VOLUME III of III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Jan 18 2022

S.C. SUPREME COURT

Certiorari to Saluda County

Honorable Debra R. McCaslin, Circuit Court Judge

GERALD R. WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000783

APPENDIX

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door and wall from both directions, including a bullet lodged in the electrical box of the home. Numerous bullet casings were also found in the yard of the home. Young's gun was found in his room. In the early morning hours following the crime, two guns and two sets of rubber latex gloves—one complete set of gloves and one missing pieces—were found beside the driveway of a nearby house. (R.p.160, line 18–R.p.162, line 24; R.p.179, lines 2–7; R.p.180, line 16–R.p.183, line 6; R.p.184, line 18–R.p.189, line 12; State's Exhibit 21; State's Exhibit 22). Officers searching the van found two stocking hats, a bandana, a dark jacket, and a partially torn rubber latex glove. (R.p.339, line 21–R.p.340, line 25). At the Saluda County Detention Center, Officer Rhonda Adams was booking Applicant when she discovered two pieces of latex rubber gloves still attached to two of his fingers. Officer Adams recovered those pieces of gloves from Applicant's possessions, and gave them to Investigator Shorter. (R.p.208, line 15–R.p.212, line 22).

The sheriff's office ordered DNA testing of the pieces of latex gloves found near the driveway and in the van, and the tests found Applicant's DNA on both sets of items. Forensic testing found that eleven of the fifteen recovered bullet shell casings came from a .40 caliber gun, one of the two found with the rubber latex gloves. (R.p.384, line 3–R.p.387, line 25; R.p.409, line 23–R.p.473, line 19; R.p.510, line 8–R.p.514, line 5; R.p.539, line 14–R.p.545, line 4).

At trial, Williams, Wrighton, and Young testified they were in the home at the time of the shooting.[2] They were sitting around the home when they noticed two men approaching. They turned off the lights, and Wrighton went to the door to get a better look at the men. The men began firing at Wrighton through the door and wall. Wrighton ran to the living room and pushed Williams to the ground. Young pulled out his gun and returned fire, shooting towards the men but firing

[2] In addition to the three victims, six other individuals lived in the home: Mike and Felicia Barlow, their three children and Williams's stepbrother Frank Gonzalez. However, these six individuals were not in the home that night. R.p.219, line 5–R.p.220, line 8; R.p.225, line 23–R.p.226, line 5).

through the door and wall. After a few moments, the gun battle ended, and all three occupants remained in the home until police arrived. (R.p.231, line 4–R.p.235, line 1; R.p.255, line 4–R.p.257, line 8; R.p.275, line 3–R.p.276, line 24).

Charley also testified at trial. He admitted to driving to Young's home in an attempt to collect money. He claimed: (1) Applicant was his driver; (2) a man named Rico Riverez also followed them in a separate vehicle; (3) Applicant was unaware of the true purpose for the trip; (4) he disembarked from the vehicle some distance from Young's home, and told Applicant to wait for him with the vehicle; (5) he and Rico were the ones that approached the trailer; (6) he heard Young shout and then saw him come outside and fire two warning shots into the air; (7) he responded by firing one shot into the air; (8) Rico then shot at the house; (9) he fled without Rico, and had no idea whether Rico was arrested after the event; (10) he returned to Applicant at the vehicle, and within seconds of his return police pulled up to the vehicle. (R.p.585, line 24–R.p.595, line 23).

On cross-examination, Charley admitted he had pled to one count of attempted murder as a result of his participation in this crime and that the State had dropped two charges of attempted murder against him because he had agreed to cooperate with the police and in the State's case against Applicant. He admitted to telling Investigator Shorter about the crime and that Applicant, not Rico, was the second gunman. The solicitor reminded Charley that his sentencing hearing was deferred until after Applicant's trial. He conceded he was "double-crossing" the State and that he was lying about Applicant's involvement in the crime in an attempt to try and help himself. He also admitted to speaking with Williams at the home during a previous attempt to try and locate Young, and that he only assumed Williams and the other occupants of the home were not present that night because she appeared scared during the previous attempt and he did not see a vehicle in

the yard. Finally, Charley stated Applicant was in possession of the .40 caliber gun found with the gloves, he fired one shot in the air, and did not shoot at Young or the house, and conceded that Applicant was the person who fired numerous shots towards Young and the house. (R.p.603, line 21–R.p.607, line 23; R.p.612, line 1–R.p.618, line 20; R.p.624, line 17–R.p.627, line 18; R.p.631, line 21–R.p.633, line 24).

C. Verdict & Subsequent Proceedings

On October 17, 2013, the jury returned a verdict of guilty on each indictment. Judge Baxley sentenced Applicant to three concurrent terms of twenty years' imprisonment.

Applicant filed a timely notice of appeal. Appellate Defender David Alexander perfected the appeal by filing an *Anders*[3] brief with the Court of Appeals. The Court subsequently issued an order denying Mr. Alexander's motion to be relieved as counsel and directing the parties to brief the following issues:

> I. Whether the trial court erred in refusing to charge the jury on the lesser-included offense of first-degree assault and battery?
>
> II. Whether the trial court erred in charging the jury on the doctrine of transferred intent?

Following briefing and oral argument, Court of Appeals affirmed the convictions and sentences in a published opinion issued February 28, 2018. *State v. Williams*, 422 S.C. 525, 812 S.E.2d 917 (Ct. App. 2018), *reh'g denied* (May 1, 2018), *aff'd in part as modified, vacated in part,* 427 S.C. 148, 829 S.E.2d 702 (2019).

On June 21, 2018, Applicant filed a petition for writ of certiorari with the Supreme Court. Following briefing and oral argument, the Supreme Court affirmed Applicant's convictions as modified in a published opinion issued June 12, 2019. *State v. Williams*, 427 S.C. 148, 829 S.E.2d

[3] *Anders v. California*, 386 U.S. 738 (1967).

702 (2019). The case was returned to the circuit court on June 27, 2019. Applicant commenced this PCR action on July 25, 2019.

II. CURRENT APPLICATION

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

> 1. "Trial counsel was ineffective for not objecting to a harmful jury instruction that a specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury."
> 2. "Appellate counsel was ineffective for failing to raise harmful error that was preserve [*sic*] for appeal; inferred malice from the use of a deadly weapon."
> 3. "Trial counsel and appellate counsel failed to challenge the trial court's ruling on the application of 609 on 'O.J. Charley' so as to avoid an ex post facto application to the applicant."

Applicant requests relief as follows:

> "That the court enter judgment granting Applicant's application for post-conviction relief and remanding the criminal case for new trial."

Attached herewith and incorporated by reference are the Saluda County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, including the trial transcript, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Trial Counsel

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other

defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler,* 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky,* 559 U.S. 356, 366 (2010). In order to

prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State,* 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). 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.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (*quoting Strickland,* 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland,* 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." *Harrington*, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing

court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." *Strickland,* 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.*

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington,* 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. *Harrington,* 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. *Id.* (*quoting Strickland*, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify

reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance 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. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland,* 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland,* at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may

evaluate the prejudice prong only. *Id.*

Applicant first contends Trial Counsels were ineffective for failing to object to the jury instruction regarding general intent as an element of attempted murder. This allegation is without merit because, as the Supreme Court noted in its opinion, "[t]o be fair to counsel, at the time of Applicant's trial, we had not yet handed down our decision in *King*, in which a majority of this Court held attempted murder was a specific-intent crime." *Williams*, 427 S.C. at 154, 829 S.E.2d at 705 n.5. For an ineffective assistance claim, the PCR court must "determine whether counsel was ineffective *at the time of the alleged error*." *Pantovich v. State*, 427 S.C. 555, 562–63, 832 S.E.2d 596, 600 (2019). Thus, the court must consider the law as it existed at the time of trial and "not as it has evolved today . . ." *Id.* at 564, 832 S.E.2d at 601. "Accordingly, trial counsel will not be found deficient for failing "to be clairvoyant or anticipate changes in the law." *Chappell v. State*, 429 S.C. 68, 79, 837 S.E.2d 496, 501–02 (Ct. App. 2019) (internal citations and quotation marks omitted).

B. Ineffective Assistance of Appellate Counsel

Applicant next contends Appellate Counsel was ineffective for failing to raise the issue regarding the trial court's instruction regarding inferred malice from use of a deadly weapon. Specifically, Applicant argues he would have been entitled to a jury instruction on the lesser-included offense of first-degree assault and battery. These allegations are without merit.

Beyond the right to effective assistance of counsel at trial, a criminal defendant is constitutionally entitled to the effective assistance of appellate counsel on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, (1985) (finding that to be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair). However, "[c]ounsel is not obligated to assert all nonfrivolous issues on appeal, as '[t]here can hardly be any question about the importance

of having the appellate advocate examine the record with a view to selecting the most promising issues for review.'" *Bell v. Jarvis*, 236 F.3d 149, 164 (4th Cir. 2000) (quoting *Jones v. Barnes*, 463 U.S. 745, 752 (1983)). Indeed, "[w]innowing out weaker arguments on appeal and focusing on' those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." *Id.* (quoting *Smith v. Murray,* 477 U.S. 527, 536 (1986).

In analyzing a claim of ineffective assistance of appellate counsel, the reviewing court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *E.g., Southerland v. State,* 337 S.C. 610, 524 S.E.2d 833 (1999). The applicant must demonstrate (1) that his "counsel's representation fell below an objective standard of reasonableness" in light of the prevailing professional norms, *Strickland*, 466 U.S. at 688, and (2) that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," *Id.* at 694; *see Smith v. Robbins*, 528 U.S. 259 (2000) (holding that habeas applicant must demonstrate that "counsel was objectively unreasonable" in failing to file a merits brief addressing a nonfrivolous issue and that there is "a reasonable probability that, but for his counsel's unreasonable failure . . . , he would have prevailed on his appeal").

Specifically, when an applicant contends appellate counsel rendered ineffective assistance for failing to argue a specific issue on appeal, he must show failure to raise that issue was objectively unreasonable and that, but for this failure, there is a reasonable probability he would have prevailed on appeal. *Southerland*, 337 S.C. at 616, 524 S.E.2d at 836; *Anderson v. State,* 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). In applying *Strickland* to claims of ineffective assistance of counsel on appeal, however, "reviewing courts must accord appellate counsel the presumption that he decided which issues were most likely to afford relief on appeal." *Jarvis*, 236

F.3d at 164 (internal citation omitted). "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." *Id.* (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)).

C. Conclusion and Action Requested

The State submits Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

IV. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

If Applicant fails to file a timely and responsive amended application setting forth specific

allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

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

V. GENERAL DENIAL

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

VI. CONCLUSION

WHEREFORE, the State respectfully requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

[Signature on following page]

Respectfully submitted,

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April 8, 2020

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF SALUDA)	2019-CP-41-00162
Gerald R. Williams,)	
)	
PETITIONER,)	TRANSCRIPT OF RECORD
)	
vs.)	APRIL 28, 2021
)	
State of South Carolina,)	Lexington, South Carolina
)	Via WebEx
RESPONDANT.)	
)	
)	
)	

B E F O R E:

THE HONORABLE DEBRA McCASLIN, Judge

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

ASHLEY McMAHAN, Esquire
Attorney for Petitioner

TAYLOR SMITH, Esquire
Attorney for the State

Recorded by: DCRP

Transcribed by: MISSY BROWN
Court Reporter

I N D E X

E X H I B I T S

NO.	DESCRIPTION	ID	EV

No exhibits presented at hearing.

P R O C E E D I N G S

April 28, 2021

(Whereupon, Court was in session with all parties present via WebEx, when the following matters were had:)

THE COURT: Let me call this case. It's Gerald R. Williams versus the State of South Carolina, docket number 2019-CP-41-162.

Mr. Williams, let me get you to raise your right hand so I can swear you in.

(WHEREUPON, THE PETITIONER, GERALD R. WILLIAMS, WAS DULY SWORN.)

THE COURT: Mr. Williams, -- okay. Thank you. You can put your hand down.

All right. Mr. Williams, we're on WebEx and your attorney, Ms. McMahan, is on screen. Can you see her?

THE PETITIONER: Yes, ma'am. Yes, ma'am.

THE COURT: All right. If at any time that you need to speak with her, let me know and I'll make sure that you get a phone and you can talk with her in private. Okay?

THE PETITIONER: Okay.

THE COURT: And the other thing is that this is your PCR hearing. You have the right to have it held in person, but we're on video. Do you agree and waive your right to have it held in person and agree to hear it on

video?

THE PETITIONER: We can go ahead and do it on video. It'll be fine. It's fine on video.

THE COURT: Okay. Thank you.

All right. Thank you so much, Mr. Williams.

All right. Ms. McMahan, I'm going to ask you if you could give me a summary of the case and then tell me about his allegations.

MS. MCMAHAN: If you'll just give me one second, Your Honor.

I believe Mr. Smith's return pretty much summarizes it pretty well procedurally and factually. Also the opinion summarizes it factually pretty well too.

But it's basically this was an attempted murder trial and he was found guilty. There were some co-defendants involved.

Give me one second. I just need to -- let me pull the return out.

But essentially, yeah, he was indicted in July 2013 for three counts of attempted murder. Bennett Casto represented him. He had a jury trial before Judge Baxley. And Ervin Maye and Mr. Young were the prosecutors on it.

Essentially what happened is the night of April 12th, 2012, there was a shooting at a home in Saluda County. And at the shooting they found like a glove with some

fingers missing. And they had also gotten a tip about a green minivan.

So when they were -- so when the shooting happened at the house and they called 911, when the sheriff's deputies were going around, they actually found the green minivan. So when they found the green minivan, one of the occupants was outside; got in the van, and drove off.

Eventually they stopped, but the driver was allegedly Mr. Williams. And Mr. Williams, according to the facts, had two bits of the plastic glove left on his fingers. And that's the basic facts.

THE COURT: Okay.

Well, as far as your PCR issues?

MS. MCMAHAN: Yes, Your Honor, we're going forward with the ones in his application. He has written a little bit of argument about them and everything. But basically those are the issues. The first one is Court's wrongful jury instruction of a specific intent crime is not an element of attempted murder. It is general intent.

Then the second one is Mr. Alexander was ineffective for failing to raise an issue, any on appeal, which was that the trial court erred ---

THE COURT: Is this the ---

MS. MCMAHAN: --- general intent crime.

THE COURT: Is this ---

MS. MCMAHAN: Yeah, the transferred -- this is really transferred intent versus -- transferred intent regarding a general intent crime versus a specific intent crime, and that's with Mr. Alexander.

And then his other issue -- I believe that's his two main issues were -- and there were a few items that Mr. Casto didn't reserve for appeal, is that he didn't object to the transferred intent and attempted murder being general intent. And then one of the issues was that he didn't request to raise, I guess, -- let me strike that one. Those are the two main issues.

Mr. Williams is obviously ---

THE COURT: All right. Well let's -- let me do this.

For what I have in front of me, the first issue I have is trial counsel was ineffective for not objecting to a harmful jury instruction; that is: specific intent to kill is not an element of attempted murder and there must be a general intent to commit serious bodily injury.

Well I did do a little reading on this, because I just finished attempted murder, and I know that specific intent with the *King* case changed all that. It is specific intent. And I think, if I'm not mistaken, correct me, Ms. McMahan, but the Court said at the time that this case was

tried, it was general intent.

MS. MCMAHAN: Actually what happened is, in the trial, there was an agreement or something that attempted murder was general intent. However, if you look at the opinion by the supreme court, they note that attempted murder is a specific intent crime. So Mr. Williams' issue is that Mr. Casto did not appropriately preserve for appeal the issue that they were arguing all along, this is a general intent crime and therefore transferred intent applies, when it's really a specific intent crime, attempted murder, and therefore transferred intent does not apply.

THE COURT: Okay. And what's your case law on that?

MS. MCMAHAN: Your Honor, I'm just looking at the *King* case, just like you. And I'm just referencing the opinion given by the supreme court in a lot of this that basically says, you know, at the time of the trial, because they were trying it as a general intent crime, that the law of the trial at the time was now that attempted murder was general intent versus specific intent. And that our argument is that because the supreme court brought that up, it obviously wasn't adequately preserved for the trial by Mr. Casto in order for Mr. Alexander to then bring it up on appeal.

THE COURT: All right. Do you want to call any witnesses?

MS. MCMAHAN: Yes, Your Honor. I'd like to call Mr. Williams if I could.

THE COURT: Okay.

Mr. Williams, I've already placed you under oath.

THE PETITIONER: Yes, ma'am.

GERALD WILLIAMS,

BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MS. MCMAHAN:

Q. Mr. Williams, is my summary of your issues, your understanding what your issues are as well?

A. Yes, ma'am. The *King* case, it further clarified the specific intent on transferring, but during 2010 the supreme court held in the *State vs. Sutton* that specific intent does require -- it's an element of attempted -- of attempted murder. It requires -- all attempt count crimes in South Carolina require specific intent. So my lawyer -- before my lawyer even had -- before the *King* case even allowed, the *Sutton* case already clarified that specific intent was applied [technical interference] higher intent than that of a general intent, which that's the burden of proof of the State also.

Q. Okay. So your issues is sort of that of -- I mean, you're summarizing what I just said to the judge, ---

A. Right.

Q. --- which was that at your trial the judge agreed that it was a general intent crime, attempted murder, ---

A. Correct.

Q. --- but we know it's not a general intent crime. It's a specific intent crime. And so when Mr. Casto and the Court upheld the general intent aspect of it, that became the law of your case and it shouldn't have been. It should have always been a specific intent.

A. Right.

Q. So that the transferred intent would not have applied.

A. We also have a case in the Green -- in *State vs. Green* concerning specific intent in an attempt crime. And that was in 2012.

Mr. TAYLOR: Judge, ---

A. Before my ---

MR. TAYLOR: --- I'm going to have to -- Judge, I object to Mr. Williams, giving argument ---

THE COURT: Yes.

MR. TAYLOR: --- instead of just agreeing if Ms. McMahan has covered all the issues.

THE COURT: Okay.

Q. So let's back up a little bit.

THE COURT: Mr. Williams, ---

THE WITNESS: Yes, ma'am.

THE COURT: --- you need to just answer the questions that your lawyer asks; okay?

THE WITNESS: Yes, ma'am.

Q. So let's back up a little bit.

THE COURT: Thank you. Go ahead.

Q. So your issues...

MS. MCMAHAN: Sorry.

Q. So, Mr. Williams, your issues with Mr. Casto, had really -- are not anything mainly to do with his overall representation, other than the failure to preserve for appeal that transferred intent does not apply to specific intent crimes, and that your case was erroneously tried as a general intent crime instead of specific intent. Is that correct?

A. That's correct.

Q. Okay.

A. Yes, ma'am.

Q. And is your issue with Mr. Alex -- is your issue with Mr. Alexander, your appellate lawyer, is that because he did not argue, or he did not raise on appeal that your attempted murder -- that he did not raise on appeal the issue that your case was tried as general intent instead of specific intent?

A. The issue with Mr. Alexander on appeal was that he failed to raise or preserve the issue of inference of

malice on use of a deadly weapon.

Q. Oh yeah.

A. That was preserved by Mr. Casto.

Q. Yeah.

Mr. Casto had preserved that issue; correct?

THE COURT: That was inferred malice?

THE WITNESS: Correct.

Q. Okay. Is there any other -- besides those issues, do you have any other issues with Mr. Casto or Mr. Alexander?

A. The only other issue I have with Mr. Casto is with the ex post facto issue, concerning that him and my lawyer stipulated to bypass the probative test. And that would have been the issue -- that would have ---

Q. Stipulated to bypass ---

A. Through our counsel and ---

Q. Which test? You were hard to hear.

A. Ma'am? To challenge -- to challenge the Court's ruling on the application of 609, that they admitted my co-defendant under that he was not testifying with. He was just a witness, not the accused that was admitted into evidence under 609, which supposed to have been admitted up under 403, 404. He was wrongfully admitted.

Q. So you're talking -- so you're talking about your co-defendant; right?

A. Yes, ma'am.

Q. You're talking about Charley, the co-defendant?
A. Yes, ma'am.
Q. Okay.
A. That's -- my counsel ---
Q. And -- I'm sorry. Continue.
A. Yes. My counselor and the solicitor stipulated to bypass the judge's decision on the ruling on dealing with the Kaufman versus probative test. They stipulated to bypass that, which they admitted him wrongfully, I think, because he was supposed to be admitted up under 403 or 404 as a witness, not the accused.

609 -- Rule number 609 is for the accused only.

Q. I've got you. Okay.
A. He was wrongfully admitted.
Q. Okay. So is that the basic summary of everything, kind of what I said and what you just told the Court about?
A. Pretty much. Pretty much. I mean, I'm not pretty much legally inclined, I'm just trying to do my best, ma'am.
Q. I've got you.

Answer any questions that Mr. Smith may have for you.

A. Yes, ma'am.

CROSS-EXAMINATION BY MR. SMITH:

Q. Hello, Mr. Williams.

A. How are you doing, sir?

Q. I'm doing just fine. I don't think I really have many questions for you, maybe one or two.

You wanted Mr. Charley to testify for you at your trial; right?

A. Well my attorney suggested that; and I felt that would be the best decisions so he went with it.

Q. So it wasn't something that you wanted; it was something that Mr. Casto suggested to you?

A. That was -- that was something he suggested that we should have him on the stand and asked me was it okay. I -- I didn't know whether he -- at the time I didn't know too much about the law, so I took his advice on the issue. Had I known what I know now, he was the only one standing between me and freedom, which I've done did nine years.

Q. Okay. Those are all the questions I have. Thank you.

A. Yes, sir.

THE COURT: Any other follow up, Ms. McMahan?

THE WITNESS: Ma'am?

THE COURT: Ms. McMahan, I can't hear you. I don't know. It's like there's some kind of delay between you and me. Can you hear me?

(No response.)

THE COURT: I can't hear you.

MS. MCMAHAN: Can you hear me now?

THE COURT: I can hear you. Yes.

MS. MCMAHAN: I'm sorry.

THE COURT: No, that's okay.

MS. MCMAHAN: Okay.

THE COURT: Do you have any follow up questions?

MS. MCMAHAN: I have no follow up, Your Honor.

THE COURT: Okay. All right.

Just let me go over my notes right quick.

All right. I just want to make sure I have this right. As far as Mr. Casto goes, Mr. Williams' complaint is that he failed to preserve for appeal the general intent versus specific intent on the attempted murder charge -- jury charges.

And the other on the ---

MS. MCMAHAN: Yes, Your Honor.

THE COURT: --- and Mr. Casto was, as far as -- and I read something about Charley testifying in this case. He said that his lawyer was the one who suggested that he testify. He talked to Mr. Williams about it. Mr. Williams said he agreed, but had he known what he knows now, he certainly wouldn't have had Charley testify. Is that correct?

THE WITNESS: Correct.

MS. MCMAHAN: That's correct, Your Honor.

THE COURT: I'm not real sure I understand what

the argument is under 609. Maybe you can clear that up for me, Ms. McMahan.

THE WITNESS: The ruling was ---

MR. SMITH: Judge, I'll say it was my understanding was that the argument was that Mr. Casto did not object to the admission of the two prior convictions under 609.

THE COURT: Okay. All right. What are the two prior convictions?

MR. SMITH: It was one for attempted murder because he -- he pled to the same crime in this case and then testified against Mr. Williams. And the other was giving a false report to police officers.

THE COURT: Okay. All right.

Ms. McMahan, am I adding that portion to this?

MS. MCMAHAN: If you please. Yes, Your Honor.

THE COURT: Okay. All right. So let me do that again.

So there was testimony given by a co-defendant that he talked to his lawyer about, Mr. Casto. Mr. Casto said he thought he ought to testify. Mr. Williams agreed. And now that Mr. Williams knows what he knows now, he would not have called him.

And on top of that, Mr. Casto did not object to his prior convictions coming in: one of attempted murder,

and giving false information to a police officer.

MS. MCMAHAN: That's an excellent summary, Your Honor, yeah.

THE COURT: Okay.

MS. MCMAHAN: That's right.

THE COURT: I'm sorry.

And then as to Mr. Alexander, he's saying his appellate counsel did not raise or preserve the inferred malice on the use of a deadly weapon, which I am assuming was a jury charge. Was that a jury charge?

MS. MCMAHAN: Yes, Your Honor.

THE COURT: Okay. All right. And that's all that Mr. Williams is complaining about in his PCR application; correct?

MS. MCMAHAN: I believe so, Your Honor. But I also touched on, with Mr. Alexander, that -- no, that's it. I apologize. Yes.

THE COURT: Okay. All right.

Because I want -- I want you to understand, Mr. Williams, you know, this is your one shot at the apple.

THE PETITIONER: Yes, ma'am.

THE COURT: Most judges won't give you another shot. Not to say it can't happen. But, you know, if there's anything that you want to complain about your lawyers, now is the time to do so.

THE PETITIONER: Well it's just stuff that he -- Mr. Alex -- Bennett Casto, he failed to object to that specific intent charge to the jury.

THE COURT: I got it.

THE PETITIONER: And then ---

THE COURT: I got it down.

THE PETITIONER: Yes, ma'am.

THE COURT: All right. Now I'm going to turn it over to the other side and they're going to tell me what's going on; okay?

THE PETITIONER: Yes, ma'am.

THE COURT: All right. Mr. Smith, do you want to call your first witness?

MR. SMITH: Yes, Judge. I'd like to just see if I can just get some clarification really quick since we're talking about the issues. I understood from the application that there would be a fourth issue, a claim that Mr. Alexander should have argued that Judge Baxley improperly admitted evidence of Mr. Charley's prior convictions. And from what Ms. McMahan and Mr. Williams are saying it sounds like that might not be an issue. I just want clarification.

THE COURT: Well it sounded -- I think they were saying that was when he took the stand with Mr. Casto during the trial.

Am I mistaken? Maybe you can clear that up for us, Ms. Mcmahan.

MS. MCMAHAN: You're correct, Your Honor. It's that Mr. Casto did not object. That's -- basically I believe they stipulated to the admission of these two priors under 609. Our -- Mr. Williams' position is that it should have come in under 403. Mr. Casto didn't object to it. Beause Mr. Casto didn't object to it, it wasn't preserved for appeal. So obviously Mr. Alexander couldn't argue it.

THE COURT: Got you.

Does that clear that up, Mr. Smith?

MR. SMITH: It does, Judge. I had a few questions I was going to ask Mr. Alexander about that. I'll probably just skip over those now, so.

THE COURT: Okay. I know I've probably done this in a weird fashion, but I wanted -- because I've got two different lawyers on two different sets, one appellate, one trial, and I'm just trying to lay out these issues so when you respond I can make my notes accordingly.

MR. SMITH: Okay, Judge. If it pleases the Court, I would like to call Mr. Bennett Casto as my first witness.

THE COURT: Yes, sir. Mr. Casto, do you want to raise your right hand?

BENNETT CASTO,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: Thank you, Mr. Casto.

DIRECT EXAMINATION BY MR. SMITH:

Q. Okay. Mr. Casto, when did you begin practicing law?

A. 2007.

Q. Okay. How much of your professional experience has been in the field of criminal law?

A. One hundred percent.

Q. Okay. How did you come to represent Mr. Williams in the underlying attempted murder case?

A. I want to say that I was not Mr. Williams' original attorney. I want to say that the public defender that had the job that I occupy before me was Mr. Williams' original attorney. His name is Greg Seigler. He's on the family court bench.

My recollection is that Mr. Williams might have grieved Mr. Seigler. Mr. Seigler then moved to be relieved of the case and appointed myself. The Court appointed myself. I think it was Judge Keesley that did that.

Q. Okay. Was Rob, Robert Madsen, co-counsel with you on this case?

A. Yes.

Q. Okay. How did you and Mr. Madsen agree to divvy up the different roles at trial?

A. I think that we just -- we just discussed it beforehand. And, you know, while we were just preparing I think that we just, you know, kind of agreed on what we would do and how we would split up the witnesses and just went forward from there.

Q. Can you tell me generally what you remember about the evidence of Mr. Williams' guilt, the evidence that was admitted at trial?

A. Yes. So in a nutshell, my understanding is that law enforcement had received some type of tip that there was going to be some type of retaliation against some folks that lived in Saluda County by some other people that lived outside of the County. They were told to be on the lookout for a vehicle matching the description.

And sure enough a call comes in from the victims saying, Hey, someone has shot up our house. Law enforcement sees the vehicle that matches the description first given, then sees people trying to -- either already in the vehicle or trying to get inside. I believe Mr. Williams was one of those individuals.

There was some latex gloves that were recovered in or around that scene and they were tested for DNA. They had Mr. Williams' DNA on those gloves. Then, interestingly enough, when Mr. Williams was being booked in at the jail in Saluda, he had fragments, or parts, of a rubber glove

still on his hand. And I believe that those fragments were collected and turned into evidence as part of the crime.

It was my understanding through Mr. Williams that his co-defendant, Orenthal James or "O.J." Charley, was basically going to take the fall for all of this. And we called him as a witness in the trial. And on direct he did take the fall for it. But it was only during cross that O.J. Charley admitted that everything he said on direct was not true and, in fact, Mr. Williams was involved in this thing and an active participant.

Q. Okay. And the co-defendant you're referring to, is that Mr. O.J. Charley?

A. Yes, sir.

Q. Okay. Whose idea was it originally for him to testify?

A. Mr. Williams. In other words, you know, I would never have a co-defendant -- you know, I would never call a co-defendant to the stand, especially a co-defendant that's already pled guilty to the exact crime that we're trying, unless I knew some type of information and that's, you know, my understanding from Mr. Williams as to what Mr. Charley would say.

I believe that we asked Mr. Charley's attorney at the time whether it was all right if we spoke with him. And we did, before he got on the stand. And he, at least

at that point, did indicate that it was only him, he was the only one involved and Mr. Williams didn't have anything to do with it.

Q. Okay. Do you have a copy of the record on appeal available to you?

A. Sure. I believe that I do.

Q. Because I'm going to ask you some questions now referring to the transcript. And I'm going to say that I'm going to be referring specifically to the pagination in the record on appeal.

A. I do have access to that. Bear with me while I pull it up.

Q. Okay.

A. And you wanted -- you're referring me to the appeal on this case?

Q. Yes.

A. Oh, okay.

Q. On appeal, that was filed by Mr. David Alexander.

THE WITNESS: Bear with me, Your Honor.

A. I'm sorry. It's taking a second.

Q. That's okay.

MR. SMITH: And I would like to make sure that Judge McCaslin has a copy of that too.

A. Yes, I believe I do have it pulled up.

Q. Okay.

THE COURT: Okay. Go ahead.

MR. SMITH: Okay.

DIRECT EXAMINATION BY MR. SMITH (CONT'D):

Q. Looking on page 705 on the record on appeal, can you tell me what Judge Baxley instructed the jury about specific intent to kill versus a general intent to commit serious bodily injury? And that's on page 705. I will draw your attention to line 22 through 24.

MS. MCMAHAN: Taylor, just for clarification, this is the big number 705, with the little number 703 right beside it; right?

MR. SMITH: It's the number in bold, yeah.

THE WITNESS: Bold. Okay.

MR. SMITH: I'm sorry. I probably should have clarified.

THE WITNESS: No, that's okay. I see -- I think I'm looking for the right thing now.

Okay. I believe that I found it. Bold 705; is that right?

MR. SMITH: That's right.

THE WITNESS: All right. And if you wouldn't mind, just repeat your question.

DIRECT EXAMINATION BY MR. SMITH (CONT'D):

Q. If you could, tell me what Judge Baxley instructed the jury about the specific intent to kill, looking at lines 22

through 24.

A. A specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injuries.

Q. Okay. And you did not object to that jury instruction. Is that right?

A. That's correct.

Q. Do you know when the attempted murder statute, found in Section 15-3-29 was codified?

A. That would have been as part of the Omnibus Crime Act of 2010 I think.

Q. Okay. That was just a few years before Mr. Williams' trial?

A. That's right.

Q. Okay. Are you aware the supreme court -- the supreme court's opinion in the case *State v. King*? Citation -- I'm sorry -- citation is 422 S.C. 403.

A. Yes.

Q. Okay. That opinion was published after Mr. Williams' trial; correct?

A. Yes.

Q. Okay. Can you tell me -- can you explain to me your understanding of the specific intent holding for the supreme court in that case?

A. Yes. Ultimately that attempted murder does in fact

require specific intent under the holding of that case.
Q. Okay. At the time of your representation of Mr. Williams, was it clear to you what level of criminal intent was required for attempted murder?
A. It was not.
Q. At the time of trial did you believe that Judge Baxley's jury instruction on specific intent was proper?
A. At that time, yes.
Q. Okay. What was your understanding of the level of general intent required at the time of trial?
A. Ultimately that the attempted murder would require some level of general intent and it did not require specific intent at the time of trial.
Q. Okay. Does the Court's holding in *State v. King* settle that ambiguity in your mind?
A. Yes.
Q. Okay. But at the time of Mr. Williams' trial you did not have the benefit of relying upon the *State v. King* decision; right?
A. That's right. Just to give us a time line, we tried the case in 2013. King didn't come out until 2015.
Q. Okay. And when you say 2015, you're referring to the court of appeals opinion; right?
A. Yes.
Q. Okay.

Okay. I want to talk to you about O.J. Charley again. Did you discuss with Mr. Williams at all the fact that Mr. Charley had prior convictions that might come in if he were to testify?

A. I don't specifically recall that. I would think that I did, but I...

Q. Okay.

A. Obviously if he was going to be our witness and kind of give things up, the understanding that for dang sure we'd know going in that he's pled to the attempted murder for which Mr. Williams was on trial. We knew that that would -- that would be an issue.

Q. Okay. So I'm going to refer you now to page 561 of the record on appeal.

A. Okay. Yes?

Q. Okay. And so looking at 561, do you remember arguing before Mr. Charley testified about which convictions would be admissible for impeachment? In other words you were the ---

A. Oh.

Q. --- attorney who argued that; right?

A. Yes, that's correct.

Q. Okay. And about page 562 we see that Mr. Charley had five prior convictions at issue. And I'm going to list them. And if you'd tell me if that's correct based off of

what you see there.

A. Yes, sir.

Q. The first would have been aiding an escape, which was a 2005 conviction; two convictions for possession with intent to distribute marijuana, one from 2004, one from 2011; attempted murder from 2012; and giving false information to police from 2005.

A. Yes, that's correct.

Q. Okay. And that attempted murder conviction was from when Mr. Charley pleaded guilty to the same crimes for which Mr. Williams was on trial?

A. Yes, sir.

Q. Okay. And am I correct that you opposed the admission of each of those convictions, except for the conviction for attempted murder and giving false information to police?

A. Yes.

Q. Okay. Why did you believe that those two convictions were admissible for impeachment purposes?

A. Well the false information to police, that just goes to the heart of, you know, dishonesty. That one's coming in. And then obviously attempted murder, that fit well within the ten years. He had just pled guilty to it as well. And I also think, you know, it's something where he could be impeached just because of where he was situated. In other words, you know, he pled guilty to being a co-

defendant in the trial that Mr. Williams was now in.
Q. Okay. So at the time you believed that the probative value of the admission of those two convictions was not substantially outweighted by the nature of unfair prejudice?
A. That's correct.
Q. Okay. So you took in -- did you take into consideration the rules of evidence, 609 and 403?
A. Yes.
Q. Okay. When, looking at page 563, -- Judge Baxley took the issue under advisement at that point -- but then when returns to the issue a little later in the trial, looks like you agree. Mr. -- Mr. Maye basically consents to -- consents with you that only those two convictions should come in for impeachment at that point?
A. Yes.
Q. Okay. And those are the two convictions that Judge Baxley allows into evidence by consent of the parties; right?
A. Yes.
Q. Okay. At the time were you aware of any basis on which you could have legitimately challenged the admission of those two convictions for impeachment?
A. No.
Q. Okay. Now I'm looking at page 589 of the record on

appeal. Can you confirm that at this point in the trial you are questioning Mr. Charley on direct examination?

A. Yes.

Q. Okay. And on page 589 you bring out that he has prior convictions for attempted murder and giving false information?

A. Yes.

Q. Okay. And you had him confirm too that the attempted murder conviction was from when he pleaded guilty to this crime for which Mr. Williams was also on trial?

A. Yes.

Q. Okay. What sort of testimony were you hoping to elicit from him for the defense?

A. Well, ideally, you know, and I -- you know, talking before, the plan was, and what Mr. Orenthal James Charley had told us was, that he acted alone and that he was willing to come to court and testify that he was the sole actor -- well, him and another individual alone, whose name is Rico Ramirez, had been the two involved in shooting up this home, and that Gerald didn't have any role at all. Mr. Williams did not have any role at all.

Q. Okay. And so I'm going to point you to a few specific places in the transcript and see if you agree that these were instances of testimony that Mr. Charley gave beneficial to the defense. The first would be on page 587.

A. Okay.

Q. And is it correct that Mr. Charley testified that he told -- he told Mr. Williams that Mr. Williams would be driving him just to meet some girls?

A. Yes, that's correct.

Q. Okay. Then on the next page, 588, Mr. Charley testified that there was nothing in the van that would have signaled to Mr. Williams the true nature of Mr. Charley's criminal plan?

A. That's correct. There was nothing that would have given rise to Mr. Williams knowing what was going to happen next.

Q. Okay. Then on page 590 Mr. Charley testifies that Mr. Williams did not know that Mr. Charley had others following him?

A. That's correct. He testified that Mr. Williams did not know that.

Q. Then on page 591 Mr. Charley testified that he told Mr. Williams to wait in the van because Mr. Charley was going to check out the girls on foot?

A. Yes, that's correct.

Q. Okay. Then on page 592 Mr. Charley testified that while Mr. Charley went to the victim's trailer he left Mr. Williams in the van parked down the street?

A. Yes, that's correct.

Q. Okay. And if you'd look at page 598. Mr. Charley testifies that Mr. Williams did not know Mr. Charley's criminal plans?

A. That's correct.

Q. Okay. Now page 601. Mr. Charley testifies that he has sent a letter to Judge Keesley saying that Mr. Williams had no knowledge of Mr. Charley's criminal plans?

A. That's correct.

Q. Okay. And then finally on page 603, Mr. Charley testifies that Mr. Williams had no idea what Mr. Charley was actually up to?

A. That's correct.

Q. Okay. So at this point do you feel that Mr. Charley had given testimony beneficial to the defense?

A. Yes.

Q. Okay. But what happened when Mr. Maye cross-examined Mr. Charley?

A. Mr. Charley then stated that everything that he had said about Mr. Williams' involvement on direct examination was untruthful.

Q. Okay. I'm going to refer you to page 631 now.

A. Okay.

Q. Okay. And this is -- if you'll confirm that this is after -- you're questioning Mr. Charley on redirect again. And you use the fact that Mr. Charley had pleaded guilty to

attempted murder in order to impeach him for bias or motive?

A. Yes.

Q. Okay. And what was the purpose of that there?

A. That because he had pled for the State one thing to think about is that Mr. Charley had not been sentenced. So, you know, in other words once he says, Hey, everything I just testified to on direct is not true, then the question becomes, well, you know, Is he doing that for the reason that he just pled and he knows that sentencing is coming up?

Q. Okay.

A. And that's what the, you know, -- a reason to change his answer on cross when the State was asking him questions.

Q. Okay. In light of the fact that you were hoping that Mr. Charley was going to say that he was responsible for the crimes and that Mr. Williams was not, did you have any expectation that you would be able to call him as a witness without it, those prior convictions being admitted for impeachment?

A. Can you ask that again?

Q. Sure. So you testified earlier that you called Mr. Charley as a witness because you wanted him to say that he did the crimes and that Mr. Williams had no involvement at

all?
A. That's right.
Q. Okay. With that expectation or hope, did you see, you know, did you have any expectation that the evidence of his prior convictions would not come into evidence?
A. No.
Q. Okay. I'm going to turn to the *Belcher* issue here. I just have a few questions about this. Looking at page 718.
A. Yes.
Q. You object at this point because Judge Baxley did not instruct the jury on the lesser-included offenses; is that right?
A. That's correct.
Q. Okay. There's a reference there to discussing it earlier. Had you discussed that issue at trial prior to that point?
A. Could you ask that again?
Q. Yeah. The language you use there makes it sound like this issue's been discussed previously. Do you remember if there had been much discussion about this, maybe off the record, before that point?
A. The page you're referring me to is 718?
Q. Right.
A. Yes, that's correct.
Q. Mr. Maye's argument on that point was that the State's

theory was that Mr. Williams was there. He was one of the shooters.

The theory you had put forth at trial was that Mr. Williams had no criminal involvement at all.

And so Mr. Maye argued that you weren't entitled to a lesser-included jury instruction.

Is that a fair summary of his argument?

A. Yes.

Q. Okay. And Judge Baxley overruled your objection?

A. Yes, that's correct.

Q. Okay. I think that's all the questions I have. Thank you.

THE COURT: All right.

Ms. McMahan, do you have any questions for Mr. Casto?

MS. MCMAHAN: Yes, Your Honor. Just briefly. And I'm going to ask him some repeat questions, but it's just because I had a hard time hearing you earlier, Mr. Casto.

THE WITNESS: Oh, yes.

CROSS-EXAMINATION BY MS. MCMAHAN:

Q. Did you suggest calling O.J. Charley or was it Mr. Williams that suggested it?

A. Mr. Williams consistently from the get-go said O.J. wanted to take the rap for this.

Q. Okay. And then said that he -- correct me if I'm wrong in any of this.

You indicated that O.J. Charley's attorney allowed you to talk to O.J. Charley?

A. Yes.

Q. Okay. And that when you spoke to him what -- what did he say to you guys?

A. O.J. Charley or the attorney?

Q. I'm sorry. O.J. Charley. O.J. Charley. I apologize.

A. He just -- essentially he test -- well he spoke with us in a manner basically exactly like he said on direct when I asked him questions.

Hey, we were going to go. We told Gerald we needed somebody to drive us. We were going to meet some girls, hang out. We were going to see what the situation is. And that Gerald never -- that Mr. Williams never knew what was really going on.

Q. Okay. And so when you were discussing his priors and then which ones would come in, are you kind of looking at this under like 609(b)? That's, you know, evidence of a conviction of any kind is admissible if it's basically lying, cheating, and stealing.

A. Yes.

Q. Or doing 609 and then analyzing 403? Okay. Sorry.

A. Well, yeah. The first part sounded so good I just had

to agree with you.

Q. Okay. But then, you know, there are some -- you know, the second scenario, you know, where you'd look at 609(a)(1), evidence of a witness other than accused. And then you would do the prongs under the -- I think it's Cole [phonetic] or something like that -- where you would do the more prejudicial or more probative than prejudicial. So in your opinion would those two priors come in no matter what because one was lying, cheating, and stealing and one was a felony?

A. Yes.

Q. Okay. Was there any DNA involved in this case?

A. There was.

Q. Would you tell me about that?

A. So to the best of my recollection there were fragments -- not full -- not full gloves, but there were pieces of ripped latex glove found where the shooting happened. I think in a driveway, maybe a piece in the van that was identified, and then also on Mr. Williams' hand once he got to the jail. They tried to match the pieces and put those pieces of glove together, but they were unable to do so because there were some shreds missing.

But the best of my recollection is that Mr. Williams' DNA was found on those glove fragments at the scene. And then obviously ---

Q. Oh, I'm sorry. Continue.
A. Or just then obviously I think that the piece -- the fragment that was on his hand at the jail, I believe that was preserved and I assume tested as well.
Q. So you're saying that Mr. Williams' DNA was found at the part -- in part of the gloves that was at the scene of the shooting?
A. Yes.
Q. Okay. Was O.J. Charley ever tested for DNA to match any of those?
A. You know, I don't know. Well, I can't remember. I'll say it like that.
Q. Okay. Would it have made a difference in your defense if his DNA had been tested, O.J. Charley's?
A. Well, probably not, in light of the fact that O.J. Charley's statements to us was that he was there and that he did this.
Q. And was there an issue of transferred intent in this case?
A. I don't believe that there really was.
Q. So the facts were the people shot up a house; right?
A. Yes.
Q. And who were -- who was in the house?
A. There were -- as I -- the best I remember is that this is like a -- this is like a trailer and it's really small.

But to the best of recollection there were several living in that house; I mean, maybe as many as seven or something, and three happened to be home at the time.

Q. Who was the main target?

A. I think maybe it was -- there was an Al Young, I think.

Q. And Mr. Young lived in that trailer?

A. I believe that's where they thought they could find him.

Q. Okay. So it was there understanding that Mr. Young was located somewhere in this trailer?

A. I believe so. That's right.

Q. And who else happened to be home at the time?

A. Quite honestly there were two others, because there's three attempted murders. There was another gentlemen and a female and her name was like Ycedra something.

Q. Was she related to Mr. Williams?

A. I can't remember.

Q. Okay. If the records reflect that she was a cousin, would you dispute that?

A. I wouldn't. I wouldn't at all.

Q. And was it Ms. Williams, Ycedra Williams, that had called 911?

A. I think that it was.

Q. Okay. But the intended target was Mr. Young, but yet

there were three people at home that had been shot at. So the intent of the target was Mr. Young. If you're transferring intent from Young to Ms. Williams, you're then also to Mr. Wrighton?

A. You certainly could be; yes.

Q. Okay. Transferred intent's a common law theory; am I right?

A. Yes, I believe so.

Q. Transferred intent can only be used for general intent crimes; is that correct?

A. I believe so.

Q. At the time of this trial -- let me preface that. The law, at the time of this trial, was that transferred intent, under common law, can only be used for general intent crimes. Would you say that's a correct statement?

A. I believe it is. I haven't looked at it in a while, but I believe that's the case. I feel like that was the case then.

Q. Okay. And...

MS. MCMAHAN: I'm sorry. I'm just going through my notes. One second.

Q. So when you guys were discussing the jury instruction, obviously that would have been outside the presence of the jury. But is that -- was that something -- do you recall if it was on the record beforehand or if it was something

you guys had discussion off the record or like in chambers?
A. Oh, honestly, I really don't know.
Q. There was -- but you do remember there was an initial discussion at some point?
A. I'm sorry. You were breaking up just a little bit. Would you ask that again?
Q. So at some point there was an initial discussion on what jury tri -- what jury instructions you were requesting?
A. Yes, I'm sure there was.
Q. Okay. And you -- you did not object when Baxley said he wasn't going to instruct on the lesser?
A. I don't believe -- I don't remember that I did object.
MS. MCMAHAN: Court's indulgence one second.
THE COURT: Take your time.
Q. And how did it come about that you guys all agreed that attempted murder was a general intent crime?
A. You know, honestly I can't remember.
Q. Well prior to 2010 obviously we didn't have attempted murder. Is that correct?
A. That's right.
Q. So we had more common law charges like ABWIK, the old version of ABWIK, ABHAN, the non-statutory version of it.
A. That's right.
Q. We didn't have an attempted murder ---

A. We did not.
Q. --- to know how to define attempted murder.
A. We did not.
MS. MCMAHAN: I have no further questions, Your Honor.
THE COURT: Okay. Anything else, Mr. Smith, as of Mr. Casto?
MR. SMITH: Yes, Judge. I have maybe two or three questions.
THE COURT: Okay.
REDIRECT EXAMINATION BY MR. SMITH:
Q. Mr. Casto, were you surprised that Mr. Charley had credibility issues when he testified? Or that his credibility would be an issue?
A. I -- yes.
Q. Yes, you were surprised?
A. Well admittedly I had some doubts about his credibility, but, you know, ultimately we had asked him what he was going to say before he got up there and he testified in a manner that helped Mr. Williams so we put him on the stand.
Q. Well I'm going to say this. Were you surprised that Ervin Maye challenged his credibility after he said that your client had no involvement in the crimes?
A. I was not surprised.

Q. Okay. I refer you to page 718 of the transcript, or the record on appeal I should say.

A. Okay.

Q. Okay. And about line 5 there you do object when Judge Baxley refuses to give the jury instructions on the lesser-included offenses; right?

A. Oh, yes, I did.

Q. Okay. And then on page 743 on the record on appeal.

A. Okay.

Q. Okay. And you renew all motions and objections you made during the course of trial there; right?

A. That's correct.

Q. Okay. And Judge Baxley still denies; right?

A. He does.

Q. Okay.

MR. SMITH: No more questions. Thank you.

THE COURT: Mr. Casto, I have one question for you. Is it pretty common that lawyers stipulate to the record to things that they want in the record or they agree to? Just like you stipulated to those two -- those two -- to his prior record?

THE WITNESS: It is quite common, yes. Yes, judge.

THE COURT: Okay. And you only stipulated because it went to his untruthfulness and a crime of moral

turpitude; is that correct?

THE WITNESS: That's right.

THE COURT: Okay. Thank you.

THE WITNESS: Yes, ma'am.

THE COURT: All right. Mr. Smith, do you have any other witnesses?

MR. SMITH: Yes, Your Honor. I also would like to call Mr. David Alexander.

THE COURT: Okay. Does anybody need a break before I call Mr. Alexander?

THE PETITIONER: No, ma'am.

MS. MCMAHAN: No, Your Honor.

THE COURT: Mr. Alexander, can you raise your right hand?

DAVID ALEXANDER,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: Okay. Thank you.

Mr. Smith?

DIRECT EXAMINATION BY MR. SMITH:

Q. Mr. Alexander, I want to make sure before I get to deep into it that you have a copy of the record on appeal there.

A. I have the transcript, which I think is about two pages off. If you could go with the little numbers.

Q. Okay. I'll do that.

A. I think that might help me.

Q. Okay. Can you tell me when you began practicing law?

A. 2000.

Q. Okay. And how much of your professional experience has been in the field of criminal law?

A. Since 2012 one hundred percent.

Q. Okay. And how much of that has been in the field of criminal appeals?

A. One hundred percent.

Q. Okay. How did you come to represent Mr. Williams in his direct appeal?

A. I was assigned his case as an appellate defender.

Q. Okay. What did you do to review Mr. Williams' case for issues to raise?

A. I read the entire trial transcript, made notes of any potential issues, and did any research to evaluate those issues.

Q. Okay. When you first reviewed Mr. Williams' case did you think that there were any issues of arguable merit?

A. I did not.

Q. Okay. Is that why you filed an *Anders* brief?

A. Yes.

Q. Okay. When the court of appeals denied your motion to be relieved, what two issues did the Court direct you -- direct you to raise?

A. The transferred intent issue and lesser-included intent issues on degrees of assault and battery.

Q. Okay. And what instruction about the inference of malice did Judge Baxley give in this case?

A. It's known as a *Belcher* charge, and how it can be inferred from a deadly weapon.

Q. Okay. Great.

Did the court of appeals direct you -- direct you to raise that issue?

A. They did not.

Q. Okay. Did you consider that issue before you filed your *Anders* brief or after the court of appeals directed you to raise two issues?

A. I considered it when I filed my *Anders* brief and determined it had no merit. At the time there had to be some kind of mitigating evidence for murder in order to strike that jury charge. And as I did not, in my initial analysis of the case, I did not see that there was any or that the lesser-included should be charged, I didn't think it was error to give that charge from the -- under the law at the time of the case.

Q. Okay. Were you relying upon *State v. Belcher* when you made that determination?

A. Yes.

Q. Okay. And for the record, I'll give the cite. It is

385 S.C. 597, 2009 case.

You didn't see any evidence at Mr. Williams' trial that would have reduced, mitigated, excused, or justified the crimes?

A. The way *Belcher* was interpreted was that you needed either a lesser-included offense charge or a self-defense charge, something that would bring it down from murder, and I didn't see that in this case.

Q. Okay. Would you agree with me that the strategies that Mr. Williams' trial lawyers put forth was basically that Mr. Williams was an innocent ride along?

A. Yes.

Q. Okay. I'll ask you some questions about the impeachment issue. Judge Baxley allowed Mr. Maye to impeach Mr. Charley's credibility with two of the five convictions; right?

A. I believe that's right.

Q. Okay. Before you filed your *Anders* brief did you consider raising some argument about...

MR. SMITH: You know, actually, Your Honor, I realize that Ms. McMahan told us that they were not raising any issue about the prior convictions for Mr. Anders -- Alexander. So I'm going to skip ahead a little bit.

Q. Mr. Alexander, are you aware of any -- can you give me any specific instances from trial where the defense

strategy was that Mr. Williams was an innocent ride along?
A. I believe that would be from the testimony from Mr. Charley, the direct testimony.
Q. Okay. You mentioned that for *Belcher* to apply there essentially would have had to be a charge on a lesser-included, but there weren't any lesser-included offenses charged in this case; right?
A. Well Mr. Casto asked for the degrees of assault and battery to be charged, but Judge Baxley did not give those charges. The court of appeals found that it was error not to charge those, but that that error was harmless. But then when it got to the supreme court, the supreme court said that it was not error and refused those charges.
Q. And the supreme court, in making that determination, cited State Dray [slight skip in audio feed]; right?
A. I didn't hear you, Mr. Smith. I'm sorry.
Q. The supreme court in making that finding also cited *State v. Drayton*; didn't it?
A. That's correct.
Q. Okay.

MR. SMITH: Thank you. No more questions.

And I'd also like to say, Your Honor, Mr. Alexander is joining us from out of state. So I appreciate that today.

(Pause.)

MS. MCMAHAN: I can't hear anybody if anyone is speaking.

THE COURT: I wasn't. It's your turn to cross. Can you hear me?

MS. MCMAHAN: I can hear you now. Okay.

CROSS-EXAMINATION BY MS. MCMAHAN:

Q. Mr. Alexander, I'll try to be brief.

When you get a case to begin with, how do you decide what you're going to argue on appeal?

A. I mean, I read the entire trial transcript first, make notes of any potential issues. Then after I'm done reading the whole thing, I go back and do any research that I might need to evaluate whether a legal issue's viable. But after that I select issues that I think will present a coherent and focused brief for the Court.

Q. So you don't necessarily raise every issue; you just raise the ones you think are the best?

A. That's correct.

Q. Okay. And you filed an *Anders* brief in this situation. Does the *Anders* brief allow the Court to review the record as a whole?

A. Yes.

Q. And how often when you've filed an *Anders* brief have you been directed to brief other issues?

A. Maybe four times in my career. This case I think -- I

want to say that the court of appeals opinion in *King* came out after I filed the *Anders* brief.

Q. Was this brief -- was this -- excuse me. Let me start over.

Was this appeal basically paused while the *King* case was being reviewed?

A. It was not. The State asked for the case to be paused while the supreme court took up *King*, but I opposed that, and the Court agreed with me and refused to put his case on pause.

Q. Why did you appose that?

A. I wanted the -- I didn't know what would happen with the supreme court, and the law was favorable after the court of appeals opinion came out and I wanted to keep going.

Q. I've got you. Okay.

And how much *Anders* briefs do you -- I mean, I realize this is a giant guesstimate here, but how many *Anders* briefs do you think you file percentage-wise based on your cases?

A. I really don't know, and if it varies from year to year. I wish it were more rare than it is.

Q. But *Anders* appeals are not entirely uncommon; are they?

A. They are not uncommon.

Q. Okay. But in that -- in that amount of time you've only been told to brief an issue in an *Anders* appeal maybe four or five times. Is that correct?

A. That's what I recall is about right.

Q. Okay. And did you file cert to the supreme court or did the State?

A. I did.

Q. Okay. And what was your reasoning behind that? What were you wanting?

A. I thought they got the law on transferred intent wrong at the court of appeals. And after *King* I thought there was a chance, if we were able to succeed on the transferred intent, at reversal.

MS. MCMAHAN: I have nothing further, Your Honor.

THE COURT: Anything else, Mr. Smith?

MR. SMITH: Yes, Your Honor. Maybe one or two questions.

REDIRECT EXAMINATION BY MR. SMITH:

Q. Mr. Alexander, the supreme court's opinion in *State v. King* did not come out until after Mr. Williams' trial had concluded; right?

A. That's correct.

Q. Okay.

MR. SMITH: That's the only question I have, Your Honor. Thank you.

THE COURT: Thank you.

Anything else from either lawyers?

MS. MCMAHAN: No, Your Honor.

MR. SMITH: That's the State's case.

THE COURT: Thank you.

Mr. Alexander, thank you so much for coming.

THE WITNESS: Thank you, Your Honor, for letting me testify remotely. It's a great help to our office.

THE COURT: Absolutely.

And you too, Mr. Casto. Good to see you.

Mr. Williams, let me tell you, that concludes your hearing.

I'm going to tell you, Mr. Williams, you know, only certain things can happen. If you win a PCR, you usually go back to court and your charges are tried all over again.

You understand that; right?

THE PETITIONER: Yes, ma'am.

THE COURT: It's not like if you win, you get to walk out. That's not how it works. So, you know, I just wanted to make sure you understood that. And I'm going to tell you, I'm going to take it under advisement and I'll issue an order. I'm going to ask Mr. Smith and Ms. McMahan to each send me a proposed order from each side.

And, Mr. Williams, when I do decide, your lawyer

will be in touch with you; okay?

THE PETITIONER: Yes, ma'am.

THE COURT: All right. Thank you.

MS. MCMAHAN: Your Honor, how many -- I'm sorry, Your Honor. How soon would you like those?

THE COURT: If I could have it by next Friday. If something happens and y'all need more time, how about just shoot me an email?

MS. MCMAHAN: Will do. Thank you.

THE COURT: Okay. All right. Thank you.

END OF TRANSCRIPT OF RECORD

CERTIFICATE OF REPORTER

I, the undersigned Missy Brown, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is, *to the best of my ability,* a true, accurate, and complete transcript of record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, as recorded by DCRP and transcribed by the undersigned, in the Court of Common Pleas for Saluda County, South Carolina, held via WebEx, on the 28th day of April 2021.

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

October 17, 2021

Missy Brown

Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF SALUDA	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Gerald Williams, #279073, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2019-CP-41-0162 **ORDER OF DISMISSAL**

This matter comes before the Court by on the application for post-conviction relief filed by Gerald Williams ("Applicant") on July 25, 2019. The State ("Respondent") filed its return on May 4, 2020. An evidentiary hearing in this matter was held before this court on April 28, 2021, with the parties appearing by WebEx due to the ongoing COVID-19 pandemic.[1] Applicant was represented by Ashley A. McMahan, Esquire, and the State was represented by Assistant Attorney General Taylor Z. Smith represented Respondent. At the hearing, applicant testified on his own behalf, and Bennett E. Casto, Esquire, and David Alexander, Esquire, testified as witnesses for Respondent. Following a thorough review of the record before this court and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that he is entitled to post-conviction relief and therefore denies the application with prejudice.

PROCEDURAL HISTORY

Applicant is presently incarcerated in the South Carolina Department of Corrections. During its July of 2013 term, the Saluda County Grand Jury indicted Applicant for three counts of attempted murder (2013-GS-41-0257; -0258; -0259). On October 14-17, 2013, Applicant was tried

[1] At the start of his hearing before this Court, Applicant waived his right to an in-person hearing and agreed to allow the hearing to proceed over WebEx.

before a jury, with the Honorable J. Michael Baxley presiding. Applicant was represented at trial by Robert M. Madsen and Casto ("trial counsel"). Assistant Solicitors Ervin J. Maye and H. Franklin Young, III, prosecuted the case. At the conclusion of trial, the jury found Applicant guilty as indicted as to all counts. Judge Baxley sentenced Applicant to imprisonment for twenty years for each count, with the sentences running concurrently.

Trial counsel filed a timely notice of appeal. Appellate Defender David Alexander ("appellate counsel") of the South Carolina Commission on Indigent Defense represented Applicant on appeal. Assistant Attorney General William F. Schumacher, IV, represented Respondent on appeal. On February 27, 2015, Appellate counsel filed a motion to be relieved as counsel and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), arguing that Judge Baxley erred in refusing to compel the State to disclose information about SLED's investigation into the alleged conduct of a law enforcement officer who testified for the State at Applicant's trial. Applicant filed a *pro se Anders* response, arguing that Judge Baxley erred in admitting into evidence intrinsic fraud evidence in the form of perjured testimony, upon which Judge Baxley relied in denying trial counsel's motion for a directed verdict. The South Carolina Court of Appeals denied appellate counsel's motion to be relieved and directed the parties to brief the following issues and any others of arguable merit: (1) whether Judge Baxley erred in refusing to instruct the jury on the lesser-included offense of first-degree assault and battery and (2) whether Judge Baxley erred in instructing the jury on the doctrine of transferred intent. *State v. Williams*, S.C. Ct. App. Order filed March 31, 2016.

On April 6, 2016, Appellate counsel filed a brief, raising only the two arguments specifically requested by the Court of Appeals. On May 19, 2016, Respondent moved to hold the appeal in abeyance, noting that the Court of Appeals had recently issued its opinion in *State v.*

King, 412 S.C. 403, 772 S.E.2d 189 (S.C. Ct. App. 2015), until such time as the South Carolina Supreme Court could review the Court of Appeals' opinion in *King*. Appellate counsel opposed the motion, arguing that the possibility that Applicant's appeal could be affected by the outcome of the Supreme Court's decision in *King* did not make Applicant's case unique and that Applicant would be harmed by the delay if his appeal was held in abeyance and the Supreme Court eventually dismissed its writ of certiorari to Respondent as improvidently granted. The Court of Appeals denied Respondent's motion to hold the appeal in abeyance. *State v. Williams*, S.C. Ct. App. Order filed June 30, 2016. The Court of Appeals affirmed Applicant's convictions and found that Judge Baxley committed a harmless error in declining to instruct the jury on the lesser-included offense of first-degree assault and battery and that Judge Baxley did not err in instructing the jury on transferred intent. *State v. Williams*, 422 S.C. 525, 533-43, 812 S.E.2d 917, 921-26 (S.C. Ct. App. 2018), *reh'g denied*, *State v. Williams*, S.C. Ct. App. Order filed May 1, 2018.

On June 21, 2018, appellate counsel filed a petition for a writ of certiorari before the Supreme Court, arguing that the Court of Appeals erred (1) in affirming Judge Baxley's instructing the jury on transferred intent for attempted murder and (1) in finding that Judge Baxley's refusal to instruct the jury on the lesser-included offense of first-degree assault and battery was harmless. The Supreme Court granted appellate counsel's petition. *State v. Williams*, S.C. Sup. Ct. Order filed October 18, 2018. After the parties filed their briefs and the Supreme Court heard oral argument, the Supreme Court affirmed the Court of Appeals' opinion as modified. *State v. Williams*, 427 S.C. 148, 829 S.E.2d 702 (2019). The Supreme Court found that the doctrine of transferred intent applied in Applicant's trial because the case was tried as a general-intent crime without objection from trial counsel. *Id.* at 150, 829 S.E.2d at 702-03. The Court found that, since the general-intent framework had become the law of the case and the doctrine of transferred intent

applies to general intent crimes, Judge Baxley therefore did not err in instructing the jury on transferred intent. *Id.* at 157-58, 829 S.E.2d at 706-07. The Supreme Court also found that Judge Baxley did not err in declining to instruct the jury on the lesser-included offense of first-degree assault and battery because, no matter which version of the evidence the jury chose to believe, the jury could not have found Applicant guilty of the lesser-included offense over attempted murder. *Id.* at 156-57, 829 S.E.2d at 706 (citing *State v. Drayton*, 293 S.C. 417, 361 S.E.2d 329 (1987)). The remittitur was issued on June 27, 2019.

CURRENT PROCEEDING

In his application for post-conviction relief, Applicant alleges that he is entitled to post-conviction relief based on the following claims: (1) trial counsel was constitutionally ineffective for failing to object to the jury instruction that the specific intent to kill is not an element of attempted murder, (2) appellate counsel was constitutionally ineffective for failing to argue on appeal that Judge Baxley erred in instructing the jury that malice can be inferred from the use of a deadly weapon, and (3) both trial counsel and appellate counsel were constitutionally ineffective for failing to challenge Judge Baxley's ruling on the applicability of Rule 609, SCRE, to the prior convictions of O. J. Charley, Applicant's codefendant. Applicant asks this Court to grant his application and remand his case for a new trial.

At the start of the evidentiary hearing before this Court, McMahan clarified that Applicant would only be moving forward upon three claims: (1) that trial counsel was constitutionally ineffective for failing to object to Judge Baxley's instruction to the jury that the specific intent to kill is not an element of attempted murder, (2) that trial counsel was constitutionally ineffective for not objecting to the admission of evidence of Charley's prior convictions for the purpose of impeachment, and (3) that appellate counsel was constitutionally ineffective for failing to argue

on appeal that Judge Baxley erred in instructing the jury that malice could be inferred from the use of a deadly weapon. This Court finds that Applicant has waived all claims other than these three, and only these three claims will be addressed in this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Saluda County Clerk of Court regarding Applicant's convictions and sentences; Applicant's direct appeal records, including the record on appeal, appellate counsel's *Anders* brief, Applicant's *pro se Anders* brief, the Court of Appeals' order directing the parties to brief certain issues, Respondent's motion to hold the appeal in abeyance, appellate counsel's return to the motion to hold the appeal in abeyance, the Court of Appeals' order denying the motion to hold the appeal in abeyance, the parties final briefs before the Court of Appeals, the Court of Appeals' dispositive opinion, appellate counsel's petition for rehearing, the Court of Appeals' order denying the petition for rehearing, appellate counsel's petition for a writ of certiorari, Respondent's return to appellate counsel's petition for a writ of certiorari, the Supreme Court's order granting appellate counsel's petition for a writ of certiorari, the parties' briefs before the Supreme Court, the Supreme Court's dispositive opinion, and the remittitur; Applicant's records from the Department of Corrections; and all filings in this matter. Set forth below are the relevant findings of facts and conclusions of law with regards to the claims that Applicant advanced at the evidentiary hearing, as required by S.C. Code Ann. §17-27-80.

Summary of the testimony presented at the evidentiary hearing.

Applicant testified briefly on his own behalf before this Court. Applicant agreed with the summary of the claims and that he wanted to advance at the hearing. On cross-examination, he testified that trial counsel suggested that Charley be called as a defense witness at trial and that

Applicant went along with the idea. Applicant testified that, had he known then what he knows now, he would not have agreed that Charley should have testified.

Trial counsel testified before this Court as a witness for Respondent. He testified that he was not Applicant's original defense lawyer, but was appointed after Applicant's previous lawyer was relieved. Trial counsel testified that Madsen was his co-counsel in this case and that he and Madsen discussed how they would divide responsibility for certain aspects of Applicant's trial between them.

In his testimony, trial counsel summarized the facts of Applicant's crime. He testified that law enforcement officers received a tip that there was some type of imminent retaliation by individuals who lived outside of Saluda County against some individuals who lived in Saluda County. He testified that the officers issued a BOLO for the vehicle described to them. He testified that someone placed a 911 call saying that someone had shot up the victims' home. Law enforcement officers recognized a vehicle near the scene as the one described in the BOLO and found Applicant in the immediate vicinity. Law enforcement officers discovered discarded latex gloves around the crime scene, and later detirmeined that Applicant's DNA was on the gloves. While he was being booked at the detention center, it was discovered that Applicant still had on his person fragments from the latex gloves that he had been wearing during the commission of the crimes.

Initially, trial counsel expected Applicant's codefendant Charley to take the stand for the defense at trial and testify that Applicant had no involvement in the crimes whatsoever. Trial counsel testified at the evidentiary hearing that Charley did testify in that manner during direct-examination, but immediately recanted on cross-examination that all of the testimony he had given on direct-examination in support of Applicant had been a lie and that Applicant was, in fact, an

active participant in the crimes. Trial counsel further testified that it was actually Applicant's idea that Charley should testify for the defense; trial counsel would not normally suggest that the defense call as a witness a codefendant who had already pleaded guilty to the offense for which the defendant was on trial. Trial counsel testified that he spoke personally with Charley before trial—with the permission of Charley's lawyer—and that Charley indicated that Applicant was not involved in the crimes.

Trial counsel testified that he was familiar with the statute codifying the crime of attempted murder in South Carolina, and believed that it had been codified only a few years before Applicant's trial. He testified that he was familiar with our appellate courts' opinions in *King*, and agreed that the opinions had been published after Applicant's trial. He explained that his understanding of the holding in *King* is that the specific intent to kill is an element of the crime of attempted murder. At the time of Applicant's trial, he did not believe that the specific intent to kill was required for the State to prove the crime of attempted murder. At the time of trial, he believed that Judge Baxley's jury instruction that the specific intent to kill was not an element of attempted murder was proper, and believed that the crime of attempted murder required some level of general intent. He testified that Applicant was tried in 2013, but the Court of Appeals' opinion in *King* was not published until 2015. The South Carolina opinion ultimately settling the issue was not published until 2017.

Trial counsel testified that he did not remember if he discussed with Applicant the possibility that evidence of Charley's prior convictions would be admitted at trial. He testified that Charley was going to be a witness for the defense and that they knew that Charley had pleaded guilty to attempted murder, the crime for which Applicant was on trial, making it obvious that Charley's guilty plea would be an issue. He agreed that Charley had five prior convictions, and

that he opposed the admission of evidence of all of them except for two: a conviction for giving false information to police and the conviction for the attempted murder. He testified that he knew that evidence of the conviction for giving false information to police would be admitted because the crime goes to the heart of the issue of Charley's credibility. He testified that he believed that evidence of Charley's pleading guilty to attempted murder was admissible because the conviction was a recent one and that Charley would be subject to impeachment on the basis that he had pleaded guilty to being a codefendant to Applicant in crimes for which Applicant was on trial. He considered Rules of Evidence 403 and 609 when reaching his decision not to oppose the admission of evidence of those two convictions. He did not believe that he had any basis upon which to challenge the admission of evidence of those two convictions for the purpose of impeachment.

Trial counsel testified that he questioned Charley on direct-examination at trial and that he elicited testimony from Charley about those two convictions. He testified that he had to ask Charley about the conviction for attempted murder because Charley was testifying that he acted alone when committing the crimes that he and another individual were the only people responsible for shooting up the victims' home, that Applicant had had no role in the crimes at all. He agreed that Charley was also subject to impeachment for bias or motive once Charley recanted his earlier testimony while being cross-examined because he could now argue that Charley was recanting his supportive testimony for Applicant because Charley knows that he will be sentenced soon. He did not have any expectation that Charley would testify without the two aforementioned convictions being admitted for impeachment purposes.

Trial counsel testified that he objected when Judge Baxley did not instruct the jury on certain lesser-included offenses. He believes that he may have raised the issue earlier on at trial, but could not recall whether or not that discussion was preserved on the record. He testified that

the State's theory of the case was that Applicant was one of the shooters and that his defense theory was that Applicant did not participate in the crimes at all. He agreed with the summary that the defense theory was that Applicant was an innocent "ride-along." He testified that Judge Baxley overruled his objection to the lack of an instruction on the lesser-included offenses.

Applicant cross-examined trial counsel. Trial counsel testified that Applicant was adamant that Charley wanted to confess to the crimes. He testified that Charley told them in their pre-trial meeting almost exactly what he said during his testimony on direct-examination at trial. He testified that neither Rule 609 nor 403 would have prevented the admission of Charley's two convictions.

Trial counsel testified that the law enforcement officers found fragments of a latex glove where the shooting took place. He testified that the officers were unable to match up the fragments, but noted that Applicant's DNA was found on the fragments of glove left behind at the crime scene. He could not remember if Charley's DNA was tested but does not think that would have mattered either way because Charley freely admitted that he was at the scene of the shooting and that he had been involved.

Trial counsel did not believe that he objected to Judge Baxley's jury instruction on transferred intent. He testified that there were three victims in the home at the time of the shooting, and noted that the home was a small trailer. He testified that the primary target was Al Young and that Applicant and Charley understood that Young was located somewhere in the trailer. He testified that there were two other victims—a man and a woman—in the trailer at the time of the shooting; the woman was the one who called 911, and was Applicant's cousin. He thought that the doctrine of transferred intent could be applied from Young to the other two victims. He agreed that transferred intent applies only when the crime at issue was one of general intent. Trial counsel

believed at the time that attempted murder was a general intent crime at the time of Applicant's trial. He could not remember the details of his conversation with Madsen about the level of intent required for attempted murder.

On re-direct, trial counsel testified that he had had some doubts about Charley's credibility but decided to put Charley on the stand because of what Charley had told them what he would say if called as a witness. He was not surprised when the State challenged Charley's credibility after Charley testified that Applicant had no involvement in the crimes. He testified that he renewed all earlier motions and objections at the end of the proceedings.

This Court posed additional questions to trial counsel. He testified that it is common practice for lawyers to stipulate certain things such as the prior criminal record of a witness. He testified that he stipulated to the admissibility of evidence of Charley's conviction for lying to a police officer because that conviction went to Charley's credibility.

Appellate counsel testified for Respondent at the hearing. He testified about the process he used to review the record of Applicant's trial for potential issues once he began representing Applicant. He testified that he read the transcript, took notes about potential issues, researched applicable authority, and then made his decision about whether or not to raise any issues. He did not think that there were any issues of arguable merit, which explained why he filed an *Anders* brief. He testified that, when the Court of Appeals directed him to raise certain issues, it did not direct him to argue that Judge Baxley erred in instructing the jury that malice could be inferred from the use of a deadly weapon. He did not seriously consider raising that issue because, under the applicable law at the time of Applicant's trial, it was not an error for a trial court to give the instruction. He agreed that the defense' trial strategy had been to argue that Applicant had been an innocent ride-along during the crimes. He testified that the defense elicited testimony from Charley

that Applicant was an innocent ride-along. He testified that he did not think that Judge Baxley had given the inference of malice instruction improperly, according to *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), because Judge Baxley had denied trial counsel's request for an instruction on a lesser-included offense. He noted that the Supreme Court had found that Judge Baxley did not err when he refused to give a lesser-included instruction.

Applicant cross-examined appellate counsel. He testified that he does not necessarily raise every issue, and focuses on the issues that he believes are the strongest. He agreed that the appellate courts review the record as a whole whenever an appellate attorney files an *Anders* brief. He testified that on only about four occasions during his time working as an Appellate Defender has he been directed to brief certain issues after filing an *Anders* brief. He testified that the Court of Appeals' opinion in *King* was published after Applicant's trial. He opposed Respondent's motion to hold Applicant's appeal in abeyance because it was uncertain what the Supreme Court would do. He testified that he sought a writ of certiorari after the Court of Appeals issued its opinion in Applicant's case because he believed that the Court of Appeals wrongly applied the law of transferred intent.

Applicant has failed to prove that trial counsel was constitutionally ineffective for not objecting to Judge Baxley's jury instruction that the specific intent to kill is not an element of attempted murder.

Section 16-3-29 of the South Carolina Code "was enacted in 2010 as part of the Omnibus Crime Reduction and Sentencing Reform Act." *King*, at 408, 772 S.E.2d at 192 (citation omitted). The statute provides, in part, that "[a] person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." S.C. Code Ann. § 16-3-29. Applicant was tried for the crime of attempted murder, codified by

statute. ROA 23-25, 761-67.[2] At Applicant's trial in 2013, Judge Baxley gave the following instruction to the jury after the parties' finished their closing arguments:

> [A] specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury. Intent means intending the result that actually occurs, not accidentally or involuntarily.

ROA 705-06. Trial counsel raised multiple objections to Judge Baxley's jury instructions, but he did not object to this instruction. ROA 715-23. Applicant argues that trial counsel should have objected to this instruction because it was given in error.

Applicant, like any defendant, has a constitutional right to the assistance of effective counsel as provided by the Sixth Amendmen. *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving all allegations in his post-conviction relief action, and Applicant must show that counsel was constitutionally ineffective, such that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." *Strickland*, at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*, 466 U.S. 668). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, at 690). In order for a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, the applicant must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper

[2] Citations styled in this way are citations to the record on appeal from Applicant's direct appeal.

measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." *Id.* (citations omitted). The "preeminent authority' for all courts when they are considering an applicant's claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

> [I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable . . . . A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards are not mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, at 670. Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, *Strickland* requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 697. Therefore, the function of the post-

conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. *Id.* at 690.

In its 2017 opinion in *King*, our Supreme Court considered the implications of the phrase "malice aforethought, either express or implied," which is found in the statute, and modified the Court of Appeals' opinion. 422 S.C. at 56-64, 810 S.E.2d at 22-27. In *King*, the Supreme Court approvingly cited the Nevada Supreme Court's reasoning that implied malice is incompatible with the specific intent to kill required for a defendant to be guilty of attempted murder, and with that court's summary that:

> Attempted murder . . . is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely with the deliberate intention unlawfully to kill.

422 S.C. at 58, 810 S.E.2d at 24 (quoting *Keys v. State*, 104 Nev. 736 (1988)). Importantly, however, in its discussion of the Court of Appeals' treatment of the issue, the Supreme Court agreed with the State that the Court of Appeals partly based its conclusion in *King* on dicta from *State v. Sutton*, 340 S.C. 393, 532 S.E.2d 283 (2000), acknowledged that South Carolina has been afflicted with "conflicting case law regarding levels of criminal intent," and noted the "ambiguity" created by the language in the attempted murder statute. *King*, at 55-62, 810 S.E.2d at 22-26.

The Supreme Court recognized the lack of clarity in the Court of Appeals' opinion in *King*, writing that the opinion would have been clearer had the Court of Appeals considered the portion of the attempted murder statute regarding malice rather than focusing in isolation "on the phrase 'with intent to kill' . . . ." *Id.* at 61, 810 S.E.2d at 25. Justice Kittredge further emphasized in his concurring opinion in *King* the ambiguity of the attempted murder statute at issue, writing that the question of whether attempted murder is a specific-intent crime "is easily stated . . . but not easily answered." *Id.* at 71, 810 S.E.2d at 31 (Kittredge, J., concurring). The majority of the Supreme

Court acknowledged agreed with this sentiment regarding the lack of clarity on the issue. *Id.* at 62, 810 S.E.2d at 25-26. The Supreme Court was concerned enough to specifically request that the South Carolina General Assembly "re-evaluate the language" of the attempted murder statute. *Id.* at 64, 810 S.E.2d at 27, n.5.

At the time of Applicant's trial, trial counsel did not have the benefit of the guidance of our appellate courts' opinions in *King*. Trial counsel was unaware at the time that attempted murder was a specific-intent crime rather than a general-intent crime. Appellate counsel opposed Respondent's motion to hold Applicant's direct appeal in abeyance because the outcome of Respondent's appeal to the Supreme Court in *King* was uncertain, which suggests that appellate counsel was also unsure of the way that the Supreme Court would interpret the attempted murder statute. It is true that after the Supreme Court's opinion in *King*, attempted murder is clearly a specific-intent crime requiring the specific intent to kill, but that conclusion was far from clear back in 2013. Applicant's Trial counsel's understanding of the attempted murder statute at the time of trial is clearly perceptible now only because the parties and this Court have the luxury of post-*King* hindsight. This Court must make "every effort . . . to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Butler*, at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). With the benefit of hindsight, this Court can see now that trial court's understanding at the time of Applicant's trial that attempted murder was a general-intent crime was clearly erroneous; however, this Court cannot say, in light of the Supreme Court's emphasis in King on the attempted murder statute's ambiguity, that trial counsel's understanding at the time of Applicant's trial of the level of intent required by the crime of attempted murder was unreasonable as a constitutional matter. As the Supreme Court wrote in its opinion in Applicant's direct appeal,

"To be fair to counsel, at the time of [Applicant's] trial, we had not yet handed down our decision in *King*, in which a majority of this Court held attempted murder was a specific-intent crime." *Id.* at 154, 829 S.E.2d at 705, n.5. To have required trial counsel to correctly assess the level of intent required by the statute at the time of Applicant's trial, before our appellate courts settled the matter, would be to hold trial counsel, wrongly, to the standard of a greater than that of any competent attorney. *See Thornes v. State*, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765-66 (1993) (explaining that the Supreme Court "has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of trial").

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for not objecting to Judge Baxley's jury instruction that the specific intent to kill is not an element of attempted murder because Applicant has failed to prove that trial counsel's understanding at the time of trial that attempted murder was a general-intent crime was deficient. Therefore, this Court denies this claim and dismisses it with prejudice.

The doctrine of transferred intent.

At the start of his hearing Applicant waived any claim that would have concerned trial counsel's performance with respect to the transferred intent instruction that Judge Baxley gave to the jury. For that reason, there is no need for this Court to address the merits of such a claim in this order; however, because there was (some) testimony on the transferred intent issue at the evidentiary hearing, this Court feels compelled to make a finding that the claim cannot properly be raised as an independent post-conviction relief claim in this case. Judge Baxley did give the transferred intent instruction to the jury. ROA 702. And then Judge Baxley overruled trial counsel's objection to the instruction. ROA 715-16. Trial counsel renewed that objection at the conclusion of the trial. ROA 743. On appeal, the Supreme Court noted that it had not yet addressed whether the doctrine of transferred intent can supply the *mens rea* for a specific intent crime.

Williams, at 150, 829 S.E.2d at 703. But the Supreme Court declined to address the issue in Applicant's case "[b]ecause this case was tried without objection as a general-intent crime" and vacated the portion of the Court of Appeals' opinion that addressed it. *Id.* When pointing out that trial counsel's objection to the transferred intent instruction did not include mention of Judge Baxley's instruction that attempted murder was a general-intent crime or that transferred intent did not apply when the crime in question is a specific-intent crime, the Supreme Court noted, in fairness to trial counsel, that it had not yet issued its opinion in *King* at the time of Applicant's trial. *Id.* at 154, 829 S.E.2d at 705, n.5. The Supreme Court found that it was the law of the case that attempted murder was a general-intent crime and that the doctrine of transferred intent applies to general-intent crimes. *Id.* at 157-58, 829 S.E.2d at 706-07 (citations omitted).

Even though the Supreme Court discussed the doctrine of transferred intent and the level of intent required for of attempted murder in its opinion in Applicant's direct appeal, it is clear that trial counsel's primary mistake at Applicant's trial was trying Applicant's case as a general-intent case. Once Applicant's case was tried a general-intent case, the application of the doctrine of transferred intent was a natural consequence. The question of whether the transferred intent instruction was properly given in Applicant's trial is a question that is merely subsidiary to the issue of whether trial counsel was constitutionally ineffective for not objecting to the specific-intent jury instruction. The Supreme Court laid out the nature of this connection in its opinion, and this Court does not need to address trial counsel's performance with respect to the transferred intent instruction; this Court has already addressed the root issue and found trial counsel's failure to object to the general-intent instruction was not constitutionally deficient.

Applicant has failed to prove that trial counsel was constitutionally ineffective for not objecting to the admission of evidence of Charley's prior convictions for the purpose of impeachment.

Applicant argues that trial counsel should have objected to the admission of evidence of Charley's prior convictions because the evidence was inadmissible under S.C. Rules of Evidence 403 and 609. Trial counsel credibly testified that having Charley testify was Applicant's idea. Applicant's testimony that the idea of having Charley testify for the defense originated with trial counsel was not credible. Trial counsel testified that he had reservations about calling Charley as a witness but looked into the possibility further at Applicant's insistence. Trial counsel testified that he eventually decided to call Charley as a witness because Charley had told them that he would testify that he and another individual were the shooters and that Applicant had no involvement in the crimes.

Outside the presence of the jury during the defense's case-in-chief, trial counsel notified Judge Baxley that the defense intended to call Charley as a witness and that Charley had a criminal history. ROA 561. Trial counsel conferred with Maye and reached a partial agreement about the admissibility of evidence of some of Charley's convictions. ROA 561-62. Trial counsel noted Charley's five convictions: (1) a 2004 conviction for possession with intent to distribute marijuana, (2) a 2011 conviction for possession with intent to distribute, (3) a 2012 conviction for attempted murder,[3] (4) a 2005 conviction for giving false information to police, and (5) a 2005 conviction for aiding in escape[4]. ROA 562. Trial counsel argued that evidence of Charley's two convictions for possession with intent to distribute should not be admitted because it would not be "probative for truthfulness . . . ." ROA 562. Trial counsel also opposed the admission of evidence of Charley's

[3] Charley plead guilty to the attempted murder of Young and the State dropped the charges as to Wrighton and Ycredra as part of its plea agreement with Charley. ROA 603-04. That is why there was only a single attempted murder conviction for Charley.

[4] Maye later referred to this conviction as one for "rescuing from escape." For the purpose of this Court's analysis, it does not matter which description of the offense applies.

conviction for aiding in escape. ROA 562. Maye initially maintained that evidence of all five of Charley's convictions should be admitted, but left it "to the Court's discretion on the balancing test issues or anything the Court thinks is appropriate." ROA 563. Trial counsel agreed with Maye that evidence of Charley's convictions for attempted murder and giving false information were admissible. ROA 562.

Later in the trial, Judge Baxley returned to the issue of Charley's prior convictions. ROA 572. Maye conceded that evidence of the two convictions for possession with intent to distribute should not be admitted and, after additional argument, conceded that evidence of the conviction for aiding in escape should not be admitted, either. ROA 573-76. Trial counsel admitted that the conviction for giving false information to police touched on "the heart of the rule" and would go to Charley's credibility. ROA 574. Trial counsel also admitted that he believed evidence of the conviction for attempted murder was "clearly relevant" because Charley had pleaded guilty "to his involvement in this case," even though that conviction did not "have that same ring of dishonesty and untruthfulness as the [conviction for giving] false information to law enforcement." ROA 574-75. Judge Baxley stated that, although evidence of the conviction for attempted murder and giving false information to police would be admitted by consent of the parties, he felt that they would have been admissible for impeachment purposes regardless. ROA 576-77.

Trial counsel then called Charley as a defense witness. ROA 576. Charley testified that he told Applicant that Applicant would be driving Charley to meet up with girls and that Charley did not reveal his true, criminal intentions to Applicant. ROA 587. Charley testified that there was nothing in the van in which he and Applicant were riding that would have given Applicant any reason to suspect the criminal nature of Charley's plans. ROA 588. Charley testified that Applicant did not know that Charley had Charley's criminal conspirators following along behind the van.

ROA 590. Charley testified that he told Applicant to wait at the van, which was parked down the road from the victims' trailer, while Charley went on foot to check on the girls. ROA 591. Charley testified that he and another individual[5] went to the victims' trailer on foot while Applicant stayed behind at the parked van. ROA 592. Charley denied that Applicant knew of Charley's true plans. ROA 598. Charley testified that he had written a letter to the Honorable William P. Keesley, in which he alleged that Applicant had no knowledge of the criminal nature of his plans. ROA 601. Charley again testified that Applicant did not know what Charley was actually doing. ROA 603. Before he finished questioning Charley on direct, trial counsel elicited testimony that Charley had a conviction for attempted murder "in this case" and to giving false information to police in 2005. ROA 589. On cross examination, Charley quickly admitted under questioning from Maye that all of the testimony he had just given in support of Applicant had been false. ROA 607. On re-direct, trial counsel attempted to impeach Charley's cross-examination testimony for bias or a motive of self-interest by questioning Charley about the fact that Charley had pleaded guilty but had not yet been sentenced, which was meant to imply that Charley was cooperating with the State only because he was afraid that there would be negative consequences for him at his sentencing hearing if he did not.[6] ROA 631.

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[5] In one of Charley's version of events for the night of the shooting, he testified that another man, his coworker, had been the shooter. *Williams*, at 152, 829 S.E.2d at 704. Law enforcement officers had used bloodhounds in a search of the area to see if there was an unidentified shooter who remained at large, but the bloodhounds found no trace of anyone other than Charley and Applicant. *Id.* at 151-52, 829 S.E.2d at 704.

[6] Charley's repudiation under cross-examination of his earlier testimony beneficial to Applicant was much more damaging to the defense than the impeachment of Charley's credibility through use of the evidence of the prior convictions. In fact, Maye never asked Charley about the two convictions in order to impeach him; instead, Maye got Charley to admit that he had been lying during his earlier testimony in an effort to save Applicant from prison. ROA 603-33. Charley's testimony during the cross-examination was so dramatically different than his testimony on direct that Judge Baxley said that Charley was "probably the most noncredible witness I think I've ever seen in 14 years of this job." *Williams*, at 152, 829 S.E.2d at 704, n.2.

Before this Court, trial counsel testified that he called Charley as a witness because he hoped to elicit testimony that Charley committed the crimes without any involvement on Applicant's part. He testified that he believed that evidence of Charley's conviction for giving false information to police was admissible because it went directly to the question of Charley's credibility as a witness. He believed that evidence of the conviction for attempted murder was admissible because Charley had only recently plead guilty and was Applicant's codefendant. In making his decision to agree that evidence of the two convictions should be admitted, trial counsel considered Rules of Evidence 403 and 609. Trial counsel was not aware of any other basis upon which he could have legitimately opposed the admission of evidence of those two convictions, and did not know of any way that he could have elicited testimony from Charley that he was guilty of the crimes but that Applicant was innocent without evidence of the prior conviction for attempted murder being admitted.

This Court finds that Applicant has failed to prove that trial counsel should have objected to the admission of evidence of Charley's conviction for giving false information to police. Rule 609, SCRE, provides, in part, as follow:

> (a) General Rule. For the purpose of attacking the credibility of a witness,
> (1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted . . . ; and
> (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.
> For the purposes of this rule, a conviction includes a conviction resulting from a trial or any type of plea . . . .
> (b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction . . . unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

Since Charley's conviction was from 2005, subsection (b) of Rule 609 does not apply. Charley's crime of giving false information to police involved dishonesty or a false statement, so evidence of that conviction was admissible according to the mandatory language of subsection (a)(2) of Rule 609. Trial counsel's admissions to Judge Baxley about his position on the admissibility of the evidence and trial counsel's testimony before this Court indicate that trial counsel performed this same analysis and reached the correct conclusion: that evidence of the conviction for giving false information to police was admissible. Applicant presented no evidence whatsoever that the admission of the evidence was prohibited by either Rule 609 or 403.

This Court finds that Applicant has failed to prove that trial counsel should have objected to the admission of evidence of Charley's conviction for attempted murder. Since the conviction was from 2012, subsection (b) of Rule 609 does not apply. Because attempted murder is punishable by imprisonment in excess of one year, evidence of the conviction must be admitted, subject to Rule of Evidence 403. Applicant presented no evidence that the probative value of the evidence of Charley's conviction for attempted murder was "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. In this case, where the defense strategy was to argue, relying upon Charley's testimony, that Charley committed the crimes and that Applicant was innocent of any wrongdoing, the probative value of evidence of Charley's pleading guilty to the crime could not have been more probative and relevant. Applicant has presented no evidence that the admission of the evidence was prohibited by Rule 609 or 403.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for not objecting to the admission of evidence of two of Charley's five prior convictions

because Applicant has not proven that trial counsel should have objected to the evidence. This claim, too, therefor, is denied and dismissed with prejudice.

Applicant has failed to prove that appellate counsel was constitutionally ineffective for not arguing that Judge Baxley erred in instructing the jury that malice could be inferred from the use of a deadly weapon.

Applicant fianlly argues that appellate counsel was constitutionally ineffective for not arguing on direct appeal that Judge Baxley erred when he instructed the jury that malice could be inferred from the use of a deadly weapon. A defendant is entitled to effective assistance of appellate counsel. *Southerland v. State,* 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide the effective assistance of counsel, "appellate counsel is not required to raise every non-frivolous issue that is presented by the record." *Thrift v. State,* 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing *Jones v. Barnes,* 463 U.S. 745 (1983)). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . . ." *Jones,* at 754.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *Southerland,* at 616, 524 S.E.2d at 836. Thus, in this case, the court considers 1) whether appellate counsel's performance was deficient, and 2) whether Applicant was prejudiced by appellate counsel's deficient performance. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, Applicant must show that, but for appellate counsel's errors, there is a reasonable probability he would have prevailed on appeal. *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

At the close of Applicant's trial, Judge Baxley instructed the jury that:

> Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm.

ROA 705. Trial counsel objected to the instruction, citing *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), and arguing that "just because there's a deadly weapon present, doesn't automatically mean malice is involved . . . ." ROA 721. Judge Baxley overruled trial counsel's objection. ROA 722. Appellate counsel testified that he had read the entire transcript of Applicant's trial and researched applicable law when trying to determine what issues, if any, he would argue in Applicant's direct appeal. Appellate counsel testified that he considered arguing that Judge Baxley erred in giving the jury instruction that malice could be inferred from the use of a deadly weapon, but ultimately decided not to raise that issue because he did not believe that the argument had any merit.

Appellate counsel's judgment was sound. In *Belcher*, the Supreme Court held that a trial court could no longer instruct a jury that the jury could infer malice from the use of a deadly weapon "where evidence is presented that would reduce, mitigate, excuse or justify the homicide." 355 S.C. at 600, 685 S.E.2d at 803-043. At the same time, the Supreme Court affirmed that:

> The standard implied malice charge remains valid, as does the general permissive inference instruction: 'If facts are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive.'

Belcher, at 612, 685 S.E.2d at 810, n.9. Appellate counsel gave at the evidentiary hearing his understanding of the Supreme Court's holding in *Belcher*, and that understanding comported with the law. Appellate counsel did not believe that it was error for Judge Baxley to give the instruction in Applicant's trial because there was no evidence that would have reduced, mitigated, excused,

or justified the crimes. Applicant's strategy at trial was that he had no involvement in Charley's criminal acts and was completely innocent of all wrongdoing. Examples of trial counsel's implementation of that strategy can be seen in his opening statement that Applicant was found by police in the getaway van only because Applicant had been giving a ride to Charley, argued in in arguing that Charley began to implicate Applicant's participation in the crimes only when Charley began to fear that he would lose the benefit of a plea bargain if he did not cooperate with the State, and that Applicant's DNA was not found on the firearms that the shooters discarded near the crime scene, and argued in closing that law enforcement officers did not perform a gunshot residue test and thus did not have evidence that Applicant fired a weapon during the shootout. ROA 146, 645, 651, 654. In recognition of the defense strategy, Judge Baxley instructed the jury that Applicant's mere presence at the crime scene was not enough to establish his guilt. ROA 708. Judge Baxley did not instruct the jury on any lesser-included offenses, and overruled trial counsel's objection on that point. ROA 718-19. The Supreme Court found that Judge Baxley did not err in declining to charge the jury on lesser-included offenses because the jury, regardless of which theory of Applicant's involvement in the shooting that it believed, "could not have found [Applicant] guilty of the lesser, rather than the greater, offense. *Williams*, at 156-57, 829 S.E.2d at 706 (citation omitted).

This Court finds that Applicant has failed to prove that appellate counsel was constitutionally ineffective for not arguing that Judge Baxley erred in instructing the jury that malice could be inferred from the use of a deadly weapon because Applicant has failed to prove that there was evidence that would have reduced, mitigated, excused, or justified the crimes, and that appellate counsel's determination that the instruction was given in error. This claim is therefore denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, this Court finds that Applicant has failed to prove any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal, through counsel, within thirty days from the receipt of this order to secure the appropriate appellate review. *See* Rule 203 and 243, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to the assistance of appellate counsel in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that, if the applicant wishes to seek appellate review, he must serve and file a notice of appeal. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

IT IS SO ORDERED.

Debra R. McCaslin
Circuit Court Judge

June 11, 2021

Lexington, South Carolina

WITNESSES

SCSO

PADGET

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JUL 09 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-41- 257

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

JULY TERM 2013

THE STATE
vs.

GERALD RUDELL WILLIAMS

CDR#3410

Indictment for

ATTEMPTED MURDER

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)

INDICTMENT FOR

ATTEMPTED MURDER

At a Court of General Sessions, convened on July 9, 2013 the Grand Jurors of Saluda County present upon their oath:

That GERALD RUDELL WILLIAMS along with Orienthal Jermaine Charley, did in Saluda County on or about April 13, 2012, feloniously, willfully and with malice aforethought, attempt to murder the victim, Joseph Christopher Wrighton, in that the defendant, Gerald Rudell Williams along with Orienthal Jermaine Charley, did shoot a firearm into the residence that the victim was then staying, with the intent to kill the victim, Joseph Christopher Wrighton, in violation of §16-3-29, 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.

ASSISTANT SOLICITOR

1096

STATE OF SOUTH CAROLINA)
COUNTY OF Saluda)
STATE VS.)
Gerald Rudell Williams)
AKA:)
Race: Sex: M Age: 41)
DOB: [redacted]-1971 SS#: [redacted])
Address: [redacted] Halford St)
City,State,Zip: Williston, SC 29853-3603)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4100257
A/W#: 2013GS4100257
Date of Offense: 7/9/2013
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Attempted Murder
in violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 13-6J-41-259
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 553 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

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

Clerk of Court/ ~~Deputy Clerk~~ Don B Holmes
Court Reporter: Stacy Sheppard
Presiding Judge
Judge Code: 2121
Sentence Date: 10/17/13

SCCA/217 (03/2011)

WITNESSES

SCSO

PADGET

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUL 09 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-41- 258

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

JULY TERM 2013

THE STATE
vs.

GERALD RUDELL WILLIAMS

CDR#3410

Indictment for

ATTEMPTED MURDER

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)

INDICTMENT FOR

ATTEMPTED MURDER

At a Court of General Sessions, convened on July 9, 2013 the Grand Jurors of Saluda County present upon their oath:

That GERALD RUDELL WILLIAMS along with Orienthal Jermaine Charley, did in Saluda County on or about April 13, 2012, feloniously, willfully and with malice aforethought, attempt to murder the victim, Ycedra Nicole Williams, in that the defendant, Gerald Rudell Williams along with Orienthal Jermaine Charley, did shoot a firearm into the residence that the victim was then staying, with the intent to kill the victim, Ycedra Nicole Williams, in violation of §16-3-29, 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.

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Saluda)
STATE VS.)
Gerald Rudell Williams)
AKA:)
Race: [redacted] Sex: M Age: 41)
DOB: [redacted]1971 SS#: [redacted])
Address: [redacted] Halford St)
City,State,Zip: Williston, SC 29853-3603)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4100258
A/W#: 2013GS4100258
Date of Offense: 7/9/2013
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Attempted Murder
in violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: E. J. Maye

Solicitor | SC Bar# | Defendant | Attorney for Defendant | SC Bar#

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 13-65-41-259
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 553 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 500
3% to County (if paid in installments)		$ 390
TOTAL		$ 3390

Clerk of Court/ Deputy Clerk: Lou Bathea
Court Reporter: Stacy Sheppard

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

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

Presiding Judge: J. Mark Lee
Judge Code: 2121
Sentence Date: 10/17/13

SCCA/217 (03/2011)

1100

WITNESSES

SCSO

PADGET

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JUL 9 2013

VERDICT

Foreperson of Petit Jury

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That GERALD RUDELL WILLIAMS along with Orienthal Jermaine Charley, did in Saluda County on or about April 13, 2012, feloniously, willfully and with malice aforethought, attempt to murder the victim, Al Jerome Young, in that the defendant, Gerald Rudell Williams along with Orienthal Jermaine Charley, did shoot a firearm into the residence that the victim was then staying, with the intent to kill the victim, Al Jerome Young, in violation of §16-3-29, 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.

ASSISTANT SOLICITOR

1102

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Gerald Rudell Williams)
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Race: Sex: M Age: 41)
DOB: [redacted]-1971 SS#: [redacted])
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ATTEST:

C. Mayl

Solicitor | SC Bar# | Defendant | Attorney for Defendant | SC Bar#

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3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

Clerk of Court/ ~~Deputy Clerk~~: Lisa G Dohn
Court Reporter: Stacy Sheppard

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Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

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

Presiding Judge: Thomas T. Lyon
Judge Code: 2121
Sentence Date: 10/7/13

SCCA/217 (03/2011)