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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Alex Kinlaw, Circuit Court Judge

DOUGLAS MURPHY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000263

APPENDIX

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State of South Carolina)
) Court of General Sessions
 County of Richland)
 2016-GS-40-2424, 2445

State of South Carolina)
) Transcript of Record
)
)
 Douglas Burn Murphy, Jr.)
)
)
)
 Defendant)

May 30, 2018
 Columbia, South Carolina

B E F O R E:

Honorable Casey L. Manning, Judge

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

Kathryn Cavanaugh, Assistant Solicitor
 Attorney for the State

Lir P. Derieg, Esq.
 Attorney for the Defendant

Joy E. Holston
 Official Court Reporter

E X H I B I T S

(There were no exhibits introduced.)

1 MS. CAVANAUGH: The State calls Douglas Murphy, Jr.

2 THE COURT: Yes, Ma'am.

3 MS. CAVANAUGH: Thank you, Your Honor. Standing
4 before you is Douglas Burn Murphy, Jr. represented by Lir
5 Derieg of the private bar, Kathryn Cavanaugh for the
6 State. We are here today for Mr. Murphy's entering of a
7 guilty plea under indictment number 2016-GS-40-2424 and
8 2445. He was originally indicted for murder and attempted
9 armed robbery. He is pleading guilty to the lessor
10 included of voluntary manslaughter along with the
11 attempted armed robbery for a negotiated 20 years. Mr.
12 Murphy, this is a deferred sentence, the victim's mother
13 in this case could not be here, she is out-of-state,
14 across the Country and wanted to be here for the actual
15 sentencing, Your Honor. But because he is on the trial
16 docket for June 25th we wanted to go ahead and get this
17 guilty plea entered prior, well in advance of the trial
18 date, Your Honor.

19 THE COURT: You are Douglas Murphy, Jr.?

20 MR. MURPHY: Yes, sir.

21 THE COURT: You are 19 years old?

22 MR. MURPHY: Yes, sir.

23 THE COURT: You heard what the Solicitor said?

24 MR. MURPHY: Yes, sir.

25 THE COURT: And you want to proceed, is that correct?

1 MR. MURPHY: Yes, sir.

2 THE COURT: So, Mr. Derieg, you represent Douglas
3 Murphy, Jr., is that correct?

4 MR. DERIEG: Yes, Your Honor.

5 THE COURT: Have you explained to Mr. Murphy the
6 charges contained in these two indictments and the
7 possible punishments and his rights including his
8 constitutional right to a jury trial?

9 MR. DERIEG: I have, Your Honor.

10 THE COURT: And in your opinion does Mr. Murphy
11 understand the charges, the punishments and his rights?

12 MR. DERIEG: Yes, sir.

13 THE COURT: How does he indicate he wishes to plead,
14 guilty or not guilty?

15 MR. DERIEG: Guilty.

16 THE COURT: You agree with his decision to plead
17 guilty?

18 MR. DERIEG: I do.

19 THE COURT: From your investigation of the facts and
20 circumstances surrounding these cases do you feel that the
21 State has sufficient evidence to convince the jury here in
22 Richland County of Mr. Murphy's guilt beyond a reasonable
23 doubt and if he were to stand trial on these charges his
24 convictions would be probable?

25 MR. DERIEG: Yes, sir.

1 THE COURT: Now, has Mr. Murphy been ordered to
2 submit to examinations to determine his competency to
3 stand trial?

4 MR. DERIEG: No, Your honor.

5 THE COURT: Any question in your mind, Mr. Derieg,
6 that Mr. Murphy is, in fact, competent to enter this
7 guilty plea?

8 MR. DERIEG: None whatsoever.

9 THE COURT: You are Douglas Murphy, Jr., once again,
10 is that correct?

11 MR. MURPHY: Yes, sir.

12 THE COURT: And, Mr. Murphy, before I can accept your
13 plea of guilty it is necessary for me to make sure that
14 you are making this plea freely and voluntarily. To do
15 that, Mr. Murphy, I need to ask you a series of questions.
16 At any point during my questioning of you if you do not
17 understand anything I say or any words that I say stop me
18 and will be more than happy to repeat or explain anything
19 that I say, Mr. Murphy. Additionally, will be more than
20 happy to stop this plea and allow you as much time you
21 feel you may need to consult your lawyer, Mr. Derieg. Do
22 you understand, sir?

23 MR. MURPHY: Yes, sir.

24 THE COURT: Once again, you are 19 years old, is that
25 correct?

1 MR. MURPHY: Yes, sir.

2 THE COURT: How far did you go in school?

3 MR. MURPHY: Tenth grade.

4 THE COURT: Tenth grade. What kind of work have you
5 done?

6 MR. MURPHY: I haven't.

7 THE COURT: Okay. Mr. Murphy, have you ever been
8 treated for the abuse of alcohol or drugs or for mental
9 illness?

10 MR. MURPHY: No, sir.

11 THE COURT: Have you taken any medications, drugs or
12 alcohol in the past twenty-four hours?

13 MR. MURPHY: I have taken medication.

14 THE COURT: What kind of medication have you taken?

15 MR. MURPHY: Albuterol.

16 THE COURT: What?

17 MR. MURPHY: Albuterol for asthma.

18 THE COURT: For asthma. Does that affect your
19 ability to know and understand and appreciate what you are
20 doing here today?

21 MR. MURPHY: No, sir.

22 THE COURT: Now, you have heard your lawyer tell me
23 that he has explained to you the charges contained in
24 these two indictments, possible punishments and your
25 rights, including your right to a jury trial and that you

1 understand these things. Is that correct?

2 MR. MURPHY: Yes, sir.

3 THE COURT: Mr. Murphy, first, on indictment number
4 2016-2424, the State versus Douglas Murphy. This is an
5 indictment for murder which you are here before me today
6 to proffer a plea, to actually plead guilty to voluntary
7 manslaughter. Do you understand the charge of voluntary
8 manslaughter?

9 MR. MURPHY: Yes, sir.

10 THE COURT: This indictment, Mr. Murphy, alleges that
11 you did here in Richland County on or about February 29th
12 of 2016 kill the victim, Jaelen Josey without malice
13 aforethought. Do you understand this?

14 MR. MURPHY: Yes, sir.

15 THE COURT: And that amounts to voluntary
16 manslaughter, do you understand that?

17 MR. MURPHY: Yes, sir.

18 THE COURT: That is what you want to plead guilty to,
19 is that correct?

20 MR. MURPHY: Yes, sir.

21 THE COURT: Mr. Murphy, you realize that by pleading
22 guilty to voluntary manslaughter that you could go to jail
23 for 30 years?

24 MR. MURPHY: Yes, sir.

25 THE COURT: Knowing this, you could go to prison for

1 30 years, while pleading guilty to voluntary manslaughter,
2 do you still wish to plead guilty, sir?

3 MR. MURPHY: Yes, sir.

4 THE COURT: Do you understand, Mr. Murphy, that
5 voluntary manslaughter is a eighty-five percent offense.
6 You have got to do eighty-five percent of whatever
7 sentence is imposed upon you. Do you understand?

8 MR. MURPHY: Yes, sir.

9 THE COURT: Knowing this, sir, you have got to do
10 eighty-five percent, this is a negotiated 20 years so you
11 have got to do eighty-five percent of 20 years if I go
12 along with it and give you the 20 years. Do you
13 understand that?

14 MR. MURPHY: Yes, sir.

15 THE COURT: Knowing all of that do you still want to
16 continue to plead guilty?

17 MR. MURPHY: Yes, sir.

18 THE COURT: I am not bound by this negotiated
19 sentence but if I am not going to go along with this I
20 would tell you that and allow you to withdraw your plea.
21 Do you understand that?

22 MR. MURPHY: Yes, sir.

23 THE COURT: So, a deal is a deal as far as I am
24 concerned. But I want you to know up front that if I am
25 not going to do it and more likely than not I will, I will

1 tell you so you can withdraw your plea or go in front of
2 another Judge. Do you understand all of that?

3 MR. MURPHY: Yes, sir.

4 THE COURT: So next, Mr. Murphy, I have before me an
5 indictment number 2016-2445, State versus Douglas Murphy.
6 This is an indictment for attempted armed robbery. Do you
7 understand this charge, sir?

8 MR. MURPHY: Yes, sir.

9 THE COURT: The indictment, Mr. Murphy, alleges that
10 you did here in Richland County along with codefendants,
11 on or about February the 29th of 2016 while armed with a
12 deadly weapon attempt to take and carry away the personal
13 property or in the immediate presence of Jaelen Josey with
14 intent to deprive him or her, him of the possession by use
15 of force, threats or intimidation. Do you understand this
16 allegation?

17 MR. MURPHY: Yes, sir.

18 THE COURT: Y'all, one or more of you attempted to
19 rob Mr. Josey. One of y'all shot and killed Mr. Josey. I
20 don't know if you were the trigger man, someone else was?

21 MS. CAVANAUGH: Yes, sir.

22 THE COURT: Do you understand all of this. But of
23 course under the hand of one, the hand of all, however you
24 want to say it. The felony of murder for whatever, you
25 are just as culpable as the shooter. Do you understand

1 all of that?

2 MR. MURPHY: Yes, sir.

3 THE COURT: All right. Knowing all of that do you
4 still wish to continue to plead guilty to attempted armed
5 robbery. Is that correct?

6 MR. MURPHY: Yes, sir.

7 THE COURT: Now, Mr. Murphy, are you currently on
8 probation or parole for any violations?

9 MR. MURPHY: No, sir.

10 THE COURT: Now, of course, we know what the
11 recommendation or negotiation is. Thus, I am still
12 required to tell you and explain to you that the sentences
13 of these two charges could be run consecutively, that is
14 one after the other or add one to the other. If that is
15 done, Mr. Murphy, you are facing, let's say 30 years on
16 the voluntary manslaughter, 20 years on the attempted
17 armed robbery, that would expose you to 50 years. Do you
18 understand that?

19 MR. MURPHY: Yes, sir.

20 THE COURT: So you understand, knowing that, sir,
21 that you could go to jail for 50 years by pleading guilty
22 to these two charges if the sentences are to run
23 consecutively. Do you still wish to continue to plead
24 guilty?

25 MR. MURPHY: Yes, sir.

1 THE COURT: Now, Mr. Murphy, when you plead guilty
2 you have to give up certain basic rights. First of all
3 you have to give up your right to remain silent. This is
4 your right of self-incrimination, Mr. Murphy, your right
5 to say nothing at all. No one can compel you to come into
6 court and testify against yourself. Do you understand
7 this right?

8 MR. MURPHY: Yes, sir.

9 THE COURT: Secondly, Mr. Murphy, when you plead
10 guilty you have to give up your right to a jury trial,
11 that is your right to a jury here in Richland County to
12 decide whether you are guilty of these two charges beyond
13 a reasonable doubt. A jury would base this decision on,
14 whatever evidence the State will introduce at trial
15 against you and also whatever evidence you and your
16 lawyer, Mr. Derieg, may wish to introduce. Now, Mr.
17 Murphy, when I say, may wish to introduce during the
18 trial. If you are presumed innocent, you don't have to
19 prove anything and you cannot be convicted unless the
20 State convinced all twelve jurors of your guilt beyond a
21 reasonable doubt. The jury's decision would have to be
22 unanimous, all twelve would have to agree that you are
23 guilty on both of these charges. Do you understand that,
24 sir?

25 MR. MURPHY: Yes, sir.

1 THE COURT: Thirdly, Mr. Murphy, when you plead
2 guilty you give up your right to confront, to be
3 confronted by the witnesses against you. That is your
4 right to see, hear and cross-examine any witnesses the
5 State may call to testify against you during a trial.
6 Additionally, Mr. Murphy, by pleading guilty you give up
7 your right to subpoena and call witnesses on your own
8 behalf, that is for someone that may testify for you. Do
9 you understand this, sir?

10 MR. MURPHY: Yes, sir.

11 THE COURT: Now, do you understand these rights that
12 I have just mentioned to you?

13 MR. MURPHY: Yes, sir.

14 THE COURT: Do you understand when pleading guilty
15 you have to give up these constitutional rights. Do you
16 understand that?

17 MR. MURPHY: Yes, sir.

18 THE COURT: Is that what you want to do, do you want
19 to give up your constitutional rights?

20 MR. MURPHY: Yes, sir.

21 THE COURT: Now, you realize you will not receive a
22 jury trial on either of these two charges by pleading
23 guilty? Do you understand that?

24 MR. MURPHY: Yes, sir.

25 THE COURT: Once again, Mr. Murphy, are you pleading

1 guilty to voluntary manslaughter, that carries up to 30
2 years in jail, again you will do eighty-five percent of
3 whatever sentence I impose on you. You are pleading
4 guilty to attempted armed robbery that carries up to 20
5 years in jail. As I have explained to you, that if you
6 add one to the other, that is 50 years in jail you are
7 facing by pleading guilty to these two charges. Now, and
8 you are giving up your constitutional rights, considering
9 what I just said to you, the time you are facing. I need
10 to ask you once again, Mr. Murphy, how do you wish to
11 plead to these charges, guilty or not guilty?

12 MR. MURPHY: Guilty, sir.

13 THE COURT: You realize, Mr. Murphy, that when you
14 plead guilty you admit the truth of the allegations
15 contained in these indictments against you, what I just
16 read to you. Do you understand that?

17 MR. MURPHY: Yes, sir.

18 THE COURT: I tell you that, Mr. Murphy, because you
19 may have some defenses to these charges, of course I have
20 no way of knowing that but you need to realize that by
21 pleading guilty here today you give up any defenses you
22 might have. Do you understand that?

23 MR. MURPHY: Yes, sir.

24 THE COURT: Additionally, Mr. Murphy, I tell you that
25 because when you were arrested by the Richland County

1 Sheriffs Department you may have given them some type of
2 incriminating statements, admissions or confessions about
3 your guilt. You need to realize that by pleading guilty
4 here today you waive your right to later on challenge or
5 contest any statements, whether or not they were taken or
6 obtained from you freely and voluntarily in accordance
7 with the constitutional rights. Do you understand that?

8 MR. MURPHY: Yes, sir.

9 THE COURT: So, Mr. Murphy, I ask you once again, did
10 you commit these offenses?

11 MR. MURPHY: Yes, sir.

12 THE COURT: So once again, Mr. Murphy, you are
13 telling me, you are pleading guilty on indictment
14 2016-2445 for attempted armed robbery because back on
15 February the 29th of 2016 y'all attempted to rob one
16 Jaelen Josey?

17 MR. MURPHY: Yes, sir.

18 THE COURT: You are pleading guilty because y'all
19 tried to rob him with a gun. Is that correct?

20 MR. MURPHY: Yes, sir.

21 THE COURT: And once again, Mr. Murphy, in connection
22 to indictment 2016-2424, voluntary manslaughter, back on
23 February 29th of 2016, I am saying y'all, y'all killed one
24 Jaelen Josey by shooting him with a handgun. Is that
25 correct, I think it was. Is that correct?

1 MR. MURPHY: Yes, sir.

2 THE COURT: Are you pleading guilty of voluntary
3 manslaughter?

4 MR. MURPHY: Yes, sir.

5 THE COURT: As well as attempted armed robbery
6 because you are guilty. Is that correct, Mr. Murphy?

7 MR. MURPHY: Yes, sir.

8 THE COURT: Now the plea negotiations are negotiated
9 20 years, the sentence to be deferred until the victim can
10 be here. Now, any other charges being dropped in
11 consideration with this plea?

12 MS. CAVANAUGH: No, Your Honor, Mr. Murphy--

13 THE COURT: That covers everything?

14 MS. CAVANAUGH: That covers everything.

15 THE COURT: Anything additional at all, Mr. Derieg,
16 needs to be added to the record in connection with any
17 plea negotiations or any recommendations?

18 MR. DERIEG: No, Your Honor.

19 THE COURT: Do you understand all of this, Mr.
20 Murphy?

21 MR. MURPHY: Yes, sir.

22 THE COURT: Do you still wish to plead guilty?

23 MR. MURPHY: Yes, sir.

24 THE COURT: I know there has been some issues between
25 you and your lawyer. There was a hearing in front of

1 Judge Newman, I think it was. At some point and time, I
2 have been told, I will mention this on the record, that
3 you were dissatisfied with your lawyer and you wanted to
4 fire him. I don't think Judge Newman granted that request
5 and then when, I think it was some sentence, matter of
6 this 20 years, you want to take advantage of the 20 year
7 deal and plead guilty with your lawyer, Mr. Derieg, by
8 your side. Is that correct?

9 MR. MURPHY: Yes, sir.

10 THE COURT: But I still have got to ask you these
11 questions. Okay?

12 MR. MURPHY: Yes, sir.

13 THE COURT: Now, you just answer them truthfully.
14 Now, are you fully satisfied with the manner with your
15 lawyer here, Mr. Derieg, the way he has advised you and
16 represented you on this charge?

17 MR. MURPHY: No, sir.

18 THE COURT: You are not satisfied, but you are
19 satisfied with the deal that has finally been negotiated
20 to 20 years and you want the deal, right?

21 MR. MURPHY: Yes, sir.

22 THE COURT: Regardless of whether Mr. Derieg is
23 standing beside you or not. Now, do you have any
24 complaints against Mr. Derieg?

25 MR. MURPHY: No, sir.

1 THE COURT: And I am trying to word this correctly so
2 it won't come back to hurt you or me or anybody else.
3 Once you weren't satisfied with him, but now since you
4 have got the negotiated 20 years, you are satisfied with
5 the end result that he has been able to maneuver for you
6 and negotiate for you. Is that correct?

7 MR. MURPHY: Yes, sir.

8 THE COURT: Now, do you have any complaints, Mr.
9 Murphy, against anyone at the Richland County Sheriff's
10 Department?

11 MR. MURPHY: No, sir.

12 THE COURT: Any complaints against anyone working
13 here in the Solicitor's office?

14 MR. MURPHY: No, sir.

15 THE COURT: Have you understood my questions?

16 MR. MURPHY: Yes, sir.

17 THE COURT: Is there anything you want to ask me
18 about, what I just went over with you, anything at all?

19 MR. MURPHY: No, sir.

20 THE COURT: All right. Now, Mr. Murphy, you realize
21 that you have a right to appeal this guilty plea and
22 whatever sentence I may impose upon you but if you are
23 going to appeal you need to file a notice of intent to
24 appeal within ten days of the date that you are sentenced
25 which is not going to be today. I don't know when it is

1 going to be but ten days within the date that you are
2 actually sentenced by me. You need to file a notice of
3 intent to appeal, if you want to, do you understand that?

4 MR. MURPHY: Yes, sir.

5 THE COURT: Additionally, Mr. Murphy, once you are in
6 the Department of Corrections, and for whatever reason,
7 good, bad or no reason at all, if you want to file a
8 complaint against your lawyer, Mr. Derieg, against the
9 Solicitor's office, against the Sheriff's Office, anybody
10 else that is involved in your case, you need to make those
11 complaints known by filing what is called a Post
12 Conviction Relief application within one year of the date
13 that you are sentenced. Do you understand that?

14 MR. MURPHY: Yes, sir.

15 THE COURT: Solicitor, I will be happy to hear about
16 it or do you want to wait, how do you want to do this?

17 MS. CAVANAUGH: Yes, Your Honor.

18 THE COURT: Okay.

19 MS. CAVANAUGH: I will just relay the facts and then
20 the victim impact and if Mr. Murphy's family wants to
21 speak we can do that at a later date.

22 THE COURT: All right.

23 MS. CAVANAUGH: This incident did occur on February
24 the 29th of 2016 at [REDACTED] Seton Hall Drive in Richland
25 County. This was right below the home, the location of

1 the home of one of the codefendant's, Trajan Mack, in this
2 case. The victim is Jaelen Josey, he was 18 years old at
3 the time and a student at the University of South
4 Carolina. The Defendant is one of four codefendants who
5 were charged with murder and attempted armed robbery from
6 this incident, two others were charged with accessory,
7 Your Honor. Only the shooter's case has been disposed of,
8 his name is Jose Reyes. He plead guilty and was sentenced
9 in front of the Honorable Tommy Cooper to murder and
10 attempted armed robbery and received 34 years, last year,
11 Your Honor. This Defendant standing before you is an
12 active participant in the planning of the armed robbery of
13 the victim and actually went down to the victim's car that
14 evening with the shooter, Jose Reyes. The plan to rob
15 this victim was devised earlier that afternoon because one
16 of the individual's who is charged with accessory in this
17 case, Sterling Kessler, was actually robbed himself of
18 money and marijuana from an unrelated person and Sterling
19 Kessler was looking to recoupe what was stolen from him.
20 Mr. Kessler, they called Mr. Murphy, the Defendant, asking
21 if he knew of someone that they could rob. Mr. Murphy in
22 turn called Trajan Mack who suggested the victim in this
23 case, Jaelen Josey, mainly because he knew that Mr. Josey
24 did not check the money he received after the transaction
25 until the deal was over. So the deal was set up, Mr.

1 Murphy and the shooter, Jose Reyes, rode in a car together
2 to the incident location, Jose Reyes had a gun on his
3 person. When they got out of the car to devise which role
4 each other would have in this case, Jose Reyes took out
5 his gun, this was in front of Douglas Murphy and the two
6 codefendants, Thaddeus Lewis and Trajan Mack. Mr. Reyes
7 said, if he acts up I have something for him, indicating
8 that he was going to do something with his pistol. Mr.
9 Murphy and the shooter then walked down to the car. Mr.
10 Murphy was to give the victim \$10.00 dollars in exchange
11 for \$120.00 dollars worth of marijuana. That \$10.00
12 dollars, Mr. Murphy approached the passenger side of the
13 car while the shooter approached the driver's side. Mr.
14 Murphy, during this interaction the \$10.00 dollars was
15 exchanged because it was located in the passenger side of
16 the car. DNA from that money matched Mr. Murphy as well
17 as Mr. Murphy dropped his phone in the victim's car.
18 Something occurred where, which caused Mr. Reyes to shoot
19 the victim while he was still sitting in the car, in the
20 back and he ultimately died because of that gunshot wound,
21 Your Honor. The shooter and Mr. Murphy fled the location.
22 Mr. Murphy actually went to the County that evening with
23 his parents because not only did he know that he dropped
24 his phone but he was also on electronic monitoring from a
25 Family Court adjudication. And even though he wasn't

1 completely forthcoming about what occurred that evening he
2 did give law enforcement all the individuals that were
3 actually involved that night, however denied that he knew
4 of any sort of an armed robbery plan. The codefendants,
5 Trajan Mack and Jose Reyes were Mirandized and interviewed
6 and it was discovered by law enforcement that Douglas
7 Murphy's role was more significant than what he initially
8 relayed. He was Re-Mirandized by Sergeant Eisenhower and
9 Captain McDonald the next morning and gave a more
10 forthcoming statement where he did confess to his role
11 being that he was going, he knew of the robbery of the
12 victim, he was going to give the \$10.00 dollars to the
13 victim and knew that the codefendant, Jose Reyes, had a
14 gun when they went to go rob the victim. The other two
15 codefendants who were charged in this case, Your Honor,
16 with murder did not go to the car, they knew of the
17 robbery, they sort of stood away from where that incident
18 actually occurred.

19 I beg the Court's indulgence.

20 In his statement Mr. Murphy did say that he was only,
21 that he remained 10 to 15 feet away from the car.
22 However, because the money with his DNA was in the car as
23 well as his phone was in the car we do not believe that he
24 was completely forthcoming about his role. Text messages
25 and phone records obtained during this investigation do

1 corroborate what I just relayed to the Court as far as
2 what his role was in this case, Your Honor. I believe
3 that is the extent of the facts in this case.

4 THE COURT: What is his prior record?

5 MS. CAVANAUGH: He was 17 when this occurred so he
6 doesn't have an adult record, he does have a juvenile
7 record if you want to see it.

8 THE COURT: No, that's okay. Now, Mr. Murphy, what
9 the Solicitor told me, is that all substantially accurate,
10 that is pretty much how it happened?

11 MR. MURPHY: Yes, sir.

12 THE COURT: You agree, Mr. Derieg?

13 MR. DERIEG: Yes, Your Honor.

14 THE COURT: Very well. I find that there is a
15 substantial factual basis for the plea, Mr. Murphy. I
16 further find your decision to plead guilty is made freely,
17 voluntarily and knowingly and intelligently made. He has
18 competent Counsel although he has had some issues with his
19 representation, you are satisfied with the final result
20 therefore I am going to accept this plea. I guess we will
21 wait until your victim is available before I actually
22 impose the negotiated 20 years on Mr. Murphy. I assume
23 that you are his mother?

24 MOTHER: Yes, sir.

25 THE COURT: And you are Ms. Murphy and you are Mr.

1 Murphy. There is no way to explain how things like this
2 happened. I can see the grief that y'all are suffering
3 from the fact of your son. You know, you hope for the
4 best and wish for the best and then we will see what
5 happens later on. And we will all gather again at some
6 point and time when the victims can be available and I
7 will impose a formal sentence. But in the meantime good
8 luck to y'all and may God go with you. Thank you all.

9 MR. DERIEG: Thank you, Your Honor.

10 MS. CAVANAUGH: Thank you, Your Honor.

11 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Richland, South
14 Carolina on the 30th day of May, 2018.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17
1819 November 3, 2018
2021 
2223 Joy E. Holston, Court Reporter
24

25 My Commission expires: May 2, 2026

I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
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No Exhibits Introduced.

1 THE COURT: Yes, ma'am.

2 MS. CAVANAUGH: The state calls Douglas Murphy, Jr.

3 (WHEREUPON, THE DEFENDANT IS DULY SWORN.)

4 THE COURT: We're here for sentencing. Is that
5 correct?

6 MR. DERIEG: Yes, Your Honor, we are.

7 THE COURT: Deferred from 5/30/18?

8 MS. CAVANAUGH: That's correct.

9 THE COURT: Yes, ma'am.

10 MS. CAVANAUGH: Thank you. Mr. Murphy pled guilty in
11 front of Your Honor on May 30, 2018, under indictment
12 number 2016-GS-40-2445 and 2424. He pled to voluntary
13 manslaughter as well as attempted armed robbery. The
14 sentence had been negotiated at -- as twenty years, Your
15 Honor. However, at the time the victim's mother, Ms.
16 Nicole Hamilton, was unable to be here. She was out of
17 state, and she wanted to be present for the sentencing, and
18 that's what we are here for today.

19 THE COURT: And would she like to speak?

20 MS. CAVANAUGH: She would, Your Honor.

21 THE COURT: All right, I'll be happy to hear from her
22 now.

23 You've Ms. Josey?

24 MS. N. HAMILTON: I'm Nicole Hamilton.

25 THE COURT: I'm sorry. Speak up.

1 MS. N. HAMILTON: Nicole Hamilton.

2 THE COURT: Okay, and you're the mother?

3 MS. N. HAMILTON: I'm his mother.

4 THE COURT: All right. Yes, ma'am.

5 MS. N. HAMILTON: Or was his mother, and I wanted to
6 be here today. I was in California as a travel nurse when
7 I lost my son, and wanted to speak up for him today because
8 when you're traveling and your kids are 3000 miles away and
9 you're paying people to take care of them, that's every
10 parent's worst nightmare is to get the call from an
11 investigator to say your child is dead, and nobody knew
12 why.

13 But now I know why, and I know all the facts and
14 everything, and I want to speak up for Jaelene. He was
15 only eighteen years old. Engineering major at USC, and he
16 was young and he had the rest of his life, and I raised him
17 as a single parent. He was my first-born son, and I will
18 never be able to have the joy of him finishing college, and
19 I will never get to have one grandbaby from my son.

20 His grandparents, paternal grandparents loved him
21 dearly. He saw them every day, and they were -- she was --
22 his paternal grandmother was never able to go back to work.
23 And my mother was only able to live here to take care of
24 Jaelene for the first time. That hurt her so bad, but now
25 I'm left with his scholarship that I founded in his name.

1 And I want to speak up today because I want to know
2 what happened to my son. He knows what happened to my son.
3 He came to that passenger's side in that car and you lost
4 your cell phone. But if you had not lost that cell phone,
5 we wouldn't be here today. We wouldn't know what happened
6 to Jaelene. But God is good. You lost that cell phone.
7 You can't get out of this now.

8 MS. O. HAMILTON: My name Octavia Hamilton. Jaelene
9 was my sister's oldest of two. He was the big brother to a
10 now eleven-year-old. He was like a big brother to my two
11 children, and he was a nephew that I named but I loved not
12 less and treated no less than my own two children.

13 I don't even know how to put into words how this has
14 impacted us. I can tell you that people say with time it
15 gets easier, but I'm here to tell you it doesn't get
16 easier. It doesn't get easier. I have -- still have
17 counseling.

18 I have a fourteen-year-old daughter who cannot share
19 with Jaelene she is going in his path, going to school
20 where he was, and they had a bet that she could keep
21 straight A's. She can't share that with him. She
22 completed her ninth grade, but she can't share that with
23 him.

24 I have a ten-year-old son who is preoccupied with
25 death. Any time I cough, any time I do anything or look

1 sad, he asks me what's wrong. Is there bad news that you
2 have to tell me? Are you waiting to tell me something?

3 It's -- I can't even -- I can't put into words -- I
4 attend every court hearing because I just want to try to
5 get someone to understand just a fraction of the magnitude
6 of the devastation, of the hurt that we have experienced
7 and we continue to experience. And I don't think that I'm
8 ever successful in that.

9 But I want Your Honor to know that it didn't end.
10 It's just that -- he was young. So was Jaelene, and we're
11 going to hear how he shouldn't have to, unlike Jaelene, pay
12 for a mistake with the rest of his life or for his life,
13 but Jaelene did. There was no mercy; there was no
14 leniency. There was nothing shown for Jaelene, and I just
15 -- it, it doesn't get easier. It doesn't get easier. And
16 I just, I just want you to know it has impacted us and it
17 continues to impact us, and it just seems still unfair.

18 THE COURT: All right. Thank you both.

19 Is there anything further from the state?

20 MS. CAVANAUGH: No, Your Honor. I forgot to introduce
21 Investigator Dalway. He's here in support of the state and
22 the family. He doesn't need to address Your Honor.

23 You don't need to hear any sort of facts, as you heard
24 those on May 30th. Just to remind you, Mr. Murphy was the
25 non-shooter in a felony murder situation where there was a

1 planned armed robbery of the victim that resulted in his
2 death, his shooting.

3 THE COURT: Thank you.

4 Mr. Derieg.

5 MR. DERIEG: Thank you, Your Honor. Very briefly, I'd
6 like to thank the court for being willing to accept this
7 negotiated plea. I'd like to thank the solicitor's office
8 for its hard work in resolving this case efficiently.

9 Here today in support of my client, Douglas Murphy,
10 Jr., is his father, Douglas Murphy, Sr., along with his
11 mother, Anita Blount. I believe they both wish to address
12 the court and my, and my client would also like to address
13 the court.

14 THE COURT: All right. I'll be happy to hear from
15 y'all. Who would like to go first? Just step to the end
16 of the rail, please, ma'am.

17 MS. BLOUNT: Good afternoon. My name is Anita Blount.
18 I'm Douglas Murphy's mother.

19 THE COURT: Yes, ma'am.

20 MS. BLOUNT: I was with him during the time that he
21 went to the sheriff department. We went as a family. We
22 didn't go because he lost his cell phone or anything. We
23 went because it was right. And he doesn't have a criminal
24 background, history. He was just a young kid appeasing or
25 with the crowd at the wrong time.

1 And this is hard for me as well because, you know --
2 and I, I do apologize to the family, what happened.
3 However, I have to serve this time with my son, and I have
4 to speak on behalf of him and fight for him as well. I'm
5 sorry that it has to be over something like this, but I can
6 only do what's in my heart to do as a parent.

7 And we went to that office as a family to report what
8 was seen. And although we learned something different
9 afterwards, we still was there as a family and to, to do
10 what's right for the victim.

11 I found my son -- I, I've also -- I work two jobs.
12 When this incident occurred, my son tried to call me on my
13 second job, but I can't have my cell phone with me, so he
14 couldn't get me. So, when I came home, I find my son in
15 his closet wrapped up in a blank mimicking what the victim
16 was saying because he was devastated that he had to see
17 this and screaming I didn't do it. I didn't do it, and he
18 didn't do it. We know he didn't do it, but he was there.
19 Yes, he was there but he said, Ma, I didn't know what to do
20 when it happened. I wanted to go back and help him, but I
21 couldn't because everybody ran. So, I ran, too.

22 He was feeling bad for the victim. We all did. We
23 all felt bad for the family, me being a mother, from mother
24 to mother.

25 We had to go to the, we had to go to the sheriff

1 department and report this. And during that time at the
2 sheriff department -- because as we were going on and on
3 during the interrogation, we started asking, wait, he needs
4 an attorney. And because of all this going on and me
5 fighting and asking questions and telling him not to speak,
6 I was asked to leave.

7 But what I don't understand is if we left that sheriff
8 department that night, that means he wasn't convicted or
9 arrested or charged with anything. So, at what point do I
10 lose my parental rights? How can you tell me to leave?
11 And then we go. We cooperate. We, we spent time with,
12 with the deputies doing stuff that wasn't even necessary.
13 I understand they have to go through certain measures to
14 get stuff out, but we were cooperating. We were there to
15 work with them. So ---

16 MR. MURPHY, SR.: On behalf of us and to the family, I
17 know there are no words to console you guys. We're truly
18 sorry for what happened. I'm not going to say we
19 understand your pain. I can't put myself in your shoes,
20 but I apologize for our son. This is on us as well as
21 parents.

22 MS. BLOUNT: Your Honor, I read the discovery. I
23 can't understand how it came up to this. If you read it,
24 if you see it, I don't know how you guys come up with
25 what's happening. I've also done further research and I

1 believe my son will present that, but I just want fair
2 justice, and I'm sorry for what I'm asking, requesting for
3 at this time, but I can only be a parent. My -- this is my
4 son's life. That's, that's, that's all.

5 THE COURT: All right. Thank you, ma'am. Thank you
6 both.

7 Yes, sir, Mr. Derieg.

8 MR. DERIEG: Your Honor, the paperwork that she was
9 referring to is the paperwork ---

10 THE COURT: I have that right here. I've reviewed it.
11 My law clerk just looked at it. I've considered it. Yes,
12 sir.

13 MR. DERIEG: And Mr., Mr. Murphy has something he
14 would like to read.

15 THE COURT: Mr. Murphy, I'll be happy to hear from
16 you, sir.

17 DEFENDANT: I have a letter I would like to read.

18 THE COURT: You are invited to do so.

19 DEFENDANT: First and foremost, I would like to
20 solemnly, sincerely apologize for the actions that took
21 place and knowing the hand I played leading to such tragic
22 events. I understand I'm not in your shoes and cannot
23 fully grasp the pain the family has to deal with. So, it
24 is improbable that I can empathize with you, but I may
25 sympathize.

1 Countless of nights, I've tossed and turned in my cell
2 with incidents of the night played in my head as a constant
3 reminder of my own dreadful decision-making. I cannot
4 begin to believe that a simple apology would ever state the
5 grief, the sorrow, the agony that I have caused on each and
6 every one of your family members, but I hope you take it
7 for its honesty and genuous [sic].

8 Over the time I have spent incarcerated, I have
9 progressively rehabilitated [sic] myself. I have watched my
10 transformation from a seventeen-year-old boy to a
11 nineteen-year-old man. As a man, I take complete and utter
12 responsibility for my actions and only hope to alleviate my
13 situation as much as possible. I do wish to ask that you
14 don't pass the torch of the same distress and misery onto
15 my loved ones.

16 I reiterate I sincerely apologize for the course of
17 actions taken on my behalf and the account of all parties
18 involved, for we young and young minded and made a
19 magnitude of choice that day, which we all deeply regret.

20 In closing, I do pray family hearts are at rest, and
21 that you can find in those hearts as much mercy and
22 leniency as you see fit. Please and thank you.

23 THE COURT: All right. Thank you, Mr. Murphy.

24 Is there anything else, Mr. Derieg?

25 MR. DERIEG: No, Your Honor.

1 THE COURT: How many days has he been in jail?

2 MS. CAVANAUGH: Your Honor, he was arrested on March
3 1st of 2016, and he's been in custody ever since. I'm not
4 sure the exact number of days.

5 THE COURT: Well, I think the Department of
6 Corrections requires me to give a number. So, we'll stop
7 and get your computer. What was the date?

8 MS. CAVANAUGH: March 1, 2016.

9 (A PAUSE.)

10 THE COURT: 842, does that sound okay?

11 MR. DERIEG: Yes, Your Honor.

12 THE COURT: If it's not, I'll adjust it later on.

13 SENTENCE OF THE COURT:

14 THE COURT: On indictment number 2016-2424, this is
15 indictment for voluntary manslaughter; additionally on
16 indictment number 2016-2445, this is attempted armed
17 robbery, sentence twenty years. Credit for time served of
18 842 days. These sentences are to run concurrent each with
19 one another.

20 Good luck to you, Mr. Murphy.

21 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM 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
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 21ST DAY OF JUNE, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 27TH, 2018

FORM 5

STATE OF SOUTH CAROLINA)

County of RICHLAND)Douglas Burn Murphy Jr. #376887)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018CP400 5508

APPLICATION FOR

POST-CONVICTION RELIEF

2018 OCT 18 PM 12:09
JEANNETTE W. MCBRIDE
CLERK, S.C.RICHLAND COUNTY
FILED**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 4360 - BROAD RIVER, CORRECTIONS INSTITUTION,
BROAD RIVER RD, COLUMBIA, SC 29210
2. Name and location of Court which imposed sentence 1701 - MAIN ST. RICHLAND Co.
COURTHOUSE, COLUMBIA SC.
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) 16-65-400-2424 VOLUNTARY MANSLAUGHTER
 - (b) 16-65-400-2445 ATTEMPTED ARM ROBBERY

- (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? N/A
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____ N/A
- ii. _____ N/A
- iii. _____ N/A
- (b) the result in each such Court to which you appealed:
- i. _____ N/A
- ii. _____ N/A
- iii. _____ N/A
- (c) the date of each such result:
- i. _____ N/A
- ii. _____ N/A
- iii. _____ N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____ N/A
- ii. _____ N/A
- iii. _____ N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____ N/A
- (b) _____ N/A

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: "GREAT SEALS, NOT AFFERED TO LAWS."
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL.
- (b) FAILURE TO INVESTIGATE.
- (c) GREAT SEALS, MISSING FROM THE LAW, APPLICANT IS SENTENCE UNDER UNCONSTITUTIONAL LAWS.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) UNCONSTITUTIONAL LAWS, NOT AFFERED WITH GREAT SEAL, of S.
- (b) 1993-94 Act No. 184 1995 Act No. 7 Bill 3151:
- (c) [MURDER] 16-3-10 AND [INVOLUNTARY MANSLAUGHTER] 16-3-60 SEE EXHIBITS. ATTEMPTED ARMED ROBBERY. 16-11-330(B)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
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. _____ N/A
- ii. _____
- iii. _____
- iv. _____ N/A
- (b) the name and location of the Court in which each was filed:
- i. _____ N/A
- ii. _____
- iii. _____ N/A
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

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

- i. _____
- ii. _____
- iii. _____
- 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?

N/A

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

N/A

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

- i. _____
- ii. _____
- iii. _____

N/A

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) _____ N/A
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____ ✓
 (b) your trial, if any? _____
 (c) your sentencing? _____
 (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? _____ N/A

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. GUILTY PLEA.

 ii. _____

 iii. _____

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

i. _____

 ii. _____

 iii. _____

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

VACATE SENTENCE / AND RELEASE.

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

No.

STATE OF SOUTH CAROLINA)

County of Richland.)

VERIFICATION

I, Douglas Burn Murphy Jr., 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.

Douglas Burn Murphy Jr.

SWORN to and subscribed before me this _____ day of _____.

Notary Public (L.S.)

My Commission Expires: _____

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

I, Douglas Burn Murphy Jr., 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.

Douglas Burn Murphy Jr.
Applicant

SWORN or affirmed to and subscribed before me this
4th day of October, 2018.

Kemolde Mitchell
Notary Public

My Commission Expires: May 23, 2028

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

DOUGLAS BURN MURPHY, JR. #376887
Applicant,

v.

STATE OF SOUTH CAROLINA
Respondent.

IN THE COURT OF COMMON PLEAS
5th JUDICIAL CIRCUIT

ADVISE Counsel
to Amend Purgant
to Rule 71.1(D) & (E)

The Applicant in addition to the grounds previously stated, sets
the following grounds for Post Conviction Relief.

NEWLY DISCOVERED EVIDENCE.

The Applicant received inadequate representation from the public defenders
office, from Attorney _____.

Counsel was informed of the unconstitutional laws by the Applicants mother
and the State and local news concerning the GREAT SEAL, missing from over
a hundred laws. Applicants mother provided the 1993 Act No. 184 and 1995
Act No. 7 from the Archives & History, of 8301 Parkland Rd., of Columbia,
S.C. 29223, to Attorney on the day of his guilty plea, and he gave copies
to the solicitor and judge, the Honorable Casey Manning, of Columbia, but
was ignored by the court and the guilty plea solicitor. This is **TRASON**,
[when ever the court **WARS** against the Constitution] an applicant without
valid laws.

Applicant was charged with [murder] and allowed to plea to [involuntary
manslaughter] and attempted armed robbery, in which both are invalid, and
(never) was affixed with the **GREAT SEAL OF SOUTH CAROLINA. BILL 3151: 1993-**
1994 Act No. 184.

RICHLAND COUNTY
FILED
2018 OCT 18 PM 12:09
JEANNETTE W. MCBRIDE
C.C.P. & C.S.

See: S.C. CONST. ART. III., §18

§ 18 Formalities of Act.

No Bill or Joint Resolutions have the force of law until it shall have been read three times and on three several days in each house, has had the (GREAT SEAL) of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives: provided, that either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by it's title only.

This renders counsel ineffective, and show the second part of Strickland v. Washington, which is prejudice and places Applicant false imprisonment since the day of his guilty plea.

Wherefore, Applicant prays that his sentence of twenty (20) years be set aside.


DOUGLAS BURN MURPHY, #376887

EXHIBITS.

1. S.C. CONST. ART. III., § 18 (§ 18 Formalities of Acts.)
2. "GREAT SEAL" 1974-1975 Op. Atty. Gen. 4013, Pg. 85.
3. GREAT SEAL
4. Pg. 4/108 1993-1994 Bill*3135:
5. Pg. 82/108 1993-1994 Bill*3135:
6. Pg. 13, 1993 Act No. 184
7. 1993 Act No. 184, Sec. 3, Section 16-1-60, Sec. 4, Section 16-11-330.
- 8.

S.C. CONST. ART. III., § 18**§ 18. Formalities of Act.**

No Bill or Joint Resolutions have the force of law until it shall have been read **THREE TIMES** and on **THREE SEVERAL DAYS** in each house, has had the (GREAT SEAL) of the State **AFFIXED** to it, and has been Signed by the President of the Senate and the Speaker of the House of Representatives: provided, that either branch of the General Assembly may provide by rule for a first and third reading of any bill or Joint Resolution by it's title only.

The **"GREAT SEAL"** of the State **(MUST)** be attached to an act before it can become effective, 1974-75.

Op. Atty. Gen. 4013, pg. 85.

GREAT SEAL.

The United States and also each of the States has and uses a SEAL, always carefully described by law, and sometimes officially called the ("**GREAT SEAL**") though in some instances known simply as "**THE SEAL OF THE UNITED STATES**", or "**THE SEAL OF THE STATE**".

(5) confine the serious offender so as to remove and restrain him from further criminal acts when the confinement is in the interest of the public protection;

(6) are understandable and clear to the offender, the victim, and the community; and

Whereas, incarceration, probation, and other forms of community supervision and fines are all recognized as punishment. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Part I

Categorization of felonies and misdemeanors

SECTION 1. Section 16-1-10 of the 1976 Code, as last amended by Act 412 of 1992, is further amended to read:

"Section 16-1-10. (A) Felonies are classified, for the purpose of sentencing, into the following six categories:

(1) Class A felonies

(2) Class B felonies

(3) Class C felonies

(4) Class D felonies

(5) Class E felonies

(6) Class F felonies

(B) Misdemeanors are classified, for the purpose of sentencing, into the following three categories:

(1) Class A misdemeanors

(2) Class B misdemeanors

(3) Class C misdemeanors

(C) All offenses with a term of imprisonment of less than one year are misdemeanors and exempt from the classification system.

(D) The following offenses are classified as exempt under subsections (A) and (B):

16-3-10 Murder

16-3-30 Killing by poison

16-3-40 Killing by stabbing or thrusting

16-3-85 Homicide by child abuse

(B)(1)

16-3-85 Aiding and abetting homicide by

(B)(2) child abuse

16-3-210 Lynching

16-3-430 Killing in a duel

16-3-620 Assault with intent to kill (if sentenced for the common law offense of assault and battery of a high and aggravated nature)

(D) A person who violates the provisions of subsection (C) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than two years, or both."

Fraudulent preparation of tax return

SECTION 158. Section 12-54-40(b)(6)(f)(2) of the 1976 Code is amended to read:

"(2) Wilfully assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under those provisions of law administered by the commission of a return, affidavit, claim, or other document, which is fraudulent, or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document is guilty of a felony and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than five years, or both, together with the cost of prosecution."

Manslaughter

SECTION 159. Section 16-3-50 of the 1976 Code is amended to read:

"Section 16-3-50. A person convicted of manslaughter, or the unlawful killing of another without malice, express or implied, must be imprisoned not more than thirty years or less than two years."

Involuntary manslaughter

SECTION 160. Section 16-3-60 of the 1976 Code is amended to read:

"Section 16-3-60. With regard to the crime of involuntary manslaughter, criminal negligence is defined as the reckless disregard of the safety of others. A person charged with the crime of involuntary manslaughter may be convicted only upon a showing of criminal negligence as defined in this section. A person convicted of involuntary manslaughter must be imprisoned not more than five years."

Administering poison

SECTION 161. Section 16-3-70 of the 1976 Code is amended to read:

"Section 16-3-70. (A) It is unlawful for a person to:

(1) maliciously administer to, attempt to administer to, aid or assist in administering to, or cause to be taken by, another person a poison or other destructive thing, with intent to kill that person; or

(2) counsel, aid, or abet a person under item (1) of this subsection.

(B) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years."

Tampering with food or drug product

SECTION 162. Section 16-3-75 of the 1976 Code is amended to read:

"Section 16-3-75. It is unlawful for a person to maliciously tamper with a human drug product or food item with the intent to do bodily harm to a person.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years."

Execution of warrants

SECTION 163. Section 16-5-40 of the 1976 Code is amended to read:

"Section 16-5-40. All sheriffs, constables, and other officers specially empowered shall obey and execute all warrants and other processes issued under the provisions of Sections 16-5-10, 16-5-20, or 16-5-50 and directed to them. If a sheriff, constable, or other officer specially empowered refuses to receive a warrant or other process when tendered to him or neglects or refuses to execute the same, he is guilty of a misdemeanor and, upon conviction, must be fined five hundred

- 44-53-375 (C)(2)(A) Second offense
Trafficking in ice, crank, crack
cocaine 28 grams or more, but less than
100 grams
- 44-53-475 (A)(1) First offense
Financial transactions involving
property derived from unlawful drug
activity
- 44-53-475 (A)(2) Transportation or attempt to
transfer monetary instruments derived
from unlawful drug activity
- 56-5-2945 Causing great bodily injury or death by
operating vehicle while under influence
of drugs or alcohol, death resulting
- (C) The following offenses are Class C felonies and
the maximum terms established for a Class C felony, as
set forth in Section 16-1-20(A), apply:
- 16-3-70 Administering or attempting to
administer poison
- 16-3-75 Unlawful and malicious tampering with
human drug product or food
- 16-3-220 Lynching in the second degree
- 16-3-620 Assault and battery with intent to kill
- 16-3-653 Criminal sexual conduct
Second degree
- 16-3-655(2) Criminal sexual conduct with minor -
victim 14 years of age or less, but who
is at least 11 years of age
Second degree
- 16-3-655(3) Criminal sexual conduct with minor -
victim less than 16 years of age, but
who is at least 14 years of age
Second degree
- 16-3-656 Assault with intent to commit criminal
sexual conduct
Second degree
- 16-3-658 Criminal sexual conduct where victim is
legal spouse (separated)
Second degree
- 16-3-810 Engaging child under 18 for sexual
performance
- 16-11-110(B) Arson - second degree
- 16-11-330(B) Attempted armed robbery
- 16-11-350 Train robbery by stopping train
- 16-11-360 Robbery after entry upon train

"Section 16-1-57. A person convicted of an offense for which the term of imprisonment is contingent upon the value of the property involved must, upon conviction for a third or subsequent offense, be punished as prescribed for a Class E felony."

Violent crimes defined

SECTION 3. Section 16-1-60 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

"Section 16-1-60. For purposes of definition under South Carolina law a violent crime includes the offenses of murder (Section 16-3-10); criminal sexual conduct in the first and second degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct with minors, first and second degree (Section 16-3-655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16-3-656); assault and battery with intent to kill (Section 16-3-620); kidnapping (Section 16-3-910); voluntary manslaughter (Section 16-3-50); armed robbery (Section 16-11-330); drug trafficking as defined in Sections 44-53-370(e) and 44-53-375(C); arson in the first degree (Section 16-11-110(A)); burglary in the first degree (Section 16-11-311); and burglary in the second degree (Section 16-11-312(B)), engaging a child for a sexual performance (Section 16-3-810); accessory before the fact to commit any of the above offenses (Section 16-1-40); and attempt to commit any of the above offenses (Section 16-1-80). Only those offenses specifically enumerated in this section are considered violent offenses."

Mandatory minimum terms

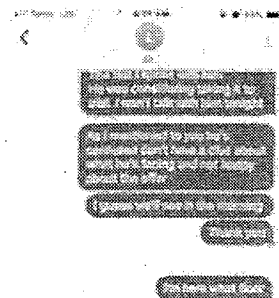
SECTION 4. Section 16-11-330 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

"Section 16-11-330. (A) A person convicted for the crime of robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon must be imprisoned for a mandatory minimum term of not less than ten years nor more than thirty years, no part of which may be suspended or probation granted. A person convicted under the provisions of this subsection is not eligible for parole until he has served at least seven years of his sentence.

(1) A person under the age of twenty-one sentenced under the provisions of Chapter 19 of Title 24 (Youthful Offenders Act) convicted of armed robbery shall receive and serve a minimum sentence of at least three years, no part of which may be suspended. The person is not eligible for parole or probation until he has served a three-year minimum sentence.

(2) A person between the ages of twenty-one and twenty-five, who is convicted of armed robbery, may not be sentenced under the provisions of Chapter 19 of Title 24 (Youthful Offenders Act).

Ex. 8.



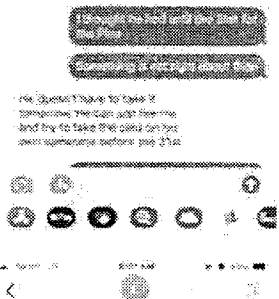
It will be in courtroom 3A on the
third floor after the probations
volunteers are done.

Douglas says he will take the
state witness's photograph.



If he takes the photo, it will be
taken regardless of what anyone
says. The choice of whether to
speak is yours. It can't help or
hurt.

Douglas will be in court in the
morning at 9:30. He will have an
opportunity to file me or take the
photo offer.



Most likely, it will be to begin with.

The chance to file the has been
lost and will likely be heard 7:30
or 8:00 a.m. (last night) when I
will for you know the date for
your when I hold out.

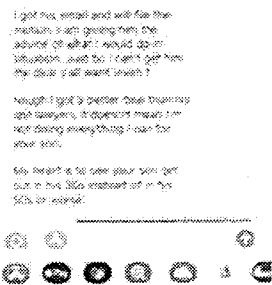
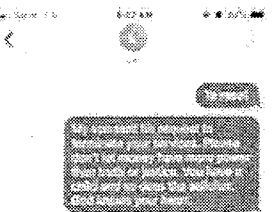
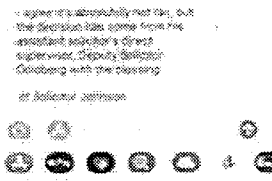
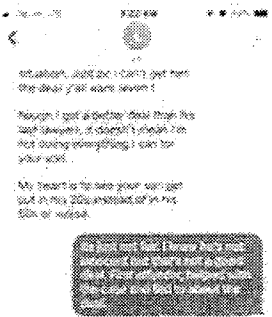
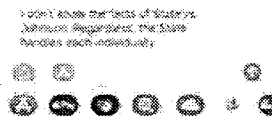
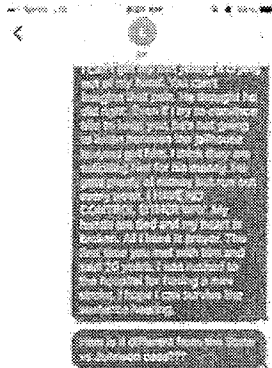
I just got a call from the assistant
attorney. She is going to meet
May that to accept the plea
offer, otherwise the offer will be
withdrawn and let.

For for murder will be June 20th.
She is going to send me a letter
with all that in writing. I'm going
to send her a copy of the offer
to be reviewed on.

4. Yes? I do. Please text me your
address.



Ex. C.



Ex. D.



Ok, just know that it will not make any difference if he shows up over the date for 16, your son will still meet twice as long as he stays after the 16

what that he did not put the trigger

I explained it's a choice of him getting out at the 16th or at the 20th. As I have told you well before, under "hand of 16" the range of all 16 shows up in

[REDACTED]

[REDACTED]

Disregard which record, is more with me or is it not?



If he sends me an email saying me that, and it's the one that is sent after to get the sentence down to 20 instead of 20-24, but that's only do me that

what

[REDACTED]

The doctor said me yesterday that is not allowed or sending to meet with you.

[REDACTED]

It was never 16, it changed from 20-24 to 20. The change is made by the



E. E.

Sprint LTE

8:00 AM

85%



Lir



Wed, Jun 20, 12:46 PM

He will be sentenced tomorrow
afternoon. Court will start at 2pm
in courtroom 2A

I would like to speak before the
judge make a decision. Thanks

You will have an opportunity to
say whatever you want in court,
but the judge doesn't have the
discretion to sentence him to
anything but 20 years

Ok

And this is for man slaughter and
not involuntary manslaughter
right?

Yes



Ex. f.

Today 12:45 PM

He will be sentenced tomorrow
afternoon. Court will start at 2pm
in courtroom 2A

You will have an opportunity to
say whatever you want in court,
but the judge doesn't have the
discretion to sentence him to
anything but 20 years

"We must live in the moment. It is all we really have. The past is gone and the future may never come if we spend all our time dwelling on yesterday or worrying about tomorrow. We lose all the joy and sweetness of today and block all the blessings."

~ Patti Labelle

Blount, Anita

From: Anita <anitablount.ab@gmail.com>
Sent: Friday, August 24, 2018 10:45 AM
To: Blount, Anita
Subject: Fwd: Douglas Murphy

*** THIS IS AN EXTERNAL E-MAIL. Use CAUTION when clicking on links as they could open malicious websites. *** (DLP2)

"We must live in the moment. It is all we really have. The past is gone and the future may never come if we spend all our time dwelling on yesterday or worrying about tomorrow. We lose all the joy and sweetness of today and block all the blessings."

~ Patti Labelle

Begin forwarded message:

From: Lir Derieg <lir@derieglaw.com>
Date: May 31, 2018 at 11:53:26 AM EDT
To: Anita <anitablount.ab@gmail.com>
Cc: Douglas <dmurphy124@yahoo.com>
Subject: Re: Douglas Murphy

The evidence mentioned yesterday was:

1. His first confession
2. His DNA on the money
3. His cell phone in the car
4. Statements from two different co-defendants
5. His second confession

He can file a notice of appeal within 10 days of his sentencing. If successful, all the appeal would do is vacate the guilty plea and start his case over, likely without a plea offer this time. So basically, if he wins an appeal (which is very unlikely), he would be going to trial for murder.

On Thu, May 31, 2018 at 11:15 AM, Anita <anitablount.ab@gmail.com> wrote:

Mr Derieg,

What happens if my son submits an appeal for the plea? The only evidence mentioned yesterday was the prints on the money.

Are there any other?

Anita Blount

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Douglas Burn Murphy, Jr., # 376887,	)	Case No.: 2018-CP-40-5508
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on October 18, 2018, 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 May 2016, the Richland County Grand Jury indicted Applicant for one count of murder (2016-GS-40-2424). Applicant was subsequently indicted at the July term of the Richland County Grand Jury for one count of attempted armed robbery (2016-GS-40-2445). Lir P. Dirieg, Esquire, represented Applicant. Assistant Solicitor Kathryn Cavanaugh, Esquire, prosecuted the case on behalf of the State. On May 30, 2018, Applicant pleaded guilty to the lesser-included offense of voluntary manslaughter and as indicted to attempted armed robbery before the Honorable L. Casey Manning. Pursuant to a negotiated sentence, Judge Manning sentenced Applicant to imprisonment for concurrent terms of twenty years each. Applicant did not appeal his conviction or sentence.

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, and the 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. Failure to investigate
2. “Great Seals not affixed to laws”
 - a. “Applicant is sentence[d] under unconstitutional laws.”

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

decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show 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’s assertion he is being held in custody unlawfully as a result of unconstitutional laws, such that he should be entitled to vacation of his sentences and be released, is without merit. Specifically, Applicant alleges there is no visible impression of the Great Seal on the following Acts enacting the laws under which he was convicted: “1993-94 Act No. 184,” “1995 Act No. 7,” “Bill 3151.”

The South Carolina Supreme Court has held absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. Smith v. Jennings, 67 S.C. 324, 45 S.E. 821, 824 (1903). Furthermore, under the enrolled bill rule, an act is deemed to be properly passed when it has been ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of Secretary of State. Medical Soc. of South Carolina v.

Medical Univ. of South Carolina, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); Beaufort County v. Jasper County, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); State v. Town Council of Chester, 39 S.C. 307, 17 S.E. 752, 755 (1893) (“when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable). Similarly, other jurisdictions have also upheld acts challenged as invalid because there was not strict compliance with a constitutional provision. See Taylor v. Wilson, 22 N.W. 119 (Neb. 1885) (citing Cottrell v. State, 1 N.W. 1008 (Neb. 1879)) (finding an act was not unconstitutional when the president of the senate did not sign it as required by the state’s constitution); Commr’s of Leavenworth Co. v. Higginbotham, 17 Kan. 62 (Kan. 1876) (“[T]he mere failure of the president of the senate to do his duty cannot have the effect to invalidate the law.”).

Additionally, the South Carolina Supreme Court has upheld the appointment of an officer whose commission lacked the Great Seal as required by law. State v. Toomer, 7 Rich. 216, 229, 41 S.C.L. 216, 229 (1854). The Court explained if the State excused the delinquency of the officer and cured the defects, then the title has related back to the time of the election. Id. Moreover, section 2-7-45 of the South Carolina 1976 Code states:

The Code of Laws of South Carolina, 1976, which contains the permanent laws of general application through the 1975 session of the General Assembly and which was presented to the members of the General Assembly during the 1977 session is hereby adopted as the Code of Laws of South Carolina, 1976, and is declared to be the only general statutory law of the State as of January 1, 1976.

The South Carolina Supreme Court has held codification of an act will cure a constitutional defect, and is part of the general statutory law of the State. South Carolina Tax Comm’n v. York Elec. Co-op., Inc., 275 S.C. 326, 333, 270 S.E.2d 626, 629-30 (1980). The Acts Applicant currently

challenges had substantial compliance with the requirements and were codified into the 1976 Code. Therefore, these laws are enforceable, and Applicant's allegation lacks merit.

Furthermore, in South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. State v. Rice, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). This evidence was discoverable prior to the entry of the plea. By entering a guilty plea, Applicant waived his right to present any and all defenses that he may have had, and he cannot raise them now.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make a showing he is entitled to relief based on the information set forth above and, therefore, he is not entitled to an evidentiary hearing on this issue. Accordingly, this allegation must be summarily dismissed with prejudice.

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.

VI.

Respondent also hereby moves for a more definite statement regarding Applicant's allegation he received ineffective assistance of counsel due to Counsel's failure to investigate. Applicant has failed to set forth facts to "support each ground" or to explain with any specificity whatsoever the facts upon which this claims is based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

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

IX.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel for failure to investigate, and Applicant allegation he was sentenced under unconstitutional laws because the enacting legislation was not affixed with the Great Seal be dismissed as a matter of law.

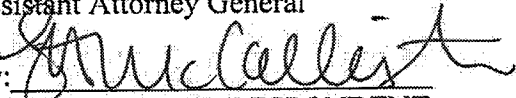
Respectfully submitted,

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
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

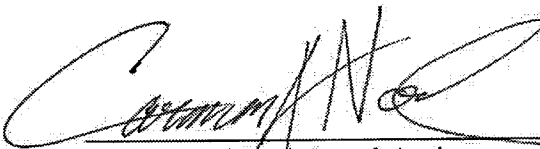
12/21, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2018-CP-40-5508
	)	
DOUGLAS MURPHY, #376887	)	
	)	
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
Waller Law Group, LLC
1116 Blanding Street
Suite 2B
Columbia, SC 29201

DATED this the 21st day of December, 2018.


Carmen A. Nord, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2018-CP-40-05508
	)	
	)	
	)	
DOUGLAS B. MURPHY	)	
	)	ORIGINAL
	)	
	)	
	)	
APPLICANT)	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA	)	
	)	
RESPONDENT)	)	

October 28, 2020
Columbia, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., Judge.

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

JONATHAN D. WALLER, ESQ.
Attorney for the Applicant

SAMUEL L. KEY, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2018-CP-40-05508
	)	
	)	
DOUGLAS B. MURPHY	)	
	)	APPLICANT)
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA	)	
	)	RESPONDENT)

October 28, 2020
Columbia, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., Judge.

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

JONATHAN D. WALLER, ESQ.
Attorney for the Applicant

SAMUEL L. KEY, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

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LIR DERIEG

Direct By Mr. Key 21
 Cross By Mr. Waller 26

» > ○ < «

Certificate of Reporter 40

APPLICANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Email dated May 31, 2018	34	34

1 (WHEREUPON, the following proceedings were held
2 via WebEx.)

3 COURT REPORTER'S NOTE: Due to remote platform
4 interruption and video/audio interference throughout the
5 hearing, those instances are denoted with [audio
6 distortion] in the transcript.

7 THE COURT: All right, let's go on the record.
8 Looks like everybody is here, is everybody ready?
9 All right, this is in the interest of Douglas Murphy
10 vs. State of South Carolina, 2018-CP-40-5548. The
11 Applicant is present. He is represented by
12 Mr. Jonathan Waller. The witness, Mr. Derieg, is
13 also here. And also I have Mr. Derieg representing
14 The State and Mr. Key. All right, I think we got
15 everybody.

16 Okay, Mr. Waller, you ready to proceed?

17 MR. WALLER: Judge, I'm ready to proceed. After
18 talking to my client last week I would like to put on
19 the record an objection to the hearing taking place
20 on the WebEx. I certainly understand the Chief
21 Justice's order but I did want to put that on the
22 record. I just don't think these work as well as in
23 person. But as long as that is on the record, I'm
24 ready to proceed.

25 THE COURT: All right, motion is noted.

1 Anything you'd like to add, Mr. Davidson?

2 Mr. Key, you're going to handle it? Mr. Key,
3 any objection?

4 MR. KEY: Yes, sir, Your Honor. The Chief
5 Justice has ordered for order -- order or memorandum
6 states that the hearings can be held over WebEx if
7 the Judge decides that that's necessary and consent
8 of the parties is not required.

9 THE COURT: All right. Okay, we'll go ahead and
10 proceed. All right, thank you. All right, you ready
11 to go forward?

12 MR. KEY: Yes, sir, Your Honor.

13 THE COURT: All right, call your first witness.

14 MR. KEY: Sir?

15 THE COURT: Can you hear me? Wait a minute.

16 THE LAW CLERK: I think I fixed the echo. The
17 correctional officer's microphone was echoing back
18 what you were saying. I muted it until they're ready
19 to talk though.

20 THE COURT REPORTER: Thank you.

21 THE COURT: All right. Okay. Y'all ready to
22 call your first witness?

23 MR. WALLER: Yes, sir, Your Honor, typically,
24 Mr. Key would call the case and give the procedural
25 background but I will proceed anyway.

1 THE COURT: I'll go that way.

2 Go ahead, Mr. Key.

3 MR. KEY: Okay. May it please the Court, this
4 is Douglas Murphy vs. State of South Carolina, case
5 No. 2018-CP-40-5508. Mr. Murphy commits this PCR
6 action on October 18, 2018. He is presently confined
7 in the South Carolina Department of Corrections,
8 pursuant to Orders of Commitment of the Richland
9 County Clerk of Court. In May 2016, the Richland
10 County Grand Jury indicted him for one count of
11 murder. He was subsequently indicted at the July
12 term that year by the Richland County Grand Jury for
13 one count of attempted armed robbery. He was
14 represented by Lir P. Derieg, and assistant solicitor
15 Katherine Cavanagh [ph] prosecuted the case.

16 On May 30th, 2018, he pled guilty to the lesser
17 included offense of voluntary manslaughter and as
18 indicted to attempted armed robbery before Judge
19 Casey Manning. He pleaded guilty with a negotiated
20 sentence. Judge Manning accepted the guilty plea and
21 sentenced him as negotiated, concurrent, terms of 20
22 years for each. He did not appeal his conviction or
23 sentence. In his original PCR Application, he
24 alleged two grounds. Ineffective assistance of
25 counsel for failure to investigate. Then he also

1 alleged the great seal was not affixed to the law.
2 And that he was sentenced under unconstitutional law.

3 Mr. Waller has filed an amendment to the PCR
4 application. And in the amendment he alleges counsel
5 was ineffective for failure to properly investigate
6 the facts and circumstances of the case, rendering
7 Applicant's plea unknowingly and voluntarily.
8 Counsel was ineffective for failing to conduct an
9 adequate amount of meetings with Applicant to review
10 discovery. And counsel was ineffective for failing
11 to file a notice of appeal when specifically asked to
12 do so. He is present today with his attorney,
13 Mr. Jonathan Waller. The State would just ask
14 Mr. Waller to specify what allegations he's going
15 forward on.

16 THE COURT: All right.

17 Yes, sir, Mr. Waller.

18 MR. WALLER: Thank you, Your Honor, may it
19 please the Court. Judge, I don't intend to get into
20 any of the allegations regarding the great seal or
21 the law being unconstitutional. The only other
22 allegation that was in the original application was
23 failure to investigate. I believe, that's
24 encompassed in my amendment that was filed August
25 19th of 2019. So I think that covers the issues that

DOUGLAS MURPHY-DIRECT BY MR. WALLER

1 we will be proceeding forward on today.

2 THE COURT: All right.

3 State ready to go forward?

4 MR. KEY: Yes, sir, Your Honor.

5 THE COURT: All right, summons your first
6 witness; is it, Mr. Murphy?

7 MR. WALLER: It is, Your Honor, I call Douglas
8 Murphy.

9 THE COURT: Mr. Murphy, raise your right hand.

10 DOUGLAS MURPHY, after being duly
11 sworn{,} testified as follows:{F}

12 THE COURT: All right, you can put your hand
13 down.

14 Go ahead.

15 DIRECT EXAMINATION

16 BY MR. WALLER:

17 Q Good afternoon, Mr. Murphy, how are you today?

18 A I'm doing fine, how are you?

19 Q I'm doing well, thank you for asking.

20 Mr. Murphy, I want to take you back a few years now and
21 talk about when you were first arrested; do you recall
22 that?

23 A Yes, sir.

24 Q Okay. When you were arrested, what charges were
25 you first arrested for?

DOUGLAS MURPHY-DIRECT BY MR. WALLER

1 A Murder and attempted armed robbery.

2 Q Okay. Were you arrested for the murder first or
3 both at the same time?

4 A I believe both at the same time. Yeah, both at
5 the same.

6 Q Okay. When you were first arrested, how long
7 after you were arrested did you get an attorney?

8 A My first attorney I had, [audio distortion] I'm
9 not sure when she exactly came on to the case but I
10 believe I had [audio distortion] I'm not exactly sure.
11 But I'm not exactly sure.

12 Q That's okay. That's okay. At some point,
13 obviously, Mr. Derieg started representing you; is that
14 right?

15 A Yes, sir.

16 Q Okay. How did he come to represent you, was he
17 appointed or did you hire him? How did that happen?

18 A Like I said, my previous attorney, I believe she
19 was having to do something and he was appointed. I had
20 got a letter where he was appointed to me. So he came and
21 visited me, I believe, like a month or two months after
22 that.

23 Q Okay. Now, if you recall, and just ballpark it
24 for me, about how long before you ended up pleading guilty
25 did Mr. Derieg start to represent you?

DOUGLAS MURPHY-DIRECT BY MR. WALLER

1 A Can you repeat it, sir?

2 Q Sure. About how long before you pled did
3 Mr. Derieg start to represent you? It doesn't have to be
4 an exact, just a ballpark idea.

5 A I would say, I believe, three -- three months
6 tops.

7 Q Okay. Okay. Now, did you -- did you have a
8 bond in this case?

9 A No, sir.

10 Q Okay. So you were in the detention center the
11 entire time?

12 A Yes, sir.

13 Q Okay. How many times do you think you and
14 Mr. Derieg met during the time he represented you?

15 A Twice.

16 Q Okay. If it's just two it would make it easier
17 for us to talk about. Do you remember what may have
18 happened at that first meeting?

19 A The first meeting I said he was basically
20 referring to the letter that I had received that he was
21 appointed to represent me and telling me that he reviewed
22 the paper work. So then said if I had any questions, go
23 ahead and ask him.

24 Q Okay.

25 A I believe he -- I believe he gave me a copy of

DOUGLAS MURPHY-DIRECT BY MR. WALLER

1 my transcript at that time. Or it was the second time.

2 Q Okay. Let me go back and clarify one thing.

3 Your first attorney represented you for three or four
4 months or Mr. Derieg only represented you for the last
5 three to four months?

6 A Mr. Derieg.

7 Q Okay. All right. That's just what I wanted to
8 confirm. All right. Okay. So when did you and
9 Mr. Derieg have a chance to go over the discovery in your
10 case?

11 A The second time. We didn't necessarily go over
12 the discovery, he just -- he was just showing me what all
13 the paperwork he had that he can look through. Let's see
14 what we had a few talks about certain ideas and stuff but
15 it wasn't anything too deep.

16 Q Okay. Had you had already been provided
17 discovery at that point by your previous lawyer?

18 A I was but I believe I sent [audio distortion] my
19 family had I requested another one.

20 Q Okay. All right. You were not the only person
21 charged with these crimes, were you? You had some
22 co-defendants?

23 A Yes, sir.

24 Q Okay. How many co-defendants did you have?

25 A Charged with the same charges I have or all

DOUGLAS MURPHY-DIRECT BY MR. WALLER

1 together?

2 Q All together.

3 A All together I would say about five, six.

4 Q Okay. There were four people charged almost
5 directly with the armed robbery and the murder; is that
6 right?

7 A Yes, sir.

8 Q Including yourself. Okay. And you and the --
9 you were not alleged to be the shooter, is that your
10 understanding?

11 A No, sir.

12 Q Okay. The allegations were that you and the
13 shooter actually approached the vehicle where the victim
14 was killed, is that your understanding?

15 A Yes, sir.

16 Q Okay. So there was a bunch of people charged
17 with and then the lesser number charges with the actual
18 armed robbery and murder. Then you and another individual
19 that were supposed to have approached the vehicle and that
20 someone else was the actual shooter, is that your
21 recollection?

22 A Yes, sir.

23 Q Okay. Did any of your co-defendants or yourself
24 give statements to law enforcement?

25 A Yes, sir, we did.

DOUGLAS MURPHY-DIRECT BY MR. WALLER

1 Q Okay. You turned yourself in; is that correct?

2 A Yes, sir.

3 Q Okay. Did you and Mr. Derieg have a chance to
4 talk about your statement or any of your co-defendants
5 statements?

6 A Yes, sir. I mean, I was notified about it.
7 Like I said, we had certain talks about it, like, I think,
8 I had a couple of questions about what was the whole
9 [audio distortion] and he gave me answers to those.

10 Q Okay. There was, obviously, some forensic
11 testing done in this case because someone was killed and
12 there was a bullet involved. Did you and Mr. Derieg have
13 a chance to discuss those issues?

14 A I had -- yes, I believe so.

15 Q Okay. There was DNA evidence, specifically your
16 DNA, on some money as well as your cell phone that ended
17 up in the victim's vehicle, did y'all have a chance to
18 discuss that?

19 A Yes, sir.

20 Q Okay. All right. At some point you were
21 unsatisfied with Mr. Derieg's representation of you; is
22 that right?

23 A Yes, sir.

24 Q Okay. You filed a motion for him to be relieved
25 as your counsel?

DOUGLAS MURPHY-DIRECT BY MR. WALLER

1 A Right.

2 Q Okay. What was the problem? What was going on
3 between you two?

4 A The lack of communication, I guess, we didn't
5 really, like I said, specific talks about my case because
6 it wasn't a question that I had pertaining to certain
7 things we didn't really discuss too much.

8 Q Okay. So unless you asked a question, all
9 didn't discuss other aspects of your case?

10 A Not really.

11 Q Okay. Okay. When you were speaking to the
12 Judge at the plea and the Judge asked you -- the Judge,
13 obviously, recognized that you had been dissatisfied at
14 some point but you told the Judge that you were satisfied
15 with the plea arrangement; is that your recollection?

16 A Yeah, yes, sir.

17 Q Okay. Was at that time you were satisfied or
18 now? Is your position still the same?

19 A I wasn't satisfied at the time but, I guess, I
20 was [audio distortion].

21 Q Okay. All right. Your plea was a negotiated
22 plea for 20 years. Did you and Mr. Derieg have a chance
23 to discuss what negotiated that?

24 A Yes, sir.

25 Q Okay. So you knew that no matter what you

DOUGLAS MURPHY-DIRECT BY MR. WALLER

1 couldn't get more than 20 years, you couldn't get less
2 than 20 years, y'all discussed that going into it?

3 A We discussed that before I went to sign the --
4 well, as I was signing the papers.

5 Q Okay. All right. After you pled guilty, did
6 you and Mr. Derieg have a chance to talk anymore? I know
7 your sentencing was later on. After the sentencing did
8 you have a chance to talk to him?

9 A The sentencing. See I had, I believe, I had, I
10 guess it was two sentencing court dates because, I guess,
11 the family wasn't there. So after the first one we --
12 when I got back to the county I -- he notified me that
13 we'll be going back again. I guess, for another one for
14 the family to show up because they wasn't there. And
15 that's the time I went up but after that it was -- no.

16 Q Okay. So the last time you went to court, when
17 the family was able to come, did you have a chance to talk
18 to him after that?

19 A Right after the court, yeah we said our piece.
20 And I believe that was the last time I saw him.

21 Q Okay. Did you and Mr. Derieg ever discuss
22 filing an appeal from your plea?

23 A Yeah, we discussed that while down at the court.

24 Q Okay. What was y'all's discussion like? What
25 did you say?

DOUGLAS MURPHY-DIRECT BY MR. WALLER

1 A At first I was naive to what an appeal was so I
2 was asking questions. And like I said, it was, basically,
3 just nothing. Really you don't need an appeal, you don't
4 have to do an appeal, just, you know, basically told me
5 [audio distortion] so that's why I said [audio
6 distortion].

7 Q Okay. Did you ask him to file an appeal for you
8 after you pled?

9 A I did. I -- when I -- me -- and like I said,
10 when we was at the court date, when I was trying to figure
11 out what it was, I did because, I believe, it was a 90 day
12 appeal. And the appeal [audio distortion] I asked for a
13 90 but I don't think -- because I never went back on that.
14 But I was denied PCR.

15 Q Okay. All right. You have, it's through me,
16 you've alleged a few things. You've alleged that
17 Mr. Derieg didn't properly investigate your case. What
18 investigation did you want him to do that he did not do?

19 A Well, first the great seal was one of the
20 statements me and my family were discussing. And it was
21 something, I believe, that needed to be discussed so that
22 way I can get a understanding of what was going on and, I
23 guess--

24 Q What about the actual -- I'm sorry to cut you
25 off. What about the actual facts surrounding your case

DOUGLAS MURPHY-DIRECT BY MR. WALLER

1 did you want him to investigate that you didn't think he
2 did?

3 A Well, the -- it was -- well, what I know now --
4 um, I'm not sure. I'm not, um. . .

5 Q All right. That's okay, Mr. Murphy. You
6 testified earlier that you and Mr. Derieg met two to three
7 times; is that correct?

8 A Yes, sir.

9 Q Okay. All right. Mr. Murphy, I don't think I
10 have any further questions for you. Is there anything
11 that you think I left out that the Judge needs to be aware
12 of of Mr. Derieg's representation of you?

13 A No, sir, I believe [audio distortion].

14 Q Well, I apologize, I do have one more question,
15 or a couple more questions I forgot to ask you. Did and
16 Mr. Derieg ever discuss going to trial?

17 A The trial was part of the appeal conversation.
18 It was, like I said, it was either more of a -- I don't
19 want to do something really [audio distortion] so I didn't
20 put any further thought to it. I thought that was the
21 best interest.

22 Q Okay. You testified that earlier that you were
23 influenced into pleading guilty. If that influence hadn't
24 taken place, would you have pled guilty or would you have
25 gone to trial?

DOUGLAS MURPHY-CROSS BY MR. KEY

1 A I would have for sure proceeded to trial.

2 Q Okay.

3 All right, Mr. Murphy, I don't have
4 anything further for you. Please answer any questions
5 that Mr. Key may have.

6 THE COURT: All right, Mr. Key.

7 Go ahead, Mr. Key.

8 MR. KEY: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. KEY:

11 Q Mr. Murphy, you said you were influenced into
12 pleading guilty, can you describe what influenced you?

13 A Conversation when I got -- when I was asking
14 questions about obtaining certain things it was more, nah,
15 you don't want to do it, this is not in your best interest
16 or I don't know that you should do that [audio
17 distortion].

18 Q Okay. And you were charged with murder and
19 attempted armed robbery; is that correct?

20 A Yes, sir.

21 Q Okay. Did Mr. Derieg explain to you the
22 sentencing exposure you faced in going to trial?

23 A Yes, sir.

24 Q Okay. And did Mr. Derieg explain to you the
25 number of years you were facing if you were convicted at

DOUGLAS MURPHY-CROSS BY MR. KEY

1 trial?

2 A The 20 years, it was brought up as [audio
3 distortion] I think the solicitor asked that and it was
4 something that he brought to me and it was something that
5 she stuck on to. We had a conversation like that.

6 Q Okay. So you knew you were pleading guilty to
7 the 20 years?

8 A Yes, sir.

9 Q Okay. Did you know if you could get more than
10 that if you had gone to trial?

11 A Did I [audio distortion].

12 Q Okay, we can move on. But you knew you were
13 pleading to the offer was for 20 years?

14 A Yes, sir, I knew.

15 Q Okay. And you met with Mr. Derieg two or three
16 times while you were in the detention center?

17 A Yes, sir.

18 Q Did y'all ever communicate any other way, by
19 phone or through letters or anything like that?

20 A We had a kiosk machine that we would send
21 messages through.

22 Q Okay. Had -- did you ever tell Mr. Derieg that
23 you wanted to go to trial?

24 A Um, like I said, when it was brought up after
25 that I didn't really press too much on the trial. Because

DOUGLAS MURPHY-CROSS BY MR. KEY

1 I didn't believe it is in my best interest so I didn't ask
2 him.

3 Q Okay. So why did you think it was not in your
4 best interest to go to trial?

5 A Because I was persuaded that 20 years was a good
6 plea for my situation or whatever.

7 Q Okay. When you said you asked Mr. Derieg to
8 file an appeal in this case, do you recall when you asked
9 him to do that?

10 A It was the first, I think, the first -- first --
11 like I said, when the family wasn't there. And like I
12 said, that's when I was notified 90 days for one appeal or
13 something. You know, I didn't really get a full
14 understanding, I guess. If it was a 90 day appeal or
15 something like that. And I was notified about a PCR.

16 Q Okay.

17 No further questions, Your Honor.

18 THE COURT: All right, Mr. Waller, anything on
19 redirect?

20 MR. WALLER: No, Your Honor, no redirect.

21 THE COURT: Okay. All right, you have other
22 witnesses, Mr. Waller?

23 MR. WALLER: Nothing further from the Applicant,
24 Your Honor.

25 THE COURT: All right.

LIR DERIEG-DIRECT BY MR. KEY

1 Okay, State, any motions, anything of that
2 nature?

3 MR. KEY: Your Honor, The State would just call
4 Lir Derieg.

5 THE COURT: All right.

6 Okay, Mr. Derieg, raise your right hand for me.

7 LIR DERIEG, after being duly sworn{,}testified
8 as follows:{F}

9 THE COURT: Okay, go ahead, Mr. Key.

10 DIRECT EXAMINATION

11 BY MR. KEY:

12 Q Mr. Derieg, how did you come to represent
13 Mr. Murphy?

14 A I was appointed to him in March of, I believe,
15 2018. I was -- I was stepping in for another 608 contract
16 attorney that had left private practice and gone back to
17 the solicitor's office that was actually prosecuting
18 Mr. Murphy.

19 Q Okay.

20 A I came in very late in the process.

21 Q Okay. Did you get the defense file and things
22 of that nature from his previous attorney?

23 A I did. I went to the solicitor's office and she
24 gave me her file, then the solicitor's office sent me
25 their discovery as well.

LIR DERIEG-DIRECT BY MR. KEY

1 Q Okay. And do you recall how many times you met
2 with Mr. Murphy?

3 A At the jail itself, probably two or three times.
4 There were multiple meetings down in the holding cell of
5 the courthouse, particularly, surrounding when I got the
6 appointment in March. And in May he asked me to file a
7 motion to be relieved. So he was brought over to the
8 courthouse a couple of times for that and we met down
9 there in the holding area as well. As well as he
10 mentioned that there was a email kiosk there that the jail
11 uses. We had dozens and dozens of emails. I went back to
12 see if I could pull them up but that system doesn't keep
13 records for that long. And I know that every time I sent
14 an email and every time he sent me an email, it cost me, I
15 believe, \$.50. So I spent, I don't know, upwards of 20,
16 \$30.00 just on emails back and forth between he and I.

17 Q Okay. Did -- did you have a chance to discuss
18 the discovery in the case with Mr. Murphy?

19 A I did. And it's -- I know that he had already
20 gotten the discovery, he discussed the discovery with his
21 previous attorney. I actually talked to her about that to
22 see what she thought of things. I went through the
23 discovery and then he and I talked. It was a fairly,
24 fairly cut and dry. And he -- and prior to my
25 representation, not only had he confessed to law

LIR DERIEG-DIRECT BY MR. KEY

1 enforcement but for, roughly, a year or more his previous
2 attorney had been offering his cooperation in the
3 prosecution of his co-defendant. Who I believe was,
4 ultimately, the killer. So yeah, we talked about all of
5 that.

6 Q Okay. Did -- did Mr. Murphy ever indicate that
7 he didn't understand anything?

8 A Until his parents brought up the great seal and
9 unconstitutionality of the manslaughter that he was
10 pleading to, no.

11 Q Okay. Did you discuss with Mr. Murphy his right
12 to file an appeal?

13 A I did. And the Judge that took his plea also
14 discussed that with him during the appeal or during the
15 plea.

16 Q And did Mr. Murphy ever ask you to file an
17 appeal in this case?

18 A He did not. A couple two to three -- the last
19 that I spoke to him face-to-face, was he was sitting in
20 the jury box after having been sentenced. We did discuss
21 the appeal. I told him that I believed that it would be a
22 waste of his time but he could certainly do it if he
23 wanted to. I also explained the consequences of winning
24 the appeal would mean that his case would get reopened and
25 he would be subject to another charge of murder where he

LIR DERIEG-DIRECT BY MR. KEY

1 would be facing 30 to life. Because originally with his
2 original attorney, the original plea offer was the
3 negotiated range of 20 to 30. She was able to get the
4 negotiated range down from 20 to 25. And then when I came
5 in I was able to get the solicitor to agree to just a
6 negotiated 20.

7 So I explained to him that if he filed an
8 appeal and he was actually successful on that, then all
9 those efforts on his behalf to get him away from 30 to
10 life and a guaranteed 20 would all go away. And I told
11 him to let me know whether or not he wanted to do that.
12 The only indication that I got that he wanted to do that
13 was, roughly, two to three weeks after the sentencing, I
14 got a text message from his mother telling me that she
15 wanted me to appeal the case.

16 Q And that was two to three weeks after?

17 A That's correct.

18 Q Okay. So that would not have been within the 10
19 days?

20 A No and it wasn't him saying it.

21 Q Okay. Did you explain to Mr. Murphy his right
22 to a jury trial?

23 A I mean, very, very little. I mean, we talked
24 about the fact that -- and like he has repeatedly said, we
25 talked about the fact that a trial would not be in his

LIR DERIEG-DIRECT BY MR. KEY

1 best interest. As his DNA and his cell phone were found
2 in the car of the guy that they set up. He had confessed
3 to law enforcement, he had been offering his cooperation
4 for more than a year. I believe maybe almost two years at
5 this point. And yeah very, very quickly, probably in the
6 first 15 to 20 minutes of our first meeting it was agreed
7 upon that a trial was definitely not in his best interest.

8 Q Okay. Did he ever tell you that he wanted to go
9 to trial?

10 A No.

11 Q Okay. Do you know if he actually cooperated
12 with law enforcement? Or in his co-defendant's trial?

13 A They didn't end up having a trial. From my
14 recollection they didn't have a trial, they ended up
15 taking a guilty plea, if I understand correctly. I know
16 his co-defendant got 34 years. I don't -- I believe that
17 was through a plea. I'm unaware of any trial because when
18 I first represented -- when I first started representing
19 him, his co-defendant hadn't been resolved yet and we were
20 still talking about him. Trying to help out. And, in
21 fact, one of the ways that I was able to get his
22 negotiated range down to just a definite negotiated 20 was
23 because of the cooperation that he had offered and I
24 didn't think that he was being treated fairly by the
25 solicitor's office and I certainly didn't think that the

LIR DERIEG-CROSS BY MR. WALLER

1 former solicitor there, Ben Johnson, was doing a very good
2 job of giving credit to people who were willing to
3 cooperate. So I have many emails with Solicitor Cavanagh
4 to that effect and eventually she was willing to come from
5 the range of 20 to 25 down to [audio distortion]. That
6 was the best that I could get.

7 Q Okay. Did you explain to Mr. Murphy that if you
8 were convicted at trial his sentencing exposure 30 to life
9 for murder to that effect?

10 A I'm sure we talked about that when I said in
11 that first 15, 20 minute conversation we had and we agreed
12 the trial wasn't in his best interest. I'm sure the 30 to
13 life was addressed.

14 Q Okay.

15 Your Honor, I don't believe I have any
16 further questions.

17 THE COURT: All right.

18 Cross-examination, Mr. Waller.

19 MR. WALLER: Thank you, Your Honor, just
20 briefly.

21 CROSS-EXAMINATION

22 BY MR. WALLER:

23 Q Mr. Derieg, you testified that Murphy discussed
24 an appeal and then you heard from his mother two to three
25 weeks later, was that after the plea or after the

LIR DERIEG-CROSS BY MR. WALLER

1 sentencing?

2 A After the sentencing. After the plea, I
3 continued to get messages from his mother about wanting me
4 at the sentencing hearing for negotiated sentence. She
5 wanted me to bring up this stuff about the great seal not
6 affixed to the law. That they had gone to the state house
7 and gotten a copy of. Between the plea and then the
8 sentencing, the only conversations that I recall that I
9 had with anybody was with his mother. And that was
10 specifically regarding the great seal in which I refused
11 to make any sort of motion. Well no, I take that back, I
12 think I actually did bring it up because the Judge -- I
13 told the Judge that I wasn't making the argument but that
14 my client and his family had a issue with the great seal
15 and I'm not sure the Judge even addressed that. But I did
16 briefly mention it, if I recall correctly.

17 Q Okay. There was approximately three and a half
18 weeks between his plea and sentencing. During that time
19 did Mr. Murphy or his family, specifically, request that
20 you file an appeal for him?

21 A Not that I recall.

22 Q Okay. Did you have a chance to speak with
23 Mr. Murphy? I know you testified that you talked to him
24 in the jury box after he had pled, did you have a chance
25 to speak with him in the days -- the days after he was

LIR DERIEG-CROSS BY MR. WALLER

1 sentenced?

2 A I did not.

3 Q Okay. Do you know was he taken to -- was he
4 taken to Kirkland, do you know what the process was,
5 specifically, to him as to when he ended up in SCDC?

6 A Do I have actual knowledge? No, I don't. I can
7 assume based on the way that things have run, typically,
8 where they end up going to R&E and spend, I don't know, 30
9 or 45 days at R&E and then get out and classified and
10 housed somewhere. But in terms of the specific dates and
11 process and that sort of thing, no, I have no idea.

12 Q Okay. I apologize, I asked a poor question
13 there. What I was trying to get at, did you have a chance
14 to -- did you hear anything from Mr. Murphy in the 10 days
15 following his sentencing?

16 A I did not.

17 Q Okay. Mr. Murphy filed or requested that you
18 file a motion for you to be relieved as his counsel, what
19 led to that?

20 A If I recall correctly it was -- one, he wasn't
21 happy with the with plea offer that I had negotiated down
22 for him. I think that -- at some point early on when he
23 was represented by his previous attorney, there was some
24 discussion about 10 to 15 years. I think that's the plea
25 she was trying to get for him. And from the day that I

LIR DERIEG-CROSS BY MR. WALLER

1 represented him, which wasn't very long, it was,
2 essentially, from March until June, I was instructed to
3 get that 10, 15 year plea offer. And when I wasn't able
4 to do that and told him that 20 years negotiated was the
5 best that I was able to do, our relationship deteriorated
6 from there. I know that some of that had to deal with my
7 communications with his mother. I mean, if anybody was
8 talking about wanting to go to trial it would have been
9 her. He never indicated to me that he wanted to. But she
10 was very adamant that her child was being treated
11 unfairly. And, frankly, just wouldn't recognize her son's
12 involvement in, essentially, setting up a drug dealer and
13 then murdering him and robbing him.

14 Q Did Mr. Murphy request any specific information
15 he wanted you to investigate?

16 A No. It was all about getting him the 10 to 15
17 year plea offer.

18 MR. WALLER: Judge, beg the Court's indulgence,
19 this would, typically, be where I would, you know,
20 walk back and ask my client if he had anything he
21 wanted to add. What we have done in the past, I've
22 called the facility. I don't know if Mr. Murphy has
23 anything he wants to share with me privately but I
24 would ask if I can get him to acknowledge, into the
25 camera, whether he does or does not want me to do

LIR DERIEG-CROSS BY MR. WALLER

1 that. I would just ask to be able to [audio
2 distortion] if he wishes to before I conclude my
3 cross-examination.

4 THE LAW CLERK: Mr. Waller, if you would like, I
5 can get y'all into a breakout room together, separate
6 from the rest of us.

7 MR. WALLER: That would be fantastic. As of
8 last week I did not think that existed yet. So that
9 would be fantastic.

10 THE LAW CLERK: With the virtual courtroom we're
11 able to.

12 THE COURT: You want to do it, Seth?

13 THE LAW CLERK: Yes, sir.

14 THE COURT: Everybody okay with that?

15 MR. KEY: Yes, sir.

16 MR. WALLER: Very briefly, Your Honor, thank
17 you.

18 THE COURT: All right.

19 MR. WALLER: Mr. Murphy, can you hear me?

20 THE LAW CLERK: I'm still working on it,
21 Mr. Waller, I'll let you know.

22 MR. WALLER: Okay, got you. Thank you, sorry.

23 THE LAW CLERK: No, you're good.

24 (WHEREUPON, an off-the-record discussion was
25 held between Mr. Murphy and Mr. Waller.)

LIR DERIEG-CROSS BY MR. WALLER

1 THE COURT: Okay, we're back on the record,
2 Mr. Waller.

3 MR. WALLER: Thank you, Your Honor, just
4 briefly.

5 BY MR. WALLER:

6 Q Mr. Derieg, you mentioned having emails and
7 other messages from Mr. Murphy's family after his plea, do
8 you have a copy of the package in this case where you
9 provided that?

10 A I do not.

11 Q All right.

12 A I don't recall that. And [audio distortion]
13 there was a message from his mom afterwards. Like I said,
14 roughly, two weeks afterwards that she wanted me to file
15 an appeal for him. I definitely don't think I had those
16 [audio distortion] two year old case [audio distortion].

17 Q Let's see, how do I do this.

18 Judge, there was an email attached as well
19 as some text messages attached to the back of Mr. Murphy's
20 application, the email is most pertinent. I have that --
21 I have that pulled out. I'm not sure exactly how I'm able
22 to show it to Mr. Derieg. I was under the impression that
23 he had been provided a copy of the packet or I would have
24 sent it to him in advance. I don't know if anyone [audio
25 distortion] or I can share my screen and do it.

LIR DERIEG-CROSS BY MR. WALLER

1 THE COURT: Why don't you try doing that.

2 MR. WALLER: I'm not -- that's -- I'm not
3 exactly sure how do it, Judge.

4 THE LAW CLERK: If you go up to the toolbar at
5 the top, the third one says, Share. You can just
6 share my screen or you can do control alt D.

7 THE COURT: Let me ask you this, I've got a copy
8 of the emails.

9 And Seth, would you put them up for him? From
10 where you are, can you do that?

11 THE LAW CLERK: I can.

12 THE COURT: You want him to do that, Mr. Waller?

13 MR. WALLER: Yes, sir, it's just one, Judge. I
14 just want to -- it's filed, I'm just trying to, I
15 guess, you know, lay a foundation and offer it into
16 evidence. I don't know even know if there's an
17 objection to it.

18 MR. KEY: Is that the last Exhibit G on his PCR
19 Application?

20 MR. WALLER: Yes, the very last page.

21 MR. KEY: Okay.

22 THE LAW CLERK: So is that without objection
23 that I'm putting the stuff on the screen?

24 MR. KEY: Yes, that's without objection.

25 THE LAW CLERK: Okay.

LIR DERIEG-CROSS BY MR. WALLER

1 THE COURT: Do you have a copy of it, Seth?

2 THE LAW CLERK: I do, I'm about to pull it up.

3 THE COURT: Okay. Because I got it right here.

4 MR. WALLER: Judge, if it's without objection I
5 don't even need to ask anything about it. It was
6 attached, it wasn't -- there was no motion no strike
7 or anything like that but I did want to -- if it's
8 without objection then I don't have any questions
9 [audio distortion] about it. I don't have any
10 further questions either, Your Honor.

11 THE COURT: Okay.

12 THE LAW CLERK: What's the date on that email?

13 THE COURT: August 24, 2018, looks like.

14 THE LAW CLERK: And his plea was in June?

15 MR. WALLER: Excuse me, that's the forwarded
16 email, the actual --

17 THE COURT REPORTER: Excuse me, Judge.

18 THE COURT: Yes.

19 THE COURT REPORTER: I can't tell who is
20 speaking when this is on the screen, so if you could
21 identify yourself so I can get that, I'd appreciate
22 it.

23 THE COURT: Thank you, okay.

24 The date on the email, is it May 31st, 2018? Is
25 that the date that you reference?

LIR DERIEG-CROSS BY MR. WALLER

1 MR. WALLER: Jonathan Waller, yes, Your Honor,
2 that's correct.

3 MR. DERIEG: Lir Derieg. So this was an email,
4 I guess, I sent to his mother prior to the plea
5 where, yeah, I fully explained to them what would
6 happen if he had an appeal. Yeah, this was what --
7 his plea was June 20 something, I believe. And this
8 would have been--

9 MR. WALLER: Judge, I don't have any further
10 questions of Mr. Derieg.

11 THE COURT: Okay. All right. Okay.

12 This is admitted without objection; is that
13 correct, on both sides? Any objection?

14 (WHEREUPON, Applicant's Exhibit No. 1 was marked
15 for identification and received into evidence.)

16 MR. KEY: Yes, sir, Your Honor.

17 THE COURT: Okay. All right. Any other
18 witnesses, any other questions, Mr. Key?

19 MR. KEY: Just -- no sir, Your Honor, I think
20 that could just be argument.

21 THE COURT: All right, okay.

22 Anything else from either side? Is that it
23 pretty much?

24 MR. WALLER: That's it, Your Honor.

25 THE COURT: That's the Applicant's case? That's

1 that The State's case? I'll be glad to entertain
2 argument from both sides if you want to do at this
3 point.

4 MR. WALLER: Thank you, Your Honor, just
5 briefly. Judge, the testimony from Mr. Murphy was
6 that he was influenced into taking a plea and that he
7 had moved to have Mr. Derieg relived at some point
8 prior to that. Judge, I think it is -- it's clear
9 that he and his family were discussing and inquiring
10 about appealing the plea. And I would point out that
11 that email was sent the day after the plea, it was
12 prior to the sentencing, which is when the 10 days
13 would start to run. Judge, certainly, in a guilty
14 plea situation, counsel does not have a duty to file
15 an appeal unless something went wrong during the
16 hearing or if the Defendant requested that he do so.
17 So, Judge, I think, you know, there may not have been
18 a direct, in writing, actual request of please file
19 an appeal for me. However, the totality of the many
20 requests from he and his family inquiring about a
21 plea -- excuse me, inquiring about an appeal,
22 continuously asking about it I think -- I think that
23 would have risen to the level where Mr. Derieg should
24 have filed an appeal or notice of appeal for
25 Mr. Murphy.

1 Judge, Mr. Murphy testified that he would have
2 gone to trial if he had not been influenced. So I
3 think that certainly that is the standard is that
4 he's alleged and the evidence has shown that there
5 was lack of investigation on Mr. Derieg's part. And
6 absent that Mr. Murphy would have proceeded to trial.
7 Which is the standard that is required in
8 post-conviction relief. I would ask you to consider
9 those things. Please review the application as well
10 as the package that you have, including the email
11 that was admitted as Applicant's No. 1, prior to
12 reaching your decision.

13 THE COURT: All right.

14 Mr. Key.

15 MR. KEY: Yes, sir, Your Honor. As far as the
16 amount of times they met, both Mr. Derieg and
17 Mr. Murphy testified that they met two to three times
18 at the detention center, that does not mean that they
19 did not have communication with each. Both testified
20 that they were able to send emails back and forth to
21 each other. Mr. Murphy was aware of the discovery in
22 his case, he was aware of the forensics of his DNA
23 being found on the money and the car. And from the
24 testimony it sounds like that they had communication
25 back and forth with each other up until to the point

1 where Mr. Murphy -- until Mr. Murphy wanted
2 Mr. Derieg to be relieved. But Mr. Derieg was not
3 relieved. And as Mr. Derieg testified, to him it
4 seemed like Mr. Murphy never wanted to go trial, he
5 was cooperating with The State, he was going to
6 cooperate with The State against his co-defendant.
7 His co-defendant ended up pleading guilty and so he
8 didn't have the opportunity to, I guess, testify at
9 trial for The State against his co-defendant.

10 He still -- he got the 20 year negotiated offer
11 that he knew about. He -- Mr. Murphy testified that
12 he was influenced to plead guilty because going to
13 trial did not seem like a good idea. Counsel's not
14 ineffective for influencing someone to plead guilty.
15 Counsel has the duty to explain the exposure that the
16 Applicant would face going to trial. He has a duty
17 of explaining the benefits and the negatives of
18 accepting a plea or going to trial. From the
19 testimony today it seems like Mr. Murphy was aware of
20 all of the plea offers and the best plea offer and
21 that that was the best Mr. Derieg could do. And then
22 Mr. Murphy ended up making the decision to plead and
23 take the 20 years instead of risking his exposure at
24 trial.

25 The -- Mr. Murphy was definitely aware of his

1 right to appeal, from everything we've heard today.
2 The question is whether he actually asked Mr. Derieg
3 to file the appeal. I'm looking at the Exhibit G of
4 his PCR Application and the first message says, What
5 happens if my son submits an appeal for the plea?

6 Well, Mr. Derieg responds to that May -- on May
7 31st 2018, and says, He can file a notice to appeal
8 within 10 days of his sentencing but if he's
9 successful it would vacate his guilty plea and he
10 would likely have to start his case over without the
11 plea offer.

12 So to me, that's Mr. Derieg explaining the
13 consequences of pursuing an appeal, just like
14 pursuing a PCR, everything can come back, all the
15 charges can come back. There is -- Mr. Derieg says
16 the only thing he got about actually requesting an
17 appeal was three or four weeks after the sentencing
18 hearing, Mr. Murphy's mother texted him and asked him
19 about the appeal. At that time the 10 days had run.
20 And I take it from Mr. Derieg's reply in that email
21 that he did not think that Mr. Murphy wanted to or
22 should pursue an appeal because that would do away
23 with the negotiated guilty plea.

24 And, finally, on the investigation, Mr. Murphy
25 testified that he didn't ask Mr. Derieg to

1 investigate any witnesses, didn't ask him to do any
2 other investigation that had already been done. I
3 think Mr. Derieg was not deficient in his
4 investigation. And nothing further from the State.

5 THE COURT: All right, anything else from either
6 side?

7 Mr. Waller?

8 MR. WALLER: Nothing, Your Honor. I would like
9 to renew my objection that the hearing being held
10 WebEx but nothing further.

11 THE COURT: All right, the objection is noted on
12 the record and denied.

13 I'm going to ask both sides to -- I'm going to
14 take it under advisement, I need to look at the file
15 some more. And I'm going to ask you to submit a
16 proposed order within a 30 day window. Does that
17 give both sides an opportunity and enough time to do
18 that?

19 MR. WALLER: Yes, Your Honor.

20 THE COURT: You going to need more time,
21 Mr. Key?

22 MR. KEY: Well, Your Honor, I was going to add
23 next week is my last week at the Attorney General's
24 office.

25 THE COURT: Okay.

1 MR. KEY: It's my understanding that
2 Mr. Davidson will be taking over a majority of my
3 case load. If I do not have the proposed order done
4 by the end of next week -- I'll have it done by the
5 end of next week, how about that?

6 THE COURT: All right, that's fine. But I'm
7 still going to extend Mr. Waller the full 30 days.
8 So if you submit it, I will not review it until I
9 seen -- Mr. Waller, until I get yours, I'll review
10 them at the same time. Or you could -- Mr. Davidson
11 was on the entire time so I'm sure he's willing to
12 jump in and take over.

13 MR. KEY: That was the second option, Your
14 Honor.

15 THE COURT: All right. Okay. Okay. All right,
16 very well. Thank y'all. And if you need to
17 communicate, communicate with my law clerk, Seth, if
18 you need any additional time or anything comes up,
19 just give Seth a call, okay.

20 MR. KEY: Thank you, Your Honor.

21 MR. DERIEG: Thank you, Your Honor.

22 THE COURT: All right.

23 (WHEREUPON, the proceedings were concluded.)
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth 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 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
28th day of October, 2020.

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

May 19, 2021

APRIL P. HERRON, Court Reporter

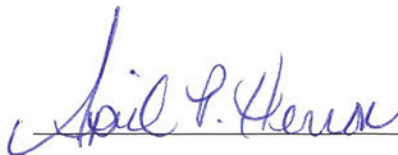
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May 19, 2021

A handwritten signature in blue ink, reading "April P. Herron", is written over a horizontal line.

APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Douglas B. Murphy, Jr., # 376887,)

2018-CP-40-5508

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent,)

RICHLAND COUNTY
FILED
2021 MAR -4 AM 10:24
CLERK OF COURT
C.C.P., G.S., & S.C.

This matter comes before the Court by way of an application for post-conviction relief filed by Douglas B. Murphy, Jr., (Applicant) on October 18, 2018, and amended August 19, 2019. A hearing convened via Cisco WebEx Virtual Platform on October 28, 2020, at which time Applicant was present and represented by Jonathan D. Waller, Esquire. Assistant Attorney General Samuel L. Key represented the State. At the hearing, Applicant testified on his own behalf. Respondent presented testimony from Lir P. Derieg, Esquire ("Plea Counsel").

This Court had the opportunity to listen to their testimony and rule on their credibility. This Court also had before it a copy of the plea transcript, the sentencing transcript, the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and pleadings in this matter. Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional violations and denies this application.

PROCEDURAL HISTORY

The records before this Court show Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of

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Court. In May 2016, the Richland County Grand Jury indicted Applicant for one count of murder (2016-GS-40-2424). Applicant was subsequently indicted at the July 2016 term of the Richland County Grand Jury for one count of attempted armed robbery (2016-GS-40-2445). Lir P. Dirieg, Esquire, represented Applicant. Assistant Solicitor Kathryn Cavanaugh, Esquire, prosecuted the case. On May 30, 2018, Applicant pleaded guilty to the lesser-included offense of voluntary manslaughter, and as indicted to attempted armed robbery before the Honorable L. Casey Manning. Pursuant to a negotiated sentence, Judge Manning sentenced Applicant to imprisonment for concurrent terms of twenty years for each offense. Applicant did not appeal his conviction or sentence.

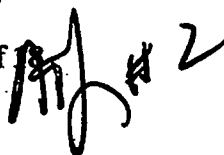
SUMMARY OF FACTS

Applicant, his co-defendant Trajan Mack, and two other co-defendants actively participated in planning the armed robbery and murder of eighteen-year-old Jaelen Josey (Victim). On February 29, 2016, Applicant and the shooter, Jose Reyes, approached Victim's vehicle in an attempt to recoup money and marijuana stolen from another co-defendant earlier that afternoon by an unrelated individual. The plan was to set up a fake drug transaction between Applicant and Victim, with the intention of robbing Victim. When they met up with Victim, Applicant gave Victim ten dollars for drugs, which was found in the vehicle, but then dropped his phone into Victim's car, which caused Jose Reyes to shoot Victim in the back. Victim died as a result of the gunshot wound. Plea Tr. 18-20.

ISSUES RAISED

Applicant alleged the following grounds in his application:

1. "Ineffective Assistance of Counsel"
 - a. "Failure to Investigate"
2. "Great Seals not affixed to laws"
 - a. "Applicant is sentence[d] under unconstitutional laws."



On August 19, 2019, Applicant amended his application through Counsel to make the following allegations:

1. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant, thus rendering Applicant's plea unknowingly and involuntarily entered into.
2. Counsel was ineffective for failing to conduct adequate amount of meeting with Applicant to review discovery so that Applicant would know of the allegations against him, thus rendering Applicant's plea unknowingly and involuntarily entered into.
3. Counsel was ineffective for failing to file a notice of appeal when specifically requested by both Applicant and his family

SUMMARY OF PCR TESTIMONY

Applicant's testimony

At the evidentiary hearing, Applicant testified he originally had a different lawyer than Plea Counsel and that Plea Counsel was appointed to represent him, ultimately leading up to his plea. Applicant testified Plea Counsel represented him for about three months before his plea and that Plea Counsel came to see Applicant in the detention center two or three times during those three months. Applicant testified he and Plea Counsel spoke about a letter Plea Counsel sent Applicant during their first meeting, and Plea Counsel told Applicant he was reviewing the paperwork and if Applicant had any questions, to let Plea Counsel know. Applicant testified Plea Counsel gave him a copy of the transcript, but acknowledged that could have been the second time they met. Applicant testified Plea Counsel did not go over discovery with Applicant, but he showed Applicant all of the papers he had and they "spoke about some ideas and stuff but it was

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not discovery.” Applicant testified he got discovery from his previous attorney, but asked for it again once Plea Counsel was appointed.

Applicant testified there were about five or six co-defendants and four were charged with armed robbery and murder, including himself. Applicant testified he was not alleged to be the shooter, but he and the shooter approached the car. Applicant testified he turned himself in. Applicant testified he and Plea Counsel were able to discuss the co-defendants’ statements, forensics, DNA evidence, specifically Applicant’s DNA and Applicant’s cell phone, which was in the victim’s vehicle. Applicant testified he wanted Plea Counsel to investigate Greg Seals, who was a witness. Applicant testified he was unsatisfied with Plea Counsel’s service at some point, which was why Applicant filed a motion for Plea Counsel to be relieved. Applicant explained he filed the motion due to of the lack of communication between him and Plea Counsel—specifically, that Plea Counsel would not talk to Applicant unless Applicant had questions.

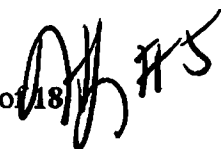
Applicant testified at the plea hearing, he told the judge he was satisfied with the plea arrangement and although he was not satisfied with Plea Counsel, he told the judge he was. Applicant acknowledged Plea Counsel discussed what negotiated sentence was and that Applicant knew he would get no more or no less than twenty years. Applicant testified after sentencing, they discussed what an appeal was in the courtroom, but Plea Counsel said he did not need one. Applicant testified after that conversation he told Plea Counsel he wanted an appeal. Applicant testified after the sentencing, he and Plea Counsel “said their peace” and that was the last conversation they had. Applicant testified the only time they discussed going to trial was part of the appeal conversation after the plea hearing, which Plea Counsel said “wouldn’t work out in Applicant’s favor.” Applicant testified this influenced him to plead guilty, and without that influence, he would have gone forward with a trial.

On cross examination, Applicant testified he was influenced to plead guilty because during conversations where Applicant asked questions and Plea Counsel dissuaded him, stating things like: "nah you shouldn't do it" or "that's not in your best interest". Applicant testified on cross that he knew the offer was for twenty years. Applicant testified he and Plea Counsel communicated in person, as well as via a kiosk machine that he and Plea Counsel would send messages through. Applicant testified on cross that he did not tell Plea Counsel he wanted to go to trial after their initial conversation because after that conversation he did not believe it was in his best interest. Applicant testified on cross he asked Plea Counsel to file an appeal after the first hearing when his family was not there because he was notified he had a ninety-day appeal window.

Plea Counsel's testimony

At the evidentiary hearing, Plea Counsel testified he was appointed very late in the process to represent Applicant in March 2018, after stepping in for another contract attorney who had left. Plea Counsel testified he got the solicitor's file and their discovery. Plea Counsel testified he met with Applicant at the jail two or three times and they had multiple meetings in the holding cell, particularly when Applicant filed a motion for Plea Counsel to be relieved in May. Plea Counsel also testified they spoke via the kiosk machine, which cost fifty-cents per message and explained he spent twenty to thirty dollars communicating with Applicant via the kiosk.

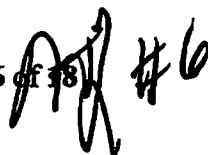
Plea Counsel testified he was aware Applicant had gotten discovery from Applicant's former attorney. Plea Counsel testified he and Applicant discussed the discovery and those conversations were pretty cut and dry. Plea Counsel testified Applicant seemed to understand everything. Plea Counsel testified he discussed the right to appeal with Applicant and that the judge explained during the plea colloquy, too. Plea Counsel explained he told Applicant pursuing an appeal would likely be a waste of time, but Applicant could if he wanted to. Counsel testified

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he explained the consequences of what would happen if Applicant was successful on appeal—that the plea deal that Plea Counsel negotiated down to twenty years would go away and Applicant could receive the maximum. Plea Counsel testified Applicant never asked him to file an appeal. Instead, Applicant's mother reached out via text message a few weeks after the plea, and well after the ten day deadline. Counsel clarified that Applicant never directly asked him to appeal.

Plea Counsel testified he and Applicant discussed very little about trial because Applicant was cooperating with law enforcement for the plea. Plea Counsel testified that within twenty to thirty minutes of their first meeting, all of their remaining conversations were focused on getting a better deal. Plea Counsel testified that Applicant's cooperation with law enforcement was key to Plea Counsel getting the solicitor to agree to twenty years, which was the best that he could get for Applicant. Plea Counsel testified that he was sure they spoke about Applicant's sentence exposure when he and Applicant discussed trial not being in Applicant's best interest.

On cross examination, Plea Counsel testified that after the plea, Applicant's mom texted him about the Great Seal issue that she wanted Plea Counsel to bring up, but Plea Counsel refused to do so. Plea Counsel testified on cross that he did not speak to Applicant between the three weeks that Applicant pleaded guilty and the date Applicant was sentenced. Plea Counsel testified on cross that he did not speak to Applicant in the three weeks between Applicant pleading guilty, and the date Applicant was sentenced. Plea Counsel testified on cross that Applicant was not happy with the plea offer he had negotiated because Applicant's previous attorney indicated she was trying to get ten to fifteen years, but after Plea Counsel was appointed, Plea Counsel could only get down to twenty years. Plea Counsel testified on cross that was why his and Applicant's relationship deteriorated. Plea Counsel testified on cross Applicant's mother was the only one who wanted a trial because she felt that Applicant was being treated unfairly. An email between



Plea Counsel and Applicant's mother was admitted without objection as Applicant's Exhibit 1. Plea Counsel testified on cross that Applicant never gave him specific information about what he wanted Plea Counsel to investigate, Applicant only focused on getting the ten to fifteen year plea deal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses present at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance

by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

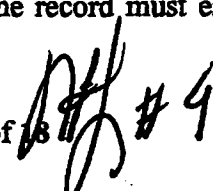
Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.*, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112.

"The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full



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

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

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Plea Counsel and any prejudice therefrom. Furthermore, after observing the witnesses and passing on their credibility, this court finds Plea Counsel's testimony to be credible. By contrast, this Court finds Applicant's testimony lacks credibility.

1. **Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant, thus rendering Applicant's plea unknowingly and involuntarily entered into.**

Applicant alleges Plea Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant, thus rendering Applicant's plea unknowingly and involuntarily entered into. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.* at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.*

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." *Id.* "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." *Id.* "In particular, what investigation decisions are reasonable depends critically on such information."

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged

lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Here, Plea Counsel credibly testified he and Applicant discussed very little about trial because Applicant was cooperating with law enforcement for the plea. Plea Counsel credibly testified that within twenty to thirty minutes of their first meeting, all remaining conversations focused on getting a better deal. Plea Counsel credibly testified that Applicant's cooperation with law enforcement was key to Plea Counsel getting the solicitor to agree to twenty years, which was the best deal he could get for Applicant. Additionally, the only information Applicant offered that Plea Counsel could have or should have investigated in furtherance of his defense was a witness, Greg Seals. However, Plea Counsel credibly testified Applicant never asked him to investigate anyone, but rather wanted to focus solely on getting a better deal.

This Court finds that Applicant has failed to prove how Plea Counsel was deficient. Specifically, this Court finds that Plea Counsel's focus on securing a favorable plea deal was reasonable tactical decision given the circumstances of the case and Applicant's strong desire to secure a plea deal. *Strickland*, 466 U.S. at 690-91 ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions."); *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) ("When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.").

Further, this Court finds that Applicant has failed to show any prejudice as a result of Plea Counsel's alleged failure to investigate the witness because Applicant has failed to show how the investigation would have changed the outcome of the case. *Harris*, 377 S.C. at 75-76, 659 S.E.2d

#12

at 145-46 (2008) (explaining an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome.) Specifically, this Court finds Applicant cannot establish prejudice because Applicant failed to present any testimony demonstrating that *but for* Counsel's failure to investigate the witness, he would not have pled guilty and instead would have insisted upon going to trial. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001)

In conclusion, this Court finds Applicant has failed to show both how Plea Counsel's failure to investigate was deficient and any resulting prejudice from Plea Counsel's alleged deficiency. Accordingly, his demand for relief by way of this allegation is **DENIED**.

- 2. Counsel was ineffective for failing to conduct adequate amount of meeting with Applicant to review discovery so that Applicant would know of the allegations against him, thus rendering Applicant's plea unknowingly and involuntarily entered into.**

Applicant alleges that Plea Counsel was ineffective for failing to discuss all discovery information and evidence with Applicant. However, this Court finds Plea Counsel adequately reviewed the discovery in Applicant's case independently and with Applicant, and therefore Plea Counsel was not deficient. Further, this Court finds Applicant wholly failed to demonstrate how Plea Counsel's alleged deficiency prejudiced him in any way.

At the evidentiary hearing, Plea Counsel credibly testified he reviewed discovery with Applicant. Plea Counsel testified he got the solicitor's file and their discovery. Plea Counsel credibly testified he met with Applicant at the jail two or three times and they had multiple meetings in the holding cell, particularly when Applicant filed a motion for Plea Counsel to be relieved in May. Plea Counsel credibly testified he and Applicant spoke via the kiosk machine, which cost fifty-cents per message, and cost him a total of twenty to thirty dollars communicating with Applicant.

Plea Counsel credibly testified he was aware Applicant had gotten discovery from Applicant's former attorney and he and Applicant had conversations about the discovery. Plea Counsel explained those conversations were pretty cut and dry. Plea Counsel testified Applicant seemed to understand everything. Furthermore, Applicant's own testimony corroborates that he and Plea Counsel engaged in discussion of the discovery. Specifically, Applicant testified he and Plea Counsel were able to discuss the co-defendants' statements, forensics, DNA evidence, specifically Applicant's DNA and Applicant's cell phone, which was in the victim's vehicle.

This Court finds Plea Counsel was not deficient because he adequately reviewed the discovery in Applicant's case independently and with Applicant and therefore, Applicant has failed to meet his burden of proving that Plea Counsel was deficient for failing to adequately discussing discovery and evidence with Applicant. Further, this Court finds that Applicant has failed to show any resulting prejudice from Plea Counsel's alleged deficiency. Applicant failed to present any testimony establishing that *but for* Counsel's failure to review discovery, he would not have pled guilty and instead would have insisted upon going to trial. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001)

In conclusion, this Court finds Applicant has failed to show both how Plea Counsel's failure to review discovery with Applicant was deficient and how he suffered any resulting prejudice from Plea Counsel's alleged deficiency. Accordingly, his demand for relief by way of this allegation is **DENIED**.

3. Counsel was ineffective for failing to file a notice of appeal when specifically requested by both Applicant and his family.

Applicant alleges he is entitled to a belated appeal, pursuant to *White v. State* for Plea Counsel's failure to file a notice of appeal when Applicant and his family requested Plea Counsel file an appeal. However, this Court finds otherwise.

The United States Supreme Court has rejected a bright-line rule that counsel must always consult with the defendant regarding an appeal. *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000). Instead, "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." *Id.* Further, "a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." *Id.*

The South Carolina Supreme Court has held there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea, absent extraordinary circumstances. *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). However, the bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). Instead, a defendant must offer proof that extraordinary circumstances exist such that he should have been advised of the right to appeal. *Id.* One situation in which extraordinary circumstances arise is when a defendant explicitly inquires about his right to appeal following a guilty plea. *Jones v. State*, 382 S.C. 589, 596, 677 S.E.2d 20, 23-24 (2009); *Weathers*, 319 S.C. at 61, 459 S.E.2d at 839. To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for plea counsel's deficient failure to consult with him about an appeal, he would have timely appealed. *Flores-Ortega*, 528 U.S. at 484.

In *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that even if the post-conviction relief court finds that the Applicant never voluntarily and

intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Here, Applicant pleaded guilty on May 30, 2018. Applicant testified he pleaded freely and voluntarily and he was aware of his right to appeal his guilty plea. Applicant testified he asked Counsel to file an appeal immediately after he was sentenced; however, Applicant acknowledged Plea Counsel discussed what a negotiated sentence was and that Applicant knew he would get no more or no less than twenty years. Applicant testified after sentencing, he and Plea Counsel discussed what an appeal was, but Plea Counsel indicated Applicant did not need one. Applicant testified he told Plea Counsel after that conversation, he wanted an appeal. Applicant testified that after the sentencing, he and Plea Counsel "said their peace" and that was the last conversation they had.

Plea Counsel testified he discussed the right to appeal with Applicant and that the judge also explained it during the colloquy. Plea Counsel testified he told Applicant pursuing an appeal would likely be a waste of time, but Applicant could if he wanted to. Counsel testified he explained the consequences of what would happen if Applicant was successful on appeal—that the plea deal that Plea Counsel negotiated down to twenty years would go away, and Applicant could receive the maximum. Plea Counsel testified Applicant never asked him to file an appeal, but Applicant's mother did via text message a few weeks after the plea, but well after the ten day deadline. Counsel testified that Applicant never directly asked him to appeal.

This Court finds Applicant has failed to meet his burden of proving he did not voluntarily and intelligently waive his right to appeal. Furthermore, after observing the witnesses and passing on their credibility, this court finds Plea Counsel's testimony to be credible. By contrast, this Court finds Applicant's testimony lacks credibility. Specifically, this Court finds credible Counsel's testimony that Applicant never asked him to appeal and even if Applicant's mother did, it was well after the ten day deadline. Accordingly, this Court finds Applicant has failed to satisfy the requirements set forth in the *Roe v. Flores-Ortega* test and therefore, he has failed to show he is entitled to a belated direct appeal under *White v. State*. Therefore, Applicant's request for belated review of direct appeal issues pursuant to *White* is hereby **DENIED**, and the allegation is dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Plea Counsel's representation was neither deficient nor prejudicial. The Court finds Applicant knew the meaning and consequences of pleading guilty to the charge against him and was fully aware of the meaning of the negotiated sentence. The Court further finds Applicant voluntarily pleaded guilty. His voluntariness is evinced by the plea transcript and testimony given at the PCR hearing.

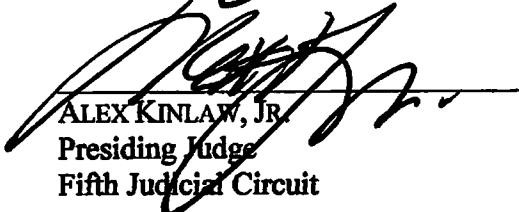
The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must

serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 22 day of May, 2021.


ALEX KINLAW, JR.
Presiding Judge
Fifth Judicial Circuit

 South Carolina

WITNESSES

(S) Inv. Stephen Dauway
- RCSD

ARREST WARRANT NUMBER

2016A4010200634

ACTION OF GRAND JURY

TRUE BILL

Brenda P. Joffe
Foreperson of Grand Jury

Date:

MAY 11 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-40-02424

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MAY TERM 2016

116

THE STATE

vs.

Douglas Burn Murphy, Jr.

Indictment for
MURDER

SC Code: 16-03-0010

CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED.
Jeanette W. Hinder
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on May 11, 2016, the
Grand Jurors of Richland County present upon their oath:

MURDER

That Douglas Burn Murphy Jr did in Richland County, on or about
February 29, 2016, kill the victim, Jaelen Josey, with malice aforethought,
either express or implied, by means of a gunshot wound, and the victim did
die as a proximate result thereof. All in violation of Section 16-03-0010, S.
C. Code of Laws, (1976, as amended).

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



DAN JOHNSON, SOLICITOR

Manslaughter - (2-30 years)

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Douglas Burn Murphy, Jr.

AKA:

Race: BLACK Sex: M Age: 19DOB: [REDACTED] SS#: [REDACTED]Address: 1 [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED]SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Manslaughter / Voluntary manslaughter

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-40-02424A/W#: 2016A4010200634Date of Offense: 2/29/2016S.C. Code §: 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0050of the S.C. Code of Laws, bearing CDR Code # 0217☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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:

Kathryn Cavanaugh
Solicitor77670
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant76135
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for [Signature]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 to the SCDOC.☐ 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 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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 (Public Def/Probation)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 36-1-292 (DUI Assessment)

\$40/ea

\$

§ 36-1-292 (DUI Assessment)

\$

3% to County (for public installments)

\$

T.C.C.P.&G.S.

\$

RICHLAND COUNTY

SOUTH CAROLINA

SCCA/217 (04/2018)

_____ days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning _____

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,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.Presiding Judge [Signature]Judge Code: 206Sentence Date: 5-30-18

DEFERRED SENT.

SCANNED

CERTIFIED TRUE COPY
OF ORIGINAL FILEDJEANETTE W. McBRIDE
C.C.P.&G.S.RICHLAND COUNTY
SOUTH CAROLINA

SCCA/217 (04/2018)

WITNESSES

(S) Inv. Stephen Dauway
- RCSD

ARREST WARRANT NUMBER

2016A4010200635

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

JUL 20 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-40-02445

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2016

116

**THE STATE
vs.**

Douglas Burn Murphy Jr

**Indictment for
ROBBERY / ATTEMPTED ARMED, OR
ALLEGEDLY ARMED, ROBBERY**

SC Code: 16-11-0330(B)
CDR Code: 0026

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jaseth Williams
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

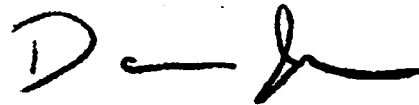
INDICTMENT

At a Court of General Sessions, convened on July 20, 2016, the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Douglas Burn Murphy Jr did, along with co-defendants in Richland County on or about February 29, 2016, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of Jaelen Josey with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, (1976, as amended).

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



DAN JOHNSON, SOLICITOR

(0-20 years)

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Douglas Burn Murphy, Jr.

AKA:

Race: BLACK Sex: M Age: 19DOB: 01/11/1997 SS#: 123456789Address: 12345 Main StCity, State, Zip: Elgin, SC 29045DL#: 123456789 SID#: 123456789*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Attempted armed, or allegedly armed, robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-40-02445A/W#: 2016A4010200635Date of Offense: 2/29/2016S.C. Code § : 16-11-0330(B)CDR Code #: 0026

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)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:

Kathryn Cavanaugh 77690
Solicitor SC Bar#Douglas Burn Murphy, Jr.
Defendant76135
Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed 20 years
and/or to pay a fine of \$ 0; provided that upon the service of 0 days/months/years and/or paymentof \$ 0; plus costs and assessments as applicable*; the balance is suspended with probation for 0months/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: June 21, 2016☐ 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 SCDPS.☐ 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 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ 0 plus 20% fee: 0 \$Payment Terms: 0☐ Set by SCDPPPSRecipient: 0

*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 (Public Def/Probation)	\$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
§ 56-5-2942(J) (Vehicle Assessment)	\$

CERTIFIED TRUE COPY
OF ORIGINAL FILED

TOTAL \$ 0

Clerk of Court Jessie W. McBride

Richland County

SOUTH CAROLINA

0 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. 0May serve W/E beginning 0Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 0 beginning 0\$ 0 paid to Public Defender FundOther: 0☐ Appointed PD or appointed other counsel,Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.Presiding Judge 0Judge Code: 0Sentence Date: 5-30-16

DEFERRED SENT.

ARREST WARRANT

2016A4010200635

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

1602041429 R7

against

Douglas Burn Murphy, Jr

Address:

Phone:

SSN:

Sex: M Race: B Height: 6 Weight: 150

DL State: SC DL #:

DOB: Agency ORI #: SC0400000

Prosecuting Agency: Richland County Sheriff

Prosecuting Officer: Stephen Dauway - 1105

Offense: Attempted Armed Robbery

Offense Code: 0026

Code/Ordinance Sec: 16-11-0330(B)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Douglas B. Murphy Jr

on 2 March 2016

Andrew A. Usher

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant

being duly sworn deposes and says that defendant Douglas Burn Murphy, Jr

did within this county and state on or about 2/29/2016

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland Bond Court

in the following particulars:

DESCRIPTION OF OFFENSE: Attempted Armed Robbery

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:

That on or about on 2/29/16 while at Seaton Hall Drive in the Pontiac Magisterial District of Richland County, it is believed that the defendant did commit the crime of Attempted Armed Robbery because he did with malice aforethought and the intent to kill, participate in the attempted robbery and murder of Jalen Josey. The defendant participated in a scheme to set up and rob the victim of narcotics. The defendant confessed to conspiring to rob the victim and to acting as the person buying marijuana from the victim. During the "transaction" the co-defendant approached the victim and shot him causing death. The defendant dropped his cell phone at the crime scene and was wearing a GPS monitor which places him at the crime scene during the incident. Affiant and others are witness to prove same.

Signature of Affiant

Reginald J. M. RCSD

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

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 or about 2/29/2016 defendant Douglas Burn Murphy, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court

) as set forth below:

DESCRIPTION OF OFFENSE: Attempted Armed Robbery

Having found probable cause and the above affiant having sworn before me, 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 soon thereafter as is practicable.

Sworn to and subscribed before me

on 3/1/2016

Benjamin Franklin Byrd
Judge Code: 7201

Judge's Address P. O. Box 192

Columbia, SC 29202-

Judge's Telephone (803)-576-23 x 30

Issuing Court: ☒ Magistrate ☐ Municipal

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2016 MAR 10 PM 12:00
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J. M. M. P. & G. S.
RICHLAND COUNTY
SOUTH CAROLINA

ARREST WARRANT

2016A4010200634

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

1602041429 R7

against

Douglas Burn Murphy, Jr

Address:

Phone: SSN:

Sex: M Race: B Height: 6 Weight: 150

DL State: SC DL #: SC0400000

DOB: SC0400000

Prosecuting Agency: Richland County Sheriff

Prosecuting Officer: Stephen Dauway - 1105

Offense: Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Douglas Burn Murphy Jr

on 2 March 2016

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

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STATE OF SOUTH CAROLINA

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Richland Bond Court

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being duly sworn deposes and says that defendant Douglas Burn Murphy, Jr

did within this county and state on or about 2/29/2016

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland Bond Court

in the following particulars:

DESCRIPTION OF OFFENSE: Murder

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:

That on or about on 2/29/16 while at Seaton Hall Drive in the Pontiac Magisterial District of Richland County, it is believed that the defendant did commit the crime of Murder because he did with malice aforethought and the intent to kill, participate in the attempted robbery and murder of Jalen Josey. The defendant participated in a scheme to set up and rob the victim of narcotics. The defendant confessed to conspiring to rob the victim and to acting as the person buying marijuana from the victim. During the "transaction" the co-defendant approached the victim and shot him causing death. The defendant dropped his cell phone at the crime scene and was wearing a GPS monitor which places him at the crime scene during the incident. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

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defendant Douglas Burn Murphy, Jr

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Signature of Judge
Benjamin Franklin Byrd

Judge Code: 7201

Judge's Address P. O. Box 192

Columbia, SC 29202-

Judge's Telephone (803)-57-6-23 x 30

Issuing Court: ☒ Magistrate ☐ Municipal

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Form Approved by
S.C. Attorney General
April 21, 2003
SCCA518

AFFIDAVIT

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R. Gayman

who

violate the criminal laws of the

2016 MAR 18 PM 12:23

CERTIFIED TRUE COPY
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JUDGE
P&C.S.
RICHLAND COUNTY
SOUTH CAROLINA