

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**May 02 2022**

S.C. SUPREME COURT

—————  
Certiorari to Spartanburg County

Honorable William A. McKinnon, Circuit Court Judge

—————  
DARIAN S. HILL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001450

—————  
APPENDIX  
—————

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

3  
 4 STATE OF SOUTH CAROLINA, ) TRANSCRIPT  
 5 PLAINTIFF, ) OF  
 6 vs. ) RECORD  
 7 DARIAN SHAUNDRE HILL, ) 2017-GS-42-611 - 613  
 8 DEFENDANT. )

9  
 10 March 28<sup>th</sup>, 2018  
 11 Spartanburg, South Carolina

12  
 13 B E F O R E :

14 THE HONORABLE GRACE GILCHRIST KNIE, Judge.

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

17 SPENSER SMITH  
 18 ASSISTANT SOLICITOR  
 Attorney for the State

19 RICHARD W. VIETH  
 20 ESQ.  
 Attorney for the Defendant

21  
 22  
 23 PAMELA E. GREEN  
 24 Circuit Court Reporter  
 Seventh Judicial Circuit

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>State's Exhibits</u>		
S-1	Photograph	5	23

1	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Defendant's Exhibits</u>		
3				
4	D-1	Letter	5	
5	D-2	Letters	5	
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## P R O C E E D I N G S

1  
2  
3 SOLICITOR SMITH: Darian Hill.

4 (WHEREUPON, the Defendant was placed under oath at this  
5 time.)

6 THE COURT: Yes, sir.

7 SOLICITOR SMITH: Good after -- good afternoon, Your  
8 Honor.

9 Before you is Darian Shaundre Hill. He's here to plead  
10 guilty to four charges on three indictments. He's pleading  
11 under North Carolina versus Alford on all these charges,  
12 Your Honor.

13 First is 2017-GS-42-613. That is a true billed  
14 indictment for armed robbery as to Count 1, and possession  
15 of weapon during the violent crime as to Count 2. He's  
16 pleading under North Carolina versus Alford. There's a  
17 negotiated range, just as we had with Mr. Tucker, Your  
18 Honor, of a 10 to 20 year range on all of these charges.

19 Next is 2017-GS-42-612. That's a true billed  
20 indictment for burglary in the first degree. He is pleading  
21 under North Carolina versus Alford to burglary second degree  
22 under the violent subsection.

23 Next is 2017-GS-42-611. That is a true billed  
24 indictment for assault and battery of a high and aggravated  
25 nature. He is pleading under North Carolina versus Alford

1 as charged with the same negotiation as previously  
2 mentioned.

3 He's represented by Mr. Rick Vieth. The victim is  
4 present and wishes to address the Court at the appropriate  
5 time. There's no restitution in the case. I'm handing up  
6 your sentencing sheet, your information sheet as well with  
7 the packet.

8 THE COURT: Okay. Thank you, sir.

9 (WHEREUPON, a photograph was marked as State's Exhibit  
10 No. 1. A letter was marked as Defendant's Exhibit No. 1. A  
11 group of letters was marked as Defendant's Exhibit No. 2.  
12 The above exhibits were for identification purposes only at  
13 this time.)

14 SOLICITOR SMITH: We were working out if it's a  
15 violation, Your Honor.

16 THE COURT: I understand---

17 SOLICITOR SMITH: I don't believe it is.

18 THE COURT: ---and I'm happy for y'all to take that up  
19 now.

20 SOLICITOR SMITH: I think it's not a violation. So --.

21 THE COURT: It's not?

22 SOLICITOR SMITH: She's sitting down.

23 THE PROBATION AGENT: Probation is standing down.

24 MR. VIETH: That's right.

25 THE COURT: Okay. All right. Thank y'all for looking

1 into that before we got started. I appreciate it.

2 Okay. And, Mr. Vieth, it's my understanding that  
3 all -- that pleas on all four of these indictments will be  
4 under North Carolina versus Alford?

5 MR. VIETH: It will be.

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

7 Sir, you are Darian Shaundre Hill.

8 Is that correct?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. Mr. Hill, I have some questions  
11 I need to go over with you before we proceed any further  
12 with your plea hearing this afternoon. If, at anytime, I  
13 confuse you or you have questions, feel free to hold up your  
14 hand or stop me, and you can confirm with Mr. Vieth or you  
15 can ask me questions before we go any further.

16 Okay?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. Sir, have you been sworn?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right. Do you understand that the  
21 purpose of your being here today is to enter a, a plea under  
22 North Carolina versus Alford as to all four indictments  
23 against you?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you understand?

1           Okay. And, sir, when you do that, you're waiving very  
2 important Constitutional rights. Not only are you waiving  
3 your right to a trial by jury, but you're also waiving your  
4 right to confront witnesses against you, and your right to  
5 remain silent.

6           Do you understand?

7           THE DEFENDANT: Yes, ma'am.

8           THE COURT: And, sir, if you were to go forward, if you  
9 were to have a trial on the charges against you, the burden  
10 of proof would not be on you or Mr. Vieth. The burden of  
11 proof is on the State, on the solicitor, to prove every  
12 element of every charge against you beyond a reasonable  
13 doubt. You are presumed to be innocent until proven guilty.

14          Do you understand?

15          THE DEFENDANT: Yes, ma'am.

16          THE COURT: And, sir, if you were to have a jury trial  
17 on these charges, every member of your jury would have to  
18 agree on your guilt before you could be found guilty.

19          Do you understand?

20          THE DEFENDANT: Yes, ma'am.

21          THE COURT: Okay. Knowing all of that, sir, is it  
22 still your wish that you go forward with your plea hearing  
23 this afternoon on these charges under North Carolina versus  
24 Alford?

25          THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. I'm now, sir, I'm gonna go  
2 through each indictment, and make sure that you understand  
3 what you're pleading, what you're pleading to, and the  
4 potential penalty for each offense.

5 okay?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Sir, I have a true billed indictment, and  
8 this is Indictment Number 2017-GS-42-611, and this is an  
9 indictment for assault and battery of a high and aggravated  
10 nature in violation of South Carolina Code Section  
11 16-3-600(B)(1), and it's my understanding that you are  
12 pleading as indicted. The potential penalty for this  
13 offense, sir, is zero to 20 years. This is classified as a  
14 violent and serious offense, sir.

15 And so, first, let me ask, do you understand what  
16 you're pleading to under this Indictment 2017-GS-42-611, and  
17 the potential penalty for this offense?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. Further, has Mr. Vieth  
20 explained to you the classification of this offense as being  
21 violent and serious?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. Next we have Indictment Number  
24 2017-GS-42-612, and this is a true billed indictment for  
25 burglary in the first degree in violation of South Carolina

1 Code Section 16-11-311, and this is -- this is a violent  
2 burglary charge second degree with a potential penalty of  
3 zero to 15 years. This is classified as being violent and  
4 serious.

5 Sir, do you understand the offense that you are charged  
6 with under this indictment --

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: -- and the potential penalty for this  
9 offense?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. And let me go back. One thing about  
12 the assault and battery of a high and aggravated nature,  
13 sir, that is a no parole offense.

14 Do you understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. Do you have any questions about it?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Okay. And then as to Indictment Number  
19 2017-GS-42-613, sir, this offense is -- this is -- this  
20 indictment is armed robbery and possession of a weapon  
21 during the commission of a violent crime under South  
22 Carolina Code Section 16-11-330(A) and 16-23-490.

23 The potential penalty for this offense, sir, is a  
24 minimum of 10 with a maximum of 30 years. It is classified  
25 as violent and most serious.

1 Do you understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you have any questions about it?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: And this is a no parole offense.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Has Mr. Vieth explained that to you?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: All right. And then, sir, under Count 2 of  
10 this indictment is the offense of possession of a weapon  
11 during a violent crime with a potential penalty of five  
12 years.

13 Do you understand that, sir?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you have any questions about it?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: All right. Now, I have neglected to say  
18 that this is actually being presented to me as a negotiated  
19 sentence, but it is not completely negotiated meaning that I  
20 do have some discretion, sir. This is being negotiated in  
21 what I call a bracket with a, with a possible period of time  
22 of 10 to 20 years.

23 Do you understand that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you have any questions about it?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: If I decided that I couldn't go along with  
3 that for any reason, what I would do is I would allow you  
4 and Mr. Vieth to step down and take this in front of another  
5 judge.

6 Do you understand?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Okay. Further, sir, it's my understanding  
9 that you have already been incarcerated for 590 days?

10 MR. VIETH: I'll go over a little bit of that with you,  
11 but it's at least that. But we'll address some issues when  
12 we get into it.

13 THE COURT: Okay. And so, sir, in addition to the  
14 sentence, of course, you would, you would be entitled to get  
15 a credit for some or all of the time that Mr. Vieth is going  
16 to discuss with me.

17 Do you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. And, sir, there will be a no  
20 contact provision between you and the victim in this matter.

21 Is it Montez---

22 SOLICITOR SMITH: Keri Moates.

23 THE COURT: Moates.

24 Okay. Keri Moates.

25 And is there restitution?

1 SOLICITOR SMITH: There's not, Your Honor.

2 THE COURT: Okay. All right. Do you understand that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. Thank you, sir. And this is  
5 complicated, and, and takes a little while.

6 All right?

7 THE DEFENDANT: I understand.

8 THE COURT: Has anybody threatened you or coerced you  
9 or promised you anything to get you to enter your plea today  
10 under North Carolina versus Alford?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Don't be offended, sir. I ask everybody  
13 the next questions.

14 All right?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Were you, at anytime during your  
17 communications with your lawyer, or are you today under the  
18 influence of any alcohol, drugs, or any intoxicant that  
19 would impair your judgment?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Do you suffer from any mental or physical  
22 infirmity that would affect your ability to understand what  
23 you're doing?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Do you take any prescribed drugs?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Are you satisfied with the services of your  
3 lawyer?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. Was discovery shared with Mr. Vieth?

6 SOLICITOR SMITH: It was, Your Honor.

7 THE COURT: Mr. Vieth, did you have an opportunity to  
8 review the evidence and the discovery in this matter with  
9 Mr. Hill?

10 MR. VIETH: We did.

11 THE COURT: Okay. And in addition to that, Mr. Vieth,  
12 did you have an opportunity to talk with Mr. Hill about his  
13 going forward with having a trial on, on these offenses or  
14 entering a plea?

15 MR. VIETH: We certainly did.

16 THE COURT: And you took into consideration the  
17 evidence against him?

18 MR. VIETH: We did.

19 THE COURT: Okay. Mr. Hill, sir, did you have an  
20 opportunity to review the evidence and discovery in this  
21 case with your lawyer, Mr. Vieth?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Did you also have an opportunity to discuss  
24 with Mr. Vieth the choice that you had before -- between  
25 going forward and having a trial versus entering a plea?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Okay. And do you believe that, based upon  
3 your communications with him, that, if you went forward,  
4 that the State could produce sufficient evidence to prove  
5 your guilt of these charges beyond a reasonable doubt?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And, sir, that if you went to trial, that a  
8 jury would most likely find you guilty?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And knowing all of that, sir, do you want  
11 to give up your very important Constitutional rights, those  
12 rights again are trial by jury, confront witnesses against  
13 you, and your right to remain silent?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And enter your plea this afternoon under  
16 North Carolina versus Alford?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Are you doing so freely, knowingly, and  
19 voluntarily?

20 THE DEFENDANT: Yes, ma'am, I am.

21 THE COURT: And, lastly, sir, be advised that in the  
22 event you wish to appeal any aspect of this plea hearing  
23 this afternoon, you only have ten days to do so in writing  
24 to this Court.

25 Do you understand?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Okay. Thank you, Mr. Hill.

3 I will now ask you to direct your attention to Mr.  
4 Smith, and to the victim if the victim wishes to address the  
5 Court.

6 Thank you.

7 SOLICITOR SMITH: Thank you, Your Honor.

8 This incident occurred on September 11<sup>th</sup> of 2015. At  
9 around three o'clock in the morning, deputies responded to  
10 an apartment complex on Fernwood-Glendale in Spartanburg  
11 County in reference to a home invasion. The victim's  
12 roommate had come back and found her severely beaten in her  
13 bedroom. Her four year old son was also present, and had  
14 witnessed the beating.

15 She was -- Your Honor, I'm gonna hand up pictures. We  
16 got State's Exhibit 1. She was severely beaten around  
17 basically all over her face to the point that she probably  
18 was blind at the time.

19 THE COURT: Thank you.

20 SOLICITOR SMITH: The victim's four year old son was  
21 present during the home invasion. The victim and son were  
22 able to speak to police. They said that two black males had  
23 done the beating. The victim was very in and out of it at,  
24 at the time when she was on the scene. She was mostly  
25 saying that she didn't want to die. Not being very --

1 giving information about who had done it. Just mainly  
2 hoping to live.

3 The victim later stated that she had woke up with a man  
4 on top of her pinning her down. That man had begun to beat  
5 her while another man that was inside of her room was  
6 screaming for her to give up the money.

7 That man that was screaming indicated that he was a  
8 Blood and was referring to her as a Crip. The victim  
9 believed this man was a man that she knew as Mack. That is  
10 Mr. Hill's codefendant, Lorenzo Gaines, who has still -- has  
11 charges pending. Both of them were on the trial docket this  
12 week, Your Honor.

13 She said that Mack had previously confronted her about  
14 dating a Crip member. She said she didn't know his real  
15 name, but her roommate and him had had a relationship. She  
16 said the struggle in the bedroom lasted for almost an hour.  
17 At least what she perceived to be an hour. She said that  
18 the man that was on top of her had a pistol and was using it  
19 to beat it with her. They were able to get her ATM card  
20 basically is what they got off of her.

21 Your Honor, we believe that the motive for this was Ms.  
22 Moates was unfortunately involved in a, in a Felony DUI  
23 accident where her fiancé at the time passed away. It's a  
24 case I handled and she broke her femur bone in this, and she  
25 had gotten a settlement from that car injury prior to this,

1 and we believe that they were out searching for that money  
2 potentially.

3       Your Honor, at that time she didn't give Mr. Hill's  
4 name. She was given the information about Lorenzo Gaines  
5 and specifically about the Yankee accent he has. He's from  
6 Brooklyn, has a pretty distinctive accent was what had stood  
7 out to her. They continue to go to her as (sic) the  
8 hospital as she improved, and she mentioned that there had  
9 been a -- I believe a payment attempted for Charter  
10 Communications in -- on Darian Hill's account off of her  
11 card. At that time she still did not say that he is the one  
12 that did it.

13       They did a check of her financial records, and her, her  
14 bank card was attempted to be used at an ATM about 20 hours  
15 after. So, it was the same day of the incident, but about  
16 ten o'clock at night, and they, they were able to ultimately  
17 get stills from that. I see Mr. Vieth has it over there.

18       Lorenzo Gaines, in that is kind of standing off of the  
19 camera view, and he has his face covered up by a bandanna  
20 trying to obscure his face, and Mr. Hill appears to be the  
21 person that's operating the machine.

22       Your Honor, they then showed that picture to the  
23 victim. She identified these two people as Darian Hill and  
24 Lorenzo Gaines, and that is the point that she said that  
25 Darian Hill was the person that had done this. I'm sure

1 Mr. Vieth will get into that.

2 So, at that time, they didn't -- they charged FTC  
3 charges for theft and fraud on Mr. Gaines and Mr. Hill, and  
4 Mr. Hill has actually been picked up on those charges, got a  
5 resisting arrest when they -- in the process of that, and  
6 then actually pled guilty, and was sentenced to prison. And  
7 that's gonna be the dispute over the time served.

8 So, he, before these warrants got even sent or served  
9 on him, he'd already pled guilty to the taking of the FTC  
10 card, and the FTC fraudulent use. But there were other  
11 items that were taken from the victim. So, I don't believe  
12 it's a double jeopardy situation, Your Honor.

13 They were able to pick up Lorenzo Gaines on the FTC  
14 charges. He stated that he had been staying at the victim's  
15 house off and on. Mr. Hill and Lorenzo knew the victim, and  
16 from what I've been told, were actually somewhat helping her  
17 as she was dealing with her broken leg, and that they  
18 would -- had been into her apartment before. They -- these  
19 were acquaintances at the, at the very least.

20 Mr. Gaines stated that he and Darian were -- had been  
21 with the victim and the roommate earlier in the day. He  
22 stated that he had ended up going over to the next door  
23 neighbor's house, that's William Clear, and that he had gone  
24 to bed around seven o'clock, and that he woke up at two  
25 o'clock in the morning to banging noises coming from the

1 victim's apartment. When he -- when he woke up, the  
2 victim's roommate and the baby were in the apartment, but  
3 Darian wasn't.

4 He said, as he heard sirens approach, that Darian ran  
5 in the back-door of the apartment, and then ran upstairs and  
6 hid for the entirety of the police investigating the crime  
7 that had occurred next door. He said, later that night,  
8 Darian came down, told him he had a debit card, and knew how  
9 to get money off of it, and that they walked to the Bank of  
10 America on Main Street, and they tried it twice with no  
11 success. He said he knew the card was stolen, but -- and  
12 that's why he put the bandanna, but denied knowing it was --  
13 belonged to Ms. Moates.

14 So, at that point, they're still just the FTC charges.  
15 At a later date, the victim's roommate, Kesha Johnson, gets  
16 picked up on a shoplifting warrant. Your Honor, she asked  
17 to speak with police.

18 She says that, after this assault occurred, that Darian  
19 hid in the next door neighbor's apartment the entire time,  
20 and that Darian told Kesha that he and Lorenzo had done the  
21 robbery, and beat the victim with a gun. Said that Mack had  
22 taken a bag of clothes, and there was actually this blue  
23 tote bag that was recovered from the next door neighbor's  
24 house as well as the victim's cell phone that had been  
25 factory reset, which were found in William Clear's apartment

1 during the process of the investigation.

2       The, the victim had said that the, the people that did  
3 this has some sort of masks covering them, and the child  
4 also said that in his, in his CAC interview. And what's  
5 interesting is, with Kesha Johnson's statement, who  
6 certainly would of had no reason, no coordination between  
7 the victim and the son, they say that Darian pulled a maroon  
8 sheet or comforter out of a closet that's right before the  
9 victim's bedroom, and tied that around his face to obscure  
10 his face. In looking at the discovery and the pictures  
11 taken of the apartment, there is a maroon sheet that is  
12 basically located exactly where the crime occurred. So,  
13 there's some corroboration with her statement, with the  
14 victim's statement, and with Trent, the son's statement.

15       Your Honor, Ms. Moates was in the hospital for a  
16 significant time. I, I -- she can speak more about her  
17 injuries at the appropriate time, but that would be the  
18 state's allegations in this case.

19       THE COURT: Okay.

20       SOLICITOR SMITH: But that there was a pistol present  
21 would be the basis of the armed robbery, and that cards and  
22 other miscellaneous items were taken off of her would be the  
23 basis of the armed robbery.

24       THE COURT: Okay.

25       SOLICITOR SMITH: And he does have a prior record, Your

1 Honor, at the appropriate time, and the victim does wish to  
2 address the Court at the appropriate time.

3 THE COURT: Okay. Well -- all right. Mr. Hill, you  
4 heard the statements of the solicitor, sir.

5 Well, this is under Alford. So -- okay.

6 All right. Let's hear from Ms. Moates.

7 (WHEREUPON, the victim comes forward.)

8 THE COURT: Okay. Good afternoon, ma'am.

9 MS. MOATES: My name is Keri Moates, and part of what  
10 was said is, is true. I've known Darian for a long time,  
11 and I was injured in a car accident, and was left pretty  
12 much -- not -- I wouldn't say paralyzed obviously. But I  
13 was in the bed and was in the position where I couldn't  
14 fight back or do anything to protect me or my kids.

15 And yes, I had kicked Darian away from my house because  
16 my landlord did a criminal background check, and said that  
17 he couldn't be there. He then got angry, and I guess that's  
18 what happened. I guess that's the reason why all of this  
19 happened. I really don't know.

20 I can tell you that my life is forever changed for  
21 several reasons. My son can't sleep at night without lights  
22 on. I have nightmares almost every night because a man that  
23 I trusted around my kids tried to kill me.

24 I can't tell anybody how to do their job, but I can  
25 tell you he doesn't deserve to be in the street because, if

1 he can do what he did to me, and someone hold, hold a gun to  
2 my four year old son's head, then he can do worse to someone  
3 else.

4 I live with what happened to me every day of my life.  
5 It has changed the relationship I have with my family, the  
6 people I deal with on a regular basis, and how I handle  
7 things. And it's not fair that I didn't do anything, but  
8 pay the bills in the house that he was staying at to drive  
9 me back and forth to the doctor, and feed these people. I  
10 did nothing to deserve to look like a slab of hamburger  
11 meat, and to be treated like I was less than human and left  
12 to die.

13 And then, when the police officers asked these same  
14 people that tried to kill me where is these people's  
15 families so that her kids can be sent somewhere, they say  
16 well, take the oldest child, and we'll, we'll keep the baby.  
17 They tried to kidnap my son.

18 So, as if taking -- trying to take my life and holding  
19 my other son at gunpoint and making him watch the ultimate  
20 demise of his mother, it -- you got to go a step further and  
21 try to kidnap the baby that just lost his dad. That is like  
22 an episode of the ID Channel, and I live with it every day.

23 And it's not fair that they come into Court and they  
24 take plea deals, and they think that it makes it go away,  
25 cause regardless as to what time they get, it doesn't change

1 what they did. It doesn't change the impact that three  
2 people had to endure.

3 Those kids were taken away from their mother and father  
4 for four and a half months because I couldn't care for them  
5 with nine broken bones. I've never been abused like that by  
6 a, a relationship much less somebody that's just a random  
7 person. It's not fair, and it's inhumane that, that -- he  
8 is dangerous.

9 THE COURT: Thank you, ma'am. Thank you for being  
10 here.

11 MS. MOATES: You're welcome.

12 THE COURT: Okay. Before I forget, Mr. Vieth, sir, did  
13 you see State's Exhibit No. 1, that the---

14 MR. VIETH: Yes, I did.

15 THE COURT: The photographs?

16 Okay. Thank you.

17 So, those will be admitted as State's Exhibit No. 1.

18 SOLICITOR SMITH: Thank you, Your Honor.

19 (WHEREUPON, State's Exhibit No. 1 was received into  
20 evidence at this time.)

21 THE COURT: Sixteen photographs, four pages.

22 Okay. And, Mr. Smith, have you given me the criminal  
23 history?

24 SOLICITOR SMITH: I have not, Your Honor.

25 THE COURT: Okay. Let me hear that, and then I'll just

1 go ahead and turn it over to Mr. Vieth.

2 SOLICITOR SMITH: Yes, ma'am.

3 2012, he has a petty larceny, and obtaining by false  
4 pretenses.

5 2014, burglary third, and petty larceny that he got a  
6 YOA on.

7 2015, domestic violence, and receiving stolen goods.

8 In 2016, FTC theft and fraud, and that's connected with  
9 this case, Your Honor.

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

11 Okay. Mr. Vieth, I'm happy to hear from you, sir.

12 MR. VIETH: Please the Court, Your Honor.

13 I've got to break this down into two phases actually.  
14 One is the Alford plea issue, and then, of course, who is  
15 Darian Hill, and I'm gonna have his mother and grandmother  
16 address the Court at the appropriate time as well.

17 Let me first mention that credit for time served issue  
18 just so you can take it into consideration. He pled to --  
19 here's the -- I just brought this quick picture of him and  
20 Lorenzo. Of course, Lorenzo Gaines, without a question, is  
21 guilty of this crime. I don't know what's gonna -- I'm sure  
22 Ms. Moates, who didn't deserve this, will be back when he  
23 stands in front of you -- some judge as well to plead  
24 guilty.

25 But this is a picture of them at the ATM machine the --

1 within several hours or so of the incident, and this is what  
2 they were -- he was charged with. This was a 9/11/2015 and  
3 he pled guilty to that charge while these other charges had  
4 not surfaced yet.

5       So, he actually -- I gave you the minimum so it  
6 wouldn't be any like me trying to sandbag anything. He's  
7 been in jail, for these charges, 590 days. But he has  
8 served time for the incident related to this, the financial  
9 transaction card. He's been in jail 839 days actually. He  
10 hadn't, he hadn't been out of a jail facility for 839 days.  
11 That would not have happened but for financial transaction  
12 card.

13       So, I'm not giving him credit for time served on the  
14 charges he's doing Alford today. But, for your  
15 consideration on the appropriate penalty, he's been in jail  
16 for 839 days on the incident involved in this.

17       THE COURT: Okay.

18       MR. VIETH: Is that kind of understandable to the  
19 Court?

20       THE COURT: Yes, sir, it is.

21       MR. VIETH: Okay. Now, Alford has a reason. Sometimes  
22 an Alford plea is done just because somebody don't want to  
23 embarrass themselves and say they had sex with a minor or  
24 something of that nature, and -- but they, they don't want  
25 to roll the dice with a trial. Sometimes Alford's

1 legitimate. Someone says I really didn't commit that  
2 offense, but when looking at the totality of the facts, and  
3 the negotiations that have been done, it's not a gamble that  
4 someone chooses to take.

5       When I first got involved in this case it looked like  
6 it was gonna be a trial, and I'll go over some incidences  
7 just like the prosecutor did on discovery. Reading a brief  
8 part of the report from an officer. While upstairs, I  
9 advised dispatch to have them call -- violent crimes  
10 investigator call me. I then exited the apartment and spoke  
11 with the juvenile son of the victim. He is four years old.  
12 He advised me that two black guys came, and hit his mother,  
13 and also hit him with a towel. He told me -- he then  
14 replied by saying that one of the guys was Dre. That's  
15 D-R-E. I then asked him who Dre was at which time he  
16 pointed at another female, Kesha Johnson, and said Dre was  
17 related in some way on that. So, at this -- and he said the  
18 two men had masks on.

19       So, at that time I figured it was Lorenzo and some guy  
20 Dre. Another discovery was another supplemental by another  
21 officer, and this was the same time at 4:45AM. He first  
22 reports to the apartment, and he said after speaking with  
23 Investigator Ledderman via cell phone, I asked Keri if she  
24 saw who assaulted her. When she replied that she had been  
25 asleep when the attack happened, and that she was able to

1 see two males, both wearing masks, I was instructed to ask  
2 her if a subject known as Dre was one of the attackers. She  
3 only stated that she had heard the name Dre called out  
4 during the incident. Keri could not tell me Dre's real  
5 name, but said that he lived in the same apartment complex  
6 with her, and that he lived in Apartment █. So, we've got  
7 Dre as being called out while she's being assaulted by the  
8 other black gentleman in that apartment.

9 Then another supplemental by another officer. While  
10 speaking with the victim, Keri Moates, she stated that she  
11 was asleep and awoke to the assault. She stated that two  
12 black males assaulted her. She was unable to provide a  
13 clothing description for either subject. She stated she saw  
14 a handgun and so forth. I asked her if she recognized  
15 either subject, but she could not. She's -- she did state  
16 that her juvenile sons, later identified as blank and blank,  
17 I won't put it on the record, were in the residence, but she  
18 could not provide anything further.

19 Then continuing with another -- there was another  
20 investigation going on. This is a little bit later. An  
21 officer says -- let me see if I can get it where it makes  
22 sense. She said that a female, Beth, always kept the door  
23 locked. Jackie went on to further state that a guy named  
24 Trent told her that two men came in the apartment, and he  
25 saw their faces before they put masks on, and that one was

1 Andre. Andre, A-N-D-R-E, gets you back to saying that's  
2 Dre. And he said that Andre -- and he did not know the  
3 other one. He said Andre came in and started beating his  
4 mama, and she kept saying Andre, quit trying to kill me. I  
5 will give you anything. Andre said give me the money, and  
6 then Andre would then sit on Beth's broken leg to hold her  
7 down.

8 So, so far we've got nobody but Andre and this guy that  
9 was known as Mack, which is Lorenzo. And that's going on  
10 into the investigation. This is now on Page 21 of 36 pages  
11 of discovery, and they're still talking about Dre.

12 Then they got in and further and say, officer on  
13 another report, Officer Foster, says she said that Kesha had  
14 been helping her get around for about two months. I asked  
15 if she knew who did this or could of done this, and she did  
16 not. No. I asked her about Dre, and she ignored it, and  
17 start, start up -- she ignored to start with and I asked her  
18 why her four year old would say that Dre did it. She got  
19 upset again as she did whatever I would -- as she did  
20 whenever I would question her story.

21 She finally said that Dre was a friend whom that lived  
22 down in [REDACTED]. When she was apprehensive about telling me how  
23 she knew Dre, I explained to her that I was not the dope  
24 police, and that she could be straight with me. She became  
25 upset again. She timely -- finally told me that she met him

1 through Mack and Darian, but would not, not elaborate on it.  
2 So, that was a connection between Mack, who is Lorenzo, and  
3 Darian, that she met him through there.

4 Then another one is that -- another report that they  
5 said I asked had her -- had the family owed anyone any money  
6 or was anyone mad at her. She said no initially. I then  
7 asked her who Dre was and she then said the victim owed Dre  
8 some money, and that he was a supplier of drugs to the  
9 victim, and he came to the apartment all the time. I asked  
10 her to describe Dre, and she said he was middle aged, black  
11 male, six feet, fat, drove a black Tahoe. This is another  
12 person that they were investigating.

13 So for 19 of 36 pages I don't see why we're not going  
14 to a jury trial, and then, 9/27, two weeks or so later, Ms.  
15 Moates does give a statement, and then clearly implicates  
16 Darian Hill and Lorenzo Gaines, and her statement was that  
17 Lorenzo did -- I mean that Darian was the one that assaulted  
18 her, beat her, and that Lorenzo was in there. And so that's  
19 the story that she's telling you today.

20 I'm not -- I wasn't there. We don't know what  
21 happened, but we do know that her statement did change, and  
22 I'm sure that the prosecutor did what he would do if we were  
23 in front of a jury, say that it took her two or three weeks  
24 to get her memory right, and get from the, from the assault  
25 and battery, and the, and the -- just the fear factor she

1 went through, and finally it dawned on her that it was  
2 Darian Hill. But for a long time it was Dre and Lorenzo,  
3 and people saying Dre -- she owed money to Dre and so forth.

4 So, this really is an Alford plea to say the least. We  
5 could of gone to trial on this, but, if you lose, you're  
6 looking at potential life in prison or something of that  
7 nature. And so the gamble became a gamble because of the  
8 photograph at the ATM. That hooked him up to at least using  
9 the credit cards to which he pled guilty to.

10 Now, going over to him personally, when I asked him  
11 about that, his version, had it gone to trial, would of been  
12 that Lorenzo and Dre had asked him to take them to cash  
13 the -- to go get the money, and he was gonna get some of  
14 that money. They did know -- everybody knew Ms. Moates, and  
15 she did not deserve this by any stretch of the imagination.  
16 But their picture being there clearly could infer that he  
17 was there several hours ago. But his position to me, and if  
18 he went to Court, was that, that Lorenzo contacted him, and  
19 that they wanted him to pick him and Dre up at a neighbor's  
20 house, and then go get the money, and they would give him  
21 some of the money.

22 I asked him just a few -- a couple weeks ago on the  
23 man. I said where in the world is Dre, and he said he's  
24 like a ghost. We don't know where he is. We don't know how  
25 to find him. But his position really is one of not guilty,

1 but also understands the huge risk factor in something this  
2 serious.

3 Like I told his family, someone sees that picture of,  
4 of Ms. Moates being hurt like she was, they're gonna go  
5 after somebody, and he's the one that's in the jury box.  
6 He's the one sitting beside somebody, and she's implicated  
7 him two or three weeks later. And I'm sure they could come  
8 up with reasons why the traumatization of the night before.  
9 You can't expect someone to remember that very night. But  
10 then, again, we have Dre being a prominent fixture in this  
11 case, and no one seems to know where he is. But even the  
12 child first said it was Dre who did it.

13 So, it was really Alford scenario when you look at the  
14 facts, and how this thing played out. We know Lorenzo was  
15 involved without a doubt.

16 One of the issues about the trial is we felt like  
17 Lorenzo would be pointing fingers at, at Darian, and Darian  
18 would be pointing fingers at Lorenzo both saying the other  
19 one got the card, and the jury's just gonna find them both  
20 guilty if we go to trial, especially as codefendants, but  
21 that's kind of the scenario of this.

22 Getting into him as a person, he's 26 years old. He  
23 does have a GED, and eleventh grade at Chapman High School.  
24 He played football, baseball, was a good athlete. Did have  
25 some issues, and his mother will address to you.

1           But I met with his parents, his mom -- and, by the way,  
2 I want to hand up what's been marked as Defendant's Exhibit  
3 1, which is from the Sheriff's Department, and then  
4 Plaintiff's Exhibit 2, which are one -- two letters. One  
5 from his brothers and sister that caused him to break down  
6 here a minute ago that they wanted to give to you. And then  
7 one from his stepfather who I think works at BMW, and he  
8 couldn't be here, and then a letter from someone who said  
9 he's -- will give him gainful employment if he -- if and  
10 when he gets out, and we would hope that you would consider  
11 the lower end of the sentencing on all these considered  
12 about -- especially the, the, the issue with the factual  
13 issue in this thing.

14           THE COURT: Okay. Mr. Smith, have you seen Defense  
15 Exhibits 1 and 2?

16           SOLICITOR SMITH: I didn't read them, but I, I'm all  
17 right with them. That's okay.

18           THE COURT: Okay. Well, one is a letter from---

19           MR. VIETH: I'll give you the letter from the Sheriff's  
20 Department.

21           SOLICITOR SMITH: Yes, sir.

22           THE COURT: ---the Sheriff's Department.

23           SOLICITOR SMITH: Mr., Mr. Vieth showed them to me. I,  
24 I just didn't---

25           THE COURT: Okay.

1 SOLICITOR SMITH: I didn't read them.

2 MR. VIETH: And the others are just saying what a, you  
3 know, what a good brother he is, and the other about the  
4 dad, and the problems they did have.

5 THE COURT: Okay.

6 MR. VIETH: while you're looking at that, Judge, Cindy,  
7 Cindy's his mom and will address the Court, but she'll tell  
8 you that -- well, I'll tell you, and save time with the  
9 Court, 1990 she was raped, and Darian was the child from  
10 that rape. She had two children prior to that. So, they --  
11 he was the younger of the three siblings at that time.

12 Her first husband was extremely abusive, and she'll  
13 tell you that he witnessed Cindy just getting beaten badly,  
14 and it made Darian kind of drift off, become very quiet, and  
15 unassuming. But he -- when Abraham married his mother about  
16 10 years after that, then he had the first real father.

17 He did get diagnosed with ADHD when -- in 1998 or so,  
18 and was give Adderall. Was a real busy child. Couldn't sit  
19 still through school and whatnot.

20 In high school, his mom will tell you that about every  
21 week he was getting in a little bit of trouble. He got  
22 caught in the bathroom with -- doing alcohol with two  
23 others, and got suspended right before he graduated.  
24 He's -- they said he was easily influenced, and the mom  
25 ended up having some heart issues. She had a heart

1 transplant and had to go to Charleston.

2 when they got back, she and Abraham decided it's time  
3 to set -- let Darian get some education, and put him in a  
4 position where he has to get an education, and they put him  
5 in Job Corps down in Beaufort.

6 Wasn't it Beaufort?

7 THE DEFENDANT: Bamberg.

8 MR. VIETH: Bamberg. Bamberg---

9 THE DEFENDANT: Job Corps.

10 MR. VIETH: ---Job Corps and that was in a -- that was  
11 a place where you had to stay. You couldn't come home.

12 So, they -- he was down there, went through Job Corps,  
13 received -- it was a military like structure. They had him  
14 on meds down there for his ADHD. Stayed there. And right  
15 on the eve of graduation, they'll tell you that he got  
16 caught smoking marijuana. They didn't charge him, but  
17 kicked him out. He had a \$2,500 scholarship that he lost  
18 with one week before graduation.

19 That disappointed the family. They came home and the  
20 family ended up opening a restaurant that he worked at, and  
21 I think the father, stepfather, has given a letter to that  
22 effect. And did a great job at Southern Jamaican  
23 Restaurant. Worked 10 to 14 days a week -- fourteen -- 10  
24 to 14 hours a day, and it was a very structured environment.

25 It's just a case where it's tough and he's -- he knows

1 he had a choice of go to trial or take this negotiation. We  
2 would ask the Court to consider all that time served,  
3 consider the, the facts of the real true Alford scenario,  
4 and look at the lower end of that negotiated sentence.

5 With that, I'd like for you to hear his mom just a few  
6 minutes, minutes, and then his grandmother if you don't  
7 mind.

8 THE COURT: Yes, sir.

9 MR. VIETH: Cindy, if you'll come around.

10 THE COURT: If you would have them come forward please.

11 (Pause.)

12 MR. VIETH: State your name and address the Court.

13 THE COURT: Yes, ma'am, good afternoon.

14 MS. HILLFIRE: Good afternoon.

15 My name is Ms. Cindy Hillfire, and I'm Darian's mother.  
16 My husband couldn't be here because he's working.

17 What I want to say was Darian, as a child and  
18 everything, that I have five sons and a daughter. He was  
19 the only one that was different in he was different because  
20 I kept a secret from him all his life until 2015 because he  
21 was a child of rape. And, because of that, I believe that  
22 he just felt like a misfit.

23 He just had low self-esteem. He, he was totally  
24 different then the other children, and I don't know if this  
25 because the way I treated him, but, you know, I was in an

1 abusive relationship, and hindsight is 20/20. All of this  
2 affects them and kids when they grow up.

3 I'm not excusing anything that's been done. I wasn't  
4 there. You know, I don't know what happened, but I know  
5 that we believe in living right and a morale life. And when  
6 Darian, after he became 18, and he chose to, you know, be  
7 with the misfits in, in the street, we just said okay. Be a  
8 man and go out here and do what you have to do, and that's  
9 how he ended up in this situation instead of being with  
10 family.

11 But, in September of 2015, my father was in the Hospice  
12 and he died. And, when he died, Darian came back to us like  
13 the prodigal son, and he stayed with my father every single  
14 day in Hospice and tended to him. And we saw a change in  
15 him. And it was at that point that I sat down with him, and  
16 told him who he really was.

17 He had no idea, and, from there, he made a change in  
18 his life. This was after all of that happened, and, my  
19 husband and I, we opened up a restaurant, and he worked with  
20 us. Excuse me.

21 THE COURT: Yes, ma'am.

22 MS. HILLFIRE: He worked tirelessly 10, 12, 20 hours to  
23 keep the restaurant going, and one day my husband said  
24 there's this girl on the phone, and she wants to talk to you  
25 about something about Darian. And so, when I got the phone,

1 this is my first time seeing the victim, but she was on the  
2 phone and she told me, she said, I want you to know that  
3 someone told me your son did something to me, and she said  
4 my brother works at Spartanburg County. She said we gonna  
5 shut y'all down.

6 I didn't know what she was talking about. I told her,  
7 I said, I don't know who you are. You know, I just hung up  
8 the phone. But that night we asked Darian. We said Darian,  
9 what's going on, and he was like mama, I didn't do anything.  
10 I don't know what you talking about. But that next day,  
11 when we went to open up our restaurant, the police were  
12 everywhere, and she did tell me -- she said they're going to  
13 take your son, and you will never see him again, and today  
14 is the first time that I've seen him since then.

15 I don't know what happened, and it's bad that it did  
16 happen. I don't blame her. I don't blame anyone. Only God  
17 knows. But I know that he is a good person. Darian is a  
18 child that brings in the bird that fell out the nest. The  
19 day that my father at Hospice, he gave us a cat that he  
20 found that had three paws. And while he was in jail, he  
21 would ask about Mila every day.

22 He was the child that took care of the little animals.  
23 Not hurt them. That's why I find it so hard to believe  
24 that, you know, that he would do something like this so  
25 violent. Like I said, I don't know, but I know that, you

1 know, he can be -- have mercy. I ask for your grace and  
2 mercy.

3 MR. VIETH: Thank you, ma'am.

4 THE COURT: Thank you, ma'am.

5 Ma'am, do you want to speak?

6 Ma'am, you want to come up and state your name, and say  
7 what you want to say?

8 MS. HUFF: My name is Monique Huff. I'm Darian's  
9 grandmother.

10 THE COURT: Yes, ma'am, happy to hear from you.

11 MS. HUFF: Darian is a special grandchild to me. When  
12 my husband was very, very sick, Darian was the one that said  
13 I'll, I'll come and stay with you, and I'll help you and he  
14 did. He would help me drag him out of the tub, give him his  
15 bath, help me feed him, help me put him to bed.

16 Darian has a tender heart, and he don't like to see  
17 pain. If he could help a person, Darian would do it. And I  
18 know there's -- I, I said to Darian why don't you go to vet  
19 school cause you have a, a tendency for things that are in  
20 need of something, and like -- you will want to supply that  
21 need that's, you know, that, that this thing has. Whether  
22 it's a child, or whether it's a bird, or whether it's the  
23 cat, and Mila was one of his pet things, the three legged  
24 cat.

25 But Darian, I believe that Darian's hope -- my God.

1 And as everybody has said it, we weren't there, but there is  
2 somebody that was there, and he's invisible, and he sees  
3 everything, and he judges all of us. You know, we have to  
4 be very careful in what we do and how we act cause God is  
5 writing a book.

6 MR. VIETH: Thank you, ma'am.

7 THE COURT: Thank you, ma'am.

8 MR. VIETH: He's got other family members here, but not  
9 to address the Court. Just for support.

10 THE COURT: Okay. Thank you.

11 MR. VIETH: Anything you want to tell the Judge?

12 THE COURT: Yes, sir, Mr. Hill, if you will, please  
13 speak up, all right, and you have been sworn.

14 Yes, sir.

15 THE DEFENDANT: I just want to let everybody know I'm  
16 sorry to my mama and them. Everything they said was true.  
17 I always want to find myself, Your Honor, and it's like,  
18 when my grandpa passed away, I came home and that's the  
19 first time in life I actually felt at home. It's like I  
20 found myself, and I was back with my family, and they were  
21 happy to see a change in me.

22 And then I got snatched away, and it just -- and here I  
23 am.

24 To Keri, I'm sorry. I always meant to take care of  
25 you.

1           Like I said, Your Honor, if I could go back in time,  
2 like Mr. Vieth said, everything would of been different.  
3 You know, I'm deeply sorry. I finally found myself, and it  
4 seem like now that I did I'm in this situation, and I hate  
5 it. I hate it cause I'm -- I know the, the, the ripple  
6 effect. I know the thing I did affected more than just me.

7           It affected my family, the victim, everyone involved in  
8 my life, and it hurts me.

9           I'm sorry to you, Bell. I'm deeply sorry, the bottom  
10 of my heart. I always cared about you, Trenton, and Jer --  
11 the kids. I love y'all to death.

12           I wish I could go back on that day and made a different  
13 decision about who I hung around with. And I wish I would  
14 of opened my mouth sooner about the things that took place  
15 that night, Your Honor.

16           To my mother and my grandma, I'm, I'm just so -- I'm  
17 sorry, and I'm sorry to everyone here right now.

18           That's all, Your Honor.

19           THE COURT: Okay. All right. Anything else, counsel?

20           SOLICITOR SMITH: Can I---

21           MR. VIETH: No.

22           SOLICITOR SMITH: Can I respond about Trent mentioning  
23 the name Dre?

24           That was obviously a concern to the State cause we  
25 don't want to prosecute innocent people. When he's asked on

1 the CAC video how he knew it was Dre, he says because he  
2 told me. The State's position would be that somebody would  
3 be unlikely to say the name of somebody doing a home  
4 invasion, and that that was to create a diversion. That  
5 would of been the State's position about Dre.

6 We've looked into him, but Trent says I knew it was Dre  
7 because he told me it was Dre. That's what he says on the  
8 CAC interview, that the individual said it was Dre, which I  
9 find to be very unlikely. But it did leave the police off  
10 on a tangent for a long time.

11 And I -- Mr. Hill's family is very impressive, but, at  
12 the time, he was living with these people because he shunned  
13 his family obviously. He was basically living in different  
14 apartments, but we're confident that he is guilty of this,  
15 and we would of won at trial.

16 THE COURT: Okay. And, Mr. Hill, I do need to make  
17 sure that I ask you one thing, sir.

18 On Indictment 2017-GS-42-0612, the indictment is  
19 actually for burglary in the first degree, and you are  
20 pleading to a lesser included offense of burglary violent in  
21 the second degree, which is classified as being violent and  
22 serious. I'm not sure that I asked you that that way at the  
23 very beginning of the hearing, sir.

24 Do you understand what you're pleading guilty to on  
25 that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Do you have any questions for Mr. Vieth  
3 about the potential -- well, the potential penalty is zero  
4 to 15 years. It is violent and serious.

5 Do you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You have any questions about it?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: All right. Okay. If y'all will bear with  
10 me for just one moment.

11 (Pause.)

12 THE COURT: Okay. With regard to the matter of the  
13 State of South Carolina, County of Spartanburg versus  
14 Darian, Darian Shaundre Hill, Indictment Number  
15 2017-GS-42-611, as to the offense of assault and battery  
16 high and aggravated nature, it would be the Order of the  
17 Court that the Defendant be committed to the State  
18 Department of Corrections for 20 years. That will be  
19 suspended upon the service of 15 years and five years  
20 probation.

21 He will be given credit of time served of 590 days. He  
22 will have no contact with the victim, Keri Elizabeth Moates.  
23 He will be referred, during his period of incarceration, to  
24 the Addiction Treatment Unit if that is deemed appropriate.  
25 He will submit for random drug and alcohol testing during

1 his probationary period.

2 With regard to Indictment 2017-GS-42-613, and this is  
3 armed robbery while armed or allegedly armed with a deadly  
4 weapon, it would be the Order of the Court that the  
5 Defendant be committed to the State Department of  
6 Corrections for 15 years. He will be given the same credit  
7 for time served, 590 days, and the same terms and conditions  
8 will apply as to contact and the Addiction Treatment Unit.

9 As to Count Two, and that is the possession of weapon  
10 during violent crime, he will be committed to the State  
11 Department of Corrections for five years.

12 With regard to Indictment 2017-GS-42-612, and this is  
13 the offense of burglary violent second degree, the Defendant  
14 shall be committed to the State Department of Corrections  
15 for 15 years. The same credit for time served, and the same  
16 conditions apply.

17 Those are concurrent sentences.

18 SOLICITOR SMITH: Thank you, Your Honor.

19 MR. VIETH: Thank you, Your Honor.

20

21

22 \* \* \*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 28<sup>th</sup> day of March, 2018.

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

October 24<sup>th</sup>, 2019

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PAMELA E. GREEN, Court Reporter

5-28-19

Dear Mrs. Hope Blackley,

I am writing this letter along with my P.C.R application explaining why it may be a little past the official deadline. Due to the riot & multiple deaths at Lee Correctional Institution all Level 3 Maximum security yards are on lockdown & also understaffed. All inmate privileges are at a all time low. Enclosed are my request to the law library to get my P.C.R application in before my deadline & yet I was not able to go either due to the lockdown status of the long waiting list. I ask that due to these unreliable conditions that my tardiness is pardoned & let the fight for my life & struggle to get home to my family & children be continued. If there is another process please let me know. But I beg you please take consideration the conditions.

Sincerely

Darion S. Hill

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SPARTANBURG COUNTY  
2019 JUN 10 AM 10:30

FORM 5

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

IN THE COURT OF COMMON PLEAS

2019CP4202101

APPLICATION FOR  
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

Since every application must be sworn under oath, any false statement of a material fact thereon 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.

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1. Place of detention \_\_\_\_\_
2. Name and location of Court which imposed sentence Spartanburg General Sessions  
186 Magnolia St. Spartanburg, S.C. 29306
3. Name(s) of co-defendant(s) (if any) Lorenzo Freeman III Gains,  
Keysha Antwanee Johnson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2017654200613A
  - (b) ~~2017654200613~~ 2017654200613
  - (c) 2017654200611 (d) 2017654200612
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 5 yrs
  - (b) 15 yrs

- (c) 20 yrs / 15 yrs & 5 yrs probation (D) 15 yr
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty \_\_\_\_\_
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) My lawyer thought it was best not to appeal
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) I never received my full motion of Discovery
  - (b) I kept being housed with my co-defendant who was threatening me with his gang members
  - (c) Certain facts were not said during my hearing that I believe would have helped
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) I asked my public defender on the kiosk in the county jail & my lawyer
  - (b) I asked for protective custody multiple times & explained my problem & the threats received to me by my co-defendant to say & what not to say considering my case
  - (c) The fact that I lived at the residence that was burglarized was not explained
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. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

(d) the date of each such disposition:

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

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

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

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

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

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

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

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

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

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

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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)

(b)

(c)

*I never been in this situation before therefore I didn't understand the process. I brought those facts to my counsel & attorney but still were not addressed.*

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_
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. ~~Paul~~ Paul Neely (Public defender) 366 North Church St. Suite 3000  
Spartanburg, S.C., 29303
- ii. Richard Vieth 360 E Henry St  
Spartanburg, S.C. 29308
- iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. Preliminary hearing/Bond hearing
- ii. Sentencing
- iii. \_\_\_\_\_
19. State clearly the relief you seek in filing this application:  
A re-sentencing with lower charges & less time.
20. Are you now under sentence from any other court that you have not challenged?  
No

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STATE OF SOUTH CAROLINA )  
 )  
County of )

VERIFICATION

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

Barion S. Hill  
Barion S. Hill

SWORN to and subscribed before me this ~~June~~ 6<sup>th</sup>  
day of ~~June~~ June 2019

Arde K. Bama (L.S.)  
Notary Public

My Commission Expires: 6-20-26

FILED  
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SPARTANBURG COUNTY  
2019 JUN 10 AM 10:30

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

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

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

Deborah S. Hill  
Applicant

SWORN or affirmed to and subscribed before me this  
6<sup>th</sup> day of JUNE, 2019

Linda K. Brown  
Notary Public

My Commission Expires: 6-20-26

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SPARTANBURG COUNTY  
2019 JUN 10 AM 10:30

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Darian S. Hill,	)	Case No.: 2019-CP-42-02101
S.C.D.C. No. 367057,	)	
	)	
Applicant,	)	
	)	<b>RETURN AND MOTION TO DISMISS</b>
v.	)	<b>(Counsel Appointed)</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the application for post-conviction relief filed by Darian S. Hill (Applicant) on June 10, 2019, Respondent would show this Court:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the February 2017 term of the Spartanburg County Grand Jury for assault and battery of a high and aggravated nature (2017-GS-42-00611); burglary, first degree (2017-GS-42-00612); armed robbery, and possession of a weapon during the commission of a violent crime (2017-GS-42-00613, Cts. I & II). Richard W. Vieth, Esq. represented Applicant, and Spenser H. Smith, Esq., of the Seventh Circuit Solicitor’s Office, prosecuted the case.

On March 28, 2018, Applicant entered an Alford<sup>1</sup> plea to the lesser-included offense of burglary, second degree, violent, and otherwise as indicted. Accepting the 10 to 20 year sentencing range negotiated between Applicant and the State, the Honorable Grace G. Knie sentenced Applicant to imprisonment for concurrent terms of 20 years for ABHAN, provided

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<sup>1</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

that upon service of 15 years the balance would be suspended upon 5 years of probation; 15 years for burglary, 15 years for armed robbery, and 5 years for the weapon. Applicant did not appeal his plea or sentence.

## II. STATEMENT OF THE FACTS

The underlying facts of the crimes for which Applicant is incarcerated were articulated by the State during the plea proceeding as follows:

This incident occurred on September 11<sup>th</sup> of 2015. At around three o'clock in the morning, deputies responded to an apartment complex on Fernwood-Glendale in Spartanburg County in reference to a home invasion. The victim's roommate had come back and found her severely beaten in her bedroom. Her four year old was also present, and had witnessed the beating.

[. . .] She was severely beaten around basically all over her face to the point that she probably was blind at the time.

[. . .]

The victim's four year old son was present during the home invasion. The victim and son were able to speak to police. They said that two black males had done the beating. The victim was very in and out of it at, at the time when she was on the scene. She was mostly saying that she didn't want to die. Not being very – giving information about who had done it. Just mainly hoping to leave.

The victim later stated that she had woke up with a man on top of her pinning her down. That man had begun to beat her while another man that was inside of her room was screaming for her to give up the money.

That man that was screaming indicated that he was a Blood and was referring to her as a Crip. The victim believed this man was a man that she knew as Mack. That is Mr. Hill's codefendant, Lorenzo Gaines, who has still – has charges pending. Both of them were on the trial docket this week, Your Honor.

She said that Mack had previously confronted her about dating a Crip member. She said she didn't know his real name, but her roommate and him had had a relationship. She said the struggle in the bedroom lasted for almost an hour. At least what she perceived to be an hour. She said that the man that was on top

of her had a pistol and was using it to beat it with her. They were able to get her ATM card basically is what they got off of her.

Your Honor, we believe that the motive for this was Ms. Moates was unfortunately involved in a, in a Felony DUI accident where her fiancé at the time passed away. It's a case I handled and she broke her femur bone in this, and she had gotten a settlement from that car injury prior to this, and we believe that they were out searching for that money potentially.

(Tr. 15-17). The State continued with its factual recitation by explaining a payment was attempted on Applicant's Charter Communications bill using her stolen ATM card. (Tr. 17, ll. 3-12). Police tracked the victim's financial records and pulled the video off an ATM used about twenty hours after the burglary, which captured video of Applicant using the ATM while a partially-disguised Lorenzo Gaines stood just "off of the camera view[.]" (Tr. 17, ll. 13-21). When law enforcement presented the victim with a still picture from the video, she identified Applicant and Gaines as the people, and that Applicant was the perpetrator. (Tr. 17-18). After the victim's roommate, Kesha Johnson, was arrested for shoplifting, she disclosed to law enforcement that Applicant admitted to her he had committed the robbery, and provided facts to corroborate her story. (Tr. 19-20).

Counsel, in mitigation, set forth some of the arguments he would have made had the case proceeded to trial, and explained Applicant's "position really is one of not guilty, but also [he] understands the huge risk factor in something this serious." (Tr. 25-31). Counsel provided letters to the plea court from Applicant's parents, and a letter from a person willing to hire him upon release from incarceration. (Tr. 32-33). Counsel further explained that Applicant's birth was the result of his mother's rape, that his home life as a child was marred by domestic abuse, that he was diagnosed with ADHD, was kicked out of the Bamberg Job Corps one week before graduation, and had managed to finally find some success working at his stepfather's Jamaican restaurant. (Tr. 33-34). Applicant's mother spoke on his behalf, and defended him as a good

person, as “the child that took care of the little animals. Not hurt them.” (Tr. 35-38).

Applicant’s grandmother also spoke on his behalf, and explained how he stayed with her and provided home care to her husband when he fell mortally ill, helping her “drag him out of the tub, give him his bath, help me feed him, help me put him to bed.” (Tr. 38-39).

At the close of the presentation in mitigation, Applicant spoke and expressed his considerable remorse, and his regret in his choice of who he “hung around with” and not speaking up sooner. (Tr. 39-40).

### III. CURRENT APPLICATION

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

1. “I never received my full motion of Discovery”
  - a. “I asked my public defender on the kiosk in the county jail & my lawyer”
2. “I kept being housed with my co-defendant who was threatening me with his gang members”
  - a. “I asked for protective custody multiple times & explained my problem & the threats received to me by my co-defendant to say & what not to say regarding my case”
3. “Certain facts were not said during my hearing that I believe would have helped”
  - a. “The fact that I lived at the residence that was burglarized was not explained”

Applicant requests relief as follows:

- “A re-sentencing with lower charges & less time.”
- “I was the only one who helped & got the most time.”

Attached to and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

## VI. MOTION TO DISMISS

Respondent moves to dismiss the application as untimely under 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 filed pursuant to this chapter 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 that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

Applicant was convicted on March 28, 2018, and did not appeal. The current application was not filed until June 10, 2019—more than two months after the one-year statutory filing period expired. Therefore, the application should be summarily dismissed as barred by the statute of limitations.

However, in a letter dated May 28, 2019, and attached to the application, Applicant acknowledges the untimeliness of his application and alleges that the untimeliness was due to persistent lockdown conditions resulting from a prior riot and multiple resulting deaths at Lee Correctional Institution. Applicant indicates inclusion of a “request to the law library to get my P.C.R. application in before the deadline,” which was not responded to in a timely manner, but any such materials allegedly filed were not included in the copy of the application provided to Respondent. Applicant requests his tardiness be forgiven in light of these circumstances.

Respondent liberally construes the letter as a request for equitable tolling. Equitable tolling may be available to an applicant for post-conviction relief where he or she can show “the failure to timely file for PCR was due to no fault of his own[.]” Mose v. State, 420 S.C. 500,

510, 803 S.E.2d 718, 723 (2017). “[I]f a PCR applicant raises the doctrine of equitable tolling as a defense to the statute of limitations, the judge should make the fact specific determination of whether equitable tolling is justified.” Id., 420 S.C. at 511, 803 S.E.2d at 511. “As part of this determination, the judge should consider any reasonably verifiable evidence of the date the document was purportedly in the possession of prison authorities for the purposes of mailing.” Id. Respondent respectfully requests a hearing on its motion to dismiss and Applicant’s request for equitable tolling.

## **V. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL**

### **Ineffective Assistance of Plea Counsel, Generally**

Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel’s performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases.

Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s

right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

#### **Failure to Provide Copy of Discovery**

Applicant alleges Counsel was ineffective in failing to provide a copy of the discovery in his case. An applicant who alleges his or her defense attorney was ineffective in failing to provide a copy of the discovery materials must show how the outcome of trial would have been different had the attorney provided such a copy; the applicant must show what evidence could have been discovered or what other defense could have been prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)).

Respondent is without information sufficient to admit or deny that Applicant was not provided with his own separate copy of discovery. However, Applicant does not indicate what, if anything, he would have discovered to contribute to his defense if he had been provided his own copy of his discovery. Furthermore, numerous reasons exist for defense attorneys to discuss and display discovery materials to defendants without giving them a physical copy—sensitive materials can be lost, misused, and even stolen, all to the potentially severe detriment of a

defendant. Accordingly, Respondent denies Applicant is entitled to relief by way of this allegation.

#### **Failure to Obtain Protective Custody**

Liberal construing the vague form of the allegation to mean Applicant asked his Counsel to secure him protective custody, Applicant's claim Counsel was ineffective in that regard is refuted by the record. The plea court specifically asked Applicant if anybody had threatened or coerced him to obtain the plea, and Applicant replied "No, ma'am." (Tr. 12, ll. 8-11). Respondent denies Applicant is entitled to relief by way of this allegation.

#### **Failure to Present Certain Facts in Mitigation**

Applicant's claim that Counsel was ineffective in failing to inform the plea court that Applicant lived at the residence burglarized is without merit. Even assuming Applicant's claim to be true, that information would not have served to mitigate the violence imposed upon the victim in the case. If anything, that information could arguably have implicitly suggested an aggravating circumstance—Applicant's residence at the scene could be the explanation of why the victim was slow to identify the perpetrator. Furthermore, Counsel clearly engaged in thorough, exhaustive, compelling mitigation that achieved the middle of the negotiated sentencing range despite very substantial injuries to the victim. Finally, there is nothing to show that but for Counsel's failure to mention Applicant lived at the scene of the burglary, Applicant would not have pled guilty, but would have insisted on proceeding to trial. Respondent denies Applicant is entitled to relief by way of this allegation.

#### **Conclusion and Action Requested**

Applicant can satisfy neither requirement of the Hill test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not

conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

#### **VI. RESPONSE TO REQUEST FOR RESENTENCING**

In his prayer for relief, Applicant requests the Court resentence him to a shorter term of incarceration. This relief is unavailable in a post-conviction relief action. If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on the original indictments. Gilstrap v. State, 252 S.C. 625, 168 S.E.2d 88 (1969); see also Smith v. State, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (“We now clarify the proper remedy is a new trial.”) Grant v. MacDougall, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964) (relief of absolute release not available). Where an applicant seeks only relief to which he or she is not entitled, “it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance, be entitled to.” Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968). For these reasons, if the application is not otherwise amended before the evidentiary hearing to reflect a desire for appropriate relief, Respondent would respectfully request this Court engage in a *thorough* colloquy with Applicant to apprise him of the relief available in a PCR. If at the evidentiary hearing Applicant indicates no desire in appropriate relief but a desire to proceed, Respondent will at that time move to dismiss the application.

#### **VII. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by*

*the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

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

#### **VIII. GENERAL DENIAL**

Respondent denies each allegation not expressly admitted, qualified, or explained.

*[Conclusion and signature on following page]*

**IX. CONCLUSION**

WHEREFORE, Respondent respectfully requests that this Court convene a hearing on its motion to dismiss the application as untimely, and there grant is motion, and only if there denied convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

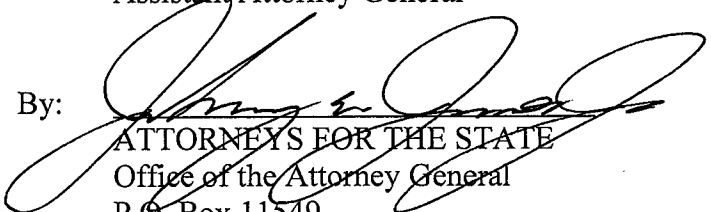
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By:



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5 Nov., 2019



State of South Carolina	)	
	)	
County of Spartanburg	)	
Darian S. Hill,	)	2019-CP-42-02101
	)	
Applicant,	)	
	)	
v.	)	Transcript
	)	
The State of SC,	)	of
	)	
Defendant.	)	Post-conviction
	)	Relief Hearing
	)	
	)	
	)	
	)	
	)	
	)	

Date: September 14, 2021

Time: 11:16 a.m.

Location: Spartanburg County Courthouse

180 Magnolia Street, Spartanburg, SC 29306

Reported by  
Amber Payne, CVR

## APPEARANCES

Presiding: The Honorable William A. McKinnon

For the Applicant: Susannah Ross, Esq.  
Ross and Enderlin  
330 East Coffee St.  
Greenville, SC 29601

For the Defendant: William Ray, Esq.  
Thirteenth Circuit  
Solicitor's Office  
305 East North St., Ste. 325  
Greenville, SC 29601

Also Present: Rich Vieth, Esq.  
Spenser Smith, Esq.

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PROCEEDINGS

THE COURT: Mr. Ray, you want to call the case?

MR. RAY: Absolutely, Your Honor. May it please the Court. This is the "Matter of Darian S. Hill vs. the State of South Carolina." It is Case Number 2019-CP-42-02101.

Mr. Hill is currently incarcerated. He was indicted back in February of 2017 for assault and battery of a high and aggravated nature, burglary first degree, armed robbery, and possession of a weapon during the commission of a violent crime. He was represented by Mr. Rick Vieth, who's here today, and Assistant Solicitor, Spenser Smith, prosecuted the case.

On March 28th, 2018, he entered an Alford plea to the lesser, including --

THE COURT: Tell me the date one more time?

MR. RAY: March 28th, 2018.

THE COURT: Okay.

MR. RAY: -- he entered a plea under "North Carolina v. Alford" to the lesser included

1 offense of burglary, second degree, violent,  
2 and otherwise pled as indicted to a sentencing  
3 -- a negotiated sentencing range between ten  
4 and 20 years. Judge Knie accepted the -- the  
5 plea and sentenced him to concurrent terms of  
6 20 years for the assault and battery, provided  
7 that upon service of 15 years. The balance  
8 would be suspended upon five years of  
9 probation and then he got 15 years on the  
10 burglary and 15 years for the armed robbery  
11 and then five for the weapons charge.

12 He did not file in a plea -- or an appeal  
13 of his plea or his sentence. And, Your Honor,  
14 we would ask -- in his initial pro se  
15 application that he filed, he requested  
16 reduced charges, or less time. We would just  
17 ask that the Court engage him in a brief  
18 colloquy just to inform him of the risks and  
19 benefits of post-conviction relief, as well as  
20 the relief available to him.

21 THE COURT: Absolutely. And just to make --  
22 was it ABHAN that he pled to, the assault  
23 charge?

24 MR. RAY: Yes, Your Honor. I -- it was -- it  
25 was the burglary, second, was the lesser

1 included, and then everything else he pled as  
2 indicted. So ABHAN, as well as the armed  
3 robbery, and the possession of a weapon.

4 I do have some materials down here that I  
5 will pass up to you.

6 THE COURT: Okay. Mr. Hill, can you hear me  
7 okay?

8 MR. HILL: Yes, sir.

9 THE COURT: Okay. The State has just asked me  
10 to make sure that you understand that the  
11 charges that you pled guilty to are very  
12 serious charges, and you got a 15-year  
13 sentence, which is a significant amount of  
14 time, but is not the maximum that you could  
15 have gotten. And you understand that if I  
16 were to grant your PCR, what you get is to  
17 kind of go back and start over again, and you  
18 could end up with a worse sentence. Do --

19 MR. HILL: Yes, sir.

20 THE COURT: -- you understand that?

21 MR. HILL: Yes, sir.

22 THE COURT: Okay. Do you still want to  
23 proceed?

24 MR. HILL: Yes, sir.

25 THE COURT: Okay.

1 MS. ROSS: Thank you, Judge. And I've  
2 reviewed that with him, as well.

3 THE COURT: Okay. All right. Ms. Ross, can  
4 you give -- give me an outline of what you'll  
5 be arguing?

6 MS. ROSS: Well, Judge, where we are with his  
7 argument, he -- he pled Alford with kind of an  
8 idea that he might come back for some sort of  
9 downward departure at a later day pursuant to  
10 Section 17-25-65, which applicant --

11 THE COURT: The -- the substantial assistance?

12 MS. ROSS: Yes. Substantial -- I'm using  
13 federal terms, but substantial assistance  
14 would maybe get him a -- a little bit of a --  
15 a break after the fact. As the -- the  
16 codefendant, Lorenzo Gaines, actually was  
17 asking for a trial, but then pled at the last  
18 minute. He ended up getting ten years, but  
19 only after Mr. Hill had been transported back  
20 to Spartanburg, met with solicitors, everyone  
21 knew about it, and -- and the whole gang  
22 system at SCDC -- so now he's been stabbed;  
23 he's in protective custody; he's a real  
24 target.

25 So he would like to go forward in -- in

1 hopes to attempt to get some recognition for  
2 the sacrifices he feels that he made with an  
3 understanding that it would benefit him.

4 THE COURT: Okay. And what is the legal basis  
5 for the PCR is what?

6 MS. ROSS: That -- that his plea was not  
7 knowingly and voluntarily made because he had  
8 an understanding that there might be a  
9 comeback situation with the substantial  
10 assistance.

11 THE COURT: All right. Call your -- call your  
12 first witness.

13 MS. ROSS: All right. We call Darian Hill.

14 (WHEREUPON, the witness was sworn.)

15 DIRECT EXAMINATION

16 BY MS. ROSS:

17 Q Okay. Mr. Hill, you've -- you've heard the -- what  
18 I told the Court; is that substantially correct  
19 about your position?

20 A Yes, ma'am.

21 Q And you understand the remedy would be you'd be  
22 starting all over; you could possibly get a lot  
23 more time?

24 A Yes, ma'am.

25 Q And you still want to go forward?

1 A Yes, ma'am.

2 Q Now, one of your -- it sounds like you're saying  
3 that you thought that your attorney was going to  
4 negotiate for a better deal for you at some point  
5 after the plea, and that's why you came back from  
6 Spartanburg?

7 A Yes, ma'am.

8 THE COURT: (To Ms. Ross) And -- and one  
9 moment, the court reporter is raising her  
10 hand.

11 THE COURT REPORTER: (To the witness) Can you  
12 speak up, please?

13 THE WITNESS: Oh, yes, ma'am.

14 THE COURT: Sir, if you don't mind, just pull  
15 your mask down for us.

16 THE WITNESS: I'm sorry.

17 MS. ROSS: Yeah. You have to -- you can't  
18 just say uh-huh, you have to answer out  
19 loud --

20 THE WITNESS: Okay.

21 MS. ROSS: -- okay?

22 Q So can you just explain that to the Court? What  
23 are you talking about?

24 A Yes. Well, when I got my time, I was in SCDC, and  
25 I was brought back to testify --

1 Q Let me clarify. You were in SCDC after pleading  
2 guilty and being sent there --

3 A Yes.

4 Q -- on these charges?

5 A On these charges.

6 Q Okay. Now, go ahead.

7 THE COURT: (To Ms. Ross) And the deferred  
8 sentencing was put off till a later date?

9 THE WITNESS: The --

10 MS. ROSS: It was not.

11 THE COURT: Oh, okay.

12 A I -- I was already sentenced, and I was -- came  
13 across Detective Letterman and Spenser Smith and he  
14 came to SCDC and he explained to me that Lorenzo  
15 Gaines was going to court and that if I was to  
16 testify, then he would be able to talk with  
17 Letterman or whatever, it would be some kind of  
18 substantial time reduction on my part. So I said,  
19 "Okay."

20 And they brought me back here to Spartanburg  
21 County while I was in SCDC and, I guess, Lorenzo  
22 went ahead and pled guilty and didn't go to trial,  
23 so they didn't take me to the courtroom. But at  
24 that time there were still inmates that was there  
25 that knew about the situation, and when I was at

1 Kirkland my -- Lorenzo Gaines ended up coming to  
2 Kirkland at the same time. So from that point on  
3 it's just been a problem after problem after  
4 problem after problem.

5 Q Okay. Let me just show you this picture from the  
6 SCDC website.

7 A Okay.

8 Q Do you recognize that person?

9 A Yes, ma'am.

10 Q Who is that?

11 A That's my codefendant, Lorenzo Gaines.

12 Q Okay. What kind of disciplinary sanctions does he  
13 have?

14 A He has possession of cell phones, narcotics, more  
15 possession of cell phones, I mean.

16 Q Okay. What kind of sanctions do you have?

17 A None.

18 Q Now, how much time did he get on his charges?

19 A He has ten years.

20 MS. ROSS: (To the Court) I'd proffer and  
21 this is Applicant's Exhibit 1 at this time.

22 MR. RAY: No objection from the State, Your  
23 Honor.

24 THE COURT: Entered into evidence without  
25 objection.

1           (WHEREUPON, a photograph, it is marked for  
2           evidence as Applicant Exhibit No. 1.)

3   Q       Now, when you came back to Spartanburg --

4           THE COURT REPORTER:   (To Ms. Ross)   Can you  
5           hold on just one second?

6           MS. ROSS:   Sure.   Thank you.

7           THE COURT REPORTER:   Uh-huh.

8           MS. ROSS:   (To the Court)   All right.   May I  
9           approach.

10          THE COURT:   All right.   Thank you.

11   Q       Now, when you came back to Spartanburg, were you  
12           just doing this out of the kindness of your  
13           heart --

14   A       When I --

15   Q       -- to testify?

16   A       I mean, no.   Not really.   No, ma'am.

17   Q       Why were you doing it?

18   A       Because I was hoping to get the time reduction.

19   Q       And you agreed to do it?

20   A       Yes, ma'am.

21   Q       All right.   And with the hopes -- what made you  
22           hope to get a time reduction?

23   A       For the simple fact that I knew the situation I was  
24           putting myself in, but I figured, "Well, I won't  
25           have to go through it as long if I did have a time

1 reduction, I would be able to get to a better yard  
2 or" -- it would just help better my situation, in  
3 the --

4 Q Okay.

5 A -- long run, but it really --

6 Q And what made you think that? Did your lawyer tell  
7 you anything?

8 A That's -- that's when -- my lawyer -- I thought we  
9 had an agreement that after I did this, then I  
10 would get a time reduction, or it would be brought  
11 up.

12 Q And --

13 A But --

14 Q And even though Mr. Gaines did not go to --  
15 actually go to trial, you met with the -- the  
16 investigators, didn't you?

17 A Yes.

18 Q And you talked to them and -- and told them --

19 A I told them --

20 Q -- everything?

21 A -- everything, even about Ms. Keyshae Johnson  
22 (phonetic), and he also -- Mr. Spenser Smith --  
23 also, relayed that he was going to talk with  
24 Letterman about helping get me my time reduction or  
25 something like that.

1 Q Okay. Are there any other allegations against  
2 Counsel that you'd like to make?

3 A I mean, no, ma'am.

4 Q Okay.

5 MS. ROSS: (To the Court) No further  
6 questions.

7 THE COURT: Mr. Ray?

8 CROSS-EXAMINATION

9 BY MR. RAY:

10 Q Mr. Hill, you said you've never had any  
11 disciplinaries loaded against you in the Department  
12 of Corrections?

13 A No, sir. Not that I know of.

14 Q No possession of contraband in (verbatim) December  
15 1st, 2016?

16 A Possession of -- in 2016? That was before I even  
17 came to -- about any of these charges right here.

18 Q Okay.

19 A And that was, also -- I don't even think I actually  
20 got charged -- I was charged with it, but it was  
21 found invalid, I believe.

22 Q Okay. And you didn't have three interferences  
23 (verbatim) with counts between July and October of  
24 2016?

25 A Yes, sir. And that was just -- that was my YOA bid

- 1           once again, that was something before --
- 2   Q       Okay.
- 3   A       -- these charges.
- 4   Q       Okay. Now, when did you first come to be in  
5           contact with Mr. Vieth? Do you recall?
- 6   A       I think it was in 2017.
- 7   Q       2017? Did you hire him or was he appointed?
- 8   A       My mother -- I was appointed to Mr. Paul Neely, but  
9           my mother seeked out Mr. Vieth.
- 10   Q       Okay. How many times did you meet with Mr. Vieth?
- 11   A       I want to say, probably, maybe three -- maybe four  
12           times.
- 13   Q       Okay. And were you -- was that in the jail?
- 14   A       I believe so.
- 15   Q       Okay. And what sort of discussions did you have  
16           with him?
- 17   A       As far as really my point of view of what happened  
18           during the case, and, also, like -- I vaguely  
19           remember the last time I talked to him it was about  
20           the agreement that he was going to try to come to  
21           Spenser Smith with. And that was the last time I  
22           actually talked to him about anything.
- 23   Q       Okay. And this agreement was it to include a plea  
24           agreement that he --
- 25   A       It -- it was, yes, sir. Actually -- basically,

1           letting me know the plea that -- well, the  
2           negotiated sentence that Mr. Smith, I guess, they  
3           worked out and also letting me know the  
4           consequences of going to trial with everything and  
5           the standards of that, but, yes, sir.

6    Q       Okay. And did you want to go to trial, or did you  
7           want a plea from the beginning?

8    A       At the beginning I wanted -- I really kind of  
9           wanted to go to trial, even when I had my public  
10          defender, for the simple fact that -- I know for a  
11          fact what really happened that day, and I also  
12          understood that everything was really hearsay. So  
13          I really wanted to go to trial, but after that last  
14          conversation I had with Mr. Rick Vieth, it was more  
15          of the lines of understanding what the Alford plea  
16          was, and then after understanding what that was I  
17          started looking at the -- the evidence, like,  
18          "Well, it is a lot of circumstantial evidence, and  
19          if I did go to trial there's no telling what would  
20          happen," you know. I'm scared. I feared for my  
21          life, so I said, "Yes, sir. Let's do the Alford  
22          plea if that's what we can do, and then we'll try  
23          to work out for it."

24   Q       Okay. And what was your understanding of the terms  
25          of this Alford plea?

1 A I believe that it was basically saying that I'm not  
2 admitting my guilt to the crime, but just for the  
3 fact of the evidence I'm afraid that if I did go to  
4 the trial, the chances of me getting convicted are  
5 high. So -- and that's what my understanding of  
6 the Alford plea was.

7 Q Was there anything promised to you about  
8 cooperation on a later date?

9 A Not at that moment. Not at that moment before I  
10 went to court. You know, it was the fact of after  
11 I went to court and I was sentenced that it was  
12 brought up, "Okay. Well, we can get you a time  
13 reduction for testifying against Mr. Gaines."

14 Q Who brought that up to you?

15 A It was -- I believe it was Spenser Smith and them  
16 that brought it up, and then Mr. Letterman came to  
17 see me while I was SCDC, and I told him about it  
18 and he said that he was going to talk to Spenser  
19 Smith and them about it also.

20 Q Okay.

21 THE COURT: Mr. Ray, can I jump in just one  
22 second?

23 Mr. Hill, I just want to make sure I  
24 understand your testimony correctly. You --  
25 you said that the -- the discussion with Mr.

1 Vieth about getting a -- possibly the reduced  
2 sentence for cooperation, that all happened  
3 after you had pled guilty?

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay.

6 THE WITNESS: Yes, sir.

7 Q Okay. So when you pled guilty, you didn't know  
8 that this might be something that could benefit  
9 you?

10 A No, sir. I had -- I didn't know anything about a  
11 time reduction or that my sights or my mindset was  
12 not on that.

13 Q Okay. And did you cooperate with the solicitor?

14 A Yes, sir.

15 Q And you provided --

16 A Very substantial.

17 Q -- the information?

18 A Very substantial.

19 Q Okay.

20 THE COURT REPORTER: (To Mr. Ray) Can you  
21 speak one at a time, please?

22 MR. RAY: Sorry about that.

23 Q And you did provide information to the solicitor.  
24 What sort of information did you provide?

25 A As far as the details to the crime, to who was

1           there or what I really seen or what really happened  
2           from my point of view. You know, and even -- I  
3           guess I uncovered some -- some lies or whatever  
4           that Lorenzo Gaines told or Ms. Keyshae Johnson,  
5           but whatever I said was clear enough for them to  
6           tell him that, "Hey, he's going to testify against  
7           you," for him to say, "I don't want to go to court.  
8           I want -- I want a plea agreement as well."

9   Q       Okay. Did you ever go into court?

10 A       I -- I never went. I -- I came -- they brought me  
11         back here to Spartanburg County, and they put me in  
12         Pod 6, so I just waited there until his court date.  
13         And his court date came, and they just never came  
14         and got me.

15 Q       Okay. And so after you gave them this information,  
16         did they tell you then that they were going to  
17         reduce your sentence?

18 A       They -- they -- after I gave them the information,  
19         I ain't seen or heard from no one else after that.

20 Q       Okay. So that was the end of it --

21 A       That's the end of it.

22 Q       -- up until today?

23 A       Up until today.

24 Q       Okay.

25           MR. RAY: No further questions, Your Honor.

1 THE COURT: Any redirect, Ms. Ross?

2 REDIRECT EXAMINATION

3 BY MS. ROSS:

4 Q Okay. I just wanted to clarify. Who are -- who's  
5 Spenser Smith?

6 A The solicitor.

7 Q And Mr. Letterman?

8 A That is the investigator.

9 Q So they came to speak -- the investigator came to  
10 speak with you at SCDC --

11 A Yes, sir.

12 Q -- after your guilty plea?

13 A Yes, sir. I mean, yes, ma'am.

14 Q And -- and then did Mr. Vieth say anything about  
15 that? Had --

16 A I --

17 Q -- he --

18 A -- after -- after I got sentenced, I only received  
19 written correspondences between me and Mr. Vieth.

20 Q And were you discussing substantial assistance in  
21 those correspondence?

22 A The last letter I got from him was, I believe, was  
23 referring to something about a -- a time reduction  
24 or something like that, but I didn't know -- I  
25 cannot remember if it was about my -- my help with

1 the case, or if the payment was paid fully to him.

2 Q Okay. Okay. All right.

3 MS. ROSS: (To the Court) I've got no further  
4 questions.

5 THE COURT: Thank you, sir. You can step  
6 down.

7 (WHEREUPON, the witness was excused.)

8 MS. ROSS: That's our case, Your Honor.

9 THE COURT: Okay. No -- any witnesses from  
10 the State?

11 MR. RAY: Your Honor, the State would call Mr.  
12 Spenser Smith.

13 THE COURT: All right.

14 (WHEREUPON, the witness was sworn.)

15 DIRECT EXAMINATION

16 BY MR. RAY:

17 Q Mr. Smith, how are you?

18 A Good. How are you?

19 Q I'm doing fine. You prosecuted this case?

20 A I did.

21 Q Okay. Did you discuss a downward departure or  
22 substantial assistance with Mister -- with Mr.  
23 Vieth?

24 A Prior to the plea, no. Darian was, from my  
25 understanding and the evidence, was the person that

1 did the physical beating in this case, so we were  
2 targeting him first. Once he pled, Mr. Gaines --  
3 Mr. Hill pled in -- Mr. Hill pled in March of '18,  
4 and Mr. Gaines came up for trial in June of '18. I  
5 sent an email to Mr. Vieth just asking if he would  
6 be willing to talk, didn't say anything about any  
7 departure. Mr. Vieth indicated he was going to  
8 send a letter to Mr. Hill in SCDC to see if he was  
9 interested in that. As I said in the email, "It's  
10 my view it never hurts to have a conversation.  
11 Obviously, I can't promise anything. I have no  
12 idea what information he would give."

13 I -- I don't know. I think at his -- the  
14 first time he said it, he made it -- I thought he  
15 said that I went to see Mr. Hill at SCDC, but I  
16 think it was just Mr. Letterman. I never -- I  
17 never went to SCDC to see Mr. Hill. The only time  
18 I had a conversation with him was, I believe, after  
19 Lorenzo Gaines had pled, but before he got sent  
20 back to SCDC. And that was where he -- Mr. Hill  
21 revealed that there was a female involved in this  
22 case that I had always suspected had assisted them  
23 in getting into the house. And he gave information  
24 about that she was, in fact, involved in this  
25 crime.

1           Now, that occurred at the old jail here,  
2           Investigator Letterman was there, Mr. Vieth, and --  
3           and Mr. Hill. And there were no promises made  
4           about what would happen in relation to that  
5           information. And, obviously, that's a motion --  
6           that the motion under the statute has to be  
7           initiated by the State. I never filed a motion to  
8           do that, but we did charge her off of that, and she  
9           ultimately pled guilty to that crime.

10           I don't want to get -- my impression at -- at  
11           that time was that I think Mr. Hill was upset with  
12           the amount of time he got, and he was trying to  
13           bring the other people that had participated in the  
14           crime with him. He wanted to make sure that  
15           they -- that he wasn't the only person that got a  
16           prison sentence out of this.

17    Q     Okay. And was there any sort of proffer agreement  
18           or anything for what he told you?

19    A     No.

20    Q     Okay. The plea agreement itself, prior to these  
21           discussions, what were the terms of that agreement?

22    A     It was a negotiated ten to twenty, which required  
23           reducing the burglary first to burglary second,  
24           violent, because burglary first has a 15 mandatory  
25           minimum. So he was pleading to armed robbery,

1 ABHAN, possession of weapon during a violent crime,  
2 and burglary, second, violent, with a negotiated  
3 range of ten to twenty. And -- and Judge Knie  
4 split the baby and did 15.

5 Q Okay. And what was Mr. Hill facing on the original  
6 indictment?

7 A Life.

8 Q Okay.

9 MR. RAY: No further questions, Your Honor.

10 THE COURT: Ms. Ross?

11 CROSS-EXAMINATION

12 BY MS. ROSS:

13 Q And that was life off the burglary first; is that  
14 correct?

15 A Potentially --

16 Q Like an LWOP?

17 A No. No. He did not have a -- he had some prior  
18 convictions; I think one burglary. I don't think  
19 we would have been able to get in that he had two  
20 burglaries. I have his record back there, but he  
21 didn't have any violent crimes that I can recall.

22 Q And you said that -- that he came -- at your  
23 behest, he came here from SCDC. He was brought  
24 here to --

25 A Yeah. Sometimes I'll have codefendants transported

1 back just to see if they will talk without having  
2 any sort of agreement in place. I've done that  
3 before on codefendant cases and sometimes they say,  
4 "I don't want to talk," and we send them right  
5 back.

6 Q Are they mirandized or anything? That's just an  
7 aside.

8 A No hard -- this is -- I'm referring to people that  
9 have already pled --

10 Q Already pled.

11 A -- guilty, and their attorney is present during  
12 these meetings.

13 Q Disregard the question. I've -- now --

14 A But I -- probably with the investigator being  
15 there, they're pretty -- in the habit of doing that  
16 before they have any sort of conversation.

17 Q And you said after speaking to you, you were able  
18 to charge and get a guilty plea from Keyshae  
19 Johnson?

20 A That is true.

21 Q And had she -- did he provide substantial  
22 assistance in getting that charge against her and  
23 the plea?

24 A He did.

25 Q Yet you choose not to make the motion under 17-25-

1 65?

2 A Correct.

3 Q All right. Now, I don't know if you'd be -- did  
4 you appraise -- or was Mr. Hill appraised by you or  
5 your investigator about the power you had to -- to  
6 do that, to make a motion under 17-25-65?

7 A I'm -- I'm sure we would have discussed that that's  
8 a -- that's a possibility. I'm trying to think.  
9 The first time that I ever -- I -- I have only done  
10 one of those and it was somebody that stopped a --  
11 a rape in prison and that happened after this, but  
12 certainly no promises were made to him about  
13 anything that would happen. And -- and, honestly,  
14 this is my recollection of it, we -- I was focused  
15 solely on Lorenzo Gaines because he was the person  
16 that was charged. In the background I always  
17 thought that she was involved, but did lack the  
18 proof to charge her. And my recollection is after  
19 Mr. Gaines pled guilty, but before Mr. Hill was  
20 sent back to SCDC, that we got word that he wanted  
21 to talk about her, and to me it was to wrap her up  
22 in it, because he felt that she had -- I think it  
23 was her idea.

24 Q Now, he didn't write you a letter, did he?

25 A No.

1 Q So that came through Mr. Vieth?

2 A Mr. Vieth.

3 Q Okay.

4 A I -- I don't recall meeting with him prior to  
5 Lorenzo pleading guilty. I -- I recall that Mr.  
6 Vieth said, "He is okay to testify." He said,  
7 "He's all in and is willing to come back and -- and  
8 testify." But then I don't think I ever met with  
9 him, and I don't believe we even picked a jury on  
10 Mr. Gaines; he just pled guilty.

11 Q Okay.

12 MS. ROSS: (To the Court) I've got no further  
13 questions.

14 THE COURT: Mr. Ray?

15 MR. RAY: Nothing further for Mr. Smith, Your  
16 Honor.

17 THE COURT: Thank you, Mr. Smith.

18 THE WITNESS: Thank you, Your Honor.

19 (WHEREUPON, the witness was excused.)

20 MR. RAY: And the State would call Mr. Rick  
21 Vieth.

22 THE COURT: Mr. Vieth?

23 (WHEREUPON, the witness was sworn.)

24 DIRECT EXAMINATION

25 BY MR. RAY:

1 Q Mr. Vieth, how are you?

2 A I'm -- I'm fine, thank you.

3 Q When were you first retained to represent Mr. Hill?

4 A Oh, gosh. I've got the file. It was 2017 --  
5 sometime in 2017, I believe. He had, had a public  
6 defender for a few months and then family came and  
7 asked me to substitute and it was real close to  
8 trial time. And I told them that judge may not  
9 substitute a lawyer for another lawyer that close  
10 to trial, because some people may think they're  
11 doing it just to delay the process. But the -- the  
12 judge and the solicitor were -- were nice and they  
13 realized it was a legitimate reason, so they  
14 continued the case and we got time to get involve  
15 with it.

16 Q Okay. And did you have negotiations or discussions  
17 about a plea agreement with the State during that  
18 time?

19 A Well, certainly. You look at the evidence in the  
20 case, and my job, I think, as a defense attorney,  
21 I've always told clients is, "You make the  
22 decision, but I've got an ethical duty to see what  
23 the best option is and you make -- you pray about  
24 it and make the decision you think's in your best  
25 interest after you look, you know, in their deck of

1 cards, the Government's deck of cards, or the  
2 State's deck of cards. And you make a decision."

3 If I've got someone charged with criminal  
4 sexual conduct with a minor, you're looking at 25  
5 to life or something, and sex registration for the  
6 rest of your life and they offer first degree  
7 assault and battery. That person's got a tough  
8 decision to make, do I want to take that, and don't  
9 have sex registration, or do I want to go to trial?

10 And I -- this case was serious, and the  
11 pictures of the alleged victim in this case -- not  
12 alleged; she was a victim. The pictures, if shown  
13 to the jury, would have been devastating. So I --  
14 I had to see what best options were available  
15 besides just rolling the dice with a jury trial.  
16 And the solicitor came back with those options, and  
17 I always let the family decide what you think's in  
18 your best interest.

19 I -- I liked Darian. I -- I thought there was  
20 a chance he may not have been guilty, but there was  
21 some pretty good evidence of him at -- at a bank  
22 with a credit card that was the victim's credit  
23 card with the other person -- other codefendant,  
24 getting the money out of the bank. And that hand  
25 of one, hand of all theory with him there. I know

1 he said he was just the driver; he just took  
2 this -- he didn't mean to -- he didn't know he was  
3 taking them, because they did something wrong.

4 But it was a tough decision. He could have  
5 gone to trial and said he just drove them there and  
6 happened to get out of the car and the picture was  
7 made by the bank, or -- you know, or gamble. And  
8 he and his family decided they didn't want to take  
9 that chance if we could get a negotiated plea.

10 Well, I explained to him in the letters -- in  
11 the jail site, what negotiated mean and what  
12 straight-up means and what recommendation means. I  
13 said, you know, "Negotiated, the judge has to  
14 accept it. Recommendation, it's just a  
15 recommendation, the judge will tell you, 'You  
16 understand I don't have to go with that  
17 recommendation.' And straight-up means there's no  
18 recommendation at all. It's just us doing our job  
19 through civil mitigation."

20 And so they -- we got the negotiated between  
21 the ten and twenty, as the solicitor said. And the  
22 family came back and said, "Can you get it down to  
23 a negotiated 12?" And Spenser went to the family,  
24 I guess, of the victim and whatnot, and said they  
25 couldn't go that -- to there, so it negotiated 15,

1           you know you're going to get it, or we could  
2           negotiate ten to twenty and you can already for the  
3           low end, know the judge could give you twenty. And  
4           that was the options I gave Darian and his family  
5           to look at. We could either negotiate 15,  
6           negotiate ten to twenty, and we can try to see if  
7           we can get down to ten. But you've gotta gamble;  
8           it could go higher. And that's what we did.

9           So it was a tough case all the way around,  
10          because I was looking a lot of time I hate to see  
11          clients get, but I also know that it could have  
12          been a lot worse if he had gone to trial in that  
13          case.

14    Q       Okay. At any point during these negotiations with  
15          the State, did any future reduction of his sentence  
16          come up?

17    A       No. Not during the negotiations of the guilty  
18          plea. I mean, Darian's being honest. He -- he  
19          said we did not discuss any -- any downward  
20          departures or anything at all during our  
21          negotiations about what to plead to. But -- but I  
22          -- when I knew that the codefendant may be going to  
23          trial, I certainly suggested. I said, "Do you want  
24          to consider cooperation?" Because sometimes the  
25          State -- I know in federal court they've did it for

1           years, and -- and the statute in state court has  
2           been existing several years now. The State can, at  
3           their discretion, make a motion for "downward  
4           departure," we call it in federal court. And would  
5           you want to consider that?

6                     And, obviously, he was wanting to consider  
7           that and he did. He was willing to cooperate, but  
8           it had nothing to do with -- but for the  
9           cooperation, he would have gone with a jury trial.  
10          That -- that wasn't never an issue.

11   Q       Okay. And were you present with him during the --  
12           the -- when he spoke with the solicitor after the  
13           plea?

14   A       Apparently so. I don't have a note in my file, but  
15           I trust Mr. Smith when he testified that we were  
16           all together at the jail. I'm sure I must have  
17           been.

18   Q       Okay.

19   A       I would have been, you know. Because I like  
20           Darian. I -- I wish he could have gotten a  
21           downward departure.

22   Q       Okay. Do you recall any promises being made about  
23           the sentence reduction?

24   A       No.

25   Q       Okay. And can you file the motion for the sentence

1 reduction yourself?

2 A No.

3 Q Okay.

4 MR. RAY: No further questions, Your Honor.

5 THE COURT: Ms. Ross?

6 MS. ROSS: Thank you, Your Honor. May it  
7 please the Court.

8 CROSS-EXAMINATION

9 BY MS. ROSS:

10 Q Mr. Vieth, I guess you didn't get a proffer  
11 agreement or any kind of agreement before -- after  
12 the plea, but before Mr. Hill was transported back  
13 to speak to Mr. Smith?

14 A I -- no, ma'am.

15 Q Okay. So you didn't have any agreement in line  
16 before the transport from SCDC?

17 A No. Just that he was willing to cooperate.

18 Q All right. And as far as the statute that -- well,  
19 do you recognize that -- that that can have a  
20 detrimental effect on a lot of inmates when they do  
21 cooperate back at SCDC?

22 A Oh, listen. I suggested that moving him around in  
23 the jails and whatnot, because I know you can have  
24 -- get in trouble if you cooperated with the State  
25 or the Federal Government.

1 Q So it certainly has a detrimental effect to the  
2 person who's cooperating?

3 A It very well could.

4 Q All right.

5 MS. ROSS: (To the Court) No further  
6 questions.

7 THE COURT: All right. Anything else from the  
8 State?

9 MR. RAY: Just one quick question, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. RAY:

12 Q Mr. Vieth, are you able to have Mr. -- Mr. Hill  
13 moved around inside the Department of Corrections?  
14 Have you ever?

15 A I don't think we -- I know we don't have  
16 jurisdiction to tell SCDC what to do. We can make  
17 recommendations, but I'll give you a -- a great  
18 example of a case in federal court. I had a  
19 gentleman in Woodruff with a sex crime, and Judge  
20 Ross Anderson, back in that day, was gonna sentence  
21 him to federal prison for five years and his wife  
22 lived in California; they lived Woodruff. She was  
23 going to move back to California. And I said,  
24 "Judge, would you recommend that he go to a federal  
25 prison in California"? And he made that

1 recommendation, and he got sent to Miami. I  
2 said -- that tells you what the prison system  
3 thinks about being told what to do.

4 Q Okay. And while this may have been detrimental, do  
5 you think it could have been beneficial, his  
6 cooperation, as far as possibly getting his  
7 sentence reduced?

8 A Well, I'll -- I thought the cooperation -- it's a  
9 prosecutorial discretion. So I'm not blaming  
10 anyone for doing what their job does, but some  
11 would've brought a motion for downward departure,  
12 and some would not have. But it wasn't part of the  
13 plea negotiations. I would have liked to have seen  
14 him get a reduction.

15 Q Okay.

16 MR. RAY: No further questions, Your Honor.

17 THE COURT: Thank you, sir.

18 THE WITNESS: Thank you.

19 (WHEREUPON, the witness was excused.)

20 MS. ROSS: Nothing further.

21 THE COURT: Any argument, Ms. Ross?

22 CLOSING ARGUMENTS

23 BY MS. ROSS:

24 MS. ROSS: Judge, I -- I understand the issues  
25 here at PCR. However, I -- I do think this is

1 sort of a dangerous situation, sort of a  
2 slippery slope with prosecutorial misconduct.  
3 At the outset, I would -- I misunderstood the  
4 situation.

5 THE COURT: Prosecutorial misconduct?

6 MS. ROSS: No. I guess, potential  
7 prosecutorial abuse of that statute. Sorry.  
8 I am not trying to suggest there were any  
9 promises made, because that was -- that was  
10 not the testimony here today.

11 However, under that statute, it does  
12 allow for situations for the State to make a  
13 motion to reduce sentence, and in -- in  
14 reliance -- or -- or hope that, that would  
15 happen, that's why Mr. Hill came back and he  
16 certainly has suffered for that. So I'm  
17 trying --

18 THE COURT: All of these events --

19 MS. ROSS: -- to fashion --

20 THE COURT: -- happened subsequent to the  
21 plea --

22 MS. ROSS: Correct.

23 THE COURT: -- sentencing, right?

24 MS. ROSS: And so I'm -- I'm having difficulty  
25 fashioning a PCR argument on there. At the



1 relief here. We've heard testimony from Mr.  
2 Hill himself that this downward departure  
3 issue did not influence his decision to enter  
4 his plea, because there were no promises made  
5 to him prior to. And with that, we would just  
6 request that the Court deny relief.

7 THE COURT: I'll take this matter under  
8 advisement. Thank you, Counsel.

9 MS. ROSS: Thank you, Your Honor.

10 (Whereupon the within hearing was  
11 concluded at 11:53 a.m.)

12 (\*This transcript may contain quoted material.  
13 Such material is reproduced as read or quoted  
14 by the speaker.)



STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 Darian S. Hill, SCDC No. 367057 )  
 Applicant, )  
 v. )  
 State of South Carolina )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-42-02101

**ORDER OF DISMISSAL**

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 SPARTANBURG COUNTY  
 CLERK OF COURT

This matter comes before the Court by way of Applicant Darian S. Hill's June 10, 2019 application for post-conviction relief. Respondent sent its return on November 5, 2019. The Court convened an evidentiary hearing on September 14, 2021 at the Spartanburg County Courthouse in Spartanburg, South Carolina. Applicant was present at the hearing and represented by Attorney Susannah Ross. Assistant Attorney General William H. Ray, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's counsel, Attorney Richard W. Vieth, and Assistant Solicitor Spenser H. Smith, of the Seventh Circuit Solicitor's Office, also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, the Spartanburg County Clerk of Court's Office, an original copy of the plea transcript, and the pleadings. The Court has reviewed the record and pleadings, observed the witnesses and heard their testimony, and finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the February 2017 term of the Spartanburg County Grand Jury for assault and battery of a high and aggravated

nature (2017-GS-42-00611); burglary, first degree (2017-GS-42-00612); armed robbery, and possession of a weapon during the commission of a violent crime (2017-GS-42-00613, Cts. I & II). Richard W. Vieth, Esq. represented Applicant, and Spenser H. Smith, Esq., of the Seventh Circuit Solicitor's Office, prosecuted the case.

On March 28, 2018, Applicant entered an *Alford*<sup>1</sup> plea to the lesser-included offense of burglary, second degree, violent, and otherwise as indicted. Accepting the 10 to 20 year sentencing range negotiated between Applicant and the State, the Honorable Grace G. Knie sentenced Applicant to imprisonment for concurrent terms of 20 years for ABHAN, provided that upon service of 15 years the balance would be suspended upon 5 years of probation; 15 years for burglary, 15 years for armed robbery, and 5 years for the weapon. Applicant did not appeal his plea or sentence.

**II. FACTUAL HISTORY**

The underlying facts of the crimes for which Applicant is incarcerated were articulated by the State during the plea proceeding as follows:

This incident occurred on September 11<sup>th</sup> of 2015. At around three o'clock in the morning, deputies responded to an apartment complex on Fernwood Glendale in Spartanburg County in reference to a home invasion. The victim's roommate had come back and found her severely beafen in her bedroom. Her four year old was also present, and had witnessed the beating.

[ . . . ] She was severely beaten around basically all over her face to the point that she probably was blind at the time.

[ . . . ] The victim's four year old son was present during the home invasion. The victim and son were able to speak to police. They said that two black males had done the beating. The victim was very in and out of it at, at the time when she was on the scene. She was mostly saying that she didn't want to die. Not being very - giving information about who had done it. Just mainly hoping to leave.

<sup>1</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

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SPARTANBURG COUNTY

The victim later stated that she had woke up with a man on top of her pinning her down. That man had begun to beat her while another man that was inside of her room was screaming for her to give up the money.

That man that was screaming indicated that he was a Blood and was referring to her as a Crip. The victim believed this man was a man that she knew as Mack. That is Mr. Hill's codefendant, Lorenzo Gaines, who has still – has charges pending. Both of them were on the trial docket this week, Your Honor.

She said that Mack had previously confronted her about dating a Crip member. She said she didn't know his real name, but her roommate and him had had a relationship. She said the struggle in the bedroom lasted for almost an hour. At least what she perceived to be an hour. She said that the man that was on top of her had a pistol and was using it to beat it with her. They were able to get her ATM card basically is what they got off of her.

Your Honor, we believe that the motive for this was Ms. Moates was unfortunately involved in a, in a Felony DUI accident where her fiancé at the time passed away. It's a case I handled and she broke her femur bone in this, and she had gotten a settlement from that car injury prior to this, and we believe that they were out searching for that money potentially.

(Tr. 15-17). The State continued with its factual recitation by explaining a payment was attempted on Applicant's Charter Communications bill using her stolen ATM card. (Tr. 17, ll. 3-12). Police tracked the victim's financial records and pulled the video off an ATM used about twenty hours after the burglary, which captured video of Applicant using the ATM while a partially-disguised Lorenzo Gaines stood just "off of the camera view[.]" (Tr. 17, ll. 13-21). When law enforcement presented the victim with a still picture from the video, she identified Applicant and Gaines as the people, and that Applicant was the perpetrator. (Tr. 17-18). After the victim's roommate, Kesha Johnson, was arrested for shoplifting, she disclosed to law enforcement that Applicant admitted to her he had committed the robbery, and provided facts to corroborate her story. (Tr. 19-20).

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**III. CURRENT APPLICATION**

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

- 1. I never received my full motion of Discovery
  - a. I asked my public defender on the kiosk in the county jail and my lawyer
- 2. I kept being housed with my co-defendant who was threatening me with his gang members.
  - a. I asked for protective custody multiple times and explained my problem and the threats received to me by my co-defendant to say and what not to say regarding my case.
- 3. Certain facts were not said during my hearing that I believe would have helped.
  - a. The fact that I lived at the residence that was burglarized was not explained.

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At the evidentiary hearing Applicant, through counsel, stated that he was proceeding forward on a claims that his plea was not knowingly and voluntarily made because he thought he could come back and receive less time after providing substantial assistance to the State. Applicant did not proceed forward on his initial allegations. Those claims are therefore waived, and will not be addressed further. Before the Court are Applicant's records from the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the current application for post-conviction relief.

**IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

*Involuntary Guilty Plea*

Applicant alleges that his guilty plea was involuntarily made because he believed he would be able to receive a sentence reduction if he provided substantial assistance to the State in prosecuting other cases. This allegation is without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also *Boykin v. Alabama*, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See *Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); *Richardson v. State*, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective

assistance of counsel as a ground for relief. Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be

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reasonable.”). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel's actions ‘more likely than not altered the outcome,’ but the difference between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements.

*Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Cl. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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; if 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.

South Carolina law allows for reduction of a sentence for substantial assistance to the State in certain circumstances. Specifically, S.C. Code Ann. §17-25-65 allows for the State to move the court for a sentence reduction within one year of sentencing if the defendant provides substantial assistance in investigating or prosecuting another person. The law specifically states that the motion for the reduction must be made by the circuit solicitor in the county where the defendant's case arose. S.C. Code Ann. §17-25-65(C).

Applicant indicated at the evidentiary hearing that he understood the relief of a time cut or sentencing reduction was not available to him in post-conviction relief proceedings. He testified that he entered his plea thinking that he may be entitled to a time reduction if he provided substantial assistance in prosecuting his co-defendant. He stated that his co-defendant has incurred many disciplinary issues in the department of corrections, whereas he has not. He stated that Counsel had discussed the possibility of receiving a sentencing reduction if he provided substantial assistance to the State. He acknowledged that he pled under *Alford* because it was a better option than going to trial. He admitted that he was not promised anything in exchange for his plea, both

at the plea hearing and again at the evidentiary hearing. He stated that all discussions about the sentencing reduction took place after he entered his plea.

Assistant Solicitor Spenser Smith testified that he prosecuted the case and only spoke with Applicant after the plea hearing. He stated that Applicant was upset about the amount of time he was serving, but no agreement was made for a reduction in exchange for assistance with prosecuting other cases. He stated that Applicant was facing life in prison for his offenses, but had agreed to the plea. He did not believe that he met with Applicant until after the co-defendant had pled guilty.

Counsel testified that he assumed representation of Applicant prior to trial and believed that a plea was in his best interest, given the solid evidence he was facing. He stated that he never talked about a lessened sentence prior to the plea hearing. He also stated that he did not promise Applicant anything about a sentencing reduction. No proffer was made and the only agreement was that Applicant would agree to cooperate after the plea was entered. He stated that he could not make the motion for the downward departure of the sentence under the statute. He acknowledged that Applicant's cooperation may have jeopardized his safety in the department of corrections, but he stated that he does not have control of how the prisons houses its inmates.

The testimony makes it clear that Applicant was not promised a sentencing reduction, and therefore the prospect of receiving a reduced sentence could not have rendered Applicant's plea involuntary when the State chose not to so move the court. All of the discussions about the matter took place after the plea was made, and it is only now that Applicant has not received the reduction that he claims his plea was invalid. The State's refusal to offer the reduction is within its prosecutorial discretion, and Applicant has offered no evidence that its failure to do so rendered his plea invalid. Furthermore, Applicant stated that he entered the plea because he was concerned

STATE OF NEW YORK  
JUDICIAL BRANCH  
CLERK OF COURT  
WESTCHESTER COUNTY  
12/15/11 10:30 AM

about his exposure at trial and believed it would be in his best interest to accept the offer. Applicant has therefore failed to meet his burden of proving deficiency or prejudice. The application for post-conviction relief is denied and dismissed with prejudice.

V. CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 24 day of November, 2021.

Spartanburg, South Carolina

William A. McKinnon  
WILLIAM A. MCKINNON  
Presiding Judge  
Seventh Judicial Circuit

2021 DEC -6 AM 9:49  
SPARTANBURG COUNTY

WITNESSES

1. SENTENCES MADE

2. REPORT ENDED

Spartanburg County Sheriff's Office

3. CARD FILLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT MADE

FINE CARD MADE

8. TRAFFIC VIOLATION COPY

Computer

WARRANT NUMBER

2016A4210102402 (Direct Indictment)

ACTION OF GRAND JURY

The State

Foreperson of Grand Jury Feb 27 2017  
Date:

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 17-GS-42-0611

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 27 2017

TERM

THE STATE  
vs.

Darian Shaundre Hill

Indictment for  
ASSAULT AND BATTERY OF A  
HIGH AND AGGRAVATED NATURE

SC Code: 16-3-600(B)(1)

CDR Code: 3411

Class FEL/C

FILED COURT  
CLERK OF COUNTY  
SPARTANBURG COUNTY  
2017 FEB 28 AM 10:54  
M. HOPPE BLANCHLEY

ew

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

INDICTMENT

FEB 23 2017

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

**COUNT ONE: ASSAULT AND BATTERY OF HIGH AND AGGRAVATED  
NATURE**

That the Defendant, Darian Shaundre Hill, did in Spartanburg County on or about  
September 11, 2015 unlawfully injure the victim, [REDACTED] and great bodily injury  
did occur and/or the act was accomplished by means likely to produce great bodily  
injury or death, to wit: by repeatedly striking [REDACTED] in the head with a pistol, in  
violation of §16-3-600(B)(1), *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

1. SENTENCE MADE  
SCSO

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

FINE CARD MADE

*Computer*  
*James W. Jones*

ARREST WARRANT NUMBER

2016A4210102401

ACTION OF GRAND JURY

*FILED*  
*FEB 24 2017*

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. -

17-GS-42-0612

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 27 2017 TERM

THE STATE

vs.

Darian Shaundre Hill

Indictment for

BURGLARY, FIRST DEGREE  
(Dwelling)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2017 FEB 28 AM 10:54  
M. HOPE BLACKLEY

*cur*



WITNESSES

SENTENCE MADE  
Spartanburg County Sheriff's Office

CARD PULLED

INDEXED

CHECKED WARRANTS

CHECKED SIGNATURE

ASSESSMENT  
PRE-CARD

TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER

2016A4210102398-Count One

Direct Indictment- Count Two

ACTION OF GRAND JURY

Foreperson of Grand Jury

FEB 24 2017

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

17-GS-42-0613

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 27 2017

TERM

THE STATE

vs.

Darian Shaundre Hill

Indictment for

ARMED ROBBERY AND POSSESSION OF  
WEAPON DURING COMMISSION OF A  
VIOLENT CRIME

SC Code: 16-11-330 (A): 16-23-490

CDR Code: 139: 549

Class FEL/A: FEL/F

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2017 FEB 28 AM 10:54  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

INDICTMENT

At a Court of General Sessions, convened on FEB 23 2017, the Grand Jurors of Spartanburg County present upon their oath:

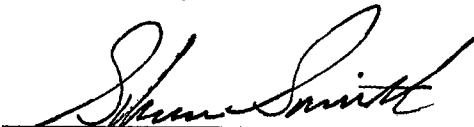
**COUNT ONE---ARMED ROBBERY**

That Darian Shaundre Hill, did in Spartanburg County on or about September 11, 2015, while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present at the time reasonably believed to be a deadly weapon, did feloniously take from the person or presence of [REDACTED] by means of force, violence, and/or intimidation, goods and/or monies, such goods or monies being described as follows: a debit card and/or a sum of U.S. currency, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO---POSSESSION OF WEAPON DURING COMMISSION OF A VIOLENT CRIME**

That Darian Shaundre Hill, did in Spartanburg County on or about September 11, 2015 ~~possess a firearm or visibly display what appeared to be a firearm during the~~ commission of a violent crime, to-wit: ARMED ROBBERY, in violation of Code §16-23-490, *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