent, is what you sent him titled? Do you have a title on
21 that document or -- I'm trying to ascertain and assist
22 Mr. Griffith in determining whether he has what you sent him
23 without revealing any of the contents of it. So I guess I'm
24 looking for something that could identify the document for
25 Mr. Griffith.

1 THE DEFENDANT: Yes, sir. It was supposed to be
2 attachment to the PCR.

3 THE COURT: Okay. Mr. Griffith, have you received any
4 correspondence from Mr. McFadden in the last two days?

5 MR. GRIFFITH: I have not received anything in the last
6 two days, Your Honor; however, he has sent me some stuff in
7 the past and I do have it now. As far as the information that
8 is pertinent to the hearing today, I do believe that I have
9 everything that's necessary.

10 Mr. McFadden, of course -- just to let him know, of
11 course, I'm going to be calling you on the stand and of course
12 you'll be able to -- with me having the information, I'm just
13 going to be asking you about it. I don't have what you sent
14 me Monday, but I do have all the other stuff you sent me.

15 THE COURT: And, Mr. McFadden, what Mr. Griffith is
16 saying is that you'll be able to testify before this Court as
17 to any issue you feel merits discussion with regard to whether
18 your counsel was ineffective.

19 I think what Mr. Griffith is saying, he's going to ask
20 you general questions about how you feel your counsel was
21 deficient at your guilty plea and he is telling the Court that
22 he's ready to go forward but, again, nobody can make this
23 decision for you, Mr. McFadden. I'm not trying to put any
24 pressure on you to go forward here today or to -- or not, but
25 we have got to have an affirmative answer on whether you want

1 to go forward today or have an in-person hearing at some point
2 in the future.

3 THE DEFENDANT: I will go forward.

4 THE COURT: Okay. All right. I think the record is
5 certainly clear. We have asked the question a few different
6 ways, and Mr. McFadden, under oath, has voluntarily consented
7 to this hearing being conducted via video conference and
8 waived his right to in-person court appearance.

9 Thank you, Mr. McFadden.

10 Mr. Neubauer, if you will put the procedural history of
11 this case on the record, please.

12 MR. NEUBAUER: Sorry, Your Honor. The screen kind of
13 closed off for a second so I had to pull it up.

14 THE COURT: All right.

15 MR. NEUBAUER: May it please the Court, the next matter
16 is Brandon McFadden versus the State of South Carolina, Docket
17 No. 2020-CP-43-990. In December of 2016, the Sumter County
18 grand jury indicted Applicant for armed robbery, indictment of
19 a weapon during the commission of a violent crime, unlawful
20 carrying of a pistol, possession of a firearm by a person
21 convicted of a violent felony. 2016-GS-43-1239, Katarzyna
22 Timmons represented Applicant and assistant solicitor
23 John P. Meadors of the Third Circuit Solicitor's Office
24 prosecuted the case.

25 On November 12, 2019, Applicant pled guilty to armed

1 robbery before the Honorable R. Ferrell Cothran. The
2 remaining charges were dismissed pursuant to the terms of a
3 plea agreement.

4 On November 12th, Judge Cothran sentenced Applicant to 20
5 years of imprisonment pursuant to the plea negotiation between
6 the defense and State. Applicant subsequently filed a notice
7 of appeal. By order of the South Carolina Court of Appeals,
8 dismissed Applicant's appeal for failure to provide a
9 sufficient explanation as required by Rule 203(d)(1)(b)(4) of
10 the South Carolina appellate court rules. That would be State
11 versus McFadden, Case No. 2019-001938. The remittitur was
12 sent May 29, 2020.

13 On July 13th, 2020, Applicant filed an application for
14 post-conviction relief. In the application, Applicant alleged
15 ineffective assistance of counsel, violation of his Sixth
16 Amendment right to effective assistance of counsel.

17 Applicant, through his attorney, filed an amended
18 application adding the following allegations: Mr. McFadden
19 was told by his attorney that the recommendation of the
20 solicitor was ten years. He then sought, in writing, an offer
21 from the solicitor for the ten-year recommendation.
22 Mr. McFadden's attorney did not tell him that the judge could
23 sentence without consideration of the recommendation of the
24 solicitor. Mr. McFadden was coerced into making his plea. He
25 was told he had to plea or a bench warrant would be issued for

1 him. This is according to Mr. McFadden. He was under
2 pressure and was told he would get the ten years.

3 Mr. McFadden did not have discovery until the day before
4 the plea, and his attorney did not go over the discovery with
5 him. As requested relief, Applicant states he wants time
6 reduction, sentence modification, and charge included the
7 lesser offense.

8 On September 18, 2020, the State made its return, motion
9 for a more definite statement. Applicant is represented today
10 in this action by Timothy Griffith.

11 THE COURT: All right. Thank you, Mr. Neubauer.

12 Mr. Griffith, be happy for you to call your first
13 witness, please.

14 MR. GRIFFITH: Thank you, Your Honor. If it please the
15 Court, we would call Mr. Brandon McFadden.

16 THE COURT: All right. Mr. McFadden, answer the
17 questions that Mr. Griffith has for you. I will remind you
18 that you are still under oath.

19 BRANDON McFADDEN,
20 the defendant, after having been previously duly sworn, was
21 examined and testified to as follows:

22 DIRECT EXAMINATION

23 BY MR. GRIFFITH:

24 **Q** Mr. McFadden, can you hear me okay?

25 **A** Yes, sir.

1 Q Okay. Now, how long have you been incarcerated,
2 Mr. McFadden?

3 A A little over about -- going on two years. I'm pushing
4 two years now. 18 months.

5 Q Okay. And what was your total sentence? What were you
6 sentenced to?

7 A Twenty years.

8 Q Okay. Now, Mr. McFadden, before you were sentenced, did
9 you have an opportunity to speak with your attorney,
10 Ms. Timmons?

11 A Yes, sir.

12 Q How many times do you think you spoke with her?

13 A Maybe two or three times.

14 Q Okay. And you were also represented for awhile by
15 Mr. Timothy Murphy; is that correct?

16 A Yes, sir.

17 Q Okay. And how often did you get to talk to him?

18 A I probably talked to him -- I talked to him on the phone,
19 like, a few times. Not too many.

20 Q Okay. Did you ever talk to him in person?

21 A No, sir. Well, a lot of time at the preliminary hearing.

22 Q Okay. Now, when you were brought to the Court and talked
23 to -- Ms. Timmons talked to you about making a plea, did she
24 go over your discovery with you?

25 A No, sir. I didn't go to discovery until, like, the day

1 of the plea hearing is when I finally got my discovery. She
2 had a full copy of it at the time, I guess, you know, so we
3 couldn't really do an adequate investigation on a lot of the
4 facts that they allege, you know. And so I didn't have the
5 opportunity to really go over it with her, no, sir.

6 Q So did you get a copy of your discovery before the --

7 A No, sir.

8 Q So you didn't go over it yourself. I mean, have a chance
9 to look through it?

10 A No, sir.

11 Q And so did Mr. Murphy go over your discovery?

12 A I believe he did. You know, we never went over it
13 together.

14 Q Okay. You never went over it together?

15 A No, sir.

16 Q But did he talk to you about it?

17 A No, not really. He just said he had it, he going to go
18 over it when we're together. So we never really -- wasn't no
19 details about the facts and things.

20 Q Okay. Now, just a second. Were you going to say
21 something else?

22 A No, sir.

23 Q Okay. So when you came for your plea, were you expecting
24 to plead guilty that day or --

25 A Can I speak a little bit?

1 Q Sure.

2 THE COURT: Yes, go ahead.

3 A All right. Thank you.

4 Days prior to the plea hearing, we had agreed on a
5 20-year sentence for all the charges. So at the end of the
6 plea hearing, the solicitor dropped three charges but the
7 20-year sentence still remained. That was part of the
8 negotiated plea that we had days prior to court.

9 So he kind of like -- so, basically, it was like a breach
10 of plea agreement because there's a problem that he had led me
11 to believe I would get 20 years for all the charges. Unless
12 he dropped the gun charge, that kind of affects the nature of
13 the primary defense (indiscernible).

14 And so I told my attorney at the time (indiscernible) on
15 the sentence, I didn't want the plea. So he was like, well --
16 because it was not part of the original agreement. And he
17 stated that, if I didn't take they plea, they was going to
18 take the plea off the table, give a record to, like,
19 (indiscernible), go to trial for the upcoming court term, and
20 I wasn't ready for the upcoming court term. Like I say, I
21 didn't have a motion for discovery for my attorney to have
22 opportunity and time to go over -- prepare a defense that I
23 was stating before trial.

24 So it's basically like I was, like, you know, in a tight
25 situation. I was basically forced to plea, like to a threat

1 if I didn't take this plea. It was already breached. And I'd
2 have to go to trial because (indiscernible) based upon all
3 charges. But then, on the day of the plea hearing, three
4 charges were dismissed without me being -- without me having
5 no knowledge of what was going on. So it was like I had
6 voluntarily, unknowingly, and unintelligently entered a plea
7 that was not part of the original agreement.

8 **Q** And when she talked to you about the plea, did she tell
9 you what you might expect as far as how many years you might
10 get?

11 **A** Yes, sir. She would say I was get 20 years for all the
12 charges. That was the agreement days prior. Then on the day
13 -- I told her, I said, Well, I'm going to be bring these
14 issues -- I wanted to bring this up in front of the judge so
15 that would -- because this plea is not part of the original
16 agreement and if they would vacate it. He advised me that
17 not -- not to bring the issue up in front of the judge of the
18 matter at hand because it could affect the plea because the
19 plea was already affected because of the breach.

20 **Q** And so it was your understanding, if I'm getting you
21 right, that the 20 years that you were pleading to, to get,
22 was for all the charges, which included the armed robbery as
23 well as some other charges; is that correct?

24 **A** Yes, sir.

25 **Q** And the way you saw it was, well, if she drops some of

1 those, then that would probably drop the amount of time. Is
2 that the way you understood it?

3 **A** Yes, sir, because without -- without the gun charge being
4 part of the armed robbery, it affects the nature and -- of the
5 crime of defense. You know, the charge could have been
6 dropped down to a lesser offense or some of the time could be
7 dropped off to affect that 20 years that it was part of
8 originally -- for all charges in the original agreement.

9 So then, again, they dropping three charges, this time
10 could have been reduced along -- you know, and make it more
11 fair.

12 **Q** And did she tell you how many years you could get for
13 armed robbery?

14 **A** No, sir. She didn't go into that statute. That statute
15 is -- we basically are more concerned about the plea agreement
16 that was now breached. You know, so she didn't say how much I
17 could get, how much I could have (indiscernible) on my
18 sentencing sheet. So I could get even 10 to 30 on the
19 sentencing sheet.

20 So I said, Well, you know, they didn't drop but three
21 charges and I had 20 years for everything, I said, they could
22 at least bring down the time on the armed robbery in
23 consideration that I'm pleading -- what they doing is just a
24 little agreement, you know?

25 **Q** And so when you did your plea, why didn't you ask the

1 judge if you could get -- or about less time because she was
2 dropping some of those charges? Did she tell you not to ask
3 or something?

4 **A** Yes, sir. I asked can I -- it was about one more that
5 she advised me to plead to guilty to the (indiscernible)
6 breach. She said, How do you plead? You know, the judge, "Do
7 you accept the plea?" I said, Your Honor, I hate to bring up
8 issues about the plea agreement, I said, about breach of the
9 agreement and they threaten to take a plea. That was
10 (indiscernible) by the prosecutor. But she constantly advised
11 me not to do that.

12 So, as I said, I feel like I was -- I was unintelligibly
13 (indiscernible) and unknowingly about some things about trial,
14 my constitutional rights, that I was going over with my
15 attorney. And she advised me not to bring the issues up in
16 front of the judge because it would affect me for not getting
17 the plea, but the plea was already affected.

18 **Q** And so when she brought you in and was telling you that
19 you were going to either plea or go to trial, did you feel
20 like you were under pressure?

21 **A** Yes, sir, I truly was. You know, this is the truth. I
22 feel like I was under pressure because I did not have
23 competent -- I did not have proper defense to prepare for
24 trial. And like the solicitor said, if I didn't take the
25 plea, he was going to bring me to trial the next month. That

1 was December. I wasn't -- we was nowhere near ready. I
2 didn't have most of discovery. I didn't know the ins and outs
3 of the case. Basically, I was really pressured into taking
4 this plea, risking a chance of losing trial without even being
5 properly prepared. Like I say, if I was properly prepared,
6 then I'd have a chance to go win at trial.

7 **Q** Okay. And so did Mr. Murphy ever go over what the
8 possibility was that you could get as far as how much time you
9 could get?

10 **A** I think I spoke with Mr. Murphy one time over the phone.
11 Like he say, he probably could get me about 12 -- like a
12 sentence of 12 to 15 years or something like that, I'd say for
13 an executed agreement. At the time, you know, I think I had
14 missed a court date, so I kind of affected that, and by the
15 time he (indiscernible) retired or resigned his position, so,
16 you know, that kind of prolonged the process, you know. But I
17 spoke with him on the phone one time. It probably could have
18 worked out fully during the time period (indiscernible).

19 **Q** Okay. And in the meantime, so what are you asking the
20 Court to do?

21 **A** I'm looking for relief. Like I say, I have got a lot
22 of -- I got some -- I know (indiscernible) time. I got some
23 time to read over the constitutional violations, that they
24 have ineffective through the whole process. I would like some
25 relief at least vacate or (indiscernible) the sentence on at

1 least some time reduction on the charges that I had against
2 me. At least to reduce the time or take the time off that.
3 Probably, you know, like some good time reduction
4 (indiscernible) for the charge, you know, in dealing with the
5 matter at hand.

6 **Q** Now, you and I talked about this on the phone, and I was
7 telling you that what the Court can do, if you were to win
8 your PCR, was put you right back where you started, you know,
9 and you'd just get a new trial or opportunity on all the
10 charges. Do you remember me talking to you about that?

11 **A** Yes, sir.

12 **Q** Okay. And so, you know, His Honor Judge Griffin can't
13 just, like, reduce your charge. You'd be put back and started
14 over. Do you understand that?

15 **A** Yes, sir.

16 **Q** And so, to sum up, basically, you felt like you were
17 under pressure and you were pushed into the plea; is that
18 correct?

19 **A** Yes, sir.

20 **Q** And, in the meantime, you felt like you were pleading
21 guilty to only one charge out of the four and so they had told
22 you you'd get 20 years for the four, and so you felt like,
23 since they dropped three of them, that you should get less
24 time. Is that what you're asking the Court?

25 **A** Yes, sir, because it was an agreement that we already had

1 prior to today coming forward, so that's a breach of the
2 agreement and how some things just went wrong.

3 (Indiscernible) totally wrong in whatever the State may go. I
4 believe that was kind of, like, unfair because I was more like
5 -- I was (indiscernible) about false promise and pleading
6 guilty, you know? So...

7 Q Now, can you give us any other information? What else
8 would you like the Court to know?

9 A I got, like, a brief summary that I can do if y'all don't
10 mind. Do we got enough time?

11 Q We have got time.

12 THE COURT: We're not running -- we're not keeping a
13 clock on this proceeding, Mr. McFadden. I would just advise
14 you that the Court needs to hear relevant evidence. So with
15 that advice, I'll be happy to hear anything else you'd like to
16 say in summation.

17 THE DEFENDANT: All right. Thank you, Your Honor.

18 Two days prior to the plea hearing, the solicitor, my
19 attorney, and I all agreed on 20 years on all charges. On the
20 day of the plea agreement -- on the day of the plea hearing,
21 the solicitor breached the plea agreement, by doing so,
22 dismissed three charges and the 20-year sentence to remain.
23 This was not part of the negotiated plea agreement.

24 Unintelligently and unknowingly, I answered the plea, and
25 the solicitor -- well, I told my -- I told the attorney that I

1 didn't want to -- I don't want to accept the plea. The
2 solicitor required me, through my counsel, stating that, if I
3 did not accept the plea, that was a breach. He would take the
4 plea off the table and had no other plea offers
5 (indiscernible).

6 And during the plea bargain, the process -- the due
7 process calls -- requires that a defendant enters a plea -- a
8 guilty plea voluntary, knowingly, and intelligently. U.S.C.
9 Constitutional Amendment 14, Article 1, 103. This was
10 violated because my counsel failed to inform me of the loss
11 and the risk of certain constitutional rights during my plea
12 bargain. Therefore, (indiscernible) counsel object or content
13 with the prosecutor of the breach of plea agreement.
14 Therefore, I unintelligently and unknowingly knew the loss and
15 risk of certain constitutional rights dealing with my plea
16 bargain. Had I would have known, I would have made a
17 different decision.

18 Under the State versus Baker, Supreme Court,
19 (indiscernible) September 13 --

20 THE COURT: Mr. -- Mr. McFadden?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I appreciate that you have done some legal
23 research on this, but, on direct examination, we're looking
24 for testimony regarding factual allegations. The law will be
25 thoroughly covered. So I appreciate the fact that you have

1 done some legal research on these issues, but your testimony
2 needs to be limited to relevant facts. And what "relevant
3 facts" means would be the things that occurred surrounding
4 your guilty plea, the things leading up to the guilty plea,
5 things that happened during the guilty plea with regard to
6 your representation.

7 So if you could limit this to factual allegations, that's
8 what the law requires.

9 THE DEFENDANT: All right.

10 BY MR. GRIFFITH:

11 Q Mr. McFadden?

12 A Yes, sir.

13 Q Just to help guide you along, basically, your argument is
14 that you expected less time for just one charge since they
15 told you that it would be 20 years for the four charges.

16 A Mm-hmm.

17 Q That's basically part of it. And you were unprepared,
18 that is to say, you were rushed into it, you felt like you
19 were under a lot of pressure, and your attorney told you that,
20 if you didn't plead right now, a bench warrant would be
21 issued.

22 A (Indiscernible).

23 Q Okay. Go ahead.

24 A All right. I was going up for a bench warrant. I was --
25 I was under probation once that was going to get lifted. If I

1 didn't have -- if I didn't have plea right then and there,
2 they were going to take me to trial the next -- the upcoming
3 court term. But, like I say, the plea agreement was breached,
4 so I didn't want to accept the plea because that was not part
5 of the original agreement.

6 And, like I say, the solicitor threatened that, if I
7 didn't take the plea, that was breached, she was going to take
8 it off the table, we're going to go to trial, (indiscernible).
9 And that's a violation -- that's in violation of the due
10 process. I got a violation -- that's a violation of the due
11 process. Once the solicitor and my attorney -- you know,
12 (indiscernible), the prosecutor manifests -- manifests
13 injustice (indiscernible.) But the plea agreement -- such the
14 defendants -- such as defendant guilty plea is involuntary
15 based on the plea agreement, the prosecution hadn't decided.
16 And like I say, I unknowingly and unintelligently entered
17 this, you know what I'm saying? This is not part of the
18 original agreement.

19 Counsel, she was well -- she was well aware of the
20 matter. And, you know -- and didn't object to the plea or did
21 an adequate investigation to kind of prepare us for proper
22 trial. And that kind of affect my due process under the Sixth
23 Amendment.

24 I had (indiscernible) rights. Counsel, she advised me
25 of, like, we spoke before -- before going to in front of the

1 judge, you know, counsel advised me, if the judge asks you,
2 "Did anybody promise you anything?", say no. If anybody
3 threatened you, just say no. So I wanted to bring some issues
4 to light. In that situation, I was promised something. I was
5 promised 20 years on all the charges. I was threatened that,
6 if I didn't accept this plea, I was going to be forced to go
7 to trial, you know. You know, that was -- that was also --
8 that's a violation of the Fourteenth or Fifteenth --
9 Fourteenth Amendment and Sixth Amendment with that.

10 And my attorney, she advised me to do that, so I did as
11 what she said because I had no other choice. Like I say, I
12 feel I was under pressure. I didn't have no other choice.
13 And I did raise the issue, like, they said the solicitor would
14 take the plea off the table, and I was facing -- forced to go
15 to trial. But at the judge's discretion, I probably could
16 have got it vacated and maybe I could have got a better plea.
17 You know?

18 And dealing with another thing, I was denied effective
19 assistance of counsel, you know what I'm saying. You know,
20 had counsel had been more effective, it would have been a more
21 different outcome. You know what I'm saying? A more
22 different outcome. She would have stood up and said and spoke
23 upon the matters at hand of breach of the agreement, they
24 threatened to take the plea, the coercion of giving false
25 answers, knowing about the promise and the threat, you know

1 what I'm saying? Had she been more effective, maybe it would
2 have been a different outcome and situation. You know? And
3 that I was denied the right to effective assistance of
4 counsel.

5 Q And so, also, to add a --

6 THE COURT: Mr. Griffith, before you had your next
7 question, if we could get Mr. McFadden moved a little bit
8 closer to the microphone so we can make sure we have an
9 adequate -- an accurate record of these proceedings.

10 All right, Mr. Griffith. Go ahead.

11 MR. GRIFFITH: Thank you, Your Honor.

12 BY MR. GRIFFITH:

13 Q And as to the fact that you felt under pressure and you
14 were hurried along it in and basically it's your contention
15 that you were threatened with a bench warrant if you didn't
16 plea right then, but yet you told the judge you weren't
17 threatened but that was because your attorney told you to say
18 that? Is that what you're saying?

19 A Yes, sir.

20 Q Okay. And you didn't really have an opportunity to go
21 over your discovery with your attorney sitting down and going
22 through it; is that correct?

23 A Yes, sir.

24 Q Okay. That's your contention. Okay.

25 I have no further questions. Please answer any questions

1 that the assistant solicitor, Mr. Neubauer, would ask you.

2 THE COURT: Mr. Neubauer?

3 MR. NEUBAUER: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. NEUBAUER:

6 Q Good afternoon, Mr. McFadden. I just have a few
7 questions for you.

8 So you said that you did not meet with Mr. Murphy in
9 person; is that correct?

10 A No, sir. I met with him one time. That was at a
11 preliminary hearing.

12 Q Yes, sir. Other than that meeting, did Mr. Murphy
13 attempt to meet with you in person? Did he send you any
14 letters or schedule any meetings with you?

15 A I believe -- I believe it was one, but at the time --
16 like I say, I was having a hard time with correspondence and
17 things of that nature. I might have talked to him on the
18 phone. We had, like, about a few phone calls. That was
19 pretty much it.

20 Q And you said you did not go over discovery with
21 Mr. Murphy; correct?

22 A No, sir.

23 Q With Mr. Murphy or Ms. Timmons, do you recall ever
24 reviewing the State's evidence that they were prepared to use
25 against you at trial?

1 **A** No, sir. Like I said, I didn't get my motion for
2 discovery until the day of the plea hearing. The day before
3 or the day of the plea hearing or something around there.

4 **Q** And do you recall, at your plea, the prosecutor telling
5 the judge that it was a negotiated 20-year sentence?

6 **A** Yes, sir. On my sentencing sheet, it's checked off --
7 there's the box checked that says negotiated sentence, and
8 they're supposed to be the negotiated sentence that we had
9 agreed on. Like I say, it was not the original negotiated
10 sentence that was agreed on.

11 **Q** And do you recall telling the plea judge that you had
12 enough time to talk with your attorney prior to pleaing?

13 **A** I believe -- if I recall, I believe so.

14 **Q** And do you remember telling the plea judge that your
15 attorney discussed all of your rights surrounding this plea,
16 such as your right to trial, right to confront witnesses, to
17 bring your own witnesses, to testify at your trial if you
18 wanted to?

19 **A** No, sir. Counsel -- the attorney, she didn't advised me
20 of the constitutional rights that I had just dealing with the
21 trial or the plea agreement -- or the plea bargain process.

22 **Q** Thank you.

23 MR. NEUBAUER: And I draw the Court's attention to the
24 plea transcript, page 3 and 4.

25 BY MR. NEUBAUER:

1 Q Do you recall telling the plea judge that you did not
2 need more time to talk with your attorney?

3 A Not that I recall. You know, it's kind of -- not that I
4 recall. I probably did. I just don't recall.

5 MR. NEUBAUER: I draw the Court's attention to guilty
6 plea transcript page 3.

7 BY MR. NEUBAUER:

8 Q Do you recall telling the judge that no one promised you
9 anything or threatened you in order for you to plead guilty?

10 A Yes, sir. I was -- after I told the judge that because
11 that was -- I was advised by my counsel -- I was advised by
12 the attorney, Ms. Timmons, not to say that nobody promised you
13 or threatened you, but in light of the situation, I was. You
14 know what I'm saying?

15 Q And do you recall telling the plea judge that you wished
16 to plead guilty and you were doing so on your own free will?

17 A Yes, sir. I believe I asked him -- I asked him yesterday
18 because I was, you know, relying on my attorney to do that.
19 You know what I'm saying? But the plea -- the plea bargain --
20 the plea agreement was not -- it was not really free. I did
21 not want to do that. I wanted to plead to that time for that
22 one particular charge. Because we would have to agree on all
23 the charges. My attorney said, if I did go in there and speak
24 upon the issues saying, no and things of that nature and they
25 say -- the plea offer may get taken off the table and there

1 may be no more pleas.

2 Q And just to make things clear, you stated that you were
3 not threatened with a bench warrant if you did not plea to
4 these charges, but instead, you were going to court for an
5 outstanding bench warrant. Did I understand that correctly?

6 A Yes, sir. What it was, I was -- I was -- I already had a
7 bench warrant for these charges. I had a bench warrant. So I
8 was dealing with the bench warrant. I was going up for the
9 bench warrant and I was threatened that, if I did not take the
10 plea, I would be forced to -- I would be going to trial the
11 next upcoming term in December.

12 So it was -- I was not threatened with the bench warrant.
13 I was threatened with going to trial if I did not take this
14 plea. And we wasn't properly prepared for trial. Like I say,
15 I didn't have a motion. Like I say, the plea agreement was
16 breached. You know, it's just all, you know...

17 Q Yes.

18 MR. NEUBAUER: I have no further questions at this point.

19 THE COURT: Any redirect, Mr. Griffith?

20 MR. GRIFFITH: No redirect, Your Honor.

21 THE COURT: All right. Thank you, Mr. Griffith.

22 Mr. Griffith, you may call your next witness.

23 MR. GRIFFITH: I have no further witnesses, Your Honor.

24 THE COURT: All right. Thank you, Mr. Griffith.

25 Mr. Neubauer?

1 MR. NEUBAUER: Thank you, Your Honor. The State would
2 call Tim Murphy.

3 THE COURT: Good afternoon, Mr. Murphy.

4 MR. MURPHY: Good afternoon, Your Honor.

5 THE COURT: Would you raise your right hand for me,
6 please.

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

10 THE COURT: Thank you, Mr. Murphy.

11 Mr. Neubauer?

12 MR. NEUBAUER: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. NEUBAUER:

15 Q Good afternoon, Mr. Murphy.

16 A Good afternoon.

17 Q How long have you been practicing law?

18 A Over 30 years.

19 Q And --

20 A About 35 now. 34, 35, somewhere around there.

21 Q Yes, sir. And what percentage of that would you say is
22 criminal defense?

23 A I was -- I served 20 years in the Air Force and five of
24 those years were specifically defense, both as a trial defense
25 attorney and then as an appellate defense attorney. And then

1 I spent 13 years with the public defender office in Sumter
2 after I retired from the Air Force.

3 **Q** Yes, sir. And do you remember when you were appointed to
4 represent Mr. McFadden?

5 **A** Yes. I appointed myself. I was the chief county PD at
6 the time. On September 2nd, 2016, he was charged with armed
7 robbery and gun charges, possession of a weapon during a
8 violent crime, unlawful carrying of a pistol, and then
9 possession of firearm and other ammunition-type based -- which
10 he was not authorized to have based on a prior armed robbery
11 conviction.

12 So I asked for discovery -- I filed a motion for
13 discovery a couple of days later on September 9th, and then
14 the preliminary hearing was scheduled for October 2016. By
15 then, Mr. McFadden was -- had made bond, so we had the
16 preliminary hearing at that time.

17 And I don't have a specific recollection of him being
18 there, but if he says he was there and met with me, I mean,
19 that is likely. So that's what -- that was the initial part
20 of it and then I did not receive discovery until 27 October
21 2016.

22 **Q** Yes. So you received discovery on October 27, 2016. Did
23 you make any attempts at that point to have a meeting with
24 Mr. McFadden to discuss the discovery you had received?

25 **A** Yes, he had -- I looked over my notes. He had contacted

1 me and left a voicemail for me on October 17th. Apparently,
2 he had been rearrested. And I wrote him in letter telling him
3 that -- after I got the discovery, I'd be in a better position
4 to talk about the case. So I reviewed the discovery between
5 October 27th and then I tried to get a hold of him after that,
6 and here, he had been released again. So in early November,
7 he had made bond or he wasn't over at the Central Lee Regional
8 Detention Center.

9 So, at that point, he had left an address and he had left
10 a couple of telephone numbers. So we had a docket appearance
11 scheduled for December 5th that he would have received a
12 letter for. And then, beginning in January of 2017, I tried
13 to get a hold of him again. And we learned that he had been
14 sent to SCDC around that time for a violation of his
15 probation.

16 So, at that point, I just focused on -- well, quite
17 frankly, I focused on other cases because he was going to be
18 in prison for awhile. And then, around that time, Mr. Meadors
19 approached me about a -- if I thought that Mr. McFadden would
20 be interested in some sort of plea offer. And I don't recall
21 the specifics of it.

22 I will say this, that the evidence was pretty strong for
23 the State. Mr. McFadden had made some incriminating remarks.
24 We were waiting on some DNA. He had basically -- he had made
25 a statement that indicated he robbed this store because he

1 hadn't made his probation payments or he needed money for the
2 probation payments. And I was aware, based on his record,
3 that he was facing a sentence for life without parole, so I
4 thought any sort of plea offer was probably a good idea so --
5 but I don't recall talking to Mr. McFadden directly. I'm not
6 saying I didn't. I don't recall having any telephone
7 conversations. It's our practice or it was our practice at
8 this time to input all of our attorney contacts with our
9 clients into the defender database, and I had access to it
10 both in my private office and at the public defender office,
11 and I don't have any telephonic contacts with Mr. McFadden in
12 the database.

13 You know, one of the reasons why we do that is for
14 situations like this where, years later, we're accused of not
15 having contact with our clients. So I feel pretty comfortable
16 that, if I would have had multiple telephone conversations
17 with him, it would be in the database. But what is in the
18 database are a series of letters asking him to contact us and
19 advising him that he had been scheduled for docket
20 appearances. The first one was in November of 2017. By then,
21 he had been released from SCDC and there's a message in there
22 that indicates we had called one of the telephone numbers that
23 he had provided to us, and a woman identifying herself as his
24 aunt answered the phone and we left a message, advising him to
25 contact us and he didn't.

1 Additionally, I called another number and somebody --
2 some woman answered the phone and hung up on me when I asked
3 for him.

4 Then -- so he didn't appear for the November 2017 docket
5 appearance, and I believe it was at that point that the bench
6 warrant would have been issued for his failure to appear.

7 We also sent him letters December of 2017, January 2018,
8 and May 2018. I misspoke; it was in May where the woman hung
9 up on me. And then December 2018 and January 2019. All of
10 these were requests for Mr. McFadden to contact us. None of
11 these letters were returned to our office as not delivered.

12 I mean, what I do recall about this case specifically is
13 I was concerned because Mr. McFadden was facing life without
14 parole that it really was in his interest to come in and try
15 to work out some sort of plea deal. And, again, I don't
16 particularly remember the specifics of it, but I do know
17 Mr. Meadors was interested in offering something, which I
18 thought was very gracious and generous -- the quality of the
19 evidence against Mr. McFadden.

20 Around January of 2019, the case went into FTA status.
21 In our office at that time, when a case went FTA status, it
22 was closed and we closed it out of our files to correspond, I
23 think, with what happens with the solicitors. They close
24 their case too.

25 So it went into FTA status. Sometime in August of 2019,

1 we learned he had been re-arrested. He contacted our office.
2 At that point, the case was reopened and rather than reassign
3 it to myself, I assigned it to Ms. Timmons to handle from that
4 point forward.

5 Q Thank you, sir. Just to clarify, you made multiple
6 attempts in writing and over the phone to reach out to
7 Mr. McFadden to have him come in and discuss a possible plea
8 deal or discuss discovery; correct?

9 A That is correct. The letters -- I only -- according to
10 the notes, I made one attempt to contact him personally. The
11 rest would have been our staff. And, obviously, the letters
12 were under my signature.

13 Q Yes, sir. And up until August 2019 when the case was
14 turned over to Ms. Timmons, Mr. McFadden had not come into
15 your office to have any further discussions with you; is that
16 correct?

17 A No. I did not have any discussions with him about the
18 discovery, no.

19 Q Thank you. I have no further questions.

20 THE COURT: Mr. Griffith, cross-examination?

21 MR. GRIFFITH: Thank you, Your Honor, if it please the
22 Court.

23 CROSS-EXAMINATION

24 BY MR. GRIFFITH:

25 Q Attorney Murphy, so to be clear, then, you did not go

1 over the discovery with Mr. McFadden; is that correct?

2 **A** That is correct.

3 **Q** Did you ever discuss a plea deal with him yourself?

4 **A** I don't believe so.

5 MR. GRIFFITH: I have no further questions, Your Honor.

6 THE COURT: All right. Thank you, Mr. Griffith.

7 Any redirect, Mr. Neubauer?

8 MR. NEUBAUER: No, Your Honor.

9 THE COURT: All right. Is there any objection to
10 Mr. Murphy being excused if he so chooses?

11 MR. NEUBAUER: No, Your Honor, no objection from the
12 State.

13 MR. GRIFFITH: No objection, Your Honor.

14 THE COURT: All right. Mr. Murphy, you're welcome to
15 stay with us but you are free to leave the video conference if
16 you so choose.

17 THE WITNESS: Thank you.

18 THE COURT: Good to see you, sir.

19 THE WITNESS: Good to see you too. Bye-bye now.

20 THE COURT: All right. Mr. Neubauer.

21 MR. NEUBAUER: Yes, thank you, Your Honor. The State
22 would call Ms. Timmons.

23 THE COURT: All right. Ms. Timmons, if you would raise
24 your right hand for me.

25 KATARZYNA TIMMONS,

1 the witness, after having been duly sworn, was examined and
2 testified to as follows:

3 THE COURT: All right. Thank you, Ms. Timmons.

4 Mr. Neubauer, whenever you're ready.

5 DIRECT EXAMINATION

6 BY MR. NEUBAUER:

7 Q Good afternoon, Ms. Timmons.

8 A Good afternoon.

9 Q A few questions. How long have you been practicing law?

10 A Probably a little over seven years now.

11 Q And what percentage of that has been criminal defense?

12 A Well, for two and a half -- a little over two and a half
13 years, I worked as a prosecutor and the rest of the time was
14 public defender that I did.

15 Q Yes, ma'am. And when were you appointed to represent
16 Mr. McFadden?

17 A I was assigned as his attorney on September 19th, 2019.

18 Q And did you have an opportunity to meet with Mr. McFadden
19 to discuss the charges against him?

20 A Yes, sir. I met with him at least five times, and I also
21 had at least six phone conversations or letters sent to him.

22 Q Thank you, ma'am. And did you discuss the indictment and
23 the elements of each offense that he was facing?

24 A Yes, I did.

25 Q And did you review the possible punishments and maximum

1 sentences that he could be facing?

2 **A** Yes, I did.

3 **Q** And did you discuss his constitutional rights with him?

4 **A** Yes, sir, I did.

5 **Q** And you discussed the State's burden of proof and the
6 evidence that they would have had against him?

7 **A** Yes. Yes, sir.

8 **Q** And did he ever indicate to you that he did not
9 understand your discussions about the charges or his rights?

10 **A** There's nothing in my notes that would indicate that he
11 didn't understand that.

12 **Q** And do you remember when you received a copy of the
13 discovery in this case?

14 **A** Whenever I was assigned as his attorney, we already had a
15 copy of discovery because it was provided to our office back
16 in 2016 before the bench warrant was issued.

17 **Q** Yes, ma'am. And do you remember when you gave Applicant
18 a copy of the discovery?

19 **A** No, I don't. I don't have -- well, there's nothing in my
20 notes that tells me that I gave him discovery. I always
21 remember my client's request for discovery, and I always
22 provide it to them. I don't have a recollection. I mean, I
23 may have given it to him but I don't have -- I guess there's
24 no proof in my notes to say that I did.

25 **Q** Yes, ma'am. Do you remember discussing the discovery

1 with Mr. McFadden?

2 **A** Yes, on several -- several times, yes, sir.

3 **Q** And did you ever discuss any possible defenses in this
4 case?

5 **A** Yes.

6 **Q** Do you remember what they may have been?

7 **A** Well, the case seemed pretty straightforward because my
8 client gave a confession. So the only, I guess, possible
9 defenses at that time were -- that may be the initial stop by
10 the police. They have not been constitutional, besides that
11 the statement that he gave to the police was not audio and
12 video recorded. That's something possibly we could argued it,
13 but they weren't the defenses that I would -- that I would say
14 were strong.

15 **Q** Yes, ma'am. And other than the fact that the confession
16 was not videoed, were there any other issues that you felt
17 were particularly problematic for Mr. McFadden?

18 **A** Not really, unless you could argue that maybe initial --
19 the police didn't have a reason to stop him, but based on the
20 fact that he matched the description and he was apprehended
21 close to the crime scene, I thought it was unlikely.

22 **Q** And did you develop an opinion regarding the State's
23 ability to prove guilt beyond a reasonable doubt in this case?

24 **A** Yes. I believe that, if the case went to trial, there
25 was enough evidence to possibly find Mr. McFadden guilty

1 during the jury trial.

2 **Q** Yes, ma'am. And did you convey this to Mr. McFadden?

3 **A** Yes, sir, I did.

4 **Q** Did you feel you had enough time to meet with
5 Mr. McFadden before his plea?

6 **A** Yes. I met with him several times.

7 **Q** Yes, ma'am. Ultimately, he pled to a negotiated 20-year
8 sentence. Do you remember any other plea negotiations on
9 behalf of Mr. McFadden?

10 **A** Yes. Well, whenever I met initially with Mr. McFadden
11 for our second meeting, he told me that he -- he was hoping
12 for something in the range of 10 to 12 years, and whenever I
13 approached the Solicitor John Meadors about this case, the
14 offer that he got back with me was 20 years and I guess one of
15 the factors that the solicitor considered was the fact that
16 Mr. McFadden was previously convicted and served prison time
17 for armed robbery.

18 **Q** Yes, ma'am. Do you remember the specific terms of the
19 plea other than the 20-year sentence? Would he -- sorry.
20 Would Mr. McFadden have been aware that the State was prepared
21 to dismiss the other three charges?

22 **A** I'm not sure. But I remember that it was 20 years
23 negotiated on armed robbery because the armed robbery was the
24 most serious of those charges, and that would include all the
25 weapons charges. So they were in the -- I guess -- because

1 they carried less time than armed robbery. It wasn't
2 something that I put in my notes.

3 **Q** Yes, ma'am. And did you explain to Mr. McFadden what a
4 negotiated plea meant?

5 **A** I'm sure I did. I always explain it to my clients.

6 **Q** And you informed him that the State could either -- or
7 not the State. The judge could either accept or reject the
8 negotiated sentence but he could not vary from the 20 years?

9 **A** That's correct.

10 **Q** And you explained all collateral consequences of the plea
11 such as two to three strike issues, serious use versus most
12 serious, violent and non-violent?

13 **A** Yes. I'm pretty sure I did. And in this case, because
14 Mr. McFadden already had a prior conviction for armed robbery,
15 the solicitor even indicated that if Mr. McFadden decides not
16 to take the plea offer, the offer will be drawn and they could
17 potentially seek life without parole in this case.

18 **Q** Yes, ma'am. And did you inform Mr. McFadden that he
19 could potentially face life without parole if this case went
20 to trial?

21 **A** Yes, sir, I did.

22 **Q** And did you convey all plea negotiations and offers to
23 Mr. McFadden?

24 **A** Yes. Every time there's an offer, I let my clients know,
25 yes, sir. And, in fact, October the 4th, 2019, my office sent

1 him a letter informing him that the State offered the 20
2 years' prison time. And then I also met with him on October
3 the 9th and (indiscernible). So at least three times after we
4 sent him the plea offer letter.

5 **Q** Yes, ma'am. And did you ever at any point tell him that
6 the solicitor was recommending a ten-year plea offer?

7 **A** No. Mr. McFadden was hoping for ten years plea offer but
8 solicitor was not willing to recommend it.

9 **Q** And Mr. McFadden alleges he was coerced into pleaing and
10 that he had a bench warrant out against him. Did you
11 communicate to him that he was facing a bench warrant if he
12 did not plea?

13 **A** There was already a bench warrant for him, so no.

14 **Q** Was Mr. McFadden ever threatened into pleaing by you?

15 **A** I had never any intention of threatening Mr. McFadden,
16 no. No, I did not.

17 **Q** Did you feel that taking a plea in this case would be in
18 Mr. McFadden's best interest?

19 **A** Yes, sir, I did.

20 **Q** And at the actual plea hearing, did you ever coach
21 Mr. McFadden on how to answer the questions from the plea
22 judge?

23 **A** What I always tell my clients is be respectful to the
24 judge and answer truthfully. And when you plead guilty,
25 you're admitting your guilt so that's the usual things that I

1 tell all of my clients.

2 Q Yes, ma'am. But you did not tell him that he had to
3 answer no, that he was not being threatened?

4 A No. No, sir.

5 Q And, ultimately, whose decision was it to plea in this
6 case?

7 A It was Mr. McFadden.

8 Q And did you ever tell him not to address any issues with
9 the judge at his plea, be it with charges being dismissed or
10 the amount of time that the plea was for?

11 A No, I don't believe so. And since it was a negotiated
12 plea, I mean, there wasn't really any issues that I could
13 think about.

14 Q Thank you. At this point, I have no further questions.

15 A Thank you.

16 THE COURT: Mr. Griffith, cross-examination?

17 MR. GRIFFITH: Thank you, Your Honor. If it pleases the
18 Court.

19 CROSS-EXAMINATION

20 BY MR. GRIFFITH:

21 Q Attorney Timmons, so, to be clear, you said that you do
22 not have any record of going over the discovery with
23 Mr. McFadden; is that correct?

24 A No, I have a record of going over discovery with
25 Mr. McFadden. I just don't have any record of providing

1 discovery to Mr. McFadden. There are -- I guess I know that
2 he requested the discovery. It's in my notes. And I can only
3 assume that, since I always provide discovery to my clients
4 when they request it, that I provided it to Mr. McFadden. I
5 guess there's no note in my notes saying that I did take him
6 discovery.

7 Q So did you in person go over the discovery, like, page by
8 page with Mr. McFadden?

9 A Yes, sir.

10 MR. GRIFFITH: I have no further questions, Your Honor.
11 Oh, wait. I'm sorry.

12 BY MR. GRIFFITH:

13 Q Now, on the day of the trial, when Mr. McFadden came in,
14 did you inform him that he had to go to trial right then -- he
15 was either going to trial or going to plea; is that correct?

16 A It was -- if he wanted to accept the plea offer, he had
17 to do it -- I guess he was scheduled for November the 12th.
18 So he would have to do it then. And if he didn't accept the
19 plea offer, the offer would be withdrawn, and he would have to
20 go to trial during the next court term.

21 Q Did he seem to you to be confused? Wasn't he confused a
22 little bit and felt rushed?

23 A I don't think he was rushed since he had time to think
24 about the plea offer for some time. And he did
25 (indiscernible). He didn't seem confused either.

1 Q So you had talked to him about this plea offer prior to
2 this or prior to the day of the plea?

3 A Yes, yes. He was -- the offer -- I believe the solicitor
4 made that offer on October the 4th, which that's when the plea
5 offer letter was sent to my client. I guess it's the policy
6 of our office that, every time there's a plea offer made by
7 the solicitor, we either send out a client letter or if
8 they're out on the street, we call them and talk to them. But
9 there's always a notation or supposed to be a notation that we
10 contacted our client.

11 In this case, because Mr. McFadden was in jail, the
12 letter was sent to him and then I also met with him at least
13 three times after the solicitor made the plea offer to
14 Mr. McFadden.

15 MR. GRIFFITH: I have no further questions, Your Honor.

16 THE COURT: Any redirect, Mr. Neubauer?

17 MR. NEUBAUER: No, Your Honor.

18 THE COURT: All right, folks. I'm going to take this
19 matter under advisement, and I will make a decision and notify
20 each side via an emailed memo and direct the prevailing side
21 to prepare an appropriate order, and I'll have that decision
22 made by next Friday, which I believe is October -- it's
23 March -- March the 19th.

24 So if there's nothing else, we'll be adjourned.

25 MR. GRIFFITH: Thank you, Your Honor.

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THE COURT: Thank all very much.
(The above hearing concluded.)

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CERTIFICATE OF TRANSCRIBER

CASE/NO.: Brandon McFadden v. The State
2020-CP-43-0990

DATE OF PROCEEDING: March 10, 2021

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

Bobbi Fisher

Bobbi J. Fisher, RPR
NCRA Registered Professional Reporter (RPR)
Prepared: June 25, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

RECORDED)
2021 APR 27 PM 2:18)

THE COURT OF COMMON PLEAS)
FOR THE THIRD JUDICIAL CIRCUIT)

Brandon McFadden, #313848,

2020-CP-43-990

Applicant,

JAMES C. CAMPBELL)
CLERK OF COURT)
SUMTER COUNTY, S.C.)

ORDER OF DISMISSAL

v.)

State of South Carolina,

Respondent.)
_____)

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. Hunt
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed on July 13, 2020, by Brandon McFadden (Applicant). The State (Respondent) filed a Return on January 21, 2021, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on March 10, 2021, remotely via the WebEx virtual courtroom. Applicant was present at the hearing and represented by Timothy Griffith, Esquire. Assistant Attorney General Michael Neubauer of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Katarzyna K. Timmons, Esquire, and Timothy Murphy, Esquire also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof of establishing any constitutional deprivations or other violations that would warrant the granting of post-conviction relief. Accordingly, this Court denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

In December 2016, Applicant was indicted by the Sumter County Grand Jury for armed robbery, possession of a weapon during the commission of a violent crime, unlawful carrying of a pistol, and possession of a firearm by person convicted of a violent felony (2016-GS-43-1238). The charges stemmed from the following incident, as set forth by the State at his plea proceeding:

At approximately 6:00 a.m. on August 21, 2016, Applicant entered Young's convenience store in Sumter, at which time Victim and a customer were present. Applicant, armed with a .45 automatic Hi-Point gun, pointed the gun at Victim and demanded money. Applicant obtained \$80.00 from Victim and fled the scene. Shortly thereafter, Applicant was spotted in an area near the scene. Articles of clothing identified by Victim were found in the immediate area where Applicant was apprehended. When law enforcement questioned Applicant, he admitted he committed the offense because he needed money.

GP. Tr. 6-7.

Katarzyna Timmons, Esquire, represented Applicant. Assistant Solicitor John P. Meadors of the Third Circuit Solicitor's Office prosecuted the case.

On November 12, 2019, Applicant appeared before the Honorable R. Ferrell Cothran, Jr., circuit court judge, and pled guilty as indicted to armed robbery. Pursuant to a plea agreement entered into between Applicant and the State for a determinate sentence of twenty years of imprisonment and the dismissal of a remaining charges, Judge Cothran sentenced Applicant to twenty years of imprisonment. The remaining charges were dismissed pursuant to the terms of the plea agreement.

Applicant subsequently filed a Notice of Appeal. By Order, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Court Rules. State v. McFadden, Case No. 2019-001938 (S.C. Ct. App. filed April 15, 2020). The remittitur was sent May 29, 2020.

ALLEGATIONS RAISED

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

1. Ineffective Assistance of Counsel
 - a. "Violation of 6th Amendment Right to Effective Assistance of Counsel."
 - b. "Violation of 14th Amendment Right to Due Process and Equal Protection."

As requested relief, Applicant states he is seeking "time reduction, sentence modification, and charge included to lesser offense."

On February 25, 2021, Applicant, through his counsel, filed an amended application alleging:

- c. Mr. McFadden was told by his attorney that the recommendation of the Solicitor was 10 years. He then saw in writing an offer from the Solicitor for the 10 year recommendation.
- d. Mr. McFadden's attorney did not tell him that the Judge could sentence without consideration of the recommendation of the Solicitor.
- e. Mr. McFadden was coerced into making the Plea. He was told he had to Plea or a bench warrant would be issued for him (according to Mr. McFadden). He was under pressure and was told he would get the 10 years.
- f. Mr. McFadden did not have discovery until the day before the Plea and his attorney did not go over the discovery with him.

At the evidentiary hearing, Applicant stated he was going forward on the allegations set forth in his original application and his amended application.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

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

1. Ineffective Assistance of Counsel

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Petitioner, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Petitioner has the burden of proving the allegations in his PCR action, and when alleging counsel

was constitutionally ineffective, he must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Petitioner must prove 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 v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “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). Petitioner 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 Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from a rigid rule of representation. Rather, Strickland requires the applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant

by the Sixth Amendment.” Id. at 697. The function of the PCR court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney.” Id. at 690. “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel).

When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational

under the circumstances. Padilla, 559 U.S. at 372.

In his initial application, Applicant alleged his attorney violated his 6th amendment right to effective assistance of counsel.

This Court finds Applicant claim should be dismissed for failure to specifically set forth the grounds upon which the claim is based. SC Code Ann. §17-27-50 requires “The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment and sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired.” Applicant has failed to specifically set forth any grounds explaining how his attorney violated his right to effective assistance of counsel. Applicant has merely expressed his counsel violated his 6th Amendment right to effective assistance of counsel. Therefore, this claim is denied and dismissed with prejudice for failing to comply with the statutory requirements for filing a post-conviction relief application.

Prior to his evidentiary hearing, Applicant amended his application for post-conviction relief to include specific allegations of ineffective assistance of counsel. These allegations are addressed below.

- a. Mr. McFadden was told by his attorney that the recommendation of the Solicitor was 10 years. He then saw in writing an offer from the Solicitor for the 10 year recommendation.*

Applicant asserts Counsel was ineffective because he was told he would receive a recommended sentence of ten years instead of the twenty year plea offer he accepted.

“... as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” Missouri v. Frye, 566 U.S. 134, 145 (2012).

At the evidentiary hearing, Applicant testified he agreed to a twenty year sentence for all charges. Applicant testified he believed the solicitor breached the plea agreement by dismissing

Applicant's charge for possession of a weapon during the commission of a violent crime, unlawful carrying of a pistol, and possession of a firearm by person convicted of a violent felony. Applicant testified he felt that the solicitor should have dropped the amount of time he would receive for his plea when the solicitor dropped three of Applicant's charges. Applicant testified he felt he should get less time because he was only pleading to one of the charges. When asked why Applicant did not ask the judge if he could get less time, Applicant testified he could not because his plea was already affected. Applicant testified Mr. Murphy told Applicant he could face twelve to fifteen years.

Katarzyna Timmons testified she met with Applicant multiple times prior to his plea. Ms. Timmons testified she discussed the possibility of a plea with Applicant. Ms. Timmons testified Applicant was hoping for a ten year sentence in a plea offer. Ms. Timmons testified she spoke with the solicitor and received an offer for twenty years. Ms. Timmons testified the solicitor's offer of twenty years was partially based on Applicant's previous conviction for armed robbery. Ms. Timmons testified the plea was a twenty year negotiated plea for armed robbery, because armed robbery was the most serious offense charged. Ms. Timmons testified she explained to Applicant that with a negotiated plea the judge could either accept or reject the negotiated offer, however the judge could not change the negotiated plea. Ms. Timmons testified she discussed all plea offer with Applicant and she never told Applicant there was a recommended offer for ten years. Tr. p. 8, l. 13-16.

This Court finds Applicant's allegation is without merit. Applicant at his plea hearing plead guilty to a twenty year negotiated sentence for Armed Robbery, and the other pending charges were dismissed. Tr. p. 8, l. 13-16; p. 9, l. 4-17. Though Applicant was hoping for a ten year offer, Applicant was informed prior to his plea hearing that he would be sentenced to twenty years if he

accepted the plea offer. Additionally Applicant's counsel testified she never told Applicant that a ten year plea offer existed. This Court finds Applicant has failed to show how Counsel was deficient, or how Applicant was prejudiced by Counsel's performance while negotiating a potential plea deal. Therefore this claim is denied and dismissed with prejudice.

b. Mr. McFadden's attorney did not tell him that the Judge could sentence without consideration of the recommendation of the Solicitor.

Applicant alleges his counsel did not inform him the Judge could sentence Applicant without consideration of the recommendation from the State.

Applicant testified he thought the twenty year offer was dependent on him pleading guilty to all four charges. Applicant testified he thought he should get less time because he was only pleading to one of the charges. On cross-examination Applicant testified he recalled the prosecutor saying the plea was negotiated.

Ms. Timmons testified she told Applicant his plea offer was for a negotiated twenty year sentence. Ms. Timmons testified she explained to Applicant what a negotiated plea was, and that the judge could either accept or reject the negotiations but not change the negotiations. Ms. Timmons testified she did not think Applicant was rushed into pleading guilty, and that Applicant was able to think about the plea offer for some time.

This Court finds Applicant has failed to show his counsel was ineffective. Applicant was informed at his plea hearing the negotiated plea was for twenty years. GP Tr. 8. Additionally, Ms. Timmons testified she did not receive a plea offer for ten years, and did not tell Applicant that a ten year plea offer existed. Accordingly, Applicant's claim his trial counsel failed to inform him that the Judge could sentence Applicant without consideration of the recommendation of the Solicitor is without merit. This claim is denied and dismissed with prejudice.

- c. *Mr. McFadden did not have discovery until the day before the plea and his attorney did not go over the discovery with him.*

Applicant asserts he was not provided a copy of his discovery until the day before his plea, and his attorney did not discuss the State's evidence against him prior to his plea.

Applicant testified he only spoke with his attorney two or three times before he went to court. Applicant testified neither Mr. Murphy nor Ms. Timmons went over discovery with him. Applicant testified he did not receive a copy of discovery until the day before his plea hearing. Applicant testified when he received a copy of his discovery he did not have time to look through it. On cross examination, Applicant again testified he did not receive discovery until the day before his plea hearing. Applicant testified he recalled telling the plea judge he had enough time to talk with his attorney prior to the plea hearing.

Mr. Tim Murphy¹ testified he assigned himself Applicant's case shortly after Applicant was arrested. Mr. Murphy testified he received discovery in Applicant's case on October 27, 2016. Mr. Murphy testified he reviewed the discovery in Applicant's case, then attempted to schedule a meeting with Applicant. Mr. Murphy testified he attempted to get in contact with Applicant via letters and phone calls, however Applicant did not respond to Mr. Murphy's requests to meet. Mr. Murphy testified he did not provide Applicant with a copy of his discovery prior to leaving the Public Defender's Office.

Ms. Timmons testified she was appointed to Applicant's case in September of 2019. Ms. Timmons testified she had a copy of Applicant's discovery when she was appointed. Ms. Timmons testified she discussed the discovery with Applicant several times. Ms. Timmons also testified she will provide clients with a copy of discovery if they request it, however Ms. Timmons cannot

¹ Mr. Tim Murphy, who formerly worked with the Sumter County Public Defender's Office, was originally appointed to represent Applicant after his arrest in August 2016. Mr. Murphy represented Applicant from September 2016, until Mr. Murphy left the Sumter County Public Defender's Office in 2019.

specifically remember when she provided Applicant with a copy of his discovery. Ms. Timmons testified she has a record of discussing discovery with Applicant, however she does not have any records indicating when she provided Applicant with a copy of the discovery.

This Court finds Applicant has failed to show his counsel was ineffective by failing to discuss the discovery with Applicant prior to his plea. Both of Applicant's attorneys testified they met with Applicant multiple times prior to Applicant's plea hearing. Ms. Timmons testified she met with Applicant five times, and had six phone conversations with him. Ms. Timmons testified she reviewed the discovery with Applicant several times, and the discovery materials contained Applicant's confession to the Armed Robbery. This court finds Ms. Timmons testimony credible. Further, this court finds Applicant's allegation his counsel did not provide Applicant with a copy of discovery until the day before the plea, and Counsel did not go over the discovery with Applicant to be without merit. Therefore this claim is denied and dismissed with prejudice.

2. Involuntary Guilty Plea

- a. *Mr. McFadden was coerced into making the Plea. He was told he had to Plea or a bench warrant would be issued for him (according to Mr. McFadden). He was under pressure and was told he would get ten years.*

Applicant alleges he was coerced into making his plea offer. Applicant claims he was told a bench warrant would be issued for him if he did not plea. This Court disagrees, and finds that Applicant has failed to prove that he was coerced into pleading guilty.

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

Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. Id. at 755; see also United States v. Smith, 440 F.2d 521, 528-529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31 (1970). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, Brady, 397 U.S. at 750-53, or by increasing the risks of punishment on those who do not. Alford, 400 U.S. at 37 (1970); cf. United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) ("It is well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." (citing Brady, 397 U.S. 742)). An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill, 474 U.S. 52).

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

at the time of the entry of the guilty plea and the record of the post-conviction hearing.” Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one’s accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243. Additionally, the defendant “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

Applicant testified he was arrested prior to his plea on a bench warrant. Applicant testified he was under pressure when he plead, and he didn’t know the “ins and outs of his case.” Applicant further testified he felt threatened into taking the plea offer from the State. On cross-examination Applicant testified he told the plea judge he did not need more time to talk with his attorney. Applicant testified he recalled telling the judge he was not threatened or promised anything to get him to plead guilty. However, Applicant testified he was advised by his attorney that he had to say yes to the plea judge’s questions. Applicant testified he recalled telling the judge he was pleading guilty on his own free will, however Applicant stated he was told he had to say this. Applicant

testified he was going to court due to an outstanding bench warrant. Applicant testified he was not threatened with a bench warrant in order to get him to plead guilty.

Ms. Timmons testified she discussed all plea offers with Applicant. Ms. Timmons testified she informed Applicant of his constitutional right prior to his plea hearing. Ms. Timmons testified Applicant was previously arrested on a bench warrant prior to his plea hearing, and Applicant was not threatened with a bench warrant to plead guilty. Ms. Timmons further testified she did not coach Applicant on how to answer the plea judge's questions, Ms. Timmons testified she told Applicant to answer the questions truthfully and to be respectful to the plea judge. Ms. Timmons testified she felt Applicant was not rushed into accepting a plea offer, Ms. Timmons stated Applicant was able to think about the plea offer for some time.

This court find Applicant's allegation to be without merit. Applicant was already incarcerated on a bench warrant at the time of his guilty plea. Applicant's counsel testified she did not coerce Applicant into accepting a plea offer. Additionally, Applicant's counsel testified she did not tell Applicant how he had to respond to the plea judge's questions. This court finds Applicant has failed to show he was coerced into accepting a plea, additionally Applicant has not provided any evidence, outside of his own self-serving testimony, to indicate he would have rejected the plea offer and proceeded to trial. Therefore, Applicant's claim is denied and dismissed with prejudice.

3. Due Process Violation

Applicant alleges his attorney violated his 14th amendment right to due process and equal protection.

This Court finds Applicant claim should be dismissed for failure to specifically set forth the grounds upon which the claim is based. SC Code Ann. §17-27-50 requires "The application

shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment and sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired." Applicant has failed to specifically set forth any grounds explaining how his attorney violated his right to due process and equal protection under the law. Applicant has merely expressed his counsel violated his 14th Amendment right to due process and equal protection. Therefore, this claim is denied and dismissed with prejudice for failing to comply with the statutory requirements for filing a post-conviction relief application.

CONCLUSION

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

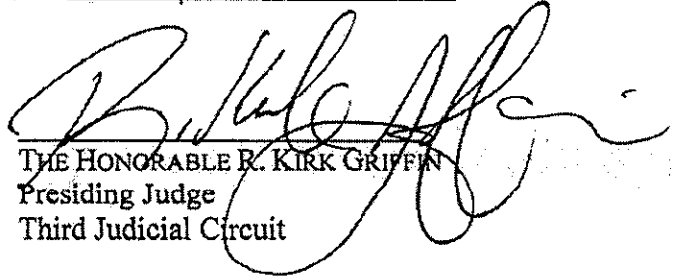
The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant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

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IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 27th day of April, 2021.


THE HONORABLE R. KIRK GRIFFIN
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

WITNESSES

N Kelly Sumter Police Dept

DOCKET NO. 2016-GS-43-1238

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

December TERM 2016

THE STATE

vs.

BRANDON JAMAL MCFADDEN

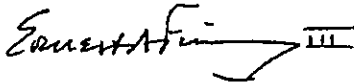
ARREST WARRANT NUMBER

2016A4320100668 2016A4320100669
2016A4320100680 2016A4320100681

Indictment for

Armed Robbery
Possession of a Weapon During a Violent Crime
Unlawful Carrying of Pistol
Possession of a Firearm by Person Convicted of Violent
Felony

ACTION OF GRAND JURY



ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

Armed Robbery
Possession of a Weapon During a Violent Crime
Unlawful Carrying of Pistol
Possession of a Firearm by Person Convicted of Violent Felony

CERTIFIED TRUE COPY
OF ORIGINAL FILE
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

At a Court of General Sessions, convened on December 1, 2016 the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE
ARMED ROBBERY

That on or about August 21, 2016, in Sumter County, South Carolina, the Defendant, Brandon Jamal McFadden, at [redacted] Broad Street, Sumter, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Young's Food Store #608 with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

COUNT TWO
POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

That Brandon Jamal McFadden did in Sumter County, on or about August 21, 2016, 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, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

COUNT THREE
UNLAWFUL CARRYING OF PISTOL

That Brandon Jamal McFadden did in Sumter County on or about August 21, 2016, carry about the person a pistol, such carrying not being authorized by law, in violation of Section 16-23-0020, S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR ARMED ROBBERY, POSSESSION OF A WEAPON DURING COMMISSION OF A VIOLENT CRIME, UNLAWFUL CARRYING OF A PISTOL, POSSESSION OF A FIREARM BY PERSON CONVICTED OF VIOLENT FELONY WITH THE AFORESAID NAME OF BRANDON JAMAL MCFADDEN SHOWN THEREON:

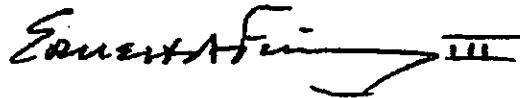
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COUNT FOUR
POSSESSION OF A FIREARM BY PERSON CONVICTED OF VIOLENT FELONY

That Brandon Jamal McFadden did in Sumter County on or about August 21, 2016 knowingly possess or acquire a firearm after having been convicted of a violent felony defined in Section 16-1-60, S. C. Code of Laws, 2003, as amended, in violation of Section 16-23-0500 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.

Solicitor



92
COUNTY OF
STATE

VS.

Brandon Jamal McFadden

AKA:
Race: Black Sex: M Age: 30

INDICTMENT/CASE#: 2016-GS-43-1238

A/W#: 2016A4320100668

Date of Offense: 8/21/2016

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139 CERTIFIED TRUE COPY
OF ORIGINAL FILE

SENTENCE SHEET

DEPUTY CLERK OF COURT

CONVICTED OF SUMMER COURT PLEADS

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST
John P. Meador
Meadors, John P

10429
SC Bar# Defendant

Timmons, Katarzyna K
Timmons, Katarzyna K
Attorney for Defendant SCB100955
SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce: Funding)	\$25	\$25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL \$128.75

Clerk of Court/ Deputy Clerk *James C. Campbell*
Court Reporter: *Frances B. Ray*

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge *H. Ferrell*

Judge Code: 2144

Sentence Date: 11-12-19

ARREST WARRANT

2016A4320100668

STATE OF SOUTH CAROLINA

County/ Municipality of

Sumter Municipal

THE STATE

16117556

against

Brandon Jamal Mcfadden

Address: Phone: Sex: M DL State: 60 DOB:

Prosecuting Agency: Sumter Police Department
Prosecuting Officer: Shaune Gill - 2644
Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon
Offense Code: 0139
Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of
The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant B. McFadden on 8/22/16

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
215 N. Harvin St.
Sumter, SC 29150

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Sumter Municipal

Personally appeared before me the affiant Shaune Gill who being duly sworn deposes and says that defendant Brandon Jamal Mcfadden did within this county and state on or about 8/21/2016 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Sumter Municipal) in the following particulars:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That the defendant did commit a robbery at the Young's Food store located at 226 Broad Street in the City of Sumter, State of South Carolina, and that he did so while armed with a handgun and directed the clerk, whom he was pointing the handgun at, to remove cash from the cash register and drop safe before fleeing the store. Further, that the defendant was located near the scene minutes afterward, and after items related to the robbery were recovered nearby, he was questioned and confessed to the offense. Law enforcement will attest to the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Sumter Municipal

Affiant's Address 107 East Hampton Avenue

Sumter, SC 29150-

Affiant's Telephone (803)436-2790

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe

on or about 8/21/2016 defendant Brandon Jamal Mcfadden

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Sumter Municipal) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 8/22/2016

Signature of Issuing Judge Lee A Tindal (L.S.) Judge's Address 190 East Canal Street

Sumter, SC 29150-

Judge's Telephone (803)436-2280

Lee A Tindal

Judge Code: 6632

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL Form Approved by S.C. Attorney General April 21, 2003 SCCA 618

AFFIDAVIT

RECORDED 2016 AUG 23 AM 11:30

JAMES G. CAMPBELL CLERK OF COURT SUMTER COUNTY, S.C. CERTIFIED TRUE COPY OF ORIGINAL FILE

Barbara Shaune