

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Feb 14 2022**

**S.C. SUPREME COURT**

—————  
Certiorari to Spartanburg County

Honorable H. Steven DeBerry IV, Circuit Court Judge  
—————

PATRICK L. DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001335  
—————

APPENDIX  
—————

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

STATE OF SOUTH CAROLINA, ) TRANSCRIPT  
PLAINTIFF, ) OF  
vs. ) RECORD  
PATRICK LAMAR DAVIS, ) 2017-GS-42-5959  
DEFENDANT. ) 2018-GS-42-2974, 2975

October 10<sup>th</sup>, 2018  
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE GRACE GILCHRIST KNIE, Judge.

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

SPENSER SMITH  
ASSISTANT SOLICITOR  
Attorney for the State

DAN MacDONALD  
ASSISTANT PUBLIC DEFENDER  
Attorney for the Defendant

PAMELA E. GREEN  
Circuit Court Reporter  
Seventh Judicial Circuit

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I N D E X   O F   W I T N E S S E S

(WHEREUPON, there were no exhibits marked during this hearing.)

1 P R O C E E D I N G S

2

3 THE COURT: Okay. So now we are going to qualify  
4 everyone.

5 THE SOLICITOR: Yes, Your Honor.

6 THE COURT: Okay. So there are some folks that have  
7 not been sworn.

8 So, everybody that intends to enter a plea, if y'all  
9 would again please stand so that we don't miss anybody.

10 (WHEREUPON, individuals in the courtroom, and in the  
11 jury box stand at this time.)

12 THE COURT: Ms. McKinney is gonna swear you.

13 (WHEREUPON, these individuals were placed under oath at  
14 this time.)

15 THE COURT: Okay. All right. And so now I am going to  
16 do a group qualification, and what that means is that I'm  
17 gonna ask all of you questions regarding your willingness  
18 and voluntariness of giving a plea, and your understanding  
19 of the waiver of Constitutional rights, and your  
20 satisfaction with your legal counsel.

21 I need to confirm that each of you understands what  
22 you're doing today, you're not under the influence of some  
23 substance that would interfere with your ability to  
24 understand what we're doing, and that you willingly wish to  
25 do this.

1           So, at this time, I would ask everyone to stand.

2           (WHEREUPON, the individuals stand at this time.)

3           THE COURT: Now, I'm gonna ask that you remain standing  
4 as long as you agree with what I'm saying.

5           All right. I'll try not to confuse you too much.

6           Does everyone understand -- and, Pam, you've got a list  
7 of everybody?

8           THE COURT REPORTER: I do.

9           THE COURT: Does everyone understand that the purpose  
10 of your being here this morning is not to have a trial, but  
11 to enter a plea on the charge or charges against you?

12           If you understand that and that you're in General  
13 Sessions Court in Spartanburg County, I want you to remain  
14 standing.

15           (WHEREUPON, all individuals remain standing.)

16           THE COURT: Thank you.

17           Now, when you agree to enter a plea, you waive very  
18 important Constitutional rights. Not only are you waiving  
19 your Constitutional right to a trial by jury, but you also  
20 waive your right to confront witnesses against you, and your  
21 right to remain silent. If you understand that, I want you  
22 to remain standing.

23           (WHEREUPON, all individuals remain standing.)

24           THE COURT: Thank you.

25           If you were to go forward and have a trial on the

1 charge or charges against you, the burden of proof would not  
2 be on you and your lawyer. The burden of proof would be on  
3 the State, on the solicitor, to prove every element of every  
4 single charge against you beyond a reasonable doubt. You  
5 don't have to prove anything.

6 And, if you understand that, I want you to remain  
7 standing.

8 (WHEREUPON, all individuals remain standing.)

9 THE COURT: Also, if you were to have a jury trial,  
10 every member of your jury, which is usually a 12 member  
11 jury, unless somebody gets sick and leaves, it's normally 12  
12 people.

13 All right. They all have to say that you're guilty.  
14 They all have to agree that you're guilty for you to be  
15 found guilty.

16 And, if you understand that, I want you to remain  
17 standing?

18 (WHEREUPON, all individuals remain standing.)

19 THE COURT: Now, this is the most important question.

20 Are you today, understanding these very important  
21 Constitutional rights, willing to waive them in exchange for  
22 entering a plea?

23 And if you are willing, willing to waive them in  
24 exchange for your plea, I want you to remain standing.

25 (WHEREUPON, all individuals remain standing.)

1 THE COURT: Thank you.

2 Has anybody threatened you or coerced you or promised  
3 you anything to get you to enter your plea today?

4 And, if that question applies to you, I want you to sit  
5 down.

6 Okay. If you feel like somebody has pressured you,  
7 coerced you, or promised you something, then I want you to  
8 sit down if you feel intimidated about being here today?

9 (WHEREUPON, all individuals remain standing.)

10 THE COURT: Nobody's sitting.

11 Okay. Are you today under the influence of alcohol,  
12 drugs, or any intoxicant that would impair your judgment in  
13 understanding what we're doing here today?

14 If you understand what you're doing -- if you, if you  
15 feel like you're under the influence of something, and don't  
16 understand what we're doing, I want you to sit down.

17 (WHEREUPON, all individuals remain standing.)

18 THE COURT: Nobody's sitting.

19 If you suffer from a mental or a physical infirmity  
20 that would affect your ability in understanding what we're  
21 doing today, I want you to sit down.

22 (WHEREUPON, all individuals remain standing.)

23 THE COURT: Nobody's sitting.

24 If you take any type of prescribed medication, I'm  
25 gonna ask you to sit, and then we're gonna -- then I'm gonna

1 let you tell me about it.

2 okay?

3 so, if you take prescribed medication -- if you would  
4 state your name for me, sir.

5 (WHEREUPON, one individual sits.)

6 THE COURT: Okay. Anyone else?

7 (No response.)

8 THE COURT: Mr. Bell, sir, when we do your plea, I'm  
9 gonna ask you more questions about that.

10 okay?

11 THE DEFENDANT: Okay.

12 THE COURT: All right. You can stand back up.

13 (WHEREUPON, Mr. Bell complies.)

14 THE COURT: All right. Is everyone satisfied with the  
15 services of your legal counsel, if you are, I want you to  
16 remain standing.

17 (WHEREUPON, all individuals remain standing.)

18 THE COURT: Thank you.

19 And if -- you need to understand one more very  
20 important thing, that if you want to appeal anything that  
21 happens here today, anything you don't like about it, and  
22 you want to file an appeal, it's 10 days. Not 30 days. Not  
23 20 days. It's 10 days in writing to this Court.

24 Do you understand?

25 And, if you understand, I want you to remain standing.

1 (WHEREUPON, all individuals remain standing.)

2 THE COURT: Okay. Thank you-all very much.

3 You-all may return to the gallery, right here in the  
4 front.

5 The rest of you please be seated.

6 THE COURT REPORTER: Judge, I've got a list with 16  
7 people on it, and they're not 16 over there. So, I need to  
8 know who exactly---

9 THE COURT: Okay. Before---

10 THE COURT REPORTER: ---who is over there.

11 THE COURT: Okay. Before we walk away, we've got Mr.  
12 Bell, and who is the gentleman with the hoodie?

13 What is your name, sir?

14 THE DEFENDANT: Christopher Gore. Gore.

15 THE COURT: Mr. Gore.

16 Okay. And I'll just -- we want to make sure that our  
17 court reporter gets a record of everybody that's doing  
18 pleas. So, I'll start with the lady in the pink.

19 Ma'am, if you would state your name?

20 THE DEFENDANT: Ruby McFadden.

21 THE COURT: Ms. McFadden.

22 THE DEFENDANT: Uh-huh. (Affirmative).

23 THE COURT: Ma'am?

24 THE DEFENDANT: Amber Bogan.

25 THE COURT: Ms. Bogan.

1 THE DEFENDANT: Yes, ma'am.

2 THE DEFENDANT: Jacki Lance.

3 THE COURT: Ms. Lance.

4 THE DEFENDANT: Justin Crutchfield. Justin  
5 Crutchfield.

6 THE COURT: Mr. Crutch -- Crutchfield?

7 THE DEFENDANT: Yes, ma'am.

8 THE DEFENDANT: Tredrick Lewis.

9 THE COURT: Mr. Lewis.

10 THE DEFENDANT: Daymon Downs.

11 THE COURT: Mr. Downs.

12 THE DEFENDANT: Yes, ma'am.

13 THE DEFENDANT: Michael Gonzales.

14 THE COURT: Mr. Gonzales.

15 THE DEFENDANT: Patrick Davis.

16 THE COURT: Mr. Davis.

17 THE DEFENDANT: Ronnie Falkner.

18 THE COURT: Mr. Falkner.

19 THE DEFENDANT: Shawn Mullins. Shawn Mullins.

20 THE COURT: Mr. Mullins. Okay. Thank you.

21 THE DEFENDANT: Tyne Foster.

22 THE COURT: Mr. Foster.

23 Okay. So we've got four. So we had 13?

24 THE COURT REPORTER: Yes.

25 THE COURT: You got them all?

1 All right. Thank you.

2 (Pause.)

3 THE COURT: All right. Thank you-all.

4 (WHEREUPON, other guilty pleas were completed at this  
5 time.)

6 SOLICITOR SMITH: Patrick Davis.

7 Morning, Your Honor.

8 THE COURT: Good morning.

9 SOLICITOR SMITH: Before you is Patrick Davis. He's  
10 here to plead guilty on three indictments with four counts.

11 First is 2018-GS-42-2974. That was a true billed  
12 indictment for attempted murder. He's pleading guilty to  
13 the lesser included offense of assault and battery of a high  
14 and aggravated nature. Count 2 was true billed for  
15 possession of a weapon during a violent crime. He's  
16 pleading as charged to that.

17 Next is 2018-GS-42-2975. That's a true billed  
18 indictment for petty larceny \$2,000 or less enhanced. He's  
19 pleading as charged on that.

20 And, finally, it's 2017-GS-42-5959. That's a true  
21 billed indictment for escape. He's pleading as charged to  
22 that.

23 There's a recommendation in this case of concurrent  
24 sentencing, which would put him in a five to 20 year range.  
25 The five's not suspendible. He's represented by Dan

1 MacDonal'd from the Public Defender's Office. Do have  
2 Officer Layton here from the City Police. I believe he'll  
3 wish to speak, and I have a statement from the victim I'd  
4 like to read at the appropriate time.

5 THE COURT: Yes, sir.

6 SOLICITOR SMITH: I have his plea sheet and --

7 THE COURT: Thank you.

8 SOLICITOR SMITH: -- his criminal record.

9 MR. MacDONALD: And, lastly, Judge, the assault and  
10 battery charge and the gun charge are Alford pleas as well.

11 THE COURT: Okay. Okay. So, on Indictment 2974, on  
12 both counts, he's pleading under Alford?

13 MR. MacDONALD: Yes, ma'am.

14 THE COURT: Is the victim here?

15 SOLICITOR SMITH: No.

16 THE COURT: Was the victim notified?

17 SOLICITOR SMITH: He was.

18 Can we approach, Your Honor?

19 THE COURT: Yes, sir.

20 (WHEREUPON, a bench conference was held at this time.)

21 THE COURT: Is there restitution?

22 SOLICITOR SMITH: No, Your Honor.

23 THE COURT: Okay. So, there is no restitution.

24 All right.

25 THE PROBATION AGENT: And, Your Honor, Mr. Davis is on

1 probation.

2 THE COURT: Did you know that?

3 MR. MacDONALD: Your Honor, we spoke and we knew he was  
4 on probation. I just -- I thought probation stance was that  
5 they would have a hearing at a later date for the probation  
6 violations. That's what I've been told in the past for a  
7 plea date. So, I was not aware that we were gonna be  
8 handling the violation today.

9 THE COURT: Okay. Well, why -- do you want to take,  
10 take that up with Mr. Davis before we proceed?

11 (Pause.)

12 MR. MacDONALD: Your Honor, Mr. Davis said that he's  
13 fine with going forward today on the probation violation.

14 THE COURT: Is the victim of the petty larceny here?

15 SOLICITOR SMITH: No, Your Honor.

16 THE COURT: Was she notified?

17 SOLICITOR SMITH: Yes, Your Honor. Well, we attempted  
18 to notify her.

19 THE COURT: All right. Okay. Sir, you are Patrick L.  
20 Davis?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: All right. I'm gonna get you to move over  
23 just a little bit so that we're standing more eye to eye---

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: ---even at a distance.

1 All right?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay. First of all, let me tell you, Mr.  
4 Davis, it is not my intent to confuse you, but this is a  
5 complicated situation. So, if at anytime during your plea  
6 today you feel like you need to talk to Mr. MacDonald, you  
7 just let me know.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: All right. And I will let you take a  
10 break, talk with him, and, and, and take -- we're gonna take  
11 this slow, and take all the time that we need.

12 All right?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: So, sir, first, let me, let me just ask, by  
15 entering a plea today, whether it was under North Carolina  
16 versus Alford or it is a straight up guilty plea, you are  
17 violating a prior probationary sentence, and we are taking  
18 all of that up at the same time today.

19 Is that your understanding?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. Do you need any more time to talk to  
22 Mr. MacDonald about that?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: All right. Now, let me ask you about the  
25 two charges that you're entering a guilty plea on.

1 All right. I've got two true billed indictments.  
2 Indictment Numbers 2018-GS-42-2974, and this is the  
3 indictment for petty larceny in violation of South Carolina  
4 Code Section 16-13-30, enhanced, 16-1-57, the value being  
5 \$2,000 or less. The potential penalty for this offense is  
6 zero to 10 years.

7 Sir, do you understand this indictment?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: You understand what you're pleading to on  
10 this?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And do you understand the potential penalty  
13 is up to 10 years?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. Do you further understand that  
16 there will be a no contact provision as part of any sentence  
17 that I issue with the victim, Ms. Mitchell, Kimberly  
18 Mitchell?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Mitchell.

21 All right. And the no contact, does that cause you any  
22 hesitation in entering your plea today?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: And there's no restitution owed on that, is  
25 there, Mr. Smith?

1 SOLICITOR SMITH: No, Your Honor.

2 THE COURT: All right. And then we have a true billed  
3 Indictment, 17-GS-42-5959, and this is for escape, and the  
4 potential penalty for this is zero to 10 years. This is in  
5 violation of South Carolina Code Section 24-13-410.

6 SOLICITOR SMITH: It's, it's under---

7 MR. MacDONALD: Okay.

8 SOLICITOR SMITH: It's under the common law escape,  
9 Your Honor. So, there's not a statute for it, but it is --  
10 that is what it carries.

11 THE COURT: Okay. Well, the statute's on the  
12 indictment.

13 SOLICITOR SMITH: Okay. There's a statutory escape,  
14 and a common law escape. He's pleading to the common law  
15 escape.

16 THE COURT: Okay. And so, just so we're clear,  
17 Mr. Smith, Mr. MacDonald, it is y'all's position that I can  
18 issue a concurrent sentence on that as opposed to a, a  
19 consecutive sentence?

20 MR. MacDONALD: Yes.

21 SOLICITOR SMITH: Only the statutory one requires  
22 consecutive time. So, yes.

23 THE COURT: Okay. Well, well, my sentencing sheet says  
24 that he's pleading as indicted.

25 SOLICITOR SMITH: We need to change that then.

1 MR. MacDONALD: And the indictment is listing the  
2 statute.

3 And so, again, do we need to change something before we  
4 proceed?

5 SOLICITOR SMITH: We can change it to the lesser  
6 included offense.

7 THE COURT: Why, why don't y'all just come up?

8 I just -- I know there's a lot of -- going on.

9 (WHEREUPON, a bench conference was held at this time.)

10 THE COURT: Okay. So, Mr. Davis, I'm just trying to  
11 make sure that we're all crystal clear on everything---

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: ---and there's not a problem later.

14 Do you understand that you are pleading to escape with  
15 a potential penalty of zero to 10 years, but apparently this  
16 is the common law escape definition, and this sentence does  
17 not have to be consecutive to your other sentence. It can  
18 be concurrent.

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you have any questions about that?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: All right. So, with regard to these two  
23 indictments, 2018-GS-42-2975 and 5959, how do you plead?

24 THE DEFENDANT: Guilty.

25 THE COURT: Are you doing so freely, knowingly, and

1 voluntarily?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: All right. And then with regard to true  
4 billed Indictment 2018-GS-42-2974, this is a two count  
5 indictment for attempted murder and possession of a weapon  
6 during a violent crime. It is my understanding, sir, that  
7 you're going to enter a plea to the lesser included offense  
8 of assault and battery of a high and aggravated nature with  
9 a potential penalty on that offense of zero to 20 years.

10 Is that your understanding?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And that you are pleading as indicted on  
13 the second count, which is possession of a weapon during a  
14 violent crime, which is a five year sentence. It is not  
15 suspendible.

16 Do you understand that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Got any questions about that?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: And the assault and battery of a high and  
21 aggravated nature is considered or classified as a violent  
22 and serious offense.

23 Do you understand that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you have any questions about that

1 classification for me or for Mr. MacDonald?

2 If you do have questions, I will give you an  
3 opportunity to speak with Mr. MacDonald.

4 THE DEFENDANT: No, ma'am.

5 THE COURT: All right. Has he explained that to you?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. So, sir, before we go any  
8 further on that, was discovery shared with Mr. MacDonald?

9 SOLICITOR SMITH: Yes, Your Honor.

10 THE COURT: And I'm assuming it was shared on all  
11 charges?

12 SOLICITOR SMITH: Yes, Your Honor.

13 THE COURT: So, Mr. MacDonald, did you have an  
14 opportunity to review the evidence and discovery in this  
15 case with Mr. Davis?

16 MR. MacDONALD: Yes, Your Honor.

17 THE COURT: Did you also discuss with Mr. Davis his  
18 options that he could enter a plea, have a trial, or have a  
19 jury trial?

20 MR. MacDONALD: Yes, Your Honor.

21 THE COURT: Okay. So, Mr. Davis, listen carefully.

22 All right. Again, it's not my intent to confuse you,  
23 but do you remember talking with Mr. MacDonald about the  
24 evidence against you---

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: ---with regard to these, these charges?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And did you also discuss with him your  
4 options of you could have a, a bench trial, you can have a  
5 jury trial, or you can enter a plea?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And, based upon those discussions with him,  
8 did you, in your review of the evidence, do you believe  
9 that, if you went forward and had a trial, that you would be  
10 found guilty based on that evidence, and that that guilt  
11 would be beyond a reasonable doubt?

12 THE DEFENDANT: I, I need to speak with him for a  
13 second.

14 THE COURT: Yes, sir, take all the time that you need.

15 (Pause.)

16 THE COURT: Yes, sir.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. So let me ask you again.

19 All right?

20 THE DEFENDANT: All right.

21 THE COURT: Sir, based upon your review of the evidence  
22 with Mr. MacDonald, and it may have been with other counsel  
23 as well, as well as your discussions with counsel regarding  
24 your options in this matter, do you believe, if you went  
25 forward and you had a trial, whether it be a jury trial or a

1 bench trial, that you would be found guilty and that guilt  
2 would be beyond a reasonable doubt based upon the evidence  
3 against you?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay, sir. And so are you entering your  
6 plea at this time under North Carolina versus Alford?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And are you doing so freely, knowingly, and  
9 voluntarily?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. Thank you, sir.

12 And, sir, do you understand that, as part of any  
13 sentence that I issue on these charges, I will also issue a,  
14 a no contact provision with the victim, Mr. [REDACTED]?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And there's no restitution on that?

17 SOLICITOR SMITH: No, Your Honor.

18 THE COURT: All right. All right. Thank you, sir.  
19 Anything else before we proceed with hearing the facts?

20 MR. MacDONALD: None, Your Honor.

21 THE COURT: Mr. Smith, anything else?

22 SOLICITOR SMITH: Your Honor, I don't know, I don't  
23 know if I've had this situation before. He was noticed with  
24 a life notice. I don't know if you want to go over that or  
25 if it -- that matters to you, but he has two qualifying

1 convictions that would of made him exposed to a potential  
2 life sentence if he was convicted of ABHAN or attempted  
3 murder. We're not going forward with that today, but---

4 THE COURT: You served him with a notice?

5 SOLICITOR SMITH: Yes, Your Honor.

6 THE COURT: When did you do that?

7 SOLICITOR SMITH: Months and months and months ago.

8 MR. MacDONALD: Around February, Your Honor.

9 THE COURT: Okay. Mr. MacDonald, do you want to put  
10 anything on the record about that?

11 MR. MacDONALD: Well, Your Honor, part of the, the, the  
12 offer that he's pleading guilty to today is that they're  
13 gonna withdraw the life notice on him for the plea, and that  
14 he's looking at a range of five to 20 years on his plea.  
15 Not a life sentence. And that's part of what got us to come  
16 to an agreement on a plea deal, Your Honor.

17 THE COURT: Okay. So, let me ask you, Mr. Davis,  
18 because this is very serious, and it is very complicated,  
19 sir, do you understand that, that you were served with -- we  
20 call it being served with a life notice or the solicitor's  
21 office looked at your criminal history, saw that, that, that  
22 would apply to you, and they served you personally, and your  
23 legal counsel.

24 Do you remember getting that letter?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: I'm sure you do.

2 And, and, so, sir, do you understand that, as part of  
3 the negotiations, I mean you've, you've already negotiated  
4 or counsel has negotiated quite a bit on your behalf to go  
5 forward today, and they're not seeking that life sentence in  
6 exchange for your plea.

7 Do you understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. All right. Anything else --

10 SOLICITOR SMITH: No, Your Honor.

11 THE COURT: -- with regard to what I said in case I  
12 made it a little confusing?

13 MR. MACDONALD: None, Your Honor.

14 SOLICITOR SMITH: I think that was very clear.

15 THE COURT: Okay. All right. Mr. Davis, you ready to  
16 go forward?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. Thank you, sir.

19 If you will direct your attention to Mr. Smith.

20 SOLICITOR SMITH: Your Honor, first is the escape. He  
21 was actually placed on a home detention monitor as a part of  
22 a sentence that he was given on August 22<sup>nd</sup> of 2017 in front  
23 of Judge Hayes. I'll go over that when I get to his  
24 criminal history, but it was part of a sentence.

25 On October 23<sup>rd</sup>, home detention got a notification

1 that his monitor had been removed. They responded to the  
2 last location in which they had it. Mr. Davis was actually  
3 present across the street from where the monitor was and  
4 where he was suppose to be. He spoke with officers, and, as  
5 he, he said, he just took it off because he wanted to chill.

6 They asked him to come with him and he ran. At that  
7 point he jumped over several fences and was able to escape.

8 October 30<sup>th</sup> of 2017, deputies got a tip that he was  
9 back at that residence. They went and knocked on the door,  
10 the door. The Defendant jumped out of a side window  
11 buck-naked.

12 Officers gave chase again over several fences.  
13 Officers lost him briefly, and then saw a pedestrian with a  
14 startled look on their face who they believed had just seen  
15 Mr. Davis. They asked that man and he said he had just  
16 jumped inside of his work truck. Officers found him hiding  
17 in the back seat of the work truck, and he was taken into  
18 custody.

19 Your Honor, he ended -- we revoked the rest of his  
20 sentence and he went to prison for a brief period of time  
21 cause he had a good amount of credit before he pled, and  
22 then the time he'd done on home detention. So, he gets out  
23 and then, on January 29<sup>th</sup> of 2018, officer -- I got -- I  
24 think he got out mid-December.

25 On January 29<sup>th</sup> of 2018, officers responded to Sunny

1 street in the city and county of Spartanburg for a theft.  
2 The victim had had her purse taken from the back seat of her  
3 vehicle. The victim had seen two people running away with  
4 the purse when they came outside.

5 witnesses had believed that one of the men was Patrick  
6 Davis, and the victim was able to pick him out of a photo  
7 lineup.

8 And the, the ABHAN, Your Honor, was on February 21<sup>st</sup> of  
9 2018. Officers responded to South Liberty Street for a  
10 shooting. The victim had already been transported by a  
11 bystander. He suffered a gunshot wound to the leg. That  
12 was [REDACTED]. He was 16-years old at the time. Four  
13 9-millimeter shell casings were found on scene in the  
14 roadway. The victim was able to tell officers he was shot  
15 by two men driving a blue Honda.

16 Before police arrived the victim had told security that  
17 Project Pat had shot him. That's the nickname for  
18 Mr. Davis. The man who drove the victim to the hospital  
19 said he had gone to Liberty Street to pick up his daughter  
20 who is the boyfriend of Patrick Davis because she was in a  
21 fight with him. During that argument, Patrick was saying he  
22 wasn't afraid of his girlfriend or her dad and asked for his  
23 gun.

24 His brother, Zykeme Davis, handed Patrick a black gun.  
25 He said Patrick and the guy or Patrick said he was about to

1 scatter those boys up the street. He and -- he and his  
2 brother got into a blue Honda with Mr. Zykeme Davis driving  
3 and Patrick in the passenger seat, and he said he saw  
4 Mr. Davis reach out of the door, and shoot into the crowd  
5 outside of the house on Liberty Street, and, fortunately,  
6 only Mr. Geter was struck. But there were several other  
7 people out in the street at the time of this shooting.

8 On February 28<sup>th</sup> of 2018, the victim did state to  
9 police that Project Pat had shot him out of a blue Honda,  
10 and that Zykeme Davis had been driving, and he was able to  
11 identify Zykeme Davis out of a photo lineup.

12 Both of the Davis' were arrested later, and found in  
13 the vicinity of a pistol. The car that they had arrived in  
14 to the location they were arrested at had two different  
15 types of ammunition in it.

16 He does have a prior record, and I believe I have a  
17 letter I'd like to read from the victim's mother at the  
18 appropriate time, go over his record, and Layton and I would  
19 like to speak on sentencing.

20 THE COURT: Okay. Well, first, let me ask, Mr. Davis,  
21 with regard to the two charges of petty or simple larceny  
22 and of escape, sir, those are the two charges that you're  
23 entering a guilty plea on.

24 Do you agree that that's what happened?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Okay. Thank you, sir.

2 Okay. And so, let me -- however you want to do it.

3 The letter, and then hear from the officer or---

4 MR. MacDONALD: Do you want to do the, the Alford plea  
5 or wait until---

6 THE COURT: Well, I've already asked him --

7 SOLICITOR SMITH: Okay.

8 THE COURT: -- under Alford.

9 SOLICITOR SMITH: Okay.

10 THE COURT: And I've asked about the evidence --

11 SOLICITOR SMITH: Okay.

12 THE COURT: -- and --.

13 SOLICITOR SMITH: Okay. Your Honor, his prior record  
14 is 2008 burglary second violent and grand larceny.

15 2011, burglary second violent, A&B second, and criminal  
16 domestic violence. Those are the two convictions the State  
17 would of been using to seek a life sentence on him.

18 2012, burglary third first offense.

19 2018, false info, driving under suspension out of  
20 Georgia, a shoplifting and malicious injury to personal  
21 property. I think that's what he's on probation for. He  
22 actually had charges that came in at different times, and  
23 they got handled about two weeks within each other. He got  
24 probation on one, and then, on the common law robbery,  
25 assault and battery third, and domestic violence second, he

1 pled on -- it was 12 days after he had pled to that  
2 shoplifting, and he got a one year home detention sentence  
3 on that common law robbery and DV second, which is what he  
4 ultimately escaped off of.

5 THE COURT: Okay. Thank you.

6 Okay. So now the victim's letter, and the statement,  
7 the statement by the officer.

8 SOLICITOR SMITH: Yes, Your Honor.

9 It says hello. I'm the mother of [REDACTED]. [REDACTED]  
10 is afraid to leave the house because of fear of retaliation.  
11 I had to send him to Philadelphia over the summer to get him  
12 out of town because he was getting threatened over Facebook.  
13 He's tried working, but he can't stand long because of him  
14 being shot in his leg. It swells up on him. I don't know  
15 Project Pat, but I'm afraid something else might happen to  
16 [REDACTED] and my family.

17 This is detective, officer?

18 THE COURT: Okay. Thank you, sir.

19 And, Mr. MacDonald, have you seen that correspondence?

20 MR. MacDONALD: I had -- I have not, Your Honor.

21 THE COURT: Okay. All right. Thank you.

22 Yes, sir.

23 INVESTIGATOR LAYTON: Your Honor, I would just request  
24 you take into consideration his prior record, the  
25 seriousness of this crime, the---

1 THE COURT: All right. Can we back up?

2 Can you identify yourself for the record?

3 INVESTIGATOR LAYTON: I'm Investigator Christopher  
4 Layton with the City of Spartanburg Police Department.

5 THE COURT: Yes, sir, it's nice to see you, and happy  
6 to hear from you, sir.

7 INVESTIGATOR LAYTON: Yes.

8 THE COURT: Okay. So now let's start again.

9 INVESTIGATOR LAYTON: Yes, ma'am, just take into  
10 consideration the prior record of Mr. Davis, the, the  
11 seriousness of this crime. Mr. Geter was 16 years old when  
12 this occurred.

13 Also, he's had to be sent away over the summer for  
14 fear, for fear of retaliation in reference to this. His  
15 family, I've spoke with members of the family. He's afraid  
16 to leave the house, afraid to go to school, afraid to work,  
17 afraid to be here, be recognized today.

18 Just take all those facts into consideration, ma'am.

19 THE COURT: Okay. Thank you, sir.

20 Mr. MacDonald, before, before -- anything else from the  
21 State?

22 SOLICITOR SMITH: Yes, Your Honor.

23 I'd just like to echo that. Obviously you've heard his  
24 record. He's got property crimes that he then gets placed  
25 on probation, and then he's placed on home detention,

1 violates home detention by cutting his monitor. He gets  
2 out. Within two months he's stealing. The next month he's  
3 shooting at people. There's just obviously an escalation of  
4 his behavior, and no record for Court orders.

5 This was a life case. We -- you know, we've struck a  
6 deal, but we would ask for something in the 15 to 20 year  
7 range on him---

8 MR. MacDONALD: Your Honor, may we approach for a  
9 second?

10 We object.

11 (WHEREUPON, a bench conference was held at this time.)

12 THE COURT: Thank you.

13 All right. So, unless there's anything else from the  
14 State, I will now hear from Agent Mannigan.

15 THE PROBATION OFFICER: Your Honor, may it please the  
16 Court.

17 On October the 10<sup>th</sup> of 2017, Mr. Davis was sentenced  
18 here in Spartanburg County before Judge Hocker under  
19 2016-GS-42-480 for the offense of malicious injury to  
20 animals, personal property with a value of \$2,000 or less.  
21 He received a sentence of five years, provided upon the  
22 service of 67 days, and the balance was suspended with three  
23 years probation.

24 Also, that same day, 2016-GS-42-4802, shoplifting value  
25 more than 2,000 but less than 10,000. The sentence was the

1 same, five years sus -- provided upon the service of 67  
2 days, and the balance was suspended with three years  
3 probation. He has special conditions of payment of the  
4 restitution, and, if he was fully compliant after one year,  
5 it could terminate. He was placed on home detention for the  
6 first nine months with GS (sic) monitoring. He could leave  
7 for work, doctor's appointments, for Court, and to see his  
8 lawyer, and probation, and he was to have no contact with  
9 wal-Mart.

10 Your Honor, wal-Mart is the victim in the case.  
11 He's -- they were owed about \$600.00. They received no  
12 payments. We were able to go forward because the victims  
13 did not wish to be notified further today.

14 THE COURT: What is the indictment number on the second  
15 one?

16 THE PROBATION AGENT: 2016-GS-42-4802.

17 THE COURT: Okay. 4801 and 4802.

18 THE PROBATION AGENT: Yes, ma'am.

19 THE COURT: Okay. And so the time that is available to  
20 be revoked is --?

21 THE PROBATION AGENT: The five years less the 67 days.

22 THE COURT: Okay. So, five and three?

23 THE PROBATION AGENT: well, both were five, but he's  
24 done 67 days.

25 THE COURT: Okay.

1 THE PROBATION AGENT: Both were five years.

2 THE COURT: Mr. MacDonald, bear with me.

3 Okay?

4 MR. MACDONALD: Oh, yes, ma'am.

5 THE COURT: I want to listen intently, and I'm trying  
6 to make a note.

7 All right?

8 MR. MACDONALD: Yes, ma'am.

9 (Pause.)

10 THE COURT: Okay. Thank you, sir.

11 And so first though, let me ask Mr. Davis.

12 Mr. Davis, sir, you heard the statements of, of our  
13 probation representative.

14 Do you admit that you have willfully violated the terms  
15 and conditions of the prior probation, probationary  
16 sentence?

17 Both of those were by Judge Hocker?

18 THE PROBATION AGENT: Yes, ma'am.

19 THE COURT: By Judge Hocker?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. Thank you, sir.

22 All right. So, now, Mr. MacDonald, I'm happy to hear  
23 from you, and anyone that you want to have address me.

24 And then, Mr. Davis, I will hear from you.

25 Okay. So, you---

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: ---if you want to get your thoughts  
3 together.

4 All right. I'm gonna give you an opportunity to  
5 address me---

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: ---before I issue my sentence.

8 Mr. MacDonald.

9 MR. MacDONALD: Thank you, Your Honor.

10 Your Honor, this is Patrick Davis, and he's been  
11 incarcerated on these charges off and on for 276 days.

12 Judge, in that time, I've had many opportunities to  
13 speak with this man.

14 Your Honor, to be honest, his personality does not  
15 match the crimes that he's charged with. He's an  
16 intelligent man. He could of gone to Clemson, Your Honor.  
17 Ended up not going to Clemson. He ended up staying here.

18 He's a, he's a good person. I will have -- I've had  
19 many conversations with him, and, honestly, if, if I -- if  
20 he wasn't in jail, you'd never even think that he'd be  
21 charged with any of these charges.

22 This is that someone cares about his community, Judge.  
23 He's had 276 days to think about the fact that he has four  
24 children that he's not been able to see. He -- Your Honor,  
25 he hasn't been able to see his family. He's just -- he's --

1 all he's had time to do is think about his past, and what's  
2 gotten him to this point here today, Your Honor.

3 Your Honor, he wants to change his ways. He's smart  
4 enough to do so. He -- he's, he's got the intelligence.  
5 He's got the charisma.

6 Your Honor, he won't -- he's told me many times that he  
7 wants to give back to his community. He wants to volunteer.  
8 He's actually worked out something with a Mr. Everette that  
9 he's gonna be a mentor once, once he gets out, but he knows  
10 he's got a prison sentence awaiting him, Your Honor, and  
11 we've talked about this over and over, that it's gonna be a  
12 while until he gets out.

13 Your Honor, we're gonna be asking for a split sentence  
14 where he can get some sort of short sentence followed by a,  
15 a long probationary sentence with the rest of that sentence  
16 hanging over his head where basically, if he steps out of  
17 line at any point, he'll have to go to prison for many, many  
18 years, and he won't be able to see his kids graduate, get --  
19 probably get married or anything like that if he is ever to  
20 go back.

21 Your Honor, he's got family here today that wish to  
22 speak. He, he wishes to speak at the appropriate time.

23 Your Honor, we just ask for leniency here in this  
24 situation. I think that Mr. Davis is someone that can turn  
25 his life around, and we're just asking for one more chance

1 to turn his life around, Your Honor.

2 At the appropriate time, we have some people that wish  
3 to speak.

4 THE COURT: Okay. Yes, sir. Thank you, Mr. MacDonald.  
5 I'm happy to hear from anyone that is here to speak on Mr.  
6 Davis' behalf.

7 MR. MacDONALD: We have Mr. Jay Davis. That's his  
8 father.

9 MR. COURT: Mr. Davis, come forward.

10 (WHEREUPON, Mr. Davis complies.)

11 THE COURT: Good morning, sir.

12 MR. DAVIS: Good morning.

13 THE COURT: If you would state your full name?

14 MR. DAVIS: Jay Davis.

15 THE COURT: And your relationship to Patrick?

16 MR. DAVIS: Father.

17 THE COURT: Okay. I'm happy to hear from you.

18 MR. DAVIS: Okay. I, I like the Court just have a  
19 little mercy on my son. He's got with the wrong people, and  
20 he's went astray, but like a lost sheep, I'm trying to bring  
21 him back in and get him on the right path.

22 I've told him that young life is part of his best  
23 years. Not spending in jail. So, I want him to just let  
24 all this old trash and stuff go, and get hisself together  
25 and be a good man. I think he'll be a good man to

1 citizen -- to society.

2 THE COURT: Thank you, sir. Thank you very much.

3 MR. DAVIS: Just have a little mercy on him for me.

4 Thank you.

5 THE COURT: Thank you, sir.

6 MR. RICHARDSON: Your Honor?

7 THE COURT: Good morning, sir.

8 MR. RICHARDSON: Lloyd Richardson.

9 THE COURT: Mr. Richardson?

10 MR. RICHARDSON: Yes, ma'am.

11 THE COURT: What is your relationship to Mr. Davis?

12 MR. RICHARDSON: I'm a friend of the family's. I'm  
13 actually his mother's boyfriend.

14 I known Mr. Davis for maybe five years now. He's a  
15 generous person. I've seen him with his children. I've  
16 seen him talk to his children, and the way he talks to them,  
17 he wants them to grow up in a different way than he did.  
18 He's trying to teach them to be prominent and upstanding  
19 citizens, and that's the way he talks to his children.

20 THE COURT: Thank you, sir.

21 MR. RICHARDSON: He's a good father.

22 THE COURT: Thank you.

23 MR. MCKENNEDY: How you doing, Judge?

24 My name is Everett McKennydy.

25 THE COURT: One more time.

1 McKenndy?

2 MR. MCKENNEDY: Everett McKenndy.

3 THE COURT: McKenndy.

4 MR. MCKENNEDY: Yes, ma'am.

5 THE COURT: Yes, sir, I'm happy to hear from you.

6 If you would, explain your relationship with

7 Mr. Patrick Davis.

8 MR. MCKENNEDY: Well, I use to be his youth pastor a  
9 few years back. Been about at least eight years. I lost  
10 touch with him and started getting back in touch with him  
11 early part of 2018 I think it was.

12 But since he's been incarcerated, I've talked to him  
13 numerous times. One thing I -- I'm hearing in him that's  
14 different is ownership. He's taking accountable,  
15 self-examination, looking at himself. He's never talked  
16 like that before. Instead of him blaming others, he's  
17 talking about things he's done wrong, and he said he -- one  
18 thing he told me, he didn't want to make any more excuses.  
19 He wants to make adjustments.

20 And so, just listening to his conversation, I hear a  
21 difference in him. I know he has to do some time, but one  
22 of the things he wants -- wanted to, to share with me, I  
23 have a program for young men -- males ages 12 to 18, and  
24 also I work with young, young men as well in a mentoring  
25 program where we teach ownership. And that's one of the

1 things he say he wants to do once he gets out.

2 He wants to be a part of the program as well as help  
3 give back to the younger kids so we don't have so much to  
4 clean up on the back end later on in life. So, he has been  
5 talking with me the last I know at least five months. I've  
6 talked to him at least once a week, Your Honor.

7 THE COURT: Thank you, sir. Thank you for being here.

8 MR. MCKENNEDY: Thank you.

9 MR. MacDONALD: That's all, Your Honor, from us.

10 THE COURT: Okay. And, Mr. Smith, you've already given  
11 me the criminal history.

12 SOLICITOR SMITH: Yes, Your Honor.

13 THE COURT: All right. So, Mr. Davis, now is your time  
14 to tell me anything you'd like to, sir. Both with regard to  
15 the charges against you and the probation matter.

16 THE DEFENDANT: Yes, ma'am.

17 As far as the probation matter, I have no excuse. But,  
18 first off, I'd like to express my concern for the victim's  
19 health and recovery. Also appreciate my family for they  
20 love and support.

21 From the bottom of my heart, being incarcerated these  
22 267 days made me realize how my life could be taken away  
23 from me for minor and major mistakes in general. Being  
24 served with the life notice was a major wake-up call.

25 The reason why, I lost my nephew and my sister while I

1 been incarcerated, and never, ever seeing them again was a  
2 hurtful feeling. And never, ever seeing my family again or  
3 getting to raise my children is a more hurtful feeling.

4 I also realize they don't just need me out. They need  
5 me to be a productive father to keep -- continue to show  
6 them what's right.

7 During this incarceration, I have bettered myself as a  
8 person, but not only for my self, but for my family and  
9 community as well.

10 As Mr. McKenzie say, I would love to be a part of the  
11 program, and I would love for it to be put in my sentence  
12 just so it will get fulfilled when I'm done doing my time.  
13 I also have access to return to my job at Lear.

14 with that being said, I want to be a part of my  
15 community, and I want to make change in my community. I not  
16 only want to make a major impact on my life, and my kid's  
17 life, but others as well. I feel like, with my testimony  
18 and my positive guidance and my change, it will be less  
19 youth in my situation, and more youth in your position.

20 As far as my career goes, I would love to start my own  
21 lawn service, and I would love to open up a barber shop or  
22 maybe a carlot. I am going back to school for business  
23 management to practice real estate so I can practice on  
24 buying foreclosing (sic) houses for a lower price to build  
25 up my financial status.

1 From the bottom of my heart, Your Honor, I know I'm a  
2 good person. I got a good heart. I got good character, and  
3 I am a good role model, and I just got caught up in a bad  
4 situation. And, from the bottom of my heart, I promise I'm  
5 gonna change, and I just needed -- do what I got to do to  
6 get myself together, and I'm gonna do that.

7 THE COURT: All right. Thank you, sir.  
8 Anything else?

9 SOLICITOR SMITH: No, Your Honor.

10 MR. MacDONALD: None from us, Your Honor.

11 THE COURT: Is it 277 the number of days that Mr. Davis  
12 has been incarcerated?

13 MR. MacDONALD: I believe so, Your Honor.

14 SOLICITOR SMITH: Yeah, we agreed on that beforehand.  
15 There was just -- I gave him an extra day.

16 THE COURT: Is there an addiction problem?

17 MR. MacDONALD: There's no drug problem here for  
18 Mr. Davis, Your Honor.

19 THE COURT: Okay. With regard to the matter of the  
20 State versus Patrick L. Davis, it is the Order of the Court  
21 that the Defendant, on Indictment 2018-GS-42-2974, and that  
22 was assault and battery of a high and aggravated nature, the  
23 two count indictment, it, it would be the Order of the Court  
24 that the Defendant be committed to the State Department of  
25 Corrections for 20 years. That will be suspended upon the

1 service of 14 years, and then probation for two. He will  
2 get credit for 277 days. He'll have no contact with the  
3 victim, [REDACTED] [REDACTED], or the immediate family members of  
4 [REDACTED]

5 On Indictment 18-2974-A, which was the possession of a  
6 weapon during the commission of a violent crime, the  
7 Defendant shall be committed to the State Department of  
8 Corrections for five years.

9 With regard to Indictment 18-2975, petty or simple  
10 larceny enhanced, the Defendant shall be committed to the  
11 State Department of Corrections for 10 years. He'll have no  
12 contact with the victim, Kimberly Mitchell.

13 And with regard to Indictment 17-5959, escape, the  
14 Defendant shall be committed to the State Department of  
15 Corrections for 10 years. Those are concurrent sentences.  
16 And, again, he will receive credit for 277 days.

17 On the probation violation, Indictment 16-GS-42-41 --  
18 I'm sorry, 4801 and 4802, I will revoke four years. I will  
19 run that concurrent. I will terminate and probation will  
20 commence again upon his release.

21 Good, good luck to you, Mr. Davis.

22 MR. MacDONALD: Thank you, Judge.

23 THE PROBATION AGENT: Your Honor, may we have a civil  
24 judgment for the restitution?

25 THE COURT: How much is it?

1 THE PROBATION AGENT: It's \$600.00---

2 THE COURT: Yes, ma'am.

3 THE PROBATION AGENT: ---to wal-Mart.

4 SOLICITOR SMITH: Thank you, Your Honor.

5

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7 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 10<sup>th</sup> day of October, 2018.

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

November 13<sup>th</sup>, 2019

---

PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of Spartanburg

PATRICK DAVIS 346636  
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

**2019-CP-42-03703**

APPLICATION FOR  
POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

2019 APR 18 PM 4:12  
FILED

1. Place of detention Lee
2. Name and location of Court which imposed sentence Spartanburg SC  
(Spartanburg County Court house)
3. Name(s) of co-defendant(s) (if any) Zyking Davis
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2018GS4202974
  - (b) 2018GS4202974A

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

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

(a) Oct 10, 2018 A+B High Aggravated Nature 14 years Volent

(b) Pass of a weapon during a Volate Crime 10 years Non Volent

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

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

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

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

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

NO

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

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

i. NO

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

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

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

i. NO

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

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

(c) the date of each such result:

i. NO

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

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

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

i. NO

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

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

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

(a) my lawyer didnt inform me that I could file and appeal After a guilty Plea

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CLERK OF SUPERIOR COURT  
GENERAL INVESTIGATIVE DIVISION  
ALBANY, NY

(b) \_\_\_\_\_

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

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: filing for Ineffectuated ~~Consent~~ Counsel

(a) my lawyer was Ineffectuated by Not Informing me I could file and Appeal after a guilty plea

(b) Lawyer was Ineffectuated by Not doing proper Investigation on my case Not giving me my motion in the timely order that I could

(c) lawyer did not interview any witnesses or my witnesses in my case so I was force to take a plea

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

(a) see Attached Page

(b) \_\_\_\_\_

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

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

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

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

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

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. NO

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

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

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

(b) the name and location of the Court in which each was filed:

i. NO

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

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

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

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SOUTH CAROLINA  
COURT OF APPEALS

(c) the disposition thereof:

- i. No
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. NO
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. NO
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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 ALABAMA  
 EAST  
 11

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

No

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

(a) which grounds have been presented:

- i. No
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. No
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) First post conviction Relief
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. MacDonald Iv Daniel J  
366 N Church St Ste 3000 Spartanburg SC 29303
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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 SPARTANBURG COUNTY  
 ATTORNEY GENERAL'S OFFICE

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

FOR the conviction and sentence to be vacated and set aside, or in the alternative, for the conviction to be reversed and a new trial be granted

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

No

STATE OF SOUTH CAROLINA )  
County of Spartanburg )

VERIFICATION

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CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA

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

Patrick Davis

SWORN to and subscribed before me this 10<sup>th</sup> day of Oct

Jhamea M. Teke (L.S.)  
Notary Public

My Commission Expires: 09/04/2029

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

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

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

Patrick Davis  
Applicant

SWORN or affirmed to and subscribed before me this

10<sup>th</sup> day of Oct

Lee Corr., Inst.,  
990 Wisacky Highway  
Bishopville, SC 29010-1775

James M. Teke  
Notary Public

My Commission Expires: 09/04/2029

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SOUTH CAROLINA  
ANDERSON COUNTY  
ANDERSON, SC 29621

I'm filing Ineffective Counsel cause my lawyer Mac Donald IV, Daniel J fail to Inform me that I could file for And Appeal After my Plea on Indictment #'s 2018GS420274A POSS Weapon during Volent crime And Indictment# 2018GS4202974 A+B High Aggravated Nature He fail to get a Ruling on the objection During my Plea cause the Solicitor said In front of Both of us it Wasnt No Recommendation from the State, that's One Reason I fail Back from trail. He fail to give my motion in a timely matter, ~~say~~ saying Right Before we thinking about going to trail He bring it. He fail to Interview any witnesses I Had. He fail to tell the facts on my mental Health Issues

11. A

This is the Attached page

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 WASHINGTON STATE

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Patrick Davis, #346636,  
Applicant,

v.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-42-03703

**RETURN AND PARTIAL  
MOTION TO DISMISS**

NOW COMES the Respondent, making their return and partial motion to dismiss the application for post-conviction relief (PCR) filed by Patrick Davis (Applicant) on October 18, 2019, Respondent respectfully shows this Court:

**I. Procedural History**

During its December 2017 term, the Spartanburg County Grand Jury indicted the Applicant for escape (2017-GS-42-5959). During its June 2018 term, the Spartanburg Grand Jury indicted the Applicant for attempted murder and possession of a weapon during a violent crime (2018-GS-42-2975), and petty larceny (2018-GS-42-2975). On October 10, 2018, the Applicant appeared before the Honorable Grace G. Knie and pled to the lesser-included offense of assault and battery of a high and aggravated nature, in addition to pleading as indicted to possession of a weapon during a violent crime, petty larceny, and escape. Both assault and battery of a high and aggravated nature and possession of a weapon during a violent crime were pleas entered into under *North Carolina v. Alford*, 400 U.S. 25 (1970). Daniel McDonald, Esquire, represented Applicant. Seventh Circuit Solicitor Barry Barnette and Assistant Solicitor Spenser Smith of the Seventh Circuit Solicitor's Office prosecuted the case. The State's recommendation was for sentences to be served concurrently. Judge Knie sentenced the Applicant to confinement for concurrent terms of twenty years. Applicant did not appeal his conviction or his sentence. Applicant remains

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detained in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court.

## II. Allegations Raised and Relief Requested

In his PCR application, Applicant alleges he is currently unlawfully detained for:

- I. "Ineffective Assistance of Counsel."
  - a. "My lawyer was ineffective by not informing me that I could file an appeal after a guilty plea."<sup>1</sup>
  - b. "My lawyer was ineffective by not doing a proper investigation. . . ."
  - c. "By not giving me my motion in a timely order."
  - d. "My lawyer did not interview any witnesses or my witnesses . . . ."
  - e. "My lawyer forced me to take a plea."

Attached and incorporated herein are the applicable Spartanburg County Clerk of Court Records, the plea transcript, Applicant's records from the South Carolina Department of Corrections, and the records from this PCR action. Respondent reserves the right to return this Return upon receipt of any relevant information.

## III. All Allegations Beyond *White* Relief Should be Barred by the Statute of Limitations

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the Act requires as follows:

An application for relief . . . must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held the statute of limitations applies to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A

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<sup>1</sup> Applicant also asserted this claim when answering question nine of the application, regarding why he did not appeal.

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motion for summary judgment may be used to raise the statute of limitations defense. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant pled to the charges on October 10, 2018 and did not pursue a direct appeal. Thus, the application was due by October 11, 2019. The application was filed on October 18, 2019; after the filing period expired. Thus, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act, particularly because the Applicant has failed to allege any ground entitling him to equitable tolling. See *Peizer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619-20 (Ct. App. 2008) (holding equitable tolling is available where (1) extraordinary circumstances prevented the plaintiff from filing despite the diligence (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim).

#### **IV. Allegation that Applicant is Entitled to Belated Appellate Review Pursuant to *White*<sup>2</sup>**

Applicant alleges he was denied his right to a direct appeal based on ineffective assistance of plea counsel. The one-year period to file a PCR application does not apply where the defendant alleges he was denied a direct appeal due to ineffective assistance of counsel. *Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002).

Applicant claims he was denied effective assistance of counsel because his plea counsel

<sup>2</sup> *White v. State*, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974).

did not inform him of his option to appeal from a guilty plea. In *White v. State*, our Supreme Court held that even if the post-conviction relief court found the applicant never voluntarily and intelligently abandoned his appeal, the PCR court has no jurisdiction over granting a belated appeal. *Id.* at 119, 108 S.E.2d at 39-40. However, where an applicant establishes in a PCR hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, upon an appeal of the PCR decision, our Supreme Court will review the trial record and pass upon all issues properly raised and argued as if the direct appeal had been properly perfected. *Id.*

Applicant cannot meet his burden of proving he is entitled to a belated appeal pursuant to *White*. However, because this allegation presumably raises questions of fact not conclusively refuted by the record, Respondent requests an evidentiary hearing solely on this issue. If this Court finds Applicant has established his failure to file a direct appeal and, consequently, his current application, because of ineffective assistance of counsel, Respondent requests an evidentiary hearing to address the remaining issues raised in the PCR application. See *Wilson*, 201 S.C. at 215, 559 S.E.2d at 583 (finding a defendant's right to "one fair bite at the apple" would be frustrated "if the one year statute of limitations for PCR claims applied where the applicant was denied his direct appeal due to ineffective assistance of counsel, and then was denied his right to a PCR application because of the one year statute of limitations").

If this Court finds the Applicant was denied his right to a direct appeal, Respondent maintains Applicant's remaining allegations of ineffective assistance of counsel lack merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a

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just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The two-pronged test outlined in *Strickland v. Washington* governs ineffective assistance of counsel claims. 466 U.S. 668 (1984). First, the applicant must prove counsel’s performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The court determines deficiency of an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is if the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.*, 300 S.C. at 117-18, 386 S.E.2d at 625. Respondent contends Applicant cannot meet his burden; however, the ineffective assistance of counsel allegations probably raise questions of fact the record does not conclusively refute. Accordingly, if this Court find Applicant was denied his right to a direct appeal and is entitled to equitable tolling of the statute of limitations, Respondent requests an evidentiary hearing to fully resolve this issue. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### V. Denial of All Other Claims

Each and every allegation contained within the application not expressly admitted,

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qualified, or explained in this Return is hereby denied.

VI. Conclusion

WHEREFORE, Respondent requests an evidentiary hearing solely on the claim of ineffective assistance of counsel in failing to file a direct appeal. If this Court finds the Applicant failed to establish he did not knowingly and voluntarily waive his right to appeal, Respondent requests all other allegations raised or potentially raised in Applicant's application be dismissed as barred by the statute of limitations. Alternatively, if this Court finds the Applicant did not knowingly and voluntarily waive his right to a direct appeal and is also entitled to equitable tolling of the PCR statute of limitations, Respondent requests an evidentiary hearing regarding Applicant's allegations of ineffective assistance of counsel.

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SPARTANBURG COUNTY  
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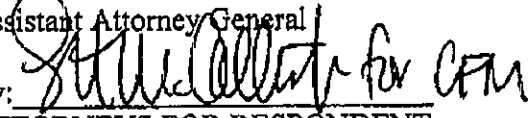
Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

2/18, 2020





ALAN WILSON  
ATTORNEY GENERAL

February 18, 2020

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SPARTANBURG COUNTY  
AMY W. COX

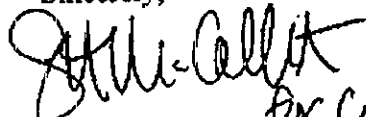
The Honorable Amy W. Cox  
Clerk of Court - Spartanburg County  
PO Box 3483  
Spartanburg, SC 29304-3483

**Re: Patrick Davis, #346636 v. State of South Carolina**  
**2019-CP-42-03703**

Dear Ms. Cox:

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

Sincerely,

  
Chelsey F. Marto *for CFM*  
Assistant Attorney General

CFM/my  
Enclosure

cc: Rodney W. Richey, Esquire

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMONS PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Patrick Davis, )  
S.C.D.C. No: 346636 )  
 )  
Applicant, )

Case No: 2019-CP-42-3703

**AMENDED  
POST-CONVICTION RELIEF APPLICATION**

vs. )  
 )  
 )  
State of South Carolina, )  
 )  
Respondent. )

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SPARTANBURG COUNTY  
AMY W. COX

The Applicant, Patrick Davis, through his undersigned attorney, Rodney Richey,

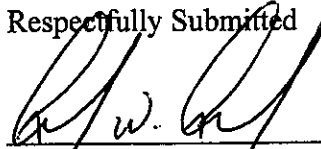
Esquire amends his Post-Conviction Relief applications as follows:

1. Applicant pled guilty to assault and battery of a high and aggravated nature, possession of a weapon during a violent crime, petty larceny, and escape.
2. Applicant was sentenced to 14 years for the assault and battery of a high and aggravated nature, 10 years for petit larceny, 10 years for escape, and 5 years for the possession of a weapon during a violent crime.
3. Applicant pled guilty on October 10, 2018. His application was filed on October 18, 2021.
4. Applicant believes that the one- year statute should be tolled. The Applicant's application was notarized on October 10, 2021. He provided it to the mail room on October 10, 2021. Applicant does not have the ability to file his application in person because he is in jail. The Applicant believes that his application should proceed.
5. Applicant alleges that his counsel was ineffective in not filing an appeal of his guilty plea. The State agree not to make a recommendation as to the sentencing range. However, the State made a recommendation as to the sentencing range which violated the plea agreement.
6. Counsel objected to the State's recommendation. However, he did not get a ruling on his objections. Applicant believes that counsel should have gotten a ruling on his

objection to preserve the issue for appeal.

Wherefore, Applicant request a hearing on all the above issues and issues already pled in his application.

Respectfully Submitted



Rodney Richey, Esquire  
RICHEY AND RICHEY, P.A.  
Post Office Box 10916  
Greenville, SC 29603  
864-467-0503  
864-467-0646 (fax)

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SPARTANBURG COUNTY  
AMY W. COX

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Dated: March 22, 2021

**RICHEY AND RICHEY**  
ATTORNEYS AT LAW

*A PROFESSIONAL ASSOCIATION*

RODNEY W. RICHEY  
LOLA S. RICHEY

POST OFFICE BOX 10916  
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503  
(864) 467-0646 FAX

March 21, 2021

Spartanburg County Clerk of Court  
Attn: PCR Division  
Post Office Box 3483  
Spartanburg, SC 29304

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SPARTANBURG COUNTY  
AMY W. COX

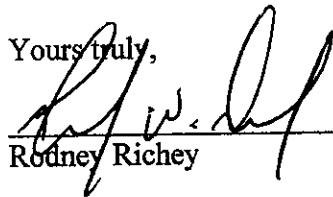
RE: Patrick Davis vs. The State of South Carolina  
Case No: 2019-CP-42-3703

Dear Sir/Madam:

Please find enclosed amendments to Mr. Davis' PCR application. Please file this document. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,

  
\_\_\_\_\_  
Rodney Richey

RWR/  
Enclosure  
Chelsey Marto, Esquire

1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF SPARTANBURG ) COURT OF COMMON PLEAS NONJURY

3  
 4 PATRICK DAVIS, ) TRANSCRIPT  
 5 APPLICANT, ) OF  
 6 vs. ) RECORD  
 7 THE STATE OF SOUTH CAROLINA, )  
 8 RESPONDENT. ) 2019-CP-42-3703

9  
 10 August 3<sup>rd</sup>, 2021  
 11 Spartanburg, South Carolina

12  
 13 B E F O R E :

14 THE HONORABLE H. STEVEN DeBERRY, IV, JUDGE.

15  
 16 A P P E A R A N C E S :

17 RODNEY RICHEY  
 18 ESQ.  
 Attorney for the Applicant

19 CHELSEY MARTO  
 20 ASSISTANT ATTORNEY GENERAL  
 Attorney for the Respondent

21  
 22 PAMELA E. GREEN  
 23 Circuit Court Reporter  
 24  
 25

I N D E X   O F   W I T N E S S E S

<u>WITNESSES</u>	<u>PAGE</u>
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Cross-examination by Ms. Marto	17
DANIEL McDONALD	
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Closing by Ms. Marto	36
Closing by Mr. Richey	37
Certificate	41

## P R O C E E D I N G S

1  
2  
3 MS. MARTO: Your Honor, may it please the Court.

4 We are here today in the case of Patrick Davis. Docket  
5 Number 2019-CP-42-03703.

6 He was indicted for attempted murder, possession of a  
7 weapon during the commission of a violent crime, grand  
8 larceny, and escape, and he pled under Alford to assault and  
9 battery of a high and aggravated nature, and possession of a  
10 weapon before the Honorable Grace Gilchrist Knie and pled  
11 guilty to everything else on October 10<sup>th</sup>, 2018, and then  
12 he was represented by Mr. Daniel McDonald. He was sentenced  
13 to 20 years imprisonment and did not file an appeal.

14 His PCR application was filed October 18<sup>th</sup>, 2019, and  
15 then March 29<sup>th</sup>, 2021. He alleges multiple ineffective  
16 assistance of counsel issues including failure to inform him  
17 of his right to file an appeal, failure to investigate,  
18 failure to give him a motion in a timely manner, failure to  
19 interview witnesses, and that he was forced into taking the  
20 plea.

21 In the amended application he requested, because the  
22 plea hearing was October 10<sup>th</sup>, 2018, and he filed the  
23 application October 18<sup>th</sup>, 2019, that is past the year long  
24 Statute of Limitations as warranted under the Uniform  
25 Post-Conviction Procedures Act. So, in his amended

1 application he stated that this timeline should be tolled  
2 because he asserts he placed the application in the mailroom  
3 on October 10<sup>th</sup>, 2019, exactly a year after the plea date.  
4 And he also alleges counsel was not ineffective for failure  
5 to file an appeal of guilty plea.

6 The State -- and the State made its return  
7 February 18<sup>th</sup>, 2020, requesting that all claims be on the  
8 failure to file an appeal as pursuant to White versus State  
9 be summarily dismissed. I do have a copy of the pleadings  
10 if Your Honor would like.

11 THE COURT: All right.

12 MS. MARTO: But we did have a hearing on a partial  
13 motion to dismiss before Judge Cole on April 7<sup>th</sup>, 2021, in  
14 which we requested that applicant provide mail log or some  
15 proof that he did place the application in the mailroom on  
16 the date he stated. And it would be the State's position  
17 that all claims, again, we would renew our motion to  
18 dismiss, that all claims be on the White versus State issue  
19 be summarily dismissed as untimely because, as the, the  
20 Supreme Court has -- State Supreme Court held in Gary versus  
21 State, it is clear, under South Carolina Law, that mailing  
22 does not constitute filing.

23 And, again, pursuant to Mose versus State, the Court  
24 stated "we expressly decline to adopt a rule that  
25 automatically deems a PCR application filed on the date an

1 applicant claims it was delivered to prison authorities"  
2 meaning that if an individual places an application in the  
3 mailroom on that date, then that does not constitute filing  
4 with the Court. But rather, Mose held that there should be  
5 some type of a balance interest between individuals in  
6 custody, which means that they should have equal footing as  
7 somebody that would be outside of prison when it comes to  
8 mailing. But, again, the State would state that an  
9 individual outside of prison would expect it to, to take a  
10 few days before the application does reach the Court for  
11 filing.

12 And so, even if we were to treat him the same as an  
13 individual that isn't in custody, and they didn't have to go  
14 through the mailroom in prison, so it would still be  
15 considered late and Mose does make quite clear that an  
16 individual, unlike in Mose where he did put the application  
17 I believe in the mailroom 17 days ahead of the filing period  
18 or 17 days before it was due.

19 Here he put it in the mailroom the date it was due, and  
20 that should be treated as untimely, Your Honor, with the  
21 only claim remaining that he can pursue today being the  
22 failure to file an appeal.

23 Thank you.

24 THE COURT: Mr. Richey.

25 MR. RICHEY: Thank you, Your Honor.

1           May it please the Court.

2           Your Honor, it's our position, my client, he did have  
3 this application notarized before the statute run and we're  
4 asking the Court to consider equitable tolling the statute.

5           At this particular time, this was during all the riots  
6 and he was on lockdown, Your Honor. I think when the  
7 attorney general referenced a regular person, I, I just  
8 believe that, at this point, he's in SCDC and in lockdown  
9 and he got the application in right before and it's filed  
10 only seven days. And, and it's our position, under equity,  
11 that, that he should be allowed to go forward and the  
12 attorney general has cited Mose, Mose case, and that -- and  
13 the Mose Court said that the tolling, the applicant must  
14 substantiate a correct and complete application was  
15 delivered to the prison authorities.

16           I mean he has the application that was notarized by the  
17 prison authorities before the statute. I think that's,  
18 that's all he can do and, Your Honor, this application is  
19 not a month late. It's not a year late. It's a total of  
20 about seven days late.

21           And, Your Honor, and -- and also I would think that the  
22 Court, he's -- the white appeal issue is going to survive.  
23 I think the State agrees and we all agree that appeal white  
24 issue would survive this motion anyway, and it's our  
25 position, in equity, I believe that, since we're going to

1 hear evidence about ineffective assistance of counsel, that  
2 we -- he should allowed to be -- he should be allowed to  
3 hear all the evidence.

4 And, like I say, this is not a case where he filed it  
5 six months late, he filed it a year late. It's, in essence,  
6 seven days and, you know, he delivered it to the prison  
7 authorities within the time.

8 Now, is it perfect?

9 No.

10 But SCDC is not perfect either. So -- and I, and I  
11 will cite to the Mose case that the attorney general --.

12 THE COURT: Mr. Richey --

13 MR. RICHEY: Thank you, Your Honor.

14 THE COURT: -- let me ask you.

15 Did, did -- now, the hearing that Judge Cole had---

16 MR. RICHEY: Uh-huh. (Affirmative).

17 THE COURT: -- did you, did you have the affidavit  
18 that's notarized?

19 MR. RICHEY: Well, what, what Judge Cole asked me to  
20 get was the prison records of the people at the mailroom,  
21 and, when I went through general counsel, they told me that  
22 does not exist.

23 THE COURT: Okay.

24 MR. RICHEY: Okay. What I proposed that we do at this  
25 hearing is my client had this ap -- had this notarized prior

1 to the statute running. I requested that he be allowed to  
2 testify under oath as to the methods that he took since  
3 we're gonna have the hearing, and the Court withhold its  
4 ruling until we had the hearing.

5 THE COURT: That's fine.

6 Is there any objection to that from the State?

7 MS. MARTO: Your Honor, we would request that they only  
8 be able to pursue forward when it came to the white versus  
9 State issue, Your Honor.

10 THE COURT: All right. Are the witnesses gonna be the  
11 same otherwise?

12 I mean --.

13 MR. RICHEY: Yes, sir, all the witnesses are the same.  
14 The whole thing is the exact same.

15 THE COURT: Well, I'm gonna just go ahead and hear,  
16 hear everything while we're here and then we'll --

17 MS. MARTO: Yes, Your Honor.

18 THE COURT: -- decide everything based on that.

19 MR. RICHEY: Thank you, Your Honor.

20 We call Mr. Davis.

21 Sir, stand and raise your right-hand please. Face the  
22 Judge.

23 THE COURT: All right. And you are Mr. Patrick Davis?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right.

Patrick Davis - Direct examination  
By Mr. Richey

1 PATRICK DAVIS, being first duly  
2 sworn, testified as follows:

3 THE COURT: Okay. Thank you.

4 You can be seated.

5 DIRECT EXAMINATION

6 BY MR. RICHEY:

7 Q Sir, you're Patrick Davis.

8 Is that correct?

9 A Yes, sir.

10 Q And you're in the Department of corrections, correct?

11 A Yes, sir.

12 Q And what are you -- are you in there for the charges  
13 that the attorney general read out to the Court?

14 A Yes, sir.

15 Q Okay. You filed an application for Post-Conviction  
16 Relief, correct?

17 A Yes, sir.

18 Q Okay. And let me ask you a couple questions.

19 You filed this or turned this application in on  
20 October 10<sup>th</sup>, correct?

21 A Yes, sir.

22 Q Tell me the mechanism of how you done that.

23 Tell me how you done that.

24 Did you deliver it to the prison people?

25 A No, I was in a cell door and the mail lady came down to

Patrick Davis - Direct examination  
By Mr. Richey

1 the dorm cause it was a massive riot where a lot of people  
2 had got killed and injured. So I can't go---

3 Q Where was that at?

4 A Lee Correctional.

5 Q Okay. Go ahead.

6 A And I wasn't allowed to come out the dorm or out my  
7 cell unless I was showering and it was lack of security.  
8 So, it was hard for me to do anything.

9 So, when the mail people came down there, I turned it  
10 in and then she had called me back up there and notarized it  
11 October the 10<sup>th</sup>.

12 Q Okay. So, you -- so this was after the lockdown -- I  
13 mean after the riot down there?

14 A Yes, sir.

15 Q Okay. And so you're -- was your access to the mailroom  
16 and all that limited?

17 A Yes, sir.

18 Q Okay. And so did you do everything that you could of  
19 done to have this thing turned in?

20 A Yes, sir.

21 Q Okay. And, and are you aware of any records they have  
22 down there?

23 Do they give y'all some type of receipt or anything  
24 saying they mailed it?

25 A No, sir.

Patrick Davis - Direct examination  
By Mr. Richey

1 Q Okay. All right. Well, let me ask you some questions  
2 about your application and I'm gonna do it kind of backwards  
3 here.

4 Now, at this particular case, the State -- you pled  
5 guilty, correct?

6 A Yes, sir.

7 Q And the -- and did you, did you and your lawyer enter  
8 into any negotiations with the State?

9 A Yes, sir.

10 Q And what were those?

11 A A plea of assault and battery high and aggravated  
12 nature with no recommendation from the State.

13 Q Okay. No -- so no recommendation as to the time?

14 A Right. Yes, sir.

15 Q Okay. And you -- that was your understanding of the  
16 plea agreement?

17 A Yes, sir.

18 Q Okay. When you pled guilty -- do you have your  
19 transcript?

20 A Yes, sir.

21 Q Okay. Take it out.

22 A (WHEREUPON, the witness complies.)

23 Q And I'm referring you to Page 29.

24 A Twenty-nine.

25 Q I think you have that.

Patrick Davis - Direct examination  
By Mr. Richey

1 A Yes, sir.

2 Q Okay. You're on 29?

3 A Yes, sir.

4 Q Okay. You -- the, the, the issue or the plea and the  
5 recommendation you were fine with that, correct?

6 A Correct.

7 Q Pardon?

8 A You say that, sir --?

9 Q with the plea and the recommendation by the State, not  
10 sentencing, you were, you were fine with that, correct?

11 A Agreement upon the plea.

12 Q Right.

13 A Right.

14 Q And on Page 29, 5 through 10, can you read that for me  
15 and I'll -- this is a life case.

16 A This, this was a life case. We know we -- we know we  
17 struck a deal but we would ask for something in the 15 to 20  
18 range on him. Mr. McDonald, Your Honor, may we approach for  
19 a second. He had objected and had---

20 Q Okay. Well, hold on. We got to clear these people up.  
21 who is Mr. McDonald?

22 who's, who's speaking in Lines 5 through 7?

23 who is that?

24 A The prosecutor, Smith, Spenser Smith.

25 Q Okay. And, Mr. McDonald, who is that?

Patrick Davis - Direct examination  
By Mr. Richey

1 A That was my lawyer at the time, public defender.

2 Q Okay. Okay. So, it's your lawyer speaking saying can  
3 we approach, we object.

4 Is that correct?

5 A Yes, sir.

6 Q Okay. Is it your position that you wanted to appeal  
7 the state violating the plea order?

8 A Yes, sir.

9 Q Okay. Did you discuss that with your lawyer?

10 A For after --?

11 Q Yeah.

12 Did you have any discussions with him about plea --  
13 what -- well, let me ask you this.

14 Did you and him discuss appealing this?

15 A No, sir.

16 Q Y'all didn't have any discussions at all?

17 A No, sir.

18 Q When, when did you find out or determine that an appeal  
19 was proper for this issue?

20 A After I was already sentenced in, in SCDC.

21 Q And did you contact your lawyer at any point about  
22 this?

23 A I, I didn't have no way to contact. I try to write  
24 letters but I ain't, I ain't have no contact with him.

25 Q Okay. And, and -- okay. And that is a proper issue

Patrick Davis - Direct examination  
By Mr. Richey

1 that you wanted to appeal, correct?

2 A Yes, sir.

3 Q Okay. And you also believe that he didn't properly  
4 investigate your case?

5 A Yes, sir.

6 Q And can you tell me why?

7 A It was a lot of witnesses. For one, I felt the victim  
8 had wrote multiple statements, multiple statements once they  
9 then stating that I didn't do it and he didn't know who did  
10 it, and he then wrote two more -- one more statement after  
11 that stating something different.

12 As far as evidence, seeing my motion, videos, and other  
13 kind of things that would help me know what's going on with  
14 my case as far as visiting and just going over the proper  
15 evidence and, and doing proper investigation.

16 Q So you -- so you got the evidence from the lawyer,  
17 correct?

18 Is that what you're saying?

19 A I got my motion to discovery probably, yeah, after  
20 like -- I want to say probably four to five months after it  
21 being in the, in the Spartanburg County if I'm not mistaken.

22 Q Okay.

23 A I don't know the actual time.

24 Q So, you -- your issue is he did not go over and explain  
25 the evidence in detail, correct?

Patrick Davis - Direct examination  
By Mr. Richey

1 A Yes, sir.

2 Q Okay. What -- and you did an Alford plea.

3 Did he go over the Alford issues with you?

4 A Yes, sir.

5 Q And, and did -- you were actually saying you were  
6 innocent, correct?

7 A Yes, sir.

8 Q And that you were not admitting to guilt?

9 A Yes, sir.

10 Q Okay. And so, when you went over that, is that, is  
11 that a plea you wanted to do?

12 A I went over the plea cause beforehand I kept telling my  
13 lawyer that I wanted to go to trial and I kept telling him I  
14 wanted to go to trial and he say he worked out this plea  
15 agreement of assault and battery high and aggravated nature  
16 zero to 20. No recommendation from the State.

17 So, I said I would take that plea. No, other than that  
18 I still wanted to go to trial and he said he worked that  
19 plea out. So, that was the agreement is and that's why I  
20 didn't go.

21 Q Now, did he do anything to force you to take this plea?

22 A No, sir.

23 Q Okay. You had allegation that he forced you to but he  
24 didn't, didn't put any kind of pressure on you to do it?

25 A He just brought it up numerous of times and kept saying

Patrick Davis - Direct examination  
By Mr. Richey

1 this is in my best decision, and I told him I needed time to  
2 think things over, and then we finally came to agreement.

3 Q Did you get that time to think it over?

4 A Yes, sir.

5 Q You did?

6 A Yes, sir.

7 Q And, and you decided to go forward with the plea?

8 A Yes, sir.

9 Q Okay. And, and you believe that he did not give you  
10 the discovery within a timely manner, correct?

11 A Yes, sir, cause I went to Court -- I went to Court nine  
12 months and I got my motion of discovery in five to six  
13 months and I was already in Court within a nine month range  
14 and I ain't --.

15 Q So but you had discovery before you went to Court?

16 A Yeah, I had it before. Like I, I got locked up  
17 fifth -- like I think, if I'm not mistaken,  
18 February 28<sup>th</sup> and I got my motion to discovery like 120  
19 days, 150 days after being incarcerated in Spartanburg  
20 County.

21 Q So, you're not saying you didn't get it. You, you  
22 wanted it sooner---

23 A Sooner so I could---

24 Q ---than before you went to Court?

25 A ---go over my case and study it and get prepared for

Patrick Davis - Direct examination  
By Mr. Richey

1 trial.

2 Q And did you have a chance to go over your discovery?

3 A After I had got it, yes, sir. I had like probably like  
4 60 days to go over it and just with it --

5 Q All right. Like---

6 A -- with, with myself.

7 Q With yourself?

8 A Yeah.

9 Q Okay. So, let's -- your, your -- the biggest crux is  
10 you just -- you, you believe that, that the ineffective was  
11 not advising that you, that you can appeal on that violation  
12 of the plea agreement by the State, correct?

13 A Correct.

14 Q Okay. Thank you. Answer any questions the attorney  
15 general will have.

16 CROSS-EXAMINATION

17 BY MS. MARTO:

18 Q Morning, sir.

19 A Good morning.

20 Q How are you doing today?

21 A I'm good.

22 Q All right. Now, approximately how many times did you  
23 meet with Mr. McDonald before pleading?

24 A I would say no more than three times, four at the --  
25 four at the most but three.

## Patrick Davis - Cross-examination

By Ms. Marto

1 Q And what did you discuss during those meetings in  
2 general in terms?

3 A We was -- the first -- like the first couple of  
4 meetings he was saying he was getting the evidence together.  
5 He was gonna come back there and speak with me. He was  
6 gonna have this. He was gonna do this and just certain  
7 things pertaining to the case basically.

8 Q Okay. So, he discussed the evidence and discovery with  
9 you?

10 A Not, not the first couple times. Probably the last  
11 time.

12 Q But he did discuss it eventually, right?

13 A Yes, sir. Yes, ma'am.

14 Q Did you have any remaining questions for him regarding  
15 the discovery?

16 A Yes, I wanted him to invest -- I wanted him to, to  
17 investigate on witnesses and the victims and with, with  
18 their statements being more than one -- like contradicting  
19 the first, like the victim wrote a statement, then he wrote  
20 another statement, and I wanted him to investigate what was  
21 going on with victims and witnesses and he failed to do  
22 that.

23 Q Did he -- were you given an explanation as to why?

24 A No, ma'am.

25 Q So, you decided to plead, correct?

Patrick Davis - Cross-examination  
By Ms. Marto

1 That was your decision?

2 A Yes, ma'am.

3 Q Yes.

4 And you did that with advice of counsel?

5 A Yes, ma'am.

6 Q Because you were given a negotiated deal where some of  
7 your charges were reduced?

8 A Only one charge was reduced.

9 Q Only one of your charges was reduced.

10 Now, you were told that you weren't going to have a  
11 recommended sentence, correct?

12 A Yes, ma'am.

13 Q And when the State stated that they requested 15 to 20  
14 years your counsel did object, right?

15 A Yeah.

16 Q Correct?

17 A Yes, ma'am. But he failed to get a ruling on it.

18 Q Okay. But he did object to that?

19 A Yes, ma'am.

20 Q There was a bench conference held thereafter, correct?

21 A Yes, ma'am.

22 Q Okay. Now, you stated that you didn't appeal, correct?

23 A Yes, ma'am.

24 Q Why did you ask your attorney for an appeal?

25 A To -- I didn't know -- like I didn't, I didn't -- that

Patrick Davis - Cross-examination  
By Ms. Marto

1 was my first time in that type of situation. I didn't know  
2 I could file for an appeal or no reconsideration or a PCR.  
3 I didn't, I didn't even know nothing about none of this till  
4 after I got to SCDC and started educating myself.

5 Q When did you -- roughly when did you find out that you  
6 could file an appeal?

7 A After I got to Lee Correctionals from other inmates  
8 telling me that my lawyer should of told me I could file an  
9 appeal.

10 Q So---

11 A Like roughly two, two weeks after I, I got to Lee  
12 Correctional --

13 Q Okay.

14 A -- to answer your question.

15 Q Now, you stated that you were given time to think over  
16 the plea, correct?

17 A Yes, ma'am.

18 Q And you were given 60 days to review your discovery?

19 A Yes, ma'am.

20 Q Thereabouts?

21 A Yes, ma'am.

22 Q And yet you still decided that pleading was in your  
23 best interest, right?

24 A Only reason was I felt like I was in a lose/lose  
25 situation is cause he -- I wasn't getting proper counsel and

Patrick Davis - Cross-examination  
By Ms. Marto

1 it, it was a guess reasonable deal, you know. So, I felt  
2 like I just --.

3 Q So, you decided to plea cause you thought that there  
4 was a reasonable deal given the fact that your biggest  
5 charge was reduced?

6 A Right. And I wanted to go to trial and it was a --.

7 Q So, you weighed the decisions for a while and weren't  
8 really sure but ultimately it was your decision to plead?

9 A Right.

10 Q Okay. Where you weren't threatened into pleading at  
11 all, correct?

12 A No, ma'am.

13 Q Okay. Do you remember, do you remember telling the  
14 judge that you were satisfied with your counsel's  
15 performance?

16 A Yes, ma'am.

17 Q Then why did you say that if you still felt like  
18 everything were not investigated?

19 A At the time of facing of -- like I was served with the  
20 two strike law, the life, the life act, at the time I was  
21 nervous and he told me it was no recommendation from the  
22 state, just go along with the plea, everything was gonna be  
23 fine, just to be honest. And so I just took his word that  
24 everything was gonna be -- it was gonna go with like I was  
25 suppose to like.

Patrick Davis - Cross-examination  
By Ms. Marto

1 Q So --

2 A And I, I was afraid that if I speak out during Court  
3 and say I wasn't satisfied with my counsel, something -- I  
4 didn't know like if I could get in trouble or cause they  
5 promised me a plea and if I didn't -- I was just --.

6 Q So, you wanted to take the plea no matter what because  
7 you were afraid that going to trial you'd be facing a life  
8 sentence?

9 A I wanted to take the plea just -- I felt like it was a  
10 better, better take than going to trial but I was -- my main  
11 objective was going to trial.

12 Q Okay. But, ultimately, you pled because you --

13 A Yeah.

14 Q -- thought it was a better option?

15 A Yes, ma'am.

16 MS. MARTO: No further questions, Your Honor.

17 MR. RICHEY: No other questions.

18 THE COURT: All right.

19 MR. RICHEY: We call Mr. McDonald.

20 THE WITNESS: Your Honor, may I take the mask down?

21 THE COURT: Sure. If you wish.

22 If you will raise your right-hand?

23 DANIEL McDONALD, being first duly  
24 sworn, testified as follows:

25 THE COURT: All right. Thank you.

Daniel McDonald - Direct examination  
By Mr. Richey

1 DIRECT EXAMINATION

2 BY MR. RICHEY:

3 Q Sir, would you state your name please?

4 A It's Daniel McDonald.

5 Q And, Mr. McDonald, where are you employed?

6 A The Public Defender's Office in Spartanburg County.

7 Q Do you recall representing Patrick Davis?

8 A I do.

9 Q And you've been in the courtroom and you, you heard the  
10 testimony thus far, correct?

11 A Yes.

12 Q I'm gonna ask you do you have a copy of the transcript?

13 A I, I brought the wrong copy for the Ellis transcript.  
14 So, I don't have this one. My apologies.

15 Q Okay. And I'm just gonna go over with you what I went  
16 over with Mr. Davis.

17 Do you recall this agreement where the State -- may I  
18 approach the witness, Your Honor?

19 THE COURT: Sure.

20 Q Do you, do you recall the, the issue -- turn to Page  
21 29.

22 Under the plea -- do you remember a plea agreement  
23 y'all entered into?

24 A Yes. So the, the recommendation from the State was  
25 only to be concurrent sentencing. There was no

Daniel McDonald - Direct examination  
By Mr. Richey

1 recommendation as to time.

2 Q And you -- and from Line 5 to -- well, yeah, Line 5 to  
3 Line 10, would you agree that that is a violation of that  
4 plea agreement?

5 A I did and so that's why I objected.

6 Q Okay. And, and do you know whether you got a ruling on  
7 this objection or not?

8 A I did not. I didn't ask for one.

9 Q what, what happened -- it says a bench trial.  
10 what happened at conference?

11 A We -- so this was the first time that that had opened  
12 to me where I had---

13 Q Yeah.

14 A ---recommendation of some -- either no recommendation  
15 or recommendation of concurrent sentencing and the  
16 solicitor -- and one of the solicitors had asked for a, a  
17 time range despite what the plea recommendation -- official  
18 recommendation was. And so I approached to get  
19 clarification because my understanding was, if the State was  
20 willing to recommend to concurrent sentencing, then they  
21 should not be making an official recommendation as to what  
22 the sentence should be.

23 And so that is what I addressed with the judge at, at  
24 the conference that I didn't -- I understood that the  
25 recommendation only to be concurrent sentencing.

Daniel McDonald - Direct examination  
By Mr. Richey

1 Q Okay. And did, did you recall discussing any, with,  
2 with Mr. Davis, any right that he would -- may would have to  
3 appeal that?

4 A So, after the plea, we -- he was taken back into the  
5 room. I think it's to the right of this courtroom --

6 Q Yes, sir.

7 A -- where they take everyone after the -- and I, and I  
8 went back there and I explained to him the sentence. And I  
9 believe, at the hearing, the judge, Judge Knie, stated that  
10 he had 10 days to file an appeal of the sentence. But I  
11 don't recall if I ever specifically addressed that issue  
12 with him when we went back there.

13 Q All right. And, and at that -- when you went back  
14 there, at that point you knew it was some issue with this  
15 thing screwy, right?

16 A That, that is---

17 Q I use the phrase. I'm sorry.

18 You understand that?

19 A When you -- yes, I object. That's why I objected to  
20 it. And so I, I did think that there was something off.

21 Q Okay. And I'm gonna run through these other issues  
22 with you here.

23 In terms of the giving him discovery in a timely  
24 manner, did you provide discovery to him?

25 He said you did but --.

## Daniel McDonald - Direct examination

By Mr. Richey

1 A I -- when he requested discovery, I sent him his  
2 discovery and I met with him multiple times. I, I -- he --  
3 I believe Mr. Davis said only three times. However, I'm  
4 pretty confident I met with him more than three times. I  
5 even sent an email to the jail asking if I could bring my  
6 laptop in to go over what was on the disks and I went over  
7 the discovery with him.

8 Q Okay. And how, how long does it take to get discovery  
9 from the time that you get appointed?

10 Do you know?

11 A It -- I mean it varies from case to case. Sometimes we  
12 get someone signed up for the Public Defender's Office  
13 within weeks after they get charged. Sometimes we don't get  
14 assigned their case until second appearance but I usually  
15 wait until I get requested the discovery, and I usually will  
16 find out, when I first meet with the client, whether they  
17 want a copy of the discovery.

18 Q And did he express to you that he wanted to have a jury  
19 trial?

20 A Yes, he did.

21 Q Okay.

22 A He did.

23 Q Okay. And what, what made him plead, to take this  
24 offer and plead though?

25 A So he was given a life notice. And so he understood.

Daniel McDonald - Direct examination  
By Mr. Richey

1 I explained to him that if he was convicted that he would  
2 receive a life sentence. And I believe an offer came where  
3 he could get his charge reduced from attempted murder to  
4 assault and battery high and aggravated nature would be zero  
5 to 20 years. And the State was going to recommend  
6 concurrent sentencing and---

7 Q When you say a life sentence, what do you mean?

8 Is it mandatory?

9 A Yes. And so if he wanted to take that deal, and he --  
10 but he did not want to admit guilt, there was an option of  
11 an Alford plea which he could take where he would not admit  
12 guilt but he would understand that he was gaining a benefit  
13 by entering a plea.

14 Q Did, did -- did you do anything in any way to force him  
15 to plead guilty --

16 A No.

17 Q -- or coerce him?

18 A I did not.

19 Q And in terms of interviewing witnesses, did he provide  
20 you any witnesses to interview?

21 A I don't recall if he did or not. I don't, I don't -- I  
22 do not remember. But we did discuss some of the witnesses  
23 that were in the discovery --

24 Q Uh-huh. (Affirmative).

25 A -- such as the person that gave multiple statements and

Daniel McDonald - Direct examination  
By Mr. Richey

1 I explained to him that we could cross-examine his  
2 conflicting statements. But he also -- that same witness  
3 also did a photo lineup and identified him and his brother.  
4 And so I had to explain to him that there were risks of  
5 going to trial and I believe that those risks Mr. Davis  
6 considered when he decided to take the plea.

7 Q Okay. And the last thing is you're, you're really --  
8 on Page 29 that is a violation of that plea agreement,  
9 correct?

10 A Well, I will -- I objected because I---

11 Q Right.

12 A ---I wasn't sure. And so I, I, I thought that it did  
13 at the time and that was my understanding.

14 Q Okay. And today do you believe that's a violation of  
15 what y'all agreed to?

16 A I believe that the State asking for time, I still  
17 believe that that would be inappropriate.

18 Q Okay. Thank you.

19 CROSS-EXAMINATION

20 BY MS. MARTO:

21 Q Morning, sir.

22 How are you today?

23 A I'm well.

24 How are you?

25 Q I'm doing well. Thank you for being here today.

Daniel McDonald - Cross-examination  
By Ms. Marto

1 A No problem.

2 Q So, concerning the State's request for 15 to 20 years,  
3 you objected, correct?

4 A That's correct.

5 Q And then there was a bench conference, correct?

6 A That's right.

7 Q What did -- what were the fruits of the bench  
8 conference?

9 You stated your position and when what happened  
10 thereafter?

11 A So, I explained to Judge Knie that I didn't believe  
12 that the State making a request for 15 to 20 years fell  
13 within the agreement since the official agreement was  
14 concurrent sentencing as a recommendation and I stated that  
15 to the judge. I believe Mr. Smith, the solicitor, stated  
16 that to the judge, after I said that, well, we undercut  
17 their recommendations all the time. And so it's, it's just  
18 as inappropriate for, for us to do that.

19 So, he believed that he could also go above the -- ask  
20 for or above the official recommendation during the  
21 discussion of the plea when each side had a chance to  
22 present their cases.

23 Q Okay. So, he essentially said that you opened the door  
24 and therefore he was able to make a recommendation at that  
25 point?

Daniel McDonald - Cross-examination  
By Ms. Marto

1 A I don't, I don't believe he said I opened the door. I  
2 think he just said that there's recommendations by the State  
3 that they make all the time and our, our defense attorneys  
4 will ask for below that recommendation even though the plea  
5 agreement was what the recommendation was. And I believe  
6 that he stated that was his justification for why he  
7 believed he could ask for more. But the official  
8 recommendation was concurrent sentencing.

9 Q Okay. And what was the result of that bench  
10 conference?

11 A So, I believe -- now I, I don't remember word for word.  
12 But I believe that the Judge Knie -- that Judge Knie stated  
13 that she was gonna take all of that into consideration when  
14 determining her sentencing and, and then left it at all.

15 Q Did you say that she was gonna treat like a formal  
16 recommendation?

17 A The --?

18 Q The State's recommendation of 15 to 20 years.

19 A I -- she didn't say.

20 Q She didn't say one way or another?

21 A Not that I can recall.

22 Q Okay. Now, you talked -- now you stated that Judge  
23 Knie told Mr. Davis that he could appeal, correct?

24 A I believe, I believe so. I've done a lot of pleas in  
25 front of Judge Knie. So I'm pretty comfortable with her

Daniel McDonald - Cross-examination  
By Ms. Marto

1 colloquy and she all -- pretty much always mentions that to  
2 the client they have 10 days to file notice of appeal. So,  
3 I, I believe she did. I don't remember exactly if she did  
4 not. I'm sure it would be in the transcripts.

5 Q Yeah. I'm looing at Page 7 of the transcript now and  
6 it does look like, starting with Line 19, if, if -- you need  
7 to understand one more very important thing, that if you  
8 want to appeal anything that happens today, anything you  
9 don't like about it, you want to file an appeal, it's 10  
10 days.

11 So, would you agree that she did?

12 A Yes.

13 Q Like general practice?

14 A Yes.

15 Q And you left to go meet with your client immediately  
16 thereafter, right, in that room?

17 A After, after the plea, that's correct.

18 Q Okay. And did he ever say that he wanted an appeal?

19 A No. And what I did was I explained the sentencing to  
20 him, what he was sentenced to because some, some -- the  
21 sentence was actually 20 years suspended to 14 years. He  
22 only got a 14 -- he got a 14 active sentence. It wasn't 20.  
23 I think that was mentioned earlier.

24 And so I was just explaining what 14 years would mean  
25 and how it would be calculated through SCDC time because

## Daniel McDonald - Cross-examination

By Ms. Marto

1 I -- since it was assault and battery high and aggravated,  
2 he'd have to do 85 percent of the sentences.

3 Q And that was seemingly his only concern at that point,  
4 not filing an appeal?

5 A I don't know if he even had a concern about that. I  
6 just -- that's just what I explained to him when I went back  
7 there.

8 Q Okay. And you stated that, concerning the witnesses he  
9 wanted further investigating, you stated you could  
10 cross-examine them at trial but you didn't think there was  
11 any need to further investigate before the plea?

12 A No. And I, I just thought that through  
13 cross-examination was the best way to get out their  
14 inconsistent statements to show, if we were to go to trial,  
15 to show the jury that their stories changed and we don't  
16 know which story we're suppose to believe if he'd of -- keep  
17 changing stories. But there were multiple witnesses that  
18 identified Mr. Davis and, and I'd explained that to him,  
19 that that was the risk with going to trial.

20 There's also the father of his girlfriend that  
21 identified him to law enforcement and then the victim picked  
22 him out of a photo lineup and picked his brother out of a  
23 photo lineup as well.

24 Q Okay. So, there was a pretty great deal of evidence  
25 against him that you would be dealing with---

Daniel McDonald - Cross-examination  
By Ms. Marto

1 A There was---

2 Q ---if he went to trial?

3 I'm sorry?

4 A There was gonna be evidence from those witnesses. But  
5 if those witnesses were unavailable or did not show up for  
6 trial or if the state was unable to locate them, I think  
7 that there could of been serious issues with the case.

8 Q Okay. But that's still multiple witnesses, right, that  
9 were all implicating him personally?

10 A That's correct.

11 Q Was there any other evidence beyond those statements  
12 that you were aware of?

13 A That, that was the -- that was the main worry in the --  
14 our main -- what our main discussions focused on when  
15 determining whether or not to go forward with the trial or  
16 if he was interested in taking the offer in -- under an  
17 Alford.

18 Q Okay. And he was facing life, correct---

19 A That's---

20 Q ---if he went to trial?

21 A That is correct.

22 Q And is that why you encouraged him to take the plea?

23 A I encouraged him to consider it, to weigh the risks  
24 because, if he was convicted, there was no range --  
25 sentencing range. He was only going to get one sentence.

## Daniel McDonald - Cross-examination

By Ms. Marto

1 Q Oh.

2 A And so -- and so that if he took this plea of zero to  
3 20, and he had specifically requested he wanted to go in  
4 front of Judge Knie for the plea, that -- and he felt he --  
5 that was his best chances of getting out as soon as  
6 possible. And so that's why I scheduled him in front of  
7 Judge Knie and we did the Alford plea.

8 Q Okay. And did you think that the plea was in his best  
9 interest at the time?

10 A I did. I did. I thought that, from weighing the  
11 risks, I thought that that would be his best option.

12 Q But the decision to plead was his, correct?

13 A It was. I didn't put any extra pressure on him. I just  
14 explained to him his case and then his offers.

15 Q Okay. And when you went over the discovery with him --  
16 you stated you went over the discovery with him, correct?

17 A Yes.

18 Q Did he have any lingering questions?

19 Did he seem like he didn't understand?

20 A I, I felt like we covered everything and that's why we  
21 were able to go forward with the plea. I didn't feel like  
22 there were any lingering questions before we began the plea  
23 hearing and it seemed like that is what he wanted to do.

24 Q Okay. And, in your opinion, he knew what he was doing  
25 when he was pleading, right?

Daniel McDonald - Redirect examination  
By Mr. Richey

1 A I believe so.

2 MS. MARTO: Okay. No further questions, Your Honor.

3 MR. RICHEY: I just have one on redirect.

4 REDIRECT EXAMINATION

5 BY MR. RICHEY:

6 Q Did you consider withdrawing the guilty plea after  
7 that, after that incident occurred?

8 A I believe I did. I'm not sure if I discussed it with  
9 Mr. Davis or not. Just when I was -- when I had left the  
10 conference and I don't dis -- and I, I don't remember if I  
11 discussed it or not with him, if he wanted to go forward or  
12 not. But, but I believe that he still answered his -- the  
13 questions that Judge Knie asked.

14 So, it seemed like he did want to go forward. I don't  
15 recall if I specifically asked him if he wanted to back out  
16 of the plea or not. I apologize.

17 Q All right. Thank you.

18 THE COURT: All right. Anything---

19 MR. RICHEY: No other witnesses.

20 THE COURT: Nothing further?

21 MS. MARTO: No witnesses, Your Honor.

22 THE COURT: All right. Thank you for being here.

23 THE WITNESS: Thank you.

24 MS. MARTO: Brief closing, Your Honor?

25 THE COURT: Okay.

1 MS. MARTO: Okay. It would be the State's position  
2 that all claims beyond he had to file an appeal should still  
3 be summarily dismissed as untimely because he didn't timely  
4 file the application, and, regardless of the timeframe, even  
5 if it was a week late, Mose makes quite clear that an  
6 individual who delivers the application to prison  
7 authorities still hasn't met -- that does not constitute  
8 filing, and that it -- that the burden of proof would be on  
9 applicant to show that it was delivered within plenty of  
10 time and that the delay in processing was due to things  
11 outside of his control.

12 Now, concerning the arguments made pursuant to the  
13 testimony, it would be the State's position that Patrick  
14 Davis was told that he did have 10 days to appeal by Judge  
15 Knie and that he did not request that from counsel.

16 Additionally for the failure to investigate issue, it  
17 would be counsel credit, and the State's position, credibly  
18 testified that he didn't think that there was anything left  
19 to investigate and the issues concerning the witnesses would  
20 of been more properly dealt with in cross-examination at  
21 trial, that it was in the applicant's best interest to enter  
22 a guilty plea in this case because he was facing life if he  
23 was convicted at trial, and that the issue concerning the  
24 recommendation was properly objected to by counsel and a  
25 bench conference held where the judge was able to hear his

1 counsel's statement that he thought that the recommendation  
2 was improper.

3 And so, for these reasons, we request you deny  
4 applicant of the relief sought.

5 Thank you.

6 THE COURT: All right. And the sentence was 14 years.  
7 Is that right?

8 MS. MARTO: From my understanding it was 20 suspended  
9 to 14.

10 MR. RICHEY: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 MR. RICHEY: Please the Court?

13 THE COURT: Yes, sir.

14 MR. RICHEY: Your Honor, I've addressed the issue about  
15 tolling the statute. My arguments remain the same on those.

16 I will say, Your Honor, as to, as to the plea issue, I  
17 think the -- Madam Attorney General is kind of skipped I  
18 think what the real issue is, and I'm gonna be relying on  
19 Gerald Smith versus State of South Carolina, the Court of  
20 Appeals case. I've got one I can -- I've got one I can pass  
21 up to the Court if you would like me to.

22 THE COURT: Sure.

23 MR. RICHEY: And, Your Honor, that, that case is a PCR  
24 case and it, and it talks about this issue about the State  
25 saying they're making no recommendation and then, in this

1 case, they asked for, they ask for the maximum sentence in  
2 this case, and the, the Court, in this case, it talks about  
3 that is a violation of the plea agreement.

4 In this particular case, the plea -- the trial counsel  
5 did not object to that. And so the Court says hey, he was,  
6 he was in, he was ineffective for not doing that.

7 I'm saying that, in this case, how it relates to the  
8 case at hand is, is that it would -- our lawyer objected to  
9 it but the record was not properly preserved because there's  
10 not -- there was not a ruling on the objection by the Court,  
11 and, and I think the testimony today was that the lawyer did  
12 not get a ruling.

13 So, therefore, without the ruling, the rock -- the, the  
14 record is not properly preserved. So, even if the judge  
15 told them you got 10 days to appeal, it, it wouldn't matter  
16 because the record is not properly preserved.

17 And so, Your Honor, it -- and, two, also, I don't know  
18 if -- the discussion with my client was that the lawyer did  
19 not discuss appealing this particular issue, and I think  
20 that that is a substantial issue in the case. The lawyer  
21 did never move to withdraw the plea.

22 But I believe that the, the main issue here is, without  
23 their record being preserved properly, that issue, he can  
24 not appeal it. So, I think that the judge telling him hey  
25 you can appeal, and that without a record properly

1 preserved, he's precluded from appealing that issue and  
2 that's why we're back at PCR see because if -- in, in  
3 theory, if he had of got the appeal, and the Appeals Court  
4 says hey, the record wasn't properly preserved, you're out.

5 So then we'd be back here again saying that counsel was  
6 ineffective for failing to preserve the record. So, I think  
7 the issue is the preservation of the record in this  
8 particular case.

9 Thank you, Your Honor.

10 THE COURT: All right. Is it, is it your understanding  
11 that the court, if it grants this PCR application, then,  
12 then your client's back at dealing with the life issue?

13 MR. RICHEY: Yes, sir. He's back to square one with  
14 life and I've discussed with him extensively because, in  
15 this case, really, Your Honor, he's got that statute tolling  
16 issue and then he's got this appeal issue. And I discussed  
17 with him, if this thing kind of, and I usually phrase it,  
18 went off the rails, he could be coming back for another PCR  
19 and then going -- it could be a five to six year case. I  
20 discussed that with him and I think he's got about seven  
21 years left.

22 Is that about right, seven?

23 THE APPLICANT: Yes, sir.

24 MR. RICHEY: He's got about seven left. So, I've  
25 discussed with him, you know, winning, you, you might do all

1 this sentence anyway but I defer to the client. He says he  
2 wants to do it. He wants to take that chance and all this.  
3 But I have discussed with him about the timing of this case  
4 and about the relief. He might still have to serve this  
5 whole sentence even, even if all these courts rule for him.

6 THE COURT: All right. All right. Well, we'll take  
7 everything under, under consideration here. I'm gonna read  
8 these cases, and the transcript, and, and will let you know.

9 MR. RICHEY: Thank you, Your Honor.

10 MS. MARTO: Thank you, Your Honor.

11 THE COURT: Thank you.

12

13 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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C E R T I F I C A T E

After reviewing of the previously prepared transcript by Denise Lauder, I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 3<sup>rd</sup> day of December, 2021

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

December 10<sup>th</sup>, 2021



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 )  
 Patrick Davis, #346636, )  
                                   Applicant, )  
 )  
                                   v. )  
 )  
 State of South Carolina, )  
                                   Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-42-03703

ORDER OF DISMISSAL

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This matter comes before this Court by way of Applicant's post-conviction relief application filed October 18, 2019. Respondent made its return on February 18, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on August 3, 2021, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Daniel MacDonald also testified through telephone. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

**Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. During its December 2017 term, the Spartanburg County Grand Jury indicted Applicant for escape (2017-GS-42-5959). During its June 2018 term, the Spartanburg County Grand Jury indicted Applicant for attempted murder and possession of a weapon during a violent crime (2018-GS-42-2974), and petty larceny (2018-GS-42-2975). Daniel McDonald, Esquire, represented Applicant. Assistant Solicitor

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Spenser Smith prosecuted the case. On October 10, 2018, Applicant appeared before the Honorable Grace G. Knie and pled to the lesser-included offense of assault and battery of a high and aggravated nature, in addition to pleading as indicted to possession of a weapon during a violent crime, petty larceny, and escape. Both assault and battery of a high and aggravated nature and possession of a weapon during a violent crime were pleas entered into under *North Carolina v. Alford*, 400 U.S. 25 (1970), with remaining charges being guilty pleas. The State's recommendation was for sentences to be served concurrently. Judge Knie sentenced Applicant to twenty years' imprisonment for assault and battery of a high and aggravated nature, suspended upon fourteen years' service, five years' imprisonment for possession of a weapon, ten years' imprisonment for petty larceny, and ten years' imprisonment for escape, sentences running concurrently. Applicant did not appeal his conviction or sentence.

Summary of Relevant Facts

Concerning the escape charge, Applicant was placed on home detention monitoring as a part of a sentence given August 22, 2017, by the Honorable J. Mark Hayes, II. (Tr. 22). On October 23, 2017, home detention received a notification that the monitor was removed. (Tr. 22-23). They responded to the last location in which they had it and found Applicant across the street from where he was supposed to be. (Tr. 23). Applicant informed the officers he took the monitor off because "he wanted to chill." (Tr. 23). Officers asked him to come with them and he took off running, jumping over several fences and was able to escape. (Tr. 23).

On October 30, 2017, deputies got a tip he was in the back of that residence. (Tr. 23). They knocked on the door and Applicant jumped out of the side window naked. (Tr. 23). Officers gave chase again over several fences. (Tr. 23). Officers lost him briefly and saw a pedestrian, looking startled, who stated they thought he just saw Applicant jump inside his work

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truck. (Tr. 23). Officers found him hiding in the backseat of the truck and arrested him. (Tr. 23).

On January 29, 2018, officers responded to a theft incident, where the victim had her purse taken from the backseat of her vehicle and stated she observed two people running away with the purse when they came outside. (Tr. 23-24). Witnesses believed one of the men was Applicant, whom the victim picked out of a photo lineup. (Tr. 24).

On February 21, 2018, officers responded to a shooting. (Tr. 24). The sixteen-year-old victim, who suffered a gunshot wound to the leg, had already been transported by a bystander. (Tr. 24). Four nine-millimeter shell casings were found on scene. (Tr. 24). The victim told the officers the two perpetrators were driving a blue Honda. (Tr. 24). Before the police arrived, the victim told security that "Project Pat", otherwise known as Applicant, shot him. (Tr. 24). The man who drove the victim to the hospital stated he went to the street where the incident took place to pick up his daughter, who is the Applicant's girlfriend, because they had a fight with him. (Tr. 24). During the argument, Applicant stated he was not afraid of his girlfriend or her father and asked for his gun. (Tr. 24). Applicant's brother handed him a gun. (Tr. 24). Applicant stated he was going to scatter the boys up the street. (Tr. 24-25). Applicant and his brother rode in a blue Honda, shooting into the crowd outside the house and struck the victim; the only individual shot during the ordeal. (Tr. 25).

On February 28, 2018, the victim told the police that Applicant had shot him out of a blue Honda and Applicant's brother had been driving. (Tr. 25). Both Applicant and his brother were arrested and found in the vicinity of a pistol. (Tr. 25). Their car contained two different types of ammunition. (Tr. 25).

**Current Action before this Court**

In his current PCR application, Applicant alleges he is being held in custody unlawfully

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because of ineffective assistance of counsel in that:

1. "Ineffective Assistance of Counsel."
  - a. "My lawyer was ineffective by not informing me that I could file an appeal after a guilty plea."
  - b. "My lawyer was ineffective by not doing a proper investigation. . . ."
  - c. "By not giving me my motion in a timely order."
  - d. "My lawyer did not interview any witnesses or my witnesses . . . ."
  - e. "My lawyer forced me to take a plea."

Applicant, through PCR Counsel, made an amended application on March 22, 2021, alleging that Counsel was ineffective for not filing an appeal of his guilty plea, based upon the State's agreement that they would not make a recommendation as to the sentencing range, but offered a recommendation at the plea hearing, in violation of the agreement.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel
  - a. Failure to file an appeal.
    - i. Failure to appeal the plea based on the State's alleged violation of the agreement by recommending a sentence after they agreed the plea would be entered without recommendation.
  - b. Failure to properly investigate the case.
    - i. Failure to interview witnesses.
  - c. Failure to review discovery with Applicant.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

#### Summary of the Proceedings

##### *Motion to Dismiss*

Prior to testimony being taken, a hearing on the State's partial motion to dismiss occurred. Respondent argued that the plea hearing occurred October 10, 2018, no appeal was filed, and the PCR application was filed October 18, 2019, approximately seven days after the statute of limitations expired. The State moved to dismiss all allegations beyond the allegation of ineffective assistance of counsel for failure to file an appeal. The State argued that though

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Applicant put the document in the mail October 10, 2021, *Mose v. State*<sup>1</sup> makes clear that putting a document in the mail does not constitute filing. The State argued that the Court in *Mose* expressly declined to adopt a rule automatically deeming an application filed on the date Applicant claims it was delivered to prison authorities. The State argued that the prison mailbox rule is intended to put a prisoner in the same position as someone not incarcerated. The State argued that a non-incarcerated person can expect the mail to take between three and five days to arrive at its destination and to be filed. Thus, this application would be filed late if mailed in a person outside of prison as well and, accordingly, Applicant is not entitled to have the application be treated as timely.

In response, Applicant argued the application was notarized and placed into SCDC custody before the statute of limitations tolled. Applicant argued he was in SCDC on lockdown because of the prison riots happening around the same time. He argued that *Mose* stated that equitable tolling is appropriate when it is not the fault of the defendant, which he claims is the case here. Applicant claimed he was only seven days late in filing the application. Regardless, Applicant argued, the main allegation they sought to raise was the failure to file an appeal allegation, which would survive regardless.

This Court decided not to grant the State's motion to dismiss and requested testimony be taken on all issues Applicant sought to raise as a part of his application.

*Applicant Testimony*

Applicant stated he made his application on October 10, 2019, and that he handed it to the mail lady through the cell door. Applicant stated he was prohibited from coming out of his dorm or cell unless he was showering because the prison was in lockdown at that time. Applicant

<sup>1</sup> 420 SC 500, 803 SE2d 718 (2017).

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stated that the mail lady called up to his cell to inform him the application was notarized that same day. Applicant stated he did everything he could to file his application timely. Applicant stated he had no receipt saying he mailed the application.

Applicant stated he pled pursuant to *Alford* on the assault and battery of a high and aggravated nature charge with no recommendations concerning sentence length and that he pled guilty to all other charges. Applicant stated he pled to the offer without negotiation or recommendation and wanted to appeal the plea because the State violated the agreement. Applicant stated he did not discuss his desire to appeal with Counsel because he did not think an appeal was proper until after he was in SCDC custody. Additionally, Applicant stated he had no way of contacting his attorney to file a timely appeal.

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SOUTH CAROLINA

Applicant stated that there were many conflicting victim statements regarding the evidence and that Counsel did not review everything with him. Applicant stated he received discovery from Counsel four or five months after being held in Spartanburg County Jail. Applicant stated Counsel did not explain everything in detail. He stated he needed more time to review it to go to trial.

Applicant stated Counsel explained what an *Alford* plea was and how it permitted him to maintain his innocence. Applicant stated he told Counsel he wanted to go to trial but his lawyer worked out a plea agreement and told him he should take it. Applicant stated Counsel did not force him to take it, but repeatedly brought it up and advised him to take it. He stated he needed time to think it over and ultimately decided to take it. He stated he wanted to go to trial but decided to plead because he thought it was a reasonable deal and Counsel was not as effective as he wanted him to be. Applicant stated he was not threatened into pleading. Applicant stated he told the plea judge he was satisfied with Counsel's performance because he was nervous about

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the two strike law. He testified he took Counsel's word that everything with the plea would proceed forward properly. Applicant stated he wanted to take the plea because it was preferable than going to trial, but otherwise would have gone to trial.

On cross-examination, Applicant stated he met with Counsel no more than three or four times. Applicant stated they discussed the case, relevant evidence, and the discovery at the meetings. Applicant stated he wanted further investigation into witnesses and their conflicting statements, but Counsel did not. Applicant stated he decided to plead with advice of Counsel. Applicant stated he was told that the plea was going to be entered without a recommendation as to sentencing presented by the State. Applicant stated Counsel objected to the recommendation at the hearing and there was a bench conference about it. Applicant stated he had enough time to think about and review discovery.

Applicant stated he did not appeal because he did not ask Counsel for one. Applicant stated he did not know appealing was an option until after the ten day window lapsed and he was in SCDC custody.

*Counsel Testimony*

Counsel is a public defender out of Spartanburg. Counsel stated he met with Applicant more than three times. Counsel stated he emailed the jail, asking to bring his laptop in to the jail to review the discovery discs with Applicant. Counsel stated that the timeline for discovery receipt varies, with receipt occurring immediately sometimes and weeks after receipt of the case others. Counsel stated he did not interview any witnesses and did not recall hearing about witnesses beyond those mentioned in the discovery.

Counsel stated that Applicant indicated he wanted a jury trial, but was served with a notice of intent to seek life without parole and was informed he would receive life if he did not

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plead and was found guilty at trial. Counsel stated that he told Applicant the sentence would be more favorable if he took the plea. Counsel stated Applicant was not forced into pleading, but decided to given the risks associated with proceeding to trial.

Counsel testified that the only recommendation the State agreed to was concurrent sentencing, not a certain sentence length. Counsel stated that the agreement was violated when the State requested a certain sentence length, which is why he objected. Thereafter, a bench conference was held, from which no ruling was made. Counsel stated he did not request a ruling on this objection. Counsel stated this was the first time he had seen the State make a sentence length recommendation after stating it would not make one. Counsel testified he approached the bench to receive clarification on this, based upon the belief that the request was improper. Counsel stated he still thinks the recommended sentence was inappropriately given.

Counsel stated that after the plea was entered and accepted, Applicant was taken back to the holding room and he explained to Applicant the sentence. Counsel testified that the judge informed Applicant that they had ten days to file the appeal, but could not remember if he mentioned the ability to appeal to Applicant personally.

On cross-examination, Counsel stated that at the bench conference he told the Judge he thought the recommendation was inappropriate, given the agreement. He stated that the Solicitor responded by saying that the Public Defender's Office undercuts recommendations all the time, making a recommendation like he did is common practice and is therefore appropriate. Counsel stated that Judge Knie stated she would consider the recommendation in issuing a sentence, but could not remember whether she stated she intended to take it as a formal recommendation. Counsel stated that Judge Knie told Applicant he could appeal, but that Applicant never informed him that he wanted to appeal. Counsel stated he explained to Applicant the sentence

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and how it would be calculated. Counsel stated he was unaware of whether Applicant was concerned about the sentence or not.

Counsel stated that, in terms of investigations, if the case proceeded to trial the best way to attack the State's case would be to bring out inconsistent statements during cross-examination. Counsel stated that many witnesses identified him and he had a large risk of being convicted at trial if he decided not to plead. Counsel stated that the father of his then-girlfriend and the victim also identified him.

Counsel stated he encouraged Applicant to take the plea because of the notice of intent to seek life without parole. Counsel stated that pleading saved Applicant from a mandatory life without parole sentence and that Judge Knie was the best Judge available when seeking a lenient sentence. Counsel stated he thinks pleading was in his best interest and that the decision was Applicant's.

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**Findings of Fact and Conclusions of Law**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

***Ineffective Assistance of Counsel***

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts

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ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRPC. The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence. Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

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proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

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 STANBURN COUNTY  
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***Failure to File an Appeal***

Applicant claims Counsel was ineffective for failing to file an appeal. Counsel is required to make certain the defendant is made fully aware of the right to appeal following a trial. *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). However, absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995). The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. *Id.* Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal. *Id.* Extraordinary circumstances may exist when there is reason to think that a rational defendant would want an appeal, such as when non-frivolous grounds for an appeal exist, or when the defendant reasonably demonstrates an interest in appealing. *Id.*; *Roe v.*

*NSD*

*Flores-Ortega*, 528 U.S. 470 (2000).

Applicant claims he did not ask Counsel for an appeal within the ten day window because he did not know appealing was an option until after the window had lapsed and he was transferred into the custody of the Department of Corrections. However, this is refuted by the plea transcript, in which the Judge informed him of his right to appeal. (Tr. 7). Counsel credibly testified at the PCR hearing that the Judge informed him of his right to appeal at the plea hearing as well. That Counsel could not remember whether he informed of this right is irrelevant; any potential deficiency on Counsel's part was remedied by the plea colloquy. *See Moorehead v. State*, 329 S.C. 329, 333, 496 S.E.2d 415, 416 (1998) ("[T]he transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing."). Thus, even if Counsel did not inform him of this right, Applicant's acknowledgment at the plea hearing that he understood he had a right to appeal quells any notion of prejudice on this issue. Because Applicant was informed of this right and failed to request an appeal, Counsel cannot be found ineffective for failing to file an appeal. Thus, relief is denied on this ground.

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***Failing to Object to and Appeal from Plea Deal Violation***

Applicant claims Counsel was ineffective for failing to object to, obtain a ruling on an objection, or appeal the State's alleged violation of the plea agreement. However, this Court finds Counsel acted reasonably, given the circumstances. Specifically, when the State recommended a sentence, Counsel stood up, objected, and requested the attorneys approach for a bench conference. (Tr. 29). At the PCR hearing, Counsel credibly testified that at the bench conference he told the Judge he thought the recommendation was inappropriate, given the agreement. He stated that the Solicitor responded by saying that the Public Defender's Office

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undercuts recommendations all the time, making a recommendation like he did is common practice and is therefore appropriate. Counsel stated that Judge Knie stated she would consider the recommendation in issuing a sentence, but could not remember whether she stated she intended to take it as a formal recommendation. This Court finds that objecting to the recommendation and alerting the Judge that he thought the recommendation was in violation of the agreement was appropriate and reasonable, given the circumstances. Thus, Counsel was not deficient on this ground.

This Court also finds that Applicant has made no showing of prejudice. At the PCR hearing, Applicant stated that he decided to plead because he thought that option was preferable to trial and that the deal as offered was reasonable. There is no indication Applicant would have rather proceeded to trial as opposed to pleading. Additionally, this Court finds that the sentence actually imposed, consisting of twenty years' imprisonment suspended upon service of fourteen years' imprisonment and two years' probation, was likely not influenced by the recommendation of fifteen to twenty years' imprisonment. Thus, even if Counsel was deficient on this ground, there has been no showing of prejudice and, accordingly, relief is denied on this ground.

*Failure to Review Discovery*

Applicant alleges ineffective assistance of counsel for failure to review discovery with him. This Court finds this allegation is without merit. Applicant stated he received his discovery through Counsel about four or five months ahead of the plea hearing, but not all of the discovery was explained in great detail. He did, however, state he had time to think about his decision and to review the decision, and that he decided to plead because he was offered a reasonable plea deal. Counsel testified that he met with Applicant more than three times, during which they reviewed the discovery. Counsel stated he emailed the jail asking to bring his laptop in to review

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SPARTANBURG COUNTY  
SOUTH CAROLINA

what was on the discs with Applicant. Applicant has failed to make any showing of what was not shared with him or how that would have changed his decision concerning the plea deal. Thus, this Court finds that Applicant was shown his discovery and had ample opportunity to review the discovery before pleading. Counsel was not deficient on this ground and no showing of prejudice has been made. Accordingly, relief is denied on this ground.

*Failure to Investigate*

Applicant claims Counsel was ineffective for failing to further investigate the case, particularly potential witnesses for trial. *Strickland* makes clear that defense counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* At the PCR hearing, Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel's failure to investigate is contingent on whether the evidence presented would have led Counsel to change his recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Applicant claimed he wanted witnesses further investigated based on contradictory statements given, including the victim, but could not state what witnesses he wanted investigated, what "contradictions" he took issue with, what further investigation could have revealed, or how it would have changed Counsel's recommendation as to the plea. Additionally, Counsel credibly testified that he was unaware of any witnesses beyond those in the discovery

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SPARTANBURG COUNTY  
SOUTH CAROLINA

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provided by the State that could have been investigated. Counsel also testified that the best strategy for investigating these contradictions would have been through cross-examination at trial, but because Applicant pled, the right to cross-examine witnesses was waived. Counsel credibly testified he thought the plea was still in Applicant's best interest. Thus, Counsel acted reasonably given the circumstance and no deficiency is found. Additionally, because Applicant failed to meet his burden of proof in showing what could have been discovered through further investigation and how it would have changed Counsel's recommendation as to the plea, no prejudice is found on this ground. Accordingly, relief is denied on this ground.

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AMY W. COX

[conclusion and signature line on following page]

Conclusion

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

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

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SOUTH CAROLINA  
FLORENCE COUNTY

**IT IS THEREFORE ORDERED:**

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

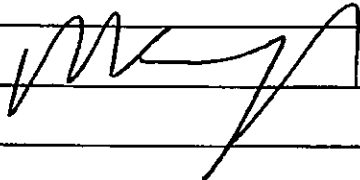
AND IT IS SO ORDERED this 25<sup>th</sup> day of October, 2021.

H. STEVEN DEBERRY, IV  
Presiding Judge  
Seventh Judicial Circuit

Florence, South Carolina.

**WITNESSES**

**Spartanburg City Police Department**



**ARREST WARRANT NUMBER**

**2018A4210200432**

**ACTION OF GRAND JURY**

**True Bill**

**JUN - 8 2018**

*Foreperson of Grand Jury*  
Date:

**VERDICT**

*Foreperson of Petit Jury*  
Date:

2975

**The State of South Carolina**

**County of Spartanburg**

**Barry J. Barnette, Solicitor**

**COURT OF GENERAL SESSIONS**

**JUN 11 2018**

**TERM**

**THE STATE**

**vs.**

**Patrick L. Davis**

**Indictment for**

**PETIT LARCENY**

**SC Code: 16-13-0030 (A); 16-1-57**

**CDR Code: 3596**

**Class FEL/E**

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF SPARTANBURG )

INDICTMENT

JUN 08 2018

At a Court of General Sessions, convened on \_\_\_\_\_ the  
Grand Jurors of Spartanburg County present upon their oath:

**PETIT LARCENY**

That Defendant, Patrick L. Davis, did in Spartanburg County on or about January 31, 2018, feloniously take and carry away the personal goods of Kimberly Mitchell, valued at less than Two Thousand Dollars, described as follows: a purse with all contents, with the intent to deprive the owner permanently of such property, in violation of §16-13-30 (A) and §16-1-57, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976)*, as amended.

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

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

**WITNESSES**

Spartanburg Co. Sheriff's Office

*Anna Fowler*

DOCKET NO.

**02-09-42-1269**

The State of South Carolina

County of Spartanburg

*Trey Gowdy, Solicitor*

COURT OF GENERAL SESSIONS

FEB 25 2008

TERM

ARREST WARRANT NUMBER

K256758

THE STATE  
vs.

ACTION OF GRAND JURY

Patrick Lamar Davis

Foreperson of Grand Jury

Date: *2/27/08*

**Computer**

1. INDICTMENT

2. CHECKED WARRANTS

3. CHIEF CLERK SIGNATURE

SHERRIFF'S OFFICE

MADE

1. *Computer*

Foreperson of Petit Jury  
Date.

Indictment for  
**BURGLARY, FIRST DEGREE**  
(Dwelling)

SC Code: 16-11-0311  
CDR Code: 0079  
Class FEL/EXM (V)

A CERTIFIED COPY  
*K. L. Hope*  
CLERK OF COURT  
SPARTANBURG COUNTY  
BY *K. L. Hope*  
DATED *2/27/08*

WITNESSES

Spartanburg Public Safety Department

1. STATEMENT MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ARREST WARRANT NUMBER

FINE CARD MADE

M121342

8. TRAFFIC COMPLAINT COPY

Computer

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 8-19-10

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

10-GS-42-4984

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

Aug 23 2010

TERM

THE STATE

VS.

Patrick Lamar Davis

Indictment for

BURGLARY, FIRST DEGREE  
(Dwelling)

SC Code: 16-11-0311

CDR Code: 0079

Class: FELJEXM (V)

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M. Hope Blackley  
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SPARTANBURG COUNTY  
AUG 25 2010  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA }  
COUNTY OF SPARTANBURG }

INDICTMENT

AUG 14 2010

At a Court of General Sessions, convened on \_\_\_\_\_, the Grand Jurors of Spartanburg County present upon their oath:

**BURGLARY, FIRST DEGREE**

**(DWELLING)**

That the Defendant, Patrick Lamar Davis, did in Spartanburg County, on or about June 10, 2010, willfully and intentionally enter the dwelling belonging to Tiara Carpenter located at [redacted] S. Center Street, Spartanburg, South Carolina without consent and with the intent to commit a crime therein, and that the defendant did enter the dwelling either:

- (1) the Defendant did enter in the nighttime and/or
- (2) armed with a deadly weapon; and/or
- (3) caused physical injury to any person who is not a participant in the crime; and/or
- (4) uses or threatens the use of a dangerous instrument; and/or
- (5) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms,

In violation of Section 16-11-311, Code of Laws of South Carolina (1976) as amended.

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

Dawn J. [Signature]  
ASSISTANT SOLICITOR

WITNESSES

Spartanburg Sheriff's Office

*[Signature]*

ARREST WARRANT NUMBER

2017A4210103914

ACTION OF GRAND JURY

*[Signature]* Foreperson of Grand Jury  
 Date: DEC 06 2017

VERDICT

Foreperson of Petit Jury  
 Date:

DOCKET NO. 17-GS-42-5959

The State of South Carolina  
 County of Spartanburg  
 Barry J. Bannette, Solicitor

COURT OF GENERAL SESSIONS  
 DEC 11 2017 TERM

THE STATE  
 vs.

Patrick Lamar Davis

Indictment for

Escape

SC Code: 24-13-410  
 CDR Code: 2527  
 Class FEL/D

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 M. HOFFER BLACKLEY

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STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF SPARTANBURG )

INDICTMENT

DEC 06 2017

At a Court of General Sessions, convened on \_\_\_\_\_ the  
Grand Jurors of Spartanburg County present upon their oath:

**ESCAPE**

That Patrick Lamar Davis, did in Spartanburg County on or about  
October 23, 2017, escape while he was in the custody of the Spartanburg  
County Home Detention Program by removing his bracelet and fleeing from  
officers, in violation of Section 24-13-410 of the Code of Laws of South  
Carolina, 1976, as amended.

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

  
\_\_\_\_\_  
Assistant Solicitor



DOCKET NO. **18-GS-42-2974**

**WITNESSES**

**Spartanburg City Police Department**

*[Handwritten Signature]*

**ARREST WARRANT NUMBER**

**COUNT ONE: 2018A4210200670**

**COUNT TWO: 2018A4210200671**

**ACTION OF GRAND JURY**

**True Bill**

*[Handwritten Signature]* JUN - 8 2018

Foreperson of Grand Jury  
Date:

**VERDICT**

Foreperson of Petit Jury  
Date:

**The State of South Carolina**  
**County of Spartanburg**  
**Barry J. Barnette, Solicitor**

**COURT OF GENERAL SESSIONS**

JUN 11 2018

**TERM**

**THE STATE**  
**vs.**

**Patrick L. Davis**

**Indictment for**

**ATTEMPTED MURDER AND**  
**POSSESSION OF A WEAPON DURING A**  
**VIOLENT CRIME**

SC Code: 16-3-0029; 16-23-490  
CDR Code: 3410; 549  
Class FEL-A; FEL-F

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

INDICTMENT

JUN 08 2018

At a Court of General Sessions, convened on \_\_\_\_\_ the

Grand Jurors of Spartanburg County present upon their oath:

**COUNT ONE: ATTEMPTED MURDER**

That Patrick L. Davis, did in Spartanburg County on or about February 21, 2018, with malice aforethought attempt to kill Jaylan Jeter, by shooting the victim, with the intent to kill the said victim, in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

**COUNT TWO: POSSESSION OF A WEAPON DURING A VIOLENT CRIME**

That Patrick L. Davis, did in Spartanburg County on or about February 21, 2018, possess or visibly display a firearm or what appeared to be a firearm during the commission of a violent crime, to-wit: ATTEMPTED MURDER, in violation of Code §16-23-480, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

  
\_\_\_\_\_  
ASSISTANT SOLICITOR