

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Certiorari to Beaufort County

Nov 03 2021

Jennifer B. McCoy, Circuit Court Judge

S.C. SUPREME COURT

PHILENZA PRITCHETT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001255

APPENDIX

JOANNA K. DELANY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

SAMANTHA WEIDAUER
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRANSCRIPT OF TRIAL HELD AUGUST 25, 2014	1
TRANSCRIPT OF TRIAL HELD AUGUST 26, 2014 PART I.....	44
TRANSCRIPT OF TRIAL HELD AUGUST 26, 2014 PART II	179
TRANSCRIPT OF TRIAL HELD AUGUST 27-28, 2014	285
FINAL BRIEF OF APPELLANT	454
FINAL BRIEF OF RESPONDENT	481
<u>STATE V. PRITCHETT</u> , OP. NO. 2016-UP-523 (S.C. CT. APP. FILED DEC. 21, 2016).....	502
REMITTITUR	505
APPLICATION FOR POST-CONVICTION RELIEF	507
RETURN.....	516
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING HELD NOV. 4, 2019	521
PLAINTIFF’S EXHIBIT #1 (LETTER)	597
PLAINTIFF’S EXHIBIT #2 (E-MAIL)	600
PLAINTIFF’S EXHIBIT #3 (CHAIN OF E-MAILS)	601
PLAINTIFF’S EXHIBIT #4 (PLEA OFFER OF 2014).....	605
ORDER OF DISMISSAL.....	609
INDICTMENTS	621
SENTENCE SHEETS	631

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

DEC 17 2015

SC Court of Appeals

Appeal From Beaufort County
The Honorable Brooks P. Goldsmith, Circuit Court Judge
Appellate Case No. 2014-001920

THE STATE,

Respondent,

v.

PHILENZA PRITCHETT,

Appellant.

PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Final Brief of Respondent Matter on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

Lara M. Caudy
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

I further certify all parties required by Rule to be served have been served.

This 17th day of December, 2015.


SALLY B. ELLISON
Administrative Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Philenza Pritchett, Appellant.

Appellate Case No. 2014-001920

Appeal From Beaufort County
Brooks P. Goldsmith, Circuit Court Judge

Unpublished Opinion No. 2016-UP-523
Submitted November 1, 2016 – Filed December 21, 2016

AFFIRMED

Appellate Defender Lara Mary Caudy, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
both of Columbia, and Solicitor Isaac McDuffie Stone,
III, of Bluffton, for Respondent.

PER CURIAM: Philenza Pritchett appeals his convictions for armed robbery,
kidnapping, conspiracy, unlawful carrying of a pistol, and possession of a weapon

during the commission of a violent crime. He argues the trial court erred in (1) admitting a witness's out-of-court and in-court identifications of Pritchett in violation of his due process rights and (2) declining to charge mere presence in reference to the unlawful carrying of a pistol charge when the hand of one is the hand of all theory was charged to the jury and the evidence presented supported giving a mere presence charge. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in admitting a witness's out-of-court and in-court identifications of Pritchett in violation of his due process rights: *State v. Govan*, 372 S.C. 552, 559-60, 643 S.E.2d 92, 96 (Ct. App. 2007) (finding the in-court identification was reliable independent of the show-up identification when the restaurant employees viewed Govan in a well-lit building; the witness was immediately next to and in direct contact with Govan for the duration of the robbery as he held her by the arm and put a gun to her head; the witness had significant opportunity to view Govan at a time when her attention would have been heightened; Govan's appearance at the time of the show-up was consistent with the witness's prior description of him, and she stated she was certain Govan was the man who robbed her; and the show-up occurred within forty-five minutes of the robbery); *State v. Brown*, 356 S.C. 496, 506, 589 S.E.2d 781, 786 (Ct. App. 2003) (finding the witness's pre-trial identification of Brown was reliable under the totality of the circumstances); *State v. Liverman*, 398 S.C. 130, 141, 727 S.E.2d 422, 427 (2012) (finding the witness' prior knowledge of the defendant was a "significant factor in determining reliability" and mitigates the "suggestive nature of a show-up").

2. As to whether the trial court erred in declining to charge mere presence in reference to the unlawful carrying of a pistol charge when the hand of one is the hand of all theory was charged to the jury and the evidence presented supported giving a mere presence charge: *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) ("To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant."); *State v. James*, 386 S.C. 650, 653, 689 S.E.2d 643, 645 (Ct. App. 2010) ("The defendant is entitled to a mere presence charge if the evidence supports it."); *State v. Stokes*, 339 S.C. 154, 163, 528 S.E.2d 430, 434-35 (Ct. App. 2000) ("Generally, a mere presence charge is appropriate under two circumstances": (1) "if there is a doubt over whether the defendant is guilty as an accomplice to a crime, the trial court may be required to instruct the jury that mere presence at the scene is insufficient to find the defendant guilty as an aider or abettor"; and (2) "in cases where the

defendant is charged with possession of contraband as a result of being present where contraband was found, the court may be required to charge the jury that the defendant cannot be found guilty of possession of contraband by being merely present near it.").

AFFIRMED.¹

HUFF and SHORT, JJ., and MOORE, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 07, 2017

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: The State v. Philenza Pritchett
Lower Court Case No. 2010GS0700872, 2010GS0700873,
2010GS0700875, 2010GS0700876, 2010GS0700977
Appellate Case No. 2014-001920

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Lara Mary Caudy, Esquire

Deborah R.J. Shupe, Esquire
Isaac McDuffie Stone, III, Esquire
The Honorable Brooks P. Goldsmith

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Philenza Pritchett (#00361339))
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

2018. CP-07-237
 IN THE COURT OF COMMON PLEAS

2018 FEB - 7 PM 12:55
 JENNI ANN HENSEN
 BEAUFORT COUNTY S.C.
 CLERK OF COURSE

APPLICATION FOR
 POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention: **Allendale Correctional Institution, 1057 Revolutionary Trail, Fairfax, SC 29827.**
2. Name and location of Court which imposed sentence **Court of General Sessions for the Fourteenth Circuit in Beaufort County, 102 Ribaut Road, Beaufort, SC 29902**
3. Name(s) of co-defendant(s) (if any) **Brandon Rolt, Harry Lockett, Tiffany Major**
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) **Armed Robbery: 2010GS0700872**
 - (b) **Possession of a Weapon During the Commission of a Violent Crime: 2010GS0700873**
 - (c) **Kidnapping: 2010GS0700875**

- (d) Criminal Conspiracy: 2010GS0700977
 - (e) Unlawful Carry of a Pistol: 2010GS0700876
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Petitioner's sentence was imposed on August 28, 2014.
 - (b) On August 28, 2014, Petitioner was sentenced to fifteen (15) years for the armed robbery charge.
 - (c) On August 28, 2014, Petitioner was sentenced to fifteen years for the Kidnapping charge.
 - (d) On August 28, 2014, Petitioner was sentenced to five (5) years for the Possession of a Weapon during the Commission of a Violent Crime.
 - (e) On August 28, 2014, Petitioner was sentenced to five (5) years for the Charge of Criminal Conspiracy.
 - (f) On August 28, 2014, Petitioner was sentenced to One (1) year for the Charge of Unlawful Carry of a Pistol.
 - (g) All sentences issued on August 28, 2014 were issued concurrently with a portion of time-served.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A.
 - (b) after a plea of not guilty X
 - (c) after a plea of nolo contendere N/A.
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes. Petitioner made a direct appeal.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. The Court of Appeals of South Carolina.
 - ii. N/A.
 - iii. N/A.
 - (b) the result in each such Court to which you appealed:
 - i. The Court of Appeals affirmed the Circuit Court's conviction.
 - ii. N/A.
 - iii. N/A.
 - (c) the date of each such result:

i. The Appellate Court sent the letter of remittitur to the Circuit Court on February 7, 2017.

ii. N/A.

iii. N/A.

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

i. State of South Carolina vs. Philenza Pritchett, Appellate Case No. 2014-001920, Unpublished Opinion No. 2016-UP-523.

ii. N/A.

iii. N/A.

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

(a) N/A.

(b) N/A.

(c) N/A.

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

(a) **Applicant alleges that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution, as well as Article I, § 14 of the South Carolina Constitution was violated, both prior to and during his jury trial. He also alleges that his decision to reject certain plea bargains were not voluntarily and intelligently entered, all due to specific errors and omissions by trial counsel that adversely affected his right to due process of law was violated in the trial court in one or more of the following particulars listed in Question Eleven (11).**

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

(a) **Applicant’s trial counsel was ineffective for failing to make appropriate for the court’s consideration a jury charge of ‘mere presence’ that would have been presented to the jury and effectively applied to all charges for which the Applicant was charged, convicted and sentenced.**

(b) **Applicant’s trial counsel failed to adequately prepare for pre-trial hearings by failing to obtain available impeachment materials with respect to the *Neil***

vs. Biggers hearing that would have materially changed the outcome of said hearing pertaining to the victim's identification of the Applicant.

12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? **No.**
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? **No.**
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? **No.**
 - (d) any other petitions, motions or applications in this or any other Court? **No.**
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. **N/A**
 - ii. **N/A**
 - iii. **N/A**
 - iv. **N/A**
 - (b) the name and location of the Court in which each was filed:
 - i. **N/A**
 - ii. **N/A**
 - iii. **N/A**
 - iv. **N/A**
 - (c) the disposition thereof:
 - i. **N/A**
 - ii. **N/A**
 - iii. **N/A**
 - iv. **N/A**
 - (d) the date of each such disposition:
 - i. **N/A**
 - ii. **N/A**
 - iii. **N/A**
 - iv. **N/A**
 - (e) if known, citations of any written opinions or orders entered pursuant to each such

disposition:

- i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
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. N/A
 - ii. N/A
 - iii. N/A
 - (b) the proceedings in which each ground was raised:
 - i. N/A.
 - ii. N/A.
 - iii. N/A.
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) N/A.
 - (b) N/A.
 - (c) N/A.
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? **Yes.**
 - (c) your sentencing? **Yes.**
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? **Yes.**
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? **Yes.**
18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Jessica M. Saxon, Esq. P.O. Box 525, Beaufort, South Carolina 29901, Helen R. Dovell, Esq.(trial counsel) (worked for Beaufort County Public Defender at the time)

ii. Helen R. Dovell, Esq., 1525 Sam Rittenburg Boulevard, Suite 103, Charleston, SC 29407 (trial counsel) (worked for Beaufort County Public Defender at the time).

iii. Matthew Lee Walker, Esq., P.O. Box 525, Beaufort, SC 29901 (pre-trial counsel)

iv. Laura M. Caudy, P.O. Box 11589, Columbia, South Carolina 29211. (appellate counsel)

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

i. Circuit Court

ii. Circuit Court

iii. Circuit Court

iv. Appellate Court

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

The Applicant respectfully requests a Vacation of his sentences, a reversal of his convictions, and in the alternative a re-sentencing, or specific performance of a plea bargain.

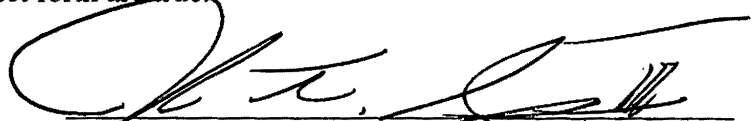
20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)
)
County of Beaufort)

VERIFICATION

I, John T. Gentry, III, Esq. as Attorney for Petitioner Philenza Pritchett, 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/or sentence attacked in this application on behalf of my client; and that the matters and allegations therein set forth are true.



John T. Gentry, III, Esq.

SWORN to and subscribed before me this 6th
day of February, 2018.

Myriam C. Aiken (L.S.)
Notary Public for State of South Carolina

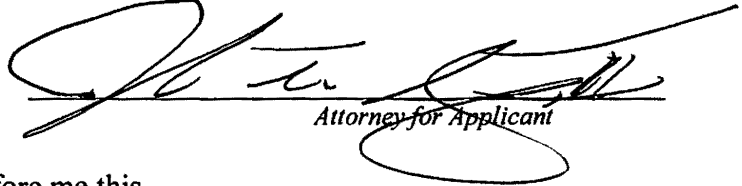
My Commission Expires: May 22, 2022

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

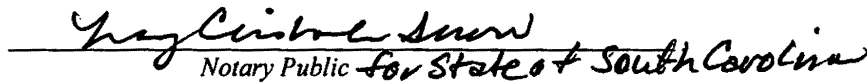
I, John T. Gentry, III, Esq. on behalf of Philenza Pritchett, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) Philenza Pritchett is the applicant in this action and I believe he is entitled to redress.

(2) Because of Philenza Pritchett's poverty, he is unable to pay the costs of said proceeding or give security thereof.


Attorney for Applicant

SWORN or affirmed to and subscribed before me this
6th day of February, 2018.


Notary Public for State of South Carolina

My Commission Expires: May 22, 2022

CLEKIS LAW FIRM, P.A.

ATTORNEYS AT LAW

Outside Charleston 800-797-LAW1 (5291)

Downtown Office:

Nicholas J. Clekis nick@clekis.com
Jacqueline J. Drescher jackie@clekis.com
John T. Gentry john@clekis.com
 171 Church Street, Suite 160, Charleston, SC
 Tel. (843) 720-3737 Fax: (843) 577-0460

North Charleston Office:

By Appointment Only
(No mail at this address)
 2050 Spaulding Drive, Suite 4A
 North Charleston, SC 29406
 Tel. (843) 569-3004 Fax: (843) 577-0460

www.clekis.com

MAILING ADDRESS:

P.O. Box 1867, Charleston, SC 29402

February 7, 2018

VIA USPS CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Alan Wilson
 South Carolina Attorney General
 Rembert Dennis Building
 1000 Assembly Street, Rm. 519
 Columbia, SC 29201

RE: Philenza Pritchett vs. State of South Carolina
 Civil Action No.: 2018-CP-07-_____

Dear Attorney General Wilson:

Pursuant to instructions from the Beaufort County Clerk of Court's office and out of an abundance of caution, please find enclosed a filed copy of my client's post-conviction relief petition, which has not yet been assigned a case number.

I trust that your office will receive notice of same from the Beaufort County Clerk's Office.

With kind regards, I am

Sincerely,
 CLEKIS LAW FIRM, P.A.

John T. Gentry, III, Esq.

JTG/

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
)	
Philenza Pritchett, #361339,)	Case No.: 2018-CP-07-0237
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on February 7, 2018, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. In May 2010, the Beaufort County Grand Jury indicted Applicant for armed robbery (2010-GS-07-0872), possession of a weapon during the commission of a violent crime (2010-GS-07-0873), kidnapping (2010-GS-07-0875), unlawful carrying of a pistol (2010-GS-07-0876), and conspiracy (2010-GS-07-0877). The charges resulted from an April 2010 incident in which Applicant and accomplices robbed a Kangaroo gas station at gunpoint. Tr. p. 82, ll. 1-21. The victim recognized Applicant's voice and identified him. Tr. p. 83, ll. 16-25. Applicant was eventually apprehended in an automobile with a handgun matching the description provided by the victim at his feet. Tr. p. 85, ll. 1-12. Pursuant to a search warrant, officers searched the automobile and also found the clothing Applicant was wearing in the surveillance video from the robbery. Tr. p. 86, ll. 1-9.

Jessica Saxon, Esquire, and Helen Dovell, Esquire, represented Applicant at trial. Assistant

Solicitor Lynorr Musser, Esquire, prosecuted the case. On August 25, 2014, proceeded to trial before the Honorable Brooks P. Goldsmith. The jury found Applicant guilty as indicted of armed robbery, possession of a weapon during the commission of a violent crime, kidnapping, unlawful carrying of a pistol, and conspiracy. On August 28, 2014, Judge Goldsmith sentenced Applicant to imprisonment for fifteen years for armed robbery, five years for possession of a weapon during the commission of a violent crime, fifteen years for kidnapping, one year for unlawful carrying of a pistol, and five years for conspiracy, all to be served concurrently.

Applicant filed a timely notice of appeal. Lara M. Caudy, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion filed December 21, 2016. State v. Pritchett, Op. No. 2016-UP-523 (Ct. App. 2016). The remittitur was returned to the circuit court on February 7, 2017.

Attached to this Return and incorporated by reference are the records of the Beaufort County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel
 - a. "Applicant alleges his right to effective assistance of counsel ... was violated both prior to and during his jury trial. He also alleges that his decision to reject certain plea bargains were not voluntarily and intelligently entered, all due to specific errors and omissions by Trial Counsel that adversely affected his right to due process of law."
 - b. "Failing to make appropriate for the court's consideration a jury charge

of 'mere presence' that would have been presented to the jury and effectively applied to all charges for which Applicant was charged, convicted, and sentenced.”

- c. “Trial Counsel failed to adequately prepare for pre-trial hearings by failing to obtain available impeachment materials with respect to the Neil v. Biggers hearing that would have materially changed the outcome of said hearing pertaining to the victim’s identification of Applicant.”

III.

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at

118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that

there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

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

VIII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

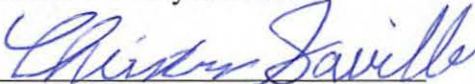
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

05/02, 2018

1 STATE OF SOUTH CAROLINA) COMMON PLEAS/PCR HEARING
)
 2 COUNTY OF BEAUFORT) CASE NO.
) 2018-CP-07-0237
 3)
)
 4 PHILENZA PRITCHETT,)
)
 5) Transcript of Record
)
 6 Plaintiff,)
)
 7 vs.) Date: November 4, 2019
)
 8 STATE OF SOUTH CAROLINA)
)
 9 Defendant.)

* * * * *

10

11

B E F O R E:

12

The Honorable Jennifer B. McCoy

13

14

15

16

17

18

19

20

* * * * *

22

23

Krista Nicole Carney, Stenographic

24

Court Reporter, transcribed by a

25

Stenographic Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

REPRESENTING THE APPLICANT:

JOHN T. GENTRY, III, ESQUIRE

CLEKIS LAW FIRM

171 Church Street

Charleston, SC 29401

REPRESENTING THE STATE:

SARAH GUNTON, ESQUIRE

SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE

Post Office Box 11549

Columbia, SC 29211

1	INDEX	
2		Page No.
3	PROCEEDINGS.....	4
4	DIRECT EXAMINATION OF PHILENZA PRITCHETT	
5	BY MR. GENTRY.....	7
6	CROSS-EXAMINATION OF PHILENZA PRITCHETT	
7	BY MS. GUNTON.....	23
8	RE-DIRECT EXAMINATION OF PHILENZA PRITCHETT	
9	BY MR. GENTRY.....	27
10	RE-CROSS EXAMINATION OF PHILENZA PRITCHETT	
11	BY MS. GUNTON.....	30
12	DIRECT EXAMINATION OF JESSICA SAXON	
13	BY MS. GUNTON.....	31
14	CROSS-EXAMINATION OF JESSICA SAXON	
15	BY MR. GENTRY.....	47
16		
17	REPORTER'S CERTIFICATE.....	76
18		
19	INDEX OF EXHIBITS ADMITTED	
20	PLAINTIFF'S NO. 1 (Letter).....	21
21	PLAINTIFF'S NO. 2 (E-MAIL).....	51
22	PLAINTIFF'S NO. 3 (CHAIN OF E-MAILS).....	59
23	PLAINTIFF'S NO. 4 (PLEA OFFER OF 2014).....	65
24		
25		

1 (These proceedings were had November 4,
2 2019, Beaufort County Common Pleas Court.)

3 THE COURT: How are you this morning?

4 MS. GUNTON: Good morning, Your Honor.

5 MR. GENTRY: Thank you for being here.

6 THE COURT: Of course.

7 All right. We have a PCR matter this
8 morning. And it's my turn for Judge Goldsmith; is that
9 correct?

10 THE CLERK: Yes, Your Honor.

11 THE COURT: All right. I'm happy to hear
12 from you all. Do you have a copy of the record that you
13 want to pass up?

14 MS. GUNTON: Yes, ma'am.

15 THE COURT: Thank you.

16 MS. GUNTON: Yes, Your Honor.

17 THE COURT: And before we get started, if
18 the attorneys could state their name for the court
19 reporter, and for the record, that would be helpful for
20 me, as well.

21 MR. GENTRY: John Gentry from the Clekis
22 Law Firm, Your Honor, representing Philenza Pritchett,
23 the Applicant, in this matter.

24 MS. GUNTON: Sarah Gunton, representing
25 the State of South Carolina with the Attorney General's

1 Office.

2 THE COURT: All right. Mr. Gentry, I'd be
3 happy to hear from you.

4 MR. GENTRY: Would Your Honor like a brief
5 opening or do you want me to go straight to the witness?

6 THE COURT: It's completely up to you.
7 However you want to present it to me.

8 MR. GENTRY: These claims are based on two
9 specific grounds, although there were many other grounds
10 listed in the application. We're focussing in on two.
11 And they kind of go together. They're intertwined.

12 We're alleging that defense counsel was
13 ineffective, first of all, for failing to allow the
14 applicant to reject an objectively fairable plea offer
15 from the State in December of 2013, without a
16 comprehensive understanding of the fact that at the jury
17 trial the presiding judge could deny or request for jury
18 instruction of more presence, not only on the kidnapping
19 and armed-robbery charges, but also on the unlawful
20 carrying charge.

21 Thereby denying the applicant the
22 opportunity to even consider the defense that he was
23 just getting a ride. And that's what the evidence will
24 show, that that's what the Defendant claimed from the
25 beginning, that he was just getting a ride on the night

1 that he was arrested.

2 Number two, defense counsel was ineffective
3 for failing to adequately explain the legal standards
4 for obtaining a jury instruction on mere presence on the
5 unlawful carrying charge, and failed entirely to even
6 request a mere presence jury charge on the kidnapping
7 charge and the armed-robbery charge.

8 Number three, defense counsel was
9 ineffective for failing to even -- by neglecting to
10 adequately explain to the applicant both that the trial
11 judge would ultimately decide whether or not the
12 evidence in the law would make Makai (phonetic) Fulton's
13 ID of the applicant admissible at trial, and whether or
14 not the evidence supported a request for a mere presence
15 jury charge.

16 In our opinion, these issues create a
17 presumption of prejudice to the applicant, as defense
18 counsel was largely absent during the critical stage of
19 Applicant's defense. In December of 2013, there was an
20 offer to pled to strong-armed robbery under the YOA, a
21 cap of 5 years. And he, in theory, could have served
22 only 15 months.

23 Because this was not explained to him and
24 there's very little written evidence that this offer was
25 even given to him, the plea would have expired on

1 December 16th, 2013. And he was forced to go to trial
2 in August of 2014, and was convicted on all counts. He
3 was convicted on armed robbery, kidnapping, unlawful
4 carrying of a pistol, criminal conspiracy, and carrying
5 a prohibited weapon. So that's a brief recitation of
6 our argument.

7 THE COURT: All right. Does the State wish
8 to make any similar opening statement?

9 MS. GUNTON: Your Honor, we're fine with
10 just jumping in.

11 THE COURT: Okay. You can call your first
12 witness, Mr. Gentry.

13 MR. GENTRY: Thank you, Your Honor. The
14 Applicant calls Philenza Pritchett.

15 THE COURT: Mr. Pritchett, we are going to
16 have you take a seat here at the witness stand, sir.
17 The clerk is going to swear you in. Just raise your
18 right hand to the best of your ability.

19 (Philenza Pritchett was sworn in.)

20 THE COURT: Mr. Gentry, you may proceed.

21 DIRECT EXAMINATION

22 BY MS. GUNTON:

23 Q. Mr. Pritchett, when were you arrested for
24 the crimes that we're here for today?

25 A. April 1st, 2010, if I'm not mistaken.

1 Q. I realize it was a long time ago. So some
2 of it's hard to remember.

3 And how were you arrested on that early
4 morning of April 1st, 2010?

5 A. Well, we were sitting at a gas station,
6 getting gas. And they just like literally jumped out.
7 Like a cop car came in and, you know, just blue-lighted
8 everything, and asking the guys for their driver's
9 license and stuff like that. And the next thing you
10 know is it went from there.

11 Q. So you were arrested at that point. Were
12 you able to bond out?

13 A. A little while later, yes.

14 Q. When were you first appointed a public
15 defender on these charges?

16 A. It was shortly after it happened. I
17 believe it was Mathew Walker or something like that.

18 Q. And when you say shortly after, was this in
19 2010 still?

20 A. Yes, it was.

21 Q. To your knowledge, what did Mr. Walker do
22 for you on your case?

23 A. Nothing I could really at all even say. He
24 really wasn't that helpful.

25 Q. Did he at least meet with you?

1 A. He met with you a few times.

2 Q. Was it your understanding that he requested
3 the discovery in the case?

4 A. I believe he did, yes.

5 Q. You said at first you had Mr. Walker. How
6 long was Mr. Walker on your case?

7 A. Nearly the whole time; 80, 90 percent of
8 the time.

9 Q. So you were convicted in August of 2014; is
10 that right?

11 A. Right.

12 Q. And you were first arrested for this in
13 April of 2010. So Mr. Walker didn't represent you the
14 whole time during that; did he?

15 A. I had the idea he was, but I don't think he
16 -- you know, he really wasn't. Because I believe he was
17 transferred or he, you know, stopped or whatever he did.
18 But I wasn't notified anything until Ms. Saxon came.

19 Q. So when were you informed that Mr. Saxon
20 was your attorney?

21 A. I guess this was when I came back from
22 Georgia, if I'm not mistaken. Like December time maybe.

23 Q. Around the holidays?

24 A. Yes.

25 Q. And I know it was a long time ago. Does it

1 sound right that you maybe would have come back around
2 the end of November of 2013?

3 A. I believe so.

4 Q. Before that time, did you realize that
5 Jessica Saxon was your attorney?

6 A. No. Not before that, no.

7 Q. Did you ask to speak with your attorney
8 concerning these charges, while you were being held in
9 Georgia?

10 A. I cannot remember.

11 Q. If you had done that, would you have done
12 an inmate complaint, inmate request form, anything like
13 that?

14 A. I definitely made complaints, wrote
15 letters. I requested as much as I could, because I
16 didn't know what was going on.

17 Q. And so as late as November 22nd, 2013, you
18 were under the understanding that Mathew Walker was
19 still your attorney; is that right?

20 A. Yes, sir.

21 Q. And at that point, were you informed that
22 Jessica Saxon was your attorney?

23 A. At the end, yes, sir.

24 Q. Had you ever met Ms. Saxon, previous to
25 that?

1 A. No.

2 Q. To your recollection, when is the first
3 time that Ms. Saxon met with you in person?

4 A. Probably around -- I'd say around the end
5 of the year. I'd say around the end of the year.

6 Q. And we're still talking about 2013?

7 A. Right.

8 Q. And what was the purpose -- did she visit
9 you in lockup? Or where did she visit you?

10 A. I was in Beaufort County, in regular
11 population.

12 Q. And what was the purpose of her visit?

13 A. Introductory -- introducing herself. And I
14 can't remember too much detail, as far as what she was
15 saying. It wasn't too much. But she was introducing
16 herself. She advising me that she was my attorney.

17 Q. Is it possible that she conveyed a plea
18 offer to you during that visit?

19 A. I can't remember plea offers too much.

20 Q. Had you had any plea offers until that
21 day -- and we're talking about the end of the year of
22 2013 -- to your recollection?

23 A. Not too much. When I came back she had --
24 you know, I don't remember the plea offers at the time.

25 Q. And I know it was a long time ago. But is

1 it possible that she conveyed a plea offer to you at
2 that visit?

3 A. She could have.

4 Q. So before I go into anything else, why
5 don't you tell me about the plea offers you can
6 remember, under your understanding.

7 A. Okay. Well, the only plea offer that I can
8 remember, when it came to her presenting, was a plea
9 offer, as far as -- when I came back from Georgia, she
10 offered -- she said that the State -- well, she could
11 get me, I think 4, 3 to 5, or something like that.

12 And that was going to -- I asked her if
13 that would interfere with the Georgia probation that I
14 was on. You know, the first offense from Georgia. She
15 said, no, it won't. It's a turnaround. And I said,
16 okay, I'll take that.

17 Later down the road, she came back and said
18 the State said no, take 10 years or we go to trial. So
19 I -- I just said 10 years. Well, you know, what
20 happened to the original deal that she was saying. She
21 said, you know, nothing she could do.

22 I said, well, you know, I guess we go to
23 trial. Because I didn't know what was -- you know, I'm
24 not legal savvy when it comes to what's going on. So I
25 didn't understand it.

1 Q. So at that visit, you were talking about 0
2 to 5. Is it possible that the offer was the plea to
3 strong-armed robbery?

4 A. Yes. Because she broke it down.

5 Q. And with a recommendation under the YOA?

6 A. Well, she didn't explain anything about YOA
7 or anything like that. I just thought she said it would
8 be a probation, the South Carolina and Georgia together.
9 And it wouldn't interfere with Georgia. But she didn't
10 get into details as far as like YOAs or anything of the
11 such.

12 Q. Do you know what YOA stands for?

13 A. I think it's like Youth Offenders or
14 something like that. I found out when I was in prison.

15 Q. And did you realize or did she explain to
16 you that most of the term would be carried out, as you
17 said, probation and some active?

18 A. There was no details. The only thing that
19 she kept pushing was effective, the 10 years was a good
20 plea. After she said that, you know, that was a no-go
21 with the first plea when I came back from Georgia. And
22 I was, you know, upset. Like how is 10 years a good
23 plea. And it just came to, you know, a lesser plea.

24 Q. So at that visit -- and I know it was a
25 long time ago -- but do you remember her or y'all

1 discussing anything about your current charges? What
2 you were currently being charged with; meaning the armed
3 robbery, kidnapping? Do you remember any discussion
4 about what elements the State had to prove or anything
5 like that?

6 A. I thought we could have pushed for the fact
7 of me just, you know, being there in general, but not --
8 you know, not to the extent it could have -- you know, I
9 think it could have been more than that.

10 But as far as me just being there just, it
11 wasn't too much explanation about it. I didn't
12 understand in depth what was going on.

13 Q. Did she indicate to you that she had looked
14 at your file or looked at the discovery in your case in
15 December of 2013?

16 A. She said that she did, you know, discovery
17 research. She did.

18 Q. Did she explain to you that --

19 Well, first of all, did you tell her your
20 side of the story, as to what happened?

21 A. Yes.

22 Q. And the main gist of your story is that you
23 were basically in the wrong place at the wrong time, you
24 were getting a ride; right?

25 A. Yes.

1 Q. So, to your knowledge, you told her that?

2 A. Yes.

3 Q. Did she tell you that in order to succeed
4 on a defense like that, a mere presence jury charge is
5 crucial and the judge can decide whether or not the jury
6 ever even hears that?

7 A. She never explained that to me.

8 Q. Did she explain to you that if the judge
9 decides that a jury doesn't hear that, and you try that
10 defense specifically on the firearm charges, you could
11 be found guilty, even if the jury believed you? Did you
12 know that?

13 A. I didn't know that either.

14 Q. And did you know that you could be
15 sentenced to 5 years, even if the jury believes you on
16 that charge, if mere presence is not an option for the
17 jury to consider?

18 A. I didn't know anything.

19 Q. Did y'all talk any at all about whether or
20 not Makai Fulton's identification of you, based on your
21 voice, whether that would be kept out or admitted at
22 trial? Was there any discussion of that?

23 A. I believe it was said that it was like
24 frowned upon or something, like SOP, police department
25 or something like that. It wasn't like in extreme

1 detail.

2 Q. So at the end of the year, you think
3 December of 2013, did she meet with you once or did she
4 meet with you twice?

5 A. I believe twice.

6 Q. Okay. And what was the reason for the
7 second meeting?

8 A. When she told me -- if I'm not mistaken,
9 when she told me that they wouldn't do the first deal,
10 you know, she came for me to take the 10 years. And
11 this was, you know, kind of before I got out of jail.

12 Q. So that second meeting, are you sure it
13 happened in December?

14 A. I believe so. No, I believe it was one
15 time. Because I know when I was getting ready to go to
16 court that issue was being pushed a little harder. But
17 I think in December it was one time. It was actually
18 one time, if I'm not mistaken.

19 Q. And it's your testimony today that you
20 rejected that plea offer?

21 A. The 10 years?

22 Q. Not the 10 years. The YOA sentence under
23 strong-armed robbery?

24 A. You say that I rejected it?

25 Q. Did you reject it?

1 A. If I knew better -- if I would knew that
2 everything in detail, I would have objected to something
3 as low as that.

4 But, I mean, I didn't -- I really didn't
5 know in any details about pleas and offers and violent
6 sentences and nonviolent sentences. I didn't know any
7 of that.

8 Q. And it was based on that ignorance that you
9 rejected the plea?

10 A. Exactly.

11 Q. So, as of December, when you meet with
12 Jessica Saxon, it was your understanding that you
13 rejected a plea to strong-armed robbery?

14 A. (Moves head.)

15 Q. Do you remember sending a letter to the
16 prosecutor in this case, in April?

17 A. Yes.

18 THE COURT: April of what year?

19 MR. GENTRY: April 1st of 2014.

20 BY MR. GENTRY:

21 Q. Do you recall that at all?

22 A. You say the letter?

23 Q. Yes.

24 A. Yes.

25 Q. And in that letter, do you remember telling

1 the prosecutor that, you know, you were annoyed, that
2 you were just getting a ride and you had been dealing
3 with this for 4 years now?

4 A. Yes.

5 Q. And in that letter, do you remember
6 misunderstanding something about a different plea offer?

7 A. Yes. I wrote about it because that's what
8 was going on. I was under the influence that I was to
9 get a specific offer, you know, of this 4 to 5, or
10 whatever this case may be. And now it's something
11 completely different.

12 And it was just, you know, a lot of passing
13 my case around, you know, with different solicitors and
14 different attorneys. And just, you know, I didn't have
15 any kind of complete information of what was going on.
16 I just needed somebody to clear it all up.

17 Q. So based on your recollection at that
18 point, would you say that the letter was sent out of
19 frustration, that all of a sudden you had a higher plea
20 offer or plea offer for more time at that point?

21 A. Yes.

22 Q. And that's not what you understood was the
23 case?

24 A. Not at all.

25 Q. At that point in April -- well, had

1 Ms. Saxon seen you since December?

2 A. Well, when I first got arrested she wasn't
3 my attorney. But later on, yes, she became my attorney.

4 Q. At the December meeting with Ms. Saxon,
5 were you ever told that that plea offer expired on
6 December 16th, 2015?

7 A. I don't remember that. I don't remember
8 her telling me that.

9 Q. So this was 5 years ago. Do you remember
10 verbatim what you wrote in the letter?

11 A. Not verbatim, no.

12 Q. Right. So would seeing a copy of the
13 letter refresh your recollection?

14 A. Yes.

15 MR. GENTRY: Your Honor, may I approach?

16 THE COURT: You may.

17 BY MR. GENTRY:

18 Q. Do you recognize this?

19 A. Yes.

20 Q. And what is it?

21 A. This is the letter that I wrote to
22 Mrs. Musser.

23 Q. And is that a true and accurate copy?

24 A. Yes.

25 Q. And I direct your attention to Page 2,

1 halfway down. Do you see what plea offer you're talking
2 about there?

3 A. The accessory after the fact?

4 Q. Right. Were you actually offered that?

5 A. That was supposed to be the 3 to 5.

6 Q. So was it your understanding that the offer
7 was on the table? Or it was going to be on the table?

8 A. The way she made it seem like it was on the
9 table. They way -- she said like, okay, as long as you
10 want to do it, you're done. But then everything
11 switches off, continued, so...

12 Q. So I realize in that letter you had some
13 hesitation about that. Did you ultimately accept that
14 offer?

15 A. Yes, I did.

16 Q. And what was the result of that?

17 A. She said that it was -- well, she'll be
18 back, you know, the next time we went to court. They
19 said no, take 10 years or we go to trial.

20 MR. GENTRY: Okay. I'd like to admit this
21 letter into evidence.

22 THE COURT: Sure. Any objection from the
23 State?

24 MS. GUNTON: No.

25 THE COURT: It will be admitted as

1 Petitioner's 1 or Plaintiff's 1.

2 (Plaintiff's Exhibit No. 1 was admitted
3 into evidence.)

4 BY MR. GENTRY:

5 Q. And I'm sorry to skip around. But going
6 back to December of 2013, were you shown any paperwork
7 about that offer that you received at that point?

8 A. No. No, sir.

9 Q. Okay. So she didn't -- Ms. Saxon did not
10 bring you anything in writing?

11 A. No.

12 Q. Again, I know this happened a long time
13 ago, so none of us have memories this good. But do you
14 recall, again, when you first learned that Ms. Saxon was
15 your attorney?

16 A. Could you repeat that?

17 Q. Can you remember the date when Ms. Saxon
18 had become your defense attorney?

19 A. No, sir. I don't remember the date. But I
20 know it was around that year when she showed up.

21 Q. Is it true -- could it be possible that you
22 found out that Ms. Saxon had begun to represent you when
23 asked for Mr. Walker and you were referred to Ms. Saxon?

24 A. Yes, it's definitely possible.

25 Q. You said that you made inmate requests and

1 complaints. Do you remember how late in the year in
2 2013 that you thought Mathew Walker was still your
3 attorney?

4 A. It was up until she showed up.

5 Q. So we've discussed together the Youthful
6 Offender Act out of court; right?

7 A. Yes.

8 Q. And I explained to you how, under the
9 Youthful Offender Act, you can have much of the sentence
10 that's -- that you agree to be suspended; right?

11 A. Yes, sir.

12 Q. Even if there's a 5-year max, it doesn't
13 mean under the YOA that you don't serve the full 5
14 years, do you understand that now?

15 A. Yes, sir.

16 Q. Did you understand that at the time in
17 December of 2013?

18 A. No, sir, I never understood it.

19 Q. So if you could go back in time to December
20 of 2013, and if you understood at that point that,
21 number one, there's not much of a chance that Makai
22 Fulton's ID would be thrown out at trial -- which you
23 knew about at that time; correct?

24 A. Yes, sir.

25 Q. Did Ms. Saxon talk with you about that at

1 all?

2 A. I believe so, but I can't remember. I
3 believe she did.

4 Q. If you knew that the judge had to okay a
5 jury charge for mere presence, based on your defense, in
6 order for the jury to even consider that defense, would
7 you have taken the December of 2013 plea, if you had
8 known that at the time?

9 A. Without a doubt, I would have took that
10 plea.

11 MR. GENTRY: That's all I have at this
12 point. Please answer any questions Ms. Gunton has.

13 CROSS-EXAMINATION

14 BY MS. GUNTON:

15 Q. Good morning.

16 A. Morning.

17 Q. I just wanted to start off going through
18 the history of this case with you. Early on in the
19 beginning, did you -- was it your intention to get a
20 plea offer and pled guilty to these charges? Or did you
21 always want to go to trial in this case?

22 A. I just wanted the clarity of what was going
23 on so we didn't have to go to trial.

24 Q. And by clarity, what do you mean by that?

25 A. If everybody was doing their job, as far

1 as, you know, the police department, everything would
2 have been cleared up and none of this would have even
3 happened.

4 But, you know, I was basically pushed this
5 the side and held in the blind from Mr. Walker from the
6 beginning. And this is what forced me to fight.
7 Because I'm not just going to, you know, accept
8 anything.

9 Q. And while Mr. Walker was representing you,
10 were there any plea offers, to your recollection, that
11 were extended to you by the State?

12 A. Nothing on paper.

13 Q. And you don't remember having any
14 conversation that you had with him from the State
15 regarding plea offers?

16 A. The only thing that I can remember was
17 something that was extremely high. And I didn't even
18 want to hear that, not for what was going on, not for --
19 you know, not for --

20 Q. And when Ms. Saxon came on your case, did
21 you express any of those concerns that you had with her
22 regarding the clarity that you just talked about, in
23 terms of evidence or the charges against you?

24 A. We did a little bit. And she told me that
25 she went to my motion.

1 Q. And did you ask her any questions regarding
2 your case or the possible sentences that you would face,
3 based on these charges? Like, can you describe for us
4 any of the conversations you had with Ms. Saxon?

5 A. It wasn't really too much to speak about.

6 Q. And during December of 2013, which you
7 discussed earlier about this plea offer that as on the
8 table, do you recall in depth Ms. Saxon coming to you
9 and explaining to you what that meant in regards to any
10 type of detail?

11 A. I mean as far as like dropping it to like
12 an accessory or something like that, a strong arm. But
13 we just discussed the detail because I didn't want to
14 get, you know, more time in Georgia, if I was convicted
15 in South Carolina. So that's really why I was asking a
16 lot of questions about. Because it was a good deal that
17 she came to me with or was pushing, or whatever the case
18 may be, you know, until further down the road.

19 Q. And when that plea offer, the December of
20 2013 plea offer was taken off the table, at that point
21 do you know that you wanted to go to trial on these
22 charges?

23 A. After she said 10 years, I had no choice.
24 She said the State said 10 years or go to trial. There
25 was no distinction of anything.

1 Q. Did you ever discuss with her the maximum
2 sentencing exposure that you face, if you did go to
3 trial on all counts, compared with the 10-year offer?

4 A. That was -- I believe so, yes.

5 Q. And knowing that you still just wanted to
6 ahead and go to trial on all these charges?

7 A. I had no choice.

8 Q. And so there is no other -- to your
9 recollection, there was no other plea offers extended to
10 you by the State leading up to the trial in August, it
11 was just that one December 2013 offer?

12 A. The only one I remember that was worth
13 anything is the one that we were speaking about.

14 Q. And earlier you had discussed with your
15 attorney that you had sent an letter in April of 2014 to
16 the Solicitor's Office. Did you convey any of that
17 information, including the letter that you sent to your
18 attorney? Did you have any discussions with her about
19 that?

20 A. About what?

21 Q. The letter that we just went offer. I
22 believe you had discussed in there a 0 to 4, your offer,
23 accessory after the fact? Did you discuss that with
24 your attorney?

25 A. That's what was told to me. That was my

1 understanding. That's why I was so upset. Because it
2 goes from to 0 to 4 or to 10 years, or your get maximum.
3 They sent you to the max. So, you know, I was highly
4 upset.

5 Q. And if moving forward going to the actual
6 trial, was there anything at trial that you had
7 specifically asked Ms. Saxon to look into, to
8 investigate for you, in terms of a defense?

9 A. They pushed for me just -- you know, just
10 the angle of me just being there. And that, you know,
11 after everything going on but...

12 MS. GUNTON: No further questions, Your
13 Honor.

14 THE COURT: All right. Any re-direct?

15 MR. GENTRY: Yes, Your Honor.

16 RE-DIRECT EXAMINATION

17 BY MR. GENTRY:

18 Q. To clear a few things up, Philenza, you
19 said you don't -- well, I think your wording was, if
20 there weren't any plea offers under Matthew Walker they
21 were high; right?

22 A. Yes, sir.

23 Q. Do you recall getting a plea offer shortly
24 after getting arrested of 12 years?

25 A. Of 12 years, you say?

1 Q. Yes.

2 THE COURT: Take your time. I want to make
3 sure you get it right.

4 A. I know it was definitely over 10.

5 BY MR. GENTRY:

6 Q. Did you know anything about a plea offer
7 that Ms. Saxon got on your behalf in July of 2013?

8 A. I can't remember.

9 Q. Were you ever told about that?

10 A. No, I don't remember that. I think I was
11 in Georgia at the time.

12 Q. So you were serving a sentence in Georgia
13 during part of that time?

14 A. Yes, sir. That was my main focus.

15 Q. At any time during Jessica Saxon's
16 representation of you, did you get anything in writing
17 about any plea offers?

18 A. No, sir.

19 Q. Did you get anything in writing explaining
20 your current charges?

21 A. Like my warrants?

22 Q. Like your charges of armed robbery,
23 kidnapping, criminal conspiracy, firearm charges?

24 A. Like my warrants and stuff like that.

25 Q. Right.

1 A. That's about it.

2 Q. So Beaufort County Sheriff's Office filed
3 those documents from that; right?

4 A. Right.

5 MR. GENTRY: Your Honor, may I approach?

6 THE COURT: Sure.

7 BY MR. GENTRY:

8 Q. Do you ever recall seeing this document,
9 Mr. Pritchett? And it's two pages. I want you to look
10 at both of them.

11 A. Okay.

12 Q. Do you see where it has a place for you to
13 sign?

14 A. Yes.

15 Q. But it's not signed?

16 A. Yeah, I didn't see this.

17 Q. And there's a place for Jessica Saxon to
18 sign?

19 A. Uh-huh.

20 THE COURT: Is that a yes?

21 THE WITNESS: Yes. I'm sorry.

22 THE COURT: You have to say yes or no, for
23 the record.

24 BY MR. GENTRY:

25 Q. Mr. Pritchett, if I can direct your

1 attention to the bottom left. I know it's not
2 completely dated as well. But what is the year listed
3 on there that --

4 A. 2014.

5 Q. 2014, not 2013?

6 A. Right.

7 Q. And that would have been after that plea
8 expired; right?

9 A. Yes.

10 MR. GENTRY: Your Honor, I would like to
11 admit this as well.

12 THE COURT: Well, this particular witness
13 said he's never seen it before. I'm sure your next is
14 potentially going can get that in.

15 MR. GENTRY: Right.

16 THE COURT: Any limited re-cross?

17 MS. GUNTON: Yes, Your Honor, briefly.

18 THE COURT: Okay.

19 RE-CROSS EXAMINATION

20 BY MS. GUNTON:

21 Q. Mr. Pritchett, through all the discussions
22 we've had, is it fair to say that you don't remember a
23 lot of about the plea offers?

24 A. There weren't many plea offers.

25 Q. Right. But just on the details of those

1 plea offers?

2 A. I wasn't explained the details of the plea
3 offers that were given to me, except for the one that I
4 had with -- I can't remember the name. You know, there
5 was no explanation from Mathew Walker at all, nor from
6 Ms. Saxon, aside that one that we really went into depth
7 to, because I wanted that plea.

8 But after anything else, as far he's
9 denying that, there was no detail. It was only this is
10 a good plea. This is a good plea. Take this plea or
11 you get the max.

12 MS. GUNTON: Thank you. No further
13 questions, Your Honor.

14 THE COURT: Okay. You can have a seat
15 back.

16 Mr. Gentry, you can call your next witness.

17 MR. GENTRY: Your Honor, the Applicant
18 rests at this point.

19 THE COURT: Okay. Ms. Gunton.

20 MS. GUNTON: Your Honor, at this point, the
21 State would call to the stand Ms. Jessica Saxon.

22 (The witness was sworn in.)

23 THE COURT: Please proceed.

24 DIRECT EXAMINATION

25 BY MS. GUNTON:

1 Q. Good morning. Thank you for being here.

2 A. Certainly.

3 Q. I just wanted to start off by asking you
4 how you got involved in this case.

5 A. Certainly. I started with the Beaufort
6 County Public Defender's Office the very beginning of
7 July of 2013, taking over Mr. Mathew Walker's caseload.
8 He had moved to one of our outer counties within the
9 14th Circuit.

10 This case was one of the ones that I took
11 over. So that would have been how I initially got it.
12 And at that time, I think Mr. Pritchett had been in jail
13 for three years -- two or three years at that time. It
14 had been a minute since they had this case.

15 So I took it over in July of 2013. At that
16 time, as Mr. Pritchett said, he was in custody in
17 Georgia. So we weren't able to meet until he was
18 transferred back to South Carolina.

19 And I attempted to talk to his family some,
20 trying to keep them in the loop with information, and
21 also trying to let the Solicitor know that our
22 communication was limited, because he was serving time
23 in Georgia.

24 When he was transferred here, I want to
25 say, it was late 2013. So that would have been when we

1 first started meeting and going over the case, going
2 over the options, and things that of nature.

3 Q. Did Mr. Walker kind of walk you through
4 where the case was at at this point, since it had been
5 three years since he had been arrested?

6 A. Matt gave me a little bit of information.
7 Matt is a brilliant lawyer, but he is not the most
8 organized. So taking over his caseload was a little
9 hectic in just getting everything organized.

10 He did give me basic -- kind of secured me
11 up to speed on what's been happening here. And the last
12 time I talked to Mr. Pritchett he wanted to go to trial.
13 So that's kind of where my head was when I got the case.

14 Q. So a lot of the discussions were in and
15 around the plea offer or plea offers that were on the
16 table?

17 A. Uh-huh.

18 Q. Could you walk us through a timeline from
19 your notes in your file of when any plea offers were
20 extended to you from the State and what the outcomes of
21 those were?

22 A. Yes. And I'm going to have to -- I've been
23 trying to organize my notes while I was sitting back
24 there. So I have the e-mailed plea offers that I
25 originally have notes of.

1 The first offer was sent to Matthew Walker.
2 And that was for a plea to armed robbery for 12 years.
3 And that was sent back to 2010. So that would have been
4 right after the initial arrest, of my understanding.

5 The second offer that was sent in 2010 was
6 for a 10-year offer to the armed-robbery charge as well.
7 And, again, that was sent to Matt. So those were in the
8 file when I took the case over.

9 The first offer that was sent to me, that I
10 have, is a 2013, right after I had started. I started
11 July 1st. I got the offer on July 17th. It was for a
12 negotiated 10 to the armed-robbery charge or attempted
13 armed robbery with no negotiation or recommendation,
14 which carried a cap of 20. So that would have been the
15 first offer I got.

16 Now, whether or not I conveyed to
17 Mr. Pritchett, I don't have my notes. Again, he was in
18 Georgia at that time. So our conversation, our ability
19 to communicate was certainly limited.

20 I told this to the Solicitor. He then --
21 at that time the Solicitor was Ben Sheldon. He went
22 back and looked at his notes and discovered that a
23 codefendant in the case, who was a Mr. Harry Lockett had
24 been offered something -- had gotten a better offer than
25 that 10-year offer that I had gotten in July.

1 So he e-mailed me an offer that was in
2 December. December of 2013 is when we were looking at
3 proceeding with the offer. And that was the first time
4 that strong-armed robbery was mentioned and an offer of
5 a YOA was mentioned. So that was in December of 2013.

6 Sometime after that offer, within a week or
7 so of that offer, the Solicitor changed to Ms. Hunter
8 Swanson, who then offered strong-armed robbery as a YOA
9 or for a cap of 5 years. So I went to the detention
10 center and spoke with Mr. Pritchett. And we talked
11 about the case. That would have been during the week of
12 December 2nd to the 9th. During that time period is
13 when I went over and talked to him a couple of times.
14 My notes say twice.

15 I explained that he had an active Y or a
16 5-year cap versus a risk of 70 years cumulatively if he
17 was found guilty in each charge and the judge was in a
18 really bad mood. That's what I used to always tell my
19 clients.

20 We talked about one of his -- or about his
21 defense and them -- him just catching the ride. And my
22 concern, that I shared to him, was that there is -- the
23 timeline didn't seem to work, in my opinion, and you are
24 asking a jury to swallow a rather a large coincidence,
25 at that point, but --

1 Q. May I ask you specifically about his
2 defense was under -- he was picked up eventually,
3 essentially. So there was an armed robbery that took
4 place, the alleged perpetrator at a second gas station.
5 But between that time, Mr. Pritchett was picked up and
6 then arrived at a second gas station?

7 A. That's what -- and to my memory and what my
8 notes refer, all of this happened in the Hilton
9 Head/Bluffton area, the main kind of thoroughfare out
10 there. And the incident location, where there was a
11 callout, and then there was the arrest location, which
12 was a couple miles down the road or a mile or two miles
13 down the road, which was roughly about 10 minutes after
14 the 911 dispatch call.

15 And Mr. Pritchett had stated to me that he
16 had been picked up or caught a ride from Kroeger
17 (phonetic), which was in the other direction.

18 And so for me -- when I explained that to
19 him, like looking at MapQuest, looking at timelines, I
20 think we run into an issue there of timeliness to be
21 able to get from A to B between when the robbery
22 happened and when the arrest was. So that was my
23 concern with the timeline.

24 Q. And did you express, I guess from your
25 position as his advocate, that it would probably be in

1 his best interest to accept the plea at that time? Or
2 did you convey that to him, that based on what his
3 defense was, that what he was explaining to you, that he
4 was not a very viable one to go forward on?

5 A. Yeah. So we met -- we had a term of court,
6 according to my notes, the week of December -- it was
7 December 19th and 20th. I have two series of notes
8 where we met in court to go over the strong-armed
9 robbery offer again.

10 I met, at that time, with another
11 individual in the office, another attorney that was with
12 us. We had talked to the judge. They were saying --
13 you know, he was -- the judge at that time, I don't
14 remember who it was. I don't have that written down.
15 He was leaning towards a 4 years out of the 5-year cap.

16 Mr. Pritchett wanted to think it over. We
17 strongly encouraged him to take the offer, but also to
18 think everything over. My advice has always been, you
19 have to make that doesn't do damage to your conscious
20 and sometimes that means rolling the dice.

21 He came back the next day, didn't want to
22 take the offer. Just kept -- was very adamant about
23 maintaining his innocence. We, again, went over what
24 the risk at trial was, my concerns with him just
25 catching a car ride defense.

1 But he rejected that offer. And at that
2 time, we had actually another bond motion. The State
3 had revoked his bond. So that was, I think, our first
4 attempt to get his bond back was that December court
5 term.

6 And that didn't work. So we had another
7 bond motion at a later time, that actually was effective
8 and we were able to get his bond reinstated in early
9 2014.

10 Q. And were you aware of the April 1st, 2014
11 letter that Mr. Pritchett sent into the Solicitor's
12 Office discussing an accessory after the fact charge?
13 Does that match anything in your recollection of what he
14 had been charged with?

15 A. It doesn't. Now, I had -- the letter that
16 was sent, it would have been forwarded to me from the
17 Solicitor's Office. It doesn't stand out in my mind.

18 I'm sure at some point we talked about that
19 as a possibility. I'm not at the Public Defender's
20 Office anymore. But it was my practice to try to hear
21 some other options of other charges we might be able to
22 work out towards; you know, strong-armed robbery,
23 accessory, various things of that nature. So I don't
24 doubt that we did discuss it at some point.

25 Q. But there was nothing firm on the table for

1 an accessory after the fact, to your recollection?

2 A. Not to my knowledge, no.

3 Q. And going forward, leading up to trial
4 after the December 2013 offer had been rejected, were
5 you now in trial prep mode?

6 A. Because the trial was August 2014. So 8
7 months after this happened. Can you walk us through,
8 were there any other offers that were extended by the
9 State?

10 A. Well, after he decided against that
11 December offer, we did shift to kind of focusing on
12 trial prep. And that is where -- I mean, obviously at
13 that point I'm less concerned about trying to work
14 something out as I am to make sure that the case is
15 ready to go to trial. So that was my focus at that
16 time.

17 I do -- the Solicitor's Office changed the
18 file again to the Solicitor who was actually trying the
19 case. And I do remember a conversation with here prior
20 to trial, where I think they offered a cap of 10 to
21 strong-armed robbery.

22 You know, we even had a conversation on the
23 eve of trial, for lack of a better descriptive, right
24 before the case started, before we did pretrials, about
25 trying to work something out that was beneficial to

1 Mr. Pritchett.

2 Unfortunately, at that point the
3 Solicitor's Office in Beaufort has a, not this late in
4 the game policy, I think is what I would refer to it as,
5 where they're not going to make a favorable offer on the
6 eve of trial. You can plea straight up, you can take
7 your chances in front of a judge, but they're not going
8 to give you any incentive to plea at that point.

9 Q. And I would point out --

10 MS. GUNTUN: And for Your Honor's
11 knowledge, it's page 108 in the trial transcript.

12 THE COURT: Okay.

13 BY MR. GUNTON:

14 Q. On the record, the Solicitor stated that
15 there was a -- the State had made an offer to the
16 Defendant for a plea to strong-armed robbery, with a cap
17 of 10 years. And she stated that it expired August 16th
18 prior to trial. Is that consistent with your memory?

19 A. Yes.

20 Q. And do you remember discussing that with
21 Mr. Pritchett? Or was he firmly at that point that he
22 wanted to go ahead and try the case?

23 A. I don't have a note from that particular
24 meeting. I would imagine I discussed it with him. It
25 didn't serve any purpose for me not to discuss the offer

1 with him.

2 The last note that I have was from one of
3 our jail meetings where he was -- it was in March of
4 2014. I'm sorry, I'm trying to find it -- where he --
5 we went over the case again. And he said that he would
6 plead if I could get him time served. And I said, well,
7 I just don't think that's feasible. He didn't have a
8 record at the time.

9 So, you know, we were trying to work out
10 something that if he had exposure it was minimal, things
11 of that nature. But I just didn't think that it was
12 being able to -- I'm sorry. I'm trying to find that.
13 There's so many papers -- that we would be able to get
14 the time served offer. And so, at that point, again we
15 were focused on trial. And I think once we had kind of
16 gotten away from the 5-year offer, he was pretty set on
17 going to trial.

18 Q. And switching gears a little bit. I wanted
19 to talk about the mere presence of a jury charge.

20 A. Certainly.

21 Q. So will you walk us through your
22 recollection of how that came up, how your presence
23 applied to any of the specific charges that he was
24 facing at the time?

25 A. Right. So towards the end of the trial we

1 did what is pretty standard, a conference charge with
2 Judge Goldsmith. And my second chair at time, Ms.
3 Duvall and I had discussed possible charges that we
4 wanted to ask for.

5 We came back and requested a mere presence
6 charge. My initial reaction was to request it on
7 everything. Upon further consideration, I limited that
8 request to the unlawful carry charge. And the reason
9 being that the allegation was that there was one white
10 male and one black male in the gas station at the time
11 of the robbery.

12 And so charging that he was merely present
13 during that crime didn't -- wouldn't have made any
14 sense. It wouldn't have applied to the facts that were
15 alleged by the State. But I did think it -- I applied,
16 it, at a minimum, to the gun charge. And then also, you
17 know, being near the items that were recovered in the
18 vehicle and things of that nature. And so I tried to
19 get it in through that avenue. But Judge Goldsmith did
20 not -- declined the charges separately. I think it's
21 charged as part of hand of one to one hand of all, but
22 he didn't charge it further.

23 Q. And that was -- did you discuss that with
24 Mr. Pritchett? Was that one of the main defenses that
25 you think you would have had?

1 A. Well, it went certainly to what he had told
2 me what happened that evening, as far as catching the
3 ride and not being part of the robbery.

4 So, you know, being present afterwards and
5 things of that nature is what we attempted to argue,
6 among other things. You know, there were DNA issues in
7 the case that we're favorable to him that we argued a
8 lot. And I thought the show of ID, flash voice ID was a
9 good issue, not only at the trial level, but the
10 appellate level. And apparently they disagreed with me.
11 But, you know, I didn't think that was a good ID.

12 So there were definitely things in there
13 that were triable that we could work with. But when it
14 came to that particular jury charge, I didn't think it
15 fit all of the charges, as much it fit towards the back
16 end of things.

17 Q. And speaking of the Appellate Court not
18 deciding to agree with you, so there was this issue --
19 or this case was directly appealed. And are you
20 familiar with the Appellate decision that was issued in
21 the case?

22 A. A little, yes. I actually started working
23 for appellate defense in April of this year. So I had a
24 chance to speak briefly with the Appellate Defender who
25 had the case, and just double checked what the briefs

1 were and what the final decision was of the court.

2 And, again, I can disagree with the Court
3 all I want. It doesn't matter. You know, they ruled
4 they way they ruled. And I certainly thought it was a
5 good issue for Mr. Pritchett. And I thought, you know,
6 it was something that would carry fruits into the appeal
7 stage. And it just didn't.

8 MS. GUNTON: Beg the Court's indulgence for
9 a moment.

10 THE COURT: Yes.

11 BY MS. GUNTON:

12 Q. And just to clarify, we were talking about
13 the mere presence charge. We're referring to the
14 unlawful carry of a pistol. So that was the issue that
15 was raised on direct appeal, specific to the mere
16 presence being the hand of one is the hand of all
17 charge?

18 A. Yeah. And, again, when I made the request
19 at trial, my mind was -- what I thought was after
20 initially requesting it for everything, it only made
21 sense to push it on the unlawful carry charge. And I
22 think Judge Goldsmith had summarized some of thoughts,
23 in saying that he could be acquitted on everything, but
24 the gun charge would still be something he'd be found
25 guilty on, which is one of the reasons I wanted the mere

1 presence charge there.

2 Because, again, especially gun in a car
3 type of situation, you know, they had to prove -- I
4 wanted them to at least have to prove that him being
5 next to the gun in the car was more than -- was enough
6 to carry it. You know, that's why there was a mere
7 presence charge there. And I think, yeah, that was on
8 appeal what they -- one of things they argued.

9 Q. And you had a lengthy discussion with Judge
10 Goldsmith on the record regarding the charge conference
11 in what to include.

12 MS. GUNTON: I'll direct the Court's
13 attention to page 144 in the trial transcript.

14 BY MR. GUNTON:

15 Q. And Judge Goldsmith basically summarized
16 that as he said he didn't need the mere presence applied
17 to the kidnapping, armed robbery, possession of weapon,
18 but it really only applied to the construction
19 possession in the vehicle?

20 A. Right.

21 Q. And just to touch on briefly the showup in
22 the audio identification of Mr. Pritchett, do you want
23 to kind of walk us in detail what -- how that went about
24 from the victim's standpoint and how she could have ID'd
25 him?

1 A. Sure. So what the allegation was, was that
2 the young lady who worked at the convenience store,
3 recognized the voice of the black male who was involved
4 in the armed robbery.

5 According to the police report, she just
6 said, I recognized the voice. But she also stated that
7 the men were fully covered, they had bandanas across
8 their mouth, across their face, they had hoodys on.

9 There was nothing distinguishable she could
10 make out, other than one was a white man and one was a
11 black man.

12 They pick her up -- again, the armed
13 robbery call and the arrest are within about 10 minutes
14 of each other. It was a very quick turnaround.

15 And they go -- there's an officer speaking
16 to her at the scene of the incident who said, I think we
17 have -- or we have someone. Or we have someone in
18 custody. Something of that nature. I'm going to take
19 you down there and see if you can ID them.

20 So there were four individuals in the car.
21 And they pull each individual out of that seat of a
22 police car one by one. And she said, no, no, no.

23 When they pulled Mr. Pritchett out, she
24 goes, that's Lenny. And she goes, oh, that's the voice
25 I recognized.

1 As I said, that's when I started at the
2 office so it was one of the ones that was immediately
3 transferred to me.

4 Q. And I'm not sure that you actually said the
5 word mess, but you basically insinuated that the file
6 was a mess when you got it?

7 A. Yes.

8 Q. And so at the time Mr. Pritchett was being
9 held in Georgia; is that right?

10 A. Yes.

11 Q. And at that time, it was about -- so July
12 to November -- would you agree that he got transferred
13 here sometime around the end of November of '13?

14 A. It was late 2013. I don't know exactly.
15 It was around November, December of 2013. So I only
16 communicated with his parents up until that point.

17 Q. So that leaves about 4 months -- you had
18 had the file about 4 months at that point; right?

19 A. Yes.

20 Q. Was the file still, as you say, a mess at
21 that point? Had you had a chance to review any of the
22 discovery at that point or anything?

23 A. No. So in a number of cases that I
24 inherited I just proactively requested to resend me as
25 much of the discovery as possible, just because, as I

1 said, organization was not Mr. Walker's strong suit.

2 And I tend to be hyper-organized. So it was easier for
3 me to start with a fresh, I guess, slate.

4 I don't -- I can't say for certain if I had
5 to re-request it in Mr. Pritchett's case. But I know I
6 did have the full incident report, as well as the videos
7 and things of that nature. I had reviewed them prior to
8 our first conversation.

9 Q. So have you reviewed Mr. Pritchett's Public
10 Defender file, before coming here today?

11 A. I reviewed what eventually became my trial
12 folder, which is 90 percent of what his Public Defender
13 file was in.

14 Q. So it's your testimony today that when you
15 got the file in July of 2013, it's kind of a common
16 practice for you on every file to re-request discovery
17 and all that, make sure the file is up to date and clean
18 and all of that?

19 A. Right.

20 Q. And the point of that is so if a plea offer
21 comes along you can know enough about the case and be
22 able to reference the case materials enough in order to
23 give the client good advice on whether or not to take
24 the plea; is that right?

25 A. Yes.

1 Q. So do you recall an e-mail you sent to
2 Lynorr Musser, who was the solicitor, not in 2013, but
3 in 2014?

4 A. Right. She was the solicitor -- she was
5 the last solicitor to get the case.

6 Q. So do you recall an e-mail you sent to her
7 on May 29th, 2014? So this is about 6 months after that
8 plea deal was offered, 10 months after you got the file?
9 Do you remember saying, please send me copy of all the
10 current discovery in this case. I inherited this from
11 another attorney. It's a mess. For now just send me
12 incidents reports, warrants, DNA results, indictments,
13 statements, et cetera? Do you remember requesting that
14 in May of 2014?

15 A. I don't recall. But if I did, I mean, it
16 would certainly be there.

17 Q. And so the e-mails -- I mean, I had
18 talked -- not off the record, but I went and viewed the
19 files weeks ago and got this from the file.

20 A. Right. If it was in the file, it was there
21 for a reason.

22 Q. Would it refresh your recollection if I
23 showed you a copy?

24 A. Sure.

25 Q. I don't know if that shows your actual

1 e-mail address, but does that look like your e-mail
2 correspondence?

3 A. Yes. Yeah. Okay. And I think that was
4 as -- again, she had also just inherited the file. So
5 we were just going kind of dismiss everything, and prior
6 to that point start from scratch.

7 Q. Right. But it looks like you sent the
8 first e-mail?

9 A. Right.

10 Q. You sent the e-mail to her and then she
11 replied?

12 A. Right. Right. Right. And I think I sent
13 it or forwarded it to one of the two. But, yeah, around
14 that timeframe. So that's about right.

15 MR. GENTRY: Your Honor, I would like to
16 request that this be admitted into evidence.

17 THE COURT: Any objection?

18 MS. GUNTON: No objection, Your Honor.

19 THE COURT: Without objection it will be
20 admitted.

21 (Plaintiff's Exhibit No. 2 was admitted
22 without objection.)

23 BY MR. GENTRY:

24 Q. So there's been a lot of talk about this
25 December 2013 plea offer. And so you stated that it's

1 policy -- well, it's kind of you're own personal policy
2 to kind of request discovery and all that when you get a
3 new file.

4 What did you know about Mr. Pritchett's
5 case when you went to convey the December 2nd, 2013 plea
6 offer then?

7 A. I would have -- I have read the incident
8 report and gone over that information. I don't know if
9 I would have any of the DNA stuff back at that point,
10 but I do remember having the incident report, having
11 read that at that time.

12 So I think mostly it was that the incident
13 report that involved what happened at the armed robbery
14 and Ms. Fulton's ID after the showup, which lead to the
15 issue with the -- there was distinctive tissues that
16 were part of the case.

17 Q. Had you read the witness and like victim
18 statements at that point?

19 A. The ones that Ms. Fulton wrote?

20 Q. Yes.

21 A. Yes.

22 Q. You say "ones", what do you mean by ones?

23 A. I just mean the statement that she wrote.

24 Sorry.

25 Q. Did you have all of her statements at that

1 time, before this plea offer?

2 A. I can't say with any certainty. It was a
3 while ago so...

4 Q. Is it possible you didn't have all the
5 information, not particularly statements, but all the
6 information regarding Makai Fulton's ID of the Defendant
7 at the time this plea offer was made?

8 A. I would say that at the time the offer was
9 made I had the information that she had -- you know, had
10 stated that she knew him from a previous causal -- I
11 guess, where she stated that she had done his mother's
12 hair from time to time or something to that effect. And
13 that she had recognized his voice. And then when she
14 him ID'd him as Lenny. I would have known that, I
15 think, just based on the incident report, if I remember
16 correctly.

17 Q. But that wasn't in her statement?

18 A. No. Her statement was -- her statement
19 didn't recognize him as Lenny. I remember that vividly.
20 That's one of the things we argued at trial.

21 Q. So were you thinking at the time, that this
22 plea offer was made, that this statement from Makai
23 Fulton had seemed a little suspect because she doesn't
24 mention Lenny or anything like that when she's being
25 interviewed by the police officer --

1 A. Right.

2 Q. -- at the first gas station, then all of a
3 sudden she remembers all this?

4 A. Right. Right. Right.

5 Q. Did you investigate that before this plea
6 offer was made?

7 A. Investigate her how? I guess I need a
8 little direction on what you're wanting to know.

9 MR. GENTRY: I'm sorry. Court's indulgence
10 for a second.

11 THE COURT: Sure.

12 BY MR. GENTRY:

13 Q. So an e-mail showed that you didn't get the
14 details about the factor as of how Makai Fulton knew
15 Philenza until right before trial; would you agree with
16 that?

17 A. Are you referring to the information that
18 Ms. Lynorr -- Ms. Musser sent after -- like right before
19 trial happened? Is that the e-mail you're referring to?

20 Q. Well, let me ask you more generally. So
21 you requested, you would agree, discovery May 29th,
22 2014 -- well, when did you get the discovery?

23 A. She would have resent me everything. I
24 think she was out of the office when I requested it. So
25 she resent me everything the following week so I could

1 make sure that I had complete file at that point, that
2 what I had inherited was, in fact, everything that was
3 in the case.

4 And I do have an e-mail from her that she
5 spoke with Ms. Fulton and there was some additional
6 information not contained in the incident report that
7 she wanted to let me know about prior to trial.

8 Q. And is that note that you have dated?

9 A. August 20th.

10 Q. Of 2014?

11 A. Yes, sir.

12 Q. So 4 days before the trial?

13 A. Yes, sir. It was -- as you know she told
14 Deputy Peletty (phonetic) that she recognized the voice
15 of a black male suspect and that she knew him as Lenny.

16 She met Lenny through his kid's mother
17 starting in about 2007. She did his mother's hair as
18 well. She would go to his mother's house to do her hair
19 while she undergoing chemo and didn't want to go out.
20 And Lenny was living at his mother's house at the time.
21 And she would talk to him while doing his mother's hair.

22 Q. So then you didn't have this information at
23 the time the December 2nd, 2013 plea offer was made; is
24 that fair to say?

25 A. About the hair?

1 Q. Right.

2 A. Maybe not. But we had the information
3 about knowing the acquaintance, who she knew by the name
4 of Lenny. So maybe not yet, not the specifics until we
5 got into trial.

6 Q. Do you remember every specific thing about
7 the December 2nd, 2013 plea offer, every specific
8 stipulation and all that?

9 A. I'm sorry. I need to see if I can find it.
10 So the December -- the notes that I have, if you will,
11 are I have an e-mail from then Solicitor Ben Shelton.
12 It's dated December 2nd of 2013, where he had noticed
13 that the co-defendant had been given a more favorable
14 offer then had been previously been extended to
15 Mr. Pritchett.

16 That co-defendant was Mr. Lockett, who had
17 a prior record. And so because Mr. Pritchett only had,
18 I think, a simple assault and battery at this time that
19 this all allegedly occurred, they offered --

20 Well, and then the other main suspect, who
21 was Brandon Roll had pled. And he was, what they
22 considered, I guess, a career offender or a clear
23 criminal, be it someone who was consistently involved in
24 rather high-profile or serious-type crimes. That he
25 could plea to strong-armed robbery for an active YOA and

1 he must plea within the December court term. That they
2 were willing to call the case as early as January of
3 2014, and that they were not going to consent to lift
4 the bench warrant. And would actually be filing to
5 revoke his bond.

6 Shortly after that, I got an e-mail from
7 Hunter Swanson, who I guess the case was transferred to,
8 within a week or so, where again she said that, you
9 know, he can -- that offer will still stand. I'll
10 revoke it at the end of the December term.

11 And I let her know that I had talked to
12 Philenza, that he was still considering, but I thought
13 he would take the case to trial. That he had wanted to
14 try and get home for Christmas, which is why we were
15 filing the bench warrant motion to lift the bench
16 warrant. But I understood the State's basis for the
17 motion for to revoke.

18 And then she wrote back that he could have
19 a cap of 5, if that would be less problematic,
20 considering he had been sentenced to a youthful offender
21 in Georgia and not sure if that would cause any issues.

22 Q. And so had you seen Philenza before the
23 second e-mail that you just referred to with Hunter
24 Swanson saying, he could have a cap of 5 years?

25 A. Yes. According to my notes, I saw him

1 twice between December 2nd and December 9th.

2 Q. And so you explained the additional
3 stipulations or additional communication about the plea
4 offer to him on your second visit in seeing him?

5 A. So we talked about -- yeah. So between --
6 so I met him twice, either the week of 12/2 and then the
7 week of 12/9. So that's what that was. And then -- it
8 looks like we brought him -- he was brought over to
9 court during the December term, which was the 12th and
10 the 9th -- excuse me, the 19th and the 20th of
11 December 2013, where we again went over the offer to
12 either an active YOA or a cap of 5. And talked that.

13 Q. Are you sure about the dates?

14 A. The dates are -- they're from my
15 handwritten notes. So it is -- I mean, I believe that
16 was a term of court. Could I have written the date
17 wrong? A hundred percent. I make mistakes.

18 Q. Would seeing a copy of the actual e-mail
19 about the plea refresh your recollection?

20 A. You mean when it was sent to me?

21 Q. Well, there's actually two communications
22 regarding the plea. There's the original plea offer
23 and then --

24 A. On December 2nd?

25 Q. Right. And then December 11th there's an

1 e-mail?

2 A. Correct. From Hunter, yes.

3 Q. Do you have those?

4 A. I do, yes.

5 And then my notes show that I went to speak
6 to him after both of those offers during the week of
7 12/2 and 12/9.

8 MR. GENTRY: Your Honor, since she has a
9 copy, I would like to get this admitted. I don't know
10 if I've introduced it properly. But it seems like we're
11 talking about it and she already has it.

12 THE COURT: Was there any communications
13 between --

14 MR. GENTRY: It's e-mails between Solicitor
15 Ben Shelton and Jessica Saxon, and then an e-mail from
16 Hunter Swanson and Jessica Saxon, all concerning the
17 December plea deal that was offered.

18 THE COURT: Any objection from the State?

19 MS. GUNTON: Can I see them?

20 THE COURT: Sure.

21 MS. GUNTON: No objection, Your Honor.

22 THE COURT: As Plaintiff's 3.

23 (Plaintiff's Exhibit No. 3 was admitted
24 into evidence.)

25 BY MR. GENTRY:

1 Q. So, Ms. Saxon, are you saying, based on
2 your notes, that Mr. Pritchett -- well, when did
3 Mr. Pritchett actually reject the plea?

4 A. December 20th. And that was -- we had kind
5 of competing motions. I was moving to lift the bench
6 warrant. The State was moving to revoke his bond. So
7 we were hearing those during the December term.

8 And I brought him over. He was
9 transferred over -- on my notes, on December 19th, and
10 we talked about it. He wanted to think about everything
11 about it, which I said, of course, that's fine, talk to
12 your family. You know, we'll bring you back over in the
13 morning. And he came over on the 20th and said that he
14 didn't want to take the plea.

15 Q. And so it's your testimony today that the
16 e-mail that says the due date or the deadline to plea
17 December 16th, are you saying that was not the deadline?

18 A. It was -- I mean, yeah, he rejected it
19 whatever the court term was. Usually, they would say,
20 you know, during the court term of this. It might have
21 been that the 16th was the Monday of that court term.
22 And then you have the week to consider anything. It's
23 usually how that would work. But my notes say that it
24 was on the 20th.

25 Q. Did you have him sign anything saying that

1 he rejected the plea offer?

2 A. No. We would have done it on the record, I
3 would imagine. They were pretty strict about that in
4 Beaufort. The Solicitors like to put rejections on the
5 record. But I didn't have him sign anything, no.

6 Q. So at the time that y'all were trying to
7 get him -- you say that you were trying everything you
8 could to get Mr. Pritchett to accept the plea that was
9 offered on December 2nd, 2013; is that correct?

10 A. We had had a conversation with him. I
11 mean, when I say -- when you say trying everything you
12 could, I know that we had talked about the facts of the
13 case. He had told me his side of the things. We had
14 gone over potential exposure in terms of the number of
15 years he could get.

16 So, to me, it was -- I think a lot of the
17 job of a public defender is kind of risk management, you
18 know, what your exposure is, things of that nature. So
19 I would have encouraged him to take it, because it was
20 such a -- compared to what he was facing, it was a very
21 good sentence. But I wouldn't have done anything to
22 force it.

23 Q. Did you go over the penalties he could face
24 in writing with him at that point?

25 A. I wouldn't have written them down for him,

1 if that's what you're asking. I usually write down what
2 the charges are. And that way I remember to go over
3 each one with my client. And I would have told him, you
4 know, what the charges carry.

5 I think in one of my notes -- if I can find
6 it -- I had put in here that, you know, you're risking
7 exposure to upwards of 70 years, just because of, you
8 know, you could have someone -- you could get hit with
9 cumulative sentences. And so there's always -- I mean,
10 it doesn't happen often, but that is always a concern.

11 But, obviously, the max sentence and the
12 minimum we would have gone over. But I don't think
13 anything in writing, to answer your question. I'm
14 sorry, that was longwinded.

15 Q. So if there's a writing in the Public
16 Defender's file matching the description of what you're
17 talking about, you're saying you never did that in
18 writing?

19 A. What I'm saying is I don't think that I
20 would have ever put anything in writing and given it to
21 him, if that's what you're asking. If I ever wrote it
22 down for myself, in my notes, I probably would have.
23 Again, I was still relatively new to the law criminal
24 practice and being a public defender. I had only been
25 here, again, since July. So I usually wrote down in my

1 file, on my file, the charge and what it carried.

2 THE COURT: Do you have something in
3 particular? Let's just cut right to it.

4 THE WITNESS: Yes.

5 BY MR. GENTRY:

6 Q. So do you recognize this?

7 A. No.

8 THE COURT: I didn't hear her answer.

9 MR. GENTRY: She doesn't recognize it
10 either.

11 BY MR. GENTRY:

12 Q. I don't know what it's doing in there.

13 A. What it looks like -- it looks like a -- we
14 call it the red book. I don't know the real name for
15 it, but the red book, the standard where it lists the
16 charge and like the type of charge and any possible
17 penalties and things of that nature. It looks like I
18 copied and pasted that.

19 BY MR. GENTRY:

20 Q. Well, was Mr. Duvall working on the case at
21 this point in December of --

22 A. No. Her role was limited to trial
23 assistance, really. She was there during the -- to be
24 kind of second seat during trial in terms of, you have a
25 second pair of eyes, ears. You have someone to help

1 with client questions. Like if I'm trying to listen to
2 a witness or things of that nature. She wasn't involved
3 in anything leading up to trial.

4 Q. Do you see the date on the second page, at
5 the bottom left?

6 A. Yes, 2014.

7 Q. Right.

8 A. I mean, it looks like it's something I
9 typed up. I just don't have a recollection of doing it.
10 But what I will say in all candor is that because I was
11 new I very well could have done this, especially given
12 the nature and the seriousness of the charges.

13 Q. Can we assume that you did that in 2014?

14 A. Yes. Definitely, that would have been
15 typed up in 2014 or copied from the red book sometime in
16 2014.

17 Q. So you just testified that it looks like
18 something you could have drafted up, but you just don't
19 recall?

20 A. Yeah. I just don't recall. Just because
21 it's -- like I said, it looks -- it's something that I
22 very well could have done, being a young attorney at the
23 time. But I can't tell you honestly I definitely did or
24 didn't do it.

25 Q. And, again, Ms. Duvall wouldn't have done

1 this later in the case?

2 A. Huh-uh. No. I'm sorry. That was rude.

3 MR. GENTRY: Your Honor, I'll still try to
4 get it admitted. I think it's important.

5 THE COURT: Well, for what purpose are you
6 trying to admit, the thought that that she may or may
7 not --

8 MR. GENTRY: That while they attempted to
9 give him an explanation of the charges and an
10 explanation and the plea in writing in 2014, it was
11 after the most favorable plea deal had already expired.

12 THE COURT: I guess you can argue that.

13 Any objection to this document being
14 admitted, for purposes of today's hearing?

15 MS. GUNTON: You want it admitted for
16 purposes to be contained in the defense file?

17 THE COURT: I think it's subject. I'll
18 allow it as Plaintiff's 4. And you're welcome to argue,
19 if you would like.

20 (Plaintiff's Exhibit No. 4 was admitted
21 into evidence.)

22 BY MR. GENTRY:

23 Q. So, Ms. Saxon, we've covered that as late
24 as May 29th, 2014 you were still asking for discovery --
25 basically, the discovery materials in Mr. Pritchett's

1 file over 6 months after the plea offer was made; is
2 that right?

3 A. Yeah. That would have been me, just making
4 sure like I was requesting everything that I had it all.
5 But, yes, that's probably the first record that shows
6 that I did actually re-request.

7 Q. Do you think it's important to describe the
8 importance of jury charges to criminal defendants facing
9 serious charges like this before deciding whether or not
10 to take a plea?

11 A. I would not have done that, no. And I can
12 honestly say that I don't think I've ever discussed
13 possible jury charges with a potential -- or with a
14 client prior to a plea or trial.

15 I just -- particularly, because at a plea
16 stage that's not necessarily a consideration of mine.
17 But I guess that's different for each person.

18 Q. Did you warn Mr. Pritchett that once that
19 plea was withdrawn there might not be any better plea
20 offers?

21 A. Yes.

22 MR. GENTRY: Your Honor, I don't have
23 anything further for this witness.

24 THE COURT: Anything further from the
25 State?

1 MS. GUNTON: No, Your Honor.

2 THE COURT: All right. You may step down.

3 Any objection to this witness being

4 released?

5 MS. GUNTON: No objection.

6 MR. GENTRY: Well --

7 THE WITNESS: I can hang out.

8 THE COURT: Any other witness?

9 MS. GUNTON: No, Your Honor. And at this
10 time the State will rest.

11 (A brief recess was taken.)

12 THE COURT: Back on the record, after a
13 brief recess. I believe the State rested. And so I
14 will let the attorneys make any closing remarks that
15 they deem appropriate. Yes, sir.

16 MR. GENTRY: Yes, Your Honor. Before any
17 closing remarks I would like to request, based on
18 Jessica Saxon's testimony, that the hearing be held open
19 so that I may call the Appellate Defender, Laura Caudy.
20 I'm not sure how you pronounce her last name. It's
21 C-A-U-D-Y. Given that it's the position of the
22 Applicant that Ms. Saxon's testimony invoked Ms. Caudy
23 in order to bolster testimony by talking with her about
24 this case, whereas I have evidence to present to
25 Ms. Caudy to the contrary, that Ms. Caudy might think

1 differently and not support Ms. Saxon's position or her
2 conduct on this case. And so I request that the hearing
3 be held open so that I can call Ms. Caudy as a rebuttal
4 witness.

5 THE COURT: Your motion to hold the hearing
6 open is denied. I will be happy to hear some of your
7 arguments at that point. And certainly you're free to
8 argue in that vein, on the record, on behalf of your
9 client.

10 Anything you'd like to present to the Court
11 by way of just a brief closing or summation of the
12 essence that has been presented during today's hearing?

13 MR. GENTRY: Yes, Your Honor. Again, what
14 we've established today is that Jessica Saxon did not
15 have the full file until four days before the trial,
16 August 20th, 2014.

17 She stated that she likes to request and
18 re-request all of the discovery as soon as she gets a
19 case, but she waited over 10 months to do so. And
20 during those 10 months, specifically 5 months in, they
21 got a very good plea deal.

22 She says that she likes her clients to go
23 on their conscious. But in reality, Mr. Pritchett could
24 have gotten as little as 15 months in jail if he had
25 pled to that YOA, strong-armed robbery. It's not

1 certain. But he certainly would not have gotten
2 15 years, as is what happened.

3 Again, if there's no guarantee that a
4 better plea offer will come along, even though it ended
5 being 7, 8 months before trial. At the time that plea
6 offer was made they thought they were going to trial in
7 January.

8 It's incumbent upon defense counsel to do
9 everything they can to adequately explain the legal
10 consequences of rejecting a plea. And in order to do
11 that, you need to have all of the materials necessary to
12 examine the case in order do so.

13 It's clear that due to her own negligence,
14 she did not get all the materials in the file until
15 6 months after this plea had expired. Despite what her
16 notes say, there's a writing from the Prosecutor saying
17 that this plea expired on December 16th, 2013. She was
18 saying that he was considering it December 20th
19 something, when it had already expired.

20 So without going into requesting a mere
21 presence jury charge when she knew what his defense was,
22 she knew what his story was. If she wants her clients
23 to go with her conscience, and that's the truth, then
24 they got to stick with the truth, which is that he was
25 getting a ride. And if that's his story, then she has

1 to do the best she can with that story.

2 Again, when that came up, which it did
3 before the pre-offer in December of 2013, she failed to
4 warn Mr. Pritchett that when we got to the jury
5 instructions, right before the closing arguments, his
6 whole case could fall apart if the jury is not allowed
7 to hear that his mere presence in the car alone is
8 something that they could use to acquit him. They
9 couldn't even consider it. And that's how it ended up.

10 And despite what the judge said -- or Judge
11 Goldsmith said at trial, he basically talked Ms. Saxon
12 into giving up any argument to request a mere presence
13 jury charge on armed robbery, on a kidnapping, or any
14 other charges.

15 She should have at least tried. Whether or
16 not she would have succeeded, we don't know. But she
17 should have at least tried to get those instructions, at
18 the very least, to preserve them for appeal.

19 And that's, again, why we would like to,
20 you know, recall our -- I mean, I know the Court has
21 decided on that. But I think that's all I have.

22 THE COURT: Okay.

23 Yes, ma'am. What do you have to tell me
24 from the State.

25 MS. GUNTON: As Your Honor is aware, the

1 burden on the Applicant to prove that his trial was
2 insufficient and that he had been prejudice by those
3 deficiencies. I do not believe that he shown either
4 deficiency or prejudice today regarding the mere
5 presence jury charge.

6 Judge Goldsmith charged the hand of one is
7 the hand of all as to relating the armed robbery,
8 kidnapping, possession of a weapon during a violent
9 crime. Mere presence would not apply to those charges.
10 And considering that there was a hand of one is the hand
11 of all given, Ms. Saxon did try to ask for a charge for
12 mere presence regarding the unlawful carry of a weapon.
13 And Judge Goldsmith denied that request. Later, that
14 was raised on direct appeal. And the Court of Appeal
15 confirmed that Ms. Goldsmith's charge was correct.

16 Regarding the plea offer that had come up
17 today, trial counsel credibility testified on the stand
18 in detail regarding her notes the times that she met
19 with the Applicant regarding the plea offers, the
20 different offers extended to him by State.

21 Regarding the e-mail that was introduced to
22 Ms. Saxon from Mr. Shelton regarding -- it was the
23 December 2nd e-mail that came in. It said that the plea
24 offer extended -- or the plea offer was to end at the
25 end of the term beginning on December 16th, which would

1 likely be a Monday, that his plea would expire
2 December 20th.

3 And the last point would go to the
4 out-of-State witness -- or the witness's out of state
5 identification of the Applicant given the
6 out-of-the-court statement that was given. Again, that
7 was raised on direct appeals. Therefore, I do not
8 believe that the Applicant has established sufficiency,
9 and therefore not prejudice.

10 THE COURT: Before I take this matter under
11 advisement, I'll read the record more thoroughly. I've
12 considered all arguments of counsel on both sides.

13 I want to be sure that your client
14 understands what a successful PCR will do and not do.
15 And in that way, I'm sure you have explained to him --
16 and, Mr. Pritchett, I'm looking at you too. If you're
17 successful on a PCR, do you know what happens?

18 MR. PRITCHETT: No, ma'am.

19 THE COURT: It puts you back at square one.
20 You'd be facing all these charges again. Do you
21 understand that?

22 MR. PRITCHETT: Yes, sir.

23 THE COURT: You'd be facing 71 years in the
24 prison system of South Carolina, if you're successful
25 today. Do you understand that?

1 MR. PRITCHETT: Yes, ma'am.

2 THE COURT: Right now I see your sheet from
3 the South Carolina Department of Corrections indicates
4 that you have a max-out date of November 5th, 2025,
5 that's 6 years from today's date; is that correct?

6 MR. PRITCHETT: Yes, ma'am.

7 THE COURT: All Right. So you understand
8 you have -- according to right now, you have about 6
9 more years to serve on Judge Goldsmith's 15-year
10 sentence, with all these charges to run concurrently.
11 And if you were successful on this, you would be back to
12 square one, facing 71 years. And you still want to go
13 forward with the PCR today?

14 MR. PRITCHETT: Yes, ma'am.

15 THE COURT: All right. I just have to make
16 sure that you understand that. Because sometimes people
17 don't understand that and they change their mind. And
18 they say, wait a minute, if that's the case, forget it.

19 So you seem to understand that. Are you
20 under the influence of any medication or anything today?

21 MR. PRITCHETT: No, ma'am.

22 THE COURT: All right. You understand
23 what's going on in court today?

24 MR. PRITCHETT: Yes, ma'am.

25 THE COURT: I'm satisfied you understand

1 and wish to continue on with this PCR.

2 Anything else that the attorneys need to
3 put on the record?

4 Yes, sir. Anything from you?

5 MR. GENTRY: Your Honor, I don't have the
6 statute in front of me. But we are requesting relief
7 under, I believe, it's 17-27-20, which is a correction
8 of the sentence. So if we are granted a PCR and
9 everything starts over, and that's the only relief that
10 Your Honor will give, then I will have to discuss this
11 with my client.

12 THE COURT: And tell me why you think the
13 sentence is incorrect that's handed down from the judge.

14 MR. GENTRY: Because the plea deal -- if it
15 weren't the ineffective assistant of Counsel, then the
16 Applicant would have taken the strong-armed robbery plea
17 deal in December of 2013. So it would correct the
18 sentence to be 5 years.

19 THE COURT: But he wasn't charged with
20 strong-armed robbery. That's the difference. That was
21 never charged. That's just a lesser included. So
22 that's absolutely not on the table.

23 So if that's something that you need to
24 discuss with your client a little bit more, then I
25 suggest that you do so. I'll hold this hearing in

1 advance. You have 10 days from the date of today to
2 correspond with my office, obviously copying the
3 Attorney General's Office on whether or not your client
4 wishes to proceed and for me continue this matter under
5 advisement.

6 After that, if I haven't heard if you all,
7 then I will assume that you do not wish to go forward.

8 MR. GENTRY: Thank you, Your Honor.

9 THE COURT: All right. Anything else from
10 the State?

11 MS. GUNTON: Just as a final point, that
12 the Solicitor's Office is under no obligation to extend
13 a plea offer at this point in time.

14 THE COURT: All right. Thank you very
15 much. I appreciate everybody participating today and
16 your timeliness. We look forward to hearing from
17 Mr. Gentry.

18 MR. GENTRY: Thank you for going out of
19 your way to hear this.

20 THE COURT: I'm happy to do that.

21 (The proceedings concluded at 11:46 a.m.)
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)
County of Beaufort)

I, Krista Nicole Carney, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina do hereby certify that the foregoing is a true, accurate and complete Transcript of Record in the Court of Common Pleas/PCR Hearing for Beaufort County, South Carolina, on the 4th of November, 2019.

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

March 12, 2020

Krista Nicole Carney,
Official Stenographic Court Reporter

11/4/14 @

Good day Ms. Musser. My name is Philenza Pritchett II. I am writing you to let you know that today (4-1-14) makes my case 4yrs. old. I find it odd that I got a ride one minute and end up in jail the next - without knowing anything. During my 4yrs. of fighting for my innocence, I've uncovered the following.

My case has been tampered with on multiple levels. SLED has came back (2yrs ago I believe) with results of prints, bucal, etc. - NOT placing me at any crime scene. I will not continue to speak about certain points of my case, however, it has been unlawfully prolonged - no matter of any situations that came up with the solicitors prior to you. (State v. Langford)

I find this all to be disturbing at how I've been pressured numerous times by multiple solicitors (who knew nothing of my case) to plead out to serious prison time. While being here, I've seen: Manslaughterers get caught red handed and get 1yr prison time. Child Molesters, 1yr non-violent. Armed Robbers get caught red handed and get probation (also another Robber get time served after 8 months!) My case shows so much under handed tactics that's its pitiful, and yet I'm getting dragged in the struggle for years. You only know me as a case number, but I am a Man with a family who loves and need me. I speak for all of them when I say that the suffering

has gone too long. The goal has been accomplished with the state, because I've lost my foundation financial.

There seems to be some sort of personal vendetta against me for an unknown reason. Perhaps because I'm truly innocent regardless of the strange circumstances.

2-3 months ago my plea offer was Accessory after the fact 0-4 - I'd do a couple of months and be home - (and IF I didn't take the plea my bond my bond would be revoked anyway.) This was past 2-3 months since these plea deals came up. The only plea I'll take is time served on (Accs. after the fact) - Although I had NO knowledge of anything to be an ~~an~~ accessory to.

If we cannot resolve this 4yr old problem in everyone's life, I will continue to fight because this means the most to me. I know that God is the Greatest Judge, and he knows all things - no matter how far fetched they seem to anyone in this life. I'll continue to pray that God brings clarity to your heart in order for us to clear up this matter. Thank You for your time ~ God Bless you.

Respectively

Mr. Philenza Pritchett

Philenza Pritchett^{Jr.}*80541 (A1,130)
Po. Drawer 1228
Bft, SC 29901
BCDL

CHARLESTON SC 294
02 APR 2014 PM 3 T



Ms. Lynnorr Musser (Solicitor)
Beaufort Solicitors office
P.O. Box 1880
Bluffton, SC 29910

29910+1880



Saxon, Jessica

From: Saxon, Jessica
Sent: Thursday, May 29, 2014 11:11 AM
To: Musser, Lynorr
Subject: RE: Philenza Pritchett

That'd be awesome -- thanks!

From: Musser, Lynorr
Sent: Thursday, May 29, 2014 11:10 AM
To: Saxon, Jessica
Subject: Re: Philenza Pritchett

Hi Jess

I'm out of the office until the 9th but I'll be working on the file when I get back. Since I inherited the file as well I'll start the discovery process from scratch
Thx

Sent from my iPhone

On May 29, 2014, at 11:07 AM, "Saxon, Jessica" <jsaxon@bcgov.net> wrote:

Hey Lynorr,

Please send me a current copy of all of the discovery in this case. Since I inherited from another attorney I want to make sure I have everything and my file is a bit of a mess. For now just send me all the written discovery (incident reports, warrants, DNA results, indictments, statements, etc) and then I'll check the disc I have against what is mentioned in the report and see if I am missing anything.

Thanks so much!

Jess

*Jessica M. Saxon
Assistant Public Defender
Beaufort County
P.O. Box 525
Beaufort, SC 29901
(O): 843-255-5810
(C): 843-812-2503
(F): 843-255-9494*

PLAINTIFFS
EXHIBIT

11/4/14 2

Saxon, Jessica

From: Shelton, Ben
Sent: Monday, December 02, 2013 3:37 PM
To: Saxon, Jessica
Subject: Phifeza Pritchett: Plea Offer
Attachments: sar [sent. sheet].pdf; ucp [sent.sheet].pdf

Dear Jessica,

Since sending the previous offer I discovered that a better offer previously had been sent to co-Defendant Harry Lockett (straight up to SAR). Mr. Lockett has a prior record. Mr. Pritchett only had a simple assault and battery at the time of the offense. In light of this, and in an effort to resolve this case pretrial along with the consideration that the career offender in this case Brandon Rolt already pleaded guilty, please find below a revised plea offer for your client Mr. Pritchett (sentencing sheets attached):

Plead to: **Strong Armed Robbery (0-15yrs, Non Violent)**
 (as a lesser included to Armed Robbery, 2010-0872 0-30yrs, violent, most serious)
 Unlawful Carrying of a Pistol (0-1yrs): 2010-876

Nolle Pros: **Kidnapping: 2010—875 (0-30yrs, Violent, Most Serious)**
 PWDCVC: 2010-873 (5 yrs)
 Conspiracy: 2010-0977 (0-5yrs)

Recommendation: An Active Sentence under the YOA (will not consent to "shock")

Expiration: The end of the court term beginning on December 16, 2013. *Mr. Pritchett must plead guilty during the December term of court or this offer is rescinded.*

Should Mr. Pritchett not plead guilty the State is prepared to call his case to trial as early as the January 2014 term of General Sessions as indicted. I am not willing to consent to lift his bench warrant and will be filing a motion to revoke his bond based on subsequent bad acts in the January term of General Sessions (or sooner if necessary).

Best regards,

Ben

Benjamin T. Shelton
 Prosecuting Attorney
 Career Criminal Unit
 14th Circuit Solicitor's Office
bshelton@bcgov.net
 (843) 255-5916 (o)
 (843) 415-6536 (m)

Confidentiality Notice:

This message is intended exclusively for the individual of which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or



602

disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (843) 255-5880 or reply to this e-mail and delete all copies of this message.

Saxon, Jessica

From: Swanson, Hunter
Sent: Wednesday, December 11, 2013 9:03 AM
To: Saxon, Jessica
Subject: RE: Philenza Pritchett

If he would rather have a cap of 5 yrs, I could do that too. He may have been sentenced to a Youthful Offender-type sentence in GA already. Not sure if that would be problematic.

Hunter P. Swanson
 Assistant Solicitor
 Beaufort County- 14th Circuit
 PO Box 1880, Bluffton, SC 29910

Tel: (843) 255-5902
 Cell: (843) 422-3774
 Fax: (843) 255-9512

hswanson@bcgov.net

From: Saxon, Jessica
Sent: Tuesday, December 10, 2013 4:03 PM
To: Swanson, Hunter
Subject: RE: Philenza Pritchett

Thanks for the heads up Hunter!

Philenza is still considering the offer but I am almost certain he wants to take the case to trial.

He'd like to be home for Christmas, hence the BW motion, but I understand the Motion to Revoke as well.

See you next week!

Jessica M. Saxon
 Assistant Public Defender
 Beaufort County Public Defender's Office
 P.O. Box 525
 Beaufort, SC 29901
 843-255-5810 (Office)
 843-812-2503 (Mobile)
 843-255-9494 (Fax)

From: Swanson, Hunter
Sent: Tuesday, December 10, 2013 3:28 PM
To: Saxon, Jessica
Subject: Philenza Pritchett

Jessica,

6-20-19 (JG)
 6-20-19 (JG)

604

This case has been transferred to me. I understand that you will be moving to rescind his BW's. He is in violation of his bond in a number of ways so I will be serving you with my Motion to Revoke Bond and setting it for trial for the week of January 20th or Feb GS should I have witness availability issues.

He may still plead to Ben's current offer in December but that offer will be revoked at the end of the term.

Thanks

Hunter P. Swanson
Assistant Solicitor
Beaufort County- 14th Circuit
PO Box 1880, Bluffton, SC 29910

Tel: (843) 255-5902
Cell: (843) 422-3774
Fax: (843) 255-9512

hswanson@bcgov.net

State v. Philenza Pritchett**Charges:****Armed Robbery***Type:* Felony*Penalty:* 10 years - 30 years

Special: Violent (16-1-60); Most Serious (17-25-45(A)); No Suspended Sentence; No Parole (24-13-100); Crime of violence per 16-1-130(3); Special code required on driver's license (56-1-148); No YOA (24-19-10(d)); DNA database (23-3-620); Mandatory minimum; No PTI (17-22-50); Eligible for work release if the crime did not involve any criminal sexual conduct or an additional violent crime, and the defendant is within 3 years of release from imprisonment

Kidnapping*Type:* Felony*Penalty:* Not more than 30 years

Special: Violent (16-1-60); Most Serious (17-25-45(A)); Sex Offender Registry if act involves an adult unless the court finds that the offense did not include a sexual offense or attempted sexual offense, or if the act involved a minor and was not committed by the child's parent (23-003-0430(C)(15)); No Parole (24-13-100); Crime of violence per 16-1-130(3); Special code required on driver's license (56-1-148); Active electronic monitoring may be required if victim was under 18 years old and defendant is not a parent of the child (23-3-540(B)); Child Abuse Registry (17-25-135); No YOA (24-19-10(d)); DNA database (23-3-620); No PTI (17-22-50); Eligible for work release if the crime did not involve any criminal sexual conduct or an additional violent crime, and the defendant is within 3 years of release from imprisonment

Poss. Weapon during Violent Crime*Type:* Felony*Penalty:* 5 years

Special: No Suspended Sentence; Mandatory unless greater mandatory minimum sentence imposed on other offense; No parole, no good time credits, no work release, no extended work release; Work release available if sentenced for vol. manslaughter, kidnapping, carjacking, burg 2nd, AR, or attempted AR, no CSC/other violent crime involved and within 3 years of release; DNA database (23-3-620)

Criminal Conspiracy*Type:* Felony*Penalty:* Not more than 5 years or not more than \$5,000

Special: Sentence may not be greater than the maximum for the substantive offense; DNA database (23-3-620)

Unlawful Carry of a Pistol*Type:* Misdemeanor*Penalty:* Not more than 1 year and/or not more than \$1,000*Special:* Transfer Court (22-3-545(A))

PLAINTIFF'S
EXHIBIT

11/4/19 4

Offer: Strong Armed Robbery*Type:* Felony*Penalty:* Not more than 15 years*Special:* Crime of violence per 16-1-130(3); Special code required on driver's license (56-1-148); DNA database (23-3-620)

Any sentence on a conviction of Armed Robbery and/or Kidnapping is a violent, most serious, no parole conviction. A no parole offense means that you will serve at least 85% of any sentence the court places upon you. Further, convictions on these charges will result in strikes on your record. When a person has 3 serious strikes, or 2 most serious strikes, or 2 serious strikes and 1 most serious strike any sentence on that 3rd strike offense will be under a life without parole option.

The court also has the option to run any sentence it gives you concurrently on each charge. If you are found guilty of every charge, given the max and the sentence is run concurrently you would face 71 years of which you would have to serve at least 85%.

Strong Armed Robbery is neither violent nor serious. This means you would only serve, at most, 65% of any sentence and would also be parole eligible. It also means the court could suspend a sentence over you instead of mandatory jail time, an option it would not have with a conviction on Armed Robbery and/or Kidnapping.

Philenza Pritchett, Defendant

Jessica Saxon, Attorney

_____, 2014
Beaufort, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP0700237

Philenza Pritchett

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order

Statement of Judgment by the Court:

Order of Dismissal

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

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

s/ J. B. McCoy

2764

8/25/2020

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **August 28, 2020**, and a copy mailed first class or placed in the appropriate attorney's box on **August 31, 2020**, to attorneys of record or to parties (when appearing pro se) as follows:

John Thomas Gentry III Clekis Law Firm, PA 171 Church Street, Suite 160 Charleston, SC 29401-3137

Sara Elyssa Gunton PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

MK

Court Reporter

Jerri Ann Roseneau - Clerk of Court

Court Reporter:

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

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

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

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOR THE FOURTEENTH JUDICIAL CIRCUIT

2020 AUG 28 PM 4: 28

Philenza Pritchett, #361339,

FERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

2018-CP-07-0237

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed by Philenza Pritchett (“Applicant”) on February 7, 2015. Respondent made its return on or about May 5, 2018. The Court convened an evidentiary hearing on this matter on November 4, 2019, at the Beaufort County Courthouse in Beaufort, South Carolina. Applicant was present at the hearing and represented by John T. Gentry, III, Esq. Sara E. Gunton, Esq., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, Jessica Saxon, Esq., also testified. The Court has before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Beaufort County Clerk of Court regarding the subject convictions, Applicant’s direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. In May 2010, the Beaufort County Grand Jury indicted Applicant for armed robbery (2010-GS-07-0872), possession of a

JBM/1

weapon during the commission of a violent crime (2010-GS-07-0873), kidnapping (2010-GS-07-0875), unlawful carrying of a pistol (2010-GS-07-0876), and conspiracy (2010-GS-07-0877). The charges resulted from an April 2010 incident in which Applicant and accomplices robbed a Kangaroo gas station at gunpoint. Tr. p. 82, ll. 1-21. The victim recognized Applicant's voice and identified him. Tr. p. 83, ll. 16-25. Applicant was eventually apprehended in an automobile with a handgun matching the description provided by the victim at his feet. Tr. p. 85, ll. 1-12. Pursuant to a search warrant, officers searched the automobile and also found the clothing Applicant was wearing in the surveillance video from the robbery. Tr. p. 86, ll. 1-9.

Jessica Saxon, Esquire, and Helen Dovell, Esquire, represented Applicant at trial. Assistant Solicitor Lynorr Musser, Esquire, prosecuted the case. On August 25, 2014, proceeded to trial before the Honorable Brooks P. Goldsmith. The jury found Applicant guilty as indicted of armed robbery, possession of a weapon during the commission of a violent crime, kidnapping, unlawful carrying of a pistol, and conspiracy. On August 28, 2014, Judge Goldsmith sentenced Applicant to imprisonment for fifteen years for armed robbery, five years for possession of a weapon during the commission of a violent crime, fifteen years for kidnapping, one year for unlawful carrying of a pistol, and five years for conspiracy, all to be served concurrently.

Applicant filed a timely notice of appeal. Lara M. Caudy, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion filed December 21, 2016. *State v. Pritchett*, Op. No. 2016-UP-523 (Ct. App. 2016). The remittitur was returned to the circuit court on February 7, 2017.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons (excerpted verbatim):

1. Ineffective Assistance of Counsel

- a. Applicant alleges his right to effective assistance of counsel ... was violated both prior to and during his jury trial. He also alleges that his decision to reject certain plea bargains were not voluntarily and intelligently entered, all due to specific errors and omissions by trial counsel that adversely affected his right to due process of law.
- b. Failing to make appropriate for the court's consideration a jury charge of 'mere presence' that would have been presented to the jury and effectively applied to all charges for which Applicant was charged, convicted, and sentenced.
- c. Trial counsel failed to adequately prepare for pre-trial hearings by failing to obtain available impeachment materials with respect to the *Neil v. Biggers* hearing that would have materially changed the outcome of said hearing pertaining to the victim's identification of Applicant.

By and through PCR counsel Gentry, Applicant amended his application by filing on October 28, 2019, to allege the following reasons (excerpted verbatim):

1. Applicant's Trial Counsel was ineffective for failing to make appropriate for the court's consideration a jury charge of "mere presence" that would have been presented to the jury and effectively applied to all charges for which the Applicant was charged, convicted, and sentenced.
2. Applicant's Counsel failed to keep Applicant abreast of plea negotiations and timely present said plea offers to the Applicant before expiration of said plea offers.
3. Applicant's Counsel was ineffective where Counsel's insufficient and deficient advice resulted in Applicant's rejection and/or lapse of a plea bargain which would have resulted in a more favorable sentence to Applicant than the outcome of the trial.
4. Applicant's Trial Counsel failed to adequately prepare for pre-trial hearings by failing to obtain available impeachment materials with respect to a *Neil vs. Biggers* hearing that would have materially changed the outcome of said hearing pertaining to the Victim's identification of the Applicant.

5. Trial Counsel was ineffective for failing to question witnesses for the State concerning any deals they may have been given, or any favorable consideration they hoped to have received, at the time of their original testimony, in exchange for their cooperation and testimony at Applicant's trial.
6. Trial Counsel was ineffective for failing to question witnesses for the prosecution concerning charges that could have been brought against them concerning this case, and any conversations they had with law enforcement, or anyone affiliated with the Solicitor's Office concerning their potential exposure to criminal charges.
7. Trial Counsel was ineffective for failing to consistently object to leading questions posed by the State where said examination either directly suggested the desired inculpatory response or lead witnesses to alter previous testimony which was advantageous to the defense.
8. Trial Counsel was ineffective for failing to request criminal records on all of the State's witnesses who were neither law enforcement nor experts.
9. Trial Counsel was ineffective for failing to order or look for the in dash camera of Officer Simmons speaking with witness and victim Makia Fulton for purposes of impeachment.
10. Applicant's Counsel was ineffective for failing to interview and investigate potential witnesses favorable to the defense in Applicant's trial.
11. Applicant's Counsel was ineffective for failing to request criminal records for the Victim, Makia Fulton.
12. Applicant's Counsel was ineffective for failing to call certain witnesses favorable to the defense of Applicant's case.
13. Applicant's Counsel was ineffective by failing to object to certain law enforcement testimony where said law enforcement witnesses had not been classified as experts on the subject matter of said testimony.
14. Applicant's Counsel was ineffective for failing to obtain rulings from the court to preserve certain issues for appeal.
15. Applicant's Counsel was ineffective for failing to properly object to certain court decisions which would have preserved said issues for appeal.

16. Applicant's Counsel was ineffective for failing to present a closing argument to the jury in which she adequately reviewed the standard of proof and illustrated for the jury how the evidence adduced at Applicant's trial fit that standard.
17. Applicant's Counsel was ineffective for failing to object to improper jury charges given at Applicant's jury trial.

At the evidentiary hearing, Applicant proceeded on the following three allegations:

1. Defense counsel was ineffective for failing to allow Applicant to reject a plea offer in December of 2013, without a comprehensive understanding of “the fact that at the jury trial the presiding judge could deny or request for jury instruction of mere presence, not only on the kidnapping and armed-robbery charges, but also on the unlawful carrying charge.” (Tr. p. 5, ll. 12-20)
2. Defense counsel was ineffective for failing to adequately explain the legal standards for obtaining a jury instruction on mere presence for the unlawful carrying charge, and failed to request a mere presence charge for both the kidnapping and armed-robbery charge.
3. Defense counsel was ineffective for failing to adequately explain to Applicant both that trial judge would decide whether or not the evidence would allow for the introduction of Makia Fulton’s identification of Applicant at trial, and whether or not the evidence supported a request for a mere presence jury charge.

Applicant abandoned any other allegations contained in his original application and subsequent amended application for post-conviction relief, and this Court will only address the allegations presented during the evidentiary hearing.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

A. Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, they must present evidence to satisfy the two prong test enumerated in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), to determine whether counsel's "assistance was so defective as to require a reversal of" applicant's sentence. First, the applicant must show counsel's performance was deficient; and second, the applicant must show they were prejudiced by that deficiency. *State v. Stalk*, 383 S.C. 559, 560-61, 681 S.E.2d 592, 594 (2009).

In order to prove deficient performance under the first prong of *Strickland*, the burden is on applicant to show that counsel's representation fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 687-88. The proper measure of attorney performance remains simply reasonableness under prevailing professional norms. *Id.* In considering whether counsel's performance was reasonable:

Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.... A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.

Strickland, 466 U.S. at 689; *Edwards v. State*, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011).

"[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)). “[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (quoting *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Even if the applicant can establish that counsel’s performance was deficient, they must still overcome their burden to demonstrate prejudice from that deficiency. The second prong of *Strickland* requires the applicant to prove that counsel’s deficient performance prejudiced applicant to the extent that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.” *Cherry*, 300 S.C., at 117-18, 386 S.E.2d, at 625 (citing *Strickland*, 466 U.S., at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S., at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the applicant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.*, 466 U.S., at 696-97.

1. Failure to Convey Plea Offer

Applicant alleges counsel was ineffective in failing to properly convey a December 2013 plea offer, which led to Applicant being “forced to go to trial” in August 2014. (Tr. p. 6-7). In order to prevail upon a claim that counsel did not adequately convey a plea offer, an applicant must present evidence to show that counsel was aware of a favorable plea offer, and Applicant

would have taken the plea offer had counsel told him about it. *State v. Bell*, 410 S.C. 436, 765 S.E.2d 4 (Ct. App. 2014); *see also* U.S.C.A Const.Amend. 6.

Our Supreme Court has held “a defendant has the right to effective assistance of counsel during the plea bargaining process.” *Davie v. State*, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009) (*abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)). 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*, 132 S.Ct. 1399, 1408 (2012).

At the evidentiary hearing, Applicant first testified he didn’t remember any plea offers in December 2013, but then recanted and recalled trial counsel explaining a plea offer of “I think 4, 3 to 5, or something like that. Tr. p. 11, ll. 17-24; p. 12, ll. 7-11. Applicant testified he told trial counsel he would take that offer. Tr. p. 12, ll. 15-16. However, Applicant recalled trial counsel stating that the State rejected that offer, countering with “take 10 years or we go to trial.” Tr. p. 12, ll. 17-18. After trial counsel explained the new 10 year plea offer to Applicant, he expressed to trial counsel that he wanted to go to trial instead. Tr. p. 12, ll. 22-23. Applicant went on to explain that trial counsel kept pushing him to take the 10 year offer, and that it was a good plea to accept. Tr. p. 13, ll. 18-20. Applicant recalled being upset with this plea offer, adding “[I]ike how is 10 years a good plea[?]” Tr. p. 13, ll. 22-23.

Counsel testified she received an offer from the solicitor in December 2013 for “strong-armed robbery as a YOA or for a cap of 5 years.” Counsel explained she went to the detention center at least twice during the week of December 2nd, and spoke with Applicant regarding his case. Counsel explained to Applicant “that he had an active YOA 5-year cap versus a risk of 70 years cumulatively if he was found guilty on each charge.” Counsel testified she met with

Applicant in court on December 19th and 20th to go over the plea offer again, and spoke with the solicitor and the judge regarding this offer. Counsel recalled the judge was leaning towards a 4 year sentence out of the 5 year cap. Counsel explained Applicant wanted to think it over, but she “strongly encouraged him to take the offer.” Counsel stated Applicant came back the next day, and expressed he did not want to take the offer, adding that Applicant was “very adamant about maintaining his innocence.” After Applicant expressed he did not wish to accept the plea offer, Counsel again went over the risks Applicant would face at trial. Although she expressed her concerns regarding his defense as it could easily be discredited at trial, Applicant did not change his mind. Tr. p. 33-38. Counsel recalled the solicitor enumerated the plea offers that had been extended to Applicant on the record at trial:

Solicitor Musser: [T]he State had made an offer to the defendant for a plea to strong-armed robbery with a cap of ... ten, and ... that was rejected. That offer expired August 16th. It's my understanding and I just wanted Ms. Saxon to confirm on the record that she did review that offer with her client and that it was rejected.

Ms. Saxon: We did. We had talked about that, as well as the other plea offers that had come over the course of this case, and Mr. Pritchett has consistently wanted to assert his right to trial.

Trial Tr. p. 108-109.

Applicant has failed to meet his burden of showing any ineffectiveness on the part of Counsel by way of this allegation. Applicant presented *no evidence* to satisfy his burden of showing prejudice, as his testimony during the evidentiary hearing reflected he was aware of the plea offers extended by the State and made a knowing decision to reject them and proceed to trial because he believed the offer(s) were too high. Furthermore, counsel provided lengthy and detailed testimony regarding her conversations with Applicant about the plea offers, and Applicant's strong desire to reject them because he maintained his innocence to the charges.

Therefore, the Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant regarding his decision to reject the plea offers and proceed to trial. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

2. Failure to Request Jury Instruction on Mere Presence

Applicant alleges Counsel was ineffective in failing to request jury instructions on mere presence and failing to explain a mere presence charge to Applicant, because he was not aware the trial judge could deny that charge.

Applicant has failed to meet his burden of showing any ineffectiveness. Counsel made the strategic decision at trial to limit the mere presence charge only to apply to the unlawful carry charge, explaining based on the facts presented by the State at trial, a mere presence charge would only make sense as applied to the unlawful carry charge. The trial judge charged the hand of one is the hand of all as to the armed robbery, kidnapping, and possession of a weapon during the commission of a violent crime charges. Counsel requested the trial court charge the jury for mere presence regarding the unlawful carry of a weapon, however, the trial judge denied the request.

Furthermore, this issue was raised on direct appeal, and the Court of Appeals upheld the trial court's charge finding and dismissed Applicant's appeal.¹ Counsel articulated valid trial strategy for her decision to only request a mere presence charge as to the unlawful carry charge, which was ultimately denied by the trial judge, and upheld on direct appeal. Thus, the Court cannot find any conceivable prejudice to Applicant. Accordingly, Applicant has failed to meet his burden under *Strickland*, and his request for relief by way of this allegation is **DENIED**.

3. Failure to Explain the Admissibility of Witnesses' Identification Testimony

¹ The issue was framed to the Court of Appeals as to whether the trial court erred in declining to charge mere presence in reference to the unlawful carrying of a pistol charge when the hand of one is the hand of all theory was charged to the jury and the evidence presented supported giving a mere presence charge. *State v. Pritchett*, Op. No. 2016-UP-523 (Ct. App. 2016).

Applicant alleges Counsel was ineffective for failing to explain to Applicant that the trial judge would ultimately decide whether or not a witnesses' audio identification of Applicant would be admissible as evidence at trial. Applicant has failed to meet his burden of showing any ineffectiveness on behalf of Counsel as to this allegation, as Applicant did not offer what, if anything, would have changed had he known this information.

Counsel testified she received from the solicitor on August 20, 2014, via e-mail, additional information not contained in the incident report regarding the identification witness. Tr. p. 55, ll. 4-7. Counsel explained she had a strong argument against the audio identification of Applicant by State's witness, and based on the evidence could attempt to discredit its validity, arguing in closing that the witness did not immediately identify Applicant to police.

Furthermore, this issue was raised on direct appeal. The Court of Appeals upheld the admissibility of the witnesses' identification testimony, and dismissed Applicant's appeal. Applicant has failed to provide any evidence to show how Counsel was ineffective in the handling of this evidence. Therefore, the Court cannot find any conceivable prejudice to Applicant. Accordingly, Applicant has failed to meet his burden under *Strickland*, and his request for relief by way of this allegation is **DENIED**.

III. CONCLUSION

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


This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 25 day of August, 2020.



 JENNIFER B. MCCOY
 Presiding Judge
 Fourteenth Judicial Circuit

Charleston, South Carolina

WITNESSES

Inv. B. Cooler-BCSO

DOCKET NO. 2010GS0700872

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

May Term 2010

Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

M056131

THE STATE

vs.

Philenza Pritchett

*FTA 11/6/2013
IMS*

ACTION OF GRAND JURY

True Bill

B. Mathis
Foreperson of Grand Jury
Date: **MAY 20 2010**

Indictment for

Robbery / Armed Robbery, robbery while armed or allegedly armed

Defendant

VERDICT

Guilty

Witness:

Lynnda Schumacher
Foreperson of Petit Jury
Date:

SC Code: 16-11-0330(A)
CDR Code:0139

C.C.C. PLS. and G.S.

INDICT

WITNESSES

Inv. B. Cooler-BCSO

DOCKET NO. 2010GS0700873

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

May Term 2010

I _____

Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

M056133

THE STATE

vs.

Philenza Pritchett

FTA 11/6/2013
1MS

ACTION OF GRAND JURY

True Bill

B. Smith
Foreperson of Grand Jury
Date: MAY 20 2010

Defendant

Indictment for

Weapons / Poss. weapon during violent crime

Witness:

VERDICT

Guilty

SC Code: 16-23-0490
CDR Code:0549

C.C.C. PLS. and G.S.

Linda S. ...
Foreperson of Petit Jury
Date:
INDICT

WITNESSES

Inv. B. Cooler-BCSO

ARREST WARRANT NUMBER

M056138

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: **MAY 20 2010**

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2010GS070875

The State of South Carolina
County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2010

THE STATE

vs.

Philenza Pritchett

*FTA 11/6/2003
INS*

Indictment for

Kidnapping / Kidnapping

SC Code: 16-03-0910
CDR Code:0095

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

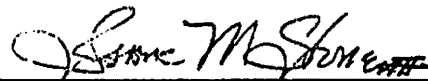
INDICTMENT
2010GS070875

At a Court of General Sessions, convened on May 20, 2010, the Grand Jurors of Beaufort County present upon their oath:

Kidnapping / Kidnapping

That in Beaufort County, South Carolina, on or about April 1, 2010, the Defendant, Philenza Pritchett, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Makia Fulton, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended)

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



Solicitor

WITNESSES

Dep. W. Murphy-BCSO

DOCKET NO. 2010GS0700876

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

May Term 2010

Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

1029031

THE STATE

vs.

ACTION OF GRAND JURY

True Bill

Philenza Pritchett

FTA 1/6/2013
IMS

[Signature]
Foreperson of Grand Jury
Date: MAY 20 2010

Defendant

Indictment for

Weapons / Unlawful carrying of pistol

Witness:

SC Code: 16-23-0020; 16-23-0050(A)
CDR Code:0044

VERDICT

C.C.C. PLS. and G.S.

Guilty

[Signature]
Foreperson of Petit Jury
Date:
INDICT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2010GS0700876

At a Court of General Sessions, convened on May 20, 2010, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Unlawful carrying of pistol

That in Beaufort County, South Carolina, on or about April 1, 2010, the Defendant, Philenza Pritchett, unlawfully did carry about his person a handgun, described as follows: Smith & Wesson .40 caliber hand gun; in violation of Section 16-23-20, Code of Laws of South Carolina (1976, as amended)

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


Solicitor

WITNESSES

Inv. B. Cooler-BCSO

ARREST WARRANT NUMBER

2010GS0700977

ACTION OF GRAND JURY

True Bill

B. Smith
Foreperson of Grand Jury
Date: **MAY 20 2010**

VERDICT

Guilty

Jurda Schenck
Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2010GS0700977

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2010

THE STATE

vs.

Philenza Pritchett

FTA 11/6/13
IMS

Indictment for

**Conspiracy / Criminal Conspiracy, Common
Law conspiracy definition**

SC Code: 16-17-0410
CDR Code:0049

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2010GS0700977

At a Court of General Sessions, convened on May 20, 2010, the Grand Jurors of Beaufort County present upon their oath:

Conspiracy / Criminal Conspiracy, Common Law conspiracy definition

That in Beaufort County, South Carolina, on or about April 1, 2010, the Defendant, Philenza Pritchett, did combine, conspire, confederate, agree or have tacit understanding with another, Brandon Rolt, for the purpose of committing a crime; to wit, Armed Robbery, in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

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



Solicitor

COUNTY OF Beaufort
STATE VS. Philenza Pritchett

INDICTMENT/CASE#: 2010GS0700872
A/W#: M056131
Date of Offense: 4/1/2010
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

AKA:
Race: B Sex: M Age: 28
DOB: SS#
Address:
City, State, Zip:
DL#: SID#

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
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.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Musser, Lynorr SC Bar# 77699 Defendant Attorney for Defendant SC Bar#

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

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

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
days/hours Public Service Employment

Payment Terms:
Set by SCDPPPS
Obtain GED
Attend Voc. Rehab. or Job Corp.

Recipient:
May serve W/E beginning
Substance Abuse Counseling

*Fine:
§ 14-1-206 (Assessments 107.5 %)
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$75.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$5.00
3% to County (if paid in installments) \$0.90
TOTAL \$133.90

Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund

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

Presiding Judge
Judge Code
Sentence Date: August 28, 2014

Clerk of Court/ Deputy Clerk
Court Reporter: Krystal Smith
SCCA/217 (03/2011)

Handwritten signatures and stamps:
A True Copy
Pam Burries
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries

up to 5yrs.

COUNTY OF Beaufort
 STATE VS.
Philenza Pritchett
 AKA: _____
 Race: B Sex: M Age: 28
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2010GS0700873
 A/W#: M056133
 Date of Offense: 4/1/2010
 S.C. Code § : 16-23-0490
 CDR Code #: 0549

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
 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: Musser 77699
 Musser, Lynorr SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

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

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____ 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: _____

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 47.9 (Public Def/Prob)	\$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/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)		\$8.90
TOTAL		\$133.90

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

Clerk of Court/ Deputy Clerk Amil's Winston
 Court Reporter: Krystal Smith
 SCCA/217 (03/2011)

Presiding Judge 2139
 Judge Code: _____
 Sentence Date: August 28, 2014

Certified - A True Copy
 Jerr Ann Rosehead - Clerk of Court
 Beaufort County, SC - Pam Burries

STATE OF SOUTH CAROLINA

Up to 30 yrs.

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS. Philenza Pritchett
AKA:
Race: B Sex: M Age: 28
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

INDICTMENT/CASE#: 2010GS070875
A/W#: M056138
Date of Offense: 4/1/2010
S.C. Code §: 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Kidnapping / Kidnapping

CONVICTED OF or PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
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.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Musser, Lynorr SC Bar# 776099 Defendant Attorney for Defendant SC Bar#

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

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

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

PTUP
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:

No State Healer Registry

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

Clerk of Court/ Deputy Clerk April S. Winston
Court Reporter: Krystal Smith
SCCA/217 (03/2011)

Presiding Judge 2139
Judge Code:
Sentence Date: August 28, 2014

Certified - A True Copy
Jerrri Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries

Up to 1 yr

COUNTY OF Beaufort
 STATE VS.
Philenza Pritchett
 AKA: _____
 Race: B Sex: M Age: 28
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2010GS0700876
 A/W#: 1029031
 Date of Offense: 4/1/2010
 S.C. Code § : 16-23-0020; 16-23-0050(A)
 CDR Code #: 0044

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Weapons / Unlawful carrying of pistol

CONVICTED OF or PLEADS

in violation of § 16-23-0020; 16-23-0050(A) of the S.C. Code of Laws, bearing CDR Code # 0044
 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: Musser, Lynorr 77699 [Signature]
 Musser, Lynorr SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____ 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: _____

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 47.9 (Public Def/Prob)	\$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	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 9.90
TOTAL		\$ 183.90

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

Clerk of Court/ Deputy Clerk April O. Winston
 Court Reporter: Krystal Smith
 SCCA/217 (03/2011)

Presiding Judge 2139
 Judge Code: _____
 Sentence Date: August 28, 2014

Certified - A True Copy
 Pam Burris
 Jerrin Roseneau - Clerk of Court
 Beaufort County, SC - Pam Burris

up to 5 yrs

COUNTY OF Beaufort
 STATE VS.
Philenza Pritchett
 AKA:
 Race: B Sex: M Age: 28
 DOB: [REDACTED] SS#: [REDACTED]
 Address:
 City, State, Zip:
 DL#: SID#:

INDICTMENT/CASE#: 2010GS0700977
 A/W#: 2010GS0700977
 Date of Offense: 4/1/2010
 S.C. Code § : 16-17-0410
 CDR Code #: 0049

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

CONVICTED OF or PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: Musser 77699
 Musser, Lynorr SC Bar# Defendant Attorney for Defendant SC Bar#

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

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms:
 Set by SCDPPPS

PTUP days/hours Public Service Employment

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 47.9 (Public Def/Prob)	\$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	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 89.0
TOTAL		\$ 188.90

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.
 § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk April B. Winston
 Court Reporter: Krystal Smith
 SCCA/217 (03/2011)

Presiding Judge
 Judge Code: 2139
 Sentence Date: August 28, 2014

Certified - A True Copy
 Pam Burries
 Jerri Ann Rosehead - Clerk of Court
 Beaufort County, SC - Pam Burries