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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Clifton Newman, Circuit Court Judge
Honorable Jocelyn J. Newman, Circuit Court Judge
Honorable Roger E. Henderson, Circuit Court Judge

ARYEE HENDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001521

APPENDIX

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State of South Carolina
Court of General Sessions
County of Richland

State)
)
) Transcript of Record
v.) 2002-GS-40-07277
)
Ayree Henderson)
)
Defendant.)

June 20, 2016
Columbia, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge.

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

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Rhodes Bailey, Assist. Public Defender
Attorney for the Defendant

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Circuit Court Reporter

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(No Witnesses.)

3

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.

(No Exhibits.)

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P R O C E E D I N G S

* * *

MS. CAMPBELL: May it please the Court. Your Honor, we're before you today on The State vs. Ayree Henderson. To give you a little bit of procedural background, Your Honor, this offense occurred back on August 3rd of 2002. It went to trial before Judge Lee approximately two years later. He was convicted of murder. He did receive, I believe, a 30-year sentence at that point.

It then went through the appeals process and was upheld. It's my understanding that it was recently, I believe, returned to us last November on a PCR issue. And we're here before you today to -- he's pleading straight-up to a -- one count of voluntary manslaughter, with each side asking for whatever time we feel is appropriate.

THE CLERK: Raise your right hand.

AYREE HENDERSON

being first duly sworn, testified as follows:

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Counsel, do you represent him?

MR. BAILEY: Yes, Your Honor.

THE COURT: And what is your understanding as

to what he's doing here today?

MR. BAILEY: Your Honor, Mr. Henderson is pleading guilty today. That's what he'd like to do, sir.

THE COURT: Okay. As to voluntary manslaughter?

MR. BAILEY: Yes, sir. And I can give you additional detailed background if you'd like.

THE COURT: Okay. And voluntary manslaughter carries the penalty of what?

MR. BAILEY: Two years to 30 years, Your Honor.

THE COURT: Is that your understanding, sir?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And, Mr. Henderson, do you want to give up your right to a jury trial and plead guilty to voluntary manslaughter, understanding that it is classified as a most serious offense?

THE DEFENDANT: Yes, sir.

THE COURT: Has anyone promised you anything to get you to plead guilty?

THE DEFENDANT: No, sir.

THE COURT: Are you satisfied with the representation by your lawyer?

THE DEFENDANT: Yes, sir.

:53:35 1 THE COURT: And do you think -- have you had
:53:38 2 enough time to look at whether you want to plead
:53:41 3 guilty to voluntary manslaughter?
:53:46 4 THE DEFENDANT: Yes, sir.
:53:46 5 THE COURT: Do you want to do that?
:53:47 6 THE DEFENDANT: Yes, sir.
:53:48 7 THE COURT: As you stand before me at this
:53:51 8 moment in time, you're presumed to be not guilty of
:53:53 9 this charge, you have the right to a jury trial,
:53:57 10 you're presumed to be not guilty, you have the right
:54:00 11 to remain silent, and the right to require the State
:54:02 12 to prove your guilt by presenting evidence which
:54:05 13 convinces the jury of your guilt beyond a reasonable
:54:08 14 doubt. And if a jury is not convinced of your guilt
:54:13 15 beyond a reasonable doubt, they would be instructed
:54:13 16 they must find you not guilty.
:54:16 17 You'd also have the right challenge any
:54:18 18 evidence the State may have against you, and to
:54:19 19 present any defense that you might have. Further
:54:19 20 than that, your lawyers could subpoena any witnesses
:54:24 21 that you might have to testify on your own behalf,
:54:30 22 and also to cross-examine any witnesses who may
:54:34 23 testify against you. Do you understand all of those
:54:36 24 rights?
:54:37 25 THE DEFENDANT: Yes, sir.

:54:37 1 THE COURT: Do you want to give up each and
:54:39 2 every one of those rights?
:54:41 3 THE DEFENDANT: Yes, sir.
:54:41 4 THE COURT: And you want to plead guilty?
:54:43 5 THE DEFENDANT: Yes, sir.
:54:43 6 THE COURT: Understanding the nature of the
:54:46 7 charge and the possible punishment, how do you
:54:49 8 plead?
:54:49 9 THE DEFENDANT: You said how do I plead?
:54:52 10 THE COURT: How do you plead, yes, sir.
:54:53 11 THE DEFENDANT: I plead guilty, sir.
:54:53 12 THE COURT: All right. Very good.
:54:55 13 Ms. Campbell.
:54:55 14 MS. CAMPBELL: May it please the Court, Your
:54:56 15 Honor. Factual basis?
:54:59 16 THE COURT: Yes.
:54:59 17 MS. CAMPBELL: This occurred back on August the
:55:01 18 3rd of 2002 in the early morning hours, around 6:15
:55:06 19 in the morning. The victim in the case, a
:55:07 20 Mr. Alonzo Gale, was in his own home in the Hammond
:55:11 21 Village area, Your Honor, when the defendant, who
:55:13 22 ultimately testified at trial to try to kind of get
:55:18 23 it into a voluntary manslaughter self-defense phase,
:55:20 24 went there. It's unclear whether his purpose was to
:55:24 25 either steal drugs or to rob him of whatever.

There was a confrontation inside the home, Your Honor. It progressed outside the home. Eyewitnesses testified they heard three different gunshots, which was consistent with the forensic evidence at the scene. The defendant then fled the scene after shooting the victim, I believe, at pointblank range multiple times. The victim was there, he was able to struggle over and ended up next to a car. Witnesses came to his aid, and he ultimately died as a result of the gunshot wounds.

Your Honor, there was -- there were several witnesses who actually saw Mr. Henderson. One witness was able to pick him out of a photo lineup as being the person who came up that night.

Ultimately, in the trial of the case, the defendant did testify that he went there, that he had a troubled childhood, but that he was acting in self-defense. And the jury convicted him of murder based on the evidence presented to them.

THE COURT: All right. You recall all of that happening during your trial?

THE DEFENDANT: It was -- basically, sir. I mean, I didn't -- I dispute some of the facts that she stated.

THE COURT: All right.

:56:34 1 THE DEFENDANT: It wasn't no robbery, Your
:56:36 2 Honor, sir. We got in an altercation, and that's --
:56:40 3 that's what led up -- the altercation is what led up
:56:43 4 to the incident, Your Honor.
:56:47 5 THE COURT: Well, with the understanding of the
:56:49 6 dispute involving everything and the fact that you
:56:54 7 had a trial some years ago and you have a choice now
:56:58 8 of having another trial or pleading guilty to those
:57:02 9 charges, what do you want to do?
:57:08 10 THE DEFENDANT: Plead guilty, sir.
:57:09 11 THE COURT: All right. And do you understand
:57:12 12 if you were to have a trial, and you were found
:57:15 13 guilty before, you could be found guilty again?
:57:19 14 THE DEFENDANT: Yes, sir.
:57:19 15 THE COURT: And you don't want to take that
:57:22 16 risk?
:57:22 17 THE DEFENDANT: I don't want to take that risk.
:57:24 18 THE COURT: So we have just Gale at Hammond
:57:24 19 Village?
:57:41 20 MS. CAMPBELL: Hammond Village at [redacted]
:57:44 21 [redacted].
:57:44 22 THE COURT: All right. And who -- who's the
:57:46 23 drug person or --
:57:46 24 MS. CAMPBELL: The allegation by this defendant
:57:48 25 was that he was a drug dealer. There was no

evidence from the scene of drugs there; however, there was -- from the toxicology of the victim, he had cocaine in his system.

THE COURT: The victim did?

MS. CAMPBELL: The victim did. That came out at trial.

THE COURT: All right.

For the Defense?

MR. BAILEY: Thank you very much, Your Honor. I was -- I believe you actually met my client before I did. I believe the Court met my client before I did when Mr. Henderson had filed a motion. And I believe y'all heard this back -- I believe, back in about January, and Mr. Hawks happened to be in the courtroom and you appointed our office from that point forward.

As long as Mr. Henderson has been around and our office has had him, my understanding was from that very first day when he was in the box, Mr. Hawks spoke with him and he said, you know, this was an overturned PCR, I just want to plead guilty, I really am ready to -- you know, I just want to take responsibility for my part and move forward.

We've had -- you know, it's an older case. Obviously, you know, I still want to do my due

diligence and review the whole thing and get to know Mr. Henderson. And I've gotten to know him. And I know that Ms. Campbell had work to do on her end and discussions to have with people affiliated with the case on her end. But I just want to say, you know, Mr. Henderson, as long as I've represented him -- and I've known him since January -- he's very extremely pleasant. I mean, he's learned, he obviously has read a lot about the law, he filed -- he -- I know that he wrote your office quite a bit, Your Honor.

But when I first met him, I got to know some about his case. And there's something -- you know, and he's real amicable. He's always been pleasant, he's always been -- he's always been -- he's always been friendly and professional. And Mr. Henderson wanted to move forward. And he's been incarcerated since August 4th of 2002. That is 13 years, 10 months, 16 days. I'll -- I'll crunch those -- I'll crunch the numbers and talk a little bit about that later. But he's been incarcerated quite a long time. He's been in since he was a young man, a much younger man.

Your Honor, we're not advancing a self-defense theory or a self-defense claim. If -- there are

facts that were there in the record, my client's testimony through one of his witnesses, that, you know, would potentially be open to an interpretation of self-defense. But every time I've had my -- had discussions with Mr. Henderson, he's said, you know, I want to go forward, I want to get this behind me, I want to plead guilty.

He didn't want to wait for a specific number, he didn't want to haggle; he said, you know, he was there that day. Ever since that day that he was first in court, he's said he wants to put this behind him. He doesn't want to put the State through a trial, he doesn't want to put the victims through a trial. He has faith in the Court, Your Honor. He has faith in the decision of the Court to give him a sentence. I find him to be very easy.

You know, he's been incarcerated 13 years, 10 months, 16 days, approximately. That's August 4th, 2002. That's a substantial part of his life. I've studied the PCR. If you want to know anything about that or you have any questions about it, please let me know.

THE COURT: How did he win his PCR?

MR. BAILEY: He won his PCR, Your Honor -- he was tried, as Ms. Campbell said, and convicted in

September of '04. The PCR was granted because evidence of his involvement as an accessory after the fact of murder was submitted as impeachable evidence to, you know, what the State claimed that showed he was dishonest. So basically, accessory after the fact of murder was found by the Court to be not a recognized impeachable offense for dishonesty.

THE COURT: Okay.

MS. CAMPBELL: It wasn't evidence, it was just the actual conviction itself was the only thing that was offered.

MR. BAILEY: Thank you. And I don't dispute that correction. It was that it was brought up to challenge his credibility. It was -- Judge Cooper granted postconviction relief and then the Court of Appeals upheld that. I do have a copy of that, Your Honor, if you want to look at it. I just always -- I like to be prepared. But it's --

THE COURT: All right. Who was the trial judge who missed the -- who allowed that in?

MR. BAILEY: Sir?

THE COURT: Who was the trial judge who allowed that improper impeachment evidence in?

MR. BAILEY: Judge Lee.

MS. CAMPBELL: It was before they changed the impeachment rules.

THE COURT: Okay. Judge...

MS. CAMPBELL: Lee.

MR. BAILEY: Judge Lee was the --

THE COURT: Judge Lee?

MR. BAILEY: Yes, sir. And I -- they said that his lawyer should have fought to keep that -- objected.

THE COURT: All right.

MR. BAILEY: It was -- that was -- that's why they found Mr. Henderson's first lawyer ineffective. I can share this with you or not, sir?

THE COURT: Yes, sir.

MR. BAILEY: Okay. If I may approach?

THE COURT: You may.

MS. CAMPBELL: And again, Judge, this trial was before they changed all the impeachment rules.

THE COURT: Okay.

MR. BAILEY: I would have been in law school at the time this settled. I don't -- I don't know. I certainly --

MS. CAMPBELL: I believe that was 2006 that they changed the law.

THE COURT: Okay.

MR. BAILEY: Your Honor, I can give you a copy of Judge Cooper's order too, if you'd like.

THE COURT: That's okay, unless you just want me to see it.

MR. BAILEY: No, sir. He was just -- we were just discussing that. No, sir, Your Honor.

So, you know, getting back to it, you know, Mr. Henderson is not interested in -- you know, his position was -- and evidence and in conversations with him was that he was meeting up with -- you know, that Mr. Gale related to drugs and there was an altercation. Your Honor, if you'd like to ask him questions about that, that's fine.

But he's not here to talk about the man having unclean hands or anything like that. And we're not here to -- you know, he's here to take responsibility for what he did here and --

THE COURT: Do we have any victims or victim's representatives here?

MS. CAMPBELL: Yes, Your Honor, I do have victims here. And at the appropriate time, I'd like you to hear about his prior record and his disciplinaries.

MR. BAILEY: And we can stop there if you want to transition over to --

8:05:25 1 THE COURT: Yes. Let's do that and then come
8:05:29 2 back.
8:05:29 3 MS. CAMPBELL: Your Honor, present in the
8:05:31 4 courtroom is Ms. Janey Martin, she's Alonzo's
8:05:36 5 mother. She's been in touch with our office the
8:05:39 6 entire time and has been very active and responsive
8:05:42 7 to any outreach we've had for her. Your Honor, I
8:05:46 8 don't believe she wishes to address -- she does wish
8:05:47 9 to address the Court now or at the appropriate time.
8:05:51 10 THE COURT: Okay. I'm ready.
8:05:54 11 MS. MARTIN: Good afternoon, Judge. I'm here
8:05:56 12 listening to him saying he's been in the detention
8:05:57 13 center since he was a child, since he was young. My
8:06:00 14 son was 25 years old. My son was in his bed asleep.
8:06:06 15 They woke -- he woke him up. My son told him never
8:06:09 16 to come to his house.
8:06:11 17 He went to my son house earlier, and his
8:06:15 18 girlfriend woke him up. And my son said that this
8:06:18 19 guy here was beating on the door, him and three
8:06:22 20 other girls. And he woke my son up. My son didn't
8:06:24 21 know what hit him because he was in his bed sleep.
8:06:26 22 And when he shot him, he was in his boxer shorts.
8:06:30 23 He woke him up and killed my child, and he was 25
8:06:34 24 years old. And he had a baby. His baby was only
8:06:37 25 nine months when he passed. And my son just had a

birthday Thursday. So he's talking about he's been in the penitentiary? Look how many years I have missed my son.

And, Your Honor, you know, I forgive him, but, hey, it's something that's always with me. But I still want him -- he need to be punished for his crime that he have committed, because my son didn't -- my son was in his bed sleep. He didn't ask to leave here and he left here too soon.

THE COURT: Did your son live on Marlboro?

MS. MARTIN: Yes, on Marlboro with his girlfriend.

THE COURT: And this happened again what time?

MS. CAMPBELL: Between 6:00 and 6:15 in the morning.

THE COURT: In the morning?

MS. MARTIN: Yeah. It woke him up.

MS. CAMPBELL: It woke him up. He was in his boxer shorts.

MS. MARTIN: He was sleep. Because they kept beating on the door that morning, him and two other girls. And Tara came back and woke him up -- woke my son up, and he came downstairs and told them -- he said, didn't I tell you don't come back around my house no more? And that's when he shot him.

8:07:51 1 THE COURT: And who all was at the house with
8:07:53 2 your son and Tanya?
8:07:54 3 THE WITNESS: Tara, his girlfriend, and his
8:07:57 4 baby.
8:07:57 5 THE COURT: And did she witness the shooting?
8:07:57 6 MS. MARTIN: Yes, sir.
8:07:57 7 MS. CAMPBELL: She actually heard more than she
8:08:00 8 saw. She saw parts of it, but she heard most -- all
8:08:05 9 of it.
8:08:06 10 THE COURT: And why was he upset with your son,
8:08:10 11 if you know? Why would he want to kill your son?
8:08:14 12 THE WITNESS: He was the crackhead in the
8:08:16 13 neighborhood, and he used to always just hang out
8:08:19 14 around in Marlboro apartments over there. And the
8:08:21 15 lady that lived over there beside him, she said she
8:08:21 16 told them -- and I know you can't go along with the
8:08:28 17 he-say. But she said that she told my son Alonzo
8:08:31 18 that they -- he [sic] heard them saying that they
8:08:33 19 were going to come and rob them.
8:08:35 20 My son did construction work. He had a car
8:08:40 21 that he was going up to Camden to get the next
8:08:46 22 morning, and they -- and he was driving a rental car
8:08:48 23 because -- they thought he had money. He didn't
8:08:52 24 have any money. He worked -- did construction work.
8:08:54 25 And he was having a car restored up in Camden, and

he was going the next day to get his car.

THE COURT: All right. So what do you want me to do?

MS. MARTIN: He need to be punished for his crime. The same amount of time that they gave him before, this is what he needs to get. And he's talking about he's been -- you know, he took my child from me at 25 years old, and I can never see him again. I have to go to the cemetery to talk to him. And my son had a long, pleasant life ahead of him. And he never -- his son, his baby, will never know him, because he's gone.

THE COURT: So you were here for the trial when he was found guilty of murder?

MS. MARTIN: Yes, sir. I was here every day.

THE COURT: How long was that trial?

MS. CAMPBELL: Four or five days -- five days -- four days -- it was within a week.

MS. MARTIN: Because I had to go through the pictures they showed with my son laid out in his boxer shorts and T-shirt, you know, from him waking him up.

THE COURT: All right. So what do you think about this case being back in court all these years later?

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MS. MARTIN: I don't think it should go back to court. I think it should -- the sentence that they gave him before, this is what he needs to keep. My son is not here, he's not coming back. This man, he can -- you know, he done killed my child. My child didn't ask -- he went to his house and woke him up out of his bed. And I don't think that's right. I truly don't think it's right, Your Honor.

THE COURT: All right. What else do I need to know?

MS. CAMPBELL: May it please the Court?

THE COURT: Yes.

MS. CAMPBELL: Your Honor, as far as his prior record, starting as a juvenile, back in 1990 he has a burglary third degree; in 1991, a simple larceny and entering another's land without permission. Then in 1994, he was convicted of the accessory after the fact to murder. Those are his juveniles.

Then as adult, he has a 1995 disorderly conduct, a 1997 -- '96 or '97, Your Honor, I can't tell -- a possession of stolen vehicle and a theft of -- motor vehicle theft for which he received a YOA. His YOA was revoked in 1999. And I believe he was convicted on a simple possession of marijuana after that prior to this.

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Your Honor, the one thing that I did check after we had a hearing with you, and I have shared this with the defense, I did pull his disciplinaries from the department of corrections since he's been in. These are a copy of them. I would hand up -- and I've shown this to defense counsel too -- a number of the offenses. They start back with his original incarceration in 1997 and go through 2015 when he was transferred here a month later.

Your Honor, he repeatedly was -- and I have the actual incident reports here, Your Honor. I highlighted -- the ones I've highlighted are the ones that are actual convictions. I didn't want to -- the ones that they just closed out once they transferred him, I didn't want to hold those against him. This is the whole thing.

Your Honor, I would note that in 2010, on two different occasions, one was an attempt and one he actually grabbed, when he would be masturbating, which he did over and over and over and over, as you see by the multiple convictions there, he did attempt to get a female guard's hand.

One time in June of 2010, he grabbed for the woman's hand as she was opening up to get his food tray in. You know they have that little area where

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you open the little, I don't know what you call it, doorway in the door. And he missed, and he was written up for that. And then in July, he was also written up because he actually was able to grab one woman's hand and try to get it to pull it in to touch himself.

Your Honor, I did also pull his disciplinaries from Alvin S. Glenn since he's been in since November of last year. Within a few days of being in, Your Honor, he's already being written up for the same thing and other things as well -- I can hand those up for the Court -- which include contraband. Most of it is the sexual indecent exposure.

Repeatedly, Your Honor, he has spent a significant amount of time -- I think his lawyer can address better than I can how much time he's actually spent in the special housing unit as a result of his inability to try to contain himself in any way. And if I could hand those up for the Court's review.

THE Court: All right.

MS. CAMPBELL: I have supplied a copy for the Defense.

THE COURT: All right.

MS. CAMPBELL: Your Honor, respectfully, we would just ask that you take the victim's request. She and I talked about this case at least two or three occasions recently. She is in agreement with this plea. She, too, wants this to come to some kind of an end. It's been very difficult for her when we've had to contact her to let her know it's come back. She's had to come back up here.

As she's related to you, the memories of what she saw in court that week and the testimony she heard was very hard on her and her family. She told you and she told me that she has to forgive him because she has to get on with her life. And that's important to her, as far as her wellbeing.

And respectfully, Your Honor, even if you were to impose the maximum sentence, it will be less than he was serving before. Whatever sentence you feel like would be appropriate, Your Honor; I just don't know that a time-served sentence would be appropriate in this case.

THE COURT: What was the sentence before?

MS. CAMPBELL: Thirty on murder, day for day. So the max here is 30, but it's 85 percent. So you're talking about 26.5, I believe, would be the most he could serve on a 30-year sentence, if my

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math is correct, because I'm not very good at it.

THE COURT: Okay. Mr. Bailey?

MR. BAILEY: Thank you, Your Honor. First, I'd like to say I'm certainly sorry for Mr. Gale's mother's loss. I know Mr. Henderson is sorry for the death of Mr. Gale and sorry for the pain that his mother has gone through. I think you know -- I think everybody in this courtroom knows that there are, you know, still two sides -- two sides to a story.

And I know that Mr. Henderson is sorry for what happened. I think it was something that escalated quickly. I don't think he showed up to the location with the intent to kill anyone or intent to inflict violence on -- on, you know, Mr. Gale here. Again, you know, I'm not here to litigate the whole thing, but any questions you may have, Your Honor, for Mr. Henderson, I certainly encourage you to ask him.

At the -- when reviewing this case, I spoke with Mr. Henderson, and he said that before this case went to trial, he was offered a plea of 15 years. That's what Mr. Henderson said. I went back and read the PCR transcripts, and his last lawyer testified that the State offered him a plea offer of 15 years at the time. They went forward

asserting -- asserting, you know, self-defense in this case.

I suspect that the -- you know, the State was trying to be reasonable. You know, I wasn't there at the time, but I suspect that the State realized that this -- you know, this wasn't just a sinner-versus-saint situation where, you know, my client, Mr. Henderson, you know, was sort of -- an absolute sort of evil, incarnate, you know, individual.

I know Ms. Campbell is real concerned about -- about, you know, disciplinary records that involve masturbation in prison. My client and I have talked about that. If you look at that, it's about 90 percent of stuff that involved stuff that Mr. Henderson was doing while he was, you know, in prison, incarcerated since 2002, which, if you've looked at enough of these jail records, this kind of thing happens a lot. It's not pretty, but it's things that happen when people are incarcerated.

I don't think Mr. Henderson is a violent person. He does dispute that he -- that he tried to force a lady, you know, onto him, and he wasn't charged in a criminal court with that. I can also say I've seen a lot of these reports and I've

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seen -- I've seen reports from the jailhouse and the department of corrections. I've seen what the reports say and sometimes I've seen what the cameras say, and sometimes they're different. But we're obviously not here to argue that too much either.

I can tell you, though, I don't think -- I don't think that these things -- if Mr. Henderson is doing something in his jail cell, which, albeit, isn't, you know, privacy as we recognize the fourth amendment or even South Carolina Right to Privacy under Article 1, Section 10. You know, I don't believe that these instances have any relevance to Mr. Henderson when it comes to, you know, his general morality and certainly not this -- you know, not this particular case.

Since he's been in prison, he completed his GED, he completed his carpentry certificate. He obviously -- you know, he obviously, you know, learned a lot about the legal process, it was something that was interesting. You know, there are a lot of jailhouse lawyers out there, but Mr. Henderson knows a lot more about it than a lot of other people, you know, sort of certainly -- certainly claim to or aspire to know.

I have -- today I have his friend. This is

Mr. James Randolph. I called Mr. Randolph. Mr. Henderson has been incarcerated for a while, he really doesn't have any family left, but Mr. Randolph is a friend of his from the neighborhood who was always around. Mr. Randolph is a business owner; he owns Mano's Restaurant by Farrow Road, he's about to open a Mano's Express, and he also owns Beauty & Barber Salon, if I got that right.

Mr. Randolph is a friend of Mr. Henderson. I want Mr. Henderson -- you know, I'm very obviously trying to humanize and show who he is and show that there are people that he deals with; that he's not just, you know, this person that was charged with this crime. I'd like Mr. Randolph to speak briefly about him before I continue, if that's all right, sir.

THE COURT: Sure.

MR. RANDOLPH: Yes, sir. How are y'all doing today?

THE COURT: We're doing fine today.

MR. RANDOLPH: I understand her loss, because the loss of life is precious, and once you lose that life, you don't get that life back. However, I growed up in Hammond Village, he growed up in

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Hammond Village. And in our growing up in Hammond Village, it was stricken with a lot of drug activity in that neighborhood and a lot of violence in that neighborhood. And you were either a part of that -- it wasn't no you wasn't with it or nothing of that nature. We all growed up in that environment at that time, and you participated in that environment, one way or another.

I know that she lost her son and he's been charged with the murder of her son. And it's more to a story than just what it is. I'm not here to be a lawyer or try to represent him, I'm just here to state the facts of our upbringing.

THE COURT: What do you know about the murder?

MR. RANDOLPH: Sir?

THE COURT: What do you know about the murder?

MR. RANDOLPH: I don't know anything about the murder. I had made a transition from out of that environment. I'm 44 years old. He's a little younger than I am, but we growed up in the same neighborhood.

THE COURT: All right.

MR. RANDOLPH: And a lot of the activities dealing with drugs, shootings, murders that occurred out there, even when I was younger, I was out there,

you know, just as well as those guys were; however, I re-educated myself and got a college degree in business and started opening up businesses and things of that nature.

And I go back to my community and try to help those that was in the community to make transitions out of it. Like, I had spoke with his lawyer that, eventually, if he was to be spending some years or so, that I would have a job for him and things of that nature like that.

THE COURT: Did you know Mr. Gale?

MR. RANDOLPH: No, sir, I didn't know that individual. He wasn't in Hammond Village growing up in Hammond Village. We both really, like, growed up out there. But I heard stories about the situation. That's pretty much what I heard, stories and the drug activity and the selling of the drugs. You know, people talk, that's really what it really is and boils down to.

He was on drugs, he was selling drugs and whatever, and the conflict took place. You don't go to nobody house to get drugs at 6:00 in the morning for nothing if you already on drugs.

THE COURT: And if you do, hopefully you don't go back to kill them.

8:23:43 MR. RANDOLPH: No, sir. It's a sad situation.
8:23:50 And like I said, the loss of life is --
8:23:50 THE COURT: Which room of Mr. Gale's home was
8:23:54 he killed in?
8:23:56 MS. MARTIN: Sir?
8:23:58 THE COURT: Which room was he killed in?
8:24:00 MS. MARTIN: At the front door.
8:24:00 THE COURT: At the --
8:24:00 MS. MARTIN: Tara woke him up. And she went
8:24:00 back to the bedroom and woke him up, and he came --
8:24:10 because she said she looked out the window and she
8:24:10 went and said, Alonzo -- she said, whatever his name
8:24:13 is, I don't know, and Alonzo came downstairs and
8:24:16 said, didn't I tell you don't come back? And that's
8:24:20 when he shot him at the door right there at his
8:24:23 house.
8:24:26 But, Your Honor, we lived in the country. We
8:24:29 didn't live -- he met Tara. And I used to come home
8:24:30 from work and he said, Mom, I met this girl. And he
8:24:34 said, I want you to meet her because she's nice.
8:24:37 THE COURT: He was over her house?
8:24:40 MS. MARTIN: Yeah. He was over to her house
8:24:40 because we didn't live -- we didn't -- he -- we
8:24:44 didn't, you know, raise up in the projects.
8:24:48 THE COURT: All of this is the country. Which

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part of the country are you from?

THE WITNESS: Atlas Road.

THE COURT: Which road?

MS. MARTIN: Atlas Road.

THE COURT: Atlas Road?

MS. MARTIN: Yes, sir. Down by Sweet Home Baptist Church.

THE COURT: All right.

MS. MARTIN: So that's where we originated from and that's where we lived at. So he met a city girl up here.

THE COURT: Okay.

MS. MARTIN: Because Alonzo would get in the bed at 7:00. That's the way we worked. Seven o'clock, we're in the bed. And I'm still that way right now today.

THE COURT: All right. Go ahead, sir.

MR. RANDOLPH: Yes, sir. I'm just here -- I'd like to say on his behalf, I support him through this situation. He don't have any more family left, or if he do have family, we can't find them.

THE COURT: All right.

MR. RANDOLPH: I've known him since -- like I said, since we was kids. I stayed in the apartment that was behind his mother's apartment. I know his

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mother, his sister, and his brother.

THE COURT: Has he been writing you too?

MR. RANDOLPH: Sir?

THE COURT: Has he been writing you too?

MR. RANDOLPH: He calls me. He got in touch with me approximately about two or three years ago. So two or three years ago and --

THE COURT: How many times has he written you in two or three years?

MR. RANDOLPH: He hasn't written me, he's called me.

THE COURT: How many times has he called you?

MR. RANDOLPH: He's called me numerous times.

THE COURT: Like 40 or 50?

MR. RANDOLPH: I'll say somewhere between that time. My conversation is always kind of short and vague because of me doing so much work and stuff that I do. And --

THE COURT: And that's a collect phone call, I'd imagine.

MR. RANDOLPH: Yes, sir, it's a collect phone call. I put money on his account or send him money.

THE COURT: All right. I gotcha. Okay. Thank you, sir.

MR. RANDOLPH: Thank you.

8:26:39 1 THE COURT: Mr. Bailey.
8:26:40 2 MR. BAILEY: Thank you very much, Your Honor.
8:26:42 3 At trial it was strongly contested about where
8:26:47 4 Mr. Gale was shot and how he was shot, and there are
8:26:50 5 differing witness accounts. I'll certainly -- you
8:26:52 6 know, I can leave it to you how much you want to
8:26:55 7 explore that, Your Honor. But that was an issue
8:26:58 8 that was disputed at trial, sir.
8:27:06 9 I'd like Mr. Henderson to have a chance to
8:27:11 10 speak with you. I know he would like to speak with
8:27:11 11 you.
8:27:11 12 THE COURT: Yes, sir. I'll be happy to talk to
8:27:12 13 you, Mr. Henderson.
8:27:12 14 THE DEFENDANT: Sir?
8:27:14 15 THE COURT: I'll be happy to talk to you.
8:27:17 16 THE DEFENDANT: What you want me to say, Your
8:27:20 17 Honor?
8:27:22 18 THE COURT: What do you want to say here today?
8:27:29 19 THE DEFENDANT: I'm guilty, Your Honor. I'm
8:27:33 20 wrong for what I did. I apologize that somebody
8:27:39 21 died in this case. I feel remorse that her son had
8:27:44 22 passed away. And I can't bring him back, nobody can
8:27:49 23 bring him back.
8:27:51 24 THE COURT: How long did you know him?
8:27:53 25 THE DEFENDANT: Wasn't long, sir.

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8:27:53 1 THE COURT: You didn't know him?
8:27:56 2 THE DEFENDANT: I mean, I knew him as he stayed
8:27:58 3 in the neighborhood. But we wasn't, you know,
8:28:01 4 friends or nothing like that. I knew of him because
8:28:08 5 he stayed in the neighborhood. But I don't know if
8:28:09 6 you really want me to get into the facts of the
8:28:12 7 case --
8:28:13 8 THE COURT: I'm just trying to understand why
8:28:14 9 we're here today.
8:28:16 10 THE DEFENDANT: Well, I went to his house
8:28:18 11 because, like I said, the acquaintance, she was with
8:28:26 12 me, she wanted to purchase a bag of weed. So I went
8:28:29 13 with her to his house because it was late night.
8:28:30 14 But whenever we had went to the house, it was
8:28:32 15 earlier on. So when he came to the door, you know,
8:28:35 16 arguing about coming to his house, I realized I made
8:28:42 17 a mistake. So that was a mistake when I went to his
8:28:43 18 house, so I retreated.
8:28:44 19 And I was retreating, that's when he came out
8:28:48 20 the back door and started arguing and cussing at me
8:28:52 21 and saying don't come to his house like that, and I
8:28:56 22 understood. But the altercation came because I was
8:28:58 23 like, I understand, but you don't have to be talking
8:29:01 24 to me in that manner. You see what I'm saying?
8:29:03 25 And, Your Honor, you know, I was living that life

like that, so, you know, I felt like he disrespected me, because in this neighborhood, if you're selling drugs, it ain't no such thing as a curfew or it ain't no specific thing, because I didn't know nobody who works a job up at no 6:00 in the morning, even though I was wrong.

So he went back in the house, he came back out the house. So when we got to the corner of the building, that's when the altercation came because when I seen the gun, that's when I went on the attack, because I seen the gun. We struggled with the gun and he got shot. Now --

THE COURT: With whose gun?

THE DEFENDANT: With his gun, sir.

THE COURT: You shot him with his gun?

THE DEFENDANT: Yes, sir.

THE COURT: Did the police get the gun?

THE DEFENDANT: No, sir.

THE COURT: They didn't get his gun? What happened to his gun?

THE DEFENDANT: I don't know. I ran, Your Honor.

THE COURT: You took his gun?

THE DEFENDANT: I didn't take it. I ran.

THE COURT: Why wouldn't it -- why wouldn't it

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be there when the police got there? If he's shot with his gun, when you had the trial, the gun would be on the table in there for the jury to see and all that and tests run and all that stuff. The gun was gone?

THE DEFENDANT: Yes, sir.

THE COURT: What did you do with it?

THE DEFENDANT: It's gone.

THE COURT: So what did you do with it?

THE DEFENDANT: Threw it away.

THE COURT: Threw it away? So you're saying you went to his house, woke him up, you didn't know him, some girls did, and he said don't come to my house this early in the morning, and he disrespected you, then he went back and got a gun that you fought him over, and you killed him with his gun and ran away with his gun and threw it away? You didn't tell the jury that, did you?

THE DEFENDANT: (Shakes head.)

THE COURT: You told them a different story?

THE DEFENDANT: I told them I left the gun. I mean, I told them everything --

THE COURT: I'm trying to figure out which one is true; what you told them then, what you're telling me now, or something different.

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8:31:19 THE DEFENDANT: No. I'm telling you --
8:31:21 THE COURT: Do you really want to plead guilty?
8:31:25 THE DEFENDANT: I'm telling you the truth now, Your Honor, sir. I'm pleading guilty because the
8:31:27 incident happened a long time ago. And like my
8:31:31 lawyer say, you know, I --
8:31:34 THE COURT: How old were you then?
8:31:35 THE DEFENDANT: I was 24.
8:31:39 THE COURT: You were 24. All right.
8:31:39 THE DEFENDANT: Yes, sir. And since my
8:31:41 incarceration, you know, that time, it gave me
8:31:43 enough -- you know, a period to really learn my
8:31:49 mistake and to know what I been through, you know.
8:31:52 I matured since that time. So you know --
8:31:55 THE COURT: Well, the Judge gave you how much
8:31:58 time; 30 years?
8:32:01 THE DEFENDANT: Yes, sir.
8:32:04 THE COURT: What happened to the 30 years he
8:32:05 gave you? You didn't plan to do all 30 of them?
8:32:07 THE DEFENDANT: No, sir.
8:32:12 THE COURT: Well, what are you trying to do?
8:32:13 THE DEFENDANT: What I'm trying to do, sir?
8:32:16 THE COURT: Yes. Why are we here today? What
8:32:19 are you trying to do?
8:32:21 THE DEFENDANT: I'm trying to live, Your Honor.
8:32:23

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8:32:26 1 THE COURT: I understand that. I'm talking
8:32:27 2 about this case. What are you trying to do here
8:32:29 3 today?
8:32:30 4 THE DEFENDANT: Plead guilty, sir.
8:32:32 5 THE COURT: You had a sentence. The judge gave
8:32:34 6 you 30 years. Did you do the PCR by yourself?
8:32:44 7 THE DEFENDANT: Yes, sir.
8:32:44 8 THE COURT: Or did you have a lawyer?
8:32:44 9 THE DEFENDANT: Well, I had -- well, I had a
8:32:46 10 lawyer, an appointed lawyer. But I raised the issue
8:32:48 11 myself.
8:32:49 12 THE COURT: All right. And you got the right
8:32:55 13 to have a new trial.
8:32:55 14 THE DEFENDANT: Yes, sir.
8:32:57 15 THE COURT: And if you have the new trial, then
8:32:59 16 you could explain this he came after me with his gun
8:33:04 17 and we fought over his gun and I got his gun and
8:33:09 18 killed him with his gun. I guess that's what you're
8:33:10 19 telling me.
8:33:11 20 THE DEFENDANT: Yes, sir.
8:33:12 21 THE COURT: But that I'm pleading guilty.
8:33:14 22 MR. BAILEY: Your Honor, if I can just
8:33:17 23 interject here a little bit.
8:33:17 24 THE COURT: Yes, sir.
8:33:20 25 MR. BAILEY: Mr. Henderson is not without fault

bringing on difficulty here, and he acknowledges that.

THE COURT: He was just, like, with someone to buy some marijuana. You can get 30 days in jail or $100 fine for that.

MR. BAILEY: Well, Your Honor, he's not a professional public speaker kind of like the rest of us. But when I've talked to him a bunch of times and reviewed this, he understood what was wrong with this picture altogether. I don't want to interrupt him --

THE DEFENDANT: I mean, okay, Your Honor, I lost because -- well, I felt like, you know, the jury could have brought back a self-defense verdict. But, like, going to trial, my lawyer at that time, he was a seasoned criminal defense lawyer.

THE COURT: Who was that?

THE DEFENDANT: Charlie Johnson, sir.

THE COURT: Charlie Johnson.

THE DEFENDANT: Yes, sir. So, I mean, you know, he made some mistakes to the jury and he told the judge that I wasn't guilty of murder, that I may have been guilty of something less than that. He said that three times. And at the end of his closing argument, he said that, as I told my client,

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he made his bed, he has to lay in it.

Now, it wasn't trial tactic. I never discussed that with him saying -- telling the jury that, because I raised the defense. However, I'm afraid to go through that again because if I get found guilty again, then, you know, I may not get a second chance. And number two, I take responsibility because a man died. A man died, Your Honor. I mean --

THE COURT: You're taking responsibility, but then you're not taking responsibility.

THE DEFENDANT: Well -- well --

THE COURT: You blame him for getting himself killed.

THE DEFENDANT: Well, this --

THE COURT: He was at home in his bed asleep.

THE DEFENDANT: Yes, sir.

THE COURT: And you say that he's supposed to answer his door at any time that anybody showed up, including a stranger like you, and he didn't have the right to tell you not to come to his house at that time in the morning.

THE DEFENDANT: See, that's what I'm here for now; to say that he was right.

THE COURT: All right.

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THE DEFENDANT: He was right. I don't -- I don't want to stand before Your Honor telling you I'm innocent and plead guilty. I mean, I was -- I was --

THE COURT: See, I have a hard time sentencing, young man, innocent people to prison, so that's why if people tell me they're not guilty, then I'm like, hey, we got to have a trial. When I go to bed at night, it will be on my conscience that I've sentenced an innocent man. That's why I want it clearly defined and clearly laid out whether I'm dealing with someone who is guilty or innocent.

If a person is guilty, don't tell me about it -- I mean, if the person is innocent, don't tell me about it, tell the jury. You know, they're the ones who can decide -- you know, if you have a trial and if the jury believes it, you'll be home tomorrow and Mr. Frank up there -- what's his name?

MR. BAILEY: Mr. Randolph.

THE COURT: Mr. Randolph, you know, he'll -- you'll be working in his restaurant by the end of the week, if you're not guilty and we were to have a trial this week. So I can't sentence an innocent man.

So -- but if you're guilty, then I'm listening

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to the mother here, the grieving mother, who has lost her son, who she hasn't seen, you know, in the past -- goodness, August 3rd, 2002, and we're in 2016. And he left a baby how old?

MS. MARTIN: Nine months.

THE COURT: A nine-month-old baby who never -- he's never gotten the chance to see walk, and if he did, it was just a step or two. He probably wasn't walking yet.

MS. MARTIN: He wasn't.

THE COURT: So I need to know which way we're going with this. It can't be half over here and half over there. I mean, if you want to plead guilty, you have to convince me that you're guilty, not convince me that you're not guilty. I want to sentence guilty people, not innocent people. This is a straight-up plea. You know, I don't know what the story is, that's why we're talking.

THE DEFENDANT: I was just like -- when they were explaining the version of the facts, I was just explaining the version of the facts of what really happened, Your Honor, sir.

THE COURT: Well, even if he was a drug dealer -- I mean, half the people who sell drugs get robbed. You know, if someone is Hispanic, they get

robbed, they go to the police. There are drug dealers who will go to the police. Drug dealers think they have friends, but they have nothing but enemies who try to rob them, set them up, take the drugs, kill them, whatever, because they think that they won't go to the police. I mean, I don't know.

But I've done many murder cases where the victim was someone who was selling drugs. They have a right to live as well. You can't say I had a right to self-defense because the person I killed was selling drugs. That's not self-defense. Of course you put the he came out with his gun and I took his gun from him and killed him with his gun. That's your self-defense?

MR. BAILEY: Your Honor, I don't believe self-defense and manslaughter are necessarily mutually exclusive, especially not under the State v. Gillian case from 1988 that says that.

THE COURT: What does it say?

MR. BAILEY: It says self-defense and voluntary manslaughter are not mutually exclusive. It's dealing mainly with jury instructions. But --

THE COURT: It's an imperfect -- we used to say an imperfect self-defense can be manslaughter.

MR. BAILEY: Yes, sir. I would say this is

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imperfect self-defense. I don't think -- I think also --

THE COURT: We never understood what it meant, but that's what we used to say: Imperfect self-defense could equal manslaughter.

MR. BAILEY: And I wish everything and every circumstance and every type of scenario in the criminal justice system could be articulated perfectly. I don't think it can be. It certainly can't be perfectly articulated or always 100 percent accurately articulated by myself, Your Honor.

But I can tell you that I gave a lot of thought to whether this should be a -- you know, just a regular run-of-the-mill manslaughter plea or whether we should do it under North Carolina vs. Alford. And the more we talked about this, I felt like we -- and I spoke with Mr. Henderson. We talked about what Alford was. He was not interested in taking sort of -- you know, that's kind of the easier way out. That's just I really don't have to explain myself, I maintain innocence while I plead guilty and benefit from this plea.

Maybe that would make it, you know, happen faster. I don't know. But when I was speaking with Mr. Henderson, he said, you know, I really -- I

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want -- I'm guilty of something here. This man is dead. I'm guilty of something here. I'm not guilty of it in the way the State says I'm guilty of it under the facts as presented by the State but, you know, but I am and I want to plead guilty.

And we made the decision. We thought it would be more forthcoming and more straightforward to, you know, plead guilty under manslaughter, Your Honor, and not try to make an Alford plea.

THE COURT: Well, that's your decision as to plead guilty to manslaughter?

MR. BAILEY: Yeah.

THE COURT: Yeah.

MR. BAILEY: I'm saying he's trying his best to --

THE DEFENDANT: Your Honor, I -- I'm just hoping that I'm not giving you a bad impression, Your Honor. I mean, I understand what you're saying, so --

THE COURT: Yeah. All right.

THE DEFENDANT: I mean, what I was saying is that, like my lawyer say, he died, Your Honor, so if --

THE COURT: You're nice and respectful and all that. I'm not holding anything against you.

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THE DEFENDANT: I was just saying that I don't want you to think that I'm standing here trying to give you an excuse or, you know, trying to -- I don't want to do that. So if --

THE COURT: Well, it's not about you, it's about me. You know, if I sentence someone to prison, I want to feel comfortable that I'm sentencing someone to prison who is guilty of committing a crime that they are pleading guilty to, and not someone who is -- you know, who is claiming that they're not guilty. That's why I asked you early on if you've had enough time to think about what you want to do. We started out there.

But then you wrote me a letter from the jail about -- how many months ago was that -- saying you got convicted of murder, that you got the conviction overturned on PCR, that you have been trying to get in touch with -- I forgot the details of it. What did it say?

MS. CAMPBELL: It said basically that he needed to come before the Court -- he wanted to come before you. And I believe he was moving at the time for -- it wasn't a bond.

THE DEFENDANT: Fast and speedy trial.

MS. CAMPBELL: Fast and speedy trial. And then

you appointed --

THE COURT: And I said, all right, you can get a fast and speedy trial, and then I appointed you a lawyer. This is the second time I've seen you, and you're here to plead guilty.

THE DEFENDANT: Yes, sir.

MR. BAILEY: Well, Your Honor, in speaking with Mr. Lucas Hawks, the first thing he said to a lawyer from our office when he saw him, he was like, listen, man, I just wanted to get -- I just want to plead guilty and I filed this motion to get here. That's what it said.

We didn't get a memo from appellate court saying, hey, we got a guy we just kicked back who is sitting in the county jail. We didn't know he was down there. And the first thing he said to my colleague who sits right across the hall from me who talked to me right after it was, man, I just want to plead guilty, I just want to get out of here. So I -- yeah.

THE COURT: We get it all the time. When someone files a PCR and then sometimes they win the PCR and realize they're back to where they started facing the original charge. So rather than going home from a PCR, they may be facing a trial on

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everything they're charged with originally and facing life imprisonment, as he would be if he had another trial and got convicted.

So, I mean, I understand that he said he didn't want to go through that process again, but I accept the fact that there is evidence -- a factual basis for him to plead guilty. I'm just dealing with the whole thing that you can't be guilty and not guilty at the same time, not on such a serious charge.

You killed someone. This is not whether or not you stole the car or just a joyrider; this is whether you're guilty of willfully killing a man versus the man trying to kill you and you took his gun and killed him with it and ran off with it.

THE DEFENDANT: Your Honor.

THE COURT: Yes, sir.

THE DEFENDANT: I -- I -- I just wish he never would have died. I never had no malice. I never went to his house with the intent to kill and all that. I had no malice. And the incident, it all occurred because of the altercation. I wish it never would have happened, Your Honor. I wish it never would have happened.

THE COURT: I'm sure. We spent about two hours this morning with a man who shot his girlfriend in

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her stomach because he couldn't reach her on the cell phone. She was out with her daughter shopping. I don't know where he thought she was. Her cell phone died, and when he came -- when she came home, he's mad with her and shoots her in the stomach, puts her in the intensive care, practically kills her, but she survived. And he was telling me how sorry he was he shot her. That's the thing about these guns and bullets: Being sorry doesn't matter.

What else you got for me, Mister? Understanding everything we've talked about, you want to plead guilty or not?

THE DEFENDANT: Plead guilty, sir.

THE COURT: All right. What else you got, Mr. Bailey?

MR. BAILEY: Thank you very much, Your Honor. As I'm sure you know, the statute under manslaughter is unlawful killing of another without malice, which is funny because I certainly didn't review these comments with Mr. Henderson ahead of time. But he said what was on my mind, and that is this wasn't a killing -- that he didn't set out for a killing with malice.

You know, manslaughter carries two to 30 years. You know, murder seems pretty clear. A lot of times

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people plead to manslaughter because it's a plea situation, because people are trying -- you know, there's negotiations with the State and the defendant.

But I believe, Your Honor, that the reason that there is space in that law is because that is -- there is that in-between, there is that, well, this is an unlawful killing, this was bad, this person obviously did something terrible, but it doesn't rise to manslaughter. Your Honor, you know, as --

THE COURT: Like the husband who catches his wife in bed with another man or vice versa.

MR. BAILEY: Yes. Yes, sir.

THE COURT: Heat of passion.

MR. BAILEY: Heat of passion, right.

THE COURT: The content takes away the malice, legally takes it away.

MR. BAILEY: Well, in this case, Your Honor, if I were to describe it, and I'm not trying to -- I'm not trying to -- you know, my opinion and a dollar will get you a copy of The State newspaper.

But if I'm trying to describe a situation, it's that, you know, Mr. Henderson, in a bad state of mind and in a -- was -- was going to this man's house, he wanted to get drugs. He was very -- he

was, you know, aggressive about wanting to get drugs. This man was understandably upset, you know, Mr. Gale, you know, was mad at him, they got into an altercation, it escalated very quickly. Mr. Gale got shot and nobody -- I don't think that he's trying to say that it was this guy's fault he got shot. I think it just gives -- I think it gives explanation as to how this happened, how this escalated.

And then kind of centered on self defenses, you know, did you create, you know, the difficulty? I think here Mr. Henderson definitely can -- you know, created the difficulty in a few ways, but I don't think he set out there to just kill him. And I think he acted -- I mean, I think we all agree that he didn't do things -- he did the wrong things.

THE COURT: There was no premeditation. He didn't go there to kill him, he went to buy drugs.

MR. BAILEY: Right, Your Honor. And, you know, there shouldn't have been a fight that was engaged in or anything like that.

THE COURT: So why did you want drugs so bad that time in the morning, 6:00 in the morning? I've never seen somebody with such a bad craving for drugs that they got to get them at 6:00 AM, unless

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they've been up all night long.

MS. MARTIN: Amen.

THE DEFENDANT: Yes, sir, you're right.

THE COURT: Right about what?

THE DEFENDANT: I shouldn't have been out there that time of the morning.

THE COURT: Had you been to bed the night before?

THE DEFENDANT: Yes, sir. You said have I been to bed?

THE COURT: Had you been to bed the night before on August 3rd, 2002?

THE DEFENDANT: I was out. That night, I was out.

THE COURT: You hadn't been to bed yet then?

THE DEFENDANT: No, sir.

THE COURT: All right. Final words, Madam Solicitor.

MS. CAMPBELL: Your Honor, I would just respectfully -- the eyewitness testimony and the blood stains, specifically at the doorway, dispute his version of events.

THE COURT: All right. Not the final words then. Mr. Bailey?

MR. BAILEY: I'm sorry. I can wait until my

final words.

THE COURT: She's going to get the final words -- well, you can get the final words.

Go ahead.

MS. CAMPBELL: Your Honor, respectfully, we'd just -- there was no evidence that this victim was a drug dealer, like he's gone on about. There is evidence that he did go there in the early morning hours to rob him because he thought he had money. And, respectfully, Your Honor, we'd just ask that he be sentenced accordingly.

MR. BAILEY: Your Honor, I would say that if we were to review it in a detailed way, I would say that maybe the blood spatter evidence could be interpreted differently. But we're not here to try the case. I did try a blood spatter evidence case with Ms. Campbell -- well, I guess a couple this past year that involved it, and I don't think it's always, you know, open and shut.

But, Your Honor, I -- you know, what I'm asking for is what my understanding of what the original offer was, which was 15 years. That's what I'm asking for, Your Honor.

THE COURT: You mean, before he had the trial in 2002?

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MR. BAILEY: Yes, Your Honor. That's --

THE COURT: Were you the prosecutor in 2002?

MS. CAMPBELL: (Nods head.)

MR. BAILEY: I guess it's a lot easier to like it better after he lost. But that's what I would ask for, Your Honor. I don't know Mr. Henderson is -- I don't think he's a cold-blooded killer type. I've talked to plenty of guys charged with murder, I've tried those cases. I don't think he's a cold-blooded killer. I'm not saying he's -- I --

THE COURT: The one thing I have yet to be able to get a killer to do is give me an accurate recitation of the killing. It's always some vague description of events. I don't know if they can't -- their mind just won't allow them to go back there and recount accurately or sufficiently an explanation for me to understand exactly what they are explaining. And he has done the same thing here, some we were fighting and some altercation and -- you know. But for him to explain it, I haven't been able to get one to do it yet.

MR. BAILEY: You know, I mean, I think that's it, Your Honor. But I would ask Your Honor for something less than what the sentence was when he was sentenced for a murder charge, Your Honor.

8:52:44 1 THE COURT: He's doing -- and do credit for how
8:52:46 2 much time?
8:52:48 3 MR. BAILEY: Okay. Your Honor, I can give you
8:52:49 4 those numbers. He's been incarcerated since August
8:52:54 5 4th of 2002. That is, by my math, as of today,
8:52:56 6 5,069 days. And just to translate it, 5,069 days is
8:53:01 7 13 years, 10 months, 16 days of actual time served.
8:53:13 8 THE COURT: All right. How much?
8:53:15 9 MR. BAILEY: I'm sorry. Thirteen years, ten
8:53:17 10 months and 16 days.
8:53:17 11 THE COURT: Thirteen years, ten months, 16
8:53:35 12 days.
8:53:35 13 MR. BAILEY: Yes, Your Honor. And, Your Honor,
8:53:36 14 I'd ask you to consider 15. I'd ask for 15. He
8:53:38 15 would have maxed out 15 years, just to be clear.
8:53:40 16 But...
8:53:41 17 THE COURT: All right. Any final words,
8:53:47 18 Mr. Henderson?
8:53:49 19 THE DEFENDANT: Your Honor, sir --
8:53:51 20 THE COURT: Yes, sir.
8:53:53 21 THE DEFENDANT: -- I just ask that you have
8:54:00 22 mercy on my soul and forgive me of my sins and grant
8:54:09 23 me a second chance, please.
8:54:10 24 THE COURT: I'm not Jesus Christ, now. Have
8:54:13 25 mercy on your soul, forgive you of your sins, and

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what else?

THE DEFENDANT: Grant me a second chance, Your Honor.

THE COURT: And grant you a second chance. All right. Thank you.

You know, I asked -- as this whole case came in here, I asked were there victims present. Many times we don't see anybody. Sometimes we don't see anyone else here. But -- so if I was just here listening to you and hearing the case from your perspective, I could be swayed to follow it from your perspective.

But then I hear the mother of Mr. Gale speak of her son. Even though you've done quite a bit of time for this crime, the pain is still raw with her. I'm sure every day she wakes up, she -- she feels the pain of a crime that you committed. Every time she sees her grandson, she sees and experiences the pain.

So it's not about what I can do for you. I mean, my responsibility also is to seek justice for the victim. Despite your having these disciplinary problems in the institution and at Alvis S. Glenn, you seem to be kind of an okay guy. I imagine there are a lot of okay guys in the department of

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corrections.

But the fact of the matter is, you have killed this man unlawfully, and you got convicted of murder, got 30 years, and now you come back and want to plead guilty to voluntary manslaughter, which also calls for a maximum sentence of 30 years. And the mother can't figure out what we're doing here, why is it that 14 years later she's back in here on this same case where she's sat through the trial and you've had a jury and the jury found you guilty of murder.

So the Court of Appeals says the judge shouldn't have allowed them to know -- the jury to know about the time you were convicted of accessory after the fact of murder. Who knows what that's about it.

But, of course, when it comes to your criminal history, it seems like you started getting in trouble when you were a juvenile and it led right up to your being sent to prison. And it looks like you were out of jail, max, a couple years before this -- when did you get out of jail before this killing?

THE DEFENDANT: 2001, sir.

THE COURT: Got out of prison in 2001. And here a year later, you're back in there for murder.

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So, you know, someone had to have that mercy for you the time before, otherwise you might have been in jail on that accessory after murder or something and you wouldn't have been able to be into drugs, strung out, rambling around 6:00 in the morning searching for drugs.

So, you know, you just -- you've had an unfortunate life experience, a lot of which you brought on yourself, including this situation. So all of these things you're asking me to have for you, I have the third thing. I can't give you a second chance. I mean, this is -- I have empathy for you. This is a bad situation. But I have to look out for the interests of the victim as well, is my biggest concern right here.

So I'm going to sentence you to 25 years in the department of corrections, and you get credit for the time you have served.

MS. CAMPBELL: Thank you, Your Honor.

MR. BAILEY: Thank you, Your Honor.

THE COURT: Good luck to you. Twenty-five-year sentence.

-- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Richland County, South Carolina, on the 20th of June, 2016.

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

September 18th, 2016

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

FORM 5

2016CP4004364

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
County of Richland)

Arjee Henderson 237687
Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY FILED
2016 JUL 21 AM 10: 29

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Reception and Evaluation Center Unit F3/215A, 4344 Broad River Rd., Columbia, S.C. 29210

2. Name and location of Court which imposed sentence Richland County Judicial Center, 1701 Main Street, Columbia, S.C. 29201

3. Name(s) of co-defendant(s) (if any) _____

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

   (a) 2002-GS-40-7277

   (b) _____

(c) _____

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

(a) _____

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

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) Plea counsel did not object at hearing

(b) Issues can only be attacked collaterally.

(c) _____

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

(a) Ineffective assistance of counsel

(b) Solicitor's office breached the plea agreement

(c) _____

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

(a) Plea counsel coerced me to plead guilty against my will and consent.

(b) Plea counsel failed to investigate the facts of my case

(c) Plea counsel failed to conduct any pretrial investigation

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

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

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes

(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. Direct Appeal

ii. Post-Conviction Relief

iii. _____

iv. _____

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

i. S.C. Court of Appeals

ii. Richland County Judicial Center, 1701 Main St., Cola, S.C. 29201

iii. _____

iv. _____

(c) the disposition thereof:

i. Appeal dismissed

ii. Reversed, remanded and granted a new trial.

iii. _____

iv. _____

(d) the date of each such disposition:

i. February 12, 2008

ii. July 12, 2010

iii. _____

iv. _____

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

i. Unpublished Op. No. 2008-UP-107

ii. 2008-CP-400-11696

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. _____

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) Ineffective assistance of counsel. - Can only be attacked collaterally

(b) Solicitor breached plea agreement. - Can only be attacked collaterally

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? N/A

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

_____

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

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

i. John Rhodes Bailey, Esquire,
1701 Main Street, Columbia, S.C. 29201

ii. _____

iii. _____

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

i. Plea hearing

ii. _____

iii. _____

Revised 3/2003

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

That conviction and sentence be reversed, remanded and vacated.

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

No

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Richland)

I, Aryee Henderson, 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.

Aryee Henderson

SWORN to and subscribed before me this 13 day of July, 2016.

Melissa D. Dring (L.S.)
Notary Public

My Commission Expires: Dec. 1, 2025

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

I, Aryee Henderson, 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.

Aryee Henderson
Applicant

SWORN or affirmed to and subscribed before me this 13 day of July, 2016.

Melissa D. Spring
Notary Public

My Commission Expires: Dec. 1, 2025

RICHLAND CO...
FILED
2016 JUL 21 AM 10:29
JEANETTE ... C.C.P. & G.S.

11. (a) Plea Counsel coerced me to plead guilty against my will and voluntary consent. On 12-29-15, I filed a pro se Motion for Fast and Speedy Trial. On 1-7-16, I appeared before the Honorable Clifton Newman, Chief Administrative Judge. At that hearing, he asked me what did I want. I told him that I wanted to get this case disposed of. I then asked him if I could plead guilty, and he asked me if I wanted a lawyer. I told him, "Yeah." He then arranged for me to be appointed representation from the public Defender's Office and instructed the Solicitor's office to have me before the Court on 1-19-16. However, on 1-20-16, John Rhodes Bailey came to visit me at the Alvin S. Glenn Detention Center and he informed me that he met with my solicitor, Kathryn Luck Campbell on 1-19-16, and he rejected her plea offer, which was: Open Plea - Voluntary Manslaughter - No Recommendation, and that's why I wasn't brought before the Court to plea. We then discussed about going to Court within 2 months in front of a judge more favorable to him. I agreed. Moreover, I advised him that I had 2 laundry mesh bags with my first trial transcripts, PCR transcripts, my Motion for Discovery, legal law cases and documents that were pertinent in order for me to prepare for trial in case I derided to go. I asked him to sign them out of my property because Alvin S. Glenn Detention Center Staff would not let me get it, and for him to review it, "copy it if necessary, and to send them all back to me through the mail. He said that he would. On the same day, at approx. 4:30 p.m., he signed and collected all of my transcripts, Motion for Discovery, legal documents and law cases from out of my personal property. After 2 months of not hearing from my

Attorney I filed several pro se pretrial motions with the Court in response to his rejection of the solicitor's plea offer. The motions were: 1) Motion to Quash; 2) Writ of Mandamus; and 3) Motion to Suppress. On 3-9-16, he had me brought to the courthouse to discuss trial tactics in reference to the pretrial motions I submitted to the Court. He advised me to plead guilty because he felt that the grounds I raised within my motions were ~~meritless~~ meritless and I was gonna lose if I elected to proceed with trial. He also told me that even if any of the State's witnesses didn't show-up for trial that testified in the first trial, my solicitor was gonna have their previous statements or testimony admitted in this trial. In other words, I was in a no-win, lose-lose situation.

D) Plea counsel failed to investigate facts regarding my case. At the time of my arrest, the police did not have probable cause to charge me with murder. I did not have a gun, no one saw me with a gun, nor did anyone see me shoot the victim. I did not do anything to bring about the altercation. If anything, I retreated to avoid the altercation.

Plea counsel failed to object that the affidavit underlying the arrest warrant was insufficient to support a finding of probable cause. The affidavit failed to set forth any facts as to why the police believed I committed the alleged crime. Furthermore, it failed to include any facts or underlying reasons concerning the informant's veracity. There was nothing on the face of the affidavit from which the magistrate could have assessed the veracity and basis of knowledge of the informant. Had plea counsel objected and filed a motion to suppress on these grounds, all evidence seized by the Columbia City Police Department and all statements and testimony intended to be used by the State at trial would have been suppressed and excluded.

Plea Counsel failed to object that State unlawfully impaneled its grand jury outside the jurisdiction of the Court of General Sessions. S.C. Code Ann. § 14-9-210 is jurisdictional in nature and requires that all criminal indictments must be issued through a grand jury impaneled before the Court of General Sessions. My bill of indictment prints that it was returned, "At a Court of General Sessions convened on November 13, 2002, the Grand Jurors of Richland County present upon their oath:" The indictment is signed by the Solicitor, Warren B. Giese, and sealed with a True Bill stamp. Furthermore the title page of State's indictment prints that it was published at a Court of General Sessions term as convened on November 2002. However, the terms of the Court of General Sessions for Richland County are fixed by S.C. Code Ann. § 14-5-670, which DOES NOT offer provisions for a Court to be open on November 13, 2002. The terms of Richland County General Sessions Court shall be held at Columbia on: 1) the 2nd Monday in January for 2 weeks; 2) the 2nd Monday in April for 2 weeks; 3) the 3rd Monday in June for 2 weeks; 4) the Tuesday following the first Monday in September for 3 weeks; and 5) the 2nd Monday in December for 2 weeks.

1) Plea counsel failed to conduct any pretrial investigation pertaining to my case. On 12-29-15. I filed a Motion for Fast and Speedy Trial because the eyewitness to the incident — who is also an acquatance of mine - has not been in constant contact with me in the last 18 months and I wanted a speedy trial before I lose permanent contact with her. My attorney failed to contact her or locate her whereabouts. This eyewitness corroborated my account of the shooting. At my first trial, the crime scene investigator testified that he saw no evidence inconsistent with self-defense. The PCR Court granted me a new trial because there was no overwhelming evidence of guilt. My attorney failed to hire any expert witnesses to reexamine the State's case and/or interview any of the State's witnesses to determine the substance and content of their testimony to be used at trial.

(d) Plea counsel failed to object that the Solicitor's Office breached the plea agreement.

On 1-20-16, my attorney informed me that I did not go to court to plea on 1-19-16, as per the Chief Administrative Judge's order was because he rejected the Solicitor's plea offer at that time, which was: Open Plea - Voluntary Manslaughter - No Recommendation. On 5-6-16, he wrote me a letter stating that the plea was back on the table. At the plea hearing, the solicitor told the victim's family to recommend the max, which was 30 years. The judge stated to me that he was gonna sentence me based on the recommendation of the victim. I was sentenced to 25 years. My counsel never informed me that my victim's family was gonna testify in court, nor did he inform me that my sentencing judge, the Honorable Clifton Newman, was gonna sentence me harshly because of victim impact statements. I was under the impression that there was gonna be NO recommendation at my plea hearing.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Ayree Henderson, #237887,	)	Case No.: 2016-CP-40-4364
Applicant,	)	
	)	**RETURN**
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

RICHLAND COUNTY FILED
2017 JUL 13 PM 12: 12
JEANETTE W. McBRIDE C.C.P. & G.S.

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on July 21, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In November 2002, the Richland County Grand Jury indicted Applicant for murder (2002-GS-40-7277). Charles E. Johnson, Esquire represented Applicant. Assistant Solicitors Kathryn Luck Campbell, Esquire and Bryan S. Jeffries, Esquire prosecuted the case. On September 21, 2004, Applicant proceeded to trial before the Honorable Alison Renee Lee. The jury found Applicant guilty as indicted. Judge Lee sentenced Applicant to imprisonment for thirty years.

Applicant filed a timely notice of appeal. Joseph L. Savitz, III, Esquire, of the Office of Appellate Defense perfected the appeal with the filling of an Anders1 brief on August 31, 2006. Applicant filed his own ground for appellate review on or about October 12, 2006. The South Carolina Court of Appeals dismissed Applicant's appeal on February 12, 2008. State v. Henderson, Op. No. 2008-UP-107 (S.C. Ct. App. filed February 12, 2008). The remittitur was returned to the

circuit court on February 28, 2008.

Applicant filed an application for post-conviction relief on March 4, 2008. The State filed its return on January 30, 2009. An evidentiary hearing was convened on August 12, 2009 at the Richland County Courthouse before the Honorable G. Thomas Cooper, Jr. Applicant was represented by Charles T. Brooks, III, Esquire. The State was represented by Assistant Attorney General Brian Petrano. On July 5, 2010, Judge Cooper signed an order granting post-conviction relief, which was filed July 14, 2010.

The State filed a petition for writ of certiorari on September 30, 2010. Applicant filed a return to petition for writ of certiorari on February 22, 2011. Applicant was represented by Tristan Shaffer, Esquire. On March 19, 2014, the South Carolina Court of Appeals affirmed the PCR court's grant of PCR. State v. Henderson, Op. No. 2014-UP-122 (S.C. Ct. App. filed March 19, 2014).

The State filed a petition for rehearing on April 2, 2014 to the South Carolina Court of Appeals. The petition was denied on April 24, 2014. The State subsequently filed an appeal to the South Carolina Supreme Court on December 17, 2014. On October 28, 2015, the Supreme Court dismissed the appeal as improvidently granted. State v. Henderson, Op. No. 2015-MO-063 (filed October 28, 2015).

After being granted post-conviction relief, Applicant proceeded to plead guilty to the lesser-included offense of voluntary manslaughter on June 20, 2016 before the Honorable Clifton Newman. Applicant was represented by Assistant Public Defender Rhodes Bailey, Esquire. Assistant Solicitor Kathryn Luck Campbell, Esquire prosecuted the case. Judge Newman sentenced Applicant to twenty-five years.

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

Applicant filed a notice of appeal of his guilty plea on November 28, 2016. The South Carolina Court of Appeals dismissed Applicant's appeal on January 6, 2017. State v. Henderson, Appellate Case No.2016-002406 (S.C. Ct. App. filed January 6, 2017). On January 16, 2017, Applicant filed a subsequent notice of appeal to the South Carolina Court of Appeals. On February 16, 2017, the Court of Appeals dismissed Applicant's appeal, construing it to be a petition to rehear the dismissal of the appeal. State v. Henderson, Op. No. 2017-UP-088 (S.C. Ct. App. filed February 15, 2017). The Remittitur was returned on March 28, 2017.

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

II.

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

1. "Ineffective Assistance of Counsel"
    a. Coercion by plea counsel into pleading guilty;
    b. Failure to investigate;
    c. Failure to object to breach of plea agreement by Solicitor's Office;
    d. Failure to object to the affidavit underlying the arrest warrant as insufficient to support a finding of probable cause;
    e. Failure to object that the State unlawfully impanelled its grand jury outside the jurisdiction of the Court of General Sessions.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application.

Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test.

However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary

waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

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.

VI.

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

Signature follows.

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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

July 12, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	**2016-CP-40-04364**
	)	
AYREE HENDERSON, #237887,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 12th day of July, 2017.

Felicia V. Hayes, Legal Assistant
For Respondent

RICHLAND COUNTY
FILED
2017 JUL 13 PM 12:12
JEANETTE W. McBRIDE
C.C.P. & G.S.

State of South Carolina 80	)	In The Court of Common Pleas
County of Richland	)	Fifth Judicial Circuit
Aryee Henderson, 237887	)	
Applicant,	)	Case No. 2016-CP-400-4364
v.	)	
State of South Carolina,	)	Applicant's Amendment To
Respondent	)	Original PCR Application

RICHLAND COUNTY FILED
2017 AUG 22 AM 10:
JEANETTE W. WALDO
C.C.P. & G.S.

Applicant hereby puts this Honorable Court on Notice that the following allegations have been amended to his original PCR Application:

Issue 1 - Plea Counsel was ineffective for failing to advise Applicant of the right to proceed 'Pro Se' and for failing to hold a hearing on Motion to Relieve Counsel.

Facts - On 4-20-16, I filed a pro se Motion to Relieve Counsel because on 3-9-16, my appointed attorney, John Rhodes Bailey, had me brought to the courthouse to discuss trial tactics in reference to several pretrial pro se motions that I filed with the Court. He advised me to plead guilty because he felt that the grounds I raised within my motions were meritless and he Baid I was gonna lose if I elected to proceed with trial. He never gave the reasons why I was gonna lose

trial, nor did he discuss what evidence the State had in its possession to substantiate his unfounded allegation. He further advised me that he would have me in court to plead guilty within a couple of weeks. I never appeared in court. Moreover, he promised that he would send me all of my trial transcripts, legal documents, and cases that he had in his possession. See Exhibit A. Because he failed to have me in court as promised, and/or send me my legal ~~accessories~~ documents, trial transcripts, and cases, I filed a Motion to Renew Motion to Relieve Counsel on 5-23-16 respectfully requesting to proceed "Pro Se" pursuant to Faretta v. California, 95 S.Ct. 2525 (1975) during any and all future court proceedings involving Applicant. See Exhibit B. Trial counsel never discussed with me that I had an option to proceed pro se during trial, nor did he advise the judge to hold a hearing on this motion.

Respectfully,

s/ Aryeh Henderson

Bishopville, South Carolina

August 13, 2017

State of South Carolina)
) In The Court of Common Pleas
County of Richland)
) Fifth Judicial Circuit
)
Aryee Henderson, 237887)
Applicant,) Case No. 2016-CP-400-4364
V.)
)
State of South Carolina,) Proof of Service
)
Respondent)

RICHLAND COUNTY FILED
2017 AUG 22 AM 10:04
JEANETTE W. McBRIDE C.C.P. & G.S. CLERK

I certify that I have served this Applicant's Amendment to Original PCR Application on the Honorable Jeanette W. McBride, Clerk of Court, by depositing a copy of it in the U.S. Mail, postage prepaid, on August 13, 2017, addressed to her office at, Post Office Box 2766, Columbia, South Carolina 29202-2766.

s/ Aryee Henderson

Aryee Henderson 237887
Lee C.I. / F-4A-210S
990 Wisacky Highway
Bishopville, S.C. 29010

Exhibit A

n 59105
:- #50
Dial Dr.
9209

April 20, 2016

Honorable Jeanette W. McBride
Clerk of Court
P.O. Box 2766
Columbia, S.C. 29202-2766

FILED
2016 APR 25 PM 1:08
CLARE[illegible]
C.C.P. & G.S.

Re: Motion to Relieve Counsel

Dear Ms. McBride,

Enclosed for filing is an original copy of a Motion to Relieve Counsel.

Respectfully,

s/ Arsyee Henderson

CC: Chief Administrative Judge
Honorable Dan Johnson (Solicitor)

State of South Carolina)
County of Richland)

In The Court of General Sessions
Fifth Judicial Circuit

State of South Carolina,)
Respondent,)
v.)
Aryee Henderson,)
Defendant.)

Case No.: 2002-GS-40-7277
Charge: Murder

Motion to Relieve Counsel

RICHLAND CO. C.C.P. & G.S. JEANETTE W. WALKER
2016 APR 25 PM 1:08
FILED

NOW COMES THE DEFENDANT, Aryee Henderson, who will move before this Court on April 25, 2016 at 9:30 a.m. or as soon as this matter may be heard for an Order to Relieve Counsel from the Public Defender's Office on the above-named Defendant. The Defendant feels that his appointed attorney is not representing him sufficiently. On 1-7-16, this Court verbally ordered the solicitor's office to bring me before the Court to plea on 1-19-16. However, the solicitor's office, nor my appointed attorney scheduled me to appear before the Court to plea. On 3-9-16, my appointed attorney had me brought to the courthouse to discuss trial tactics in reference to several pro se motions I filed with the Court. He advised me to plead guilty because he felt that the grounds I raised within my motions were meritless and I was gonna lose if I elected to proceed with trial. He further advised me that he would have me in court to plead guilty within a couple of weeks. I have yet to appear in court. Moreover, he promised that he would send me all of my transcripts, legal documents, and cases that he

has in his possession. I have yet to receive these items.

The above information is true and accurate to the best of my knowledge.

This Motion is made in good faith.

Conclusion

Wherefore, Defendant prays that this Court issue an Order to Relieve him of his Appointed Counsel from the Public Defender's Office and that he return all of the Defendant's transcripts, legal documents, and law cases.

Respectfully,

s/ Aryee D Henderson

Columbia, South Carolina

Dated: April 20, 2016

FILED
2016 APR 25 PM 1:08
CLERK OF COURT
C.C.P. & G.S.
RICHLAND COUNTY

Exhibit B

86

SON 59105

116

Dial Dr.

29209

May 23, 2016

Honorable Jeanette W. McBride

Clerk of Court

P.O. Box 2766

Columbia, S.C. 29202-2766

RICHLAND COUNTY
FILED
2016 MAY 26 PM 4:27
JEANETTE W. McBRIDE
C.C.P. & G.S.

Re: Motion to Relieve Counsel

Dear Ms. McBride,

Enclosed for filing is an original copy of a Motion to Renew Motion to Relieve Counsel, along with a:

1) Motion for Bond;

2) Proof of Service

Respectfully,

S/ Angela Henderson

cc: Chief Administrative Judge (5th Circuit)

Honorable Dan Johnson (Solicitor)

State of South Carolina)
County of Richland)

In The Court of General Sessions
Fifth Judicial Circuit

State of South Carolina,
Respondent,
v.
Aryee Henderson,
Defendant.

Case No.: 2002-GS-40-7277

Motion to Renew Motion to Relieve Counsel

RICHLAND COUNTY
FILED
2016 MAY 26 PM 4:27
CLANETTE W. KIRKLAND
C.C.P. & G.S.

TO: CHIEF ADMINISTRATIVE JUDGE

YOU WILL PLEASE TAKE NOTICE that Defendant Aryee Henderson, proceeding pro se, will respectfully move before this Court on June 16, 2016 at 9:30 a.m. or as soon thereafter as this matter may be heard for an Order to Relieve Counsel on the above-named Defendant.

An initial Motion to Relieve Counsel was filed on or about April 20, 2016 and has yet to be heard. The Defendant requests that he be relieved from further representation from the Public Defender's Office. The Defendant does not feel that his appointed attorney, J. Rhodes Bailey, is representing him sufficiently. Moreover, pursuant to Faretta v. California, 95 S.Ct. 2525 (1975), the Defendant respectfully requests the right to go "Pro Se" during any and all future court proceedings involving Defendant.

The above information is true and accurate to the best of my knowledge. This Motion is made in good faith.

Respectfully Submitted,
S/ Aryee Henderson

Columbia, South Carolina
Dated: May 23, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Aryee Henderson, #237887,	)	**AMENDMENT TO APPLICATION FOR**
	)	**POST CONVICTION RELIEF**
Applicant,	)	
	)	
Vs.	)	Case No. 2016-CP-40-4364
	)	
State of South Carolina	)	
	)	
Respondent.	)	

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed on July 21, 2016, by adding the claims of ineffective assistance of to question 10 and by adding the following specifics to his original allegations:

1. As to representation rendered by Rhodes Bailey, Esquire:
    a. Counsel was ineffective for failing to ensure timely scheduling of Applicant's pro se motion to relieve counsel and represent himself at his trial.
    b. Counsel was ineffective for failing to object to the presentation of his SCDC disciplinary record to the court during sentencing.
    c. Counsel failed to advise Applicant that the victims would be able to speak at his sentencing.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

Jonathan D. Waller
Waller Law Group
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

January 18, 2018

Columbia, South Carolina

State of South Carolina) In the Court of Common Pleas
) Fifth Judicial Circuit
County of Richland) 2016-CP-40-4364

Aryee Henderson)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Defendant.)
)
)

January 24, 2018

Columbia, South Carolina

B e f o r e:

The Honorable Jocelyn Newman, Judge

A p p e a r a n c e s:

Jonathan Waller, Esquire
Attorney for the Plaintiff

Jessica Kinard, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

WITNESS/DESCRIPTION					PAGE NO.
Case Called/Ms. Kinard					4
	DIRECT	CROSS	REDIRECT	RE-CROSS	
ARYEE HENDERSON					
Mr. Waller	7		53/93		
Ms. Kinard		35			
RHODES BAILEY, ESQ.					
Mr. Waller	55		93		
Ms. Kinard		84			
Decision by the Court					105
Certificate Page					107

E X H I B I T S

NO.	DESCRIPTION	I.D.	EV.
C-1	4/22/2016 Motion	43	
C-2	6/7/2016 Motion	43	

(On the record at 9:50 a.m.)

MS. KINARD: Your Honor, there should be an amendment in your packet. Is it?

THE COURT: I'm sorry. An amendment? Yes.

MS. KINARD: You have it? Okay. Great.

May it please the Court?

THE COURT: Yes, ma'am.

MS. KINARD: This is the matter of *Aryee Henderson vs. the State of South Carolina*, case No. 2016-CP-40-4364. This is before the Court on an application for post conviction relief filed July 21, 2016.

Mr. Henderson is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In November of 2002, the Richland County Grand Jury indicted him for murder. He was represented by Charles Johnson at trial and that trial was prosecuted by Assistant Solicitors Kathryn Luck Campbell and Bryan Jeffries.

On September 21, 2004, Mr. Henderson began trial before the Honorable Alison Renee Lee. The jury found him guilty as indicted and Judge Lee sentenced him to imprisonment for 30 years. Mr. Henderson filed a timely notice of appeal. Joseph L. Savitz III, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of an *Anders* brief on August 31, 2006.

Mr. Henderson filed his own grounds for appellate review on or about October 12, 2006, and his case was dismissed on February 12, 2008, in an unpublished opinion. Remittitur was returned to the Circuit Court on February 28, 2008.

He filed his first application for post conviction relief on March 4, 2008. The State filed its return on January 30, 2009. An evidentiary hearing was convened on August 12, 2009, at the Richland County Courthouse before The Honorable G. Thomas Cooper, Jr. Mr. Henderson was represented by Charles T. Brooks III and the State was represented by Assistant Attorney General Brian Vetrano.

On July 6, 2010, Judge Cooper signed an order granting post conviction relief and this order was filed July 14, 2010. The State filed a petition for writ of certiorari on September 30, 2010. Mr. Henderson filed a return to that petition on February 22, 2011, by and through his attorney Tristan Schaffer.

On March 19, 2014, the South Carolina Court of Appeals affirmed the PCR Court's grant of PCR in an unpublished opinion. The State filed a petition for re-hearing April 2, 2014, to the South Carolina Court of Appeals. Petition was denied April 24, 2014. The State subsequently filed an appeal to the South Carolina Supreme Court on December 17, 2014. On October 28, 2015, the Supreme Court dismissed the

appeal as improvidently granted.

After being granted post conviction relief, Mr. Henderson proceeded to plead guilty to the lesser included offense of voluntary manslaughter on June 20, 2016, before The Honorable Clifton Newman. At his hearing, he was represented by Assistant Public Defender, Rhodes Bailey, and Kathryn Luck Campell again prosecuted the case. Judge Newman sentenced him to 25 years.

From that guilty plea, he filed a notice of appeal on November 28, 2016. The South Carolina Court of Appeals dismissed it on January 6, 2017. On January 16, 2017, he filed a subsequent notice of appeal to the South Carolina Court of Appeals; and on February 16, 2017, the Court of Appeals dismissed his appeal, construing it to be a petition to re-hear the dismissal of the appeal. Remittitur was returned March 28, 2017.

As stated, we are before the Court essentially on an application for post conviction relief arising from the entry of his guilty plea at which he was represented by Rhodes Bailey.

The State is present and ready to proceed. Mr. Henderson is present and represented by Jonathan Waller, and the State would defer to him.

THE COURT: Mr. Waller.

MR. WALLER: Thank you, Your Honor. Your Honor, I

would call the Applicant at this time.

THE COURT: Mr. Henderson, come around and be sworn.

ARYEE HENDERSON, having been first duly sworn, testifies as follows:

THE BAILIFF: State your full name for the record and spell your last name.

THE APPLICANT: Aryee Henderson, H-e-n-d-e-r-s-o-n.

THE COURT REPORTER: Please spell your first name, too.

THE PLAINTIFF: Aryee, A-r-y-e-e.

THE COURT: I'm sorry. Spell it again.

THE PLAINTIFF: A-r-y-e-e.

THE COURT: Oh, okay.

MS. KINARD: I apologize, Your Honor. His name has been spelled a few different ways.

THE COURT: Mr. Waller.

MR. WALLER: Thank you, Your Honor. May it please the Court?

DIRECT EXAMINATION

BY MR. WALLER:

Q Good morning, Mr. Henderson. How are you today?

A All right, sir.

Q All right. Mr. Henderson, you heard the Attorney General read out the procedural history of your case. This -- this has been going on for a long time, since 2002; is

that right?
A Yes, sir.
Q Okay. I want to take you back to after you were granted PCR from the trial. You remember that?
A Yes, sir.
Q Okay. When you got sent back from SCDC to Alvin S. Glenn, did you have a lawyer at that time?
A No, sir.
Q Okay. How did you get a lawyer to represent you on the charge again?
A I filed a fast and speedy trial motion.
Q Okay. So you filed a motion on your own.
A Yes, sir.
Q Okay. What happened when you filed that motion?
A When I filed the motion, two weeks later I was summoned to court and I was brought before Judge Newman. And he asked me what did I want, and I told him that I wanted to get the case disposed of.
Q Okay. And just to clarify, it was a different Judge Newman, not the one we're in front of today ---
A Right.
Q --- is that correct?
A Right.
Q It was Clifton Newman?
A Yes, sir.

Q Okay. And you told -- you told Judge Newman you wanted to get the case disposed of.
A Yes, sir.
Q Okay. And you did not have a lawyer at that time?
A No, sir.
Q Okay. Did Judge Newman let you dispose of your case that day?
A He -- he was gonna do it. He was like -- he was -- he agreed to it, but he asked me did I want a lawyer. And due to the fact that I didn't have a lawyer, he said that he was gonna appointment me one from the Public Defender's Office; and he instructed the Solicitor's Office to bring me back to the courthouse on the 19th of January 2016.
Q Okay. And to -- to back up just a little bit, when you told Judge Newman you wanted to get the case disposed of, you actually told him you wanted to plead guilty; is that right?
A Yes, sir.
Q And again, that was before you had a lawyer.
A Before I had a lawyer.
Q Okay. You got appointed the Public Defender's Office. Do you remember who -- who was appointed to represent you?
A At that -- at that particular moment, no because the -- the -- the person that was there from the Public Defender's Office said that he wasn't going to be the one,

but they was gonna -- he was gonna get somebody to appoint me one.

Q Okay. Who did you end up getting?

A Sir?

Q Who ended up being your attorney with ---

A Oh.

Q --- the Public Defender's Office?

A Mr. John Rhodes Bailey.

Q Okay. What -- how many times do you think you and Mr. Baily met?

A Three.

Q Three times?

A Yes, sir.

Q Okay. Do you remember what y'all talked about?

A Well, the ---

(Cell phone rings.)

A His first visit he came to see me on the 20th of January, and he came and we discussed trial tactics and we discussed me about -- well, the first thing we discussed was why I wasn't brought to court on the 19th. And he ---

Q Okay.

A --- and he said that the reason I -- I wasn't brought back to court was because he had a discussion with Ms. -- Ms. Campbell, my solicitor, and she was -- her plea offer at that time was open plea, voluntary manslaughter, no

recommendation.
Q Okay.
A And he said that he rejected her plea offer. So he rejected her plea offer and he was gonna put me in front of a judge that -- you know, that he's more favorable with. So ...
Q Okay. Well, let me slow you down and -- and ask you some questions about a couple of those things. So you did not go back to court on the 19th.
A I didn't.
Q You met with Mr. Bailey on the 20th of January.
A Right.
Q Okay. And he told you that the reason you didn't go was because that ---
A He rejected her plea offer --
Q Plea offer.
A -- which was open plea, voluntary manslaughter, no recommendation.
Q Okay. Did Mr. Bailey discuss that plea offer with you before rejecting it?
A No. No, sir.
Q All right. Outside of talking about that, what else did y'all talk about?
A We just -- we talked about my legal -- my legal issues, like my -- my legal work, like, all of my -- my

first trial transcripts and all of my legal documents that I had in my possession as far as like exhibits that need to be shown to the Court. You know, everything that involved my first case was in my property and I was asking him to retrieve that just so -- because Richland County wouldn't let me get it.

So I told him to check it out, review it, make any copies that he needed, and send it back to me because if he rejected her plea offer, then I was ready to proceed with trial.

Q Okay. So you had some of your -- your legal documents from your first case at -- were at the jail, but they wouldn't let you get them.

A They wouldn't let me get it.

Q Okay.

A But he could get it.

Q Okay. Now, Mr. Bailey did not represent you at your trial; is that right?

A Right.

Q Okay. Who represented you at your trial?

A Charlie Johnson.

Q Okay. And Mr. Johnson did not work in the Public Defender's Office.

A No, sir.

Q Okay. Do you know if Mr. Bailey ever got the -- the

documents you asked him to?
A He got them.
Q He did get them.
A He did get them.
Q Okay. Did y'all go over those?
A We went over it, but he never -- he never gave it back to me.
Q Okay. Well, let me ask you this. It had been almost 14 years since your trial --
A Right.
Q -- or -- or since you were arrested. Did you ever receive new discovery or a new copy of the discovery in 2016?
A No, sir.
Q Okay. Do you know if Mr. Bailey did?
A No, sir.
Q Did y'all discuss the discovery?
A We discussed it, but he kept saying that I was gonna lose if I was to plea. That -- he kept saying that it was better for me to plea instead of going to trial. So you know, and I kept pushing the issue as far as, like -- well, I felt like because of my -- the reason that I got found guilty in the first trial could be avoided in the second trial. So I was -- I kept pushing the issue because, No. ONE, this a self-defense case; No. two, the State's

evidence that was against me was not overwhelming; and No. three, I was -- I felt that if he was to -- if he -- if he was to hire any expert witness to reexamine the State's case because the State -- the evidence that he used against me was -- was -- was -- was lacking. And it wasn't no eyewitnesses on the scene that could pinpoint and say, yeah, I -- I'm the one who killed the victim because noone saw what happened.

Only thing -- only thing individual said was they just heard a struggle and they heard some gunshots, but nobody saw me shoot or kill anybody.

Q Okay. Well, let me ask you this. Y'all -- at -- at your trial, you raised self-defense; is that right?

A I raised self-defense.

Q All right. Did you have a copy of your trial transcript?

A Yes, sir.

Q And did Mr. Bailey have a copy of your trial transcript?

A Yeah, he had my copy.

Q Okay. He had your copy. And do you know if he read it?

A I don't know if he read it.

Q And did y'all ever discuss it?

A We discussed it.

Q Okay. You just mentioned that you thought there were some things that could be avoided at -- at your trial if you went back for retrial.

A Right.

Q Did y'all discuss those things?

A We did at length, but his main theme was not to pursue trial, not to go to trial. And he kept saying that if I was to go to trial, I was gonna lose.

But even though he was saying it, I was still adamant about proceeding with trial because I felt that, you know, even though I lost the first trial, I -- I still felt that I could overcome my second trial.

Q Okay. Now, I want to go back. When you went in front of Judge Newman, Judge Clifton Newman, the first time, you told him you wanted to plead guilty.

A Right.

Q Did that change when you got a lawyer?

A It did.

Q Okay. So once you got a lawyer, you did not want to plead guilty anymore.

A No.

Q Okay.

A One of the -- one of the -- one of the main reasons I even mentioned about the plea was because I -- I was experiencing anxiety from the incarceration, the pre-trial

incarceration.

The State knew that, you know, I was already in Richland County. They was already aware that I was on -- that the case got overturned. So the State, obviously, was -- was already aware that I was ready, but ---

Q Okay.

A --- my lawyer -- he wasn't -- he wasn't -- he just wanted me to sit. And I was like, "No, that --" I didn't wanna sit because I wanted to get him to track down the eyewitness who was there, which was the -- an acquaintance of mine. She was the only eyewitness on the -- on the scene and I needed her before she was to get lost. Number two, I wanted to prevent, like I said, any pretrial anxiety that I was experiencing. And number three, that's -- I'm entitled to a fast and speedy trial. You see what I'm saying?

Q Okay. Did y'all ever discuss the -- any of the witnesses that were at your first trial, any investigation as to if they were available or not available for the -- for a new trial?

A We did. And he told me that if I was to proceed with trial, that whatever witnesses' statements that was admitted in the first trial, will automatically be admitted in the second trial.

Q Okay.

A Or whatever testimony that was admitted in the first trial would be admitted in the second trial.
Q Okay. Do you know why he told you that?
A He said -- he told me because it was a part of the rules of evidence.
Q Okay. Do you know if he did any investigation to see if any of those witnesses were available?
A Not to my knowledge.
Q Okay. Do you know if he contacted any of the witnesses?
A No, sir.
Q Did you ask him to contact anybody?
A I did.
Q Do you know if he contacted who you asked him to?
A I asked him to contact Shay Thomas. That's the -- that's the young lady who was a eyewitness at the scene.
Q Okay.
A I asked him to contact her, but I don't know whether he contacted her or not.
Q Okay. At some point -- Mr. Henderson, at some point your -- you appeared -- you appeared in front of Judge Clifton Newman again, and it -- you were there to plead guilty.
A Right.
Q What changed?

A What changed was throughout his representation of me, I kept filing pretrial motions with the Court. So on his second -- on his second visit to me, we discussed some of the pretrial motions that I had submitted to the Court, which was a motion to suppress and a motion to quash and a writ of mandamus.

Q Okay.

A So on my motion to quash -- on my motion to suppress, I filed that and I told him that I felt that if he was to raise that motion to quash, which -- which is -- since it's a pretrial motion, that a lot of the statements that were admitted or testimony that was admitted at the first trial should be suppressed because the State did not -- I felt that, at the time of my arrest, the magistrate nor did the police have probable cause to arrest me for murder, for the actual crime of murder.

So he was saying that, well, you know, my motions that I raised to the Court was meritless, the judge was not gonna grant me any -- any relief on that or due to my motion to quash. So he was saying -- he stated that, you know, it would be futile to even argue that.

So I was like, well, you know, if he wouldn't do that, just go ahead and let me get all my legal work and my whole -- my whole theme was me trying to get in front of the judge so I'd get all my legal documents back 'cause I -- I

was gonna either -- I was gonna proceed with trial pro se if I had to.

Q Okay.

A See what I'm sayin'? And so ---

Q Yeah. And let me stop you right there. You -- you filed all these motions. At that point, were you still wanting to go to trial?

A Yes, sir.

Q Okay. One of the motions you filed was a pro se motion to relieve counsel and to represent yourself; is that right?

A Yes, sir.

Q Did that motion ever get heard?

A No, sir. That's what -- well, I -- I filed -- when I filed the motion to relieve counsel, I -- I -- I never -- he came and saw me. So when I filed the motion to relieve counsel, he came -- that's -- that's when he came and saw me the third time.

So he asked me did I know what I was locked up for. And I said, "Yeah." And he said, "Well, you know, Dan Johnson, he allow your solicitor to do whatever she want because she has a impeccable trial track record." He said that, "She's a old white lady with no kids, and she got nothing else better to do than to send black men to prison."

So you know, when he made that statement, it's like, kind of enlightened me and I understood that, you know, if I was to proceed with trial, then I had a very high chance of losing trial.

And I felt like, you know, if he was to say that, then I guess that my only relief was to go to the Court because, you know, I mean, I couldn't -- I felt that, you know, I wasn't gonna be able to get my case heard or presented the way I -- I need to get presented. And if he kept telling me that I was gonna lose trial and -- and -- and -- and this what's gone happen, then maybe it was gonna happen.

Q Okay. So was he not doing the things you -- you -- you thought he should be doing as far as investigating your trial -- or investigating the case?

A I -- I -- I felt that he wasn't.

Q Okay. You talked earlier about there not being any eyewitnesses or -- or other things. Did y'all ever talk about the crime scene or doing any investigation into that at the crime scene?

A We didn't talk about that at all.

Q Okay. How about any -- hiring any expert witnesses? Did y'all ever talk about that?

A No, we never talked about that either.

Q Okay. What -- what potential defenses did y'all ever talk about?

A I mean, we talked about the self-defense, but you know, like -- like he say, he was saying that, you know, if we was to proceed with trial, he -- he said that he didn't want me getting on the stand and he didn't want me to -- talking about anything that dealt with the law or anything like that and he really didn't want me to speak up in behalf of my case.

That's -- that's what the dispute was about because I felt that if I was to proceed with trial, dealing with a lot of points as far as dealing with law, I wanted to speak myself. And he was like, "Well, I don't want you to speak, I don't want you to talk. I'm gone do all the talkin'." And you know, I guess it was a little conflict as far as the representation as far as, you know, what -- what was gonna be said and what not was gonna be said in court.

Q Okay. You raised self-defense at your trial; is that right?

A Yeah. Yes, sir.

Q Okay. Did you testify at your first trial?

A Yes, sir.

Q Okay. So prior to your testifying at the trial, did the judge go over with you your constitutional right to testify or not to testify? Do you remember that?

A I remember it vaguely.

Q Did you understand that it was your decision whether

to testify or not?

A Yes, sir.

Q Okay. Did you understand it wasn't your lawyer's decision?

A Yes, sir.

Q Did you -- fast forward back to 2016, did you understand the same thing, that Mr. Bailey can't make that decision for you to testify?

A I understand -- well, now I understand, but this is -- this is -- this is -- this is the thing. All right. I got this -- when I found out ---

Q Did -- did Mr. Bailey ever tell you it was your decision to testify or not?

A No. He didn't -- we didn't discuss that. He was saying that -- what he said -- how -- how -- my understanding from what he told me he was saying that, you know, he didn't want me to get on the stand and testify to certain points as far as dealing with trial -- trial strategy or law -- case law or whatever like that right there.

So you know, that's where the conflict came in at because I felt like that if I was to go to trial, I didn't wanna be restricted as far as me saying what I need to say dealing with my freedom. It's because, you know, this case -- don't nobody know this case better than me ---

Q Right.
A --- because it involves me. So -- and like I say, I -- I filed this letter with the -- with the -- with the -- with Court.
(The Applicant hands documents to Mr. Waller.)
A This -- this is the letter right here. These are the exhibits I wanted you to hand up to the Court right here as far as why I decided to plead guilty. And -- and this the letter right here, but ---
Q Okay. Why don't -- why don't -- why don't you tell us why you decided to plead guilty first.
A I mean, because he -- like I say, when he told me that number one, I couldn't -- I couldn't talk at the trial, and number two, like I say, when he made the statement about Ms. Campbell that she ain't got nothin' better to do than to send black men to prison, I mean, it -- my hands was tied. I mean, what can I do?
Q Okay. At some point, based on those conversations with him, you decided to plead guilty; is that right?
A Yes, sir.
Q Okay. What was your understanding of the plea agreement?
A The plea was for open plea, voluntary manslaughter, no recommendation.
Q Okay. What did you understand "no recommendation" to

mean?

A That nobody was gonna -- nobody was gonna say nothing. It was just gonna be up to the judge.

Q Okay. When you say, "Nobody was gonna say -- say anything," what do you mean? Who's "nobody"?

A The State and -- and especially the victim because he never discussed with me that the victim was gonna testify or get up and make any impact statements. And had I known that the victim was gonna make any impact statement, I definitely wouldn't have plead guilty.

Q Okay. So you thought that by taking an open plea, as you called it, that it was going to be entirely up to the judge, but the solicitor or -- or anyone else could not have a chance to -- to speak and ask for a particular sentence.

A We -- we -- we -- me and my attorney -- we discussed -- all right. This is what happened. I filed my first motion to relieve counsel, he came and saw me. And he -- that's when he told me that, you know, it was -- it was -- it was better for me to take the plea and because of Dan Johnson letting her do what she wanted to do, that if I was to proceed to trial, I was gonna lose and whatnot.

So after that, I filed a motion to renew motion to relieve counsel.

Q Okay.

A Once I filed that motion to renew motion to relieve counsel, then the plea came up. Because at first -- the first -- the second time he came and saw me, he -- he informed me that the plea was off the table. So when he came back on the third visit, that's when he informed me that we goin' to plea, after I filed the motion to renew motion to relieve counsel.

Q All right. So let me get the time on here so -- so Judge Newman can understand.

A All right.

Q There was an offer made to you that was rejected.

A It was rejected.

Q Okay. Then you met with Mr. Bailey.

A Right.

Q And y'all discussed trial and then somehow -- somehow or another you decided not to go to trial but plead guilty.

A Right.

Q But at that point the offer was not on the table anymore.

A It wasn't on the table.

Q It was not. Okay. Do you know how it got back -- the offer back made to you?

A All I know was after I filed the motion to renew motion to relieve counsel, the -- that was the second motion to relieve counsel I filed with the Court, he -- I

got a letter that same week he was saying that we was going to plea. So he came and he -- that's when -- when he wrote that letter, he came and saw me right after that. And then we started discussing plea.

Q Okay.

A He never mentioned anything about the motion to relieve counsel, he never brought it up to the judge that I filed it or nothing like that. But I mean, I -- I wrote three copies of that and I mailed one to the judge, one to solicitor, one to the Clerk of Court.

Q Okay. So you -- hold on. Let me -- let me slow you down here. You filed a motion to relieve counsel.

A Right.

Q That never got ruled on.

A Never got ruled on.

Q Okay. After that you filed a motion to renew your motion to relieve counsel.

A Right.

Q That one never got ruled on either.

A That never got ruled on.

Q Okay. And then even after filing the second one, Mr. Bailey wrote you a letter and then came to see you.

A Right.

Q Okay. And that's how you ended up with the -- the open plea, as you called it.

A Right.
Q With no recommendations.
A Right.
Q Okay. At the plea --
A We discussed -- before you go on -- we discussed the plea, about pleaing the front -- about -- he -- when he came to see me about the plea?
Q Uh-huh?
A So we discussed that. So everything I said he basically told me to say it. Like, he prepped me to say whatever I needed to say at the plea hearing.
Q He prepped your -- the questions the judge would ask you?
A Right. And for what I needed to say.
Q Okay. What -- what did he tell you to say?
A He told me that he didn't know -- he didn't know anything about Judge Newman, but I -- I didn't know him neither. And he didn't, like, know if whether he was a hard judge. So he advised me that when I plea in front of, you know, just to -- not to appear -- to appear like -- like -- like -- to say things that may appease him because he never went in front of Judge Newman before. So due to the fact that we didn't know what the outcome was gonna be, you know, just -- just tell him -- you know, he was, like, you know, just be truthful, and you know, say this and say

that.

And basically he was like what I said -- everything I said basically came off his advice on what I said at the plea hearing. You see what I'm saying?

Q Okay. Well, I -- I guess I have to ask you a question: Were your answers to Judge Newman's questions truthful?

A Yes, sir.

Q Okay.

A As far as when you say "truthful"?

Q You were under oath at your -- when you plead guilty.

A Right.

Q Judge Newman asked you some questions and you answered those questions. Were all those answers --

A Dealing with the facts of the case? That was ---

Q Any question that was asked of you.

A But I mean -- I mean, as far as the facts of the case?

Q Yes, sir.

A Because like I say, when -- when they told me -- when he said that, "All right. Mr. Henderson, were you promised anything?" I mean, the -- the whole -- the reason for me pleaing was the open plea, voluntary manslaughter, no recommendation. That was my understanding.

And like I say, we discussed that at the county jail, and he told me that, "Well, even though I said that," he

was -- he -- he told me that Ms. Campbell was gonna raise up the issues about my prior history and everything. And I asked him the -- what -- I said, "If this is a no recommendation, then what that got to do with me, the -- what I'm -- what -- what I'm serving time for?"

He was like, "Well, it don't got nothin' to do with it." He said that, "It just normal. That's what she gonna do, that it don't got nothin' to do with -- with my case and it wasn't gonna hurt me."

Q Okay. Let me ask you this. When -- when Ms. Campbell went through your prior convictions and she asked for -- for a period -- a specific period of incarceration and when the victim's family spoke, did you ask your lawyer to object to that or did you ask him why he wasn't objecting to that?

A Well, I did while we was in court.

Q Uh-huh.

A He told me don't worry about it, that the judge wasn't gonna pay it no attention and it was -- that since it was just something that happened while I was in prison, that it wasn't gonna affect the sentence at all.

Q Okay. But I'm talking about the people speaking, the solicitor and -- and the victim's family. You testified earlier that your understanding was that noone was gonna speak.

A Right.
Q And when they spoke, did you tell your attorney to object?
A I did, I did.
Q Okay.
A And he told me, "Don't worry about it."
Q Okay.
A He told -- he said that the judge wasn't -- wasn't gonna pay it no attention, just don't worry about it.
Q Okay.
A Like I did -- I -- I did -- I did say something to him when she was speaking on it, but he was like, "Don't worry about it."
Q Okay. The solicitor went over your disciplinary record in SCDC with the judge.
A Right.
Q Okay. Did you ask your attorney to object to that?
A I did.
Q Okay.
A I asked him -- I asked him, "What does that got to do with me being incarcerated for what I'm serving time for?"
Q Did y'all talk about that before you got to court or did it -- just something ---
A It was before -- before. We talked about it before in the meeting. But when she started mentioning it at -- in

the courtroom, I said something to him then and that's when he told me while we was in the courtroom, "Don't worry about it. The judge is not gonna pay that no attention."

Q Okay. Mr. Henderson, we talked about some things that happened when Mr. Bailey was appointed to represent you before you got to court to plead guilty.

A Right.

Q Okay. Now, we talked about some things you asked him to do that -- that he didn't do and -- and things that y'all had talked about. If it wasn't for those things, would you have pled guilty?

A I wouldn't.

Q Okay. You would've gone to trial?

A Yes, sir.

Q Okay. When you got to the actual plea itself, did things happen that you -- that weren't supposed to happen based on your understanding?

A Yes, sir.

Q Okay. And it's in the transcript, but do you recall Mr. Bailey objecting to any of those things?

A I don't recall him objecting.

Q Do you -- did you talk to him afterwards and ask him to file an appeal or ask him to file a motion for reconsideration or anything like that?

A No, sir.

Q Okay. Mr. Henderson, I've asked you all the questions that I have for you. Is there anything you think I've left out or that the Court needs to be aware of Mr. Bailey's representation of you?

A I was just going to say that, well, number one, I wanted to admit these exhibits into -- into evidence first of all. Number two, like I say, when we was discussing as far as -- as far as the no recommendation, what happened was I don't -- I don't -- I mean, when I came into the courtroom, it was already -- a hearing was already in session, so ...

THE COURT REPORTER: I'm sorry? It was already ...?

A A hearing. A court proceeding was already in session.

And the victim's mother was there, and I -- I didn't pay it no attention, you know, I was just waiting on that to get resolved so I could get -- get the plea hearing over with.

So Ms. Campbell -- she asked the judge was she ready for me when the proceeding was over with, and the judge was like, "Nah, let's wait 20 minutes."

So like, then -- and they -- that's when the solicitor -- she called the victim's mothers back, and she went to the back and I guess they had their little discussion. And so when they came out and the plea hearing began, you know, we started talking about -- that's when the judge --

discussing about the facts of what happened, this, that, the third.

So when the victim -- he asked was the victim -- any victims here, you know, the victim mother, she got up and she made a statement. She was like, well, I wasn't gonna say nothin', but then she changed her mind. And when she got up there and made a statement, and I felt that, you know, the solicitor persuaded her to get up there and make a statement.

Q Okay. Is that something that you and your attorney had talked about, the victim having a right to -- to address the Court?

A We never discussed that.

Q Okay. Would that have had an impact on your decision to plead guilty or not?

A It -- it would have.

Q Okay.

MR. WALLER: Your Honor, may I approach the witness?

THE COURT: Yes, sir.

MR. WALLER: May I beg the Court's indulgence, please?

THE COURT: Yes, sir.

(Brief pause.)

Q All right. Mr. Henderson, you had filed some motions regarding your case after -- after your trial conviction was -- was vacated through PCR.

A Right.
Q You were represented by Mr. Bailey when you filed some of those motions.
A Yes, sir.
Q Did y'all ever discuss those motions?
A Yes, sir, we did.
Q Okay. Did y'all ever discuss you being able to file those motions?
A Well, he told me to stop writing letters to the Court and he was saying that -- you know, at first he was saying that, you know, every time I filed a motion with the Court, you know, Judge Newman would call him to the office and he say he felt that, you know, Judge Newman took a liking to me and he don't know what's up.

He -- he say he didn't know, you -- you know, how -- how that was gone play out, but he was saying that, you know, how he feel about it he felt that I should -- based according to what I write in my motions, he felt that I should plead guilty. He was saying that, you know, in -- in -- in his best -- in his best interests, he didn't -- he didn't feel that we would be able to win trial, that I should -- I should take the plea.
Q Okay. Did you ask him to file any of the -- any of the motions that you had -- had attempted to file on your own? Did you ask him to file any of those motions?

A No, sir.
Q Okay. But he knew you were filing them.
A Yes, sir.
Q Okay. And did he have copies of them, do you know?
A Yes, sir.
Q Okay. But he never filed any on his own.
A No, sir.
Q Okay. Mr. Henderson, I don't have any further questions for you. Please answer any questions Ms. Kinard has.
A All right.

CROSS-EXAMINATION

BY MS. KINARD:
Q Good morning, Mr. Henderson.
A Good morning.
Q I want to start with kind of where Mr. Waller started, when you got back to County and you testified that someone from the Public Defender's Office came and saw you and said, "I'm not gonna be your lawyer, but I'm here to talk to you now." Do you recall that? Isn't that what you testified to?
A No.
Q No?
A That's not what I -- I didn't -- I didn't -- I didn't -- I -- I never spoke with a lawyer. Only time I spoke

with a lawyer was the day I actually saw Judge Newman, the first day.

Q I'm sorry. That's what I meant. When you were in front of Judge Newman and he said he wanted you to have a lawyer, and then did somebody from the Public Defender's Office come and talk to you?

A Yes, sir. Yes, ma'am.

Q That's okay. And that was -- do you recall what you told that lawyer?

A I asked him to go and speak with Luck Campbell to tell -- to ask her would she accept a plea of 15 years time served.

Q But you told him you wanted to plead guilty; is that correct?

A Yes, sir [sic]. That -- just to get the case disposed of. Not that I was guilty, but because I was -- to get the case disposed of.

Q And to fast forward a bit, that was kind of an issue at the entry of your plea hearing and -- and throughout, isn't it, that you wanted the case disposed of, but you didn't necessarily agree with how the state was presenting the facts?

A Yes, ma'am.

Q That's an accurate statement?

A That's -- it's accurate. Like I say, the reason I did

it like that was because when me and Mr. Bailey was discussing pleaing in front of Judge Newman, it was -- it was -- it was understood that I didn't want to seem like I was -- I was the innocent type, you know, that I was supposed to accept responsibility for my actions and that's what I was supposed to say, and that's why I -- I -- I pled guilty like that.

Q And is it fair that there was some confusion during the entry of your plea that Judge Newman took the time to make sure that you really wanted to plead guilty and you accepted guilt?

A Yeah. Because he did -- he was trying to understand, like, why I was pleading guilty, but -- I mean, like, I was pleading guilty because my lawyer told me to plead guilty. I mean, I didn't wanna plead guilty.

Q But you asked him to get a -- get you a plea deal repeatedly; is that correct?

A Yeah. I mean, I didn't have no choice.

Q And why didn't you have a choice?

A I didn't have a choice.

Q Why not?

A Because he -- he say if I -- if I -- if I was to go to trial, I'm gonna lose.

Q So you didn't have a choice in the sense that you felt you were between a rock and hard place.

A Yes, ma'am.
Q So you chose the lesser of the two evils?
A Yes, ma'am.
Q Okay. So the first plea agreement -- or plea offer that you said Mr. Bailey rejected without notifying you was a straight-up plea with no recommendations of voluntary manslaughter.
A Yes, ma'am.
Q And that is what you ultimately pled to.
A Yes, ma'am.
Q Did you ever insist to Mr. Bailey that you wanted to go to trial?
A Yes, ma'am.
Q But at the same time you discussed with Mr. Bailey getting plea deals.
A Yeah. He -- I mean, by me being adamant about going to trial, he was insisting that it would -- it would be in my best interest to go to trial.

He kept saying that, you know, even though I was filing these pre-trial motions, even though I'm telling him that if -- use this trial strategy or use that trial strategy, he kept saying that whatever trial strategy I was employing wasn't -- wasn't going to work, that it would be in my best interest to go ahead an plead guilty.

And what eventually led about, I -- when I filed a

motion to relieve counsel, it ultimately led to that -- okay, I was gonna acquiesce to the plea deal because, I mean -- you know, for him to make that statement as far as him telling that -- saying that she could do whatever she want, that she don't got nothing else better to do but send black men to prison, I mean, my hands was tied. I mean, I didn't -- I really -- I didn't -- I didn't have no choice.

So -- I mean, and from that point, I felt like, okay, well then maybe I don't need a lawyer. I should just go pro se. So I filed a pro se motion to relieve counsel, and I wanted to proceed pro se throughout any and all future proceedings involving me. But -- and so when I filed that motion, that initiated the plea. Like, nothing else was discussed but that, just plea. Come on, let's plea. And that's when he came and saw me, well, like, "All right. We can plea -- the motion that I filed as far as relieving counsel, it wasn't heard, it wasn't brought up, it wasn't mentioned. Nothing like that. Only thing was mentioned was, "Mr. Henderson, here it is. We can plea. This is what we're gonna do. I want you to say this. I want you to say that."

Q Did you tell Mr. Bailey you wanted that motion heard?

A I mean, he already knew.

Q How did he know?

A He had a copy of it.

Q Well ---
A I mean -- I mean, because of that motion if that motion wouldn't have never got filed, I would have never had a plea or I never would've went to court. That -- that -- that motion is what got me in court.
Q Is that your inference or did somebody tell you that?
A No, because -- can I see the copy of that motion to relieve counsel, please? Can you hand it up to the judge?
MS. KINARD: I would object to that. I checked the public index. I can't find a filing of a motion to relive counsel.
(The applicant and Ms. Kinard speak simultaneously.)
THE APPLICANT: He -- he got it. He got it right there, Your Honor.
MS. KINARD: If there's a copy ---
THE APPLICANT: Can you -- can you -- can you give her a copy of all the motions, especially the motion to relieve counsel and the motion to renew motion to relieve counsel? Because it's dated for May -- the end of May, and I went to court right -- right after that. And he told me -- he told me that I would be going to court on June of that week term.
THE COURT: Now, is this motion something that you filed with the Court or something you gave to Mr. Bailey?
THE APPLICANT: I filed with the Court. All -- all

those is what I filed with the Court.

THE COURT: Then I'm happy to look at a clocked copy.

THE APPLICANT: Yes, ma'am. They clocked copy.

Hey, you can give her all of it. It -- it -- it's two more. It's one motion to relieve counsel, and it's another motion to renew motion to relieve counsel.

THE COURT: So none of these things are things that you gave to Mr. Bailey for him to file.

THE APPLICANT: I filed it --

THE COURT: Okay.

THE APPLICANT: -- myself.

THE COURT: So ---

THE PLAINTIFF: All -- all those motions I filed with the Court. The clerk.

THE COURT: Understood. Mr. Waller, if you have filed copies, I'll look at those.

THE PLAINTIFF: All of those are final copies of all the motions I filed with the Court. I -- I would like for all of them to be admitted into evidence, if you don't mind.

MR. WALLER: Your Honor, I have -- there's two -- two motions: A motion to relieve counsel filed April 22, 2016. This is another one filed the same day. This might be just a cover sheet.

(Mr. Waller hands documents to the Court.)

THE PLAINTIFF: Yeah, that's just the cover sheet. And it's another one filed May ---

MR. WALLER: Okay. Hang on one second.

THE APPLICANT: Can I see it? Can I see it?

MS. KINARD: Just a second.

MR. WALLER: Your Honor, there is another one filed June 7, 2016 as well.

THE APPLICANT: And can you get -- can you hand her that letter, the letter to the Honorable Judge?

MR. WALLER: Okay. Hang on.

THE PLAINTIFF: That's the letter I sent with that second motion, and that's what got me in court.

MR. WALLER: Your Honor, may I approach?

THE COURT: Yes.

(Mr. Waller hands documents to the Court.)

MR. WALLER: Your Honor, may I approach again?

THE COURT: Yes, sir.

(Mr. Waller hands documents to the Court.)

(Brief pause.)

THE APPLICANT: It got the letter with it to the Honorable Judge? Should be dated May.

MR. WALLER: Mr. Henderson, I presented the -- the clocked copies to the judge. I don't --

THE APPLICANT: I mean, it's in the record on page -- let me see ...

MR. WALLER: Your Honor, may I hand Mr. Henderson back his paperwork?

THE COURT: Absolutely.

(Mr. Waller hands documents to the applicant.)

THE PLAINTIFF: I wanted her to get all the copies.

MR. WALLER: She can't.

THE APPLICANT: Why not? So you can't -- Your Honor, you can't -- I can't present none of these as exhibits to you?

THE COURT: No, sir.

Ms. Kindard, any objection to the two file stamped documents that the Court's been handed?

MS. KINARD: No, Your Honor. I -- I am curious why I can't find those in the public index, but they appear to be accepted by the Clerk of Court.

THE COURT: Okay. So then we'll mark these as Court's Exhibits 1 and 2, 1 being the April 22, 2016 filing and 2 will be the June 7, 2016 filing along with the cover sheet added by the Clerk of Court.

(Marked Court's Exhibits 1 and 2, Motions.)

THE COURT: Continue, Ms. Kinard.

MS. KINARD: Yes, ma'am. Thank you.

Q So we were kind of talking about the timing of things, Mr. Henderson, and how you felt that once these were received by the Court, that spurred action on somebody's

part to get you a plea date. Is that fair to say that?
A Yes, ma'am. I mean, right after -- right after I file that motion, he wrote me a letter saying that the plea was back on the table and he came to visit me to discuss how we gonna plea in front of Judge Newman.
Q Okay. So ultimately you said you testified -- excuse me -- you testified that you pled guilty because you were making these other motions on your own -- the motion to suppress, the motion to quash -- and you felt that your lawyer wasn't taking you seriously.
A Right.
Q And you felt that he wasn't listening to you regarding strategy.
A Yes, ma'am.
Q And you felt that he didn't want your voice to be heard at trial regarding any of these things.
A Yes, ma'am.
Q So because of that, that's what led you to file a motion to be -- to relieve him.
A Yes, ma'am.
Q Okay.
A And -- and also, he wouldn't send me none of like -- none of my legal documents pertaining to my case a
A As far as my motion to discovery, my first trial transcripts, and all the exhibits that I had to show to the

Court that needed to be shown to the Court dealing with trial.

Q Okay. So I want to talk about the investigation. You allege that he failed to do a full investigation. You said that you believe he read your full trial transcript.

A Right.

Q And so he understood what happened in the case, the witnesses that were presented at the first trial, and things like that; is that correct?

A I don't -- I don't -- he -- he told me he read it, but I don't think he understood it because if he understood it, he would've -- we would've -- we would've been in trial. I don't think that, you know, we would've been opting out for a plea. We would've went to trial.

And I felt that, you know, had he did his investigation, he -- first thing he would've did was contact my eyewitness that I needed for trial, number one. He would have scheduled for a -- for a speedy trial date, number two. He also would have asked the Court for funds to hire expert witnesses to -- private investigator or a homicide reconstruction expert, a CSI expert to reexamine the -- the blood spatter.

Because in the first case, that -- that was the issue -- that was the main issue in the case. They were trying to say that when I came -- when I -- when I walked up --

when I came and I approached the victim, I shot the victim right then and there. But it didn't happen like that. It happened --

Q Sir, I -- I -- I understand. I was just trying ---

A Oh.

Q --- to keep things moving.

Well, the -- I want to make sure that we're understanding. The reason you got a -- the opportunity for a new trial was through PCR.

A Right.

Q Not because there was an issue with the evidence in your first trial. It was actions of your first attorney.

A Well, the evidence -- the evidence that was admitted in my first trial was erroneous, and that's what prejudiced me in my first trial due to me raising self-defense.

Q But you understand that the -- the Court that reviewed your first trial had no problem with it. It was the Court that reviewed your PCR felt that Mr. Johnson failed to make an objection and that's why it was overturned.

A Yeah. Because the first Court that ruled on it, it -- it wasn't objected to at trial.

Q Correct.

A Right.

Q Which made it a PCR issue.

A Right.

Q Kind of like why we're here today.

So -- so you testified that when you went to Court, you didn't know victims could make impact statements or that anybody could mention a year -- term of years that you might serve.

A No, ma'am.

Q Okay. But you did say that you talked to Mr. Bailey prior to that about questions that would be asked of you at the plea --

A Right.

Q -- how you'd be expected to answer them, things like that.

A Only thing -- only -- the -- the main thing we were discussing was about what I should say to Judge Newman and how I should present myself to Judge Newman. But we didn't discuss nothing about no victims making any type of statements. We didn't discuss about nobody making any type of recommendations or nothing like that.

Q So you didn't discuss what the term, "no recommendations" meant?

A I asked him. He said that -- when I -- only -- only thing he said about that was when he mentioned about Luck Campbell bringing up my prior disciplinary, I asked him about that, he was like, "Don't worry about that. The judge is not gonna say anything. The judge is not gonna

worry about that." I'm good. But he didn't say anything about the State -- I mean, the victim making a recommendation and the State agreeing with it and that's what happened.

And just -- just on -- on -- on the simple fact that she did make a recommendation because she asked for me to -- to stay in prison based on my prison disciplinaries, she breached -- she breached the plea agreement.

Q The plea agreement that had no constraints on it, the -- the straight-up plea?

A With no recommendation.

Q Okay.

A She made a recommendation.

Q All right. I -- I understand your allegation there.

So regarding the failure to investigate, you think that even though you were continually asking for plea offers, Mr. Bailey should have hired investigators and -- and -- and gone out and researched your case?

A Yes, ma'am.

Q Even though you were continually asking for offers?

A (No response.)

Q Yes?

A Yes, ma'am. Listen, he is the one who rejected the State's first plea offer; therefore, I felt that since he rejected the State's plea offer without my knowledge and

without my consent, then we needed to go ahead and proceed with tral. I -- and -- and the whole reason for me going on filing the fast speedy trial motion was to get the case disposed of. And that was my understanding that that's what we was gonna do.

And the first thing I asked him was to retrieve my legal documents and get all my trial transcripts, motion discovery, everything out my -- send it to me, make any copies that you need to make, and let's go ahead and get this case --

Q Yes, sir. I understand.

A -- moving forward But ---

Q And you testified that you also pled the exact same plea offer that he had rejected.

A Right.

Q Okay. And you -- there was some discussion during the plea entry about pleaing pursuant to *Alford*. Is that something that you discussed with Mr. Wallar?

A Yes, ma'am.

Q Do you recall any of your conversations about that and why you decided not to plead under *Alford*?

A Because -- dealing with that was -- my understanding was if I was to plea under *Alford*, then the judge would -- due to the fact that we didn't know how Judge Newman was gonna sentence because we was thinking that Judge -- since

Judge Newman was a harsh judge, sentencing judge, I didn't wanna go -- I shouldn't go up under Judge Newman pleaing under -- under the impression that I'm innocent, hands clean, and that I should take some type of responsibility for my actions. That's why ---

Q Did you testify earlier that you had no idea what kind of judge Judge Newman was when it came to testimony?

A Right.

Q Or sentencing?

A That -- that's why I -- I was telling you -- that's what me and him were discussing, that we didn't know if he was gonna be a harsh sentencing judge. That since we didn't know, that that's how I should present myself to him --

Q Okay.

A -- when I plea.

Q And a similar question, you said at first there was no eyewitness to this crime, but then you said that Mr. Bailey should go out and look for Shay Thomas who was an eyewitness.

A Okay. When I said that I was talking about the State's -- the State's witnesses. They didn't -- I was saying that there was no witnesses as far as the -- they -- that they can say I shot this man in cold blood. They trying to say that I went up straight to the man and I shot

this man in the cold blood, which I didn't. It -- we tussled, and that's why -- I was telling him that if he would have hired an investigator to go re-examine the State's case, that they -- that all this could be brought out. And that -- that's why I got all these motions right here that I wanted to present to the Court.

Q Okay.

A You see what I'm saying? I got -- I got the motions, exhibits, and I got the -- the statement from the State's witness. She wrote a statement to the police and I got it right here. Came out my motion discovery.

Q I -- I understand, and that -- that isn't -- not something we typically look at during PCR. And I certainly would defer to the Court for any different statement on that.

But it -- to just wrap up my questions, I just want to make sure I got the time line straight. You filed a motion for a speedy trial.

A Right.

Q You saw Judge Newman and he wanted you to get a lawyer.

A He -- he wanted ---

Q He appointed you a lawyer.

A Right.

Q Meaning, the Public Defender's Office. So you spoke

with someone -- that was Lucas Hawkes, I believe -- and ultimately Mr. Bailey was appointed to represent you.

A Right.

Q Okay. Once Mr. Bailey was appointed to represent you, you decided you wanted to go to trial because he rejected a plea offer which is the offer that you ultimately pled to.

A Right.

Q Okay. And so while you worked with Mr. Bailey, you were continually looking for better plea offers, while wanting him to research and investigate your case.

A The only plea offer I was looking for was the 15 years -- was the -- was the first plea offer she initially offered me before my first trial and that was the 15 years.

Q Right. And did Mr. Bailey talk to you about why that 15 years probably wasn't gonna be back on the table?

A The only -- only conclusion I came up with was when I start filing the pre-trial motions, he told me that the plea offer was off the table. So --

Q Okay.

A He told me that was off the table. That's when my last motion I wrote was the motion to relieve counsel because by that time, he didn't -- he didn't do -- he didn't contact the eyewitness that I needed, he didn't -- he didn't file no pre-trial motions on his own to the Court --

Q And you've testified extensively to what he didn't do.

I'm just trying to ---
A Oh, yeah, yeah. And I ---
Q --- wrap this up. I think you made that point.
A All right.
Q So -- so you filed a motion to relieve because you thought you'd do just as well on your own.
A Right.
Q That wasn't heard, but you think it spurred on somebody setting a plea date for you.
A As soon as I filed that motion to relieve counsel, that's when he came and saw me and told me that the plea was back on the table and this is what we gonna plea to.
Q And you said, "Let's go ahead and do it. I wanna get outta here. I don't think I have a better choice."
A I mean, that -- I mean, I didn't.
Q Okay. All right. Thank you, Mr. Henderson.

MS. KINARD: No further questions at this time.

MR. WALLER: Just briefly, Your Honor.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. WALLER:
Q Mr. Henderson, does asking for an offer mean you have to take it? I mean, can you be -- could you have been preparing for trial at the same time entertaining a plea offer?

A Right.
Q Okay. Do you think Mr. Bailey was prepared to go to -- to start a trial?
A No, sir.
Q Okay. You say -- Ms. Kinard said, and I agree with her, that you testified extensively about the things that -- that Mr. Bailey did not do that you asked him to do.
A Yes, sir.
Q And are those things you believe he should have done to be prepared for trial?
A Yes, sir.
Q Okay. No further questions. Thank you, Mr. Henderson.

THE COURT: All right. Mr. Henderson, you can go back and sit next to your lawyer.

(The Applicant complies.)

THE COURT: Any additional witnesses, Mr. Waller?

MR. WALLER: You Honor, the Applicant would call Rhodes Bailey.

MS. KINARD: And Your -- Mr. Bailey just stepped out. He'll be right back. He wasn't sure if he was gonna have time.

THE COURT: Okay.

(Brief pause.)

RHODES BAILEY, having been first

duly sworn, testifies as follows:

THE WITNESS: And I apologize. I was outside, Your Honor.

THE COURT: It's okay.

THE WITNESS: My name is John Rhodes Bailey, J-o-h-n R-h-o-d-e-s B-a-i-l-e-y. I usually go by Rhodes Bailey.

THE COURT: Mr. Waller.

MR. WALLER: Thank you, Your Honor. May it please the Court?

DIRECT EXAMINATION

BY MR. WALLER:

Q Good morning, Mr. Bailey. How are you today?

A Good morning.

Q Mr. Bailey, how did you come to represent Mr. Henderson?

A Well, it turned out that Mr. Henderson had won a PCR and his case was sent back to circuit court. I believe he was actually stuck in jail because we didn't get -- you know, we don't get notification. Sometimes we get a notification from somebody in Indigent Defense, but it was -- it was -- it was sort of unique because he didn't have a lawyer. We didn't even know he existed in the system at that point.

He had filed something. Judge Newman -- and I believe Judge Clifton Newman was the administrative judge brought

him in because he had filed a pro se motion, and I had a colleague, Lucas Hawkes, come in and go -- come in and he said, "Hey, we have the guy up here who is looking for a lawyer and he really just wants to plead guilty, and judge Newman just appointed our office from the bench."

I remember Lucas, who actually was in court at the time -- his office is directly from -- across from mine in -- in our office. So that was how our office came to represent him, and then it was assigned to me by the deputy, Jim Davis, who just assigns cases. So at -- at that point I -- you know, he was -- he was -- he was assigned to me and I went down to see him at the jail.

Q Okay. What -- what discovery did you receive in this case?

A I -- the -- it took a little -- it was kind of strange because it was -- it was from a -- I guess it was an '02 case, the original case. So sometimes in old cases even warrants look a teeny bit different, you know? It was -- I got PDF's from Assistant Solicitor Luck Campbell, and she sent them to me in PDF format if I remember correctly.

Q Did you get, to your knowledge, a complete copy of -- of discovery?

A I -- I -- at this point I don't have any reason to believe it wasn't complete. Yeah. But I -- we -- we discussed discovery very little. Every time I met with Mr.

Henderson it was, "When are you gonna get me in court to plead? When are you gonna get me in court to plead?"

And I mean, we talked about the case a little bit factually, but very rarely -- I don't remember him ever asking me to see discovery.

I mean, Aryee -- Aryee knows this case better than anybody because he's read the transcripts a hundred times, if not more, and you know, lived it, you know. So he never really asked about what was in discovery or anything like that. I think he was pretty informed as to every tiny aspect of -- of -- of his case.

Q Mr. Bailey, you -- what investigation or what review of the discovery did you do on your own?

A I read the transcript, and honest -- and Mr. Henderson's right. One of the transcripts I had was actually one that was his transcript, and it was just the first one I had in my possession, so I went ahead and read it.

That's not discovery, but that -- you know, a lot of times when you get an old case, you like to see what happened, how it happened, when it happened --

Q You're talking about the trial transcript?

A Yeah, yeah. That was the first thing I did. If I have a transcript of something like an old trial, I read that first because I just like to get a feel for what

happened, or I'll read a preliminary hearing transcript or something like that to kind of get a general outline even if it's not complete, and then I'll kind of delve into discovery.

So I reviewed that first, and then I reviewed discovery that was sent to me by Ms. Campbell, if that answers your question. I apologize if I digressed there.

Q No, no, no. That's fine. You talked about you and -- and Mr. Henderson didn't really discuss the discovery a lot. Y'all were discussing a plea. Did you -- based on your review of the -- the transcript and any discovery, did you feel a need to do any investigation or anything into what had been provided?

A I mean, it was -- it was a self-defense case. I've tried self-defense cases. I like to try, you know, self-defense murder cases. Those are -- those can be, you know, decent defenses in -- in certain cases.

You know, Mr. Henderson would say things like, "This is a self-defense case. You know, I didn't murder anybody," and that would frequently be kind of the -- I mean, he -- you know, he -- he was -- you can kind of see how he is in the courtroom today. He has a -- he -- and I don't mean this as a negative thing. Mr. Henderson has a way that he wants, you know, his ideas conveyed, like the way he's handing around papers, "I wanna see this. I want to put

this into evidence."

So when you sit with him, it's hard to -- it's hard to reach certain subjects or certain things because he likes to sort of set the agenda up front. And every time we met it was, "Why" -- you know -- "I wanna plead guilty. Why can't I plead guilty?"

And we actually did meet certainly more than three times. I have at least five times recorded, but I -- I -- I believe it was more than that. And -- and I started representing him in January of 2016, and then despite all the work I did not this, he -- he was -- his second guilty plea was June 20th and that's pretty fast.

And it was fast because every time I saw him it was, "When am I gonna get to court? I wanna plead guilty. When am I gonna get to court? I wanna plead guilty."

And in fact, I -- I had to kind of -- and just to kind of clear things up later, I never rejected any offer from the State. I -- I certainly wouldn't do that and I cannot do that without -- without a client's permission anyway.

But early on Ms. Campbell -- it was discussed that maybe she would offer manslaughter. I thought she would get back to me sooner about that, but I documented that she didn't even make me officially the manslaughter offer 'til June 7th, and -- I come in on -- early June, I said Luck -- Luck finally made -- made a manslaughter offer. I wrote

Defendant a letter in jail immediately to get word to him, and plea is scheduled for Monday, June 20th, in front of Judge Newman.

So the minute I had that, I was like, "All right. Let's do this because this is -- this is what he wants to do." So -- I mean, so we -- I -- I tried to schedule it ahead of time. It took awhile -- it took longer than I would have liked to get the offer, but when -- you know, it was never like a situation where the State said, "Let's do manslaughter," and then I said, "No, let's not do manslaughter," or -- or -- or anything.

And it was kind of funny because every time I would talk to him, he would still say, "Well, if I don't get the 15 at trial, I'm fine with the straight-up plea." I have that documented on January 20th during our first meeting. I have, "He wants to plead guilty. He's fine with a straight-up plea." I actually have that in bold, and then there's a lot of stuff. And then I talk about, "He says he had a 15 year offer the last time in trial, and that's documented in his PCR."

In March -- March 9, 2016, he says, "He likes" -- or I remember, he -- he seemed to like his interactions with Judge Clifton Newman when he was in court. He says, "He -- he -- he didn't seem to care if Luck won't go with the 15. He was ready to just get in there and put -- you know, get

in there and try his -- try his chances." May 5th he's -- I have "D" for "Defendant" -- "still wants to plead guilty in front of Judge Newman ASAP. He does not care about whether it's straight up and doesn't want me to wait for a specific number as to time. Says to get him in court as soon as he has the offer and as soon as it's reasonably possible."

So I mean, it was -- there's -- there's a pattern here, and I take -- especially with somebody as extensive a writer and letter -- letter writer as -- as Mr. Henderson, I -- I try to take, you know, as diligent notes as I could there.

So I -- I mean, you know, and -- and I might have skipped ahead there, Mr. Waller, and I apologize. I just -- that seems to be sort of a recurring theme.

But yeah. So we -- I mean, the truth is is we -- I -- I know how I got here. We -- you know, he did not want to talk about the trial so much. He certainly didn't wanna talk about going to trial so much. He might have, near the end, said something like, "If I'm not getting an offer, let's just go to trial."

But we -- we didn't talk about -- I don't remember us talking about finding witnesses. I'm not saying it didn't come up at one point, but I investigate a lot of cases. I -- in hire -- I hire a lot of private investigators, and I don't have -- I'm not shy about doing it or getting a court

order to get funding for a private investigator, and that was just -- that was never a serious discussion that we had. It was always, "I wanna get to court and I wanna -- I wanna plead guilty," you know.

Q The client tells you that he -- he's interested in pleading guilty or -- or you know, is open to pleading guilty. Do you just stop doing any -- any work on it?

A Absolutely not. I -- I see it as a -- I see it as a -- a dual thing, especially with a serious case. If I don't -- you know, I have a lot of cases with -- with the senior solicitor's like Luck Campbell or Megan Walker or people that try a lot of these serious cases. And the thing is a lot of times with murder cases you don't have an offer that you like. So you -- you know, you wanna prepare a case, but at the same time you -- or you want to be ready for a case, but at the same time, you want to, you know, you do want to, you know, see what your offer situation is.

The problem is is, you know, it takes time to prepare a case, and if -- and if a -- if a client tells you up front, "I'm not interested in trial. I'm not interested in trial. Guilty, guilty, guilty, guilty plea, guilty plea, guilty plea," like every single time you talk to him, you're of course gonna shift -- I mean, you're gonna shift the attention to -- you know, to -- to preparing for plea stuff.

And at this point, the number one priority every time

we spoke was, "I want the manslaughter offer." And I said, "Do you want me to -- " you know, "You don't want me to sit and wait tight for a little, you know, you want me to haggle with her?"

And I did try and you know, haggle with -- with the solicitor about, you know, getting 15 'cause he was in -- at least in the PCR court found that he was offered 15 before.

You know, I was -- I was trying to -- a lot of times you try and say to your clients, "Hey, you know, sit tight a little bit. Let me see if I can do a little better than this." And every time I said that, he -- he had more faith in his ability to get in there and just, you know, get into court and -- and get a better sentence rather than wait.

Q You mentioned during the plea --

MR. WALLER: Your Honor, it's on page 53 of the plea transcript.

Q You mentioned some of the discrepancies and that -- that the blood spatter evidence could be interpreted differently. Did you ever discuss that with Mr. Henderson?

A I don't remember the specifics. I don't remember if we discussed blood spatter per se. I've dealt with blood spatter experts, I've dealt with crime scene experts, and I think at this point I was just trying to convey to the judge the circumstances of the death of the -- of Mr. Gail, the victim in this case, were open to interpretation because of

evidence. I was just trying to say, you know, "Your Honor, I think that this is -- I think that the circumstances are vague, and I -- I would disagree with the State's characterization and previous characterization of how things happened at the crime scene. And -- and you know -- and that's one reason I don't think this is an open and shut, regular run-of-the-mill murder case."

At this point I'm just trying to convey this is a -- this is a gray area in between, you know, murder and manslaughter, murder and self-defense, that kind of -- that kind of thing.

Q Well, at this point, 53 pages into the transcript, he's not pleading to murder, he's pleading to manslaughter.

A Right. But I'm -- I'm trying to convey -- right now I'm just doing my best to sort of mitigate, you know. And if you read -- you know, I don't know if you read Ms. Campbell's -- Ms. Campbell makes a, you know, an aggressive case, that this is -- this is an open and shut, tough, nasty, malicious, if -- even if she didn't use that word -- murder. I mean, that's -- she's a prosecutor. That's -- that's her position on this case. That's -- you know, that's, you know -- and -- and I'm trying to counter and parry -- you know, respond to her characterization of it, which I obviously had a different view of the facts in the case.

Q My ---

A It wasn't like I just sort of decided to start talking about blood spatter and you know ...

Q I understand that. My -- my question is: Did you discuss your interpretation of the blood spatter evidence with Mr. Henderson?

A I -- I don't remember.

Q Okay.

A I don't remember. I mean, I would not be surprised if it came up. I don't remember extensive conversations about it. We had long conversations when we spoke, but I don't remember. I don't remember it ever being a priority because I take good notes, and if -- if -- if it had -- and I mean, a priority of -- of Mr. Henderson's or a big topic of discussion. You can almost just sort of feel his presence through my notes that I take, that it's just this, you know -- he did send a barrage of paperwork.

You know, one reason why I had the transcript -- which kind of -- the first meeting I had with him he said, "I need you to take -- I want you to have all my papers." And I said, "Okay. Well, what's in there?" And he goes, "I -- I -- they won't let me have them." He was in SHU, the special housing unit.

I don't know why they didn't let him have them there at first. So I -- I got him to sign a slip --

Q Mr. -- Mr. Bailey, let -- let me stop you right there.
A Uh-huh.
Q I wanna get back to -- to -- we're getting a little off topic. Let me get back to my questions, if I can.

You used the term "vague" earlier when describing some of the evidence that the State had. You thought that the -- the facts were vague you said. Did you discuss that with Mr. Henderson?
A He -- I -- I don't -- I don't remember if I ever used the term "vague" with Mr. Henderson. I can tell you he did not want to talk about the evidence in this case. He wanted to talk about when he was gonna to plead and how soon he was gonna plea. And getting him into court in five months on this case was pretty fast.
Q Okay. What investigation did you do? Based on your review of the discovery and the trial transcript, what investigation did you do?
A I -- I read it. I -- I read it. Most of what I did was research on unavailable witnesses or dead witnesses and the admissibility of transcripts. I did not investigate, you know -- I did not do any of my own crime scene investigation. I reviewed it. I didn't send an investigator. I did not hire an expert. I wasn't asked to, but we were not preparing for trial at that point.
Q Okay.

A And -- and -- and it was -- it was clear that he didn't want to prepare for trial.

Q You testified that the majority of your conversations were centered around a plea ---

A Yes.

Q --- and pleading guilty. Did you ever discuss any potential defenses with Mr. Henderson?

A Yeah. I mean, self-defense. He said, "This is a self-defense case." I go, "Certainly looks like that would be a self-defense case to me."

Q Okay. Do you have any -- any of your notes or any letters or anything you had written him that you specifically informed them of self-defense? Obviously he had raised it before.

A Well, I'm not gonna write him letters about legal strategy into Alvin S. Glenn 'cause I don't think that's a very -- I don't think it's -- I don't think it'd be smart. I did say things like I'm -- I -- I sent him a letter -- well, I only have -- I have two letters I sent to him. I can't say for sure that these are the only ones right now.

I sent him one in, let's see, March. Hold on. Oh, no, it's April. And I said (as read): "I'm still waiting to get an official offer from solicitor in your case. From that point we will move forward with scheduling the hearing. Don't worry. I have not forgotten you. I hope to have new

information to you soon."

And then another one I wrote in right -- I think I said this. I think this was June 3rd, I said (as read): "I've just received the official offer from the solicitor in your case" 'cause I knew he was super -- wanting to hear about it all the time, all the time. And I -- I -- when I talked to her I was like, "I'm gonna write Mr. Henderson a letter right now."

I said (as read): "I will be down to visit you soon so we can prepare for your plea. Hopefully we will be in court by the end of the month," and we were.

I didn't -- I didn't talk about trial strategy in a letter because even though it's supposed to be confidential communication, you don't know what's gonna make it's way around -- around the courthouse, I mean, not the courthouse, jailhouse.

Q Sure. Did you ever discuss with Mr. Henderson the -- if he had gone to trial, the potential outcomes?

A The only -- I don't think I ever said anything to him, like -- I mean, you have a conversation with your clients a lot about -- I mean, I -- I've only been practicing 11 years, but you'll have -- on -- almost -- or I'm going on 11 years. You have conversations where you'll say, "Listen, I think if you go to trial, you're gonna lose this" or I -- or I think it's -- "You could win it, you could lose it" or "I

think you got a good case, but we may not win it." You know, there's a whole range of potential outcomes, and I don't -- you know, I -- he seemed less interested in going to trial so much at this point, I mean, the minute he pled guilty, he -- and we met afterwards, he was like, "Aw, I should've gone to trial. I should've gone to trial." It was like all the sudden he -- that was -- that was what he wanted in retrospect.

But I don't remember telling him that he would be convicted if we went. I said, you know, "You could be convicted, you could not. Self-defense defense is better than a lot of defenses, but the evidence has been heard in court once before and that's the same evidence that's gonna come in again."

So he was concerned about whether or not witnesses would be alive or available, and I said -- I said, "It's not really gonna matter because, you know, the prosecutor --" and this prosecutor certainly has tried cases where she read transcripts to -- to jurors when they're -- when they're in evidence.

So if I spoke about the nature of the evidence against him, it was based on the fact that all evidence that was submitted before would be submitted again for the most part. I -- I don't remember telling him, "You're gonna lose, so you need to plea." I mean, I -- I didn't have to encourage

him to plea at all 'cause that's what he wanted to do every single time I met with him.

Q Okay. I want to shift gears to the actual plea itself. What was your reaction when Ms. Campbell read the -- read his SCDC disciplinary record?

A Well, I -- I was unhappy with it. I didn't want her to read it. And I think you can see me -- me address it.

Luck would frequently -- Luck Campbell, the assistant solicitor -- she would frequently say, "Aw, he gets caught, you know, masturbating in jail all the time. He's really bad behaved." And she -- she thought this was hilarious. She would say really demeaning things about it when I had conversations with her, you know, about him. And -- and the fact that he was always getting, you know, in trouble for this in prison and at Alvin S. Glenn when he came back.

And I of course thought it was irrelevant. I didn't think it was something you consider, and I -- you know, I didn't fight with her about it. I -- I saved it for sort of the record, and I was gonna make clear -- I -- I -- I make, I -- I'd make a case that, you know, that this shouldn't be considered by the Court.

Of course this isn't a -- this is a guilty plea. It's not an evidentiary hearing in the way a -- a -- a jury trial would be or something like that. So stuff gets said in a guilty plea all the time that's, you know, inappropriate,

and all you can really say is, you know, "Your Honor, I don't I -- I -- I -- I disagree with this. I don't think this should be considered." I didn't say "objection" like you would on TV or in a trial because I don't -- it's -- I -- I wouldn't believe that it'd be that kind of a thing.

Additionally, Judge Newman is an interactive judge when it comes to pleas. Two things: One, he -- he -- if he wants information, he's gonna ask for it and he always does. Two, I'm -- you know, I'm not gonna -- I -- I can't stop them from saying it. I can say -- I -- I did tell Aryee, "Judge Newman's a smart man. He's been a judge for awhile, I don't want them talking about you, you know, getting in trouble in the jail for masturbating, but I also don't have to tell Judge Newman that that doesn't have bearing on how this case should turn out. He's gonna have his own opinions about it and it's relevance or its irrelevance, you know, he's -- he's -- he's a judge. He's heard hundreds and hundreds of cases, and he can make a decision as to whether it's relevant or not. He doesn't need a lawyer to tell him this is inappropriate," although I did and I can -- I can read it in the transcript if you want me to.

Q No. I ---

A Yeah. I made a point to say I thought it was inappropriate and shouldn't be considered. I was mad. I -- I think your question was how -- what did I think about it.

I thought it was stupid and I thought it was kind of unfair that the solicitor brought it up.

Q You did argue against it arguing in opposition, but you never made a -- a formal objection to it; is that fair to say?

A That is fair to say. I don't think saying, "objection" I -- we wouldn't have had an evidentiary conversation on -- on whether or not it was admissible 'cause it wasn't an evidentiary hearing.

I did not use the word "objection," but I don't really know how much that would've helped in the courtroom at that particular time.

Q When you were -- do you recall when exactly you were appointed?

A January of 2016.

Q Do you remember what day?

A I -- no, I don't. I can't figure that out from here.

Q Okay.

A I know that I saw him January 20, 2016, and we try to see people within three days or so of when we get appointed -- a case gets assigned to us. That's sort of kind of the rule. We try to see -- 'cause we don't like people sitting and waiting in the jail.

So I don't know how -- I don't -- I don't -- and I don't know what day that he was in court. I remember Lucas

Hawkes coming back and telling me that he was in court and he was in the box.

Q Mr. Henderson's testified here today that he was scheduled to go back to court on January 19th.

A Well, I think that that was relating to -- well, I -- I don't -- I don't -- I think that once he was appointed a lawyer, you know, I guess Judge Newman didn't feel the need to have a speedy trial motion hearing.

But when I saw Aryee -- and he's smart and he's savvy and he knows how, you know, get into court and, well, submit things. They're not always official filings. He said, "I filed that motion so I would get into court and I would get their attention I wouldn't be sitting here," you know, that kind of -- that's what he -- that's what he said.

Q Okay.

A But I -- yeah. He wasn't -- he -- I mean, he wasn't brought back into court. And I don't know -- and that's another thing, I don't -- I don't know what was said before our office had -- had him in court except that -- that Lucas Hawkes talked to him -- went to talk to him, presumably when he was in the box.

Q Okay.

A And he -- and he said, "I just wanna plead guilty." And -- and then Judge Newman decided to appoint him our office -- appoint our office from the bench.

Q What did you discuss with him about -- prior to going into court for the plea, what did you discuss with him about the procedures of a plea and how things would go?

A Let's see. I met with him -- I know I met with him in holding before the plea, which would've been June 20th, and we would've had a long discussion about it. I also met with him a week before the plea, which was June 13, 2016. No. No. I said that wrong. That was the day I called his friend James Randolph.

When I spoke -- I'm sorry, give me a second. I'm trying to find the dates.

I met with him in June, and we had -- and I had -- actually I wrote (as read): "Long meeting with Defendant regarding mitigation of his case." This was June 7th, I believe. That's how I've got it marked. So that was -- that was -- that was 13 days before the plea, but the plea was scheduled for Monday, June 20th.

So we talked to -- we talked mitigation. He had gotten his carpentry certificate, he had gotten his GED, he wants to go back to school, he thinks he has a talent for law and helping people with the law. and I asked him, "Hey, is there anybody that I can have to come and speak on your behalf?"

He gave me two numbers. He gave me Omaro Goodwin and then James Randolph. Later about -- I guess, six days later

I did reach James Randolph and he was a really nice guy. And I think -- I guess James was the guy who showed up at the plea. Yeah. He was a really nice fella, and he was gonna try and give him a job at the restaurant and it was nice of him to come. And it was -- it was a real disappointment and it was sad because Mr. Henderson's a nice guy and a good guy. It was -- it was hard for -- I'm glad I had one person to come on his behalf, but I -- I -- he -- he didn't have a lot of people that he -- that he knew or could have come see him anymore because he's been in for -- prison so long.

Q Did you discuss with him the questions the Court would ask of him before being allowed to accept his plea?

A Yes. Actually, I don't have that right in front of me, but I always do an advice of rights form, and I forgot to bring that today. But that would have been in my file. I don't -- I don't even know if -- I don't know where the -- the file itself is right now, but I always get them to sign, I mean always, an advice of rights form and that's when I go through, "You realize what this carries," you know, that sort of thing.

I do that for two purposes: One, to fully inform Defendants of their rights; two, the judge is gonna ask them these very questions, and I don't want these questions to be new or foreign when the judge asks them.

Q Did you talk to him at all about the victim's bill of rights and the fact the victim would be allowed to address the Court?

A I -- that's not my standard form. I don't remember. I might not have even heard from the solicitor until fairly last minute about the victim being there.

I can tell you that -- that sometimes the Solicitor's Office doesn't know what's going on with the victims 'til the last minute because they use the victim's rights advocate; whereas, if I'm gonna pick up the phone and call a witness or call a mom or a dad or a James Randolph to come in and speak for my client, I call them myself. I tell them what courtroom to go to. The Solicitor's Office, they'll go -- frequently they go through the victim's advocate group or they'll tell their paralegal to talk to the victim's advocate group, and the victim's advocate talks to this other person; and it's like -- it's almost kind of like a game of telephone. I'll ask the solicitor -- I'll be like, "What did your victim say?" "Well, I've gotta ask the victim's advocate." So I don't even know sometimes.

And -- so frequently I don't even know -- I -- I'm -- I don't even know who's gonna show up or when they're gonna show up. I -- I ask. I try to find that out. Sometimes with -- with this particular solicitor -- I don't mean this as criticism, I just -- I'll say, "Hey, who's showing up?"

And they'll say, "Oh, it's a family member," and they might not even know if it's a mom or a grandma or a daughter or a son or something like that until sort of the last minute. So frequently we are right up in court before it happens.

I -- I mean, you know, the truth is I don't remember specifically. I certainly wasn't trying to hide it from him. And I might have heard it later in -- than I wanted to. If Aryee would've asked me, I would've told him what I -- what I knew at the time.

Q Would you advise him that, if present, any representatives of the victims had the opportunity address the Court?

A If it came up in -- in conversation, I would've said that, "The victims get to speak." I was like, "We don't always like what they have to say. It might not be accurate, and I -- but -- but they -- you know, they get to speak and say whatever they want to as a victim or a victim member of family," you know.

Q But you wouldn't offer that information if -- or wait 'til it came up in conversation?

A Yeah, absolutely. I mean, it's sort of automatic. I mean, I've had that conversation -- I would've told him, "The victim gets to speak." I might not be able -- I mean, we might have been in a general discussion or a hypothetical, like, "Is anybody coming?" And I say, I --

sometimes you don't know until last minute, and I -- and -- and you say, "If they come, they -- they have a right to speak, and they're gonna get up and say I'm so sad. You know, my family member is gone or something to that effect."

A lot of times what will happen is I do not know or the solicitor does not even know that they're coming or whether they're coming or not. We get up in court, and the victim's there. Frequently I will sneak over to the box where my client is and say, "Yes, the victim is here."

And I will try and ask the solicitor, "What's the victim asking for," or "Does the victim have an opinion?" and I'm talking about all scenarios, not just a murder case. And -- and I will try and go to the box to talk to my client tell them what I know to the best of my ability before it. We don't always have a lot of notice of that.

Q All right. Shifting gears one more time, Mr. Henderson filed or attempted to file several motions or things with the Court. Some of those were motions to relieve counsel, which he would be able to file pro se. Were you aware of those motions?

A No. I -- and I -- I don't know if I -- I'd agree with you're allowed to file a motion to relieve counsel pro se. I mean, yes, it is the client's motion, but typically the Court doesn't hear them unless they come through the lawyer in this Court, you know.

Like, I don't -- I got a lot of stuff from Aryee. I wanna give you a little paper background. First of all he never asked me to hire -- fire him. I'm sorry. He never asked me to fire myself or to relieve myself in a -- in a conversation. I don't remember -- I don't remember him ever saying, "I wanna fire you. I want you off this case."

He did write a lot of letters to Judge Newman and Richland County, and he was -- he was very prolific when it came to writing stuff.

Now, what you're calling a motion, the Clerk's Office here gets all the time. And if -- if a -- if a Defendant, especially from the jail, writes something on a piece of paper, it says, you know, "Motion to reveal this" or "Motion to whatever," they get it. The Clerk's Office in Richland County sees this item, they -- they stamp it as when it came in, they clock it, but they -- it's -- they don't consider it a motion and they don't file it as a motion or it's not filed as a motion. It's just stamped as mail coming from a client. And then they send -- they usually, I believe, send a letter to the Defendant saying, "We have your record" -- I don't have it right in front of me, you guys probably would -- "We have on record that -- that your lawyer is Rhodes Bailey. Talk to your lawyer about filing a motion," or something -- something to that effect.

And then I eventually, sometimes weeks later, will get

something in my mailbox that -- it -- it has a little form that says, "Your client wrote us, we clocked it, and then we sent a -- a copy to the solicitor's office."

It's a frustrating situation because client's will frequently think what they're doing makes a difference or it's a legal action, and I try to say, you know, "You need to talk to me if we're talking about motions. You -- you're not ..." -- unless you are pro se without a lawyer, they're gonna ignore it. I mean, you know, they practically throw it in the -- the -- the trash can. Not literally, I'm saying figuratively. They stamp it, and they put it in file, they don't read it, they don't consider it.

And I believe that he wrote some of that stuff -- and you can look at some of his -- at his PCR application. If there was a spare piece of paper, Aryee was writing something on it, something about a statute and he was -- he was sending it in.

I had six -- I swear, I think it was like 60 pounds of papers of his stuff because the first time I met him, he said, "I want you to take my papers." And I went into the property room, and I signed it, and the officer looked at me and laughed. He goes, "You're gonna take all this stuff?" And I go, "How much is it?" And he handed me two laundry bags of transcripts, mail, all that kind of stuff. And -- and Mr. Henderson was absolutely adamant that I had to take

this -- you know, take this stuff out.

So I took it, and I signed it. It was kind of hard to carry them. They were old laundry bags and they were starting to -- starting to tear. So I -- I made it into my office with them. I had to drag them through -- I -- it was -- it was pretty hard. They started tearing and ripping.

I threw away the old laundry bags. They didn't really smell very good, but that's not anybody's fault. They were laundry bags from the -- you know, the Department of Corrections and they had years of papers. And I put them in new boxes. So there was a lot of stuff, and he saved everything. There were also magazines, and you know, stuff like that.

So I was frequently surrounded by his paperwork. And then he would write stuff all the time, and he would write statutes. And some of it was, you know, irrelevant or -- you know, and I -- I don't mean this in a -- in a -- in a condescending way, but some of it was gibberish. He had a preoccupation with grand juries and regular juries and when you could -- there's this sort almost conspiracy theory type of thing that gets around the Department of Corrections from the courthouse where they think that they've caught the State and they've got a get out of jail free card because of something to do with --

Q All right. Mr. Bailey, let me -- let me cut you off

again. I think we're getting a little off topic to my question.

A I'm sorry. I -- you know. All right. Yes, sir. Whatever you want me to answer.

Q Whether or not Mr. Henderson was allowed to file a pro se motion to have you relieved, okay, were you made aware of any -- the things that he was filing?

A I -- sometimes -- sometimes, sometimes not. I mean, I -- I -- I don't remember -- I mean, he put so much stuff -- there was so much paper, it would've taken hours to read all of it and most of it was gibberish about grand jury transcripts, which don't exist, or grand jury sessions or regular jury sessions or when trials were there.

I mean, so most of that stuff was the stuff that he wrote. But I -- if you wanna -- what -- do you want to hand me --

Q Let me hand you what's been marked or what's been admitted as Court's Exhibit No. 2.

A All right.

Q And ask if you've ever seen that.

A Okay. And see this is -- this cover sheet is exactly what I was talking about. They say (as read): "We received your inquiry and respond as follows: A copy has been sent to the Public Defender's Office and Solicitor's Office." And that's what they do.

"Motion to relieve counsel." Yeah. And then there were -- I'm sure he filed a lot of other things that he called motions and he wrote them on the back of these Alvin S. Glenn things. There's also a -- yeah. So this is a motion to renew. I -- I've never -- I don't know if I've heard of a motion to renew in that thing.

Yeah. We didn't talk about these. I mean, if -- if -- if -- if Aryee wanted, you know, to relieve me, and he'd said that to me at a meeting, I would've filed a motion to be relieved and we would've had it heard.

Q Okay. So you weren't aware of that being filed.

A I -- no. Well, here's another thing, clients -- if you've done this as long as I have, I mean, you don't even have to do it that long, clients are always writing these things and then you go down and you say, "Do you want me relieved?" "No, no, no. I just want your attention"; or no -- or -- or this might be one of five other things, like motion for a speedy trial to plead guilty or -- Mr. Henderson's certainly a lot more savvy and -- than a lot of other folks, but a lot -- or it'll be this thing -- this weird thing about the -- the transcripts of the grand -- the -- of -- of, you know, grand juries.

So, you know, if he needed me to -- if he wanted me to be fired, I mean, I -- I -- I just needed him to tell me, and I would've at least -- either we would've talked about

it and he would've changed his mind, or I would've filed a motion to be relieved 'cause I -- you know, I feel -- I feel like it's my obligation to -- if somebody says, "I want you to be relieved" and they don't change their mind -- sometimes they do change their mind -- I -- I -- I got no reason to keep trying -- I have no reason to not file it.

MR. WALLER: Beg the Court's indulgence?

THE COURT: Yes.

(Brief pause.)

MR. WALLER: No further questions. Please answer anything that Ms. Kinard has.

CROSS-EXAMINATION

BY MS. KINARD:

Q Good morning, Mr. Bailey.

A Morning.

Q You've testified extensively on direct, but I do have a few questions I want to follow up with. These documents that you checked out from Mr. Henderson while he was in County, he alleged that you never returned those documents; is that accurate?

A That's right. Yeah. He -- he actually grieved me about it, and I mean, the grievance was dismissed, but it -- he -- he would -- he complained at some point about -- I don't know.

It was -- it was difficult. When you speak with Mr.

Henderson, he speaks quickly and he moves from subject to subject really quickly, but he really wanted -- mainly it was all about, you know, "When can you get me into court?" You know, "When can you get me into court?"

And he would say, "I want my documents." And I'd say -- at some point I said, "Well, what do you want" 'cause it's -- I mean, it's -- I mean, this is two -- this is two large file boxes, once I got them out of the laundry bags and organized them. I mean, I -- you know, I -- it was like, "This is -- this is a lot of documents. What is it that you want or maybe I can -- maybe I can even bring you down to the courthouse and we can review them. What do you want?" And he would never say -- I mean, it was, you know, I -- I don't know.

I was never trying to hide anything from him, it was just hard to decipher what he wanted out of it and it was a lot. I mean, we're talking pounds and pounds of -- of stuff. So it wasn't like I could just wheel it in.

Q Okay. Did you get any new discovery on this case once you took it over?

A I got -- I got -- I got -- I believe P -- PDF's of the same discovery that the Solicitor's Office had used in their first case. I mean, I can't speak to if that had something that they didn't initially have, which I doubt. But I got -- I got their police reports and statements and -- and all

that stuff. The same -- and -- and it had been PDF'd and emailed to me and I saved it on our F-drive file.

Q Was it a conscious decision to plead in front of Judge Clifton Newman?

A Yeah. Mr. Henderson liked Judge Newman a lot 'cause of his interaction with him, and you know, Judge Newman apparently at that hearing was, you know, really pleasant to Mr. Henderson. And I mean, I don't -- I don't -- I hesitate to use the term "rapport," but if there's kind of a interaction that's sort of pleasant or makes sense or people on sort of the same page, I think that's how he felt about him, and usually when we talked, that -- you know, that's sort of what he -- sort of what he said.

And I actually -- and you know, contradictory to what Mr. Henderson said, I've -- I've been in front of Judge Newman many, many times since I've been practicing in 2007. And I -- I told -- I did tell him, I said, "You know, Judge Newman is going to -- he's gonna be real active, he's gonna ask you questions, and he will -- I believe that -- that he will, you know, hear our side better if there's a certain amount of remorse or acknowledgment of guilt or something like that."

But I -- I didn't ever say he was a tough judge or that I hadn't been in front of him or any of that kind of stuff. I don't -- I don't know where that's coming from.

CROSS-EXAMINATION BY MS. KINARD - RHODES BAILEY

Q Did you discuss with Mr. Henderson the meaning of a straight-up plea with no recommendation?

A I -- he -- he -- he knows what a straight -- I mean, yes, we talked about it. But, I mean, Mr. Henderson -- he has been through the system. He understands what's going on, he's been through it before. He knew exactly what he wanted and that he wanted to plead in front of Judge Newman.

And I said, "Do you want me to -- do you wanna -- do you wanna take some time on this and see if I can get a number?" And you know, I don't think that that was sort of fast enough from him. And I think he had heard other lawyers, he had been through other lawyers, he'd been through so many hearings. He just seemed like this was it, this was his big chance for reduction, and he was just ready -- he was just sort of ready to go.

I -- I definitely said at some point, you know, "If you just sit tight, I will continue to try and get the solicitor to ..." -- I -- I wanted -- I wanted her to recommend 15 years, and I'm sure he wanted that; but it got to the point where he was just like, "I think we should just go in and just ask for it."

So -- he -- we talked about it and -- and -- and he was aware of what a straight-up plea was. And -- and I wrote in my notes at least three -- on three different days that he's fine with a straight-up plea. Our first meeting I

wrote (as read): "He mainly wants to plead guilty. He's fine with a straight plea -- straight-up plea." And I keep saying (as read): "He doesn't care if Luck wants to go with the 15", on my next meeting -- or in March, and I guess it was a few other times.

And she finally made the manslaughter -- that was the thing is we kind of felt like Luck had to make a manslaughter offer for it to be a plea, right? And I figured she was going to eventually make it, but you know, it took a certain amount of time to get one from her.

And I'm sorry if I'm answering more stuff than -- I'm probably -- lawyers are terrible witnesses on the stand. So -- and -- and --

Q Do you think it was improper that any of the attorneys or victims mentioned a definite term or years or asked for the max or asked for leniency in a plea that doesn't have a recommendation?

A Yeah. I wish they wouldn't. If I don't have -- I've looked at the transcript. I don't remember -- the solicitor asked taking a position on sentencing, but I think she conveyed that the -- I mean, we -- we know that frequently the victims are gonna ask for what the victims are gonna ask for, and we can't -- and we -- we can't control that.

Q Regarding your investigation of this case, is it reasonable for you to hire an investigator and -- and jump

full force into so called "trial prep," if a bulk of your discussion with the client is about getting a plea?

A I -- when a client seems to convey -- and I've had thousands of clients at this point -- that there's a route that they wanna take, that becomes sort of the focus. If I don't think a plea offer's gonna be available, I'm gonna prepare for trial even more because I realize a plea offer's not gonna be made available.

But in this case, I thought we would eventually get an offer. We eventually did get a reduction to manslaughter. That wasn't -- I wanted a better offer for sure, but you know, this was just not a case -- you -- very frequently when you meet -- meet a client early on, you know whether this is a case where you're gonna get investigators, whether you're going to get -- ask funding for a private investigator, whether you're gonna start planning for trial; and I've planned for a lot of trials, and this was just not a case where that was sort of a top priority.

It -- the only time trial even seemed to come up was near the end when Mr. Henderson was kind of like, "This is taking too long," you know, "This is taking way too long. I -- I -- you know, I'll have a trial if they don't give me -- give me an offer."

Q Regarding the victims, you testified that often you don't know until right before -- or sometimes you're in the

courtroom -- if victims are going to show up and speak.

A Right. I -- if I can find out or if I know it, I want to know it, but I -- I don't always know. And I -- and the solicitors themselves don't always know. Some are better than others about letting me know.

Q And you discussed the possibility of victims being there with Mr. Henderson?

A I -- I can't remember. I mean, I'm sure -- I'm sure I said -- I mean, I -- I -- I honestly just can't remember. I had a lot going on. I had a pretty involved presentation for Mr. Henderson. This was like a real involved -- I took a lot of notes, I've got the outlines I made, outlining -- you know, doing all the math of his incarceration. And I talked about manslaughter versus self defense not being mutually exclusive. I had a lot of case law. If you read the thing, we went through the facts of the case, we did sort of basic mitigation.

I had to be able to give the procedural history on the last PCR. I talked about what he did in prison. I -- I had so much going on with him, and then I was going over the rights. I just honestly -- I cannot remember if we -- I cannot remember if at this time in this case I knew if the victim was gonna be there or which victim was gonna be there, and if I knew it, I was gonna convey it to him.

And usually a client says, "Is anybody gonna be there

to speak against me?" And you know, I say, "I don't know," or "If they are gonna be here, they -- they have a right to speak. I can't stop them from speaking."

Q Right.

A I -- I do not remember me and Mr. Henderson's specific discussions with that. I -- I certainly wouldn't try to hide it from him or anything like that.

Q So it's your practice to talk to clients about that kind of stuff?

A Yeah. Yeah. It's just automatic. I've done this so many times. In the very least, in the general hypothetical sense like, "Victims get to talk. I don't know what they're gonna say."

I try to find out what they're gonna say.

Q So you stated you had a lot going on here in that you prepared more for this mitigation, perhaps more than others, due to the procedural history of this case?

A Right. And it was a straight-up plea, so I felt like I had to work extra hard to -- to get lower in the range. And you know, we asked for 15. I -- I thought that was fair 'cause that was what he -- what he was offered, you know, 14 years before.

And I had a few -- I got a few different cases like Mr. Henderson's in 2016, which were murder cases that had come back after a PCR. And it was just kind of like high --

and -- and -- and -- and -- and most -- a lot of those guys just want to plead, too, because they're hoping to get out soon or time served or something to that effect.

Rarely do the judges give them time served, which, obviously, it'd be great for the client; but I -- I was in high mitigation mode in 2016. I remember having to do a lot of these type -- not a lot, but I had a lot -- I had similar work in other cases.

Q So he went from being convicted of murder and a day-for-day 30 years to voluntary manslaughter, 85 percent of 25 years ---

A Right.

Q --- is that correct?

A That's right. So my math, that saved him about eight -- eight point seven five years. I wanted more for him. I remember Judge Newman said he won a small victory or something like that in the transcript. I remember Judge Newman saying it. Like, "Eh, took a little bit of time off. It's a small victory for you."

I also remember Judge Newman saying, "You know, if there wasn't a victim here, I might go your way," like, "You seem like a not bad guy." Some -- something to that effect.

Q I have no further questions for you. Is there anything else you'd like the Court to know about your representation of Mr. Henderson?

A I think -- I think I've conveyed everything I need to.
Q Okay. Thank you, Mr. Bailey.
MR. WALLER: Just briefly, Your Honor.
THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. WALLER:
Q Mr. Bailey, if Mr. Henderson had backed out of the plea, what would you have done then?
A What would I have done? I would've gotten us ready for ---
MS. KINARD: Objection, Your Honor. That's outside the scope of my cross-examination.
THE COURT: Overruled.
MR. WALLER: Your Honor, I think her questions were --
-
THE COURT: Yeah. Overruled.
A We would've -- we would've gotten it ready for trial. Not that Mr. -- that had been a priority of Mr. Henderson if he wanted a trial, I'd do it. Hey, man, I took this job not to beg people to plea to stuff. I took this job to try cases. Of course, frequently things turn into pleas.
Q Was there a trial scheduled or on the horizon or ---
A No, there wasn't. And at least how things are done in Richland County, you know, this was -- I mean, I had him for less than five months. I think -- yeah. Or maybe about

five months. I had him for about five months, and I tried to speed this along as quickly as possible for him because he wanted it fast.

Q You mentioned that towards the end of your representation he began to mention a trial because he thought it was taking too long?

A Yeah. I'd say right near the end he started -- he mentioned it a couple of times, but then -- having conversations with him would be like, "Yeah, I want this. No, no, I don't know. Yeah, yeah, I definitely want this." It -- it would -- it would -- "I don't know, I don't know. Maybe, maybe not. Oh, no. Let's just do it."

I mean, that would be -- I mean, it would always come back to the main thing, but he would get real excited about something and was real hyper-active, "Let's just do it. I don't -- I don't need to wait on the 15 years with Ms. Campbell or from the solicitor."

And so occasionally it would almost be like a throw away comment, like, "Man, I'll just go to trial if this is gonna take this long. I'll go to trial. I can win this. This is self-defense."

And then it would shift back to, "Well, okay. I'm ready for -- I'm -- I'm ready for the plea offer when it comes."

It was almost kind of like a throw away comment. It

was like a back and forth, back and forth thing. I remember, you know, fairly clearly.

But I mean, it was never -- I mean, it was just -- there weren't -- I'd love -- I'd have been happy to talk about trial stuff, but he -- he -- he did not -- early on clients really make clear to you if they want a trial. And he just did not seem to want a trial, not like -- you know, not sort of in my experience. I wasn't trying to keep him from going down that road.

Q Based on those kind of back and forth comments he -- he was making, either with himself or -- or with you, did you change any of the work that you were doing?

A I -- I think we would talk a little bit about the facts of the case, and -- and then it would sort of drift back to, you know -- frequently -- and -- and he would -- he was very -- he steered conversations the way he wanted to steer them. I mean, he -- I -- I certainly wouldn't have been able to push him around if I wanted to. And it always went back to -- it was all about speed. Getting to court, getting to court, getting to court. Get -- you know.

And of course, you know, that's not how you try a case. You don't rush into court to, you know, try a murder, case in that -- you know, in -- in that way. The -- the conversations were always about moving quicker, not about preparing for trial or witnesses or that kind of stuff.

MR. WALLER: Your Honor, I have nothing further for this witness.

THE COURT: Okay. Thank you, Mr. Bailey.

THE WITNESS: Thank you, Your Honor.

(The witness exits the stand.)

MR. WALLER: Your Honor, I would -- I would ask to be able to recall Mr. Henderson.

THE COURT: All right. Any objection to that?

MS. KINARD: None, Your Honor.

THE COURT: Before we do that, let's take a five minute break.

(Off the record at 11:46 a.m.)

(On the record at 11:51 a.m.)

THE COURT: Whenever you're ready.

MR. WALLER: Oh. Sorry, Your Honor. Your Honor, I recall Aryee Henderson.

(Mr. Henderson re-takes the stand.)

THE BAILIFF: You're still under oath.

REDIRECT EXAMINATION

BY MR. WALLER:

Q Good -- still morning, again, Mr. Henderson. Mr. Henderson, you already testified once today. You were scheduled to go back to court on January 19th.

A Yes, sir.

Q What were you scheduled to go back to court for?

A Pertaining to that fast speedy trial motion because I want -- like I say, that's when I asked for the -- the 15 year time served. And Judge Newman specifically ordered the Solicitor's Office to bring me back up here on the 19th.

So instead of me going to court on the 19th, Mr. Bailey came and saw me on the 20th, and he pacifically [sic] told me that he met with Ms. Campbell on the 19th, that she had a plea offer of open plea, voluntary manslaughter, no recommendation; that he rejected her offer, and that -- that's when we started discussing my case and he started asking me what I needed and that's when I explained to him that I didn't have my legal documents, I needed it to prepare for trial. I told him to get everything out of it he needed to make copies of it, and to send everything back to me. He said, "Okay. I'm gonna do that." And I asked him when he was gonna do it, he say just give him 'bout 30 days. He never got back with me.

Q Okay. So his explanation to you on the 20th of January about why you didn't go to the court on the 19th was that the solicitor had made an offer that he rejected on your behalf.

A Right.

Q Okay. We've been talking about things that you filed or attempted to file with the Clerk of Court, motions and other -- other documents.

A Right.
Q Was Mr. Bailey aware of those?
A Yes, he was. The first motion to relieve counsel I filed, he came and saw me. And when he came and saw me, he screamed. He said, "Stop writing letters to the Court." Those were his exact words.

And he said that -- that anything that we discussed it supposed to be discussed between me and him, and that he -- the judge didn't want me writing letters to him and stuff like that. And basically what he was saying that -- what he was saying I -- what I be writing in my motions was meritless, that I should be -- he was trying to make it seem like really I was harassing the Court.

But I mean, basically what I was just saying was that I was just unsatisfied with his representation, so obviously he knew and he was aware because every time I filed a motion with the Court, my motion to the Court would get filed with the Chief Administrative Judge. So every time I filed a motion with Chief Administrative Judge, the judge would inform Mr. Bailey that I filed a motion with the Court.

So he came and saw me with the first. I filed the second motion to renew motion to relieve counsel, and that's when I placed in the motion that throughout any further proceedings with me, that I wanted to proceed pro se throughout any and all future proceedings. And that's when

he -- and soon as I filed that motion with the Court, that's when he wrote a letter saying that a plea was back on the table, we was going to court.

Now, we never discussed any -- we never discussed holding a hearing on that motion. He never brought it up to the Court. It was never spoken of.

Q But he was aware of that and -- and other things that you had filed.

A Yes, sir.

Q Okay. Nothing further.

MS. KINARD: No cross, Your Honor

THE COURT: All right. Thank you. You may step down.

(The witness complies.)

THE COURT: Any other witnesses, Mr. Waller?

MR. WALLER: No further witnesses, Your Honor.

THE COURT: Okay. I am -- I'd like to go ahead and hear argument --

MR. WALLER: Your Honor, just -- just brief argument. I think ---

MS. KINARD: I'm sorry. Your Honor, for the record, the State has no witnesses.

THE COURT: I'm sorry.

MS. KINARD: Sorry.

THE COURT: I assumed you didn't. Okay. Mr. Waller.

MR. WALLER: Your Honor, just some -- just brief

argument. I'd ask the Court to consider the -- the application and the amendment to the application when reaching a decision. And also to review, if Your Honor has not had time to in advance, the -- the transcript and other documents that are in the record.

Your Honor, the testimony was that Mr. Henderson -- Mr. Henderson's testimony is that he initially did want to plead guilty. Once he got appointed a lawyer that -- that changed. Mr. -- Mr. Bailey obviously testified to the opposite.

Mr. Bailey testified that while he reviewed discovery and -- and reviewed the transcript, he was -- every time he met with Mr. Henderson he was focused on a plea. And so he didn't really do any investigation outside of reviewing the discovery which he had.

I believe Mr. Bailey testified correctly that -- that there wasn't a trial on the horizon or anything like that. So certainly there wasn't -- wasn't a situation where he was unprepared for trial the very next day; however, Mr. Henderson's testimony -- it -- it's pretty clear that he -- that he -- he wanted to go to trial and that he felt that if he had to go to trial with Mr. Bailey, that he would be in a position where Mr. Bailey was not prepared and he would lose.

I think that he made a decision based on the perceived

threat or coercion of "you're gonna lose and be convicted of murder if -- unless you plead guilty to this voluntary manslaughter."

So Your Honor, we would ask you to consider those arguments and grant Mr. Henderson post conviction relief.

THE COURT: Ms. Kinard.

MS. KINARD: Your Honor, the State actually agrees with the bulk of what Mr. Waller's just mentioned; however, we disagree on the reality and what repercussions this had.

For example, there was no trial looming on the horizon. So Mr. Bailey did not need to be expected to be prepared for trial that day. He said he had begun preliminary investigation and was not shy about hiring an investigator should they need to go to that step in the process.

There was a perceived threat at losing at trial, and that was based on the professional advice that Mr. Bailey provided to Mr. Henderson as is his duty as an attorney. That is why people get attorneys is to receive the benefit of their experience and their advice, and I think in this situation Mr. Henderson absolutely received the benefit of Mr. Bailey's experience and advice.

He had been before Judge Newman before. He had done many cases like this before. He said he worked -- was working on several that had come back from successful PCRs.

He prepared a very extensive mitigation on Mr. Henderson's behalf, and he presented his case to the best of his ability.

Mr. Henderson testified to a few different aspects in his direct examination that I believe demonstrated lack of credibility on his part. There are a few different instances where he contradicted himself, and so I -- I think where their stories differ, Mr. Bailey would be the more credible of the two witnesses.

Mr. Henderson also testified directly that he pled guilty to receive the benefit of the bargain and the lesser of two evils. He could go to trial and roll the dice again, or he could take the straight-up plea that he had requested of Mr. Bailey several times and get the -- the devil you know versus the devil you don't, to use another aphorism.

Ultimately there is no prejudice toward Mr. Henderson based on the performance of Mr. Bailey. Mr. Henderson -- even if you look at the evidence in the light most favorable to him and if you assume that perhaps there was a plea offer Mr. Bailey rejected, Mr. Henderson still pled to the exact same thing that he alleges was offered. He took the advice of counsel, he took the -- the benefit of what Mr. Bailey had to provide for him, and he made the decision that he thought best benefitted him at the time.

So for him to come back now and say that all of these

deficiencies may have been present, I certainly do not believe that there are any deficiencies or any prejudice to Mr. Henderson; and therefore, he cannot satisfy other prongs of the *Strickland* test and we ask that his application be denied and dismissed with prejudice.

MR. WALLER: Your Honor, I apologize. I neglected to address one of our issues.

THE COURT: Yes, sir.

MR. WALLER: And I won't rebut anything Ms. Kinard just said.

Your Honor, two of the issues were involving the actual plea itself. Your Honor, Mr. Henderson testified that his understanding of an "open plea" as he called it was that noone would speak. And Mr. Bailey even testified that he didn't specifically recall and -- and was oftentimes not able to know if victims are going to be present. And he didn't specifically recall if he informed Mr. Henderson of -- just in a general sense, if victims are present, they would be able to testify.

So Your Honor, I think that -- that in that sense the testimony is that the plea agreement was -- was breached.

Your Honor, additionally, Mr. Bailey did not object to the presentation of the SCDC disciplinary record during the sentencing. He did argue against it, and I completely understand his point as far as arguing against it. I don't

believe it was relevant. I don't know how much Judge Newman -- Judge Clifton Newman considered those because they're certainly not criminal convictions. It much different. I don't know why it was presented, but Mr. Bailey certainly did not object to that.

So we'd ask Your Honor to consider those two additional arguments.

MS. KINARD: The State avers that having people mention terms of years is not a recommended plea. It is not a formal recommendation by the State or the Solicitor's Office. It is merely discussion of the amount of time that an individual could received from the Court. For that reason, it cannot be viewed as violation or breach of a plea agreement.

As to the SCDC records, this was not an evidentiary hearing. They were not presented as evidence toward the Court. They are presented in terms of reference to Mr. Henderson's pattern of conduct while he has been incarcerated, and Judge Newman gave them the weight that he deemed necessary. We have no information on the record of whether those even played a part in his decision.

So again, we don't think that these in any way show any deficiency by Mr. Bailey and are not prejudicial to Mr. Henderson.

THE COURT: All right. The application for post

conviction relief is denied. As to ineffective assistance of counsel, specifically where there is a guilty plea, the prejudice prong must be satisfied similar to the way that it must be satisfied where a trial occurs and the case law says specifically it ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance, he would not have pled guilty. There must be something more shown to demonstrate the prejudice required.

As to the breach of the plea agreement as alleged, I don't find that there was any breach; but to the extent that it could be construed that there was, the applicant must show some detrimental reliance on that agreement. I think this case is a little different in that, one, Mr. Henderson always wanted to plead guilty. He said that a number of times. There's been some assertion today that he might have gone to trial, but certainly the day of, he -- he weighed his options and thought that a trial was -- I mean -- I'm sorry -- a guilty plea was the best option for him, and that is -- puts him back in the same position that he was before he even met Mr. Bailey, frankly. He wanted to plead guilty then, and that was without any offer from the Solicitor's Office.

And I've lost my train of thought. So I'll sum it up by saying for these reasons and others, the application for post conviction relief is denied. I'll ask Ms. Kinard to

prepare an order for me.

MS. KINARD: Yes, ma'am.

MR. WALLER: Thank you.

(Off the record at 12:05 p.m.)

-- END OF TRANSCRIPT OF RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court, for Richland County, South Carolina, on the 24th day of January, 2018.

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

E/Bonnie H. Kelly

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

May 24, 2018

RECEIPT FOR EXHIBITS

28787

Case No. 2016-CP-40-04364 Judge J. Newman

Plaintiff: Aryee Henderson Pltf's Atty. Jonathan D. Waller

Defendant: State of SC Def's. Atty. Jessica Kinard

Date Trial Started: 1-24-18 Date Trial Ended: 1-24-18

Received of Bonnie Kelly, Court Reporter for the above case, these exhibits:

		Clerk of Court Use
C-1	Clocked Documents Dated 4/22/16 3 pgs	
C-2	Clocked Documents Dated 6/7/16 4 pgs	
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This 24 day of January 20 18. Page 1 of 1

By: [signature]

Richland County Clerk of Court

Clerk should retain white copy in Civil cases, yellow copy in Criminal cases.

Revised 3/96

198

Inmate ID: 59105

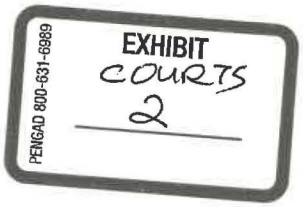
Case Status: P (H258760)

Jeanette W. McBride
Clerk of Court

Virginia F. Belcher
Chief Deputy Clerk of Court

Mailing Address
Post Office Box 2766
Columbia, S.C. 29202
Phone: (803) 576-1939
Fax: (803) 576-1925

RICHLAND COUNTY JUDICIAL CENTER
Clerk of Court
Criminal Records Division
1701 Main Street
Columbia, S.C. 29201



Name: Aryee Henderson

Date: 6/7/16

We have received your inquiry and respond as follows:

___ Please find enclosed the following document(s):
____ Disposition ____ Sentence ____ Warrant ____ Indictment ____ Motion

____ Other: _____

✓
___ A copy of your request has been forwarded for handling to:
✓ Solicitors Office ✓ Public Defender's Office

___ SCDC is responsible for clearing up detainers. Your charge(s) have been faxed to SCDC.

___ SCDC calculates credit for time served. Necessary records have been faxed to SCDC.

___ To obtain a transcript, please write to SC Court Administration at 1220 Senate Street, Suite 200, Columbia, SC 29201 and provide the case number, Judge's name, and date of trial.

___ We need more information to process your request:
___ Case Number ___ Charge ___ SSN ___ Court Location ___ Date of Arrest

___ There is no record of said charge.

___ Please contact: _____

DISCLAIMER: The role of the Clerk of Court's office is to maintain court documents. The Clerk's office provides copies of case documents (with proper identifying information) upon request, but does not provide other information regarding a case. The Clerk's office is not permitted to give legal advice and/or determine length of sentence or other case specific questions.

Aryee Henderson 59105
ASGDC / SHU #416
201 John Mark Dial Dr.
Columbia, S.C. 29209

June 2, 2016

Honorable Jeanette W. McBride
Clerk of Court
1701 Main St.
Columbia, S.C. 29201

RICHLAND COUNTY
FILED
16 JUN -7 PM 12:01
JEANETTE W. McBRIDE
C.C.P. & G.S.

Re: Motion to Relieve Counsel

Dear Ms. McBride,

Enclosed is an original copy of Motion to Relieve Counsel, along with a:

1) Motion for Bond;

2) Proof of Service

Respectfully,

s/ Aryee Henderson

CC: Honorable Clifton Newman (Chief Administrative Judge)
Honorable Dan Johnson (Solicitor 5th Circuit)

State of South Carolina	)	In The Court of General Sessions
County of Richland	)	Fifth Judicial Circuit
	)	
State of South Carolina, Respondent,	)	Warrant No.: 258760
v.	)	Motion to Renew
Arijee Henderson, Defendant.	)	Motion to Relieve Counsel

RICHLAND COUNTY FILED
16 JUN -7 PM 12:01
JEANETTE W. McBRIDE C.C.P. & G.S.

TO: CHIEF ADMINISTRATIVE JUDGE

YOU WILL PLEASE TAKE NOTICE that Arijee Henderson, Pro Se Defendant, will respectfully move before this Court on June 6, 2016, at 9:30 a.m. or as soon thereafter as this matter may be heard for an Order to Relieve Counsel on the above-named Defendant.

An initial Motion to Relieve Counsel was filed on or about April 22, 2016 and has yet to be heard.

The Defendant respectfully request that he be relieved from further representation from the Public Defender's Office. The Defendant feels that his court appointed attorney, John Rhodes Bailey, is not representing him efficiently. Furthermore, pursuant to Faretta v. California, 95 S.Ct. 2525 (1975), the Defendant respectfully requests to proceed "Pro Se" during any and all future proceedings involving Defendant.

The above information is true and accurate to the best of my knowledge.

This Motion is made in good faith.

Conclusion

Wherefore, the Defendant prays this Court relieve him from further representation from the Public Defender's Office.

Respectfully

s/ Anyee Henderson

Columbia, South Carolina

Dated: June 2, 2016

RICHLAND COUNTY
FILED
16 JUN -7 PM 12:01
JEANETTE W. McBRIDE
C.C.P. & G.S.

Aryee Henderson 59105
ASGDC / Kima-G-#50
201 John Mark Dial Dr.
Columbia, S.C. 29209

April 20, 2016

Chief Administrative Judge
Richland County 5th Circuit
1701 Main Street
Columbia, S.C. 29201

RICHLAND COUNTY
FILED
2016 APR 22 PM 4:15
JEANETTE W. McBRIDE
C.C.P. & G.S.

Re: Motion to Relieve Counsel

Dear Honorable Judge,

Enclosed is an original copy of a Motion to Relieve Counsel.

Respectfully
S/ Aryee Henderson

EXHIBIT
COURTS
1
PENGAD 800-631-6989

CC: Honorable Dan Johnson (Solicitor)
Honorable Jeanette W. McBride (Clerk of Court)

State of South Carolina)
County of Richland)

In The Court of General Sessions
Fifth Judicial Circuit

State of South Carolina,)
Respondent,)
v.)
Aryee Henderson,)
Defendant)

Case No.: 2002-GS-40-7277
Charge: Murder

Motion to Relieve Counsel

RICHLAND COUNTY
FILED
2016 APR 22 PM 4:15
JEANETTE W. WALPOLE
C.C.P. & G.S.

NOW COMES THE DEFENDANT, Aryee Henderson, who will move before this Court on April 25, 2016 at 9:30 a.m. or as soon as this matter may be heard for an Order to Relieve ~~Counsel~~ Counsel from the Public Defender's Office on the above-named Defendant. The Defendant feels that his appointed attorney is not representing him sufficiently. On 1-7-16, this Court verbally ordered the solicitor's office to bring me before this Court to plea on 1-19-16. However, the solicitor's office, nor my appointed attorney scheduled me to appear before this Court to plea. On 3-9-16, my appointed attorney had me brought to the courthouse to discuss trial tactics in reference to several pro se motions I filed with this Court. He advised me to plead guilty because he felt that the grounds I raised within my motions were meritless and I was gonna lose if I elected to proceed with trial. He further advised me that he would have me in court to plead guilty within a couple of weeks. I have yet to appear in court. Moreover, he promised

that he would send me all of my transcripts, legal documents, and cases that he has in his possession. I have yet to receive these items.

The above information is true and accurate to the best of my knowledge.

This Motion is made in good faith.

Conclusion

Wherefore, Defendant prays that this Court issue an Order to Relieve him of his Appointed Counsel from the Public Defender's Office and that he return all of the Defendant's transcripts, legal documents, and law cases.

Respectfully.

s/ Arryee Henderson

RICHLAND COUNTY
FILED
2016 APR 22 PM 4:15
JEANNETTE W. WALKER
C.C.P. & G.S.

Columbia, South Carolina

Dated: April 20, 2016

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Ayree Henderson (SCDC #237887), Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No. 2016-CP-40-04364 **ORDER OF DISMISSAL**

This matter comes before the Court upon Application for Post-Conviction Relief filed by Applicant Ayree Henderson ("Applicant") on July 21, 2016. Respondent filed its Return on July 13, 2017. "Applicant's Amendment to Original PCR Application" was filed on August 22, 2017; and an "Amendment to Application for Post Conviction Relief." dated January 18, 2018, was also provided to the Court (although apparently not filed with the Clerk of Court). On January 24, 2018, an evidentiary hearing was conducted at the Richland County Judicial Center. Applicant was present along with his counsel, Jonathan D. Waller, Esquire. The State was represented by Jessica Kinard, Esquire, of the South Carolina Office of the Attorney General.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED WITH PREJUDICE.

FACTUAL AND PROCEDURAL HISTORY

At the November 2002 term of the Richland County Grand Jury, Applicant was indicted for murder. Beginning on September 21, 2004, Applicant was tried by a jury and was ultimately convicted of murder. He was sentenced to thirty years' imprisonment. Applicant filed for post-conviction relief ("PCR"), which was granted by Order filed July 14, 2010. That decision was affirmed by the appellate court.

In January 2016, Applicant appeared in the Richland County Court of General Sessions *pro se* after having filed a "speedy trial motion." At that time, Applicant expressed his desire to enter a guilty plea, but he also accepted the Court's offer to appoint counsel to represent him. The Richland County Public Defender's Office was appointed, and J. Rhodes Bailey, Esquire ("plea counsel"), was assigned to Applicant's case.

The State ultimately extended a plea offer to Applicant, allowing him to plead guilty to the lesser charge of voluntary manslaughter without the State offering any negotiation or recommendation of what Applicant's sentence should be. Applicant accepted that offer and entered his guilty plea on June 20, 2016. He received a sentence of twenty-five years in the South Carolina Department of Corrections ("SCDC"). Approximately one month later, Applicant filed the instant action in which he alleges (1) that plea counsel coerced him to plead guilty, (2) that plea counsel failed to investigate the allegations of his case, (3) that plea counsel failed to object to the State's breach of the plea agreement, (4) that plea counsel failed to challenge the affidavit upon which his arrest warrant was premised, and (5) that plea counsel failed to contest the improper impaneling of the Richland County Grand Jury.

A. Testimony of Applicant

During the evidentiary hearing, Applicant testified that when he appeared in court in early January 2016 and was appointed counsel, he first spoke with Lucas Hawks, Esquire, of the Richland County Public Defender's Office. The conversation occurred in the courtroom, where Applicant told Hawks that he wanted to plead guilty and asked that Hawks seek a plea offer. Applicant also testified that the prosecutor instructed that he be returned to court on January 19, but that didn't occur.

Instead, according to Applicant, plea counsel appeared at the county jail on January 20 for his first of three visits with him. During that meeting, they discussed the transcript and exhibits from Applicant's previous trial. Applicant also asked plea counsel to retrieve certain documents from the jail's property room and to photocopy them. According to Applicant, plea counsel did as instructed and ultimately discussed the documents with Applicant; however, counsel never gave Applicant a copy of the documents. Applicant also testified that during this meeting, plea counsel informed him that he had rejected the State's initial plea offer on his behalf without having conveyed the offer to Applicant.

Applicant also testified that he pled guilty based on plea counsel's advice that a plea would be better than a trial. Plea counsel told Applicant that even if prosecution witnesses wouldn't appear for a new trial, that their previous trial testimony would be used. Applicant stated that he had also filed a *pro se* motion challenging probable cause to have arrested him, but plea counsel told him that the motion was meritless and that a hearing on the motion would be futile. Applicant also testified that he believed that if he went to trial, plea counsel would restrict Applicant's testimony and not allow him to say what he wanted to say. (Applicant later contradicted this, testifying that plea counsel told him that he wouldn't be able to testify at all during trial.) According to Applicant, he repeatedly asked plea counsel to seek a plea offer for him. He ultimately pled guilty as a choice of "the lesser of two evils."

Applicant contends that immediately prior to the plea, plea counsel told him that the prosecutor would discuss his criminal record, but that it wouldn't hurt his case. However, Applicant was unaware that the prosecutor would apprise the court of his disciplinary history while at the South Carolina Department of Corrections. Applicant was also surprised when the family of the victim of the crime was able to address the court during his guilty plea. Applicant had

understood that his "straight up" plea to voluntary manslaughter meant that no one connected with the prosecution would make any comment on the sentence that he should receive. Therefore, when both the victim's family and the prosecutor did so, Applicant was surprised and believes that plea counsel should have objected. He contends that if he had known that those statements would be made, that would've impacted his decision to plead guilty.

II. Testimony of Plea Counsel

Plea counsel, J. Rhodes Bailey, also testified at the evidentiary hearing and corroborated many of Applicants allegations. Specifically, plea counsel admits that he visited Applicant at the county jail on January 20, 2016 and discussed the previous trial of Applicant's case. Plea counsel also agrees that he retrieved certain documents from the jail's property room, photocopied them and reviewed them without providing a copy to Applicant. According to plea counsel, the documents were ultimately the basis of a grievance which Applicant filed against him, but the grievance was deemed unfounded and dismissed.

Plea counsel stated that Applicant asked him about a guilty plea repeatedly and that, therefore, there was never any plan to try his case. He had begun preliminary trial preparation, but he never hired an investigator or took any other steps to prepare because Applicant was adamant that he wanted to plead guilty. No trial was ever even scheduled for Applicant's case. Plea counsel also denied that he ever rejected any plea offer from the State without first discussing it with Applicant.

Finally, plea counsel testified that, like Applicant, he didn't believe that the discussion of Applicant's disciplinary history during the guilty plea was relevant; however, based on his experience, he didn't think that it was objectionable or that objecting to the information would make any difference. Plea counsel denies that he told Applicant that neither the prosecutor nor the

victim's family would comment on sentencing during the plea. Rather, plea counsel knows that victims' families routinely make statements during guilty pleas. He testified that the subject simply never arose in his conversations with Applicant.

CONCLUSIONS OF LAW

In a PCR action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence." Rule 71.1(e), SCRCP. Specifically, "[a] defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty." *Johnson v. Catoe*, 336 S.C. 354, 358, 520 S.E.2d 617, 619 (1999) (citing *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) and *Satterwhite v. State*, 325 S.C. 254, 481 S.E.2d 709 (1997)).

I. Involuntary Plea

Applicant alleges that his guilty plea was involuntary because it was coerced by plea counsel, who failed to properly investigate his case, failed to challenge the arrest warrant affidavit, and failed to contest the impaneling of the Richland County Grand Jury. These allegations are without merit.

"Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)). "A defendant who pleads guilty upon the advice of counsel may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases." *Richardson v. State*, 310 S.C. 360, 363, 426 S.E.2d 795,

797 (1993) (citing *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366, 369, 88 L.Ed.2d 203, 209 (1985)).

"[A] guilty plea cannot be attacked as based on inadequate legal advice unless counsel was not 'a reasonably competent attorney' and the advice was not 'within the range of competence demanded of attorneys in criminal cases.'" *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759, 770 (1970)). "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Id.* at 687-88.

"Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689 (citation omitted). Applicant has not done that here.

Having weighed the credibility of the testifying witnesses and having considered the admissions and explanations offered, the Court cannot find that plea counsel was not "a reasonably competent attorney" or that his advice was not "within the range of competence demanded of attorneys in criminal cases." The Court finds no professional errors on the part of plea counsel; therefore, no prejudice could have resulted from plea counsel's representation. Further, while Applicant contends that he would have gone to trial but for counsel's advice, this is not supported by the evidence. Rather, the credible testimony in this case is that Applicant always wanted to plead guilty and repeatedly requested a plea offer. Applicant is in the unique position of having previously elected a trial on the same criminal charges. Thus, he was well aware of his alternatives,

including the logistics of how a jury trial would occur. He testified that he simply chose "the lesser of two evils." Therefore, the PCR application is denied as to these allegations.

II. Plea Bargain

Similarly, Applicant's contention that counsel was ineffective for failing to act when the "Solicitor's office breached the plea agreement" is meritless.

Although Applicant was charged with murder, the State ultimately extended a plea offer by which Applicant could enter a "straight up" plea to the lesser-included offense of voluntary manslaughter. He did so on June 20, 2016. During the plea the victim's mother, in response to the court's inquiry, requested that Applicant be given a thirty-year sentence. The prosecutor echoed the request of the victim's mother but also apprised the court of Applicant's disciplinary history while he was in SCDC and in the Richland County Detention Center. Applicant complains that those actions amounted to the State breaching the plea agreement, as he interpreted "straight up" to mean that no one would comment on sentencing.

Specifically, Applicant complains that plea counsel should have objected when the prosecutor introduced evidence of his disciplinary history while at SCDC and when the court permitted both the prosecutor and the victim's family to comment on Applicant's potential sentence. Neither amounts to a breach of the "plea agreement" in Applicant's case.

Applicant is correct that, typically, a defendant must be permitted to withdraw their guilty plea when it was induced by a broken promise made by the prosecutor that they wouldn't comment on sentencing, *see, e.g., Santobello v. New York*, 404 U.S. 257 (1971); however, this is not a typical case. Here, Applicant has not proven that the assistant solicitor promised not to comment on sentencing. Even assuming that the promise was made, there has been no real breach of that agreement or negative effect to Applicant. Instead, the victim's mother made a sentencing

recommendation. While that recommendation was repeated by the prosecutor, she also subsequently said, "Whatever sentence you feel like would be appropriate, Your Honor," which is not a sentencing recommendation at all. Further, all of this discussion occurred *before* the court accepted Applicant's guilty plea. It is clear that, subsequent to those comments, Applicant had a number of opportunities to withdraw his guilty plea. In fact, the court asked several times whether Applicant wished to plead guilty; and each time, Applicant said that he did. Therefore, the PCR application is denied as to these allegations as well.

III. Investigation and Evidence Considered

Finally, Applicant contends that plea counsel failed to investigate the allegations against him or "conduct any pretrial investigation," to challenge the arrest warrant affidavit and to challenge the impanelment of the grand jury. These allegations are also without merit, and Applicant has failed to provide any evidence that would entitle him to relief.

A PCR applicant is not entitled to relief where there is no evidence presented at his PCR hearing to demonstrate how the outcome of his case might've been different is counsel were more prepared. *Skeen v. State of South Carolina*, 325 S.C. 210, 213-15, 481, S.E.2d 129, 131-32 (1997). This is particularly true here, where Applicant pled guilty and always wanted to plead guilty.

Similarly, Applicant has failed to offer evidence of his claims of defects in the arrest warrant and the grand jury. Further, any such claims are obviated by Applicant's guilty plea. Challenges regarding the arrest and indictment are, in essence, claims that Applicant's constitutional rights were violated. However, any related constitutional rights were waived when Applicant pled guilty to the charge. Without evidence that Applicant's waiver of those rights was not knowing, voluntary and intelligent (which Applicant doesn't even allege), Applicant cannot prevail on this claim, and the PCR application is denied as to these allegations as well. *See. e.g.*,

Pittman v. State of South Carolina, 337 S.C. 597, 524 S.E.2d 623 (1999) (discussing guilty pleas and waiver of constitutional rights).

IT IS THEREFORE ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

IT IS FURTHER ORDERED that Applicant Ayree Henderson be REMANDED to the custody of the State of South Carolina.

AND IT IS SO ORDERED.

Jocelyn Newman
Presiding Judge

March 20, 2018
Columbia, South Carolina.

State of South Carolina)
) In The Court of Common Pleas
County of Richland)
) For The Fifth Judicial Circuit
Aryee Henderson. 237887)
) Civil Action No.: 2016 - CP - 400 - 4364
Applicant,)
v.)
) Motion for Extension
) of Time
State of South Carolina,)
)
Respondent)

RICHLAND COUNTY FILED
2018 MAY 22 AM 10:31
JEANNETTE W. McBRIDE C.C.P. & G.S.

NOW COMES THE APPLICANT, Aryee Henderson, respectfully requesting that this Court grant Applicant an extension of time to file a Rule 59(e) Motion to Alter or Amend PCR Order of Dismissal premised on the following reasons:

1) Applicant received his initial and only copy of his PCR Court's Order of Dismissal on 5-2-18; See Exhibit A

2) SCDC is on state-wide institutional lockdown because of the Murders at Lee Correctional Institution (Lee C.I.);

3) The only reason I received a copy of the PCR Court's Order of Dismissal was because I submitted letters to the Richland County Clerk of Court and the Attorney General's Office during the week of April 15th, asking for copies of her decision, if she rendered one;

4) Since SCDC has been on state-wide institutional lockdown, Applicant has not been allowed to use the satelite law computers or go to the law library; and

5) Applicant has no other means to remedy this situation.

Conclusion

Wherefore, Applicant respectfully requests that this Court grant him an Extension of Time based on the above-mentioned facts.

Respectfully,

s/ Arzee Henderson

Ridgeville, South Carolina

Dated: May 3, 2018

State of South Carolina) In The Court of Common Pleas
)
County of Richland) Fifth Judicial Circuit
)
Aryee Henderson, 237887) Civil Action No.: 2016-CP-400-4364
Applicant,)
v.) Proof of Service
State of South Carolina,)
Respondent)

RICHLAND COUNTY
FILED
2018 MAY 22 AM 10:31
JEANNETTE W. McBRIDE
C.C.P. & G.S.

I certify that I have served this Motion for Extension of Time on the Honorable Chief Administrative Judge, Richland County 5th Circuit, by depositing a copy of it in the U.S. Mail, postage prepaid, on May 3, 2018, addressed to this office at, 1701 Main Street, Columbia, South Carolina 29201.

Respectfully,

s/ Aryee Henderson

Aryee Henderson 237887
Leiber C.I. / Ashley-A#25
136 Wilborn Ave.
Ridgeville, S.C. 29472

Exhibit A

TYPED Copies

U.S. POSTAGE PITNEY BOWES
ZIP 29204 $ 002.05⁰
02 1W
0001375672 APR 25 2018

eanette W. McBride
CLERK OF COURT
RICHLAND COUNTY
P.O. Box 2766
Columbia, SC 29202-2766

Return to sender if not delivered in five (5) days.

A210

Allendale

RECEIVED
APR 27 2018
LEE C.I. MAIL ROOM

Allyce Henderson # 237887
Lee Cor. Inst F-4A-2105
990 Wisacky Hwy
Bishopville, SC 29010

RECEIVED
MAY 02 2018
MAILROOM
ACI

State of South Carolina) In The Court of Common Pleas
218
County of Richland) For The Fifth Judicial Circuit
)
Aryee Henderson, 237887) Civil Action No.: 2016-CP-400-43364
Applicant,)
v.)
State of South Carolina,) Motion for Preliminary Injunction
Respondent)

RICHLAND COUNTY FILED
2018 MAY 22 AM 10:33
JEANETTE W. McBRIDE C.C.P. & G.S.

The Applicant, Aryee Henderson, proceeding pro se, respectfully moves this Court for a preliminary injunction against SCDC administrative officials here at Leiber Correctional Institution on the following grounds:

1) The Applicant needs adequate time in the law library to file a Rule 59(e) motion to alter or amend the PCR Court's order of dismissal;

2) The administrative officials here at Leiber C.I. refuses me the use of the law library stating that SCDC headquarters has all institutions on state-wide lockdown per Executive Order by the Governor. However, I have not seen an Executive Order, heard about one on any news media outlets, nor was a memorandum issued expounding on any Executive Order;

3) Moreover, I missed the PCR Court's deadline to file a Rule 59(e) Motion to Alter or Amend the PCR's Order of Dismissal. On 3-20-18, the Honorable Jocelyn Newman denied my Application for Post-Conviction Relief. On 5-2-18, I received my initial and only copy of the PCR Court's Order. Since receiving

this Order, I have not been able to use the satellite law computer, nor were able to receive up-to-date current cases or law books. I wrote the General Counsel explaining my predicament and my request fell on deaf ears. I don't understand why it took so long for me to receive a copy of the PCR Court's Order. The only reason I believe that I got it was because I wrote the Richland County Clerk of Court during the week of 4-16-18, asking for copies of the PCR Order, transcript, or any other documents pertinent to my PCR hearing;

4) The Applicant has no other means or recourse to resolve this issue.

Conclusion

Wherefore, Applicant respectfully requests this Court to issue a Preliminary Injunction against the administrative officials here at Leiber Correctional Institution to allow me the use of the law library at least three (3) times per week.

Respectfully,

S/ Argee Henderson

Ridgeville, South Carolina

Dated: May 9, 2018

State of South Carolina)
)
County of Richland)

In The Court of Common Pleas

For The Fifth Judicial Circuit

Aryee Henderson 237887
Applicant,

v.

State of South Carolina,
Respondent

Civil Action No.: 2016-CP-400-4364

Proof of Service

RICHLAND COUNTY
FILED
2018 MAY 22 AM 10:33
JEANNETTE W. MOBRIDE
C.C.P. & G.S.

I certify that I have served this Motion for Preliminary Injunction on the Honorable Chief Administrative Judge, Richland County 5th Circuit, by depositing a copy of it in the U.S. Mail, postage prepaid, on May 9, 2018, addressed to his office at, 1701 Main Street, Columbia, South Carolina 29201.

S/ Aryee Henderson

Aryee Henderson 237887
Leiber C.I. / Ashley - A# 25
136 Wilborn Ave.
Ridgeville, S.C. 29472

Arijee Henderson 251889
Broad River C.I. / WA-275
4460 Broad River Rd.
Columbia, S.C. 29210

August 14, 2018

Honorable Alan Wilson
Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549

RECEIVED
AUG 20 2018
Referred to MCCollister/P
Answered

Re: Arijee Henderson v. State of South Carolina
Civil Action No.: 2016-CP-4

Dear Mr. Wilson,

Enclosed for your file is an original copy of Rule 59(e) Motion to Alter or Amend PCR Order of Dismissal, along with a:

1) Proof of Service
2) Exhibits

Respectfully,
s/ Arijee Henderson

cc: Chief Administrative Judge (Richland County 5th Circuit)

LEGAL MAIL

State of South Carolina 222 County of Richland	In The Court of Common Pleas For The Fifth Judicial Circuit
Aryee Henderson, 237887 Applicant, v. State of South Carolina, Respondent,	Civil Action No.: 2016-CP-400-4364 Rule 59(e) Motion to Alter or Amend PCR Order of Dismissal

Factual and Procedural History

At the November 2002 term of the Richland County Grand Jury, Applicant was indicted for murder. Beginning on September 21, 2004, Applicant was tried by a jury and was ultimately convicted of murder. He was sentenced to thirty years' imprisonment. Applicant filed for post-conviction relief ("PCR"), which was granted by Order filed July 14, 2010. That decision was affirmed by the appellate court.

In January 2016, Applicant appeared in the Richland County Court of General Sessions pro se after having filed a "speedy trial motion." See Exhibit D. At that time, Applicant expressed his desire to enter a guilty plea, but he accepted the Court's offer to appoint counsel to represent him. The Richland County Public Defender's Office appointed J. Rhodes Bailey, Esquire ("plea counsel") to represent Applicant.

The State ultimately extended a plea offer to Applicant, allowing him to plead guilty to the lesser charge of voluntary manslaughter without the State offering any negotiation or recommendation of what Applicant's sentence should be. Applicant accepted that offer and entered his guilty plea on June 20, 2016. He received a sentence of twenty-five (25) years in the South Carolina Department of Corrections ("SCDC"). See Exhibit G. Approximately one month later, Applicant filed the instant action in which he alleges (1) that plea counsel coerced him to plead guilty, (2) that plea counsel failed to investigate the allegations of his case, (3) that plea counsel failed to object to the State's breach of the plea agreement, (4) that plea counsel failed to challenge the affidavit upon which his arrest warrant was premised, and (5) that plea counsel failed

to contest the improper impaneling of the Richland County Grand Jury. Respondent filed its Return on July 13, 2017. Applicant filed an "Applicant's Amendment to Original PCR Application on August 22, 2017 and an "Amendment to Application for Post Conviction Relief" on January 24, 2018. See Exhibits C & D. On January 24, 2018, an evidentiary hearing was conducted at the Richland County Judicial Center. Applicant was present along with his counsel, Jonathan D. Waller, Esquire. The State was represented by Jessica Kinard, Esquire, of the South Carolina Office of the Attorney General.

For the reasons set forth below, the Applicant respectfully requests that this Court Alter or Amend its previous ruling and grant him Post Conviction Relief.

Conclusions of Law

The Petitioner; pursuant to Rule 59(e), SCRCP, respectfully requests for this Honorable Court to alter or amend its judgment in favor of the Applicant based on the following points that this Honorable Court may have overlooked or misapprehended.

Applicant maintains that plea counsel was ineffective for failing to advise him of the right to proceed 'Pro Se' and for failing to hold a hearing on his Motion to Relieve Counsel. See Exhibit A & Plea Transcript. The Sixth Amendment as made applicable to the States by the Fourteenth guarantees that a defendant in a state criminal trial has as independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily and intelligently elects to do so. Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed. 2d 562 (1975). Applicant was dissatisfied with his plea counsel for various reasons and filed two (2) Motions to Relieve Counsel with the Court two months before trial. See Exhibits B & C. A South Carolina criminal defendant has the constitutional right to represent himself under both the federal and state constitutions. U.S. Const. amend VI; S.C. Const. art. I, § 14, State v. Starnes, 388

S.C. 590, 698 S.E. 2d 604 (2010). So long as the defendant makes his request prior
224
to trial, the only proper inquiry is that mandated by Faretta. State v. Winkler, 388 S.C. 574, 698 S.E. 2d 596 (2010). However, plea counsel, never requested a hearing on the motion, request that the trial court conduct a Faretta inquiry, request a ruling on the issue of Applicant's right to self-representation, nor did plea counsel advise Applicant of the right to proceed pro se. To further substantiate this allegation, Applicant was adamant about representing himself because he filed several pro se pretrial motions with the Court. See Exhibits D, E, & F. The United States Supreme Court in Adams v. United States ex rel. McCann, 317 U.S. 269, 63 S.Ct. 236, 87 L.Ed. 268, did recognize, albeit in dictum, an affirmative right of self-representation:

> "The right to assistance of counsel and the correlative right to dispense with a lawyer's help are not legal formalisms. They rest on considerations that go to the substance of an accused's position before the law.
>
> . . .
>
> ". . . what were contrived as protections for the accused should not be turned into fetters . . . [T]o deny him in the exercise of his free choice the right to dispense with some of the safeguards . . . is to imprison a man in his privileges and call it the Constitution."

Id., at 279-280, 63 S.Ct., at 241-242. (emphasis added).

When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id., at 117, 386 S.E.2d at 625, citing Strickland. Second, Counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable possibility that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id., 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.

The Applicant has proven both prongs of the Strickland test and is entitled to a new trial. The first prong of the test, that counsel failed to render reasonably effective assistance under prevailing professional norms, is met because plea counsel failed to advise Applicant of the right to self-representation, failed to request a

hearing on the motion, request the trial court to conduct a Faretta inquiry, or request a ruling on the issue of Applicant's right to self-representation. The Applicant filed a Motion to Relieve Counsel two months prior to plea hearing. See Exhibits B & C. Because Applicant filed these motions with the Court, plea Counsel rushed Applicant into Court to plea. The trial court did not do an independent investigation into the details surrounding the Applicant's Motion to Relieve Counsel, did not conduct a Faretta inquiry, nor rule on the issue of Applicant's right to self-representation. As plea counsel admitted at PCR hearing, he did not engage in any pretrial investigation. such as; interview witnesses, file pretrial motions, hire expert witnesses to reexamine the State's case, or discuss trial tactics with Applicant.

The second prong of the Strickland test, that the Applicant was prejudiced by counsel's performance, is met because Applicant claimed self-defense. In this case, the risk of prejudice is heightened by the lack of direct evidence in the State's case against the Applicant. The evidence against the Applicant was not overwhelming, and he claimed self-defense. He testified that the victim had a gun, made threats, a tussle ensued, and the gun discharged on accident. Trial transcript p. 481 line 20 - p. 482 line 24. The State did not admit any direct evidence to disprove the Applicant's version of the events. Therefore, the Applicant was prejudiced by plea counsel's performance for failing to advise Applicant of the right to self-representation and for failing to hold a hearing on Motion to Relieve Counsel.

To further substantiate this allegation, ~~plea~~ PCR Counsel was ineffective for failing to 227
file a Rule 59(e) Motion to Alter or Amend asking postconviction relief (PCR) judge to make specific findings of fact and conclusion of law pertaining to "Applicant's Amendment to Original PCR Application." Applicant's plea counsel was ineffective for failing to advise him of the right to self-representation and for failing to hold a hearing on Motion to Relieve Counsel. ~~Moreover, PCR Counsel~~ Moreover, PCR Counsel filed Applicant's Amended PCR Application on the day of the evidentiary hearing instead of prior to the hearing. The South Carolina Supreme Court has made it abundantly clear that where a PCR Court fails to set forth findings and the reasons for those findings, the issue is not preserved for appellate review if the petitioner fails to make a Rule 59(e) motion requesting the PCR court make specific findings of fact and conclusions of law on the allegations. Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). Pursuant to S.C. Code Ann § 17-27-80 (2003), the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. The failure to specifically rule on the issues precludes appellate review of the issues. Id., at 408, 653 S.E.2d at 266. Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992). Thus, the language in the Order of the PCR judge in this matter fails to specifically address any of the allegation pertaining to plea counsel was ineffective for failing to advise Applicant of the right to self-representation and for failing to hold a hearing on Motion to Relieve Counsel raised by Applicant. This argument is not preserved inasmuch as it was not ruled upon by the PCR Judge. See Kolle v. State 386 S.C. 578, 589, 690 S.E.2d 73, 79 (2010) (noting an issue that was neither

raised to or ruled upon by the PCR Court is not preserved for appellate review); State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (finding argument advanced on appeal was not raised and ruled on below and therefore was not preserved for review).

Conclusion

Wherefore, based upon the foregoing, the Applicant respectfully requests this Honorable Court to Alter or Amend its previous ruling and grant Applicant postconviction relief and a new trial.

Respectfully,

s/ Angee Henderson

Columbia, South Carolina

August 7, 2018

LEGAL MAIL

The State of South Carolina
In The Court of Common Pleas

Rule 59(e) Motion to Alter or Amend
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Civil Action No.: 2016-CP-400-4364

Aryee Henderson . . . . . Petitioner

v.

State of South Carolina . . . . . Respondent

Proof of Service

I certify that I have served this Rule 59(e) Motion to Alter or Amend on the Honorable Alan Wilson, Attorney General, by depositing a copy of it in the U.S. Mail, postage prepaid, on August 16, 2018, addressed to his office at, Post Office Box 11549, Columbia, South Carolina 29211-1549.

S/ Aryee Henderson

Aryee Henderson 237884
Broad River C.I. / WA-275
4460 Broad River Rd.
Columbia, S.C. 29210

Exhibit A

Exhibit A

n 59105
:- #50
Dial Dr.
9209

April 20, 2016

Honorable Jeanette W. McBride
Clerk of Court
P.O. Box 2766
Columbia, S.C. 29202-2766

FILED
2016 APR 25 PM 1:08
C.C.P. & G.S.

Re: Motion to Relieve Counsel

Dear Ms. McBride,

Enclosed for filing is an original copy of a Motion to Relieve Counsel.

Respectfully,

s/ Arsyee Henderson

CC: Chief Administrative Judge
Honorable Dan Johnson (Solicitor)

State of South Carolina)
) In The Court of General Sessions
County of Richland)
) Fifth Judicial Circuit
State of South Carolina,)
Respondent,) Case No.: 2002-GS-40-7277
v.) Charge: Murder
Aryee Henderson,)
Defendant.)

Motion to Relieve Counsel

FILED
RICHLAND COUNTY
2016 APR 25 PM 1:08
JEANETTE W. WALTERS
C.C.P. & G.S.

NOW COMES THE DEFENDANT, Aryee Henderson, who will move before this Court on April 25, 2016 at 9:30 a.m. or as soon as this matter may be heard for an Order to Relieve Counsel from the Public Defender's Office on the above-named Defendant. The Defendant feels that his appointed attorney is not representing him sufficiently. On 1-7-16, this Court verbally ordered the solicitor's office to bring me before the Court to plea on 1-19-16. However, the solicitor's office, nor my appointed attorney scheduled me to appear before the Court to plea. On 3-9-16, my appointed attorney had me brought to the courthouse to discuss trial tactics in reference to several pro se motions I filed with the Court. He advised me to plead guilty because he felt that the grounds I raised within my motions were meritless and I was gonna lose if I elected to proceed with trial. He further advised me that he would have me in Court to plead guilty within a couple of weeks. I have yet to appear in Court. Moreover, he promised that he would send me all of my transcripts, legal documents, and cases that he

has in his possession. I have yet to receive these items.

The above information is true and accurate to the best of my knowledge.

This Motion is made in good faith.

Conclusion

Wherefore, Defendant prays that this Court issue an Order to Relieve him of his Appointed Counsel from the Public Defender's Office and that he return all of the Defendant's transcripts, legal documents, and law cases.

Respectfully.

s/ Anyce Henderson

Columbia, South Carolina

Dated: April 20, 2016

FILED
2016 APR 25 PM 1:08
JEANNETTE W. C.C.P. & G.S.

Exhibit B

LEGAL MAIL

Exhibit B

Jon 59105
116
Dial Dr.
29209

May 23, 2016

Honorable Jeanette W. McBride
Clerk of Court
P.O. Box 2766
Columbia, S.C. 29202-2766

RICHLAND COUNTY
FILED
2016 MAY 26 PM 4:27
JEANETTE W. McBRIDE
C.C.P. & G.S.

Re: Motion to Relieve Counsel

Dear Ms. McBride,

Enclosed for filing is an original copy of a Motion to Renew Motion to Relieve Counsel, along with a:

1) Motion for Bond;

2) Proof of Service

Respectfully,

s/ Wayne Henderson

cc: Chief Administrative Judge (5th Circuit)
Honorable Dan Johnson (Solicitor)

State of South Carolina)
County of Richland)

State of South Carolina,)
Respondent,)
v.)
Aryee Henderson,)
Defendant.)

In The Court of General Sessions
Fifth Judicial Circuit

Case No.: 2002-GS-40-7277

Motion to Renew Motion to Relieve Counsel

RICHLAND COUNTY
FILED
2016 MAY 26 PM 4:27
JEANETTE W. WALDEN
C.C.P. & G.S.

TO: CHIEF ADMINISTRATIVE JUDGE

YOU WILL PLEASE TAKE NOTICE that Defendant Aryee Henderson, proceeding pro se, will respectfully move before this Court on June 16, 2016 at 9:30 a.m. or as soon thereafter as this matter may be heard for an Order to Relieve Counsel on the above-named Defendant.

An initial Motion to Relieve Counsel was filed on or about April 20, 2016 and has yet to be heard. The Defendant requests that he be relieved from further representation from the Public Defender's Office. The Defendant does not feel that his appointed attorney, J. Rhodes Bailey, is representing him sufficiently. Moreover, pursuant to Faretta v. California, 95 S.Ct. 2525 (1975), the Defendant respectfully requests the right to go "Pro Se" during any and all future court proceedings involving Defendant.

The above information is true and accurate to the best of my knowledge. This Motion is made in good faith.

Respectfully Submitted,

s/ Aryee Henderson

Columbia, South Carolina
Dated: May 23, 2016

Exhibit C

State of South Carolina	)	In The Court of Common Pleas
County of Richland	)	Fifth Judicial Circuit
Aryee Henderson, 237887	)	
Applicant,	)	Case No. 2016-CP-400-4364
v.	)	
State of South Carolina,	)	Applicant's Amendment To
Respondent	)	Original PCR Application

RICHLAND COUNTY FILED
2017 AUG 22 AM 10:00
JEANETTE W. WALDEN C.C.P. & G.S.

Applicant hereby puts this Honorable Court on Notice that the following allegations have been amended to his original PCR Application:

Issue 1 - Plea Counsel was ineffective for failing to advise Applicant of the right to proceed 'Pro Se' and for failing to hold a hearing on Motion to Relieve Counsel.

Facts - On 4-20-16, I filed a pro se Motion to Relieve Counsel because on 3-9-16, my appointed attorney, John Rhodes Bailey, had me brought to the courthouse to discuss trial tactics in reference to several pretrial pro se motions that I filed with the Court. He advised me to plead guilty because he felt that the grounds I raised within my motions were meritless and he said I was gonna lose if I elected to proceed with trial. He never gave the reasons why I was gonna lose

trial, nor did he discuss what evidence the State had in its possession to substantiate his unfounded allegation. He further advised me that he would have me in court to plead guilty within a couple of weeks. I never appeared in court. Moreover, he promised that he would send me all of my trial transcripts, legal documents, and cases that he had in his possession. See Exhibit A. Because he failed to have me in court as promised, and/or send me my legal ~~accessories~~ documents, trial transcripts, and cases, I filed a Motion to Renew Motion to Relieve Counsel on 5-23-16 respectfully requesting to proceed "Pro Se" pursuant to Faretta v. California, 95 S.Ct. 2525 (1975) during any and all future court proceedings involving Applicant. See Exhibit B. Trial counsel never discussed with me that I had an option to proceed pro se during trial, nor did he advise the judge to hold a hearing on this motion.

Respectfully,

s/ Aryel Henderson

Bishopville, South Carolina

August 13, 2017

State of South Carolina)
)
County of Richland)

In The Court of Common Pleas

Fifth Judicial Circuit

Aryee Henderson, 237887
Applicant,
V.

State of South Carolina,
Respondent

Case No. 2016-CP-400-4364

Proof of Service

RICHLAND COUNTY
FILED
2017 AUG 22 AM 10:04
JEANETTE W. McBRIDE
C.C.P. & G.S.

I certify that I have served this Applicant's Amendment to Original PCR Application on the Honorable Jeanette W. McBride, Clerk of Court, by depositing a copy of it in the U.S. Mail, postage prepaid, on August 13, 2017, addressed to her office at, Post Office Box 2766, Columbia, South Carolina 29202-2766.

s/ Aryee Henderson

Aryee Henderson 237887
Lee C.I. / F-4A-210S
990 Wisacky Highway
Bishopville, S.C. 29010

Exhibit D

December 21, 2015

Ar 242 Henderson 59105
ASGDL / Lima
201 John Mark Dial Dr.
Columbia, S.C. 29209

Honorable Jeanette W. McBride
Clerk of Court
P.O. Box 2766
Columbia, S.C. 29202-2766

2015 DEC 29 PM 2:41

Re: Motion for Fast and Speed Trial

Dear Ms. McBride,

Enclosed for filing is an original copy of a Motion for Fast and Speedy Trial, along with a:

1) Proof of Service

Respectfully
B/ Arjay Henderson

cc: Chief Administrative Judge
Honorable Dan Johnson (Solicitor)

State of South Carolina)
County of Richland)

In The Court of General Sessions
Fifth Judicial Circuit

State of South Carolina,)
Respondent,)
v.)
Aryee Henderson,)
Defendant.)

Case No.: 2002-GS-40-7277

Motion for Fast and Speedy Trial

2015 DEC 29 PM 2:41

The Defendant, proceeding pro se, respectfully moves this Court with a Motion for a Fast and Speedy Trial.

Factual / Procedural History

On August 3, 2002, Aryee Henderson (Defendant) was charged in the shooting death of Alonzo Gale (Deceased). The Defendant turned himself in to the Columbia City Police Department on August 4, 2002. On September 21, 2004, the Defendant stood trial for murder in Richland County before the Honorable Alison Renee Lee and a jury. Defendant testified that he killed Gale in self-defense when Gale's own gun discharged during a struggle. The State conceded that Gale had been shot during an altercation. A crime scene investigator found no evidence inconsistent with self-defense. Finally, an eyewitness to the incident corroborated Defendant's account of the shooting. The jury convicted Defendant of murder, and the judge sentenced him to imprisonment for thirty years.

The Defendant perfected a direct appeal and the Court of Appeals dismissed the appeal in an unpublished opinion on February 12, 2008. See State v. Argee Henderson, Unpublished Opinion No. 2008-UP-101 (Ct App. Filed February 12, 2008). On March 3, 2008, the Defendant filed a PCR application with the Richland County Office of the Clerk of Court. A PCR hearing was convened on August 12, 2009 before the Honorable G. Thomas Cooper, Jr.. In an order dated July 12, 2010, the PCR Court granted relief. See Argee Henderson v. State of South Carolina, Opinion No 2009-CP-40-1696. The State perfected an appeal and the Court of Appeals affirmed the PCR judge's ruling. See Henderson v. State, Opinion No. 2014-UP-122 (S C Ct App. filed March 19, 2014). On July 28, 2014, the State filed a Petition for Writ of Certiorari with the South Carolina Supreme Court. On October 28, 2015, the Supreme Court of South Carolina affirmed the Court of Appeals decision. See Henderson v. State, 102515, SCSC, 2015-MO-063. This motion for fast and speedy trial follows.

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Argument

The Sixth Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment, and under Article 1, Section 14, of the Constitution of South Carolina guarantee an accused the right to a speedy trial. State v. Edwards, 374 S.C. 513, 649 S.E.2d 112 (Ct. App. 2007); State v. Kennedy, 339 S.C. 243,

528 S.E. 2d 700 (Ct. App. 2000), aff'd 348 S.C. 52, 558 S.E. 2d 527 (2002); State v. Chapman, 287 S.C. 42, 341 S.E. 2d 611 (1986). "The right to a speedy trial is not a theoretical or abstract right but one rooted in hard reality in the need to have charges promptly exposed." Id., at 568, 649 S.E. 2d at citing Dickey v. Florida, 398 U.S. 30, 31, 90 S.Ct. 1564, 26 L.Ed. 2d (1970). "A speedy trial does not mean an immediate one . . . it simply means a trial without unreasonable and unnecessary delay." Id. at 568, 649 S.E. 2d at citing State v. Durner, 256 S.C. 218, 222, 181 S.E. 2d 286, 288 (1971).

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The Defendant submits that he has been incarcerated for more than thirteen (13) years. A warrant for his arrest was issued on August 3, 2002. He turned himself in to authorities on August 4, 2002. A person's right to a speedy trial arises when he becomes the accused. State v. Brazell, 325 S.C. 65, 75, 480 S.E. 2d 64, 70 citing United States v. MacDonald, 456 U.S. 1, 6, 102 S.Ct. 1497, 71 L.Ed. 2d 696 (1982).

The Defendant asserted self-defense at trial. An eyewitness to the incident -- who is also an acquaintance of the Defendant - corroborated Defendant's account of the shooting. The Defendant has not been in constant contact with this eyewitness in the last 12 months and I respectfully move this Court to honor this motion so Defendant won't lose permanent contact with this eyewitness.

The Crime scene investigator who processed the crime scene of this alleged incident testified that he found no evidence inconsistent with self-defense.

Moreover, Defendant wants to prevent further prolonged incarceration. The South Carolina Supreme Court considered the purpose of the speedy trial guarantee in determining when a defendant's right to a speedy trial began to run.

> The Sixth Amendment right to a speedy trial is thus not primarily intended to prevent prejudice to the defense caused by passage of time; that interest is protected primarily by the due process clause and by statutes of limitations. The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but never the less substential, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges.

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CLERK OF COURT
C.C.P. & G.S.

Chapman, 289 S.C. at 44, 344 S.E.2d at 612-13.

Conclusion

The Defendant respectfully moves this Court for a fast and speedy trial.

Respectfully,

/s/ Trayce Henderson

The State of South Carolina

In The Court of General Sessions

Motion for Fast and Speedy Trial

Court of General Sessions

Chief Administrative Judge

FILED
2015 DEC 29 PM 2:41
U.C.P.C. & G.S.

State of South Carolina . . . . . Respondent

v.

Aryee Henderson . . . . . Defendant

Proof of Service

I certify that I have served this Motion for Fast and Speedy Trial on the Honorable Jeanette W. McBride, Clerk of Court, by depositing a copy of it in the U.S. Mail, postage prepaid, on December 21, 2015, addressed to her office at P.O. Box 2766, Columbia, S.C. 29202-2766.

/s/ Aryee Henderson

Aryee Henderson 59105
ASGDC / Lima
201 John Mark Dial Dr.
Columbia, S.C. 29209

Exhibit E

LEGAL MAIL

State of South Carolina)
County of Richland)

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

Aryee Henderson,)
Defendant.)

In The Court of General Sessions
Fifth Judicial Circuit

Case No.: 2002-GS-40-7277
Warrant No.: H-258760
Charge.: Murder

Motion to Suppress

CLERK OF COURT
C.C.P.&G.S.
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THE DEFENDANT, proceeding pro se, respectfully requests this Court to suppress all evidence, statements and testimony seized by the Columbia City Police Department and intended to be used by the State at trial.

Statement of Facts

Early on the morning of August 3, 2002 at the Hammond Village Apartment complex, the Defendant, Aryee Henderson, and a female acquaintance, Sherri Thomas, were at apt. 2-2 where Terrell Myers and his live-in boyfriend Alonzo Gale (Deceased victim) lived to purchase a bag of weed. The Defendant knocked on the door and when Myers answered, Gale began cussing and fussing. Defendant and Thomas began walking off when they heard him and after taking several steps, Gale appeared at the backdoor with a gun in his hand. Defendant and Gale began arguing and after several minutes, Gale walked back into his apartment. Defendant and Thomas walked off and by the time Defendant made it to the corner of building 2-1, Gale appeared with a gun in his hand fussing and cussing. Gale then pointed his gun at Defendant and Defendant grabbed Gale's gun hand and they struggled fussing. After a minute or two, the gun went off and Gale fell from a gunshot wound to the neck. Thereafter, Defendant ran.

On the same day, an arrest warrant was issued for Defendant's arrest. Defendant turned himself in to the Columbia City Police Department on the next day. Defendant was served a copy of the arrest warrant on the same day, which was August 4, 2002.

Argument

The Warrant Clause of the Fourth Amendment and state constitution requires that warrants (1) be based "upon probable cause, supported by Oath or affirmation," (2) be issued by a neutral and detached magistrate, and (3) contain a "particular description of the . . . persons . . . to be seized." U.S. CONST. amend. IV; S.C. Const. art. I § 10. The General Assembly has imposed stricter requirements than federal law for issuing a warrant. The South Carolina General Assembly has enacted a requirement that warrants may be issued only upon affidavit sworn to before the magistrate . . . establishing the grounds of the warrant." S.C. Code Ann § 17-13-140 (1985).

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The warrant requirement serves to interpose between the police and the individual's personal privacy an orderly procedure involving "a neutral and detached magistrate[]" Johnson v. United States, 333 U.S. 10, 14, 68 S. Ct. 367, 92 L.Ed. 436 (1948), who is responsible for making an "informed and deliberate determination" on the issue of probable cause. Aguilar v. Texas, 378 U.S. 108, 110, 84 S.Ct. 1509. The warrant process thus avoids allowing the determination of probable cause to rest with the "zealous" officers of the police who are engaged in the often competitive enterprise of ferreting out crime." Johnson, 333 U.S. at 14, 68 S.Ct. 367.

Probable cause in context of arrest warrants depends on presence of two criteria: (1) the warrant and supporting documents must justify a finding of probable cause to believe that offense has been committed and (2) the warrant and documents supporting it must demonstrate a sufficient basis for a finding of probable cause that the party named in the warrant committed the offense charged. U.S. ex rel. Bruno v. Anderson, 1991 F.2d 252 C.A.3 (Del) 1991

Magistrate's normally rely exclusively on the information contained in the officer's sworn affidavit; they rarely take oral testimony or call other witnesses. Therefore, since the validity of the warrant will hinge on whether the officer's affidavit contains enough information to enable the magistrate to make an independent determination of probable cause, the officer's affidavit

must contain a detail account of the facts uncovered by the investigation, the source of these facts, and any other information that the magistrate will need to evaluate the reliability of the officer's sources. See State v. Philpot, 317 S.C. 458, 461, 454 S.E.2d 905, 907 (Ct. App. 1995) (affidavit must contain sufficient underlying facts and information upon which the magistrate can make a probable cause determination).

The Defendant contends that the affidavit submitted in support of his arrest was insufficient to establish probable cause because it lacked the requisite particularized facts regarding the alleged criminal activity. (see exhibit A)[1]

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The affidavit supporting the warrant states:

> The Defendant did at 921 Marlboro St., Columbia, S.C. shoot the victim Ahmzu Gale at least once with a pistol causing the victim's death. The Defendant has been implicated in this crime by witness and he has been identified by a witness in a photo line-up.

This affidavit is insufficient to support a finding of probable cause because it fails to set forth any facts as to why police believed Defendant committed the alleged murder. An affidavit must contain sufficient underlying facts and information upon which a magistrate may make a determination of probable cause. State v. Smith, 301 S.C. 391, 392 S.E.2d 182, 183 (1990). State v. Ward, 276 S.C. 147, 276 S.E.2d 531 (1981). Moreover, the language within the affidavit lacks specificity and contains nothing more than conclusory statements. "The affidavit must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter." State v. Baccus, 367 S.C. 41, 50-51, 625 S.E.2d 216, 221 (2006) (citing Franks v. Delaware, 438 U.S. 154, 165, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978)).

1. Exhibit A has been sent to Chief Administrative Judge. Defendant only had one copy.

The affidavit in support of the arrest warrant only contain two conclusory statements. "Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient." State v. Smith, 101 S.C. 391, 393, 392 S.E.2d 182, 183 (1990). "[T]his action cannot be a mere ratification of the bare conclusions of others." Id. (citing Illinois v. Gates, 462 U.S. 213, 239, 103 S.Ct. 2317, 2333, 76 L.Ed.2d 527, 549 (1983).

Finally, there was absolutely nothing on the face of the affidavit from which the magistrate could have assessed the veracity and basis of knowledge of the witness, or that the information and its source is reliable. See Gates, 462 U.S. at 238, 103 S.Ct. 2317 (stating the circumstances a magistrate must consider include the "veracity" of the persons supplying the hearsay information on which the warrant is based). State v Philpot, 317 S.C. 395, 454 S.E.2d 903, 904 (Ct.App. 1995) (no substantial basis for probable cause existed where magistrate was given no information regarding the reliability of the confidential informant). In State v. Johnson, the South Carolina Supreme Court found that an affidavit was defective because "it [did] not set forth any information as to the reliability of the informant nor was the information corroborated." Johnson, 302 S.C. 243, 247, 395 S.E.2d 167, 169 (1990). "Without any information concerning the reliability of the informant, the inferences from the facts which lead to the complaint will be drawn not by a neutral and detached magistrate, as the Constitution requires, but instead, by a police officer engaged in the often competitive enterprise of ferreting out crime . . ." Id. at 248, 395 S.E.2d at 169.

The United States Supreme Court listed three situations in which it had, in the past, held that deference to a magistrate's finding of probable cause was not warranted:

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> First, the deference accorded to a magistrate's finding of probable cause does not preclude inquiry into the knowing or reckless falsity of the affidavit on which that determination was based ... Second, the courts must also insist that the magistrate purport to "perform his 'neutral and detached' function and not serve as a rubber stamp for the police." ... Third, reviewing courts will not defer to a warrant based on an affidavit that does "provide the magistrate with a substantial basis for determining the existence of probable cause."

United States v. Leon, 468 U.S. 897, 914-15, 104 S.Ct. 3405, 3416, 82 L.Ed. 2d 677, 693 (1984) (emphasis added).

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In State v Johnson, the South Carolina Supreme Court interpreted Leon as precluding application of the good-faith exception when an affidavit fails to provide a magistrate with a substantial basis for finding probable cause by stating that [s]uppression is appropriate in only a few situations, including when an affidavit is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." Leon, 468 U.S. at 923, 104 S.Ct. at 3421, 82 L.Ed. 2d at 699.

Conclusion

Therefore, based on the totality of the circumstances, the affidavit in support of Defendant's arrest warrant lacked any indicia of probable cause for the warrant to issue. As such, all evidence seized and all statements procured should be suppressed by this Honorable Court.

Respectfully,

Angel Henderson

Columbia, South Carolina

Dated: February 22, 2016

Exhibit F

SC/ SHP
John Mark
...ial Dr.
...mbia, S
... 29209

...ie Jeanette W. McBride
...erk of Court
P.O. Box 2766
Columbia, S.C. 29202-2766

2016 FEB 16 PM 2:31
CLERK OF COURT
RICHLAND CO. S.C.

Re: Motion to Quash

Dear Ms. McBride,

Enclosed is an original copy of a Motion to Quash, along with a:

1) Proof of Service
2) Judicial Department Circuit Court Calendar (Exhibit B)

Respectfully,
Aryee Henderson

CC: Chief Administrative Judge (5th Circuit)
Honorable Dan Johnson (Solicitor)

State of South Carolina)
County of Richland)

State of South Carolina,)
Respondent,)
v.)
Aryee Henderson,)
Defendant)

In The Court of General Sessions
Fifth Judicial Circuit
Case No.: 2002-GS-40-7277

Motion to Quash

2016 FEB 16 PM 2:31

The Defendant, proceeding pro se, respectfully requests this Court to quash his Murder Indictment on the following grounds.

Statement of Facts

Early on the morning of August 3, 2002 at the Hammond Village Apartment Complex, the Defendant, Aryee Henderson, and a female acquatance, Snea Thomas, went to apt. 2-2 where Terrell Myers and her live-in boyfriend Alonzo Gale (Deceased Victim) stayed to purchase a bag of weed. The Defendant knocked on the door and when Myers answered, Gale began cussing and fussing. Defendant and Thomas began walking off when they heard him and after taking several steps, Gale appeared at the back door with a gun in his hand. Defendant and Gale begun arguing and after several minutes, Gale walked back into his apartment. Defendant and Thomas walked off and by the time Defendant made it to the corner of building 2-1, Gale appeared with a gun in his hand fussing and cussing. Gale then pointed his gun at Defendant and Defendant grabbed Gale's gun hand and they started fussling. After a minute or two, the gun went off and Gale fell from a gunshot wound to the neck. Thereafter, Defendant ran.

On the same day, an arrest warrant was issued for Defendant's arrest. Defendant turned himself in to the Columbia City Police Department on the next day. Defendant was served a copy of the arrest warrant on the same day, which was August 4, 2002. Defendant's arrest warrant was not forwarded to the Richland County Clerk of Court within fifteen (15) days of his arrest. The Clerk of Court did not receive Defendant's arrest warrant until January 13, 2003. The Solicitor, Warren B. Giese, prepared an indictment for presentment to the Grand Jury during the November 2002 Term. It states that the Grand Jury convened on November 13, 2002. Defendant's indictment is at issue within this Motion to Quash.

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Argument

Here Defendant will show that State knowingly employed the use of unlawful procedures for the return and publication of its true-billed indictments. That State unlawfully impaneled its grand jury outside the jurisdiction of the Court of General Sessions, and then willfully caused false and misleading information to be printed in its indictment. Consequently, the unlawfully and illegal acts committed by State require this Court to hold Defendant's indictment null and invalidate all judicial proceedings taken in this case.

A. Invalid Proceedings a Void Indictment

The matter presented for review is not a challenge to the Court's general grant of authority to hear and determine cases. That authority is rightfully granted by the State constitution, S.C. Const. art. V § 11 (which states that the Circuit Court is the general trial court with original jurisdiction in civil and criminal matters), See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), and will not be at issue here. Instead, Defendant contends that the Court of General Sessions failed to comply with statutory law jurisdictional in nature, specifying the manner and means for lawful return of true-billed indictments.

"The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the State, and is fundamental." State v. Heyward, 564 S.E.2d 379 (S.C. App. 2002) (citing Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989) (emphasis added).

Subject matter jurisdiction may not be waived even with consent of the parties, and may be raised at any time. Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). And, "no indictment may be true-billed by grand jury when circuit court lacks jurisdiction, since grand jury's jurisdiction is coextensive with criminal jurisdiction of the Court in which it is impaneled and for which it is to make inquiry..." State v. McClure, 279 S.C. 432, 289 S.E.2d 153 (1982); State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972); and State v. Wheeler, 259 S.C. 571, 193 S.E.2d 515 (1972).

Since S.C. Code Ann. § 14-9-210 is jurisdictional in nature and requires that all criminal indictments must be issued through a grand jury impaneled before the Court of General Sessions, the State's noncompliance with mandatory indictment procedures, and willful acts of perjury, have rendered all judicial proceedings invalid and its indictments null.

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The statutory provisions at issue are contained in section 14-9-210, and provide in pertinent part that:

> "The County Solicitor shall prepare and through the presiding Judge of the Court of General Sessions submit to the grand jury while in attendance upon the Court of General Sessions, bills of indictments in all cases pending in the County Court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the grand jury. The grand jury shall act thereon, and shall report its action to the presiding Judge of the Court of General Sessions and said Judge shall direct the Clerk of the Court of General Sessions to report the same to the presiding Judge of the county at its next ensuing term..."

The statutory terms above are clear, unambiguous, and require the County Solicitor to prepare and submit bills of indictment through the presiding Judge of the Court of General Sessions to a grand jury impaneled under the authority of the Court of General Sessions. No exceptions.

It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000), State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994). And words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand

the statutes operation, Bryant v. City of Charleston, 295 S.C. 403, 368 S.E.2d 894 (1998). Moreover, penal statutes must be construed strictly against the State and in favor of defendant. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

Accordingly, Section 14-9-210, requires strict compliance with its provisions, and mandates that the grand jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of a true-billed indictment can take place.

However, here, evidence will establish that State unlawfully impaneled its grand jury outside the jurisdiction of the Court of General Sessions, and then willfully printed and published false and misleading information in its indictment in order to deep secret its violations of statutory law.

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In this case, Defendant's bill of indictment prints that it was returned, "At a Court of General Sessions convened on November 13, 2002, the Grand Jurors of Richland County present upon their oath:" (See exhibit A)[1] The indictment is signed by the Solicitor, Warren B. Giese, and sealed with a True Bill stamp. (See exhibit A) Further, the title page of State's indictment prints that it was published at a Court of General Sessions term as convened on November 2002. (See exhibit A)

However, the evidence presented below will conclusively establish that State printed and published FALSE information in Defendant's indictment.

The terms of the Court of General Sessions for Richland County are fixed by S.C. Code Ann § 14-5-610, and which DOES NOT offer provisions for a Court to be open on November 13, 2002. Thus, State could not have lawfully returned its indictment "at a Court of General Sessions, convened on November 13, 2002," as FALSELY alleged in State's indictment. (See exhibit B)

One additional piece of evidence very clearly settles the matter of State's FALSE condition. The information contained in Exhibit B also establishes that no special term of the Court of General Sessions was convened on November 13, 2002 under the provisions of either Section 14-5-410, Section 14-5-910, or Section 14-5-920.

The attached Judicial Department Circuit Court Calendar for the Richland County General Sessions Court term proves beyond doubt that NO Court of General Sessions was convened on November 13, 2002 as FALSELY printed in Defendant's indictment. (See exhibit B)

1. Exhibit A has been sent to the Honorable Chief Administrative Judge. Defendant only had one copy.

There 260 recognizing the jurisdictional requirements set forth in section 14-9-210, mandating the only process allowed for impaneling a lawful grand jury, and often consideration of the facts and evidence presented above, it becomes apparent that Defendant was indicted outside the jurisdiction of the Court of General Sessions and by a mode of procedure that State had no lawful authority to adopt.

When a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way. Thus, since the Court utilized an unlawful mode of procedure not allowed under section 14-9-210, SMR lacked the requisite jurisdiction to complete return of its true-billed indictment.

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As established above, section 14-9-210 is clearly a jurisdictional statute, and sets forth mandatory procedure to be utilized by State for lawful return of a true-billed indictment. As substantial body of South Carolina law holds that a failure to comply with statutory law jurisdictional in nature deprives the court of subject matter jurisdiction, State v. Lee, 564 S.E.2d 372 (S.C. App. 2002); State v. Brown, 510 S.E.2d 559 (Ct. App. 2002); State v. Felder, 437 S.E.2d 43 (1993); State v. Richburg, 304 S.C. 162, 403 S.E.2d 315 (1991); State v. Loftin, 275 S.E.2d 575 (1981); Gray v. State, 276 S.C. 634, 281 S.E.2d 226 (1981); State v. Brunson, 274 S.C. 220, 262 S.E.2d 44 (1980); State v. Castleman, 64 S.E.2d 250 (1951), and many more.

Consequently, and in keeping with the mandatory provisions of Section 14-9-210, State has NO jurisdiction to issue return of true-billed indictment except during a time when the Court of General Sessions is lawfully convened to oversee the grand jury process. Any acts of the Court taken outside those statutory restrictions would by necessity be null and void. In fact, the South Carolina Supreme Court has already determined that NO indictment may be true-billed by a grand jury when the Court lacks jurisdiction. The grand jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of indictment can take place. See State v. McClure, State v. Funderburk, and State v. Wheeler.

Therefore, since NO Court of General Sessions was convened on the date Defendant's indictment was allegedly true-billed, the grand jury proceedings would therefore by necessity be held invalid, and its illegally issued indictment null and without binding legal effect.

B. Court Rules, Order or Other Processes

It should be noted the section 14-9-210 is not a local rule or statute but general provision applicable to the Courts in every county, and as shown, mandates that the grand jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of a true-bill indictment can take place. Thus, section 14-9-210 is clearly a jurisdictional statute, and sets forth the only process allowed lawful return of indictments.

No local rule of court, administrative order, policy, or other procedure can take precedent over statutory law, which is always controlling. See S.C. Const. art. 91,4, and State v. Cottingham, 77 S.E.2d 897, 224 S.C. 181 (1953) (Statutes override rules of court if in conflict); State v. Duncan, 264 S.E.2d 421 (1980) (Circuit court rule promulgated by individual judicial circuit was unconstitutional and void).

However, the issue of whether or not a local rule, order, policy, or procedure was utilized for process and return of Defendant's indictment is irrelevant, because by State law, it would still have to be in agreement with the provisions of section 14-9-210 for it to be constitutional.

Article V Section 4 of the State Constitution provides in pertinent part:

> "The Supreme Court shall make rules governing the administration of all courts of this State, subject to the statutory law the Supreme Court shall make rules governing the practice and procedures in all such courts." [Emphasis added]

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And, S.C. Code Ann. § 14-5-310, Rules of Court:

> "The circuit courts may make and establish all necessary rules for the orderly conducting of business in said courts, provided such rules are not repugnant to the laws of the State or the rules prescribed by the justices of the Supreme Court and circuit judges." [Emphasis added]

Thus, under those requirements, NO rules can be made or established for process and return of indictments, unless it comports with section 14-9-210. Otherwise, it would be unconstitutional and Null, being without binding legal effect.

Additionally, it should be noted that the Court of Common Pleas is vested with NO authority to take any action on matters pertaining to return of true-bill criminal indictments. "The Court is made up of the Court of Common Pleas which hears civil actions and the Court of General Sessions which hears criminal cases . . ." See Dove v. Gold Kist Inc., 314 S.C. 235, 442 S.E.2d 600 (1994); See also S.C. Const. art. V § 1.

Thus, there is no grant of concurrent jurisdiction, and therefore NO true-bill criminal indictments can be lawfully issued through grand jury proceedings held before a Court of Common Pleas.

Lastly, it should also be noted that a Circuit Court Judge retains NO authority on his own standing to conduct and oversee grand jury proceedings outside the bounds of a lawfully convened Court of General Sessions.

"Under our judicial system the presiding judge in the Circuit Court loses jurisdiction with the adjournment of the term." See State v. Best, 257 S.C. 361, 186 S.E.2d 272 (1972) (citing State v. Thompson, 122 S.C. 407, 115 S.E. 826). Also see State v. Rinehart, 430 S.E.2d 536 (S.C. App. 1993).

Therefore, if raised by State, there would be no merit to the contention that a judge on his own standing retains authority to impanel a grand jury after the close of Court, because in this case, the record shows that no lawful term of General Sessions' Court was in progress on November 13, 2002. (See Exhibit B). And as established a judge loses jurisdiction with the adjournment of court.

Accordingly, and in this case, no court rules, orders, or other procedures can be invoked or cited by State to save its unlawful grand jury process, and resulting null indictment.

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Conclusion

Wherefore, Defendant prays that this Honorable Court quash the Defendant's indictment on the above-mentioned grounds, and release him immediately and forthwith. Or, in the alternative, that this Honorable Court allow the Defendant to plead guilty to Voluntary Manslaughter, fifteen (15) years time served.

Respectfully,

Angel Henderson

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The State of South Carolina

In The Court of General Sessions

Motion to Quash

Court of General Sessions

Chief Administrative Judge

State of South Carolina ..... Respondent

v.

Aryee Henderson ..... Defendant

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C.P. & G.S.

Proof of Service

I certify that I have served this Motion to Quash on the Honorable Jeanette W. McBride, Clerk of Court, by depositing a copy of it in the U.S. Mail, postage prepaid, on February 10, 2016, addressed to her office at, P.O. Box 2766, Columbia, S.C 29202-2766.

s/ Aryee Henderson

Aryee Henderson 59105
ASGDC/SHU # 54
201 John Mark Dial Dr.
Columbia, S.C. 29209

Exhibit B
265

§ 14-5-670. Terms of court in Fifth Circuit

The courts of the fifth judicial circuit shall be held as hereinafter

(2) Richland County - The court of general sessions for Richland County shall be held at Columbia on the 2nd Monday in January for 2 weeks, on the 2nd Monday in April for 2 week on the 3rd Monday in June for 2 weeks, on the Tuesday following the 1st Monday in September for 3 weeks and on the 2nd Monday in December for 2 weeks.

The court of common pleas for the county shall be held in Columbia on the fourth Monday in January for 2 weeks, on the 2nd Monday in March for 3 weeks, on the 1st Monday in June for 2 weeks, on the 4th Monday in September for 3 weeks and on the 3rd Monday in November for 3 weeks, 2 weeks of which shall be for the disposal of jury matters and the other week, which includes Thanksgiving Day, for the disposal of motions, equity matters and other matters not requiring the attendance of a jury.

(3) Additional terms for certain matters - In addition to the terms of court hereinbefore set forth, there shall be held additional terms of court, without juries, to hear equity matters and all matters not requiring jury trials, such terms to be held as follows:

(a) Richland County: On the 3rd Monday in February, on the 3rd Monday in May and on the 4th Monday in October, each for one week; . . .

The terms of court provided for in this paragraph (3) shall be presided over by a judge other than the regularly assigned judge, to be selected by the Chief Justice from the regular or retired circuit judges, or he may select a special judge, qualified by law, to hold such terms. The terms of court provided for in this paragraph (3), if found at any time to be unnecessary, shall be called off as the law now provides for other terms.

FILED
2016 FEB 17 AM 10:05
RICHLAND COUNTY
C.C.P. & G.S.

WALLER
LAW GROUP

July 12, 2018

The Honorable Jocelyn Newman
Presiding Judge
Fifth Judicial Circuit
1701 Main Street, Room 223
P.O. Box 192
Columbia, SC 29202-0192

Re: Aryee Henderson vs. State of South Carolina
C/A No: 2016-CP-40-04364

Dear Judge Newman:

Please find enclosed a filed copy of Applicant's Motion Pursuant to Rule 60(b), SCRCP in the above referenced case. This motion stems from an evidentiary hearing in a PCR matter over which you presided on January 24, 2018. Should you require any additional information, I will be happy to provide whatever the court requests.

If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,

Jonathan D. Waller

Cc: Lindsey A. McCallister, Esquire

Enclosures

Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201

803-520-7278
www.wallerlawgroup.com
jonathan@wallergroupsc.com

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
)
) CASE NO.: 2016-CP-40-04364
Aryee Henderson)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
State of South Carolina)
Defendant.)

2018 JUN 28 AM 11:52
RICHLAND COUNTY
FILED
C.C.P. & G.S.
M. MCBRIDE

Plaintiff's Attorney:	Defendant's Attorney:
Jonathan D. Waller, Bar No. 76290	_____, Bar No. _____
Address:	Address:
1116 Blanding Street, Suite 2B, Columbia, SC 29201	_____
Phone: 803-520-7278 Fax _____	Phone: _____ Fax _____
E-mail: jonathan@wallergroupsc.com Other:	E-mail: Other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Relief from Judgment
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 6/26/2018
Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ _____
☒ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court, or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	5TH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
Aryee Henderson, #2378867,)	
)	**MOTION PURSUANT TO RULE 60(B) SCRCP**
Applicant,)	
vs.)	
)	Case No. 2016-CP-40-04364
State of South Carolina,)	
)	
)	
Respondent.)	

2018 JUN 28 AM 11:52
JAMIE H. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

YOU WILL PLEASE TAKE NOTICE that the Applicant, Aryee Henderson, by and through his undersigned counsel, hereby gives notice of his intent to move and does so move the Court pursuant to Rule 60(b)(1), SCRCP, for an Order of the Court to grant relief from its previous Order of Dismissal filed March 22, 2018.

The Applicant filed a timely application for post-conviction relief (PCR) on July 21, 2016. On January 24, 2018 a hearing was held at the Richland County Judicial Center. Following the hearing, on January 26, 2018, The Honorable Jocelyn Newman issued a Form 4 Order denying Applicant's Application for Post Conviction Relief and instructing the parties of a "Formal Order to follow." On June 25, 2018, Counsel for Applicant became aware that a formal Order of Dismissal had been filed in this case on March 22, 2018. Counsel for Applicant submits to this Court that Respondent has not formally served him with a copy of the Order of Dismissal. Upon a search of counsel's email inbox, an email was discovered from a member of the Clerk of Court's staff, (Attachment A) which had been previously unopened and overlooked. Counsel contends that while the email was certainly sent to him providing notice of the entry of the Oder of Dismissal, the heading and address of the sender of the email is not such that would draw attention to its importance. Counsel contends that his failure to take action from the Order of Dismissal, namely to

file any post-trial motions or a Notice of Appeal was due to mistake, inadvertence, surprise, or excusable neglect as contemplated by Rule 60(b)(1), SCRCP.

Applicant respectfully requests this Court to grant Applicant relief from its previous Order of Dismissal and allow Applicant to file appropriate post-trial motions and when appropriate, a Notice of Appeal.

Respectfully submitted,

By: 

Jonathan D. Waller
Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, South Carolina 29201
Telephone: 803-520-7278
E-mail: jonathan@wallergroupsc.com

ATTORNEY FOR THE APPLICANT

June 26, 2018

Columbia, South Carolina

Attachment A

From: **PAUL GUNTER** GUNTERP@rcgov.us
Subject: FW: 2016CP4004384 Order of Dismissal
Date: March 22, 2018 at 9:44 AM
To: JKnard@scag.gov, jonathan@wallergroupsc.com

Paul J. Gunter
Richland County Clerk of Court
Civil Court Scheduler
1701 Main Street
P.O. Box 2766
Columbia, SC 29202
803-576-1932
803-576-1612 (facsimile)

Starting January 2018, roster meetings will move from Mondays at 9:00 a.m. to Fridays at 10:00 a.m. and be held in Courtroom 2E. Any exceptions will be posted on the website (www.sccourts.org - Richland County Attorney Page). Please note, if you want a Status Conference, contact all clerks by email - Bailey Davis at rhoodlc@sccourts.org (Judge Hood's law clerk) and Paul Gunter at guntersp@rcgov.us (jury) and Anne Henley at henleya@rcgov.us (non-jury) to schedule. Status Conferences will be held on Fridays at 9:00 a.m. prior to the Roster Meeting at 10:00 a.m.

-----Original Message-----
From: Courtmail40_DoNotReply@sccourts.org [mailto:Courtmail40_DoNotReply@sccourts.org]
Sent: Thursday, March 22, 2018 9:43 AM
To: PAUL GUNTER
Subject: 2016CP4004384 Order of Dismissal

----- CONFIDENTIALITY NOTICE ----- This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

PDF

2016CP400436
4_ORD...85.PDF

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-40-04364

AYREE HENDERSON (SCDC #237887)	STATE OF SOUTH CAROLINA
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: NEWMAN, J.	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: **Applicant's "Motion Pursuant to Rule 60(b), SCRCP" is DENIED. The Court finds that the final judgment itself was not obtained by mistake, inadvertence, surprise, or excusable neglect. Rather, counsel was aware of the dismissal of this action, and it was simply the review (or failure to review) of counsel's email that was the mistake. The Court finds this reason insufficient to warrant relief from judgment as requested.**

ORDER INFORMATION

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2757 Judge Code	July 26, 2018 Date

ELECTRONICALLY FILED - 2018 Jul 31 10:42 AM - RICHLAND - COMMON PLEAS - CASE#2016CP4004364

ELECTRONICALLY FILED - 2018 Jul 31 10:42 AM - RICHLAND - COMMON PLEAS - CASE#2016CP4004364

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this 31 day of July, 20 18 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jeanette W. McBride

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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

FORM 5

STATE OF SOUTH CAROLINA)
)
County of Richland)
)
Aryee Henderson 237887)
Full name and prison number (if any) of Applicant)
)
v.)
)
State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

2018CP4004964

RICHLAND COUNTY FILED
2018 SEP 20 PM 2:41
JEANNETTE W. McBRIDE C.C.P. & G.S.

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS – READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution
4460 Broad River Rd., Columbia, South Carolina 29210

2. Name and location of Court which imposed sentence Richland County
Judicial Center, 1701 Main Street, Columbia, South Carolina 29201

3. Name(s) of co-defendant(s) (if any) _____

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2002-GS-40-7277 Voluntary Manslaughter

(b) _____

(c) _____

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

(a) June 20, 2016 Must Serve 85% of Sentence

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

_____

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

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

i. South Carolina Supreme Court

ii. _____

iii. _____

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

i. Appeal dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. June 29, 2018

ii. _____

iii. _____

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

i. See Exhibit A & B

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) Ineffective assistance of PCR Counsel

(b) _____

(c) _____

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

(a) See attached sheet

(b) _____

(c) _____

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

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

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? yes

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

(a) the specific nature thereof:

i. Direct Appeal

ii. Post-Conviction Relief

iii. Post-Conviction Relief

iv. Motion for Extension of Time (See Exhibit H)

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

i. South Carolina Court of Appeals, P.O. Box

ii. Richland County Judicial Center, 1701 Main St., Cola, S.C. 29201

iii. Richland County Judicial Center, 1701 Main St., Cola, S.C. 29201

iv. Richland County Judicial Center, 1701 Main St., Cola, S.C. 29201

(c) the disposition thereof:

i. Appeal dismissed

ii. Reversed, remanded, and granted a new trial

iii. Post-Conviction Relief Denied

iv. N/A

(d) the date of each such disposition:

i. February 12, 2008

ii. July 12, 2010

iii. January 25, 2018

iv. N/A

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

i. Unpublished Op. No. 2008-UP-107

ii. 2008-CP-400-1696

iii. 2016-CP-400-4364

iv. N/A

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

No

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

(a) which grounds have been presented:

i.

ii.

iii.

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

i.

ii.

iii.

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

(a) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

_____

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. J. Rhodes Bailey, Esquire
1101 Main Street, Columbia, S.C. 29201

ii. Charlie Jay Johnson - Post Office Box 11212
1634 Main Street, Suite 95, Columbia, S.C. 29211

iii. J. Rhodes Bailey, Esq. (Plea); Charlie J. Johnson, Esq. (trial)
(See attached sheet)

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

i. Plea hearing (J. Rhodes Bailey)

ii. trial (Charlie J. Johnson)

iii. appeal (Joseph L. Savitz, III) (Wanda H. Carter)

Revised 3/20[illegible]

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

Reversed, remand, and vacate

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

NO

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Richland)

I, Aryee Henderson, 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.

Aryee Henderson

SWORN to and subscribed before me this 27th day of August, 2018.

Kenneth Nichols (L.S.)
Notary Public

My Commission Expires: May 23, 2028

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

I, Aryee Henderson, 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.

Aryee Henderson
Applicant

SWORN or affirmed to and subscribed before me this 27th day of August, 2018.

Kamala Mata
Notary Public

My Commission Expires: May 23, 2028

11 (g) PCR Counsel sabotaged my PCR by failing to file an Amended PCR Application with the Court, failed to file a Rule 59(e) Motion to Alter or Amend, failed to subpoena Shea Thomas – an eyewitness to the incident who corroborated my account of the Shooting – to testify in my behalf that plea counsel never contacted her, and failed to file an appeal from the Order of Dismissal of my PCR application. PCR Counsel failed to notify me once the PCR Order of Dismissal was issued, failed to follow-up and keep track of my PCR case, failed to submit a Proposed Order to the PCR Court, and failed to forward me copies of the PCR Court's Order, Proposed Orders submitted by him and the State, and any other documentation submitted by the Court pertaining to me. See Exhibits A, B, C, & D.

(a) the specific nature thereof:

13. V. Motion to Relieve Counsel (See Exhibit E)

VI. Motion to Renew Motion to Relieve Counsel (See Exhibit F)

VII. Motion for Preliminary Injunction (See Exhibit G)

VIII. Petition for Writ of Certiorari

IX. Writ of Mandamus

(b)

V. Richland County Judicial Courthouse, 1701 Main St., Columbia, S.C. 29201

VI. Richland County Judicial Courthouse, 1701 Main St., Columbia, S.C. 29201

VII. Richland County Judicial Courthouse, 1701 Main St., Columbia, S.C. 29201

VIII. Supreme Court of South Carolina, P.O. Box 11330, Columbia, S.C. 29211

IX. Richland County Judicial Courthouse, 1701 Main St., Columbia, S.C. 29201

(c) 282

v. Court never ruled or responded

vi. Court never ruled or responded

vii. Court never ruled or responded

viii. Appeal dismissed

ix. Petition denied

(d)

v. N/A

vi. N/A

vii N/A

viii June 29, 2018 (See Exhibits I & J)

ix.

18. iv. Joseph L. Savitz, III
Post Office Box 11589
Columbia, S.C. 29211-1589

Wanda H. Carter
Post Office Box 11589
Columbia, S.C. 29211-1589

Exhibit A

WALLER
—LAW GROUP—

June 26, 2018

Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: Aryee Henderson vs. State of South Carolina
Appellate Case No.: 2018-001154
Lower Court Case No.: 2016CP4004364

Dear Mr. Shearouse:

I have received a letter from your office regarding the above-referenced matter and a filing received from my client. You have asked that I provide the Court with a copy of proof of service showing a notice of appeal being served on counsel for the State as well as the date written notice of entry was received.

Please note that I have not served a Notice of Appeal on the State as I have not filed a Notice of Appeal in the matter. Written notice of entry of the order was provided to me on March 22, 2018 and I have filed a Motion pursuant to Rule 60(b), SCRCP, mailed contemporaneously with this letter, regarding the written notice of entry of the order.

If I can provide any additional information to the Court, I will gladly do so. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,

Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General
Aryee Henderson

Enclosures

Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201

803-520-7278
www.wallerlawgroup.com
jonathan@wallergroupsc.com

Exhibit B

WALLER
LAW GROUP

June 27, 2018

The Honorable Jeanette W. McBride
Clerk of Court, Richland County
PO Box 2766
Columbia, SC 29202-2766

Re: Aryee Henderson vs. State of South Carolina
C/A No: 2016-CP-40-04364

Dear Madam Clerk:

Please find enclosed one (1) original and one (1) copy of Applicant's Motion Pursuant to Rule 60(b), SCRCP in the above referenced case. Please file the original and return the clocked copy to me in the enclosed envelope. Please note that Post Conviction Relief matters are **EXEMPT** from the requirements of e-filing.

By copy of this letter I am serving same on counsel for Respondent. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,

Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General
Aryee Henderson

Enclosures

Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201

803-520-7278
www.wallerlawgroup.com
jonathan@wallergroupsc.com

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
)	CASE NO.: 2016-CP-40-04364
)	
Aryee Henderson)	**MOTION AND ORDER INFORMATION**
Plaintiff,)	**FORM AND COVERSHEET**
vs.)	
)	
State of South Carolina)	
Defendant.)	

Plaintiff's Attorney:	Defendant's Attorney:
Jonathan D. Waller, Bar No. 76290	_____, Bar No. _____
Address:	Address:
1116 Blanding Street, Suite 2B, Columbia, SC 29201	_____
Phone: 803-520-7278 Fax _____	Phone: _____ Fax _____
E-mail: jonathan@wallergroupsc.com Other: _____	E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Relief from Judgment
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 6/26/2018
Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ _____
☒ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	5TH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Aryee Henderson, #2378867,	)	
	)	**MOTION PURSUANT TO RULE 60(B) SCRCP**
Applicant,	)	
vs.	)	
	)	Case No. 2016-CP-40-04364
State of South Carolina,	)	
	)	
	)	
Respondent.	)	

YOU WILL PLEASE TAKE NOTICE that the Applicant, Aryee Henderson, by and through his undersigned counsel, hereby gives notice of his intent to move and does so move the Court pursuant to Rule 60(b)(1), SCRCP, for an Order of the Court to grant relief from its previous Order of Dismissal filed March 22, 2018.

The Applicant filed a timely application for post-conviction relief (PCR) on July 21, 2016. On January 24, 2018 a hearing was held at the Richland County Judicial Center. Following the hearing, on January 26, 2018, The Honorable Jocelyn Newman issued a Form 4 Order denying Applicant's Application for Post Conviction Relief and instructing the parties of a "Formal Order to follow." On June 25, 2018, Counsel for Applicant became aware that a formal Order of Dismissal had been filed in this case on March 22, 2018. Counsel for Applicant submits to this Court that Respondent has not formally served him with a copy of the Order of Dismissal. Upon a search of counsel's email inbox, an email was discovered from a member of the Clerk of Court's staff, (Attachment A) which had been previously unopened and overlooked. Counsel contends that while the email was certainly sent to him providing notice of the entry of the Oder of Dismissal, the heading and address of the sender of the email is not such that would draw attention to its importance. Counsel contends that his failure to take action from the Order of Dismissal, namely to

file any post-trial motions or a Notice of Appeal was due to mistake, inadvertence, surprise, or excusable neglect as contemplated by Rule 60(b)(1), SCRCP.

Applicant respectfully requests this Court to grant Applicant relief from its previous Order of Dismissal and allow Applicant to file appropriate post-trial motions and when appropriate, a Notice of Appeal.

Respectfully submitted,

By: _____

Jonathan D. Waller
Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, South Carolina 29201
Telephone: 803-520-7278
E-mail: jonathan@wallergroupsc.com

ATTORNEY FOR THE APPLICANT

June 26, 2018

Columbia, South Carolina

Attachment A

From: **PAUL GUNTER** GUNTERP@rcgov.us
Subject: FW: 2016CP4004364 Order of Dismissal
Date: March 22, 2018 at 9:44 AM
To: JKinard@scag.gov, jonathan@wallergroupsc.com

Paul J. Gunter
Richland County Clerk of Court
Civil Court Scheduler
1701 Main Street
P.O. Box 2766
Columbia, SC 29202
803-576-1932
803-576-1612 (facsimile)

Starting January 2018, roster meetings will move from Mondays at 9:00 a.m. to Fridays at 10:00 a.m. and be held in Courtroom 2E. Any exceptions will be posted on the website (www.sccourts.org - Richland County Attorney Page). Please note, if you want a Status Conference, contact all clerks by email - Bailey Davis at thoodjc@sccourts.org (Judge Hood's law clerk) and Paul Gunter at gunterp@rcgov.us (jury) and Anne Henley at henleya@rcgov.us (non-jury) to schedule. Status Conferences will be held on Fridays at 9:00 a.m. prior to the Roster Meeting at 10:00 a.m.

-----Original Message-----
From: Courtmail40_DoNotReply@sccourts.org [mailto:Courtmail40_DoNotReply@sccourts.org]
Sent: Thursday, March 22, 2018 9:43 AM
To: PAUL GUNTER
Subject: 2016CP4004364 Order of Dismissal

---- CONFIDENTIALITY NOTICE ---- This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



2016CP400436
4_ORD...85.PDF

Exhibit C

WALLER LAW GROUP

August 2, 2018

Aryee Henderson
SCDC ID: 237887
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Aryee Henderson vs. State of South Carolina
C/A No: 2016-CP-40-4364

Dear Mr. Henderson:

Please find enclosed a copy of the Order denying my Motion Purusant to Rule 60(b), SCRCP I issued by Judge Newman in your above referenced PCR case. Based on that, I am filing an appeal from this Order on your behalf. I will forward you copies of the filed Notice of Appeal when I receive them back from the Clerk of Court.

Again I apologize for missing the email with the Order of Dismissal in your case. The proper remedy is for you to file a new PCR alleging only that I failed to file an appeal of this PCR. I will do everything that I can to assist you in getting an appeal of this PCR.

Sincerely,

Jonathan D. Waller

Enclosures

1116 BLANDING STREET, SUITE 2B, COLUMBIA, SOUTH CAROLINA 29201
(P) 803-520-7278
WALLERLAWGROUP.COM

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-40-04364

AYREE HENDERSON (SCDC #237887)
PLAINTIFF(S)

STATE OF SOUTH CAROLINA
DEFENDANT(S)

Submitted by: NEWMAN, J.

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: **Applicant's "Motion Pursuant to Rule 60(b), SCRCP" is DENIED. The Court finds that the final judgment itself was not obtained by mistake, inadvertence, surprise, or excusable neglect. Rather, counsel was aware of the dismissal of this action, and it was simply the review (or failure to review) of counsel's email that was the mistake. The Court finds this reason insufficient to warrant relief from judgment as requested.**

ORDER INFORMATION

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2757 Judge Code	July 26, 2018 Date

ELECTRONICALLY FILED - 2018 JUL 31 10:42 AM - RICHLAND - COMMON PLEAS - CASE#2016CP4004364

ELECTRONICALLY FILED - 2018 Jul 31 10:42 AM - RICHLAND - COMMON PLEAS - CASE#2016CP4004364

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this 31 day of July, 20 18 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jeanette W. McBride

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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

Exhibit D

WALLER
LAW GROUP

August 4, 2018

Aryee Henderson
SCDC ID: 237887
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Aryee Henderson vs. State of South Carolina
C/A No: 2016-CP-40-4364

Dear Mr. Henderson:

I have received a copy of a letter you wrote to the Attorney General requesting a copy of an application for post conviction relief, which I have enclosed here.

As you know I have filed a motion pursuant to Rule 60, SCRCP asking for relief from the Order of Dismissal, specifically asking that I be able to file an appeal in your case. The clerk of court sent an email to me with the Order of Dismissal attached and I accidentally failed to open the email as I didn't realize what it contained.

I apologize for my error and will do anything that I can to get you an appeal of this decision. Should you have any questions, please don't hesitate to ask.

Sincerely,

Jonathan D. Waller

Enclosures

Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201

803-520-7278
www.wallerlawgroup.com
jonathan@wallergroupsc.com

Exhibit E

LEGAL MAIL

Aryee Henderson 54105
ASGDC / Lima-G-#50
201 John Mark Dial Dr.
Columbia, S.C. 29209

April 20, 2016
299

Chief Administrative Judge
Richland County 5th Circuit
1701 Main Street
Columbia, S.C. 29201

RICHLAND COUNTY
FILED
2016 APR 22 PM 4:15
CLERK OF COURT
C.C.P. & G.S.

Re: Motion to Relieve Counsel

Dear Honorable Judge,

Enclosed is an original copy of a Motion to Relieve Counsel.

Respectfully

S/ Aryee Henderson

cc: Honorable Dan Johnson (Solicitor)
Honorable Jeanette W. McBride (Clerk of Court)

County of Richland) Fifth Judicial Circuit
300
)
State of South Carolina,) Case No.: 2002-GS-40-7277
Respondent.)
v.) Charge: Murder
)
Arijee Henderson,) Motion to Relieve
) Counsel
Defendant.)

FILED
2016 APR 20 PM 4:15
CLERK OF COURT
C.C.P. & G.S.

NOW COMES THE DEFENDANT, Arijee Henderson, who will move before this Court on April 25, 2016 at 9:30 a.m. or as soon as this matter may be heard for an Order to Relieve ~~Counsel~~ Counsel from the Public Defender's Office on the above-named Defendant. The Defendant feels that his appointed attorney is not representing him sufficiently. On 1-7-16, this Court verbally ordered the solicitor's office to bring me before this Court to plea on 1-19-16. However, the solicitor's office, nor my appointed attorney scheduled me to appear before this Court to plea. On 3-9-16, my appointed attorney had me brought to the courthouse to discuss trial tactics in reference to several pro se motions I filed with this Court. He advised me to plead guilty because he felt that the grounds I raised within my motions were meritless and I was gonna lose if I elected to proceed with trial. He further advised me that he would have me in court to plead guilty within a couple of weeks. I have yet to appear in court. Moreover, he promised

that he would send me all of my transcripts, legal documents, and cases that he has in his possession. I have yet to receive these items.

The above information is true and accurate to the best of my Knowledge.

This Motion is made in good faith.

Conclusion

Wherefore, Defendant prays that this Court issue an Order to Relieve him of his Appointed Counsel from the Public Defender's Office and that he return all of the Defendant's transcripts, legal documents, and law cases.

Respectfully.

s/ Arryee Henderson

RICHLAND COUNTY
FILED
2016 APR 22 PM 4:15
C.C.P. & G.S.

Columbia, South Carolina

Dated: April 20, 2016

Exhibit F

LEGAL MAIL

SCDC / SMU #416
Mark Dial Dr.
Columbia, S.C. 29209

Honorable Jeanette W. McBride
Clerk of Court
101 Main St.
Columbia, S.C 29201

RICHLAND COUNTY
FILED
16 JUN -7 PM 12:01
JEANETTE W. McBRIDE
C.C.P. & G.S.

Re.: Motion to Relieve Counsel

Dear Ms. McBride,

Enclosed is an original copy of Motion to Relieve Counsel, along with a:

1) Motion for Bond;

2) Proof of Service

Respectfully,
S/ Aryee Henderson

CC: Honorable Clifton Newman (Chief Administrative Judge)
Honorable Dan Johnson (Solicitor 5th Circuit)

LEGAL MAIL
MAIL ROOM

State of South Carolina County of Richland State of South Carolina, Respondent, v. Arijee Henderson. Defendant.	)	In The Court of General Sessions Fifth Judicial Circuit Warrant No.: 258760 Motion to Renew Motion to Relieve Counsel

16 JUN -7 PM 12:01
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
S.C.

TO: CHIEF ADMINISTRATIVE JUDGE

YOU WILL PLEASE TAKE NOTICE that Arijee Henderson, Pro Se Defendant, will respectfully move before this Court on June 6, 2016, at 9:30 a.m. or as soon thereafter as this matter may be heard for an Order to Relieve Counsel on the above-named Defendant.

An initial Motion to Relieve Counsel was filed on or about April 22, 2016 and has yet to be heard.

The Defendant respectfully request that he be relieved from further presentation from the Public Defender's Office. The Defendant feels that his court appointed attorney, John Rhodes Bailey, is not representing him efficiently. Furthermore, pursuant to Faretta v. California, 95 S Ct. 2525 (1975), the Defendant respectfully requests to proceed "Pro Se" during any and all future proceedings involving Defendant.

The above information is true and accurate to the best of my knowledge.

This Motion is made in good faith.

LEGAL MAIL
MAIL ROOM

Conclusion

Wherefore, the Defendant prays this Court relieve him from further representation from the Public Defender's Office.

Respectfully

s/ Aryee Henderson

Columbia, South Carolina

Dated: June 2, 2016

RICHLAND COUNTY
FILED
16 JUN -7 PM 12:01
JEANETTE W. McBRIDE
C.C.P. & G.S.

Exhibit G

State of South Carolina) In The Court of Common Pleas
County of Richland)
) For The Fifth Judicial Circuit
Aryee Henderson, 237887)
Applicant,) Civil Action No.: 2016-CP-400-4364
v.)
State of South Carolina,) Motion for Preliminary
) Injunction
Respondent)

RICHLAND COUNTY FILED
FEBRUARY 22 AM 10:33
JEANETTE W. MCBRIDE C.C.P. & G.S.

The Applicant, Aryee Henderson, proceeding pro se, respectfully moves this Court for a preliminary injunction against SCDC administrative officials here at Heiber Correctional Institution on the following grounds:

1) The Applicant needs adequate time in the law library to file a Rule 59(e) motion to alter or amend the PCR Court's order of dismissal;

2) The administrative officials here at Heiber C.I. refuses me the use of the law library stating that SCDC headquarters has all institutions on state-wide lockdown per Executive Order by the Governor. However, I have not seen an Executive Order, heard about one on any news media outlets, nor was a memorandum issued expounding on any Executive Order;

3) Moreover, I missed the PCR Court's deadline to file a Rule 59(e) Motion to Alter or Amend the PCR's Order of Dismissal. On 3-20-18, the Honorable Jocelyn Newman denied my Application for Post-Conviction Relief. On 5-2-18, I received my initial and only copy of the PCR Court's Order. Since receiving

this Order, I have not been able to use the satellite law computer, nor were I able to receive up-to-date current cases or law books. I wrote the General Counsel explaining my predicament and my request fell on deaf ears. I don't understand why it took so long for me to receive a copy of the PCR Court's Order. The only reason I believe that I got it was because I wrote the Richland County Clerk of Court during the week of 4-16-18, asking for copies of the PCR Order, transcript, or any other documents pertinent to my PCR hearing;

4) The Applicant has no other means or recourse to resolve this issue.

Conclusion

Wherefore, Applicant respectfully requests this Court to issue a Preliminary Injunction against the administrative officials here at Leiber Correctional Institution to allow me the use of the law library at least three (3) times per week.

Respectfully,

S/ Anajee Henderson

Ridgeville, South Carolina

Dated: May 9, 2018

State of South Carolina)
)
County of Richland)

In The Court of Common Pleas
For The Fifth Judicial Circuit

Aryee Henderson 237887
Applicant,

v.

State of South Carolina,
Respondent

Civil Action No.: 2016-CP-400-4364

Proof of Service

FILED
2018 MAY 22 AM 10:33
JEANNETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY

I certify that I have served this Motion for Preliminary Injunction on the Honorable Chief Administrative Judge, Richland County 5th Circuit, by depositing a copy of it in the U.S. Mail, postage prepaid, on May 9, 2018, addressed to his office at, 1701 Main Street, Columbia, South Carolina 29201.

S/ Aryee Henderson

Aryee Henderson 237887
Lieber C.I. / Ashley - A*25
136 Wilborn Ave.
Ridgeville, S.C. 29472

Aryee Henderson 291887
Leiber C.I / Ashley - A # 25
136 Wilborn Ave.
Ridgeville, S.C. 29472

May 9, 2018

Honorable Chief Administrative Judge
Richland County 5th Circuit
1701 Main Street
Columbia, S.C. 29201

Re: Aryee Henderson v. State of South Carolina
Civil Action No.: 2016 - CP - 400 - 4364

Dear Honorable Judge,

Enclosed for your file is an original copy of Motion for Preliminary Injunction, along with a:

1) Proof of Service

Respectfully,
s/ Aryee Henderson

Exhibit H

State of South Carolina) In The Court of Common Pleas
County of Richland) For The Fifth Judicial Circuit
)
Aryee Henderson, 297887) Civil Action No.: 2016 - CP - 400 - 4364
Applicant,)
v.) Motion for Extension
) of Time
State of South Carolina,)
Respondent)

FILED
RICHLAND COUNTY
2018 MAY 22 AM 10:31
JEANETTE W. MCBRIDE
C.C.P. & G.S.

NOW COMES THE APPLICANT, Aryee Henderson, respectfully requesting that this Court grant Applicant an extension of time to file a Rule 59(e) Motion to Alter or Amend PCR Order of Dismissal premised on the following reasons:

1) Applicant received his initial and only copy of his PCR Court's Order of Dismissal on 5-2-18; See Exhibit A

2) SCDC is on state-wide institutional lockdown because of the Murders at Lee Correctional Institution (Lee C.I.);

3) The only reason I received a copy of the PCR Court's Order of Dismissal was because I submitted letters to the Richland County Clerk of Court and the Attorney General's Office during the week of April 15th asking for copies of her decision, if she rendered one;

Arijee Henderson 297887
Keiber C.I. / Ashley - A# 25
136 Wilborn Ave.
Ridgeville, S.C. 29472

May 3, 2018

RECEIVED
MAY 17 2018
ROBERT E. HOOD
SC CIRCUIT COURT JUDGE

Honorable Chief Administrative Judge
Richland County 5th Circuit
1701 Main Street
Columbia, S.C. 29201

Re: Arijee Henderson v. State of South Carolina
Civil Action No.: 2016-CP-400-4364

Dear Honorable Judge,

Enclosed for your file is an original Motion for Extension of Time, along with a:

1) Proof of Service

2) Exhibit A

Respectfully,
S/ Arijee Henderson

Exhibit I

The Supreme Court of South Carolina

Aryee Henderson, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2018-001154
Lower Court Case No. 2016CP4004364

ORDER

The *pro se* notice of appeal in this case is dated June 19, 2018. No proof of service was provided for this notice of appeal. In response to a letter from this Court, petitioner's counsel before the circuit court has advised this Court that he received written notice of entry of the order under appeal on March 22, 2018.

Based on petitioner's failure to provide a proof of service showing that a copy of the notice of appeal has been served on the counsel for the State as required by Rule 203(d)(1)(B)(i) of the South Carolina Appellate Court Rules (SCACR), and and his failure to timely serve the notice of appeal under Rules 243(b) and 203(b)(1), SCACR, the notice of appeal is dismissed. The remittitur will be sent as provided by Rule 221, SCACR.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina
June 29, 2018

cc: Lindsey Ann McCallister, Esquire
Jonathan D Waller, Esquire
Mr. Aryee Henderson

Exhibit J

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

July 17, 2018

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: Aryee Henderson v. State
Lower Court Case No. 2016CP4004364
Appellate Case No. 2018-001154

Dear Clerk of Court:

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

Very truly yours,

Daniel E. Shearouse
BS

CLERK

cc:
Lindsey Ann McCallister, Esquire
Jonathan D Waller, Esquire
Aryee Henderson, #237887

Arlyee Henderson 284884
Broad River C.I. / WA-256
4460 Broad River Rd.
Columbia, S.C. 29210

November 27, 2018

RECEIVED
NOV 30 2018
Referred to McCollister/PB
Answered

Honorable Alan Wilson
Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549

Re: Arlyee Henderson v. State of South Carolina
Docket No.: 2018-CP-400-4964

Dear Mr. Wilson,

This Applicant's Amendment To Original PCR Application is being submitted to your office because I don't have a PCR Counsel to file one, and it's for this Court to review as exhibits.

Thank you in advance for your time and assistance in this matter.

Respectfully,
S/ Arlyee Henderson

cc: Honorable Chief Administrative Judge (Richland County 5th Circuit)

State of South Carolina) In The Court of Common Pleas
County of Richland) For The Fifth Judicial Circuit
)
Arijee Henderson, 237887) Civil Action No.: 2018-CP-400-4964
)
Applicant,)
v.) Applicant's Amendment To
)
State of South Carolina,) Original PCR Application
)
Respondent)

Applicant hereby puts this Court on Notice that the following Allegations have been Amended to his original PCR Application:

II(a) PCR Counsel failed to file an appeal from the PCR Court's Order of Dismissal.

Facts - On January 24, 2018, a PCR hearing was held before Honorable Jocelyn Newman. After the hearing on the same day, she denied me relief. See PCR transcript (Exhibit K). On March 22, 2018, an e-mail was sent to my PCR Counsel from Paul Gunter — Clerk of Court - informing him of the PCR Court's Order of Dismissal. See Exhibit B. During the week of

April 23, 2018, I wrote the Richland County Clerk of Court asking for the disposition of my PCR case. I received a copy of the PCR Court's Order of Dismissal on May 2, 2018. See Exhibit H. I attempted to file a Pro Se appeal to the S.C. Supreme Court but it got denied. See Exhibit I.

(b) PCR Counsel failed to file a Rule 59(e) Motion to Alter or Amend the PCR Court's Order of Dismissal.

Facts - On January 24, 2018, the PCR Court verbally denied PCR relief to Applicant. On March 22, 2018, the PCR Court issued and filed its Order of Dissmissal with the Clerk of Court. At no time did PCR Counsel notify me once the PCR Court's Order of Dissmissal was issued, failed to follow-up and keep track of my PCR case, and furthermore, he failed to submit a Proposed Order. To further substantiate this allegation, PCR Counsel failed to forward me copies of the PCR Court's Order of Dismissal, proposed Orders submitted by Counsel, or any other documentation submitted by the Court pertaining to Case No.: 2016 - CP-400-4364. At the PCR hearing. I testified that I filed a Motion to Relieve Counsel with the Court and that I wanted to proceed "Pro Se" throughout the Court proceedings. The Plea Court never entertained this issue, Plea counsel did not bring it to the Court's attention, nor did the PCR Court make specific findings of fact, and state expressly its conclusions of law, relating to the Motion to Relieve Counsel and my (2) request to proceed "Pro Se."

(c) PCR Counsel failed to subpoena Shea Thomas - an eyewitness to the incident who corroborated my account of the shooting — to testify in my behalf that plea counsel never contacted her or attempted to subpoena her for my [redacted] trial.

Facts - At no time did PCR Counsel come visit me to discuss the issues raised within my previous PCR application, nor did we speak with each other on the telephone. Around September or October of 2016, I wrote him a letter asking him to subpoena Shea Thomas so she can testify in my behalf at the PCR hearing pertaining to my "failed to investigate" issue. On the day of my PCR hearing, - which was my first time seeing and communicating with him - I asked him if he subpoenaed Shea Thomas and he informed me "no" because it was too late.

Respectfully,

s/ Aryed Henderson

Columbia, South Carolina

Date: November 27, 2018

State of South Carolina)
County of Richland)
)
Aryee Henderson, 237887)
)
V. Applicant,)
)
~~State~~ of South Carolina,)
)
Respondent)

In The Court of Common Pleas
For The Fifth Judicial Circuit

Docket No.: 2018-CP-400-4964

Proof of Service

I certify that I have served this Applicant's Amendment To Original PCR Application on the Honorable Alan Wilson, Attorney General, by depositing a copy of it in the U.S. Mail, postage prepaid, on November 27, 2018, addressed to his office at, Post Office Box 11549, Columbia, South Carolina 29211-1549.

s/ Aryee Henderson

Aryee Henderson 237887
Broad River C.I. / WA-256
4460 Broad River Rd.
Columbia, S.C. 29210

Exhibit K

State of South Carolina

Court of General Sessions

County of Richland

State)
)
v.) Transcript of Record
) 2002-GS-40-07277
Ayree Henderson)
)
Defendant.)

June 20, 2016
Columbia, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge.

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

Luck Campbell, Assist. Solicitor
Attorney for the State

Rhodes Bailey, Assist. Public Defender
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

I N D E X

WITNESS	PAGE

(No Witnesses.)

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.

(No Exhibits.)

PROCEEDINGS

* * *

MS. CAMPBELL: May it please the Court. Your Honor, we're before you today on The State vs. Ayree Henderson. To give you a little bit of procedural background, Your Honor, this offense occurred back on August 3rd of 2002. It went to trial before Judge Lee approximately two years later. He was convicted of murder. He did receive, I believe, a 30-year sentence at that point.

It then went through the appeals process and was upheld. It's my understanding that it was recently, I believe, returned to us last November on a PCR issue. And we're here before you today to -- he's pleading straight-up to a -- one count of voluntary manslaughter, with each side asking for whatever time we feel is appropriate.

THE CLERK: Raise your right hand.

AYREE HENDERSON

being first duly sworn, testified as follows:

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Counsel, do you represent him?

MR. BAILEY: Yes, Your Honor.

THE COURT: And what is your understanding as

to what he's doing here today?

MR. BAILEY: Your Honor, Mr. Henderson is pleading guilty today. That's what he'd like to do, sir.

THE COURT: Okay. As to voluntary manslaughter?

MR. BAILEY: Yes, sir. And I can give you additional detailed background if you'd like.

THE COURT: Okay. And voluntary manslaughter carries the penalty of what?

MR. BAILEY: Two years to 30 years, Your Honor.

THE COURT: Is that your understanding, sir?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And, Mr. Henderson, do you want to give up your right to a jury trial and plead guilty to voluntary manslaughter, understanding that it is classified as a most serious offense?

THE DEFENDANT: Yes, sir.

THE COURT: Has anyone promised you anything to get you to plead guilty?

THE DEFENDANT: No, sir.

THE COURT: Are you satisfied with the representation by your lawyer?

THE DEFENDANT: Yes, sir.

:53:35 1 THE COURT: And do you think -- have you had
:53:38 2 enough time to look at whether you want to plead
:53:41 3 guilty to voluntary manslaughter?
:53:46 4 THE DEFENDANT: Yes, sir.
:53:46 5 THE COURT: Do you want to do that?
:53:47 6 THE DEFENDANT: Yes, sir.
:53:48 7 THE COURT: As you stand before me at this
:53:51 8 moment in time, you're presumed to be not guilty of
:53:53 9 this charge, you have the right to a jury trial,
:53:57 10 you're presumed to be not guilty, you have the right
:54:00 11 to remain silent, and the right to require the State
:54:02 12 to prove your guilt by presenting evidence which
:54:05 13 convinces the jury of your guilt beyond a reasonable
:54:08 14 doubt. And if a jury is not convinced of your guilt
:54:13 15 beyond a reasonable doubt, they would be instructed
:54:13 16 they must find you not guilty.
:54:16 17 You'd also have the right challenge any
:54:18 18 evidence the State may have against you, and to
:54:19 19 present any defense that you might have. Further
:54:19 20 than that, your lawyers could subpoena any witnesses
:54:24 21 that you might have to testify on your own behalf,
:54:30 22 and also to cross-examine any witnesses who may
:54:34 23 testify against you. Do you understand all of those
:54:36 24 rights?
:54:37 25 THE DEFENDANT: Yes, sir.

:54:37 1 THE COURT: Do you want to give up each and
:54:39 2 every one of those rights?
:54:41 3 THE DEFENDANT: Yes, sir.
:54:41 4 THE COURT: And you want to plead guilty?
:54:43 5 THE DEFENDANT: Yes, sir.
:54:43 6 THE COURT: Understanding the nature of the
:54:46 7 charge and the possible punishment, how do you
:54:49 8 plead?
:54:49 9 THE DEFENDANT: You said how do I plead?
:54:52 10 THE COURT: How do you plead, yes, sir.
:54:53 11 THE DEFENDANT: I plead guilty, sir.
:54:53 12 THE COURT: All right. Very good.
:54:55 13 Ms. Campbell.
:54:55 14 MS. CAMPBELL: May it please the Court, Your
:54:56 15 Honor. Factual basis?
:54:59 16 THE COURT: Yes.
:54:59 17 MS. CAMPBELL: This occurred back on August the
:55:01 18 3rd of 2002 in the early morning hours, around 6:15
:55:06 19 in the morning. The victim in the case, a
:55:07 20 Mr. Alonzo Gale, was in his own home in the Hammond
:55:11 21 Village area, Your Honor, when the defendant, who
:55:13 22 ultimately testified at trial to try to kind of get
:55:18 23 it into a voluntary manslaughter self-defense phase,
:55:20 24 went there. It's unclear whether his purpose was to
:55:24 25 either steal drugs or to rob him of whatever.

There was a confrontation inside the home, Your Honor. It progressed outside the home. Eyewitnesses testified they heard three different gunshots, which was consistent with the forensic evidence at the scene. The defendant then fled the scene after shooting the victim, I believe, at pointblank range multiple times. The victim was there, he was able to struggle over and ended up next to a car. Witnesses came to his aid, and he ultimately died as a result of the gunshot wounds.

Your Honor, there was -- there were several witnesses who actually saw Mr. Henderson. One witness was able to pick him out of a photo lineup as being the person who came up that night.

Ultimately, in the trial of the case, the defendant did testify that he went there, that he had a troubled childhood, but that he was acting in self-defense. And the jury convicted him of murder based on the evidence presented to them.

THE COURT: All right. You recall all of that happening during your trial?

THE DEFENDANT: It was -- basically, sir. I mean, I didn't -- I dispute some of the facts that she stated.

THE COURT: All right.

:56:34 1 THE DEFENDANT: It wasn't no robbery, Your
:56:36 2 Honor, sir. We got in an altercation, and that's --
:56:40 3 that's what led up -- the altercation is what led up
:56:43 4 to the incident, Your Honor.
:56:47 5 THE COURT: Well, with the understanding of the
:56:49 6 dispute involving everything and the fact that you
:56:54 7 had a trial some years ago and you have a choice now
:56:58 8 of having another trial or pleading guilty to those
:57:02 9 charges, what do you want to do?
:57:08 10 THE DEFENDANT: Plead guilty, sir.
:57:09 11 THE COURT: All right. And do you understand
:57:12 12 if you were to have a trial, and you were found
:57:15 13 guilty before, you could be found guilty again?
:57:19 14 THE DEFENDANT: Yes, sir.
:57:19 15 THE COURT: And you don't want to take that
:57:22 16 risk?
:57:22 17 THE DEFENDANT: I don't want to take that risk.
:57:24 18 THE COURT: So we have just Gale at Hammond
:57:24 19 Village?
:57:41 20 MS. CAMPBELL: Hammond Village at [redacted]
:57:44 21 [redacted].
:57:44 22 THE COURT: All right. And who -- who's the
:57:46 23 drug person or --
:57:46 24 MS. CAMPBELL: The allegation by this defendant
:57:48 25 was that he was a drug dealer. There was no

evidence from the scene of drugs there; however, there was -- from the toxicology of the victim, he had cocaine in his system.

THE COURT: The victim did?

MS. CAMPBELL: The victim did. That came out at trial.

THE COURT: All right.

For the Defense?

MR. BAILEY: Thank you very much, Your Honor. I was -- I believe you actually met my client before I did. I believe the Court met my client before I did when Mr. Henderson had filed a motion. And I believe y'all heard this back -- I believe, back in about January, and Mr. Hawks happened to be in the courtroom and you appointed our office from that point forward.

As long as Mr. Henderson has been around and our office has had him, my understanding was from that very first day when he was in the box, Mr. Hawks spoke with him and he said, you know, this was an overturned PCR, I just want to plead guilty, I really am ready to -- you know, I just want to take responsibility for my part and move forward.

We've had -- you know, it's an older case. Obviously, you know, I still want to do my due

diligence and review the whole thing and get to know Mr. Henderson. And I've gotten to know him. And I know that Ms. Campbell had work to do on her end and discussions to have with people affiliated with the case on her end. But I just want to say, you know, Mr. Henderson, as long as I've represented him -- and I've known him since January -- he's very extremely pleasant. I mean, he's learned, he obviously has read a lot about the law, he filed -- he -- I know that he wrote your office quite a bit, Your Honor.

But when I first met him, I got to know some about his case. And there's something -- you know, and he's real amicable. He's always been pleasant, he's always been -- he's always been -- he's always been friendly and professional. And Mr. Henderson wanted to move forward. And he's been incarcerated since August 4th of 2002. That is 13 years, 10 months, 16 days. I'll -- I'll crunch those -- I'll crunch the numbers and talk a little bit about that later. But he's been incarcerated quite a long time. He's been in since he was a young man, a much younger man.

Your Honor, we're not advancing a self-defense theory or a self-defense claim. If -- there are

facts that were there in the record, my client's testimony through one of his witnesses, that, you know, would potentially be open to an interpretation of self-defense. But every time I've had my -- had discussions with Mr. Henderson, he's said, you know, I want to go forward, I want to get this behind me, I want to plead guilty.

He didn't want to wait for a specific number, he didn't want to haggle; he said, you know, he was there that day. Ever since that day that he was first in court, he's said he wants to put this behind him. He doesn't want to put the State through a trial, he doesn't want to put the victims through a trial. He has faith in the Court, Your Honor. He has faith in the decision of the Court to give him a sentence. I find him to be very easy.

You know, he's been incarcerated 13 years, 10 months, 16 days, approximately. That's August 4th, 2002. That's a substantial part of his life. I've studied the PCR. If you want to know anything about that or you have any questions about it, please let me know.

THE COURT: How did he win his PCR?

MR. BAILEY: He won his PCR, Your Honor -- he was tried, as Ms. Campbell said, and convicted in

September of '04. The PCR was granted because evidence of his involvement as an accessory after the fact of murder was submitted as impeachable evidence to, you know, what the State claimed that showed he was dishonest. So basically, accessory after the fact of murder was found by the Court to be not a recognized impeachable offense for dishonesty.

THE COURT: Okay.

MS. CAMPBELL: It wasn't evidence, it was just the actual conviction itself was the only thing that was offered.

MR. BAILEY: Thank you. And I don't dispute that correction. It was that it was brought up to challenge his credibility. It was -- Judge Cooper granted postconviction relief and then the Court of Appeals upheld that. I do have a copy of that, Your Honor, if you want to look at it. I just always -- I like to be prepared. But it's --

THE COURT: All right. Who was the trial judge who missed the -- who allowed that in?

MR. BAILEY: Sir?

THE COURT: Who was the trial judge who allowed that improper impeachment evidence in?

MR. BAILEY: Judge Lee.

MS. CAMPBELL: It was before they changed the impeachment rules.

THE COURT: Okay. Judge...

MS. CAMPBELL: Lee.

MR. BAILEY: Judge Lee was the --

THE COURT: Judge Lee?

MR. BAILEY: Yes, sir. And I -- they said that his lawyer should have fought to keep that -- objected.

THE COURT: All right.

MR. BAILEY: It was -- that was -- that's why they found Mr. Henderson's first lawyer ineffective. I can share this with you or not, sir?

THE COURT: Yes, sir.

MR. BAILEY: Okay. If I may approach?

THE COURT: You may.

MS. CAMPBELL: And again, Judge, this trial was before they changed all the impeachment rules.

THE COURT: Okay.

MR. BAILEY: I would have been in law school at the time this settled. I don't -- I don't know. I certainly --

MS. CAMPBELL: I believe that was 2006 that they changed the law.

THE COURT: Okay.

MR. BAILEY: Your Honor, I can give you a copy of Judge Cooper's order too, if you'd like.

THE COURT: That's okay, unless you just want me to see it.

MR. BAILEY: No, sir. He was just -- we were just discussing that. No, sir, Your Honor.

So, you know, getting back to it, you know, Mr. Henderson is not interested in -- you know, his position was -- and evidence and in conversations with him was that he was meeting up with -- you know, that Mr. Gale related to drugs and there was an altercation. Your Honor, if you'd like to ask him questions about that, that's fine.

But he's not here to talk about the man having unclean hands or anything like that. And we're not here to -- you know, he's here to take responsibility for what he did here and --

THE COURT: Do we have any victims or victim's representatives here?

MS. CAMPBELL: Yes, Your Honor, I do have victims here. And at the appropriate time, I'd like you to hear about his prior record and his disciplinaries.

MR. BAILEY: And we can stop there if you want to transition over to --

THE COURT: Yes. Let's do that and then come back.

MS. CAMPBELL: Your Honor, present in the courtroom is Ms. Janey Martin, she's Alonzo's mother. She's been in touch with our office the entire time and has been very active and responsive to any outreach we've had for her. Your Honor, I don't believe she wishes to address -- she does wish to address the Court now or at the appropriate time.

THE COURT: Okay. I'm ready.

MS. MARTIN: Good afternoon, Judge. I'm here listening to him saying he's been in the detention center since he was a child, since he was young. My son was 25 years old. My son was in his bed asleep. They woke -- he woke him up. My son told him never to come to his house.

He went to my son house earlier, and his girlfriend woke him up. And my son said that this guy here was beating on the door, him and three other girls. And he woke my son up. My son didn't know what hit him because he was in his bed sleep. And when he shot him, he was in his boxer shorts. He woke him up and killed my child, and he was 25 years old. And he had a baby. His baby was only nine months when he passed. And my son just had a

birthday Thursday. So he's talking about he's been in the penitentiary? Look how many years I have missed my son.

And, Your Honor, you know, I forgive him, but, hey, it's something that's always with me. But I still want him -- he need to be punished for his crime that he have committed, because my son didn't -- my son was in his bed sleep. He didn't ask to leave here and he left here too soon.

THE COURT: Did your son live on Marlboro?

MS. MARTIN: Yes, on Marlboro with his girlfriend.

THE COURT: And this happened again what time?

MS. CAMPBELL: Between 6:00 and 6:15 in the morning.

THE COURT: In the morning?

MS. MARTIN: Yeah. It woke him up.

MS. CAMPBELL: It woke him up. He was in his boxer shorts.

MS. MARTIN: He was sleep. Because they kept beating on the door that morning, him and two other girls. And Tara came back and woke him up -- woke my son up, and he came downstairs and told them -- he said, didn't I tell you don't come back around my house no more? And that's when he shot him.

THE COURT: And who all was at the house with your son and Tanya?

THE WITNESS: Tara, his girlfriend, and his baby.

THE COURT: And did she witness the shooting?

MS. MARTIN: Yes, sir.

MS. CAMPBELL: She actually heard more than she saw. She saw parts of it, but she heard most -- all of it.

THE COURT: And why was he upset with your son, if you know? Why would he want to kill your son?

THE WITNESS: He was the crackhead in the neighborhood, and he used to always just hang out around in Marlboro apartments over there. And the lady that lived over there beside him, she said she told them -- and I know you can't go along with the he-say. But she said that she told my son Alonzo that they -- he [sic] heard them saying that they were going to come and rob them.

My son did construction work. He had a car that he was going up to Camden to get the next morning, and they -- and he was driving a rental car because -- they thought he had money. He didn't have any money. He worked -- did construction work. And he was having a car restored up in Camden, and

he was going the next day to get his car.

THE COURT: All right. So what do you want me to do?

MS. MARTIN: He need to be punished for his crime. The same amount of time that they gave him before, this is what he needs to get. And he's talking about he's been -- you know, he took my child from me at 25 years old, and I can never see him again. I have to go to the cemetery to talk to him. And my son had a long, pleasant life ahead of him. And he never -- his son, his baby, will never know him, because he's gone.

THE COURT: So you were here for the trial when he was found guilty of murder?

MS. MARTIN: Yes, sir. I was here every day.

THE COURT: How long was that trial?

MS. CAMPBELL: Four or five days -- five days -- four days -- it was within a week.

MS. MARTIN: Because I had to go through the pictures they showed with my son laid out in his boxer shorts and T-shirt, you know, from him waking him up.

THE COURT: All right. So what do you think about this case being back in court all these years later?

MS. MARTIN: I don't think it should go back to court. I think it should -- the sentence that they gave him before, this is what he needs to keep. My son is not here, he's not coming back. This man, he can -- you know, he done killed my child. My child didn't ask -- he went to his house and woke him up out of his bed. And I don't think that's right. I truly don't think it's right, Your Honor.

THE COURT: All right. What else do I need to know?

MS. CAMPBELL: May it please the Court?

THE COURT: Yes.

MS. CAMPBELL: Your Honor, as far as his prior record, starting as a juvenile, back in 1990 he has a burglary third degree; in 1991, a simple larceny and entering another's land without permission. Then in 1994, he was convicted of the accessory after the fact to murder. Those are his juveniles.

Then as adult, he has a 1995 disorderly conduct, a 1997 -- '96 or '97, Your Honor, I can't tell -- a possession of stolen vehicle and a theft of -- motor vehicle theft for which he received a YOA. His YOA was revoked in 1999. And I believe he was convicted on a simple possession of marijuana after that prior to this.

Your Honor, the one thing that I did check after we had a hearing with you, and I have shared this with the defense, I did pull his disciplinaries from the department of corrections since he's been in. These are a copy of them. I would hand up -- and I've shown this to defense counsel too -- a number of the offenses. They start back with his original incarceration in 1997 and go through 2015 when he was transferred here a month later.

Your Honor, he repeatedly was -- and I have the actual incident reports here, Your Honor. I highlighted -- the ones I've highlighted are the ones that are actual convictions. I didn't want to -- the ones that they just closed out once they transferred him, I didn't want to hold those against him. This is the whole thing.

Your Honor, I would note that in 2010, on two different occasions, one was an attempt and one he actually grabbed, when he would be masturbating, which he did over and over and over and over, as you see by the multiple convictions there, he did attempt to get a female guard's hand.

One time in June of 2010, he grabbed for the woman's hand as she was opening up to get his food tray in. You know they have that little area where

you open the little, I don't know what you call it, doorway in the door. And he missed, and he was written up for that. And then in July, he was also written up because he actually was able to grab one woman's hand and try to get it to pull it in to touch himself.

Your Honor, I did also pull his disciplinaries from Alvin S. Glenn since he's been in since November of last year. Within a few days of being in, Your Honor, he's already being written up for the same thing and other things as well -- I can hand those up for the Court -- which include contraband. Most of it is the sexual indecent exposure.

Repeatedly, Your Honor, he has spent a significant amount of time -- I think his lawyer can address better than I can how much time he's actually spent in the special housing unit as a result of his inability to try to contain himself in any way. And if I could hand those up for the Court's review.

THE Court: All right.

MS. CAMPBELL: I have supplied a copy for the Defense.

THE COURT: All right.

MS. CAMPBELL: Your Honor, respectfully, we would just ask that you take the victim's request. She and I talked about this case at least two or three occasions recently. She is in agreement with this plea. She, too, wants this to come to some kind of an end. It's been very difficult for her when we've had to contact her to let her know it's come back. She's had to come back up here.

As she's related to you, the memories of what she saw in court that week and the testimony she heard was very hard on her and her family. She told you and she told me that she has to forgive him because she has to get on with her life. And that's important to her, as far as her wellbeing.

And respectfully, Your Honor, even if you were to impose the maximum sentence, it will be less than he was serving before. Whatever sentence you feel like would be appropriate, Your Honor; I just don't know that a time-served sentence would be appropriate in this case.

THE COURT: What was the sentence before?

MS. CAMPBELL: Thirty on murder, day for day. So the max here is 30, but it's 85 percent. So you're talking about 26.5, I believe, would be the most he could serve on a 30-year sentence, if my

math is correct, because I'm not very good at it.

THE COURT: Okay. Mr. Bailey?

MR. BAILEY: Thank you, Your Honor. First, I'd like to say I'm certainly sorry for Mr. Gale's mother's loss. I know Mr. Henderson is sorry for the death of Mr. Gale and sorry for the pain that his mother has gone through. I think you know -- I think everybody in this courtroom knows that there are, you know, still two sides -- two sides to a story.

And I know that Mr. Henderson is sorry for what happened. I think it was something that escalated quickly. I don't think he showed up to the location with the intent to kill anyone or intent to inflict violence on -- on, you know, Mr. Gale here. Again, you know, I'm not here to litigate the whole thing, but any questions you may have, Your Honor, for Mr. Henderson, I certainly encourage you to ask him.

At the -- when reviewing this case, I spoke with Mr. Henderson, and he said that before this case went to trial, he was offered a plea of 15 years. That's what Mr. Henderson said. I went back and read the PCR transcripts, and his last lawyer testified that the State offered him a plea offer of 15 years at the time. They went forward

asserting -- asserting, you know, self-defense in this case.

I suspect that the -- you know, the State was trying to be reasonable. You know, I wasn't there at the time, but I suspect that the State realized that this -- you know, this wasn't just a sinner-versus-saint situation where, you know, my client, Mr. Henderson, you know, was sort of -- an absolute sort of evil, incarnate, you know, individual.

I know Ms. Campbell is real concerned about -- about, you know, disciplinary records that involve masturbation in prison. My client and I have talked about that. If you look at that, it's about 90 percent of stuff that involved stuff that Mr. Henderson was doing while he was, you know, in prison, incarcerated since 2002, which, if you've looked at enough of these jail records, this kind of thing happens a lot. It's not pretty, but it's things that happen when people are incarcerated.

I don't think Mr. Henderson is a violent person. He does dispute that he -- that he tried to force a lady, you know, onto him, and he wasn't charged in a criminal court with that. I can also say I've seen a lot of these reports and I've

seen -- I've seen reports from the jailhouse and the department of corrections. I've seen what the reports say and sometimes I've seen what the cameras say, and sometimes they're different. But we're obviously not here to argue that too much either.

I can tell you, though, I don't think -- I don't think that these things -- if Mr. Henderson is doing something in his jail cell, which, albeit, isn't, you know, privacy as we recognize the fourth amendment or even South Carolina Right to Privacy under Article 1, Section 10. You know, I don't believe that these instances have any relevance to Mr. Henderson when it comes to, you know, his general morality and certainly not this -- you know, not this particular case.

Since he's been in prison, he completed his GED, he completed his carpentry certificate. He obviously -- you know, he obviously, you know, learned a lot about the legal process, it was something that was interesting. You know, there are a lot of jailhouse lawyers out there, but Mr. Henderson knows a lot more about it than a lot of other people, you know, sort of certainly -- certainly claim to or aspire to know.

I have -- today I have his friend. This is

Mr. James Randolph. I called Mr. Randolph. Mr. Henderson has been incarcerated for a while, he really doesn't have any family left, but Mr. Randolph is a friend of his from the neighborhood who was always around. Mr. Randolph is a business owner; he owns Mano's Restaurant by Farrow Road, he's about to open a Mano's Express, and he also owns Beauty & Barber Salon, if I got that right.

Mr. Randolph is a friend of Mr. Henderson. I want Mr. Henderson -- you know, I'm very obviously trying to humanize and show who he is and show that there are people that he deals with; that he's not just, you know, this person that was charged with this crime. I'd like Mr. Randolph to speak briefly about him before I continue, if that's all right, sir.

THE COURT: Sure.

MR. RANDOLPH: Yes, sir. How are y'all doing today?

THE COURT: We're doing fine today.

MR. RANDOLPH: I understand her loss, because the loss of life is precious, and once you lose that life, you don't get that life back. However, I growed up in Hammond Village, he growed up in

Hammond Village. And in our growing up in Hammond Village, it was stricken with a lot of drug activity in that neighborhood and a lot of violence in that neighborhood. And you were either a part of that -- it wasn't no you wasn't with it or nothing of that nature. We all growed up in that environment at that time, and you participated in that environment, one way or another.

I know that she lost her son and he's been charged with the murder of her son. And it's more to a story than just what it is. I'm not here to be a lawyer or try to represent him, I'm just here to state the facts of our upbringing.

THE COURT: What do you know about the murder?

MR. RANDOLPH: Sir?

THE COURT: What do you know about the murder?

MR. RANDOLPH: I don't know anything about the murder. I had made a transition from out of that environment. I'm 44 years old. He's a little younger than I am, but we growed up in the same neighborhood.

THE COURT: All right.

MR. RANDOLPH: And a lot of the activities dealing with drugs, shootings, murders that occurred out there, even when I was younger, I was out there,

you know, just as well as those guys were; however, I re-educated myself and got a college degree in business and started opening up businesses and things of that nature.

And I go back to my community and try to help those that was in the community to make transitions out of it. Like, I had spoke with his lawyer that, eventually, if he was to be spending some years or so, that I would have a job for him and things of that nature like that.

THE COURT: Did you know Mr. Gale?

MR. RANDOLPH: No, sir, I didn't know that individual. He wasn't in Hammond Village growing up in Hammond Village. We both really, like, growed up out there. But I heard stories about the situation. That's pretty much what I heard, stories and the drug activity and the selling of the drugs. You know, people talk, that's really what it really is and boils down to.

He was on drugs, he was selling drugs and whatever, and the conflict took place. You don't go to nobody house to get drugs at 6:00 in the morning for nothing if you already on drugs.

THE COURT: And if you do, hopefully you don't go back to kill them.

MR. RANDOLPH: No, sir. It's a sad situation. And like I said, the loss of life is --

THE COURT: Which room of Mr. Gale's home was he killed in?

MS. MARTIN: Sir?

THE COURT: Which room was he killed in?

MS. MARTIN: At the front door.

THE COURT: At the --

MS. MARTIN: Tara woke him up. And she went back to the bedroom and woke him up, and he came -- because she said she looked out the window and she went and said, Alonzo -- she said, whatever his name is, I don't know, and Alonzo came downstairs and said, didn't I tell you don't come back? And that's when he shot him at the door right there at his house.

But, Your Honor, we lived in the country. We didn't live -- he met Tara. And I used to come home from work and he said, Mom, I met this girl. And he said, I want you to meet her because she's nice.

THE COURT: He was over her house?

MS. MARTIN: Yeah. He was over to her house because we didn't live -- we didn't -- he -- we didn't, you know, raise up in the projects.

THE COURT; All of this is the country. Which

part of the country are you from?

THE WITNESS: Atlas Road.

THE COURT: Which road?

MS. MARTIN: Atlas Road.

THE COURT: Atlas Road?

MS. MARTIN: Yes, sir. Down by Sweet Home Baptist Church.

THE COURT: All right.

MS. MARTIN: So that's where we originated from and that's where we lived at. So he met a city girl up here.

THE COURT: Okay.

MS. MARTIN: Because Alonzo would get in the bed at 7:00. That's the way we worked. Seven o'clock, we're in the bed. And I'm still that way right now today.

THE COURT: All right. Go ahead, sir.

MR. RANDOLPH: Yes, sir. I'm just here -- I'd like to say on his behalf, I support him through this situation. He don't have any more family left, or if he do have family, we can't find them.

THE COURT: All right.

MR. RANDOLPH: I've known him since -- like I said, since we was kids. I stayed in the apartment that was behind his mother's apartment. I know his

mother, his sister, and his brother.

THE COURT: Has he been writing you too?

MR. RANDOLPH: Sir?

THE COURT: Has he been writing you too?

MR. RANDOLPH: He calls me. He got in touch with me approximately about two or three years ago. So two or three years ago and --

THE COURT: How many times has he written you in two or three years?

MR. RANDOLPH: He hasn't written me, he's called me.

THE COURT: How many times has he called you?

MR. RANDOLPH: He's called me numerous times.

THE COURT: Like 40 or 50?

MR. RANDOLPH: I'll say somewhere between that time. My conversation is always kind of short and vague because of me doing so much work and stuff that I do. And --

THE COURT: And that's a collect phone call, I'd imagine.

MR. RANDOLPH: Yes, sir, it's a collect phone call. I put money on his account or send him money.

THE COURT: All right. I gotcha. Okay. Thank you, sir.

MR. RANDOLPH: Thank you.

8:26:39 1 THE COURT: Mr. Bailey.
8:26:40 2 MR. BAILEY: Thank you very much, Your Honor.
8:26:42 3 At trial it was strongly contested about where
8:26:47 4 Mr. Gale was shot and how he was shot, and there are
8:26:50 5 differing witness accounts. I'll certainly -- you
8:26:52 6 know, I can leave it to you how much you want to
8:26:55 7 explore that, Your Honor. But that was an issue
8:26:58 8 that was disputed at trial, sir.
8:27:06 9 I'd like Mr. Henderson to have a chance to
8:27:11 10 speak with you. I know he would like to speak with
8:27:11 11 you.
8:27:11 12 THE COURT: Yes, sir. I'll be happy to talk to
8:27:12 13 you, Mr. Henderson.
8:27:12 14 THE DEFENDANT: Sir?
8:27:14 15 THE COURT: I'll be happy to talk to you.
8:27:17 16 THE DEFENDANT: What you want me to say, Your
8:27:20 17 Honor?
8:27:22 18 THE COURT: What do you want to say here today?
8:27:29 19 THE DEFENDANT: I'm guilty, Your Honor. I'm
8:27:33 20 wrong for what I did. I apologize that somebody
8:27:39 21 died in this case. I feel remorse that her son had
8:27:44 22 passed away. And I can't bring him back, nobody can
8:27:49 23 bring him back.
8:27:51 24 THE COURT: How long did you know him?
8:27:53 25 THE DEFENDANT: Wasn't long, sir.

8:27:53 1 THE COURT: You didn't know him?
8:27:56 2 THE DEFENDANT: I mean, I knew him as he stayed
8:27:58 3 in the neighborhood. But we wasn't, you know,
8:28:01 4 friends or nothing like that. I knew of him because
8:28:08 5 he stayed in the neighborhood. But I don't know if
8:28:09 6 you really want me to get into the facts of the
8:28:12 7 case --
8:28:13 8 THE COURT: I'm just trying to understand why
8:28:14 9 we're here today.
8:28:16 10 THE DEFENDANT: Well, I went to his house
8:28:18 11 because, like I said, the acquaintance, she was with
8:28:26 12 me, she wanted to purchase a bag of weed. So I went
8:28:29 13 with her to his house because it was late night.
8:28:30 14 But whenever we had went to the house, it was
8:28:32 15 earlier on. So when he came to the door, you know,
8:28:35 16 arguing about coming to his house, I realized I made
8:28:42 17 a mistake. So that was a mistake when I went to his
8:28:43 18 house, so I retreated.
8:28:44 19 And I was retreating, that's when he came out
8:28:48 20 the back door and started arguing and cussing at me
8:28:52 21 and saying don't come to his house like that, and I
8:28:56 22 understood. But the altercation came because I was
8:28:58 23 like, I understand, but you don't have to be talking
8:29:01 24 to me in that manner. You see what I'm saying?
8:29:03 25 And, Your Honor, you know, I was living that life

like that, so, you know, I felt like he disrespected me, because in this neighborhood, if you're selling drugs, it ain't no such thing as a curfew or it ain't no specific thing, because I didn't know nobody who works a job up at no 6:00 in the morning, even though I was wrong.

So he went back in the house, he came back out the house. So when we got to the corner of the building, that's when the altercation came because when I seen the gun, that's when I went on the attack, because I seen the gun. We struggled with the gun and he got shot. Now --

THE COURT: With whose gun?

THE DEFENDANT: With his gun, sir.

THE COURT: You shot him with his gun?

THE DEFENDANT: Yes, sir.

THE COURT: Did the police get the gun?

THE DEFENDANT: No, sir.

THE COURT: They didn't get his gun? What happened to his gun?

THE DEFENDANT: I don't know. I ran, Your Honor.

THE COURT: You took his gun?

THE DEFENDANT: I didn't take it. I ran.

THE COURT: Why wouldn't it -- why wouldn't it

be there when the police got there? If he's shot with his gun, when you had the trial, the gun would be on the table in there for the jury to see and all that and tests run and all that stuff. The gun was gone?

THE DEFENDANT: Yes, sir.

THE COURT: What did you do with it?

THE DEFENDANT: It's gone.

THE COURT: So what did you do with it?

THE DEFENDANT: Threw it away.

THE COURT: Threw it away? So you're saying you went to his house, woke him up, you didn't know him, some girls did, and he said don't come to my house this early in the morning, and he disrespected you, then he went back and got a gun that you fought him over, and you killed him with his gun and ran away with his gun and threw it away? You didn't tell the jury that, did you?

THE DEFENDANT: (Shakes head.)

THE COURT: You told them a different story?

THE DEFENDANT: I told them I left the gun. I mean, I told them everything --

THE COURT: I'm trying to figure out which one is true; what you told them then, what you're telling me now, or something different.

8:31:19 THE DEFENDANT: No. I'm telling you --
8:31:21 THE COURT: Do you really want to plead guilty?
8:31:25 THE DEFENDANT: I'm telling you the truth now, Your Honor, sir. I'm pleading guilty because the incident happened a long time ago. And like my lawyer say, you know, I --
8:31:35 THE COURT: How old were you then?
8:31:39 THE DEFENDANT: I was 24.
8:31:39 THE COURT: You were 24. All right.
8:31:41 THE DEFENDANT: Yes, sir. And since my incarceration, you know, that time, it gave me enough -- you know, a period to really learn my mistake and to know what I been through, you know. I matured since that time. So you know --
8:31:58 THE COURT: Well, the Judge gave you how much time; 30 years?
8:32:04 THE DEFENDANT: Yes, sir.
8:32:05 THE COURT: What happened to the 30 years he gave you? You didn't plan to do all 30 of them?
8:32:12 THE DEFENDANT: No, sir.
8:32:13 THE COURT: Well, what are you trying to do?
8:32:16 THE DEFENDANT: What I'm trying to do, sir?
8:32:19 THE COURT: Yes. Why are we here today? What are you trying to do?
8:32:23 THE DEFENDANT: I'm trying to live, Your Honor.

8:32:26 1 THE COURT: I understand that. I'm talking
8:32:27 2 about this case. What are you trying to do here
8:32:29 3 today?
8:32:30 4 THE DEFENDANT: Plead guilty, sir.
8:32:32 5 THE COURT: You had a sentence. The judge gave
8:32:34 6 you 30 years. Did you do the PCR by yourself?
8:32:44 7 THE DEFENDANT: Yes, sir.
8:32:44 8 THE COURT: Or did you have a lawyer?
8:32:44 9 THE DEFENDANT: Well, I had -- well, I had a
8:32:46 10 lawyer, an appointed lawyer. But I raised the issue
8:32:48 11 myself.
8:32:49 12 THE COURT: All right. And you got the right
8:32:55 13 to have a new trial.
8:32:55 14 THE DEFENDANT: Yes, sir.
8:32:57 15 THE COURT: And if you have the new trial, then
8:32:59 16 you could explain this he came after me with his gun
8:33:04 17 and we fought over his gun and I got his gun and
8:33:09 18 killed him with his gun. I guess that's what you're
8:33:10 19 telling me.
8:33:11 20 THE DEFENDANT: Yes, sir.
8:33:12 21 THE COURT: But that I'm pleading guilty.
8:33:14 22 MR. BAILEY: Your Honor, if I can just
8:33:17 23 interject here a little bit.
8:33:17 24 THE COURT: Yes, sir.
8:33:20 25 MR. BAILEY: Mr. Henderson is not without fault

bringing on difficulty here, and he acknowledges that.

THE COURT: He was just, like, with someone to buy some marijuana. You can get 30 days in jail or $100 fine for that.

MR. BAILEY: Well, Your Honor, he's not a professional public speaker kind of like the rest of us. But when I've talked to him a bunch of times and reviewed this, he understood what was wrong with this picture altogether. I don't want to interrupt him --

THE DEFENDANT: I mean, okay, Your Honor, I lost because -- well, I felt like, you know, the jury could have brought back a self-defense verdict. But, like, going to trial, my lawyer at that time, he was a seasoned criminal defense lawyer.

THE COURT: Who was that?

THE DEFENDANT: Charlie Johnson, sir.

THE COURT: Charlie Johnson.

THE DEFENDANT: Yes, sir. So, I mean, you know, he made some mistakes to the jury and he told the judge that I wasn't guilty of murder, that I may have been guilty of something less than that. He said that three times. And at the end of his closing argument, he said that, as I told my client,

he made his bed, he has to lay in it.

Now, it wasn't trial tactic. I never discussed that with him saying -- telling the jury that, because I raised the defense. However, I'm afraid to go through that again because if I get found guilty again, then, you know, I may not get a second chance. And number two, I take responsibility because a man died. A man died, Your Honor. I mean --

THE COURT: You're taking responsibility, but then you're not taking responsibility.

THE DEFENDANT: Well -- well --

THE COURT: You blame him for getting himself killed.

THE DEFENDANT: Well, this --

THE COURT: He was at home in his bed asleep.

THE DEFENDANT: Yes, sir.

THE COURT: And you say that he's supposed to answer his door at any time that anybody showed up, including a stranger like you, and he didn't have the right to tell you not to come to his house at that time in the morning.

THE DEFENDANT: See, that's what I'm here for now; to say that he was right.

THE COURT: All right.

8:35:41 1 THE DEFENDANT: He was right. I don't -- I
8:35:41 2 don't want to stand before Your Honor telling you
8:35:46 3 I'm innocent and plead guilty. I mean, I was -- I
8:35:51 4 was --
8:35:51 5 THE COURT: See, I have a hard time sentencing,
8:35:54 6 young man, innocent people to prison, so that's why
8:35:57 7 if people tell me they're not guilty, then I'm like,
8:36:02 8 hey, we got to have a trial. When I go to bed at
8:36:02 9 night, it will be on my conscience that I've
8:36:11 10 sentenced an innocent man. That's why I want it
8:36:12 11 clearly defined and clearly laid out whether I'm
8:36:20 12 dealing with someone who is guilty or innocent.
8:36:20 13 If a person is guilty, don't tell me about
8:36:20 14 it -- I mean, if the person is innocent, don't tell
8:36:22 15 me about it, tell the jury. You know, they're the
8:36:24 16 ones who can decide -- you know, if you have a trial
8:36:27 17 and if the jury believes it, you'll be home tomorrow
8:36:31 18 and Mr. Frank up there -- what's his name?
8:36:35 19 MR. BAILEY: Mr. Randolph.
8:36:36 20 THE COURT: Mr. Randolph, you know, he'll --
8:36:39 21 you'll be working in his restaurant by the end of
8:36:42 22 the week, if you're not guilty and we were to have a
8:36:47 23 trial this week. So I can't sentence an innocent
8:36:55 24 man.
8:36:56 25 So -- but if you're guilty, then I'm listening

to the mother here, the grieving mother, who has lost her son, who she hasn't seen, you know, in the past -- goodness, August 3rd, 2002, and we're in 2016. And he left a baby how old?

MS. MARTIN: Nine months.

THE COURT: A nine-month-old baby who never -- he's never gotten the chance to see walk, and if he did, it was just a step or two. He probably wasn't walking yet.

MS. MARTIN: He wasn't.

THE COURT: So I need to know which way we're going with this. It can't be half over here and half over there. I mean, if you want to plead guilty, you have to convince me that you're guilty, not convince me that you're not guilty. I want to sentence guilty people, not innocent people. This is a straight-up plea. You know, I don't know what the story is, that's why we're talking.

THE DEFENDANT: I was just like -- when they were explaining the version of the facts, I was just explaining the version of the facts of what really happened, Your Honor, sir.

THE COURT: Well, even if he was a drug dealer -- I mean, half the people who sell drugs get robbed. You know, if someone is Hispanic, they get

robbed, they go to the police. There are drug dealers who will go to the police. Drug dealers think they have friends, but they have nothing but enemies who try to rob them, set them up, take the drugs, kill them, whatever, because they think that they won't go to the police. I mean, I don't know.

But I've done many murder cases where the victim was someone who was selling drugs. They have a right to live as well. You can't say I had a right to self-defense because the person I killed was selling drugs. That's not self-defense. Of course you put the he came out with his gun and I took his gun from him and killed him with his gun. That's your self-defense?

MR. BAILEY: Your Honor, I don't believe self-defense and manslaughter are necessarily mutually exclusive, especially not under the State v. Gillian case from 1988 that says that.

THE COURT: What does it say?

MR. BAILEY: It says self-defense and voluntary manslaughter are not mutually exclusive. It's dealing mainly with jury instructions. But --

THE COURT: It's an imperfect -- we used to say an imperfect self-defense can be manslaughter.

MR. BAILEY: Yes, sir. I would say this is

imperfect self-defense. I don't think -- I think also --

THE COURT: We never understood what it meant, but that's what we used to say: Imperfect self-defense could equal manslaughter.

MR. BAILEY: And I wish everything and every circumstance and every type of scenario in the criminal justice system could be articulated perfectly. I don't think it can be. It certainly can't be perfectly articulated or always 100 percent accurately articulated by myself, Your Honor.

But I can tell you that I gave a lot of thought to whether this should be a -- you know, just a regular run-of-the-mill manslaughter plea or whether we should do it under North Carolina vs. Alford. And the more we talked about this, I felt like we -- and I spoke with Mr. Henderson. We talked about what Alford was. He was not interested in taking sort of -- you know, that's kind of the easier way out. That's just I really don't have to explain myself, I maintain innocence while I plead guilty and benefit from this plea.

Maybe that would make it, you know, happen faster. I don't know. But when I was speaking with Mr. Henderson, he said, you know, I really -- I

want -- I'm guilty of something here. This man is dead. I'm guilty of something here. I'm not guilty of it in the way the State says I'm guilty of it under the facts as presented by the State but, you know, but I am and I want to plead guilty.

And we made the decision. We thought it would be more forthcoming and more straightforward to, you know, plead guilty under manslaughter, Your Honor, and not try to make an Alford plea.

THE COURT: Well, that's your decision as to plead guilty to manslaughter?

MR. BAILEY: Yeah.

THE COURT: Yeah.

MR. BAILEY: I'm saying he's trying his best to --

THE DEFENDANT: Your Honor, I -- I'm just hoping that I'm not giving you a bad impression, Your Honor. I mean, I understand what you're saying, so --

THE COURT: Yeah. All right.

THE DEFENDANT: I mean, what I was saying is that, like my lawyer say, he died, Your Honor, so if --

THE COURT: You're nice and respectful and all that. I'm not holding anything against you.

8:42:01 1 THE DEFENDANT: I was just saying that I don't
8:42:04 2 want you to think that I'm standing here trying to
8:42:08 3 give you an excuse or, you know, trying to -- I
8:42:11 4 don't want to do that. So if --
8:42:14 5 THE COURT: Well, it's not about you, it's
8:42:16 6 about me. You know, if I sentence someone to
8:42:19 7 prison, I want to feel comfortable that I'm
8:42:25 8 sentencing someone to prison who is guilty of
8:42:28 9 committing a crime that they are pleading guilty to,
8:42:32 10 and not someone who is -- you know, who is claiming
8:42:35 11 that they're not guilty. That's why I asked you
8:42:41 12 early on if you've had enough time to think about
8:42:41 13 what you want to do. We started out there.
8:42:43 14 But then you wrote me a letter from the jail
8:42:46 15 about -- how many months ago was that -- saying you
8:42:52 16 got convicted of murder, that you got the conviction
8:42:56 17 overturned on PCR, that you have been trying to get
8:43:00 18 in touch with -- I forgot the details of it. What
8:43:03 19 did it say?
8:43:03 20 MS. CAMPBELL: It said basically that he needed
8:43:05 21 to come before the Court -- he wanted to come before
8:43:08 22 you. And I believe he was moving at the time for --
8:43:12 23 it wasn't a bond.
8:43:12 24 THE DEFENDANT: Fast and speedy trial.
8:43:14 25 MS. CAMPBELL: Fast and speedy trial. And then

you appointed --

THE COURT: And I said, all right, you can get a fast and speedy trial, and then I appointed you a lawyer. This is the second time I've seen you, and you're here to plead guilty.

THE DEFENDANT: Yes, sir.

MR. BAILEY: Well, Your Honor, in speaking with Mr. Lucas Hawks, the first thing he said to a lawyer from our office when he saw him, he was like, listen, man, I just wanted to get -- I just want to plead guilty and I filed this motion to get here. That's what it said.

We didn't get a memo from appellate court saying, hey, we got a guy we just kicked back who is sitting in the county jail. We didn't know he was down there. And the first thing he said to my colleague who sits right across the hall from me who talked to me right after it was, man, I just want to plead guilty, I just want to get out of here. So I -- yeah.

THE COURT: We get it all the time. When someone files a PCR and then sometimes they win the PCR and realize they're back to where they started facing the original charge. So rather than going home from a PCR, they may be facing a trial on

everything they're charged with originally and facing life imprisonment, as he would be if he had another trial and got convicted.

So, I mean, I understand that he said he didn't want to go through that process again, but I accept the fact that there is evidence -- a factual basis for him to plead guilty. I'm just dealing with the whole thing that you can't be guilty and not guilty at the same time, not on such a serious charge.

You killed someone. This is not whether or not you stole the car or just a joyrider; this is whether you're guilty of willfully killing a man versus the man trying to kill you and you took his gun and killed him with it and ran off with it.

THE DEFENDANT: Your Honor.

THE COURT: Yes, sir.

THE DEFENDANT: I -- I -- I just wish he never would have died. I never had no malice. I never went to his house with the intent to kill and all that. I had no malice. And the incident, it all occurred because of the altercation. I wish it never would have happened, Your Honor. I wish it never would have happened.

THE COURT: I'm sure. We spent about two hours this morning with a man who shot his girlfriend in

her stomach because he couldn't reach her on the cell phone. She was out with her daughter shopping. I don't know where he thought she was. Her cell phone died, and when he came -- when she came home, he's mad with her and shoots her in the stomach, puts her in the intensive care, practically kills her, but she survived. And he was telling me how sorry he was he shot her. That's the thing about these guns and bullets: Being sorry doesn't matter.

What else you got for me, Mister? Understanding everything we've talked about, you want to plead guilty or not?

THE DEFENDANT: Plead guilty, sir.

THE COURT: All right. What else you got, Mr. Bailey?

MR. BAILEY: Thank you very much, Your Honor. As I'm sure you know, the statute under manslaughter is unlawful killing of another without malice, which is funny because I certainly didn't review these comments with Mr. Henderson ahead of time. But he said what was on my mind, and that is this wasn't a killing -- that he didn't set out for a killing with malice.

You know, manslaughter carries two to 30 years. You know, murder seems pretty clear. A lot of times

people plead to manslaughter because it's a plea situation, because people are trying -- you know, there's negotiations with the State and the defendant.

But I believe, Your Honor, that the reason that there is space in that law is because that is -- there is that in-between, there is that, well, this is an unlawful killing, this was bad, this person obviously did something terrible, but it doesn't rise to manslaughter. Your Honor, you know, as --

THE COURT: Like the husband who catches his wife in bed with another man or vice versa.

MR. BAILEY: Yes. Yes, sir.

THE COURT: Heat of passion.

MR. BAILEY: Heat of passion, right.

THE COURT: The content takes away the malice, legally takes it away.

MR. BAILEY: Well, in this case, Your Honor, if I were to describe it, and I'm not trying to -- I'm not trying to -- you know, my opinion and a dollar will get you a copy of The State newspaper.

But if I'm trying to describe a situation, it's that, you know, Mr. Henderson, in a bad state of mind and in a -- was -- was going to this man's house, he wanted to get drugs. He was very -- he

was, you know, aggressive about wanting to get drugs. This man was understandably upset, you know, Mr. Gale, you know, was mad at him, they got into an altercation, it escalated very quickly. Mr. Gale got shot and nobody -- I don't think that he's trying to say that it was this guy's fault he got shot. I think it just gives -- I think it gives explanation as to how this happened, how this escalated.

And then kind of centered on self defenses, you know, did you create, you know, the difficulty? I think here Mr. Henderson definitely can -- you know, created the difficulty in a few ways, but I don't think he set out there to just kill him. And I think he acted -- I mean, I think we all agree that he didn't do things -- he did the wrong things.

THE COURT: There was no premeditation. He didn't go there to kill him, he went to buy drugs.

MR. BAILEY: Right, Your Honor. And, you know, there shouldn't have been a fight that was engaged in or anything like that.

THE COURT: So why did you want drugs so bad that time in the morning, 6:00 in the morning? I've never seen somebody with such a bad craving for drugs that they got to get them at 6:00 AM, unless

they've been up all night long.

MS. MARTIN: Amen.

THE DEFENDANT: Yes, sir, you're right.

THE COURT: Right about what?

THE DEFENDANT: I shouldn't have been out there that time of the morning.

THE COURT: Had you been to bed the night before?

THE DEFENDANT: Yes, sir. You said have I been to bed?

THE COURT: Had you been to bed the night before on August 3rd, 2002?

THE DEFENDANT: I was out. That night, I was out.

THE COURT: You hadn't been to bed yet then?

THE DEFENDANT: No, sir.

THE COURT: All right. Final words, Madam Solicitor.

MS. CAMPBELL: Your Honor, I would just respectfully -- the eyewitness testimony and the blood stains, specifically at the doorway, dispute his version of events.

THE COURT: All right. Not the final words then. Mr. Bailey?

MR. BAILEY: I'm sorry. I can wait until my

final words.

THE COURT: She's going to get the final words -- well, you can get the final words.

Go ahead.

MS. CAMPBELL: Your Honor, respectfully, we'd just -- there was no evidence that this victim was a drug dealer, like he's gone on about. There is evidence that he did go there in the early morning hours to rob him because he thought he had money. And, respectfully, Your Honor, we'd just ask that he be sentenced accordingly.

MR. BAILEY: Your Honor, I would say that if we were to review it in a detailed way, I would say that maybe the blood spatter evidence could be interpreted differently. But we're not here to try the case. I did try a blood spatter evidence case with Ms. Campbell -- well, I guess a couple this past year that involved it, and I don't think it's always, you know, open and shut.

But, Your Honor, I -- you know, what I'm asking for is what my understanding of what the original offer was, which was 15 years. That's what I'm asking for, Your Honor.

THE COURT: You mean, before he had the trial in 2002?

MR. BAILEY: Yes, Your Honor. That's --

THE COURT: Were you the prosecutor in 2002?

MS. CAMPBELL: (Nods head.)

MR. BAILEY: I guess it's a lot easier to like it better after he lost. But that's what I would ask for, Your Honor. I don't know Mr. Henderson is -- I don't think he's a cold-blooded killer type. I've talked to plenty of guys charged with murder, I've tried those cases. I don't think he's a cold-blooded killer. I'm not saying he's -- I --

THE COURT: The one thing I have yet to be able to get a killer to do is give me an accurate recitation of the killing. It's always some vague description of events. I don't know if they can't -- their mind just won't allow them to go back there and recount accurately or sufficiently an explanation for me to understand exactly what they are explaining. And he has done the same thing here, some we were fighting and some altercation and -- you know. But for him to explain it, I haven't been able to get one to do it yet.

MR. BAILEY: You know, I mean, I think that's it, Your Honor. But I would ask Your Honor for something less than what the sentence was when he was sentenced for a murder charge, Your Honor.

8:52:44 1 THE COURT: He's doing -- and do credit for how
8:52:46 2 much time?
8:52:48 3 MR. BAILEY: Okay. Your Honor, I can give you
8:52:49 4 those numbers. He's been incarcerated since August
8:52:54 5 4th of 2002. That is, by my math, as of today,
8:52:56 6 5,069 days. And just to translate it, 5,069 days is
8:53:01 7 13 years, 10 months, 16 days of actual time served.
8:53:13 8 THE COURT: All right. How much?
8:53:15 9 MR. BAILEY: I'm sorry. Thirteen years, ten
8:53:17 10 months and 16 days.
8:53:17 11 THE COURT: Thirteen years, ten months, 16
8:53:35 12 days.
8:53:35 13 MR. BAILEY: Yes, Your Honor. And, Your Honor,
8:53:36 14 I'd ask you to consider 15. I'd ask for 15. He
8:53:38 15 would have maxed out 15 years, just to be clear.
8:53:40 16 But...
8:53:41 17 THE COURT: All right. Any final words,
8:53:47 18 Mr. Henderson?
8:53:49 19 THE DEFENDANT: Your Honor, sir --
8:53:51 20 THE COURT: Yes, sir.
8:53:53 21 THE DEFENDANT: -- I just ask that you have
8:54:00 22 mercy on my soul and forgive me of my sins and grant
8:54:09 23 me a second chance, please.
8:54:10 24 THE COURT: I'm not Jesus Christ, now. Have
8:54:13 25 mercy on your soul, forgive you of your sins, and

what else?

THE DEFENDANT: Grant me a second chance, Your Honor.

THE COURT: And grant you a second chance. All right. Thank you.

You know, I asked -- as this whole case came in here, I asked were there victims present. Many times we don't see anybody. Sometimes we don't see anyone else here. But -- so if I was just here listening to you and hearing the case from your perspective, I could be swayed to follow it from your perspective.

But then I hear the mother of Mr. Gale speak of her son. Even though you've done quite a bit of time for this crime, the pain is still raw with her. I'm sure every day she wakes up, she -- she feels the pain of a crime that you committed. Every time she sees her grandson, she sees and experiences the pain.

So it's not about what I can do for you. I mean, my responsibility also is to seek justice for the victim. Despite your having these disciplinary problems in the institution and at Alvis S. Glenn, you seem to be kind of an okay guy. I imagine there are a lot of okay guys in the department of

corrections.

But the fact of the matter is, you have killed this man unlawfully, and you got convicted of murder, got 30 years, and now you come back and want to plead guilty to voluntary manslaughter, which also calls for a maximum sentence of 30 years. And the mother can't figure out what we're doing here, why is it that 14 years later she's back in here on this same case where she's sat through the trial and you've had a jury and the jury found you guilty of murder.

So the Court of Appeals says the judge shouldn't have allowed them to know -- the jury to know about the time you were convicted of accessory after the fact of murder. Who knows what that's about it.

But, of course, when it comes to your criminal history, it seems like you started getting in trouble when you were a juvenile and it led right up to your being sent to prison. And it looks like you were out of jail, max, a couple years before this -- when did you get out of jail before this killing?

THE DEFENDANT: 2001, sir.

THE COURT: Got out of prison in 2001. And here a year later, you're back in there for murder.

So, you know, someone had to have that mercy for you the time before, otherwise you might have been in jail on that accessory after murder or something and you wouldn't have been able to be into drugs, strung out, rambling around 6:00 in the morning searching for drugs.

So, you know, you just -- you've had an unfortunate life experience, a lot of which you brought on yourself, including this situation. So all of these things you're asking me to have for you, I have the third thing. I can't give you a second chance. I mean, this is -- I have empathy for you. This is a bad situation. But I have to look out for the interests of the victim as well, is my biggest concern right here.

So I'm going to sentence you to 25 years in the department of corrections, and you get credit for the time you have served.

MS. CAMPBELL: Thank you, Your Honor.

MR. BAILEY: Thank you, Your Honor.

THE COURT: Good luck to you. Twenty-five-year sentence.

-- END OF TRANSCRIPT OF RECORD --

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Richland County, South Carolina, on the 20th of June, 2016.

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

September 18th, 2016

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

State of South Carolina) In The Court of Common Pleas
County of Richland) Fifth Judicial Circuit
)
Aryee Henderson, 237887) Civil Action No. 2018-CP-400-4964
Applicant,)
v.) **Applicant's Amendment To Original PCR Application**
State of South Carolina,)
Respondent.)

Applicant, proceeding pro se, hereby puts this Honorable Court on Notice that the following allegation(s) have been amended to his Original PCR Application:

Issue 1 - PCR Counsel failed to file a Rule 59(e) Motion to Alter or Amend PCR Court's Order of Dismissal.

(a) On 1-24-18, I was brought to the Richland County Judicial Center for an evidentiary hearing premised on my PCR application. At the conclusion of the hearing, the Honorable Jocelyn Newman verbally denied me post-conviction relief. On 3-20-18, the PCR Court issued its Order of Dismissal. It was filed with the Clerk of Court on 3-22-18. See Exhibit A. However, PCR counsel failed to notify me that the PCR Court issued an Order of Dismissal. Moreover, he failed to file a Rule 59(e) Motion within ten (10) days of the PCR Court's ruling, nor did he advise me of the right to file one to preserve my claims for appellate review.

One of the issues to be preserved for appellate review is my Motion to Relieve Counsel so I can proceed pro se. I filed two(2) pro se motions with the Court, which was; Motion to Relieve Counsel and Motion to Renew Motion to Relieve Counsel. See Exhibits B & C. The PCR Court did not rule on this issue, look to the merit, nor give any conclusions of fact or law pertaining to this issue. See Exhibit A. PCR counsel should have filed a Rule 59(e) motion and had these exhibits attached as evidence. I was prejudiced by his omission because PCR Counsel Knew that by not filing a Rule 59(e) motion, the State and state appellate Courts can deny my claim by relying on a well-established rule, which, under the doctrine of procedural default, would prohibit a federal court from reaching the merits of this claim. PCR counsel is conscious that this is my first and only opportunity to raise a claim of ineffective assistance of counsel claim. In essence, this initial-review collateral proceeding would be my "one bite at the apple."

(b) Applicant's plea counsel gave untruthful testimony at the PCR hearing. Plea Counsel stated that my legal documents were the basis of a grievance filed against him. See Exhibit A p.4. However, Applicant's grievance against plea counsel did not commence until after his plea. See Exhibits E & F. To further substantiate this allegation, Applicant feels that PCR counsel sabotaged his PCR case because of the grievance that was filed against him. See Exhibit G, H, & I.

Plea Counsel also denied that he ever rejected any plea offer from the State without first discussing it with Applicant. However, this Motion to Plea contradicts plea counsel's untruthful testimony. See Exhibit D.

State of South Carolina) In The Court of Common Pleas
County of Richland) Fifth Judicial Circuit
)
Arijee Henderson, 237887) Civil Action No. 2018-CP-40D-4964
Applicant,)
v.)
Proof of Service
State of South Carolina,)
Respondent)

I certify that I have served this Applicant's Amendment To Original PCR Application on the Honorable Jeanette W. McBride, Clerk of Court, by depositing a copy of it in the U.S. Mail, postage prepaid, on February 28, 2019, addressed to her office at, Post Office Box 2766, Columbia, South Carolina 29202-2766.

S/ Arijee Henderson
Arijee Henderson 237887
Broad River C.I./Saluda #234
4460 Broad River Rd.
Columbia, S.C. 29210

Exhibit A

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-40-04364

AYREE HENDERSON (SCDC# 237887) — PLAINTIFF(S)

STATE OF SOUTH CAROLINA — DEFENDANT(S)

Submitted by: NEWMAN, J.	**Attorney for :** ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: **Application for Post-Conviction Relief is DENIED. Formal Order to follow.**

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Jocelyn Yarman
Circuit Court Judge

2757
Judge Code

January 25, 2018
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 26 day of Jan, 20 18 to attorneys of record or to parties (when appearing pro se) as follows:

Aryee Henderson #287887 Jonathan D Waller Jessica Elizabeth Kinard

Aryee Henderson #287887

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. Bruder

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Ayree Henderson (SCDC #237887), Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No. 2016-CP-40-04364 **ORDER OF DISMISSAL**

This matter comes before the Court upon Application for Post-Conviction Relief filed by Applicant Ayree Henderson ("Applicant") on July 21, 2016. Respondent filed its Return on July 13, 2017. "Applicant's Amendment to Original PCR Application" was filed on August 22, 2017; and an "Amendment to Application for Post Conviction Relief," dated January 18, 2018, was also provided to the Court (although apparently not filed with the Clerk of Court). On January 24, 2018, an evidentiary hearing was conducted at the Richland County Judicial Center. Applicant was present along with his counsel, Jonathan D. Waller, Esquire. The State was represented by Jessica Kinard, Esquire, of the South Carolina Office of the Attorney General.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED WITH PREJUDICE.

FACTUAL AND PROCEDURAL HISTORY

At the November 2002 term of the Richland County Grand Jury, Applicant was indicted for murder. Beginning on September 21, 2004, Applicant was tried by a jury and was ultimately convicted of murder. He was sentenced to thirty years' imprisonment. Applicant filed for post-conviction relief ("PCR"), which was granted by Order filed July 14, 2010. That decision was affirmed by the appellate court.

In January 2016, Applicant appeared in the Richland County Court of General Sessions *pro se* after having filed a "speedy trial motion." At that time, Applicant expressed his desire to enter a guilty plea, but he also accepted the Court's offer to appoint counsel to represent him. The Richland County Public Defender's Office was appointed, and J. Rhodes Bailey, Esquire ("plea counsel"), was assigned to Applicant's case.

The State ultimately extended a plea offer to Applicant, allowing him to plead guilty to the lesser charge of voluntary manslaughter without the State offering any negotiation or recommendation of what Applicant's sentence should be. Applicant accepted that offer and entered his guilty plea on June 20, 2016. He received a sentence of twenty-five years in the South Carolina Department of Corrections ("SCDC"). Approximately one month later, Applicant filed the instant action in which he alleges (1) that plea counsel coerced him to plead guilty, (2) that plea counsel failed to investigate the allegations of his case, (3) that plea counsel failed to object to the State's breach of the plea agreement, (4) that plea counsel failed to challenge the affidavit upon which his arrest warrant was premised, and (5) that plea counsel failed to contest the improper impaneling of the Richland County Grand Jury.

A. Testimony of Applicant

During the evidentiary hearing, Applicant testified that when he appeared in court in early January 2016 and was appointed counsel, he first spoke with Lucas Hawks, Esquire, of the Richland County Public Defender's Office. The conversation occurred in the courtroom, where Applicant told Hawks that he wanted to plead guilty and asked that Hawks seek a plea offer. Applicant also testified that the prosecutor instructed that he be returned to court on January 19, but that didn't occur.

Instead, according to Applicant, plea counsel appeared at the county jail on January 20 for his first of three visits with him. During that meeting, they discussed the transcript and exhibits from Applicant's previous trial. Applicant also asked plea counsel to retrieve certain documents from the jail's property room and to photocopy them. According to Applicant, plea counsel did as instructed and ultimately discussed the documents with Applicant; however, counsel never gave Applicant a copy of the documents. Applicant also testified that during this meeting, plea counsel informed him that he had rejected the State's initial plea offer on his behalf without having conveyed the offer to Applicant.

Applicant also testified that he pled guilty based on plea counsel's advice that a plea would be better than a trial. Plea counsel told Applicant that even if prosecution witnesses wouldn't appear for a new trial, that their previous trial testimony would be used. Applicant stated that he had also filed a *pro se* motion challenging probable cause to have arrested him, but plea counsel told him that the motion was meritless and that a hearing on the motion would be futile. Applicant also testified that he believed that if he went to trial, plea counsel would restrict Applicant's testimony and not allow him to say what he wanted to say. (Applicant later contradicted this, testifying that plea counsel told him that he wouldn't be able to testify at all during trial.) According to Applicant, he repeatedly asked plea counsel to seek a plea offer for him. He ultimately pled guilty as a choice of "the lesser of two evils."

Applicant contends that immediately prior to the plea, plea counsel told him that the prosecutor would discuss his criminal record, but that it wouldn't hurt his case. However, Applicant was unaware that the prosecutor would apprise the court of his disciplinary history while at the South Carolina Department of Corrections. Applicant was also surprised when the family of the victim of the crime was able to address the court during his guilty plea. Applicant had

understood that his "straight up" plea to voluntary manslaughter meant that no one connected with the prosecution would make any comment on the sentence that he should receive. Therefore, when both the victim's family and the prosecutor did so, Applicant was surprised and believes that plea counsel should have objected. He contends that if he had known that those statements would be made, that would've impacted his decision to plead guilty.

II. Testimony of Plea Counsel

Plea counsel, J. Rhodes Bailey, also testified at the evidentiary hearing and corroborated many of Applicants allegations. Specifically, plea counsel admits that he visited Applicant at the county jail on January 20, 2016 and discussed the previous trial of Applicant's case. Plea counsel also agrees that he retrieved certain documents from the jail's property room, photocopied them and reviewed them without providing a copy to Applicant. According to plea counsel, the documents were ultimately the basis of a grievance which Applicant filed against him, but the grievance was deemed unfounded and dismissed.

Plea counsel stated that Applicant asked him about a guilty plea repeatedly and that, therefore, there was never any plan to try his case. He had begun preliminary trial preparation, but he never hired an investigator or took any other steps to prepare because Applicant was adamant that he wanted to plead guilty. No trial was ever even scheduled for Applicant's case. Plea counsel also denied that he ever rejected any plea offer from the State without first discussing it with Applicant.

Finally, plea counsel testified that, like Applicant, he didn't believe that the discussion of Applicant's disciplinary history during the guilty plea was relevant; however, based on his experience, he didn't think that it was objectionable or that objecting to the information would make any difference. Plea counsel denies that he told Applicant that neither the prosecutor nor the

victim's family would comment on sentencing during the plea. Rather, plea counsel knows that victims' families routinely make statements during guilty pleas. He testified that the subject simply never arose in his conversations with Applicant.

CONCLUSIONS OF LAW

In a PCR action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence." Rule 71.1(e), SCRCP. Specifically, "[a] defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty." *Johnson v. Catoe*, 336 S.C. 354, 358, 520 S.E.2d 617, 619 (1999) (citing *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) and *Satterwhite v. State*, 325 S.C. 254, 481 S.E.2d 709 (1997)).

I. Involuntary Plea

Applicant alleges that his guilty plea was involuntary because it was coerced by plea counsel, who failed to properly investigate his case, failed to challenge the arrest warrant affidavit, and failed to contest the impaneling of the Richland County Grand Jury. These allegations are without merit.

"Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)). "A defendant who pleads guilty upon the advice of counsel may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases." *Richardson v. State*, 310 S.C. 360, 363, 426 S.E.2d 795,

797 (1993) (citing *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366, 369, 88 L.Ed.2d 203, 209 (1985)).

"[A] guilty plea cannot be attacked as based on inadequate legal advice unless counsel was not 'a reasonably competent attorney' and the advice was not 'within the range of competence demanded of attorneys in criminal cases.'" *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759, 770 (1970)). "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Id.* at 687-88.

"Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689 (citation omitted). Applicant has not done that here.

Having weighed the credibility of the testifying witnesses and having considered the admissions and explanations offered, the Court cannot find that plea counsel was not "a reasonably competent attorney" or that his advice was not "within the range of competence demanded of attorneys in criminal cases." The Court finds no professional errors on the part of plea counsel; therefore, no prejudice could have resulted from plea counsel's representation. Further, while Applicant contends that he would have gone to trial but for counsel's advice, this is not supported by the evidence. Rather, the credible testimony in this case is that Applicant always wanted to plead guilty and repeatedly requested a plea offer. Applicant is in the unique position of having previously elected a trial on the same criminal charges. Thus, he was well aware of his alternatives,

including the logistics of how a jury trial would occur. He testified that he simply chose "the lesser of two evils." Therefore, the PCR application is denied as to these allegations.

II. Plea Bargain

Similarly, Applicant's contention that counsel was ineffective for failing to act when the "Solicitor's office breached the plea agreement" is meritless.

Although Applicant was charged with murder, the State ultimately extended a plea offer by which Applicant could enter a "straight up" plea to the lesser-included offense of voluntary manslaughter. He did so on June 20, 2016. During the plea the victim's mother, in response to the court's inquiry, requested that Applicant be given a thirty-year sentence. The prosecutor echoed the request of the victim's mother but also apprised the court of Applicant's disciplinary history while he was in SCDC and in the Richland County Detention Center. Applicant complains that those actions amounted to the State breaching the plea agreement, as he interpreted "straight up" to mean that no one would comment on sentencing.

Specifically, Applicant complains that plea counsel should have objected when the prosecutor introduced evidence of his disciplinary history while at SCDC and when the court permitted both the prosecutor and the victim's family to comment on Applicant's potential sentence. Neither amounts to a breach of the "plea agreement" in Applicant's case.

Applicant is correct that, typically, a defendant must be permitted to withdraw their guilty plea when it was induced by a broken promise made by the prosecutor that they wouldn't comment on sentencing, *see, e.g., Santobello v. New York*, 404 U.S. 257 (1971); however, this is not a typical case. Here, Applicant has not proven that the assistant solicitor promised not to comment on sentencing. Even assuming that the promise was made, there has been no real breach of that agreement or negative effect to Applicant. Instead, the victim's mother made a sentencing

recommendation. While that recommendation was repeated by the prosecutor, she also subsequently said, "Whatever sentence you feel like would be appropriate, Your Honor," which is not a sentencing recommendation at all. Further, all of this discussion occurred *before* the court accepted Applicant's guilty plea. It is clear that, subsequent to those comments, Applicant had a number of opportunities to withdraw his guilty plea. In fact, the court asked several times whether Applicant wished to plead guilty; and each time, Applicant said that he did. Therefore, the PCR application is denied as to these allegations as well.

III. Investigation and Evidence Considered

Finally, Applicant contends that plea counsel failed to investigate the allegations against him or "conduct any pretrial investigation," to challenge the arrest warrant affidavit and to challenge the impanelment of the grand jury. These allegations are also without merit, and Applicant has failed to provide any evidence that would entitle him to relief.

A PCR applicant is not entitled to relief where there is no evidence presented at his PCR hearing to demonstrate how the outcome of his case might've been different is counsel were more prepared. *Skeen v. State of South Carolina*, 325 S.C. 210, 213-15, 481, S.E.2d 129, 131-32 (1997). This is particularly true here, where Applicant pled guilty and always wanted to plead guilty.

Similarly, Applicant has failed to offer evidence of his claims of defects in the arrest warrant and the grand jury. Further, any such claims are obviated by Applicant's guilty plea. Challenges regarding the arrest and indictment are, in essence, claims that Applicant's constitutional rights were violated. However, any related constitutional rights were waived when Applicant pled guilty to the charge. Without evidence that Applicant's waiver of those rights was not knowing, voluntary and intelligent (which Applicant doesn't even allege), Applicant cannot prevail on this claim, and the PCR application is denied as to these allegations as well. *See. e.g.*,

Pittman v. State of South Carolina, 337 S.C. 597, 524 S.E.2d 623 (1999) (discussing guilty pleas and waiver of constitutional rights).

IT IS THEREFORE ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

IT IS FURTHER ORDERED that Applicant Ayree Henderson be REMANDED to the custody of the State of South Carolina.

AND IT IS SO ORDERED.

Jocelyn Newman
Presiding Judge

March 20, 2018
Columbia, South Carolina.

Exhibit B

Aryee Henderson 59105
SCDC / Lima - G- #50
101 John Mark Dial Dr.
Columbia, S.C. 29209

April 20, 2016

Honorable Jeanette W. McBride
Clerk of Court
P.O. Box 27766
Columbia, S.C. 29202-2766

FILED
2016 APR 25 PM 1:08
JEANETTE W. McBRIDE
C.C.P. & G.S.

Re: Motion to Relieve Counsel

Dear Ms. McBride,

Enclosed for filing is an original copy of a Motion to Relieve Counsel.

Respectfully,

s/ Aryee Henderson

cc: Chief Administrative Judge
Honorable Dan Johnson (Solicitor)

State of South Carolina)
County of Richland)

State of South Carolina,)
Respondent,)
v.)
Aryee Henderson,)
Defendant.)

In The Court of General Sessions
Fifth Judicial Circuit

Case No.: 2002-GS-40-7277

Charge: Murder

Motion to Relieve Counsel

FILED
2016 APR 25 PM 1:08
RICHLAND COUNTY
CLERK OF COURT

NOW COMES THE DEFENDANT, Aryee Henderson, who will move before this Court on April 25, 2016 at 9:30 a.m. or as soon as the matter may be heard for an Order to Relieve Counsel from the Public Defender's Office on the above-named Defendant. The Defendant feels that his appointed attorney is not representing him sufficiently. On 1-7-16, this Court verbally ordered the solicitor's office to bring me before the Court to plea on 1-19-16. However, the solicitor's office nor my appointed attorney scheduled me to appear before the Court to plea. On 3-9-16, my appointed attorney had me brought to the courthouse to discuss trial tactics in reference to several pro se motions I filed with the Court. He advised me to plead guilty because he felt that the grounds I raised within my motions were meritless and I was gonna lose if I elected to proceed with trial. He further advised me that he would have me in court to plead guilty within a couple of weeks. I have yet to appear in court. Moreover, he promised that he would send me all of my transcripts, legal documents, and cases that he

has in his possession. I have yet to receive these items.

The above information is true and accurate to the best of my knowledge.

This Motion is made in good faith.

Conclusion

Wherefore, Defendant prays that this Court issue an Order to Relieve him of his Appointed Counsel from the Public Defender's Office and that he return all of the Defendant's transcripts, legal documents, and law cases.

Respectfully,

s/ Aryee Henderson

Columbia, South Carolina

Dated: April 20, 2016

2016 APR 25 PM 1:08
C.C.P.G.S.
FILED

Exhibit C

SCDC / SMU #416
1) John Mark Dial Dr.
Columbia, S.C. 29209

Honorable Jeanette W. McBride
Clerk of Court
181 Main St.
Columbia, S.C 29201

RICHLAND COUNTY
FILED
16 JUN -7 PM 12:01
JEANETTE W. McBRIDE
C.C.P. & G.S.

Re: Motion to Relieve Counsel

Dear Ms. McBride,

Enclosed is an original copy of Motion to Relieve Counsel, along with a:

1) Motion for Bond;

2) Proof of Service

Respectfully,
S/ Bryce Henderson

CC: Honorable Clifton Newman (Chief Administrative Judge)
Honorable Dan Johnson (Solicitor 5th Circuit)

LEGAL MAIL
MAIL ROOM

404

State of South Carolina County of Richland	)	In The Court of General Sessions Fifth Judicial Circuit
State of South Carolina, Respondent, v.	)	Warrant No.: 258760
Arijee Henderson. Defendant.	)	Motion to Renew Motion to Relieve Counsel

16 JUN -7 PM 12:01
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

TO: CHIEF ADMINISTRATIVE JUDGE

YOU WILL PLEASE TAKE NOTICE that Arijee Henderson, Pro Se Defendant, will respectfully move before this Court on June 6, 2016, at 9:30 a.m. or as soon thereafter as this matter may be heard for an Order to Relieve Counsel on the above named Defendant.

An initial Motion to Relieve Counsel was filed on or about April 22, 2016 and has yet to be heard.

The Defendant respectfully request that he be relieved from further presentation from the Public Defender's Office. The Defendant feels that his court appointed attorney, John Rhodes Bailey, is not representing him efficiently. Furthermore, pursuant to Faretta v. California, 95 S Ct. 2525 (1975), the Defendant respectfully requests to proceed "Pro Se" during any and all future proceedings involving Defendant.

The above information is true and accurate to the best of my knowledge.

This Motion is made in good faith.

LEGAL MAIL
MAIL ROOM

Conclusion

Wherefore, the Defendant prays this Court relieve him from further representation from the Public Defender's Office.

Respectfully

s/ Aryee Henderson

Columbia, South Carolina

Dated: June 2, 2016

16 JUN -7 PM 12:01
JEANETTE W. McBRIDE
C.C.P. & G.S.

Exhibit D

State of South Carolina)
County of Richland)
)
State of South Carolina,)
Respondent,)
v.)
)
Aryee Henderson,)
Defendant.)

In The Court of General Sessions
Fifth Judicial Circuit
Case No.: 2002-GS-40-7277

Motion to Plea

FILED
2016 MAY -2 PM 12:45

NOW COMES THE DEFENDANT, Aryee Henderson, who respectfully moves this Honorable Court for an Order scheduling a hearing to plead guilty.

On 1-7-16, I appeared before the Court pursuant to a pro se Motion for Fast and Speedy Trial. At the hearing, the ~~Judge~~ Honorable Judge asked me what I wanted and I told him that I wanted to get this case disposed of. I then asked him if I can go ahead and plead guilty at that moment. He asked me if I wanted to proceed P.I.S.E and I responded no. He then arranged for me to be appointed counsel from the Public Defender's Office and ordered the Solicitor's office to have me in court on 1-19-16.

However, on 1-20-16, my court appointed lawyer, J. Rhodes Bailey, came to visit me at the Alvin S. Glenn Detention (ASGDC) and informed me that he met with the Assistant Solicitor, Kathryn Luck Campbell, on 1-19-16 and her plea offer to me at that time was: OPEN PLEA - VOLUNTARY MANSLAUGHTER - NO RECOMMENDATION, and that was the reason I was not taken to court on 1-19-16 as per the verbal order of the Chief Administrative Judge.

Since that time, the Defendant has not had any other plea offers from the Solicitor's office and the Defendant does not see none coming in the near future.

Therefore, the Defendant respectfully request that on May 9, 2016, or as soon

after that date this motion may be scheduled, I be allowed to appear before the Court to plead guilty to the solicitor's plea offer, which was: Open Plea - Voluntary Manslaughter - No Recommendation.

Conclusion

Wherefore, the Defendant prays he be allowed to plead guilty to the solicitor's plea offer, which was: Open Plea - Voluntary Manslaughter - No Recommendation.

Respectfully.

S/ Aryee Henderson

FILED
2016 MAY -2 PM 12:15
CLERK OF SUPERIOR COURT
C.C.P. & G.S.

Exhibit E

The Supreme Court of South Carolina
OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Kelly B. Arnold
Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

December 12, 2016

PERSONAL & CONFIDENTIAL
Aryee Emmanuel Henderson #237887
Evans Correctional Institution
610 Highway 9 West, F-2-B-150
Bennettsville, SC 29512

RE: Lawyer: John Rhodes Bailey, Esquire
File Number: 16-DE-L-1507

Dear Mr. Henderson:

We have received your complaint against John Rhodes Bailey, Esquire. We will conduct an investigation into the matters you have reported. You will not necessarily be contacted prior to a decision regarding your complaint; therefore, you should submit any additional information or documentation to support your allegations at this time.

The authority of this office and the jurisdiction of the Commission on Lawyer Conduct are limited to issues of whether a lawyer is subject to discipline pursuant to the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR. Where misconduct is found, this disposition might include a confidential letter of caution or admonition, a public reprimand, suspension, or disbarment. If our investigation does not reveal evidence of lawyer misconduct, your complaint will be dismissed.

We take this opportunity to advise you of the limited role of this office and the Commission so that you will be aware that we cannot provide you with assistance or advice. Furthermore, we do not have the authority to intervene in your case or to communicate with Mr. Bailey on your behalf. You should promptly seek assistance or advice that you might need from legal counsel or other sources. If you do not have a lawyer, and believe you need one, you should contact the SC Bar Lawyer Referral Service by phone at 1(800) 868-2284 or by mail at SC Bar, Attn: LRS, PO Box 608, Columbia, SC, 29202. If you cannot afford a lawyer, you might qualify for free legal assistance. You can contact the Legal Aid Telephone Intake Service (LATIS) by phone at (888) 346-5592 or by mail at PO Box 11433, Columbia, SC, 29211, to see if you qualify.

You will be notified of the final disposition of your complaint. It is often many months after receipt of a complaint before a final decision is made. In the meantime, feel free to contact me if you have any questions or concerns.

Sincerely,

Kelly B. Arnold

KBA/clg

Exhibit F

The Supreme Court of South Carolina
OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Kelly B. Arnold
Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

March 21, 2017

PERSONAL & CONFIDENTIAL

Aryee Emmanuel Henderson #237887
Evans Correctional Institution
610 Highway 9 West
F-2-B-150
Bennettsville, SC 29512

Re: Lawyer: John Rhodes Bailey, Esquire
Case Number: 16-DE-L-1507

Dear Mr. Henderson:

This office previously informed you of its intent to dismiss the complaint you filed in connection with the above-referenced matter. You were given thirty days to submit your written request for a review of that decision. No request was received from you. Accordingly, the complaint in this matter is dismissed pursuant to the provisions of Rule 19(d)(1) of RLDE. As required by these rules, a copy of this letter is being sent to Mr. Bailey as notice of the dismissal of this complaint.

Sincerely,

Kelly B. Arnold

KBA/

cc: John Rhodes Bailey, Esquire

Exhibit G

The Supreme Court of South Carolina
OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

William C. Campbell
Senior Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

November 15, 2016

PERSONAL & CONFIDENTIAL

Aryee Emmanuel Henderson #237887
Evans Correctional Institution
610 Highway 9 West
F-5-D-137
Bennettsville, SC 29512

RE: Lawyer: Jonathan D. Waller, Esquire
File Number: 16-DE-L-1382

Dear Mr. Henderson:

We have received your complaint against Jonathan D. Waller, Esquire. We will conduct an investigation into the matters you have reported. You will not necessarily be contacted prior to a decision regarding your complaint; therefore, you should submit any additional information or documentation to support your allegations at this time.

The authority of this office and the jurisdiction of the Commission on Lawyer Conduct are limited to issues of whether a lawyer is subject to discipline pursuant to the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR. Where misconduct is found, this disposition might include a confidential letter of caution or admonition, a public reprimand, suspension, or disbarment. If our investigation does not reveal evidence of lawyer misconduct, your complaint will be dismissed.

We take this opportunity to advise you of the limited role of this office and the Commission so that you will be aware that we cannot provide you with assistance or advice or copies of the cases you requested. You should promptly seek assistance or advice that you might need from legal counsel or other sources.

Please note, this office does not have the authority to remove, replace, appoint, or substitute counsel in a case and cannot assist you in obtaining new counsel.

You will be notified of the final disposition of your complaint. It is often many months after receipt of a complaint before a final decision is made. In the meantime, feel free to contact me if you have any questions or concerns.

Sincerely,

William C. Campbell

WCC/clg

Exhibit H

The Supreme Court of South Carolina
OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

William C. Campbell
Senior Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

January 27, 2017

PERSONAL & CONFIDENTIAL

Aryee Emmanuel Henderson #237887
Evans Correctional Institution
610 Highway 9 West
F-2-B-150
Bennettsville, SC 29512

Re: Lawyer: Jonathan D. Waller, Esquire
Case Number: 16-DE-L-1382

Dear Mr. Henderson:

This office has conducted an investigation concerning the allegations of lawyer misconduct raised in the complaint you filed in connection with the above-referenced matter. This investigation focused on those grounds for misconduct set out in the Rules for Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR, adopted by the Supreme Court of South Carolina.

This office is not authorized to give advice concerning a legal dispute or dealings with a lawyer; nor is it empowered to intervene in a case. We cannot seek to cause things to be done by a lawyer on behalf of a complainant; nor can we seek to change the outcome of a case. Instead, this office deals solely with issues of misconduct or incapacity related to lawyers under these rules. We do so to preserve institutional values of the legal system in South Carolina for the benefit of the public as a whole, not to obtain individual benefit for a complainant.

The provisions of RLDE do not apply to legal matters related to whether or not the outcome of a dispute was fair or to errors of law or judgment that might have been made by a lawyer or judge. These are legal matters, which can only be addressed at trial or on appeal using appropriate procedures.

In your complaint, you allege that Jonathan D. Waller, Esquire failed to supply you with copies of cases you requested, failed to communicate with you about your case, and has failed to diligently represent you. As a result of your complaint, this office conducted an investigation to ascertain if Mr. Waller's conduct violated the Rules of Professional Conduct and the RLDE.

From our investigation, this office has determined that there is insufficient evidence of any such lawyer misconduct on the part of Mr. Waller arising out of the events mentioned in your complaint and that further investigation would not likely reveal any such evidence.

Please note, as we informed you in our acknowledgement letter, this office does not have the authority to remove, replace, appoint, or substitute counsel in a case and cannot assist you in obtaining new counsel.

Accordingly, you are hereby notified of the intent of this office to dismiss your complaint pursuant to the provisions of Rule 19(d)(1) of RLDE. You may seek a review of this decision by an investigative panel of the Commission on Lawyer Conduct pursuant to Rule 18(b), RLDE, by filing a written request, which must be received in this office no later than February 27, 2017. If you request a panel review, the lawyer will be given an opportunity to respond. Your request and the lawyer's response, if any, will be considered at the next investigative panel meeting. You will then be notified of the panel's decision. Feel free to contact me if you have any questions regarding this process.

Sincerely,

William C. Campbell

WCC/

cc: Jonathan D. Waller, Esquire

Exhibit I

The Supreme Court of South Carolina
OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

William C. Campbell
Senior Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

March 1, 2017

PERSONAL & CONFIDENTIAL

Aryee Emmanuel Henderson #237887
Evans Correctional Institution
610 Highway 9 West
F-2-B-150
Bennettsville, SC 29512

Re: Lawyer: Jonathan D. Waller, Esquire
Case Number: 16-DE-L-1382

Dear Mr. Henderson:

This office previously informed you of its intent to dismiss the complaint you filed in connection with the above-referenced matter. You were given thirty days to submit your written request for a review of that decision. No request was received from you. Accordingly, the complaint in this matter is dismissed pursuant to the provisions of Rule 19(d)(1) of RLDE. As required by these rules, a copy of this letter is being sent to Mr. Waller as notice of the dismissal of this complaint.

Sincerely,

William C. Campbell

WCC/

cc: Jonathan D. Waller, Esquire

ALAN WILSON
ATTORNEY GENERAL

July 19, 2019

The Honorable Jeanette W. McBride
Richland County Clerk of Court
PO Box 2766
Columbia, SC 29202-2766

Re: Aryee Henderson, #237887 v. State of South Carolina
2018-CP-40-04964

Dear Ms. McBride:

Enclosed please find the original Return and Partial Motion to Dismiss of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Lindsey A. McCallister
Assistant Attorney General

LAM/jj
Enclosure

cc: Arthur K. Aiken, Esquire

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Aryee Henderson, # 237887, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-40-04964 **RETURN AND PARTIAL MOTION TO DISMISS**

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed May 17, 2017, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In November 2002, the Richland County Grand Jury indicted Applicant for murder (2002-GS-40-7277). Charles E. Johnson, Esquire, represented Applicant. Assistant Solicitors Kathryn Luck Campbell, Esquire, and Bryan S. Jeffries, Esquire, prosecuted the case. On September 21, 2004, Applicant proceeded to trial before the Honorable Alison Renee Lee. The jury found Applicant guilty as indicted. Judge Lee sentenced Applicant to imprisonment for thirty years.

Applicant filed a timely notice of appeal. Joseph L. Savitz, III, Esquire, of the Office of Appellate Defense perfected the appeal with the filling of an Anders[1] brief on August 31, 2006. Applicant filed his own ground for appellate review on or about October 12, 2006. The South Carolina Court of Appeals dismissed Applicant's appeal on February 12, 2008. State v.

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

Henderson, Op. No. 2008-UP-107 (S.C. Ct. App. filed February 12, 2008). The remittitur was returned to the circuit court on February 28, 2008.

2008-CP-40-1696

Applicant filed an application for post-conviction relief on March 4, 2008. The State filed its return on January 30, 2009. An evidentiary hearing was convened on August 12, 2009, at the Richland County Courthouse before the Honorable G. Thomas Cooper, Jr. Applicant was represented by Charles T. Brooks, III, Esquire. The State was represented by Assistant Attorney General Brian Petrano. On July 5, 2010, Judge Cooper signed an order granting post-conviction relief, which was filed July 14, 2010.

The State filed a petition for writ of certiorari on September 30, 2010. Applicant filed a return to petition for writ of certiorari on February 22, 2011. Applicant was represented by Tristan Shaffer, Esquire. On March 19, 2014, the South Carolina Court of Appeals affirmed the PCR court's grant of PCR. State v. Henderson, Op. No. 2014-UP-122 (S.C. Ct. App. filed March 19, 2014). The State filed a petition for rehearing on April 2, 2014 to the South Carolina Court of Appeals. The petition was denied on April 24, 2014. The State subsequently filed an appeal to the South Carolina Supreme Court on December 17, 2014. On October 28, 2015, the Supreme Court dismissed the appeal as improvidently granted. State v. Henderson, Op. No. 2015-MO-063 (filed October 28, 2015).

2016 Guilty Plea

After being granted post-conviction relief, Applicant pleaded guilty to the lesser-included offense of voluntary manslaughter on June 20, 2016, before the Honorable Clifton Newman. Applicant was represented by Assistant Public Defender J. Rhodes Bailey, Esquire. Assistant Solicitor Kathryn Luck Campbell, Esquire, prosecuted the case. Judge Newman sentenced

Applicant to twenty-five years.

Applicant filed a notice of appeal of his guilty plea on November 28, 2016. The South Carolina Court of Appeals dismissed Applicant's appeal on January 6, 2017. State v. Henderson, Appellate Case No.2016-002406 (S.C. Ct. App. filed January 6, 2017). On January 16, 2017, Applicant filed a subsequent notice of appeal to the South Carolina Court of Appeals. On February 16, 2017, the Court of Appeals dismissed Applicant's appeal, construing it to be a petition to rehear the dismissal of the appeal. State v. Henderson, Op. No. 2017-UP-088 (S.C. Ct. App. filed February 15, 2017). The remittitur was returned on March 28, 2017.

2016-CP-40-4364

While Applicant's guilty plea appeal was pending, he also filed an action for post-conviction relief on July 21, 2016. Applicant alleged his plea counsel (1) coerced him to plead guilty; (2) failed to investigate the allegations of his case; (3) failed to object to the State's breach of the plea agreement; (4) failed to challenge the affidavit upon which his arrest was based; and (5) failed to contest the improper empaneling of the Richland County Grand Jury. An evidentiary hearing was convened on January 24, 2018, before the Honorable Jocelyn Newman. Jonathan Waller, Esquire, represented Applicant. Assistant Attorney General Jessica E. Kinard, Esquire, represented Respondent. By order filed March 22, 2018, Judge Newman denied all of Applicant's claims and dismissed the application with prejudice.

On June 28, 2019, Applicant, through counsel, filed a motion pursuant to Rule 60(b), SCRCP, asking the PCR court to grant relief from its previous order of dismissal and allow Applicant to file appropriate post-trial motions, including an notice of appeal. In the motion, counsel for Applicant asserted he received notice of the entry of the Order of Dismissal via email

from the Clerk's Office, and by mistake or inadvertence, failed to open the email until after the time post-trial filings had passed. The Court denied Applicant's motion on July 31, 2018.

Thereafter, Applicant filed a notice of appeal from the order denying the Rule 60(b) motion. Katherine Haggard Hudgins, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division was appointed to represent Applicant. After consulting with his attorney, Applicant moved to withdraw his appeal, and his motion was granted by Order dated January 2, 2019. The remittitur was return on January 22, 2019. Applicant then filed this PCR action seeking Austin relief.

II. ALLEGATIONS

In his second and current application for post-conviction relief, Applicant raises the following allegations:

1. Ineffective assistance of PCR counsel, in that:

> PCR Counsel sabotaged my PCR by failing to file an Amended PCR Applicant with the Court, failed to file a Rule 59(e) Motion to Alter or Amend, failed to subpoena Shea Thomas. . . , and filed to file an appeal from the Order of Dismissal of my PCR application. PCR Counsel failed to notify me once the PCR Order of Dismissal was issued, failed to follow up and keep track of my PCR case, failed to submit a Proposed Order to the PCR court, and failed to forward me copies of the PCR Court's Order, Proposed Orders submitted by him and the State, and any other documentation submitted to the Court pertaining to me.

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

III. RESPONSE TO AUSTIN CLAIM

Applicant alleges he was denied the right to appeal the dismissal of his previous post-

conviction relief application when his previous PCR counsel failed to timely file a notice of appeal of the denial of that action. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for belated discretionary review of the dismissal of his or her application in some circumstances. A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). Because this allegation raises questions of fact which cannot be conclusively refuted by the record, Respondent requests an evidentiary hearing limited to this ground for relief.

IV. MOTION TO DISMISS ALL OTHER ALLEGATIONS

All of Applicant's other allegations must be summarily dismissed as successive to Applicant's previous applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) provides:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are prohibited unless an

applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450,409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised. . . in the previous application." Id. at 450, 409 S.E.2d at 394.

An allegation of ineffective assistance of PCR counsel is not a valid reason for allowing a successive application. The South Carolina Supreme Court in Kelly v. State specifically held the holding in Martinez v. Ryan is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions. 404 S.C. 365, 745 S.E.2d 377 (2013). Therefore, the ruling in Martinez has no bearing on an Applicant's ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive state PCR application. Therefore, any allegations regarding his previous PCR counsel's representation, other than the Austin claim, are barred as successive and should be summarily dismissed.

V. DENIAL OF ALL REMAINING ALLEGATIONS

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

VI. PRAYER FOR RELIEF

WHEREFORE, Respondent requests that an evidentiary hearing be held limited to Applicant's claim that he was denied his right to appeal the dismissal of his 2016 PCR application.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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

July 19, 2019

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Aryee Henderson, #237887 Applicant, vs State of South Carolina, Respondent,	IN THE COURT OF COMMON PLEAS **2018-CP-40-04964** AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return and Partial Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Arthur K. Aiken, Esquire
Aiken & Hightower
2231 Devine Street, Suite 201
Columbia, SC 29205

DATED this the 19th day of July, 2019.

Jennifer Jennison, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
) IN THE COURT OF
COUNTY OF RICHLAND) COMMON PLEAS

ARYEE HENDERSON,)
Plaintiff,)
Vs.) CASE NO. 2018-CP-40-4964
THE STATE,)
Defendants.)

AUGUST 21, 2019
COLUMBIA, SOUTH CAROLINA

HONORABLE ROGER E. HENDERSON, JUDGE

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

BY: ARTHUR K. AIKEN, ESQUIRE
Attorney for the Plaintiff
BY: LINDSEY A. MCCALLISTER, ESQUIRE
Attorney for the Defendants

KATHERINE A. SPIRES
REGISTERED PROFESSIONAL REPORTER

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
JONATHAN WALLER.				
Ms. McCallister	7			
Ruling of the Court	14			
Certificate of Reporter	17			

E X H I B I T S

NO.	DESCRIPTION	ID	EX

(NO EXHIBITS)

MS. MCCALLISTER: May it please the Court, Your Honor. This is Aryee Henderson verses the State of South Carolina, 2018-CP-40-4964.

Your Honor, Mr. Henderson filed this application for relief on May 17, 2017. Your Honor, he is currently confined in the South Carolina Department of Corrections. He was indicted back in November of 2002 for murder. He proceeded to trial on that charge on September 21, 2004 and he was found guilty as indicted. He was represented by Charles Johnson.

He filed a timely notice of appeal of that conviction. He was represented by the Office of Appellate Defense which they filed an Ander's brief. And then the South Carolina Court of Appeals dismissed that appeal on February 12, 2008.

Mr. Henderson then filed his first application for post-conviction relief on March 4, 2008. An evidentiary hearing was held in August of 2009 before the Honorable G. Thomas Cooper. And as a result of that hearing, Judge Cooper signed an order granting post-conviction relief which was filed on July 14th of 2010. The State petitioned for a writ of certiorari and that petition was denied on February -- April 24, 2014.

And, Your Honor, then after being granted post-conviction relief, Mr. Henderson was essentially retried, ended up pleading guilty to the lesser include offense of voluntary manslaughter on June 20, 2016 before Judge Clifton Newman. He filed a notice of an appeal from his guilty plea in November of 2016. And while that appeal was pending, he filed a 2016 action for post-conviction relief on the guilty plea.

Eventually, Your Honor, in February of 2017, the Court of Appeals dismissed Applicant's appeals -- Applicant's direct appeal. And then in March of 2018 -- or Judge Newman denied and dismissed all of the claims relating to the 2016 guilty plea.

Your Honor, Applicant through his counsel then filed a 60(b) motion asking a PCR court to grant relief from the previous order of dismissal and allow him to file appropriate post-trial motions including a notice of appeal. In that motion, Mr. Henderson's 2016 PCR counsel, Mr. Waller, asserted that he received entry of notice of the Order of Dismissal via email from the Clerk's Office and by mistake or inadvertence failed to open the email until after the time for

post-trial filings had run. The Court denied that motion on July 31, 2018. And then Mr. Henderson appealed the denial of the 60(b) motion.

Your Honor, after consulting with his appellate attorney regarding that the appeal of the 60(b), he moved to withdraw his appeal in January of 2019 and he then filed this action seeking Austin relief. And, I'm sorry, Your Honor, I believe I misspoke. I said that this post-conviction relief action was filed in 2017, it was not. It was filed in 2019.

He -- since we received this application, we -- the State requested a hearing on the Austin issue. Mr. Henderson is present today. Art Aiken has been represented -- or appointed to represent him in this action.

Your Honor, in addition to the Austin issue, Mr. Henderson filed some additional allegations alleging ineffective assistance of the PCR counsel. Your Honor, based on my conversations with Mr. Waller, the State believes that what he's going to testify to is essentially what I read in the procedural history that this was just a mistake, that he just didn't see the email, and didn't file the notice of appeal. So the State is

prepared to concede that Mr. Henderson is entitled to Austin relief. However, we would move to dismiss the remaining allegations. And, I believe, Mr. Aiken can speak to that.

MR. AIKEN: That's correct, Your Honor. We are prepared to accept the government's offer of belated review under Austin v. State.

As to the other issues. Your Honor, they are ineffective assistance of post-conviction relief counsel issues which cannot be raised according to South Carolina precedent in a State -- South Carolina state court PCR. They can, however, be raised in habeas review in the federal system.

So what Mr. Henderson has agreed to is that he accepts the government's offer belated review and agrees to a dismissal of his remaining PCR grounds, but needs to be made clear that those are not bard in the federal system.

Do you have any questions for me, Your Honor?

THE COURT: No, sir. Not at this time, I don't think so.

MR. AIKEN: Thank you.

THE COURT: You have been very thorough in your explanation. Okay. Mr. Henderson, would

you stand. Do you have anything else, Ms. McCallister, before I --

MS. MCCALLISTER: Your Honor, I'll do it however you want. If you want to question Mr. Henderson first or if you would like the State to call Mr. Waller and question him first about the Austin relief and the appeal. However you would like to do it.

THE COURT: Well, I'm trying to see if it's really necessary based on your statements. But to be thorough -- have a seat, I'll let you call Mr. Waller first and then I'll talk with Mr. Henderson.

JONATHAN WALLER,

being first duly sworn, was examined and testified as follows:

THE CLERK: Thank you. Have a seat in the witness stand, please. State your name for the record.

MR. WALLER: Jonathan Waller.

DIRECT EXAMINATION BY MS. MCCALLISTER:

Q. Mr. Waller, do you recall your representation of Mr. Henderson in his PCR action?

A. I do.

Q. Okay. And that action had an

evidentiary hearing before Judge Jocelyn Newman; is that correct?

A. I believe that is correct.

Q. Okay. And Judge Newman issued an order denying all of Mr. Henderson's claims; correct?

A. Yes.

Q. Okay. And how and when did you receive notice of that order?

A. The -- I guess a little background. In, I think, February of 2018, if my memory serves, the rule changed where notice was proper if emailed by a clerk or opposing party. I was aware of that. Kind of, you know, in theory, but not in actual practice. I received an email that was actually a forward of an email. The Clerk of Court in their internal system had forwarded it to one of their staff members. I think it was Mr. Gunter who then forwarded it on to me. That was in March. I don't recall the exact date, but it was in March.

I believe I saw it. Didn't open it. Because I was still stuck in the old mindset of that -- of expecting to get a hard copy in the mail. So it was completely -- completely my fault. I saw the email. I don't recall when, but I saw it with either the day or within a few days of when it

came in when it was sent to me.

Q. Okay. So you saw the email, but didn't open it to realize that it was the Order of Dismissal?

A. Correct.

Q. You didn't open the attachment?

A. Correct. And the heading did not have -- I don't think it had a case name. It might have had a case number. And maybe that's just the way it's set up on my computer, but I did not recognize just by looking at the subject line that it was an Order of Dismissal from Mr. Henderson's case.

Q. Okay. And so because of the fact that you just sort of missed this email, the time had expired -- by the time you actually opened it and realized that it was an Order of Dismissal, had the time already expired to file the notice of appeal?

A. Yes, it had.

Q. Okay. And so you attempted to correct the deficiency by filing a Rule 60(b) motion instead; is that correct?

A. Yes.

Q. The time had expired. I don't recall the exact date. I think it was relatively close. I went, you know, kind of down the rabbit hole of

researching if, you know, the time extended by, you know, it may have been five days for mail because email counts the same. Those weren't options. There's not a time limit on Rule 60(b), so I did file that. And, unfortunately, Judge Newman did not grant the relief I was seeking.

Q. Okay. And if you had you opened the email in March when you received it, would you have filed the notice of appeal for Mr. Henderson?

A. Absolutely. I would have filed -- I would have reviewed the order and filed whatever was appropriate, if it was a motion based on the order within 10 days. Or if the order was accurate to what her ruling was, I would have filed an appeal.

Q. Okay. So based on your representation of Mr. Henderson, did you believe that he intended to appeal the denial of his application for post-conviction relief?

A. Absolutely. Yes.

MS. MCCALLISTER: That's all the questions I have, Your Honor.

MR. AIKEN: No questions, Your Honor.

THE COURT: All right. You can step down, Mr. Waller. Thank you.

MR. WALLER: Thank you.

MS. MCCALLISTER: Your Honor, just based on Mr. Waller's testimony, the State concedes that Austin relief is appropriate in this instance.

THE COURT: All right. Mr. Henderson, would you stand again. All right. Mr. Henderson, you understand what has been discussed here this morning.

MR. HENDERSON: Yes, sir.

THE COURT: Okay. And you understand that the State is conceding or agreeing that you are allowed to your Austin appeal; you understand that?

MR. HENDERSON: Yes, sir.

THE COURT: And the decision of Judge Newman, you can appeal. Now, also your attorney has indicated that you will be withdrawing the new allegations that you have made in your PCR application; you understand that?

MR. HENDERSON: Yes, sir.

THE COURT: Okay. You understand you will not be bard from any relief that you might receive from the federal court?

MR. HENDERSON: Yes, sir.

THE COURT: You understand that?

MR. HENDERSON: Yes, sir.

THE COURT: Okay. Have you had ample time to discuss this with your attorney, Mr. Aiken?

MR. HENDERSON: Yes, sir.

THE COURT: Okay. Has he answered all of your questions to your satisfaction?

MR. HENDERSON: No, sir.

THE COURT: He hasn't? What kind of questions do you have for him that he hasn't answered?

MR. HENDERSON: Well, it was just one issue in particular.

THE COURT: Speak up now.

MR. HENDERSON: I said it was just one issue in particular I raised about self-representation at the PCR hearing. And the judge, she never ruled on that issue -- that particular issue. And I just wanted it to be addressed so it can be raised at the appellate --

THE COURT: You understand can't educate me on that --

MR. AIKEN: May I speak with him about that?

THE COURT: Yes, sir.

MR. AIKEN: I'm sorry, Your Honor.

THE COURT: No, that's fine. I'm glad you discussed that with him. Has that issue been addressed now by Mr. Aiken with you?

MR. HENDERSON: Yes, sir.

THE COURT: Okay. Are you satisfied with the discussion you just had with Mr. Aiken?

MR. HENDERSON: Yes, sir.

THE COURT: You sure? I want to make sure.

MR. HENDERSON: I mean, I got no choice.

THE COURT: What do you mean you don't have any choice?

MR. HENDERSON: I mean, I accept it because I don't have no choice.

THE COURT: Okay. I'm not sure what he was talking about as far as the self-representation issue.

MR. HENDERSON: No, I was telling -- all right. At my first PCR hearing, the previous PCR hearing, the only issues that I wanted to be addressed with the Court was the issue I raised about self-representation. And I raised that at my PCR. However, the PCR judge, she failed to rule on that issue. So I was saying that I was -- what I

was addressing with this Court is that I wanted that issue to be ruled upon so I -- it could be preserved for appellate review on my appeal. That's all I was concerned about, just that issue.

Because I raised it at my PCR hearing; however, she failed to rule on that issue. And I wanted that issue to be addressed for appellate review on my direct appeal. That's all I was asking.

THE COURT: Okay.

MR. HENDERSON: That's all I was asking.

THE COURT: I'm still a little confused. What was the issue --

MR. HENDERSON: The issue was --

MR. AIKEN: Let me address this real quick, Mr. Henderson, and then I'll recognize you. It was an issue concerning Mr. Henderson's demand that he be allowed to represent himself. And that was raised in the original PCR. And Mr. Henderson, and I agree with him, that issue was raised, but was not ruled upon by the PCR judge.

And what I have explained to him is, if that's what happened, then the thing for his PCR lawyer to do would be to file a 59(e) motion to

reconsider to get a ruling or at least request a ruling on that issue. Well, that wasn't done because all the deadlines were missed. Okay. So that is the ineffective assistance of PCR counsel issue which is preserved in the federal system, but can't even be raised in the state system.

THE COURT: Do you understand that? Do you understand it? It can be raised in the federal system, you understand? You're not being bard from being able to bring it up, it just can't be raised in the state system; you understand that at this point?

MR. HENDERSON: Yes, sir.

THE COURT: Okay. All right. Do you have any questions you want to ask the Court? I may not be able to answer them, but maybe somebody can.

MR. HENDERSON: I mean, that's the only question I had was, I just wanted to be able to raise that issue for appellate review after this stage right here. That's what I was wanting to ask or discuss about.

THE COURT: All right. I understand that. As far as you're agreeing to as part of the agreement, dismiss the new allegations raised,

you're doing that freely and voluntarily, are you not?

MR. HENDERSON: Yes, sir.

THE COURT: Doing so after consultation with Mr. Aiken?

MR. HENDERSON: Yes, sir.

THE COURT: Okay. And you're satisfied with Mr. Aiken's representation at this point, are you not?

MR. HENDERSON: Yes, sir.

THE COURT: Okay. All right, sir. Okay. You may be seated. All right. Ms. McCallister, if you'll prepare me an order setting forth the agreement what we've discussed here this morning I would appreciate it.

MS. MCCALLISTER: Yes, Your Honor.

MR. AIKEN: Thank you, Your Honor. Nice to see you, sir.

THE COURT: Thank you, sir. Good luck, Mr. Henderson.

- - -END OF REQUESTED TRANSCRIPT OF RECORD- - -

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the Fifth Judicial Circuit of 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 21st of August, 2019.

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

JANUARY 9, 2022

s/Katherine A. Spires
Katherine A. Spires
Registered Professional Reporter

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Aryee Henderson, #237887, Applicant, vs. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Case No. 2018-CP-40-04964 **CONSENT ORDER GRANTING BELATED APPELLATE REVIEW PURSUANT TO AUSTIN V. STATE**

RICHLAND COUNTY
FILED
2021 NOV 16 AM 10:02
C.C.P., G.S.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 20, 2018. Respondent made its return on July 19, 2019. An evidentiary hearing on the matter convened on August 21, 2019, at the Richland County Courthouse. Applicant was present at the hearing and represented by Arthur K. Aiken, Esquire. Lindsey A. McCallister of the South Carolina Office of the Attorney General represented Respondent.

The Court had before it the plea transcript, the records of the Richland County Clerk of Court regarding the subject conviction, appellate records, and the records from Applicant's previous post-conviction relief actions. Respondent also presented testimony from Applicant's previous PCR counsel, Jonathan D. Waller.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. In November 2002, the Richland County Grand Jury indicted Applicant for murder (2002-GS-40-7277). Charles E. Johnson, Esquire, represented Applicant. Assistant Solicitors Kathryn Luck Campbell, Esquire, and Bryan S. Jeffries, Esquire, prosecuted the case. On September 21, 2004, Applicant proceeded to trial before the Honorable Alison Renee Lee. The jury found

Applicant guilty as indicted. Judge Lee sentenced Applicant to imprisonment for thirty years.

Applicant filed a timely notice of appeal. Joseph L. Savitz, III, Esquire, of the Office of Appellate Defense perfected the appeal with the filling of an Anders[1] brief on August 31, 2006. Applicant filed his own ground for appellate review on or about October 12, 2006. The South Carolina Court of Appeals dismissed Applicant's appeal on February 12, 2008. State v. Henderson, Op. No. 2008-UP-107 (S.C. Ct. App. filed February 12, 2008). The remittitur was returned to the circuit court on February 28, 2008.

2008-CP-40-1696

Applicant filed an application for post-conviction relief on March 4, 2008. The State filed its return on January 30, 2009. An evidentiary hearing was convened on August 12, 2009, at the Richland County Courthouse before the Honorable G. Thomas Cooper, Jr. Applicant was represented by Charles T. Brooks, III, Esquire. The State was represented by Assistant Attorney General Brian Petrano. On July 5, 2010, Judge Cooper signed an order granting post-conviction relief, which was filed July 14, 2010.

The State filed a petition for writ of certiorari on September 30, 2010. Applicant filed a return to petition for writ of certiorari on February 22, 2011. Applicant was represented by Tristan Shaffer, Esquire. On March 19, 2014, the South Carolina Court of Appeals affirmed the PCR court's grant of PCR. State v. Henderson, Op. No. 2014-UP-122 (S.C. Ct. App. filed March 19, 2014). The State filed a petition for rehearing on April 2, 2014 to the South Carolina Court of Appeals. The petition was denied on April 24, 2014. The State subsequently filed an appeal to the South Carolina Supreme Court on December 17, 2014. On October 28, 2015, the Supreme Court dismissed the appeal as improvidently granted. State v. Henderson, Op. No. 2015-MO-063

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

(filed October 28, 2015).

2016 Guilty Plea

After being granted post-conviction relief, Applicant pleaded guilty to the lesser-included offense of voluntary manslaughter on June 20, 2016, before the Honorable Clifton Newman. Applicant was represented by Assistant Public Defender J. Rhodes Bailey, Esquire. Assistant Solicitor Kathryn Luck Campbell, Esquire, prosecuted the case. Judge Newman sentenced Applicant to twenty-five years.

Applicant filed a notice of appeal of his guilty plea on November 28, 2016. The South Carolina Court of Appeals dismissed Applicant's appeal on January 6, 2017. State v. Henderson, Appellate Case No.2016-002406 (S.C. Ct. App. filed January 6, 2017). On January 16, 2017, Applicant filed a subsequent notice of appeal to the South Carolina Court of Appeals. On February 16, 2017, the Court of Appeals dismissed Applicant's appeal, construing it to be a petition to rehear the dismissal of the appeal. State v. Henderson, Op. No. 2017-UP-088 (S.C. Ct. App. filed February 15, 2017). The remittitur was returned on March 28, 2017.

2016-CP-40-4364

While Applicant's guilty plea appeal was pending, he also filed an action for post-conviction relief on July 21, 2016. Applicant alleged his plea counsel (1) coerced him to plead guilty; (2) failed to investigate the allegations of his case; (3) failed to object to the State's breach of the plea agreement; (4) failed to challenge the affidavit upon which his arrest was based; and (5) failed to contest the improper empaneling of the Richland County Grand Jury. An evidentiary hearing was convened on January 24, 2018, before the Honorable Jocelyn Newman. Jonathan Waller, Esquire, represented Applicant. Assistant Attorney General Jessica E. Kinard, Esquire, represented Respondent. By order filed March 22, 2018, Judge Newman denied all of Applicant's claims and dismissed the application with prejudice.

On June 28, 2019, Applicant, through counsel, filed a motion pursuant to Rule 60(b), SCRCP, asking the PCR court to grant relief from its previous order of dismissal and allow Applicant to file appropriate post-trial motions, including a notice of appeal. In the motion, counsel for Applicant asserted he received notice of the entry of the Order of Dismissal via email from the Clerk's Office, and by mistake or inadvertence, failed to open the email until after the time post-trial filings had passed. The Court denied Applicant's motion on July 31, 2018.

Thereafter, Applicant filed a notice of appeal from the order denying the Rule 60(b) motion. Katherine Haggard Hudgins, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division was appointed to represent Applicant. After consulting with his attorney, Applicant moved to withdraw his appeal, and his motion was granted by Order dated January 2, 2019. The remittitur was return on January 22, 2019. Applicant then filed this PCR action seeking relief pursuant to Austin v. State.[2]

ALLEGATIONS

In his second and current application for post-conviction relief, Applicant raises the following allegations:

1. Ineffective assistance of PCR counsel, in that:

> PCR Counsel sabotaged my PCR by failing to file an Amended PCR Applicant with the Court, failed to file a Rule 59(e) Motion to Alter or Amend, failed to subpoena Shea Thomas. . . , and filed to file an appeal from the Order of Dismissal of my PCR application. PCR Counsel failed to notify me once the PCR Order of Dismissal was issued, failed to follow up and keep track of my PCR case, failed to submit a Proposed Order to the PCR court, and failed to forward me copies of the PCR Court's Order, Proposed Orders submitted by him and the State, and any other documentation submitted to the Court pertaining to me.

At the call of the case, counsel for Applicant informed this Court Applicant wished to withdraw all allegations except for his request for relief pursuant to Austin v. State.

[2] 305 S.C. 453, 409 S.E.2d 395 (1991).

Additionally, after the testimony of Applicant's previous PCR counsel, Respondent indicated it agreed Applicant's request for Austin relief was proper and should be granted in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to section 17-27-100 of the South Carolina Code, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. See also Rule 243, SCACR ("A final decision entered under the Post-Conviction Relief Act shall be reviewed by the Supreme Court upon petition of either party for a writ of certiorari."). When an applicant is denied his right to seek such review of his initial PCR application due to ineffective assistance of PCR counsel, the Supreme Court has directed the circuit court to hold "an evidentiary hearing on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review." Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991). If this Court so finds, Applicant shall have the right to petition the Supreme Court for review of the denial of his initial application. Id.

After reviewing of the facts and circumstances surrounding Applicant's failure to appeal the denial of relief in the Applicant's first post-conviction relief action, both parties have indicated to this Court that they believe Applicant is entitled, pursuant to Austin, to seek belated appellate review of the decision denying relief and dismissing Applicant's first PCR application. The parties agree Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of the Applicant's application for post-conviction relief in 2016-CP-40-4364. Former PCR counsel for Applicant indicated via his testimony that Applicant wished to appeal the decision denying his first application for post-conviction relief, but, through

no fault of Applicant, Counsel failed to file a timely Notice of Appeal of that decision.

Based upon the foregoing, this Court finds granting Applicant the right to seek belated appellate review of the denial of Applicant's first PCR action (2016-CP-40-4364) pursuant to Austin is warranted. Both Applicant and Respondent consent to granting Applicant the right to seek belated appellate review in this matter.

IT IS THEREFORE ORDERED:

1. Applicant shall remain in the custody of the South Carolina Department of Corrections; and

2. Applicant is granted the right to seek belated appellate review of the denial of post-conviction relief in 2016-CP-40-4364, in accordance with Austin v. State. Counsel for Applicant is directed to file the appropriate notice of appeal within thirty days of receipt of written notice of the entry of this order.

AND IT IS SO ORDERED this 9th day of November, 2021.

ROGER E. HENDERSON
Presiding Judge
Fifth Judicial Circuit

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland)
STATE VS.)
Aryee Henderson)
AKA:)
Race: BLACK Sex: M Age: 38)
DOB: [redacted] SS#: [redacted])
Address: [redacted] S.C. Department of Corrections)
City,State,Zip: COLUMBIA, SC 29201)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 2002GS407277
A/W#: H258760
Date of Offense: 8/3/2002
S.C. Code § : 16-03-0010
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Manslaughter / Voluntary manslaughter

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: Campbell, Luck 13009 SC Bar# Aryee Henderson Defendant J. [illegible] Attorney for Defendant 76145 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 2-5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____ ; provided that upon the service of _____ days/months/years and/or payment
of $ _____ ; plus costs and assessments as applicable*: the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. (5,069 days - 13 years 10 months and 16 days)
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

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

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

Clerk of Court/ Deputy Clerk Jeanette McBride
Court Reporter: Clayton
Presiding Judge Casey Manning
Judge Code: 2402
Sentence Date: June 20, 2016

SCCA/217 (03/2011)

ARREST WARRANT

H258760 H-258760 0224961

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of COLUMBIA

THE STATE

against

ARYEE HENDERSON

Address: COLUMBIA SC 00000

Phone: _____ SSN: _____

Sex: M Race: B Height: 5 10 Weight: 195

DL State _____ DL#: _____

DOB: 04/29/1978 Agency ORI#: SC0400100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: VINSON MW/GASSER

Offense: MURDER

Offense Code: HOM

Code/Ordinance Sec.: 16-3-10

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/☒ Municipality of COLUMBIA. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant ARYEE HENDERSON on 8-4-02

C. J. Bu
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA
☐ County/☒ Municipality of COLUMBIA

AFFIDAVIT

Personally appeared before me the affiant MW VINSON who being duly sworn deposes and says that defendant ARYEE HENDERSON did within this county and state on 08/03/2002 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/☒ Municipality of COLUMBIA) in the following particulars:

DESCRIPTION OF OFFENSE: MURDER 16-3-10

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID AT 921 MARLBORO ST., COLUMBIA, S.C. SHOOT THE VICTIM ALONZO GALE AT LEAST ONCE WITH A PISTOL CAUSING THE VICTIMS DEATH. THE DEFENDANT HAS BEEN IMPLICATED IN THIS CRIME BY WITNESSES AND HE HAS BEEN IDENTIFIED BY A WITNESS IN A PHOTO LINE-UP.

CERTIFIED TRUE COPY OF ORIGINAL FILED,
Jeanette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Sworn to and subscribed before me on 08/03/2002

Signature of Issuing Judge (L.S.)

Signature of Affiant

Affiant's Address: #1 JUSTICE SQ COLA, SC 29201

Affiant's Telephone: 733-8415

STATE OF SOUTH CAROLINA
☐ County/☒ Municipality of COLUMBIA

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 08/03/2002 defendant ARYEE HENDERSON did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/☒ Municipality of COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE: MURDER 16-3-10

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Judge Code: 463003

Judge's Address: CITY OF COLUMBIA, SC MUNICIPAL COURT, P.O. BOX 644

Judge's Telephone: _____

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

WITNESSES

(5) Investigator Vinson, CPD /5

ARREST WARRANT NO. H258760

ACTION OF GRAND JURY

TRUE BILL

Foreman of Grand Jury

VERDICT

Guilty of Murder

Foreman of Petit Jury 2/27/04 *Date*

DOCKET NO. 02 GS 40-7277

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

#42 NOVEMBER **TERM** 2002

THE STATE

vs.

AYREE HENDERSON

Indictment for Murder

S. C. Code Section 16-3-10 Felony
0116

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeanette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

FORM 5 (12/87)

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR MURDER
COUNTY OF RICHLAND)

At a Court of General Sessions, convened on November 13, 2002,
the Grand Jurors of RICHLAND County present upon their oath:

COUNT ONE — MURDER

That AYREE HENDERSON
did in Richland County on or about August 3, 2002,
feloniously, wilfully and with malice aforethought, kill one Alonzo Gale
by means of a gunshot wound
and that the said victim died as a proximate result thereof.

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

Warren B. Giese
SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeanette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA