

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

\_\_\_\_\_  
PATRICK J. FEREBEE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000963

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

VICTOR R SEEGER  
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

BENJAMIN LIMBAUGH  
Assistant Attorney General  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
State of South Carolina,	)	CASE NO. 2015-GS-10-1643
	)	2015-GS-10-1647
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
Patrick Ferebee,	)	
	)	
DEFENDANT.	)	
	)	

October 12, 2016

Charleston, South Carolina

B E F O R E:

The Honorable Kristi Harrington

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

Burns Malone Wetmore, Esquire  
For the Plaintiff

John Joseph Kozelski, III, Esquire  
For the Defense

*Certified Transcript Provided For: OFFICE OF ATTY GENERAL*

I N D E X

HEARING - Plea -- 03

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT -- 24

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

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

1 THE COURT: Mr. Wetmore, has the victim been  
2 notified?

3 MR. WETMORE: They have, Judge. I spoke to them.  
4 Both victims. There are two. They are out-of-state  
5 largely because of this incident. And they will not be  
6 here. But they are going to call me and get the  
7 sentence. They are very interested, but they are out of  
8 state and they are not going to be here.

9 THE COURT: Is there any restitution?

10 MR. WETMORE: No, ma'am.

11 THE COURT: Mr. Ferebee, you are here to plead  
12 guilty on 2015-GS-10-1647 and 1643. The State is  
13 allowing you to plead to assault and battery of a high  
14 and aggravated nature.

15 MR. FEREBEE: Yes, ma'am.

16 THE COURT: I can sentence you from up to 20 years  
17 in the Department of Corrections. Do you understand that  
18 is the potential punishment?

19 MR. FEREBEE: Yes, ma'am.

20 THE COURT: That is classified as a violent and a  
21 serious offense. Do you understand what those two  
22 classifications mean to you?

23 MR. FEREBEE: Yes, ma'am.

24 THE COURT: In your own words explain to me what  
25 violent means to you.

1 MR. FEREBEE: Violent means something in the nature  
2 of like saying you are aggravated or angry or something  
3 of that nature.

4 THE COURT: And how is that classification going to  
5 impact your incarceration?

6 MR. FEREBEE: I would have to do 85 percent instead  
7 of 65 percent.

8 THE COURT: And Mr. Kozelski may have indicated that  
9 to you, and that is what that classification means.

10 MR. FEREBEE: Yes, Your Honor.

11 THE COURT: But I always tell defendants you should  
12 expect to serve whatever sentence I impose on you day for  
13 day.

14 MR. FEREBEE: Yes, ma'am.

15 THE COURT: Do you understand?

16 MR. FEREBEE: Yes, ma'am.

17 THE COURT: So even though he may have said 85  
18 percent you should just assume that whatever sentence I  
19 give to you you will serve 100 percent of it. Do you  
20 understand?

21 MR. FEREBEE: Yes, ma'am. Yes, ma'am.

22 THE COURT: As to the serious classification what  
23 does that mean to you?

24 MR. FEREBEE: It means that I could have done  
25 serious harm to someone.

1 THE COURT: And how will that impact your future?

2 MR. FEREBEE: It would be a strike against me to  
3 where that if I do it again it will be they can seek the  
4 life penalty or something of that nature.

5 THE COURT: Okay. Life without the possibility of  
6 parole?

7 MR. FEREBEE: Yes, ma'am.

8 THE COURT: Knowing that, do you still wish to enter  
9 into a plea to assault and battery of a high and  
10 aggravated nature?

11 MR. FEREBEE: Yes, ma'am.

12 THE COURT: You are also here to plead guilty to  
13 arson in the third degree. I can sentence you up to 15  
14 years. The State is allowing you to plea to the lesser  
15 included arson in the third degree. It was originally  
16 indicted as arson in the first degree.

17 MR. FEREBEE: Yes, ma'am.

18 THE COURT: You do not have to plead guilty to these  
19 indictments. By pleading guilty you are giving up  
20 certain rights, your right to a jury trial, your right to  
21 have the jury determine your guilt beyond a reasonable  
22 doubt based upon the evidence the State presents as well  
23 as any evidence you may introduce, your right against self-  
24 incrimination, your right to say nothing at all, your  
25 right to confront and be confronted by the witnesses

1 against you, as well as the right to call witnesses on  
2 your own behalf.

3 By pleading guilty here today you give up any  
4 defense that you may have to these charges. Do you  
5 understand those rights?

6 MR. FEREBEE: Yes, ma'am.

7 THE COURT: And do you waive all of those rights at  
8 this time?

9 MR. FEREBEE: Yes, ma'am.

10 THE COURT: Understanding the charges that you are  
11 facing, the possible punishment and well as the  
12 consequences of this plea, how do you plea to assault and  
13 battery of a high and aggravated nature?

14 MR. FEREBEE: I plead guilty.

15 THE COURT: How do you plead to arson in the third  
16 degree?

17 MR. FEREBEE: I plead guilty.

18 THE COURT: Are you pleading guilty because you in  
19 fact are guilty?

20 MR. FEREBEE: Yes, ma'am, I am guilty because I  
21 did -- I did attempted suicide, but by me setting fire I  
22 caused damage to someone's home and possible could have  
23 hurt them inside the process.

24 THE COURT: Has anybody promised you anything,  
25 threatened you, forced you to plead guilty here today?

1 MR. FEREBEE: No, ma'am.

2 THE COURT: Have you been satisfied with the  
3 services of Mr. Kozelski?

4 MR. FEREBEE: Yes, ma'am.

5 THE COURT: Any complaints about the way he has  
6 handled this case? Now is the time to tell me. Do you  
7 have any complaints about Mr. Kozelski?

8 MR. FEREBEE: No, ma'am. He tried his best when he  
9 got me evaluated by Dr. Knight and we took psycho  
10 evaluations and things of that nature.

11 And I am just really have been focusing a lot with  
12 myself or and not letting life get me to the point where  
13 I want to commit suicide again.

14 THE COURT: Is there something that perhaps he could  
15 have done or still could do to assist you in your  
16 defense? Do you think he has done everything possible  
17 for you?

18 MR. FEREBEE: Yes, ma'am, I think he did.

19 THE COURT: You have the right to appeal this plea  
20 and the sentence that I will impose. But you or your  
21 attorney must do so within ten days. Do you understand?

22 MR. FEREBEE: Yes, ma'am.

23 THE COURT: So talk to me about wanting to kill  
24 yourself or -- has Mr. Kozelski had you evaluated; is  
25 that correct?

1 MR. FEREBEE: Yes, ma'am.

2 THE COURT: And are you -- did you get a diagnosis?

3 MR. FEREBEE: Yes, ma'am, she diagnosed me with  
4 PTSD. And right now I am taking medicine for it right  
5 now. So when -- it is helping. I mean ---

6 THE COURT: What are you taking?

7 MR. FEREBEE: It is Paxel. And I take the 40  
8 milligrams of it. It is a reuptake for your -- it is for  
9 Serotonin inside of your brain and stuff like that.

10 THE COURT: And are you receiving that at the jail?

11 MR. FEREBEE: Yes, ma'am.

12 THE COURT: Does that help you think better ---

13 MR. FEREBEE: Yes, ma'am.

14 THE COURT: --- and more clearly?

15 MR. FEREBEE: It keeps me calm and where I wouldn't  
16 get angry at myself no more. And I am just really like  
17 kind of -- I have done asked for forgiveness from God and  
18 I am like really ready to put it behind me and stuff of  
19 that nature.

20 THE COURT: You understand what we are doing here  
21 today?

22 MR. FEREBEE: Yes, ma'am. I am trying to plead  
23 guilty.

24 THE COURT: Have you been able to talk to Mr.  
25 Kozelski and explain to him all of your potential

1 defenses?

2 MR. FEREBEE: Yeah, I tried; but certain things  
3 where the victim is kind of upset about things that she  
4 lost inside of the -- inside of the fire. And I  
5 understand that.

6 But the only thing that I was disputing was that I  
7 was originally charged with attempted murder but they  
8 dropped it down to the assault and battery, which is not  
9 a that serious. But I am looking at in my future where  
10 it wouldn't look that bad when I fill out an application  
11 and try to get a job something of a high and aggravated  
12 nature. And I understand that I could have done harm to  
13 someone.

14 THE COURT: All right. Do you still wish to enter  
15 into this plea?

16 MR. FEREBEE: Yes, ma'am.

17 THE COURT: Mr. Kozelski, do you understand what my  
18 line of questioning and my line of concern is; do you  
19 have any concerns about his ability to understand what we  
20 are doing here today?

21 MR. KOZELSKI: I do not, Your Honor.

22 THE COURT: And you had him evaluated by Dr. Knight?

23 MR. KOZELSKI: Yes, Your Honor.

24 THE COURT: Anything I need to know pursuant to that  
25 evaluation?

1 MR. KOZELSKI: No, Your Honor. I will -- I will --  
2 I can go into the depth of what Dr. Knight said. But he  
3 is competent. He was also evaluated for competency by  
4 MUSC. And they found him competent.

5 THE COURT: Please listen to the facts.

6 Mr. Wetmore.

7 MR. WETMORE: Thank you, Judge. This happened on  
8 December 15th of 2014 in North Charleston. Mr. Ferebee  
9 at some point had had a relationship with the victim, a  
10 lady named Mattie Brown.

11 Whether that was reality or just his perception, he  
12 thought he had a relationship with her and came to her  
13 residence. She would not let him in, for whatever  
14 reason.

15 At that point he got very upset with her. He banged  
16 and tried to get in through the door, and she wouldn't --  
17 she wouldn't let him. At that point he told her he was  
18 going to set it on fire.

19 And so he poured gasoline all over the front door,  
20 which is the only door, and lit it. And that apartment I  
21 mean it went up. And it was almost completely destroyed.  
22 This lady was in it with her son. And it was -- you  
23 know, it was a very close situation to them getting  
24 killed.

25 Mr. Ferebee left and then he set her car on fire.

1 And then he -- at that time the police had arrived and he  
2 was apprehended very close to the scene. Obviously  
3 reeked of gasoline.

4 There was no question that he had done it. In fact  
5 he gave a two-page confession. Said that he had done it.  
6 Indicated he was very upset that she didn't reciprocate  
7 his feelings.

8 The victims, as I told you, Judge, because of this  
9 incident are, you know, basically homeless. They are  
10 moving around different places. They are out of state  
11 right now.

12 They are still very concerned about this man and  
13 what happened. They do hope that you will give him  
14 closer to the maximum is what they have told me. They  
15 are going to call me and find out what happened. They  
16 are not here today.

17 Judge, he was never actually charged with arson  
18 first; it was always an arson third, the minor injury or  
19 property damage. So that is a straight-up plea.

20 I did reduce the attempted murder to the ABHAN,  
21 Judge. I think it fits given the case law in the Raheem  
22 Keen case with the specific intent to commit the murder.  
23 So I think that reduction is fair. Beyond that there is  
24 no recommendation, Judge.

25 I will share with you his prior record. It is

1 fairly limited: 2004, trespass. 2006, possession of  
2 crack. 2007 failure to stop. 2009 possession of  
3 cocaine. And 2010 open container. And 2012 possession  
4 of marijuana. 2013 contempt in magistrate court. I am  
5 not sure what that exactly is.

6 But, you know, nothing of violence, Judge. This  
7 incident here obviously though was one of a very violent  
8 nature. It could have been much more serious. So that  
9 is all we have. Thank you.

10 THE COURT: You heard the facts. Is that what you  
11 did, sir?

12 MR. FEREBEE: No, ma'am, it is quite backwards.  
13 What he just said just sounded quite backwards. What  
14 happened was me and this lady did have a relationship and  
15 we were going together for almost three months. I  
16 started talking to her after my grandmother passed away,  
17 and we were talking.

18 And I have a child. I have a six-year-old child  
19 right now. And it was getting closer to Christmas. Me  
20 and Ms. Mattie was together all -- from all the way from  
21 August up until December.

22 It was 10 days before Christmas. I had -- I didn't  
23 have a permanent job, but I had a job through a temp  
24 agency, a little side job that I need to -- but my  
25 finances was not up to par with it.

1 (WHEREUPON, Mr. Kozelski confers with Mr. Ferebee.)

2 MR. FEREBEE: Yeah, I understand that.

3 But I am getting to that point where he has got it  
4 wrong, he answered wrong, flip side.

5 But when -- around about -- before the 15th came up  
6 Ms. Brown was in debt financially. And with me being her  
7 boyfriend I couldn't support her the way that I wanted  
8 to. I was in love with this woman.

9 And I asked this question that my child's mother  
10 hugging -- was touching my little girl inappropriately.  
11 And me and my mother was having a financial situation  
12 too. And I had a suspicion that Ms. Mattie was cheating  
13 on me and she wanted to leave me.

14 But that night before this happened I went -- I  
15 slept at her house, and I woke up that morning and we had  
16 an argument. And she was telling me to like just leave  
17 her alone and just let her live her life and if she goes  
18 through financial issues she is fine.

19 And I was like you are my girlfriend and I want to  
20 help you. I really wanted to help her. And I told her  
21 we had an argument about she wanted to leave me.

22 I was wrong by trying to -- I threatened myself. I  
23 never threatened her. I said, Mattie, you know how you  
24 make me feel; you make feel like going to get gas and set  
25 myself on fire and just burn up and die.

1           Like I had a lot of stuff going on and I was really  
2 frustrated. And I left her home. She called -- she  
3 called my mother.

4           And my mother would have been here today and I would  
5 have had somebody to talk on my conduct too, but the  
6 hurricane last week and I couldn't communicate with the  
7 exact date. My mother didn't know it was this week. But  
8 I have a support system.

9           I am not that type of person to where I would want  
10 to hurt someone that I love. But when I told her that I  
11 felt like setting myself on fire, burn up and die, she  
12 called my mother and told my mother I wanted to set her  
13 house on fire. She didn't tell my mother that I was  
14 suicidal.

15           So when I called her phone there one afternoon to  
16 try to contact her she wouldn't contact me -- wouldn't  
17 talk to me. So I went to the house and had gas -- did  
18 have gas. And I told her, Mattie, I am not playing.

19           I really started emotion when she said that -- I  
20 said I am not playing, I am going to kill myself. She  
21 said -- thinking that I said I was going to kill her.

22           I took the gas and set the car on fire. Because  
23 when I -- I got upset when she was talking to someone  
24 else on the phone and she told them that she is cooking.  
25 It is 8:30 at night. I am kind of thinking it was

1 another male.

2 So I did went ballistic and I kicked the door and  
3 with not -- with me not thinking, she said she was going  
4 to call the police. I was like the police are going to  
5 come so I might as well go ahead and try to do it.

6 I goes and I pour gas on the car on her vehicle and  
7 set it on fire. I did do that. That is the malicious  
8 damage to property. My charges were assault first and  
9 two attempted murders.

10 Judge Lumbar before she came off the panel she gave  
11 me two new bonds, \$100,000 bond and a \$50,000 bond. I  
12 have been incarcerated for two years.

13 People have gotten murder charges and gotten bond.  
14 But I am not -- they painting me a picture like I am some  
15 monster and I went back upstairs and then that is when I  
16 tried to pour -- I was going to pour the gas on myself,  
17 but I lit a sweater and dropped it. And when I slung the  
18 gas can it blew up in mid air. And I pulled back.

19 And when the police was coming I was like something  
20 told me just to stand aside. It was these people are not  
21 going to believe that I was -- hurt myself. So I stand  
22 aside.

23 So I went downstairs and let the police arrest me.  
24 How I think the fire got inside the house is through a  
25 socket that was right by the door and it probably caused

1 an electrical fire and then caught the TV on fire that  
2 was on the other side.

3 But they were aware that I was on outside. And she  
4 was aware that I was suicidal.

5 I wanted to go to trial but the way that I figured  
6 that she is not in Charleston and Ms. Lumbar told me do  
7 not to try to contact her, under no circumstances,  
8 incarcerated or out incarcerated. So I never contacted  
9 her. I figured that she was coming to trial.

10 But in my heart I ask for forgiveness from God for  
11 me trying to commit suicide. And I ask forgiveness for  
12 God for even trying that. So I pray that one day that  
13 she can -- if you conversate with her I pray that she can  
14 forgive me one day and tell her that I am truly sorry for  
15 what happened.

16 But, Judge, Your Honor, I have paperwork stating  
17 from the jail when I was in the program in the jail and  
18 paperworks pertaining to the situation with my little  
19 child.

20 And right now it is almost over with where if I want  
21 to have custody of my child -- and I am kind of like  
22 ready to move forward with my life and get it -- just do  
23 my time I have to do and go forward with my life. And I  
24 was willing to pay restitution and do at least 300 hours  
25 of community service in the future.

1           But, Judge, Your Honor, it was -- it was a mistake.  
2 The biggest mistake of my life to be honest with you.

3           THE COURT: Mr. Wetmore, would you repeat only the  
4 portion of the facts to tell me where he was located when  
5 he was arrested.

6           MR. WETMORE: Sure. Judge, he was -- the police  
7 responded obviously to the disturbance. He was located a  
8 short distance from the apartment. And they obviously  
9 their primary focus was getting the flames put out.

10           They did detain him. Obviously noted he smelled  
11 like gas. And he later admitted to all of that.

12           MR. FEREBEE: I watched those --- yes, ma'am.

13           MR. WETMORE: The background of their relationship  
14 is completely irrelevant so.

15           THE COURT: I am not worried about that. My  
16 question was -- he made some statements. I just wanted  
17 to know where he was arrested.

18           MR. WETMORE: Sure. I mean, Judge, it was right in  
19 the outside area of the house. I mean it was very close  
20 by. On the property still. I don't think he traveled  
21 very far at all.

22           THE COURT: And tell me what type of property this  
23 was.

24           MR. WETMORE: I think they are a small apartment on  
25 Whipper Barony Lane in North Charleston.

1 THE COURT: All right. Thank you.

2 MR. WETMORE: And, Judge, obviously in his own  
3 statement he admits arson third. And he admits the  
4 assault, the aggravated assault second.

5 And I think it is a fair, you know, reduction,  
6 and ---

7 THE COURT: I wasn't questioning that. I just  
8 wanted to know where he was located. Thank you, Mr.  
9 Wetmore.

10 All right. Mr. Ferebee, is that what you did? You  
11 are pleading guilty to arson in the third degree and  
12 assault and battery of a high and aggravated nature. Is  
13 that what you did?

14 MR. FEREBEE: I am guilty of arson. But I am  
15 saying -- I am pleading guilty to assault and battery  
16 high and aggravated nature because of the fact that they  
17 could have gotten hurt. But they had a back door and  
18 they were safe. And there was a fire extinguisher inside  
19 the home too.

20 It wasn't supposed -- I understand once the fire  
21 entered the home it was serious. But the whole -- my  
22 whole intentions was for me to hurt myself. And with me  
23 going through trial ---

24 THE COURT: Did you know that they were in that  
25 house?

1 MR. FEREBEE: Yes, ma'am. I was talking to them.

2 But I wasn't aware ---

3 THE COURT: But you knew ---

4 MR. FEREBEE: --- that the fire would go inside the  
5 home.

6 THE COURT: You knew they were in the house,  
7 correct?

8 MR. FEREBEE: Yes, ma'am. I was talking to her.

9 THE COURT: Has anybody promised you or threatened  
10 you to plead guilty here today?

11 MR. FEREBEE: No, ma'am.

12 THE COURT: Are you pleading guilty freely and  
13 voluntarily?

14 MR. FEREBEE: Yes, ma'am.

15 THE COURT: Do you need any more time to meet with  
16 Mr. Kozelski?

17 MR. FEREBEE: No, ma'am.

18 THE COURT: I find a substantial factual basis for  
19 your plea. Your decision to plead guilty has been  
20 freely, voluntarily, knowingly, and intelligently made.

21 You have indicated to the court you have had the  
22 advice and counsel of a competent attorney with whom you  
23 have told the court you are satisfied. I hereby accept  
24 your plea of guilt.

25 Mr. Kozelski, I am happy to hear from you regarding

1 sentencing.

2 MR. KOZELSKI: Thank you, Your Honor. May it please  
3 the court.

4 Patrick is 31 years old. I have actually known him  
5 for the last three years.

6 THE COURT: How long has he been in custody?

7 MR. KOZELSKI: He has been in custody 668 days. But  
8 before that I had him on some other small cocaine charges  
9 which his record indicates. He has cocaine charges and  
10 bike violations. Those are the serious charges that he  
11 has had in his past. And I was shocked by this. Because  
12 I knew him. He would do 30 days on a cocaine charge and  
13 he would get out.

14 When he came back on these charges he was balling.  
15 There was no other way -- I could barely talk to him. He  
16 tried to get his point across. He was suicidal.

17 And that is why I had the decision to get him  
18 evaluated by MUSC and Dr. Knight to see if there was  
19 anything that I could find as to why this happened.

20 But my understanding from it all is that he does  
21 have a psychotic disorder undiagnosed from Dr. Knight  
22 along with a significant cocaine addiction that he has  
23 had since he was about 18.

24 He was born here in Charleston. He was raised by  
25 his mother primarily. His father died at the age of 12

1 from asbestos.

2 He never really left the home. He stayed there and  
3 eventually bounced from house to house with friends after  
4 not finishing high school. But never really got into any  
5 serious trouble.

6 I think what happened here, Your Honor, is him and  
7 Ms. Brown who is much older than him sort of I think took  
8 her under -- took him under her wing and offered him  
9 shelter and they did form a relationship and he was in  
10 love with her.

11 Around this time that they had been going together  
12 for about three or four months it was very close to  
13 Christmas. I think Ms. Brown had moved on in her life  
14 and had said some things to Patrick that were very  
15 belittling about him not being a man, not being able to  
16 support her, not being able to take care of his own  
17 child. Because his five-year-old daughter at the time  
18 they were having a DSS investigation for abuse by the  
19 mother's boyfriend.

20 MR. FEREBEE: Her husband.

21 MR. KOZELSKI: Husband. So he -- he made a really  
22 bad decision, Your Honor. And I think he did intend to  
23 hurt himself. He told me at the very beginning he put  
24 the car on fire so that the police would come -- or the  
25 ambulance would come.

1 MR. FEREBEE: Ambulance and fire people.

2 MR. KOZELSKI: And then he did try to set himself on  
3 fire, but the gas can blew up in his hand.

4 You know, he -- this 668 days that he has been  
5 incarcerated has been the longest period of sobriety that  
6 he has ever had. And I think he has been given some sort  
7 of mental health treatment in the jail.

8 And I think Dr. Knight's diagnosis somewhat hit the  
9 nail on the head. But I don't see this, Your Honor, as  
10 being a maximum case. I think he made a very poor  
11 decision, and I think he is having to live with that  
12 decision for the rest of his life. And he knows that,  
13 and he is willing to plead guilty today.

14 I am very torn as to what I should be asking the  
15 court for. I think somewhere in the range of five to  
16 seven years would be appropriate for this or maybe even a  
17 split sentence. He did mention that he wanted me to ask  
18 the court to show that he could do community service and  
19 show that he ---

20 MR. FEREBEE: And pay restitution.

21 MR. KOZELSKI: And pay restitution.

22 MR. FEREBEE: I am willing to do that because I did  
23 damage. And I understand my wrong.

24 MR. KOZELSKI: He is very accepting of this. He  
25 wants to prove himself. He did DeOtis while he was in

1 jail to show that he could follow directions and do what  
2 he needed to do. And he has done everything that I have  
3 asked him to.

4 So I would ask the court to consider that nobody,  
5 thank goodness, got hurt in this situation except for  
6 Patrick. But I would ask the court to consider somewhere  
7 in the mid range of five to seven years. I think that  
8 would be enough time for him to reflect on this and to  
9 not do it again. Considering his past I don't believe he  
10 will.

11 THE COURT: Anything further, Mr. Kozelski?

12 MR. KOZELSKI: Only, Your Honor, if he does -- if  
13 you are inclined to give him a sentence, an active  
14 sentence, to maybe recommend ATU unit.

15 THE COURT: It is the order of the court on 2015-GS-  
16 10-1643 and 1647 - they will run concurrent - that you be  
17 committed to the State Department of Correction for a  
18 term of 12 years. They will run current.

19 I will give you credit from 666 days. I am going to  
20 order another mental health evaluation. Follow the  
21 recommendations and ATU. Good luck to you.

22 MR. FEREBEE: Thank you, Judge.

23 MR. KOZELSKI: Thank you, Your Honor.

24 (WHEREUPON, the hearing concluded.)

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

### CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on October 12, 2016.

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



PHYLLIS NORTON, CVR

Date: November 9, 2017

Certified Transcript Provided For: OFFICE OF ATTY GEN  
Certification Reference #110917 Original

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Patrick J. Ferebee  
Plaintiff(s)

vs.

State of S.C.  
Defendant(s)

Submitted By: Patrick J. Ferebee #370050  
Address: Alienated Correctional Inst.  
P.O. Box 1151 Fairfax, SC 29405

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017 -CP- 10 5802

FILED  
CLERK OF COURT  
NOV -7 PM 3:32

SC Bar #: N/A  
Telephone #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Other: \_\_\_\_\_  
E-mail: \_\_\_\_\_

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |  |  |   |  |
|--|--|---|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Fraud/Bad Faith (150)</li> <li><input type="checkbox"/> Failure to Deliver/Warranty (160)</li> <li><input type="checkbox"/> Employment Discrim (170)</li> <li><input type="checkbox"/> Employment (180)</li> <li><input type="checkbox"/> Other (199)</li> </ul>  | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case # <u>20 -NI-</u></li> <li><input type="checkbox"/> Notice/ Fiie Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>   | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Assault/Battery (370)</li> <li><input type="checkbox"/> Slander/Libel (380)</li> <li><input type="checkbox"/> Other (399)</li> </ul>   | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul>  |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>  | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Drv. License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul> | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Confession of Judgment (770)</li> <li><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Comm. (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> <li><input type="checkbox"/> Permanent Restraining Order (680)</li> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> <li><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)</li> <li><input type="checkbox"/> Pre-Suit Discovery (670)</li> </ul> |  |   |  |

Submitting Party Signature: Patrick Ferebee

Date: 10-9-17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**Pursuant to the ADR Rules, you are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

FORM 5

STATE OF SOUTH CAROLINA )  
County of Charleston )

2017 - CP - 10 - 5802  
IN THE COURT OF COMMON PLEAS

FILED  
JULY 17 2017 7 PM 3:31  
CLERK OF COURT

Patrick Jerene Ferebee #370050  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

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
2. Name and location of Court which imposed sentence Court of General Sessions, Charleston County, S.C. 100 Broad Street, Suite 106 29401
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2015 GS1001643

(b) 2015 GS 1001647

(c) \_\_\_\_\_

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

(a) 10/12/16 12 Yrs non-violent

(b) 10/12/16 12 Yrs violent/serious <sup>Concurrent</sup>

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

I tried to appeal but done incorrect it prose did not file with the clerk of the Court of Appeals.

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

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

i. The Clerk of Court of Charleston County General Sessions <sup>See Attached</sup>

ii. Asked SCCID for help too.

iii. \_\_\_\_\_

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

i. None

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. None

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) I tried but i did not file with the court of Appeals Prose attorney did not file for me.

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective Assistance of Counsel
- (b) Solicitor Violated Plea agreement
- (c) Judge Improperly Sentenced

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

- (a) A, B, C on Back →→→
- (b) on Back →→→
- (c) on Back →→→

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

- (a) any petition in a State Court under South Carolina Law? Yes
- (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? Yes

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. Attempted to file Appeal with county Clerk of Court
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. Julie J. Armstrong Clerk of Court, CP+GS/ Charleston County
  - ii. 100 Broad Street, Suite 106 Charleston, South Carolina 29401
  - iii. \_\_\_\_\_

RE: to #11

- A) Failed to effectively investigate facts and circumstances or interview witnesses. Failed to let me see my Brady motion. Failed to introduce mitigating documents and testimony at plea. Failed to object when solicitor made plea sentencing recommendations. Failed to file appeal intent. I wrote to attorney and asked him to help me with 10 day appeal and to give me my attorney/client under per hand of 123 SE 1984 saying that attorney/client file is my property and must be return upon reasonable request. He did not answer my letter. So he has subsequently failed to provide attorney client file to aid in research and documentation of PCR. Application.
- B) Solicitor violated plea agreement by asking for Maximum Sentence. Made incorrect and prejudicial statements concerning factual issues and circumstances produced no evidence as to truth of allegations.
- C) Judge accepted plea even after plea agreement was violated by solicitor.

iv. \_\_\_\_\_

(c) the disposition thereof:

i. Did not receive appeal "Ten day appeal"

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. I have a letter from SCCID telling me to go forth with

ii. my PCB. 9/22/17 because i was not going to get the

iii. ten day appeal.

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

i. None

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. None

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

- (a) Court did not entertain appeal
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. John J. Kozelski S.C. Bar # 100153 9<sup>th</sup> Circuit Public Defender Charleston County 101 Meeting St. 5<sup>th</sup> Floor
  - ii. Charleston, S.C. 29401
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Arraignment, Plea and Sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

To have the Assault and Battery Charge dropped because I did a  
unsuccessful suicide act. I also don't want a violent charge on  
my record. I Attempted suicide.

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

NO

STATE OF SOUTH CAROLINA )  
County of Allendale )

VERIFICATION

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

Patrick Ferebee

SWORN to and subscribed before me this 9  
day of October, 2017.

Virginia Drubbs (L.S.)  
Notary Public

My Commission Expires: 12/12/20

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

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

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Patrick Ferebee  
Applicant

SWORN or affirmed to and subscribed before me this  
9 day of October, 2017.

Virginia Brubaker  
Notary Public

My Commission Expires: 12/12/22

RECEIVED  
OCT 03 2017  
MAILROOM  
ACI

RECEIVED  
OCT 10 2017  
MAILROOM  
ACI

SCDC-FINANCIAL ACCTS  
2017 OCT -4 PM 3:45

FINANCIAL CERTIFICATE  
FOR THE  
DISTRICT OF SOUTH CAROLINA  
(for use in § 1983, Bivens, and non-habeas civil actions filed by prisoners)

UNIT # F1 B02

I request that an authorized officer of the institution in which I am confined, or other person designated to review financial information in relation to inmate trust funds, complete this Certificate. If I have insufficient funds in my account that prohibit me from paying the full filing fee required by 28 U.S.C. § 1914 (currently \$350.00), I will send with my complaint an initial installment payment, required by 28 U.S.C. § 1915, equal to the amount calculated and entered on line four by the authorized officer signing this form.

I recognize that by filing this case, I am required to pay the full filing fee (or the remaining unpaid portion of the filing fee by installments if necessary) under 28 U.S.C. § 1915(b) even though I am requesting to proceed *in forma pauperis*. I authorize and consent to collection of the filing fee in accordance with 28 U.S.C. § 1915 until the filing fee is paid in full.

Derrick Ferebee # 370050  
INMATE NAME (PRINTED) INMATE (PRISONER) NUMBER  
Derrick Ferebee ACI  
INMATE SIGNATURE PLACE OF CONFINEMENT

- ◆ (1) Average monthly deposits to the inmate's account.....\$ 0
- ◆ (2) Average monthly balance in the inmate's account calculated for the prior six months period. .... \$ 0
- ◆ (3) Current Balance ..... \$ 0
- ◆ (4) Initial Installment Payment (Take 20 percent of the greater of lines 1 or 2)..... \$ 0

I hereby certify that as of this date, the above financial information is accurate for the above named inmate.

Peggy Cawthon  
Authorized Officer's Signature  
Peggy Cawthon, Fiscal Analyst I  
Authorized Officer's Name and Title

10/6/17  
Date

to #8 Attached

Date: Oct 18<sup>th</sup> 2016

Name: Patrick Ferebee 370050  
Address: K.C.I REE F3-227-A  
4344 Broad River Road  
Columbia, South Carolina 29210

To: Clerk of Court  
Address 100 Broad Street  
Charleston, South Carolina  
29401

RE: Notice of (10) ten day Appeal

Clerk,

I'm writing in response to my (10) day Appeal. I wish to Appeal the decision set forth at my sentence which I was sentence by Judge Harrington on Oct 12<sup>th</sup> 2016 in the general sessions court. Advances to have my lawyer contact the courts has went unanswered and ignored by my attorney which was appointed to me by the courts. The lawyer that was appointed by the courts was (John Kozelski) So on behalf of myself I wish to make the Appeal before the deadline. Notice of this Appeal should be made record of and placed on file so that I can receive a court date. Your help in this situation will be highly appreciated.

Sincerely

Patrick Ferebee

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.

By: *Julie J. Armstrong*  
DEPUTY CLERK

BY *JJA*  
JULIE J. ARMSTRONG  
CLERK OF COURT

2016 OCT 25 PM 12: 28

FILED

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Patrick J. Ferebee, #370050,  
Applicant,

v.  
State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

2017-CP-10-5802

**RETURN**

Respondent, making its Return to the application for post-conviction relief ("PCR") filed on October 10, 2017 by Patrick J. Ferebee ("Applicant"), would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the April 2015 term of the Charleston County Grand Jury for attempted murder (2015-GS-10-01643) and arson-third degree (2015-GS-10-01647). On October 12, 2016, before the Honorable Kristi L. Harrington, Applicant pled guilty to assault and battery of a high and aggravated nature (ABHAN), a lesser included offense of attempted murder. Applicant was represented by John Kozelski, Esquire. Burns Malone Westmore, prosecuted the case. Judge Harrington sentenced Applicant to confinement for a period of twelve years for each offense. The sentences were to run concurrently. Applicant was to be given 668 days credit for time served. Applicant was also order to receive a mental health evaluation. Applicant did not appeal.

II.

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

1. "Ineffective assistance of counsel."
2. "Solicitor violated plea agreement."<sup>1</sup>
3. "Judge improperly sentenced."

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

### III.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief 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), SCRCP. 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, SCRCP. 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), SCRCP.

### IV.

Applicant also alleges prosecutorial misconduct. Specifically, Applicant alleges the "Solicitor violated plea agreement by maximum sentence, [and] made incorrect prejudicial statements concerning factual issues and circumstances produced no evidence as to truth of

---

<sup>1</sup> Respondent interprets this allegation as a claim of prosecutorial misconduct.

allegations.” However, a post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Respondent submits the Applicant has not carried his burden of proving actual prosecutorial misconduct; therefore, this allegation should be summarily dismissed.

#### V.

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

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

made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced 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, the State requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### VI.

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

#### VII.

**WHEREFORE**, the State requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel, and that Applicant's claim of prosecutorial misconduct be summarily dismissed.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

RASHEEDA CLEVELAND  
Assistant Attorney General

By: *Rasheeda Cleveland*  
ATTORNEYS FOR RESPONDENT

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

*January 23rd*, 2018

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 PATRICK FEREBEE, #370050 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent, )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS


2015-CP-10-5802

AFFIDAVIT OF SERVICE BY MAIL

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

**Rodney Duane Davis, Esquire**  
**Lowcountry Law Office**  
**4000 Faber Place Drive, Suite 300**  
**Charleston, SC 29405**

DATED this the 23<sup>rd</sup> day of January, 2018.

  
 \_\_\_\_\_  
 Jennifer Jemison, Legal Assistant  
 For Respondent



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PROCEEDINGS

1  
2 THE COURT: Have you had enough time, Mr. Davis?

3 MR. DAVIS: Thank you so much, Your Honor, yes.

4 THE COURT: You're welcome. This is Patrick Jerene  
5 Ferebee versus the State, 2017-CP-10-5802. It is before  
6 the Court on an application for Post-Conviction Relief  
7 which was filed on November 7th, of 2017. The State  
8 filed its Return on January 25th of 2018.

9 He was convicted of attempted murder on 2015-GS-10-  
10 1643; arson third degree 2015-GS-10-1647. He pled guilty  
11 to assault and battery of a high and aggravated nature, a  
12 lesser included offense of the attempted murder. He was  
13 represented by Mr. Kozelski. Mr. Wetmore appeared on  
14 behalf of the State.

15 He was sentenced to a period of confinement of 12  
16 years for each offense and they were to run concurrently.  
17 He was given credit for 668 days and he was to receive a  
18 mental health evaluation. Was this a negotiated plea? I  
19 guess I need to look at the sentencing sheet.

20 MR. DAVIS: No, Your Honor.

21 [Whereupon, the court reviews documents]

22 THE COURT: Have you explained to your client that  
23 the Court cannot resentence him and that he would face --  
24 go back to facing the attempted murder which has a  
25 maximum of 30 years day for day and the arson third

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1 degree?

2 MR. DAVIS: Your Honor, it was actually there were  
3 two attempted murders; one was dismissed and he pled down  
4 on the other. So we have talked about that and in fact  
5 he ---

6 THE COURT: --- are they serious or how are they  
7 classified?

8 MR. DAVIS: They were at least serious if not most  
9 serious, Your Honor.

10 [Whereupon, the court reviews documents]

11 MR. DAVIS: And in fact I've spoken with his mother  
12 and he's spoken with his mother about that as well. It  
13 was my understanding he was prepared to go forward. And  
14 if he wants to go forward I'm prepared as well.

15 THE COURT: Absolutely. I just would say to you  
16 sir this is a very lenient sentence, extremely lenient;  
17 that's why I asked if it was negotiated.

18 MR. FEREBEE: Yes ma'am, I understand ---

19 THE COURT: --- and I don't want you putting  
20 yourself in jeopardy unnecessarily.

21 MR. FEREBEE: I'm not putting myself in jeopardy  
22 unnecessarily because in my heart I was not trying to  
23 hurt nobody but myself. And I would have went through  
24 with my trial because my plea was a negotiated ---

25 THE COURT: --- you understand that your intentions

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1 are not what the State has to prove in terms of the  
2 elements of the offense?

3 MR. FEREBEE: I understand that. So it should be  
4 arson second then.

5 THE COURT: Pardon me?

6 MR. FEREBEE: My primary charge should have been  
7 arson second.

8 THE COURT: Well, sir you don't decide that; they  
9 do.

10 MR. FEREBEE: I understand that, ma'am. I really  
11 do understand that. But its I attempted suicide and ---

12 THE COURT: --- I can't -- yes, I just need to know  
13 if you want to go forward and I just need to make sure  
14 you're doing that with your eyes wide open.

15 MR. FEREBEE: Yes, ma'am. I'm fully aware of it.

16 THE COURT: Thank you. You can take your seat.

17 [Whereupon, Mr. Ferebee is seated]

18 THE COURT: Mr. Davis, are you ready to proceed?

19 MR. DAVIS: Yes, Your Honor.

20 THE COURT: Okeydoke. Call your witness.  
21  
22  
23  
24  
25

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1 MR. DAVIS: Your Honor, we would call Mr. Ferebee.

2 THE COURT: Sir, if you would stand for me and  
3 raise your right hand to be sworn.

4 [Whereupon, the witness is duly sworn by the Court]

5 THE COURT: You can put your right hand down. Will  
6 you tell me your full name for the record?

7 THE WITNESS: Patrick Jerene Ferebee.

8 THE COURT: Sir, you can take your seat. Spell  
9 your last name for the court reporter.

10 THE WITNESS: F-E-R-E-B-E-E.

11 THE COURT: Thank you. Mr. Davis, you may  
12 proceed.

13 MR. DAVIS: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 - - - - -

16 PATRICK FEREBEE,

17 Having been first duly sworn,

18 Was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. DAVIS:

21 Q. Mr. Ferebee, can you start out by telling the Judge  
22 where you were born and raised?

23 A. North Charleston, South Carolina.

24 Q. And when were you born?

25 A. [REDACTED].

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1 Q. How far did you go in school?

2 A. I went to tenth grade.

3 Q. Tenth grade? And where was that?

4 A. I went to North Charleston High School and then I  
5 went to Youthful America Charter School [phonetic].

6 Q. Okay. Did you ever get your GED or diploma?

7 A. No, ma'am -- no sir, but I'm currently right now  
8 working on my GED at Allendale Correctional Institution.

9 Q. Are you under any medication today?

10 A. Just my prescribed mental health medication and its  
11 Paxil --

12 THE COURT REPORTER: It's what sir?

13 Q. [Mr. Davis] Paxil?

14 A. Paxil, 50 mg.

15 Q. Because we had a court date earlier this week and  
16 there was a little mix up with making sure you had your  
17 medication, is that right?

18 A. Yes. They was worried about my blood pressure  
19 medicine and that's the one I'm supposed to keep on.

20 Q. But are you fine today it's about 12:30 on Thursday,  
21 the 26th are you fine with your medication today?

22 A. Yes, sir.

23 Q. Okay. And you're able to understand what's going on  
24 today?

25 A. Yes, sir.

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1 Q. Okay. Who was your attorney that represented you on  
2 the three charges that Judge Jefferson was talking about  
3 that you were originally arrested on? Who was your  
4 attorney?

5 A. John Kozelski.

6 Q. Was he hired by you or was he appointed from the  
7 Public Defender's office?

8 A. He was appointed from the Public Defender's office.

9 Q. Okay. Did you have any other attorney that worked  
10 on your case other than Mr. Kozelski?

11 A. No sir; just you and him.

12 Q. Okay. And up through your -- and he was your  
13 attorney up through your guilty plea, is that right?

14 A. Yes, sir.

15 Q. Okay. So our complaints today are about his conduct  
16 in representing you, is that right?

17 A. Yes, sir.

18 Q. Now can you tell Judge Jefferson in the time that  
19 Mr. Kozelski represented you approximately how many  
20 meetings you had with him?

21 A. In the 22 months we seen each other about two or  
22 three different times; maybe four at the most.

23 Q. And did you make bond or would these have been  
24 meetings at the Charleston County Detention Center?

25 A. They were meetings at the Charleston County

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1 Detention Center.

2 Q. . Now would those meetings include also times if you  
3 ever met with him on the video conference?

4 A. That's what they -- they all were video conference.

5 Q. Okay. Were there any meetings here at the  
6 courthouse other than the day that you pled guilty?

7 A. The first time we had Judge Dennis then the guilty  
8 plea was an attempted murder and arson third.

9 Q. Let's explain that to the Judge just a little bit.  
10 We're not going to be complaining about that, right?

11 A. No, sir.

12 Q. But there was a time you were in court with an offer  
13 that was worse than this offer, is that right?

14 A. Yes, sir.

15 Q. Okay. So that was another meeting you had with Mr.  
16 Kozelski, right?

17 A. Yes, sir.

18 Q. And then the time you came to court in front of  
19 Judge Harrington for this guilty plea, right?

20 A. Yes, sir.

21 Q. Okay. Now leading up to let's focus on the time you  
22 did plead, okay? Leading up to this guilty plea did Mr.  
23 Kozelski review the sentence sheets with you?

24 A. Yes. I was aware of the zero to 20 and the zero to  
25 15 non violent and zero to 20 violent and that they may

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1 possibly run concurrent and it would be a violent  
2 sentence. I was aware of that.

3 Q. Okay.

4 A. And he told me about the no negotiation and no  
5 recommendation. And from my understanding the prosecutor  
6 was supposed to tell the Judge what happened and I was  
7 supposed to accept my fault and my role and the Judge was  
8 supposed to make a decision between zero and 20 years.

9 But when the prosecutor broke with the plea  
10 agreement and they saying that the victim asked for the  
11 maximum penalty he didn't object and I was afraid that I  
12 was going to get a contempt of court if I did reject it  
13 again because he read my charges the wrong way and make  
14 it seem worser [phonetic] than what it was earlier inside  
15 the plea.

16 I tried to explain to the Judge what I did and why I  
17 did it, the way that I do it.

18 Q. Okay.

19 MR. DAVIS: Judge, part of the packet obviously is  
20 the sentence sheet and you'll note on there it is marked  
21 no negotiation, no recommendation.

22 THE COURT: That doesn't mean they can't speak about  
23 sentence. That just means they haven't made a  
24 recommendation on it and they haven't negotiated  
25 anything. But the case law is very clear; nothing

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1 precludes them from making a statement. And under the  
2 Victim Witness Act they have -- and under the Victim's  
3 Act they have to make the victim's desires known for the  
4 record. They can't be precluded from doing that.

5 MR. DAVIS: And Your Honor I've spoken with him  
6 about all of that. We note that in the packet it  
7 contains the sentence sheets that are marked with no  
8 negotiation or recommendation.

9 Q. [Mr. Davis] So did you understand this to be  
10 basically a straight up plea?

11 A. Yes. But if I knew they were going to be able to do  
12 that I would have pulled out -- I would have went to  
13 trial. I would have pulled out.

14 Q. So let's break it down there. If you had known that  
15 the State would have been able to talk about the victim's  
16 position on ---

17 A. --- yes, without being ---

18 Q. --- hold on just a second, sir. Hold on just a  
19 second, sir. The court reporter can only take down one  
20 person talking at a time, okay?

21 A. Yes, sir.

22 Q. So had you known that the State could talk about the  
23 victim's opinion on sentencing before you pled would you  
24 have pled or would you have gone to trial?

25 A. I would have gone to trial.

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1 Q. During the plea did your attorney, Mr. Kozelski,  
2 object at any time to comments by the State?

3 A. No. And the Judge asked about a mental health  
4 evaluation I had to tell him yes, I did take a mental  
5 health evaluation and he said something about they said  
6 chronic drug use.

7 At the same time I was going through a lot of  
8 emotional state, things that were going on at home  
9 between my child and her step-father and my mother. I  
10 had used drugs and I was at a point in my life where I  
11 wanted to give up and I just wanted to try that.

12 My life was a wreck. I was going through -- an  
13 emotional wreck and I tried to commit suicide but I  
14 understand that I did put people in danger.

15 Q. And so my question is when the State was presenting  
16 the victim's opinion on sentencing did your attorney  
17 object?

18 A. No.

19 Q. Did you try to stop the plea?

20 A. [No response]

21 Q. Did you try to stop the plea?

22 A. No. After she read it she read it right after ---

23 Q. --- did you try to stop the plea?

24 A. I wasn't able to.

25 Q. Sir, my question is really yes or no. Did you try

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1 to stop the plea?

2 A. I didn't know what to do. I was ---

3 Q. --- sir, I promise you I'm trying to be really  
4 simple here. Yes or no did you try to stop the plea?

5 A. No, I did not.

6 Q. Did you know you could stop the plea?

7 A. No, I did not. I thought I would get contempt of  
8 court.

9 Q. Had your attorney ever talked to you about the fact  
10 that until the plea is accepted you can stop the plea?  
11 Had that ever been discussed with you?

12 A. No, I never knew about that.

13 Q. If you had known that you could withdraw the plea  
14 before it is accepted would you have attempted to do  
15 that?

16 A. Yes, sir.

17 Q. After Judge Harrington sentenced you can you tell  
18 Judge Jefferson physically where did you go? After you  
19 left the court where did you go?

20 A. I went back to the holding cell and then back to the  
21 county jail and they told me to pack my stuff up and I  
22 went to a lockup. And then the next morning I was on a  
23 bus to Kirkland.

24 And I couldn't use the phone to call nobody. And  
25 they gave me two envelopes. I wrote my mother and told

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1 her what happened and then -- I didn't want to put her  
2 through it so I didn't really told her to come to court.  
3 I told her to come today because I knew where I stand.  
4 And then I wrote a letter to my mother and then I wrote  
5 to try to get my ten day appeal because I remember when  
6 she told me you got ten days to appeal her judgment.

7       And I was like maybe she would understand that that  
8 was not about the plea agreement with them breaking it  
9 like that. And that's why I really wanted to appeal on a  
10 ten day appeal.

11 Q. At any point after the plea before you left  
12 Charleston County whether at the courthouse or the jail  
13 did you have the opportunity to speak to Mr. Kozelski?

14 A. No sir; just like he closed the book and left.

15 Q. Once you arrived at Kirkland which is the Department  
16 of Corrections facility in Columbia were you able to  
17 speak to Mr. Kozelski?

18 A. No, sir.

19 Q. And you sent one letter to your mother right?

20 A. Yes, sir.

21 Q. Where did you send the other letter?

22 A. To the Clerk of Court.

23 Q. What Clerk of Court?

24 A. Charleston County Clerk of Court -- downstairs ---

25 Q. --- and what were you trying to obtain with that

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1 letter?

2 A. I was trying to get the Judge to reconsider the  
3 sentencing, to really try to overdo the guilty plea  
4 because I felt like it got violated.

5 Q. And what if any response did you get from that  
6 letter?

7 A. I didn't get no response. They filed it and they  
8 sent me a copy and they kept a copy and they said they  
9 were going to send a copy to the Solicitor.

10 And then when I wrote to the South Carolina  
11 Appellate Defense Committee to ask them for help in this  
12 situation because I was kind of confused and I was  
13 illiterate with law work and I never really was able to  
14 get to a law library.

15 Inside Charleston County Detention Center we do it  
16 on a kiosk machine so I started going to the law library  
17 and sort of learned different things.

18 And then when the South Carolina Appellate Defense  
19 Committee wrote me back they told me that it was like  
20 almost invalid because I was supposed to file it with the  
21 Appeals Court in Columbia and the lower court. I only  
22 filed it with the lower court.

23 And there is one more thing. And I wasn't aware  
24 just like when she said with the law when they said that  
25 I asked John about subpoenaing my ex-girlfriend to come

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1 to the guilty plea. The Judge -- the Solicitor told him  
2 that they don't have to subpoena her to come to no guilty  
3 plea. The only time they will subpoena her is if I go to  
4 trial. So if I knew they were going to talk on that  
5 level I would have went to trial because I threw away all  
6 of my rights.

7 MR. DAVIS: And Your Honor on page 11, line 12  
8 through 14.

9 Q. The comment from Solicitor Wetmore quote: they are  
10 still very concerned about this man and what happened.  
11 They do hope you will give him closer to the maximum is  
12 what they've told me.

13 That's what you have an objection to?

14 A. Yes, sir. And it's like I don't understand that.  
15 Did he explain to my ex-girlfriend? She may have been  
16 talking about the maximum on the option because I damaged  
17 part of her home and her vehicle.

18 I know in my heart that I don't believe that she  
19 believed that I was trying to kill her. And that's why I  
20 would have went to trial because at the same time it's  
21 like did he explain to her that all after if the Judge  
22 give him closer to the max that's he's going to have to  
23 do a violence sentence or would he have to do a non-  
24 violent sentence.

25 I don't know if he explained all this to her. He

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1 could have asked her that when she was upset when this  
2 first happened. This was a comment made outside of court  
3 and we don't know if this was factual if he wrote it down  
4 or she said it out her own mouth.

5 That's like if I tell my mother to come up here and  
6 testify that I used to play with fire when I was younger  
7 I have arsonist tendencies. I'm guilty of arson but I  
8 never intended to hurt nobody but myself.

9 MR. DAVIS: Your Honor, could I have just one  
10 moment?

11 THE COURT: Uh Huh.

12 [Whereupon, Mr. Davis reviews documents]

13 MR. DAVIS: Thank you, Your Honor. Those are the  
14 only questions I have.

15 Q. [Mr. Davis] Thank you, Mr. Ferebee.

16 THE COURT: Any questions for the witness?

17 MR. MITCHELL: If it please the Court, Your Honor.

18 THE COURT: Yes sir, you may proceed.  
19  
20  
21  
22  
23  
24  
25

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1

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1 CROSS-EXAMINATION

2 BY MR. MITCHELL:

3 Q. Good afternoon, Mr. Ferebee. How are you?

4 A. Yes, sir.

5 Q. So how many times did you meet with Mr. Kozelski  
6 prior to pleading guilty?

7 A. It was about four or five times. And every time he  
8 came he was coming back with different things that the  
9 Solicitor was saying and trying to recommend.

10 Q. Okay, so four or five times. And so during those  
11 meetings he went over discovery with you?

12 A. My motion discovery?

13 Q. Yes?

14 A. No. My Brady motion I never got my Brady motion.

15 Q. So he never went over any of it with you?

16 A. No. We was supposed to get -- I thought that's what  
17 he was calling me down here for that time when he said he  
18 seen some pictures and he was like it looks bad. But I  
19 was like that's irrelevant; I need to see the stuff.

20 It's like he withhold it from me because he was  
21 trying to get me to plead guilty by saying this was the  
22 best way to go about the whole situation.

23 And I was like well, if that seems like the best way  
24 to go about it. And I've heard people trying to fire  
25 lawyers and stuff like that but he was on it from the

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1 start. And I knew that I was confused to be honest with  
2 you when it got down to the point to where we was almost  
3 to the go and he was like well, this is what they  
4 recommended and I feel like this is the best way we  
5 should go.

6 Q. So you guys met four or five times. Did you --

7 THE COURT REPORTER: -- I'm sorry Mr. Mitchell.

8 MR. MITCHELL: I apologize.

9 THE COURT REPORTER: If you can just turn a little  
10 toward me so I can hear you better. Thank you.

11 MR. MITCHELL: Absolutely.

12 Q. [Mr. Mitchell] So you guys met four or five times.  
13 What did you guys talk about in those meetings?

14 A. We were talking about like the plea agreement and  
15 stuff like that. And then I was asking him did he talk  
16 to my ex-girlfriend and see -- and he was like just we  
17 want to try to give her time to see what her state of  
18 mind frame was at.

19 Q. Okay. And so did she say that you were upset about  
20 the Solicitor's comments that he made, right?

21 A. Yes. I feel like he break the plea agreement  
22 because he said those things to make me get a more  
23 harsher sentence because at the same time South Carolina  
24 has the most highest CDV's against anything and females.  
25 I'm in front of a female Judge and you're making it seem

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1 like I'm trying to you know do something to the extreme.  
2 So at the same time I feel like if he said that -- I feel  
3 like if he said that that would make the Judge say if she  
4 had her mind set on a lower number she would go higher.

5 MR. MITCHELL: Your Honor, may I approach the  
6 witness?

7 THE COURT: You may.

8 [Whereupon, the witness is shown document]

9 Q. [Mr. Mitchell] Sir, I'm going to hand you a copy of  
10 the transcript from the guilty plea that day. And I'm  
11 referring to page 11.

12 And so I think you testified to that the Solicitor  
13 made a comment about the victim wanting the max. But if  
14 you look at lines 23 and 24 the Solicitor says to the  
15 Court what?

16 A. So I think that the reduction is fair for Your Honor  
17 that there is no recommendation, Judge.

18 Q. So Solicitor says to the Judge beyond that, beyond  
19 what I said there is no recommendation, right?

20 A. But I still feel like he still made it clear that to  
21 try to make her go with like whenever she first heard  
22 that it's like she wanted -- like he wanted her to think  
23 to go toward the max.

24 Q. While ---

25 A. --- and if he was going to ask for the max I could

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1 have gone to trial.

2 Q. And while ---

3 A. --- and everything with my mental state and  
4 everything that was leading up to that can come to the  
5 forefront.

6 Q. While I appreciate that answer the question I asked  
7 you was the Solicitor made clear to the Judge that there  
8 was no recommendation, right?

9 A. He tried to. I don't even remember him saying that  
10 to be honest with you.

11 Q. Okay. Fair enough. So let me ask you about the  
12 appeal in this case. So you wrote a letter once you got  
13 to Kirkland?

14 A. Yes, sir.

15 Q. And who did you write it to?

16 A. To the Clerk of Court.

17 A. Okay. Asking for an appeal?

18 A. Yes sir, on behalf of myself. They filed it and  
19 they said they sent it. I got my true copy right here,  
20 the seal and stamp and they said they sent it to the  
21 Solicitor office.

22 And then when I asked the Appellate Defense  
23 Committee about it they said that I was supposed to  
24 appeal to the higher Court of Appeal and I was illiterate  
25 to that, like legally wise. And it's like a lot of

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1 things that I'm learning now with me being incarcerated  
2 and going to the law library it's kind of like I'm  
3 thinking because at the same time I wasn't trying to hurt  
4 nobody. I tried to do harm to myself.

5 Q. So prior to you leaving the guilty plea proceedings  
6 did you talk to your lawyer about appealing at all?

7 A. This one right here?

8 Q. No, no, your guilty plea lawyer, Mr. Kozelski?

9 A. No, I didn't get the chance to because at the same  
10 time if I knew they was going to be able to do that and  
11 it was legit that he could have make recommendations like  
12 that and talk about the maximum penalty I would have told  
13 him that I wanted to appeal. I never got the chance  
14 because he never came to see me.

15 Q. And I think your lawyer asked you on direct  
16 examination but you didn't say anything at the guilty  
17 plea once the Solicitor said that, right?

18 A. No, I talked before that in the transcript because  
19 he read my charges wrong. He told me that I set the  
20 house on fire and then I set the vehicle on fire and then  
21 I fled.

22 No, I set the car on fire so the fire and the  
23 ambulance people could come because my ex-girlfriend  
24 called the police. I told her I was not playing; I was  
25 going to set myself on fire. And I went back ---

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1 THE COURT REPORTER: --- sir, could you speak just

2 ---

3 THE COURT: --- sir, we need you to slow down a  
4 little bit for us so the court reporter can take  
5 everything down.

6 A. Yes, ma'am. And I told her I was going to set  
7 myself on fire and I went back by the door and I tried to  
8 throw gasoline on myself but it blew up in mid air.

9 And then I was about to stand inside the fire and  
10 then something told me just go downstairs and let the  
11 police lock you up. They was right downstairs. I didn't  
12 flee and go nowhere. I went right downstairs and got  
13 arrested right there.

14 Q. So what you're saying here you said the same thing  
15 at the guilty plea as what you're saying today, right?

16 A. Yes. I explained to the Judge that because he read  
17 it and said it backwards like saying I set the house on  
18 fire, then I set the car on fire and then I leave.

19 No, I set the car on fire so the ambulance and fire  
20 people can come because I know I was going to try to set  
21 myself on fire upstairs.

22 If I roll to the left there was a flight of stairs I  
23 would fall down the flight of stairs or be engulfed in  
24 flames right there. So God spared me when the gas can  
25 blew up. That's basically it.

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1 Q. So the guilty plea Judge was well aware of your  
2 version of the facts?

3 A. Yes. And this is some of the things I would have  
4 brought up in trial and these are some things that --  
5 there was some mental things that was going on with my  
6 mother, myself, my girlfriend and with my little girl  
7 being -- possibly being molested.

8 And it was a lot of stuff and then ten days before  
9 Christmas I was under like an emotional wreck. Like I  
10 didn't feel like living no more; I was not happy.

11 Q. So you say you went to trial in large part because  
12 the Solicitor made those comments. Did you give a  
13 confession in this case?

14 A. Yes. I wrote, I wrote, I wrote an affidavit and you  
15 know they tried to say it was a two-page affidavit like  
16 telling on myself. No, I told you what happened and  
17 where my mental state was at.

18 Q. Okay. And you also got evaluated, right?

19 A. Yes and he, Mr. Kozelski, he didn't bring it up.  
20 When I brought it up to the Judge I was telling the Judge  
21 that I did have a psych evaluation and somebody -- he  
22 said something about they said it come from chronic drug  
23 use.

24 I used drugs but that was not because of that. That  
25 was because I was going through a lot of emotional stuff.

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1 Q. So are you saying that the doctor didn't find you  
2 competent?

3 A. I'm not sure what the doctor found. I never saw the  
4 results of those things.

5 MR. MITCHELL: Thank you, Judge. That's all the  
6 questions I have for this witness.

7 THE COURT: Any redirect?

8 MR. DAVIS: Yes, Your Honor.

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1 REDIRECT EXAMINATION

2 BY MR. DAVIS:

3 Q. One specific thing Mr. Ferebee the Attorney General  
4 asked about asked about you now, that you didn't object  
5 in front of the Judge. What were you afraid of if you  
6 had spoken out in front of the Judge?

7 A. I was afraid of contempt of court because I already  
8 tried -- I was like I'm having a trial; I'm disputing  
9 with the prosecutor. And it's like if I got to have a  
10 trial I could have been able to have witnesses and other  
11 people. There is a girl who lives downstairs we were  
12 neighbors.

13 At the same time I was like if I set the fire they  
14 just want to be like it's a fire to the car and they  
15 would get out the house. And in my heart I really feel  
16 like it how in the world -- it's an apartment complex.  
17 And they said its one door. Its four doors; there is two  
18 doors to each apartment. There is a front door and it's  
19 a back door.

20 At my bond hearing I got two no bonds, a 100,000  
21 dollar bond and a 50,000 dollar bond. It's like I set a  
22 house on fire that had no back door. And that's  
23 something I would have brought up at trial. It was a  
24 back door. It was a fire extinguisher inside the house.  
25 They said the door handle was broke off. I sat there and

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1 watched two officers kick the door in. They broke the  
2 door knob off.

3 [Whereupon, the witness is shown document]

4 MR. DAVIS: Your Honor, may I have this marked?

5 THE COURT: Sure. What is it that you're having  
6 marked?

7 MR. DAVIS: It's the letter to the Clerk.

8 THE COURT: It's in the file.

9 MR. DAVIS: His letter?

10 THE COURT: Uh Huh.

11 MR. DAVIS: I apologize, Judge.

12 THE COURT: As part of the State's records.

13 MR. DAVIS: I apologize. I wanted to make sure it  
14 was part of the -- thank you, Your Honor.

15 THE COURT: Yes, it's part of the State's package.

16 MR. DAVIS: Okay. Other than that being in the  
17 record with the stamp from Julie Armstrong, Clerk of  
18 Charleston County Clerk I have no other questions. Thank  
19 you. And that would be our presentation; we would rest.

20 THE COURT: Okay. Any witnesses from the State?

21 MR. MITCHELL: Yes, Your Honor.

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1 MR. MITCHELL: The State calls Mr. Kozelski.

2 THE COURT: Mr. Kozelski, if you would come forward  
3 to be sworn.

4 [Whereupon, Mr. Kozelski comes forward]

5 [Whereupon, the witness is duly sworn by the Clerk  
6 of Court]

7 CLERK OF COURT: Please state your full name and  
8 spell your last name for the record.

9 THE WITNESS: John Kozelski, K-O-Z-E-L-S-K-I.

10 THE COURT: You may proceed.

11 - - - - -

12 JOHN KOZELSKI,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MITCHELL:

17 Q. How are you sir?

18 A. Good.

19 Q. And I apologize if I messed up your name.

20 A. No worries.

21 Q. So how long have you practiced law in South  
22 Carolina?

23 A. I've been a lawyer since 2011 so approximately seven  
24 to eight years.

25 Q. Has the majority of that time been devoted to

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1 criminal law?

2 A. Yes.

3 Q. So you work for the Public Defender's office,  
4 correct?

5 A. Yes.

6 Q. So you were appointed to represent the Defendant in  
7 this case?

8 A. I was.

9 Q. So can you tell me a little bit or just give me a  
10 truncated version of the facts in this case?

11 A. This particular guilty plea or my representation of  
12 Mr. Ferebee?

13 Q. The facts related to this particular guilty plea.

14 A. Well, he -- I actually had been Patrick's attorney  
15 for some time. I was originally given some cases just  
16 for minor drug charges back in 2013. This arose in  
17 December of 2014 and it involved an incident with a  
18 girlfriend of sorts or a person with whom he had  
19 relations with and there was I guess a breaking up of  
20 sorts.

21 He was, I know for a fact that Mr. Ferebee was going  
22 through a number of mental health issues at the time and  
23 his story to me was that he was -- the harm that he was  
24 trying to inflict was more or less self inflicted or he  
25 was trying to kill himself at that point due to all the

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1 mental health stuff that he had going on at that time.

2 Q. Let me ask you because you mentioned mental health.

3 Did you get him evaluated?

4 A. I did. I had him evaluated by Doctor Susan Knight  
5 in part for mitigation but he was also evaluated for  
6 competency at MUSC. I believe it was Doctor Anna Gomez  
7 did that evaluation for competency.

8 I had -- before these incidents I had talked with  
9 Patrick on a number of occasions. And I never had an  
10 issue or thought there was an issue with his competency.  
11 But certainly after these events I think I went to see  
12 him, he was arrested and I went to see him shortly after  
13 he was arrested.

14 I think he was arrested on the 16th and I saw him on  
15 the 17th; so the very next day. And was not -- he was  
16 not making a whole lot of sense when I went to go see him  
17 which gave me great concern which is why I initiated a  
18 competency evaluation at that point.

19 Q. And what were the results of the competency  
20 evaluation?

21 A. He was found competent. I think in large part it  
22 was something that he had to be given medication. And  
23 once he was on the right medication he seemed to balance  
24 out.

25 Q. And let me ask you. During your representation do

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1 you recall how many times you met with him?

2 A. I have in my notes about 15 times.

3 Q. Fifteen times, okay. And during the course of those  
4 meetings did you all go over the discovery in the case?

5 A. We did. You know I think there may have been issues  
6 with me actually showing him the pictures like he said.  
7 I did not get those until very late. I think there was  
8 some sort of custody issue that North Charleston had.

9 And so I didn't actually get the pictures until  
10 maybe a month or so before the plea. And at that time I  
11 don't know if we had laptops or not in order to bring  
12 them out but I don't know. I don't have them in my files  
13 so I don't believe I printed them out to show him.

14 So he may not have seen the pictures. Sometimes I  
15 bring them on an I-pad but it just depends on the case.  
16 But I did go over the other discovery with him. As part  
17 of the other charges that I had him for the drug charges  
18 had already been dismissed prior to the plea so we didn't  
19 really have to go over those.

20 Mr. Wetmore had dismissed them just because they  
21 were such petty drug charges. We were looking at these  
22 other serious charges so. We've gone over the facts of  
23 this case I would say a number of times.

24 Q. Okay. In regards to the evidence that the State had  
25 against the Applicant what would they have used to prove

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1 him guilty at trial?

2 A. Well, it was I mean it was a fairly straightforward  
3 case as to what the evidence showed but I guess the  
4 longing question was more or less why he did what he did  
5 as opposed to how he did what he did.

6 His -- the entire time that I had represented Mr.  
7 Ferebee his story was that he was trying to kill himself.  
8 He was not trying to harm the people in that apartment.  
9 More or less I think it was a cry for help. But you know  
10 in the end game it definitely put these people in danger.

11 Q. And he wrote a confession?

12 A. Yes, he did ---

13 Q. --- is that correct? And he was found closely  
14 located to the apartment?

15 A. Twenty feet from the burning car from what I  
16 remember.

17 Q. So turning our attention to the actual guilty plea  
18 during the Solicitor's presentation about the victims did  
19 the Solicitor, and I guess the record speaks for itself  
20 so I guess I should ask you did you feel the need to  
21 object when the Solicitor made the comment?

22 A. I did not. I mean I don't think that Mr. Wetmore  
23 was giving his personal opinion as to what he believed  
24 that he thought Mr. Ferebee should get. He seemed rather  
25 indifferent about the sentence. We had a number of

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1 conversations about the charge and what he would plead  
2 to. We actually attempted a plea in front of Judge  
3 Dennis in June of 2016 but the plea was to arson third  
4 and attempted murder.

5 I always told Mr. Wetmore I thought we were going to  
6 have an issue with allocuting to the attempted murder  
7 because that's a specific intent crime and I don't think  
8 he had any intent to murder anybody in there. And so  
9 that was the reason why the plea actually did blow up the  
10 first time.

11 So, I gave Mr. Wetmore some case law which I think  
12 helped support him giving the recommendation for the  
13 ABHAN rather than the attempted murder which is the  
14 charges that we pled to in front of Judge Harrington.

15 Q. So at any point during the guilty plea did he  
16 indicate to you that he wanted to stop it?

17 A. No.

18 Q. Now in terms of an appeal did he indicate to you  
19 prior to him leaving and going to Kirkland that he wanted  
20 you to appeal his case?

21 A. I did not talk to Mr. Ferebee after the plea. I  
22 believe I had several other pleas right after that. And  
23 he was transported rather quickly up to Kirkland. I  
24 believe he was transported the next day up to Kirkland.  
25 I did receive a phone call from his mother the next day

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1 and I talked to her about what happened, the sentence  
2 that the Judge gave. I talked to her about the  
3 possibility of making a Motion to Reconsider the sentence  
4 even though I did not think that it would be likely; it's  
5 something that we could have done. Or we could have  
6 appealed or tried to attempt to withdraw the plea.

7 I laid out those concerns for her. I also told her  
8 that you know if we were successful that would  
9 essentially put him back to where he was two days before  
10 where he's looking down two attempted murder charges and  
11 an arson charge.

12 Q. So what was the conclusion of the conversation? Did  
13 she ever call you back?

14 A. I told her to call me back and let me know what he  
15 wanted me to do. I would be happy to do either one.  
16 File an appeal; I wouldn't be handling the appeal but we  
17 file appeals all the time and then that would be up to  
18 Appellate Defense or I could do a Motion to Reconsider.

19 I don't believe I got a call from her but I'm also  
20 extremely busy and my voice mail adds up. From my  
21 recollection I don't believe I got a call back but I  
22 could have; I'm not sure.

23 Q. And you've been practicing criminal law for some  
24 time now. Based on your understanding of the guilty plea  
25 did you see any issues with it; any issue that should be

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1 appealed I should say?

2 A. I didn't at the time of the plea. I will put it  
3 this way; if I felt there was an issue, an objectionable  
4 issue during the plea I would have objected.

5 Q. Do you see any today?

6 A. I -- based on the -- I guess what is being asserted  
7 I don't believe that what Mr. Wetmore did was  
8 objectionable.

9 MR. MITCHELL: Thank you, Judge. Those are all  
10 the questions I have.

11 Q. [Mr. Mitchell] Please answer any questions ---

12 THE COURT: --- Mr. Davis?

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Post Conviction Relief-John Kozelski-Cross-Examination by Mr. Davis  
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1 CROSS-EXAMINATION

2 BY MR. DAVIS:

3 Q. In preparation for the guilty plea did you ever  
4 discuss with Mr. Ferebee the ability to withdraw or stop  
5 the plea prior to it being accepted?

6 A. I did not go over that with him. But like I said we  
7 did attempt a plea before this in front of Judge Dennis  
8 and it was stopped. So I don't know if I necessarily  
9 needed to go through the fact that it could be stopped  
10 again.

11 Q. Do you recall how you would have explained to Mr.  
12 Ferebee on the boxes on the sentence sheet when it's  
13 marked no recommendation or negotiation do you have a  
14 habit or a way that you normally explain that to clients?

15 A. Certainly if it is checked without negotiations or  
16 recommendations I will say that the Solicitor is not  
17 going to take a stance as far as what he believes he  
18 should get and that it is completely at the Judge's  
19 discretion.

20 Q. Prior to the guilty plea were you given any letter  
21 or correspondence from the victims that were going to be  
22 presented by the State?

23 A. We had attempted immediately after I saw Patrick the  
24 next day after he was arrested he gave me Ms. Brown's  
25 phone number. I gave that -- I passed that information

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1 along to my investigator and I do not believe she wished  
2 to interact with our office.

3 But throughout this process Mr. Wetmore had informed  
4 me that they were onboard to prosecute and that they  
5 essentially they were willing to go forward and do  
6 whatever they had to do.

7 Q. And I didn't ask it very well. What I was trying to  
8 get at is did Mr. Wetmore ever show you a letter or an  
9 email from the victim that contained what he told Judge  
10 Harrington their opinion was, which was they're still  
11 very concerned about this man and what happened and they  
12 hope you will give him closer to the maximum.

13 Did he give you any notice prior to the plea that  
14 that was their position?

15 A. He wrote -- yes. I was looking through this  
16 [indicates]. He did write me an email saying -- I  
17 believe he said you've got one last chance to plead; this  
18 is what the offer is. The State is taking no position  
19 but the victims want the max.

20 Q. But you did not share that with Mr. Ferebee when he  
21 signed up or prior to coming into court.

22 A. To be honest with you I do not -- I'm not 100  
23 percent sure. I normally would but it looks like what he  
24 wrote me in October right directly before the plea was  
25 the vics will not be present but they hope the Judge will

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1 give him the maximum. If that is what he wrote me I feel  
2 like I would have relayed that to Patrick but I don't  
3 have anything in my notes to indicate that I did tell him  
4 that.

5 Q. Because while that's not Mr. Wetmore, who  
6 represented the State, while it's not his position it  
7 would be important to note that that would be conveyed to  
8 Judge Harrington.

9 A. Certainly. And just for clarification that was  
10 actually written on October 12th, which was the day of  
11 the plea.

12 [Whereupon, Mr. Davis confers with Mr. Ferebee]

13 Q. Mr. Kozelski at any time did you receive even after  
14 the plea a request for your files from Mr. Ferebee?

15 A. I do not recall.

16 Q. Do you have any notation in your file that you sent  
17 him not just Rule 5 before the plea but is there any  
18 notation that you would have sent the contents of your  
19 file to him upon his request?

20 A. No.

21 [Whereupon, Mr. Davis confers with Mr. Ferebee]

22 Q. Thank you, Mr. Kozelski.

23 MR. DAVIS: No other questions, Your Honor.

24 THE COURT: Any redirect?

25 MR. MITCHELL: No redirect, Your Honor.

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1 THE COURT: Any objection to Mr. Kozelski being  
2 excused from the Applicant?

3 MR. DAVIS: No, Your Honor.

4 THE COURT: From the State?

5 MR. MITCHELL: None, Judge.

6 THE COURT: Sir, you're excused.

7 THE WITNESS: Thank you, Judge.

8 THE COURT: You're welcome.

9 [Whereupon, the witness is excused and exits the  
10 witness stand]

11 MR. MITCHELL: The State has no additional  
12 witnesses, Your Honor.

13 THE COURT: Any rebuttal?

14 MR. DAVIS: Can I have just a moment with my  
15 client, Your Honor?

16 THE COURT: Sure.

17 MR. DAVIS: Thank you.

18 [Whereupon, Mr. Davis confers with Mr. Ferebee]  
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Post Conviction Relief-Patrick Ferebee (recalled)-Direct Examination by Mr. Davis  
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1 MR. DAVIS: Your Honor, we would recall Mr. Ferebee  
2 for one question.

3 THE COURT: Sir, I'll remind you you're still under  
4 oath. You may proceed. State your name for the record.

5 THE WITNESS: Patrick Jerene Ferebee.

6 THE COURT: You may proceed.

7 - - - - -

8 PATRICK FEREBEE,  
9 Having been previously duly sworn,  
10 Was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. DAVIS:

13 Q. Mr. Ferebee, on the day of the plea prior to the  
14 plea did Mr. Kozelski indicate to you that the State was  
15 going to present the victim's opinion that you should get  
16 the maximum sentence before the plea? Was that shared  
17 with you?

18 A. No, sir.

19 MR. DAVIS: Thank you, Your Honor. No other  
20 questions.

21 THE COURT: Any questions for the witness?

22 MR. MITCHELL: No, Your Honor.

23 MR. DAVIS: Nothing further, Your Honor.

24 THE COURT: Any argument?  
25

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Post Conviction Relief-Closing Arguments-Remarks by Mr. Davis  
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1 CLOSING ARGUMENTS

2 BY MR. DAVIS:

3 Judge, if I may in reverse order we would argue that  
4 we've shown that Mr. Ferebee attempted to appeal after  
5 his guilty plea and it was unsuccessful. But he intended  
6 to have an appeal otherwise we would ask that you grant a  
7 belated appeal.

8 However, that's kind of our secondary but we'd much  
9 rather win the PCR. On behalf of my client I will cite  
10 Smith v State 413 S.C. 194. That deals with the State  
11 breaching a plea agreement. We would argue that the  
12 State ---

13 THE COURT: --- what plea agreement did they have?

14 MR. DAVIS: I'm sorry, Your Honor?

15 THE COURT: What plea agreement did they have?

16 MR. DAVIS: In this case Smith alleges his attorney  
17 was deficient for failing to object to the State's  
18 recommendation ---

19 THE COURT: --- that's not my question. My  
20 question is what plea agreement did they have other than  
21 his reduction in sentence?

22 MR. DAVIS: Forgive me, Your Honor. Are you  
23 talking about the Smith case or this case?

24 THE COURT: I'm talking about in this case.

25 MR. DAVIS: To remain silent; to not have a

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1 recommendation.

2 THE COURT: They didn't have a recommendation.

3 MR. DAVIS: But they made one on behalf of the  
4 victims ---

5 THE COURT: --- they didn't make a recommendation.  
6 They spoke on behalf of the victim which they are  
7 required to do under the statute.

8 MR. DAVIS: And Your Honor ---

9 THE COURT: --- so my question is what plea  
10 agreement did they have regarding -- I'm guess I'm at a  
11 loss because it says no recommendations, no negotiations.  
12 The only thing they did was reduce his sentence -- I mean  
13 his charge. But I don't see any indication in the record  
14 of any other agreement..

15 MR. DAVIS: The very direct argument we would make  
16 is that when they agree no recommendations, no  
17 negotiations that is to remain silent. Then they acted  
18 as an agent of the victim when speaking to the Court  
19 about the victim's position and we would argue that  
20 violated the agreement. That's as direct as I can make  
21 the argument, Your Honor.

22 THE COURT: What case law do you have that would  
23 support that proposition?

24 MR. DAVIS: And Your Honor, again Smith v State ---

25 THE COURT: --- what facts in Smith would support

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1 that?

2 MR. DAVIS: And again Your Honor in that case Smith  
3 alleges his attorney was deficient for failing to object  
4 to the State's recommendations after the State had  
5 previously promised to remain silent during sentencing.

6 THE COURT: But is that what the State did in  
7 Smith?

8 MR. DAVIS: We argue they did.

9 THE COURT: Factually how did -- I need more than a  
10 broad brush stroke because every case is fact driven and  
11 I don't recall Smith saying that and the facts being  
12 analogous to these facts.

13 MR. DAVIS: This is again continuing from Smith,  
14 the State's recommendation of a maximum sentence was a  
15 breach of its agreement with Smith ---

16 THE COURT: --- that's not what I'm asking. I'm  
17 asking the facts in Smith how do they support that. I  
18 know what the holding is in a case. I'm asking what  
19 factually in that case is analogous to this case to  
20 support it being applicable to this case.

21 MR. DAVIS: And I apologize, Your Honor. I'm not  
22 following you.

23 THE COURT: It would have to be exactly the same  
24 factually; and is it?

25 MR. DAVIS: I believe it is. In that case and in

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1 this case the agreement was for the State to be silent.

2 In that case the State asked for the maximum. In this

3 case ---

4 THE COURT: --- what was he charged with in Smith?

5 MR. DAVIS: Smith was indicted for murder and pled

6 guilty to voluntary manslaughter.

7 THE COURT: Was the victim in Smith present?

8 MR. DAVIS: I don't believe the record indicates,

9 Your Honor. I don't believe the order indicates.

10 THE COURT: What's the citation on Smith v State?

11 MR. DAVIS: 413 S.C. 194.

12 THE COURT: You may continue.

13 MR. DAVIS: That's our argument, Your Honor.

14 THE COURT: All right. I'll be glad to hear from  
15 the State.

16 MR. MITCHELL: Thank you, Your Honor.

17 THE COURT: You're welcome.

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Patrick Ferebee v State  
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1 CLOSING ARGUMENTS

2 BY MR. MITCHELL:

3 I'll take it in reverse order just like opposing  
4 counsel did. In terms of the issue in regards to direct  
5 appeal I would cite to Roe v Flores-Ortega which was a  
6 United States Supreme Court case from 2000, 528 U.S. 470  
7 --

8 THE COURT REPORTER: I'm sorry, give me the cite  
9 again please?

10 MR. MITCHELL: The cite; 528 U.S. 470. And so the  
11 Court held in that case that counsel has a  
12 constitutionally imposed duty to consult with the  
13 Defendant about an appeal where there is reason to think  
14 that 1) that a rational Defendant would want to appeal  
15 and 2) that this particular Defendant reasonably  
16 demonstrated to counsel he or she was interested in  
17 appealing.

18 The Court goes on to say although not controlling a  
19 highly pertinent factor in evaluating this issue will be  
20 whether the conviction followed a trial or a guilty plea.  
21 This is because a guilty plea produces the scope of any  
22 potential appealable claims and also that such a plea may  
23 indicate that the Defendant seeks a conclusion to  
24 judicial proceedings.

25 In this particular case, Your Honor counsel

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1 testified that he did not see any appealable issues then  
2 or now. Notwithstanding the fact that Mr. Ferebee did  
3 not indicate that he wanted to appeal at that time. And  
4 so the normal process after say a guilty plea is appealed  
5 counsel would have to submit an explanation to the Court  
6 of Appeals on why they think that they have some merit to  
7 get a guilty plea appealed.

8 In this case counsel's testimony indicated that he  
9 does not believe that there would be merit. In regards  
10 to the first issue I think the record is quite clear.  
11 Page 11 lays out that the Solicitor does not make any  
12 recommendations to the sentence.

13 Pursuant to the Victims Bill of Rights victims have  
14 to be notified about what goes on in their cases.  
15 Notwithstanding that they can speak at that sentencing if  
16 they want to. And so I think the State's argument would  
17 be that obviously the transcript says that they can't be  
18 there at the time so the Solicitor was simply relaying  
19 their thoughts.

20 It would be the State's position that there is no  
21 recommendation in this case and I think the record bears  
22 that out.

23 And that would be the State's argument, Your Honor.

24 THE COURT: Anything further?

25 MR. DAVIS: If we can have one moment, Your Honor.

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Post Conviction Relief-Closing Arguments-Remarks by Mr. Mitchell  
July 26, 2018

1 [Whereupon, Mr. Davis confers with Mr. Ferebee]  
2 MR. DAVIS: Nothing else, Your Honor. Thank you.  
3 THE COURT: You're welcome.  
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Patrick Ferebee v State  
Post Conviction Relief-Ruling by the Court  
July 26, 2018

1 RULING

2 THE COURT: The first observation that I will make  
3 is that Smith is not analogous to this case. It is not  
4 applicable at all. Factually it's not analogous. In  
5 Smith the State and the Defendant had a negotiated plea  
6 to remain silent. That is not -- and if that were in  
7 fact the case here I would agree with the Applicant's  
8 argument but it's not even remotely the same situation.

9 When you have a negotiated plea and a part of that  
10 plea is that you remain -- that negotiation is that you  
11 remain silent and you breach it that's different than  
12 what happened in this case. And generally when you have  
13 a negotiated plea that involves silence you put that on  
14 the record. It happens all the time. The State says  
15 we've negotiated that we will take no position and we're  
16 going to remain silent.

17 And that's not what happened in this case. And so  
18 Smith is not applicable nor is it analogous and therefore  
19 I don't need to apply it to this situation and I don't  
20 think it forms a basis for the grant of the post-  
21 conviction relief.

22 There have been several issues raised by the  
23 Defendant -- Applicant; I'm sorry, most of which deal  
24 with things that were covered in depth by the plea. He  
25 indicates that his counsel was deficient because he did

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1 not object to the Solicitor's statement. I would observe  
2 for the record and make the finding that his counsel had  
3 no basis to object nor any obligation to because he did  
4 not in any way, State did not breach in any way what they  
5 had agreed to.

6       However, there really was no agreement except that  
7 he would plead straight up for a reduction in his  
8 sentence. And Mr. Wetmore goes in great detail regarding  
9 the appropriateness of reducing the sentence. And really  
10 in large part as a part of mitigation and the fact that  
11 the Defendant maintained at all times that he did not  
12 intend to hurt anyone, what he fails to acknowledge and  
13 realize is that he didn't have to intend under the ABHAN  
14 statute nor the arson statute.

15       The arson statute is in some instance really a  
16 strict liability statute. When you set something on fire  
17 you're held accountable for it in layman's language. And  
18 the ABHAN Mr. Wetmore goes into great detail that he  
19 reduced it to an ABHAN because he felt that the specific  
20 intent for the attempt charge was not warranted and he  
21 did not have a problem reducing it.

22       And quite frankly and with much credit to him  
23 acknowledged that that was really the more fair course of  
24 action to pursue in terms of prosecuting the Applicant.  
25 And so I can find no merit in that argument as well. The

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1 State honored what they said they would do which is that  
2 he would plead straight up and they would reduce the  
3 charge and they would take no position. And they didn't.  
4 If you look at the transcript the State never takes a  
5 position regarding sentencing. And they never make any  
6 argument regarding sentence.

7       And if you read -- it becomes even more clear as you  
8 go to the end of the transcript. What he merely states  
9 is that the victims have become homeless, that they are  
10 basically moving from pillar to post, that they really  
11 have no desire to be in the Defendant's -- the  
12 Applicant's presence. They are afraid of him and that he  
13 merely indicates that what their position is regarding  
14 any applicable sentence or what their desires are.

15       And I think under the Victim's statute he is  
16 required to do that and would have fallen short of his  
17 responsibility if he had failed to do that. He was  
18 merely -- it would be no different that if someone had  
19 written a letter and he read it on their behalf and  
20 indicated their posture that they were compliant and very  
21 concerned about the case as well as the disposition of  
22 the case.

23       But very clearly at the beginning of the transcript  
24 as we are all required to do we ask if the victim has  
25 been notified and if they are present, and that's at page

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1 3, and he indicates they left the State due to the  
2 incident and there is no restitution and that they do not  
3 plan to be present, which is again reiterated throughout  
4 certain portions of the transcript.

5 I do not find the Applicant's testimony credible  
6 that he did not understand what was going on. I do not  
7 find his testimony credible that he did not have the  
8 opportunity sufficiently to state the basis of any  
9 defense or his mitigation because he goes on for several  
10 pages in the transcript reiterating that.

11 And the Court goes into a colloquy with him  
12 regarding his mental health issues, the lack of intent  
13 and otherwise. So it is just simply not borne out by the  
14 contemporaneous record regarding the facts and  
15 circumstances of the case.

16 I find Mr. Kozelski credible, that he did go over  
17 the discovery with him. I find credible that he met with  
18 him on multiple occasions and that he explained to him  
19 not only the elements of the offense but the range of  
20 penalty as well as his constitutional rights.

21 I also find him credible that there was no  
22 recommendation, that there were no negotiations. And  
23 there was no evidence that the State had broken their  
24 plea agreement because there was no plea agreement other  
25 than the reduction of sentence. I also find credible

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1 that he had a conversation with the Applicant's mother  
2 regarding an appeal. And the issue is not whether he  
3 failed to file the appeal; that's only one prong of the  
4 test. The other part of it is whether he would have been  
5 successful.

6 And there is absolutely no basis for a belated  
7 appeal in this matter as I do not perceive based on the  
8 record it would be successful on any front. And so there  
9 is no basis for a belated ---

10 MR. FEREBEE: --- Ms. Jefferson ---

11 THE COURT: --- no, sir don't interrupt the Court  
12 when I'm speaking. There is no basis for a belated  
13 appeal in this matter. Also, there is no question  
14 regarding his competency. They went through that at  
15 great detail. Doctor Knight saw him for mitigation and  
16 he was seen by Doctor Gomez at MUSC and he did not have  
17 any concerns. And the record is very clear regarding his  
18 ability to assist in his representation.

19 He does indicate that there are a couple of photos  
20 that he was not able to show him because he got them  
21 late. He doesn't recall whether he showed them to him in  
22 terms of what technology was available. But I can't  
23 discern any prejudice from that either because the  
24 Applicant was there; he saw what he did. He knew what  
25 the results of it were. So I don't know that there

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1 really is any appreciable ---

2 MR. FEREBEE: --- Ms. Jefferson ---

3 THE COURT: --- sir, do not interrupt the Court  
4 again.

5 [Whereupon, Mr. Davis confers with Mr. Ferebee]

6 THE COURT: There is no appreciable difference and  
7 I can't discern any prejudice to him regarding whether he  
8 did or did not see the photos. It is also clear that and  
9 I do not find credible his testimony that he didn't know  
10 he could stop the plea.

11 He and Judge Harrington had a very long discussion  
12 throughout the entirety of the plea. She asked him on  
13 several occasions knowing these certain things do you  
14 still wish to go forward. She even gave him multiple --  
15 he had three pages of the transcript to explain his  
16 version of the facts and what he thought needed to be  
17 changed regarding the facts.

18 So I do not find credible any assertion that he did  
19 not know he could stop the plea. If he wished to insist  
20 on going to trial because he also speaks at length about  
21 his right to trial and going to trial.

22 And I do find credible Mr. Kozelski's testimony that  
23 he would have gone over the email with the Applicant  
24 although he doesn't have any specific recollection or  
25 notation of having done that. The record is very clear

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1 regarding his understanding of the charges, range of  
2 penalty, the violent and serious classification, the fact  
3 that it is day for day as well as the three strikes law  
4 because in the transcript Judge Harrington asks him to  
5 explain in his own words what it means to him and he's  
6 very articulate in being able to explain that. That's at  
7 page 3 lines 11 through 25, page 4 lines 1 through 25,  
8 page 5 lines 1 through 16.

9 He clearly understood his constitutional rights.  
10 That's at page 5 lines 18 through 25 and the nature of  
11 what he was entering into which was a guilty plea at page  
12 6 line 14 and line 17. He made the Court clearly aware  
13 of his attempted suicide that he never intended to hurt  
14 anyone.

15 And again I sort of got ahead of myself but I will  
16 come back to those page and line numbers, that there were  
17 no threats or promises made to him. That's at page 6  
18 line 24 through 25 and page 7 line 1, that he was  
19 satisfied with his attorney at page 7 lines 5 through 13,  
20 that he had done all possible for him page 7 line 18,  
21 that he was clearly explained -- that he had no  
22 complaints as well and that he was well aware of his  
23 right to appeal at page 7 lines 18 through 21.

24 The Court was made well aware of his diagnoses which  
25 he told the Court was PTSD. I'm well aware of the

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1 reduction in sentence and the implications which is at  
2 page 9.

3 MR. FEREBEE: Ms. Jefferson ---

4 THE COURT: --- he also understood it was a  
5 straight up plea; that's page 11 lines 17 through 19.  
6 Clearly, as I've already acknowledged, Mr. Wetmore  
7 reduced it to an ABHAN an acknowledgment of mitigation  
8 and lack of specific intent to kill.

9 And he also specifically says on the record that he  
10 has no recommendation and that's at page 11 lines 20  
11 through 24. And the Court being well aware of his  
12 diagnosis is at page 8 where they discuss it at length in  
13 a colloquy with the Court.

14 The Court was also aware of the evaluation done by  
15 Doctor Knight and the facts are allocuted at pages 10 and  
16 11 that the plea was free and voluntary at page 19 line  
17 14, that he didn't need any more time to make up his mind  
18 at page 19 line 17, that he understood the nature of the  
19 proceedings at page 8 as well as his defenses and the  
20 limitations of his defenses at pages 8 and 9.

21 And also he made a great discussion in his testimony  
22 regarding that the Court didn't know there was a back  
23 door. He made the Court aware there was a back door at  
24 page 18 lines 14 through 23. He corrected the facts that  
25 were elucidated by the State at page 12 lines 12 through

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1 25, page 13 -- well, actually at page 12 lines 12 through  
2 25. Also regarding any investigation by his attorney at  
3 page 13 and his contradiction about the facts goes on  
4 page 13, 14, 15, and 16 and basically reflects the same  
5 testimony he provided to the Court today. And he  
6 acknowledges that he damaged the property and that he put  
7 them in fear of their life and actually put them in  
8 actual harm of losing their lives.

9       The only thing I can discern from the transcript  
10 that is troubling to the Applicant is that he asked the  
11 Court for a different sentence that he received. And  
12 when it did not pan out that way he has a little bit of  
13 remorse regarding that ---

14       MR. FEREBEE: --- I did not ask for that ---

15       THE COURT: --- you asked for 300 hours of  
16 community service and that you not have to do any jail  
17 time and the Court simply did not agree with that posture  
18 ---

19       MR. FEREBEE: --- when have I asked that ---

20       THE COURT: --- in any event -- I think I've  
21 covered everything. If I haven't I maintain the ability  
22 to make any additional findings of fact or conclusions  
23 that are reflected by the record. I'm directing the  
24 Attorney General to provide the Court with a proposed  
25 order within 10 days of today in Word format to my

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1 secretary which is [djeffersonsc@sccourts.org](mailto:djeffersonsc@sccourts.org). Please  
2 copy Mr. Davis on that order in the event that he wishes  
3 to make any additions or request any additions or  
4 modifications to the order. And I'm giving him leave to  
5 make any findings of fact and conclusions of law  
6 consistent with the record. Thank you very much.

7 MR. DAVIS: Thank you, Your Honor.

8 MR. MITCHELL: Thank you, Judge.

9 THE COURT: You're welcome. And also -- wait  
10 before he goes -- also there was one thing I forgot to  
11 mention and just remembered just now, that even though  
12 the victims in this case asked for the maximum penalty it  
13 is clear from the record that Judge Harrington gave a  
14 great deal of consideration and mitigation to everything  
15 he presented to her because with the maximum penalty that  
16 was available she gave him 12 years, which is extremely  
17 lenient under the circumstances and the factual basis of  
18 the plea.

19 MR. FEREBEE: Ms. Jefferson?

20 THE COURT: Yes, sir.

21 MR. FEREBEE: I'm going to say this and y'all can  
22 record this too.

23 THE COURT: Yes, sir.

24 MR. FEREBEE: So basically you're telling me I just  
25 lost?

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1 THE COURT: Pretty much, yes sir.

2 MR. FEREBEE: And guess what? If my Momma passes  
3 away before I do the seven years you'll remember me. And  
4 I'm going to set a big ass fire. For real, for real.  
5 And that's real. And I'm going to burn this shit ---

6 THE COURT: --- the deputies, y'all need to do a  
7 report. He just threatened a public official and I want  
8 it referred to the Attorney General or the Solicitor for  
9 prosecution. Thank you very much. Have a good day.

10 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*

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STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 Patrick J. Ferebee, #370050, )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 IN THE NINTH JUDICIALCIRCUIT

Case No.: 2017-CP-10-5802

**ORDER OF DISMISSAL**

FILED  
 2019 MAY 14 PM 1:04  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

Presiding Judge: Honorable Deadra L. Jefferson  
 Applicant's Attorney: Rodney Davis, Esq.  
 Respondent's Attorney: DeShawn H. Mitchell, Esq.  
 Plea Counsel: John J. Kozelski, III, Esq.  
 Date of Hearing: July 26, 2018  
 Court Reporter: Joyce C. Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed on October 10, 2017, by Patrick J. Ferebee (Applicant). Respondent made its Return on or about January 23, 2018. An evidentiary hearing into the matter was convened on July 26, 2018, at the Charleston County Courthouse in Charleston, South Carolina. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Plea Counsel John Kozelski, Esquire, also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return, and Applicant's records from the Department of Corrections. After reviewing the record and everything presented, this Court finds

Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the April 2015 term of the Charleston County Grand Jury for Attempted Murder<sup>1</sup> (2015-GS-10-01643) and Third-Degree Arson<sup>2</sup> (2015-GS-10-01647). On October 12, 2016, before the Honorable Kristi L. Harrington, Applicant pled guilty to Assault and Battery of a High and Aggravated Nature (ABHAN)<sup>3</sup> a lesser included offense of Attempted Murder and Third-Degree Arson as indicted. Applicant was represented by John Kozelski, Esquire. Burns Malone Wetmore, Esquire, prosecuted the case. Judge Harrington sentenced Applicant to confinement for a period of twelve (12) years for each offense. The sentences were to run concurrently. Applicant was to be given six hundred and sixty-eight (668) days credit for time served. Applicant was also ordered to receive a mental health evaluation and follow all recommendations. He also received a referral to the Alcohol Treatment Unit (ATU). Further, the Court ordered no contact with the victim. Applicant did not appeal.

### FACTUAL HISTORY

This incident occurred on December 15, 2014, in North Charleston, South Carolina. (Transcript of Plea at 10:7-10, State v. Patrick Ferebee, October 12, 2016). At some point,

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<sup>1</sup> Attempted Murder is a violent and most serious felony, punishable by up to thirty (30) years in prison. See S.C. Code Ann. § 16-3-29 (2005). A sentence for Attempted Murder may not be suspended nor probation granted. *Id.*

<sup>2</sup> Third-Degree Arson is a felony punishable by up to fifteen (15) years in prison. See S.C. CODE ANN. § 16-11-110(C) (2005).

<sup>3</sup> ABHAN is a violent and serious felony punishable by up to twenty (20) years in prison. See S.C. Code Ann. §16-3-600(B)(1)-(2) (2005).

2/13  
[Signature]

Applicant had a relationship with the victim, Mattie Brown. (Id.). Applicant came to her residence but she would not let him into her home. (Id. at 10:11-14). Applicant got very upset with her after being denied entry. (Id. at 10:15). He banged on the door and tried to get in, but she refused to let him enter. (Id. at 10:15-17). At that point, Applicant told her he was going to set the residence on fire. (Id. at 10:17-18). He poured gasoline over the front door, which was the only door to the residence, and set it on fire. (Id. at 10:19-20). The apartment went up in flames and was almost completely destroyed. (Id. at 10:21). The victim was in the apartment with her minor son. (Id. at 10:22). Applicant left and while doing so, also set her car on fire. (Id. at 10:25). At that time, the police arrived and apprehended Applicant in close proximity to the scene, where he reeked of gasoline. (Id. at 11:1-3). Additionally, Applicant gave a two-page confession in which he said he had committed the crimes, indicating he was very upset that she did not reciprocate his feelings. (Id. at 11:4-7).

### ALLEGATIONS

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

1. "Ineffective assistance of counsel."
2. "Solicitor violated plea agreement."
3. "Judge improperly sentenced."

### SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

#### Applicant's Testimony

Applicant testified he is from North Charleston, South Carolina. He testified he dropped out of high school in the tenth grade while being enrolled in the Youth Build America Program at a local charter school. He testified he did not receive his diploma but was currently working on his GED while incarcerated. Applicant testified he takes medication and has been prescribed Paxil at

a dose of fifty milligrams. He testified he was not having any issues with his medication at the evidentiary hearing, and he understood the proceedings.<sup>4</sup> Applicant testified Plea Counsel was appointed to represent him. He testified that during his twenty-two (22) months of pre-detention Plea Counsel represented him, he only met with him two (2) to four (4) times at the most. Applicant testified those meetings occurred at the jail with all of them happening via video conference. He testified he made a previous attempt to plead guilty in front of the Honorable R. Markley Dennis, Jr., prior to his actual guilty plea. Applicant testified Judge Dennis denied his guilty plea to attempted murder and third-degree arson. Applicant testified Plea Counsel reviewed the sentences he would face if he pled guilty. He testified he was supposed to accept fault at the guilty plea; but during the plea, the Assistant Solicitor told the Judge the victim wanted him to get the maximum sentence for his charges. Applicant testified Plea Counsel did not object to the assistant solicitor's comments, and he was afraid to say anything to the Judge because of possibly receiving contempt of court charges. He testified it was his understanding that his plea was a straight-up plea with no recommendation or negotiation by the State. Applicant testified if he had known the State could comment regarding the victim's desires, he would have proceeded to trial. He testified his life was a "wreck" as he was in an emotional state dealing with his medication and mental health and that he wanted to commit suicide as well as hurt others at the time of the crime. Applicant testified Plea Counsel did not tell him the State was going to speak on behalf of the victims, and had he known the State would, he would have withdrawn his plea.

Applicant testified once he was sentenced he was taken to Kirkland Correctional Institution. He testified he could not use the phone to call anyone once he got there. Applicant testified he wrote a letter to his mom about his guilty plea and told her he wanted to appeal his

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<sup>4</sup> He testified there had been a "mix-up" in his medications at the institution earlier in the week but that had been corrected and he was "fine" on the day of the hearing.

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sentence. He testified he did not talk to Plea Counsel after his guilty plea or while at Kirkland. Applicant testified he sent a letter to the Clerk of Court to get the Judge to reconsider his sentence because he felt as though his agreement to plead guilty was violated. He testified he wrote to the Office of Appellate Defense concerning his appeal, but they told him his appeal was invalid because he did not file it with opposing counsel and the lower court. Applicant testified he was unaware of the law. He testified he wanted Plea Counsel to subpoena his girlfriend (the victim) to come to his guilty plea.<sup>5</sup> Applicant testified he would have gone to trial had he known the solicitor was going to make those comments, and he felt as though he threw his rights away. Applicant testified his girlfriend did not believe he was trying to kill her.

On cross-examination, Applicant testified Plea Counsel met with him four (4) or five (5) times prior to his guilty plea.

He testified Plea Counsel did not review his discovery with him, and he never received a copy of it. Applicant testified Plea Counsel withheld his discovery because Plea Counsel wanted him to plead guilty and that confused him. He testified during his conversations with Plea Counsel, they discussed plea offers and he asked Plea Counsel to talk to his girlfriend. He testified the solicitor broke the plea agreement when he made comments on behalf of the victims asking for a higher sentence. Applicant testified South Carolina has high criminal domestic violence rates, and the Judge he was appearing in front of was a female, which may have contributed to his sentence. He testified after a review of his guilty plea transcript the Assistant Solicitor ultimately told the Judge the State was not making a recommendation in his case. Applicant testified he was not trying to hurt anyone during the crime. He testified he did not talk to Plea Counsel about appealing his

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<sup>5</sup> At the time of the plea the victim and her minor child were homeless as a result of the destruction of their home. At the time of the plea they were out of state and moving around different places. Although interested in the outcome of the proceedings they did not plan to attend the plea. (*Id.* at 11:8-16).

case because he did not have a chance. Applicant testified Plea Counsel did not come to see him after he pled guilty. He testified he set the car on fire and wanted to set himself on fire. Applicant testified he explained his version of the facts to the Judge and she was aware of them. He testified he gave a confession to police about what happened and that he had mental health issues. Applicant testified he received a mental health evaluation, but Plea Counsel did not bring it to the Court's attention during his guilty plea.

On re-direct, Applicant testified he was afraid of contempt of court charges if he had objected when the solicitor made comments about the victim's stance on his sentencing. He also reiterated that the Apartment had a back door as well as a fire extinguisher.

#### Plea Counsel's Testimony

Plea Counsel testified he has been practicing law since 2011, and the majority of his career has been devoted to criminal law. He testified he was appointed to represent Applicant for some time as Applicant also had minor drug charges. Plea Counsel testified during December of 2014, when the crime happened, Applicant's girlfriend broke up with him and Applicant was going through mental health issues. He testified during the crime, Applicant was trying to commit suicide. Plea Counsel testified he had Applicant evaluated for competency by Dr. Knight of the Medical University of SC (MUSC) for mitigation purposes. He testified he personally never thought Applicant was not competent, but shortly after Applicant was arrested he visited him and he was not making sense which resulted in having Applicant evaluated. Plea Counsel testified the results of the competency evaluation were that Applicant was found competent. He testified he met with Applicant before he pled guilty at least fifteen (15) times. Plea Counsel testified during those meetings he reviewed discovery with Applicant, but there were issues with showing him pictures from the incident because of technology and late receipt of the pictures. He testified

Applicant's drug charges were dismissed prior to his guilty plea. Plea Counsel testified that it was pretty straight forward as to what the evidence showed. He testified there was never a question of whether Applicant committed the crime only why he did what he did. Plea Counsel testified Applicant's story was he was to trying to commit suicide and not trying to kill anybody in the apartment. He testified Applicant wrote a confession and was found some twenty (20) feet away from the apartment. Plea Counsel testified he did not feel he needed to object to the State's comments concerning the victim's position regarding sentencing. He testified he did not believe the State's comments were the assistant solicitor's personal opinions. Plea Counsel testified Applicant previously attempted a guilty plea in front of Judge Dennis for third-degree arson and attempted murder but Applicant had a problem allocating to the charge. He testified there was also an issue during that plea because Applicant did not have the intent to murder anyone. Plea Counsel testified when Applicant finally did plead guilty, at no time did Applicant indicate that he wanted him to stop the plea proceeding. He testified he did not talk to Applicant after the plea, and Applicant was transported quickly. Plea Counsel testified he received a phone call from Applicant's mother, and he talked to her about the plea, a motion for reconsideration, and an appeal. He testified he told Applicant's mother a motion for reconsideration was unlikely to be granted and it would put Applicant in the same situation he was in prior to the plea. Plea Counsel testified he told Applicant's mother to call him back and let him know what Applicant wanted to do. He testified he did not believe he ever got a call back. Plea Counsel testified had he felt there was an objectionable issue during the guilty plea, he would have objected. He testified he did not believe the State's comment regarding the victim's stance on a sentence for the Applicant was objectionable.

On cross-examination, Plea Counsel testified he did not go over stopping a guilty plea with

Applicant. He testified the Assistant Solicitor wrote him an email indicating the victim wanted Applicant to receive the maximum sentence for the charge. Plea Counsel testified he could not remember if he shared that email with Applicant.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689, 104 S. Ct. at 2065. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that

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counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. This Court finds as follows on the following grounds presented by Applicant at the evidentiary hearing:

**Ineffective Assistance of Counsel**

*Failure to Object*

Applicant alleges Plea Counsel was ineffective for failing to object to the State's comments concerning the victim's stance regarding sentencing. Applicant testified the assistant solicitor told the plea judge during his guilty plea the victim wanted him to get the maximum sentence for his charges. Applicant testified Plea Counsel did not object to the assistant solicitor's comments, and he was afraid to say anything to the judge because of possibly receiving contempt of court charges. Applicant testified it was his understanding that his plea was a straight up plea with no recommendation by the State, and had he known the State could comment regarding the victim's desires, he would have proceeded to trial. In support of this allegation, Applicant cites to Smith v.

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State 413 S.C. 194 775 S.E.2d 696 (2015), in which the court held the State's recommendation of the maximum sentence was breach of plea agreement with defendant, which included the State's promise to remain silent during sentencing, that warranted invalidation of the plea agreement in the manslaughter prosecution. This Court initially finds the Smith case is not analogous to Applicant's case in that in Smith there was a negotiated plea offer between the parties. In Applicant's case, there was never a negotiated plea offer as evidenced by the State's comments to the plea judge that there was no recommendation. (Tr. at 11:19-24). This is further corroborated by the Applicant's testimony. Further, this Court finds Plea Counsel did not have a valid basis to object to the assistant solicitor's comments. This Court finds the assistant solicitor in his comments was merely complying with the Victim's Bill of Rights in referencing the victim's comments as she requested of him during Applicant's guilty plea. S.C. CONST. art. I, § 24. This Court does not find Applicant's testimony credible regarding his mental state negating his ability to understand his attorney, and likewise finds credible Plea Counsel's testimony that he met with Applicant and explained to him his constitutional rights. This Court further finds there are no questions regarding Applicant's competency as Plea Counsel had Applicant evaluated. (Tr. at 10:1-4). This Court further finds there is no prejudice from Applicant not seeing the crime scene photos. This Court does not find Applicant's testimony credible that he could not have stopped the plea proceeding, given the extensive time as reflected in the record, in which he spoke to the plea judge during his guilty plea. (Id. at 12:12 – 17:2). This Court further finds credible Plea Counsel's testimony that he would have reviewed the email from the Assistant Solicitor (indicating the victim wanted Applicant to receive the maximum sentence for the charge) with Applicant. This Court notes during the plea, Judge Harrington very thoroughly went through the plea colloquy with Applicant regarding his sentence ranges and constitutional rights. (Id. at 3:11-25); (Id. at 4:1-25); (Id. at 5:18-

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25). Moreover, Applicant indicated that he understood the purpose of the plea hearing and expressed satisfaction with his plea counsel's representation. (Id. at 8:20-23); (Id. at 7:5-18). Lastly, this Court notes even though the victim asked for the maximum sentence, Judge Harrington considered the mitigation offered in this case and sentenced Applicant to twelve (12) years imprisonment when he was potentially exposed to twenty (20) years imprisonment. (Id. at 23:15-21). Judge Harrington was likewise made aware of the reduction in charge in mitigation of the Applicant's lack of the requisite specific intent to kill. (Id. at 8-9); (Id. at 11:20-24). Therefore, this Court finds Applicant has failed to meet his burden to prove Plea Counsel was ineffective. This allegation is denied and dismissed with prejudice.

*Failure to File Notice of Appeal*

Applicant alleges Plea Counsel was ineffective for failing to file a notice of appeal after his guilty plea. While trial counsel is required to make certain the defendant is made fully aware of the right to appeal, the standard for a guilty plea differs. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to believe that: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). In the event of a guilty plea, "there must be proof that extraordinary circumstances exist, such as where a defendant inquires about an appeal, in order for counsel to be required to advise a defendant of the right to appeal." Rolen v. State, 384 S.C. 409, 415, 683 S.E.2d 471, 474-75 (2009) (citing Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)). When counsel has consulted with the defendant regarding the right to appeal, "[c]ounsel performs in a professionally

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unreasonable manner *only* by failing to follow the defendant's express instructions with respect to an appeal." Flores-Ortega, 528 at 478, 120 S. Ct. at 1036 (emphasis added).

This Court finds no deficiency on the part of Plea Counsel or prejudice there from. The Court relies upon the credibility findings already set forth above, and finds Applicant never asked for an appeal and no other reason existed for Plea Counsel to believe Applicant wanted or would want an appeal. In fact, Applicant stated that he understood his right to appeal his plea and the sentence within ten (10) days, and made no mention of his desire to appeal at that time. (Tr. at 7:18-22). Moreover, on appeal from a guilty plea the notice must be accompanied by "a written explanation showing that there is an issue which can be reviewed on appeal," and the explanation must also identify the issues and provide a factual basis for the issues. Rule 203(d)(1)(B)(iv), SCACR. This Court finds based on Plea Counsel's testimony, there were no appealable issues. Therefore, this Court finds no basis for a belated direct appeal. Accordingly, Applicant's request for relief by way of this allegation is denied and dismissed with prejudice.

#### 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 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR

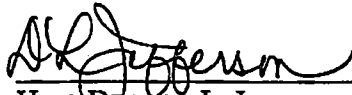
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counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

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 15<sup>th</sup> day of Feb., 2019.

  
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 HON. DEADRA L. JEFFERSON  
 Presiding Judge  
 Ninth Judicial Circuit

Char \_\_\_\_\_, South Carolina

After the conclusion of this case and the Court had ruled on the merits of the matter the Applicant threatened the Court with setting it on fire. A referral was made to memorialize the threat for the protection of the Court. Further it was made to trigger a forensic evaluation of the Applicant by SCDC to ensure the Applicant did not pose a threat to the Court, the public or himself. The Applicant has a projected release date of February 21, 2025.

BMW20141212491

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2014043323

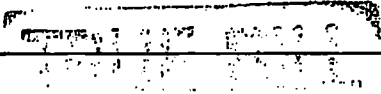
ARREST WARRANT NUMBER

2014A1021001299

DATE OF ARREST

December 15, 2014

ACTION OF GRAND JURY



*Nancy Mc Krown*  
Foreperson of Grand Jury  
Date:

APR 7 2015

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2015GS1001643

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2015

THE STATE

vs.

PATRICK JERENE FEREBEE

DOB: [REDACTED]

B/M

Indictment for  
Attempted Murder

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

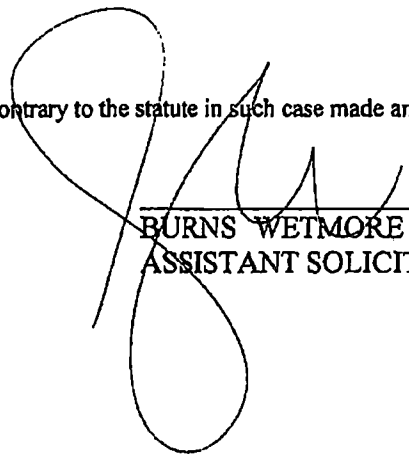
INDICTMENT

At a Court of General Sessions, convened on April 6, 2015 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about December 15, 2014, the Defendant, PATRICK JERENE FEREBEE, did, with intent to kill and malice aforethought, attempt to kill Maddie Brown. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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

  
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BURNS WETMORE  
ASSISTANT SOLICITOR

BMW20141212491

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2014043323

ARREST WARRANT NUMBER

2014A1021001301

DATE OF ARREST

December 15, 2014

ACTION OF GRAND JURY

**TRUE BILL**

*Nancy McKeown*  
Foreperson of Grand Jury

Date: APR 7 2015

VERDICT

Foreperson of Petit Jury Date:

INDICT

DOCKET NO. 2015GS1001647

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2015

THE STATE

vs.

PATRICK JERENE FEREBEE

DOB: [REDACTED]  
B/M

Indictment for

Arson - 1st Degree

**FILED**

4/21/2015 3:01:44 PM  
JULIE J. ARMSTRONG  
CLERK OF COURT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

INDICTMENT

At a Court of General Sessions, convened on April 6, 2015 the Grand Jurors of Charleston County present upon their oath:

**Arson - 1st Degree**

That in Charleston County, South Carolina, on or about December 15, 2014, the Defendant, PATRICK JERENE FEREBEE, willfully and maliciously did cause an explosion, or set fire to, burn or cause to be burned a building or structure which caused death or serious bodily injury to Maddie Brown; in violation of Section 16-11-110(A) of the South Carolina Code of Laws (1976) as amended.

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

  
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BURNS WETMORE  
ASSISTANT SOLICITOR