

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

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JUN 05 2013

S.C. Supreme Court

BOBBY M. SHAW,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213348

APPENDIX

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

STATE OF SOUTH CAROLINA)
STATE,)

TRANSCRIPT OF RECORD
11-GS-21-0978

v.)
BOBBY M. SHAW,)
DEFENDANT.)

June 13, 2011
Florence, South Carolina

BEFORE :

THE HONORABLE MICHAEL G. NETTLES, JUDGE;

APPEARANCES:

E. L. CLEMENTS, III, ESQ.
Solicitor

SCOTT FLOYD, ESQ.
Assistant Public Defender

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MR. CLEMENTS: If it please the Court,
2 Your Honor.

3 THE COURT: Yes, sir.

4 MR. CLEMENTS: This is indictment
5 2011-GS-21-978, the State of South Carolina versus
6 Bobby Marion Shaw and Mr. Shaw is represented by
7 Mr. Scott Floyd. This is an indictment for murder.
8 He's entering a plea, Your Honor, to the lesser
9 included offense of voluntary manslaughter. There's
10 no recommendation on this, Your Honor.

11 THE COURT: Okay, very good. Voluntary
12 manslaughter is up to 30 years; is that correct?

13 MR. CLEMENTS: Yes, Your Honor.

14 THE COURT: All right. Mr. Floyd, do you
15 represent Mr. Shaw?

16 MR. FLOYD: I do, Your Honor.

17 THE COURT: Have you explained to him the
18 offense of voluntary manslaughter, the fact that he
19 could receive up to 30 years, the fact that this is
20 a violent offense and a most serious offense subject
21 to the two strike rule, it's a non-parolable offense
22 subject to the 85 percent rule. You discussed the
23 elements of the offense, potential defenses, and all
24 these collateral consequences?

25 MR. FLOYD: Yes, Your Honor.

1 THE COURT: How does he wish to plead?

2 MR. FLOYD: Guilty, Your Honor.

3 THE COURT: You agree with his decision to
4 do so?

5 MR. FLOYD: I do.

6 THE COURT: You feel if called upon to do
7 so the State could prove him guilty beyond a
8 reasonable doubt?

9 MR. FLOYD: I do, Your Honor.

10 THE COURT: All right... Let's place Mr.
11 Shaw under oath if we could.

12 CLERK OF COURT: Please raise your right
13 hand.

14 WHEREUPON,

15 **BOBBY SHAW,**

16 having been duly sworn by the Clerk of Court,
17 testified as follows:

18 THE COURT: Mr. Shaw, are you under the
19 influence of any drugs or alcohol here today?

20 THE DEFENDANT: Yes, sir. Well, on my
21 medications I have.

22 THE COURT: What kind of medication are
23 you on?

24 THE DEFENDANT: One is for seizures and I
25 don't what the other for.

1 THE COURT: Well, does it make you to
2 where you can understand things better or worse?

3 THE DEFENDANT: Well, it weighs my mind
4 for a little bit at one point or another, but now it
5 doesn't take me out of the picture I don't guess ---

6 THE COURT: You understand what we're
7 doing here today?

8 THE DEFENDANT: I think so, Your Honor.
9 I...

10 THE COURT: All right. I want you to pay
11 very close attention to what the State has to say.

12 THE DEFENDANT: Yes, sir.

13 MR. CLEMENTS: Ready, Your Honor?

14 THE COURT: Yes, sir.

15 MR. CLEMENTS: If it please the Court,
16 Your Honor. Your Honor, Mr. Shaw, in regards to his
17 criminal history he has a conviction for DUI second,
18 Your Honor. Way back, Your Honor, he has a
19 conviction for lewd act on a minor and he got nine
20 years, four years probation on that, and he's on the
21 sex offender registry. And that is the only
22 convictions that I see showing up on his NCIC
23 report, Your Honor.

24 Your Honor, this happened at [REDACTED]
25 [REDACTED] in the city of Florence on the 25th

1 of August, 2010. Your Honor, that was the home of
2 his mother Annie Shaw Colson (ph). Mr. Bobby Shaw
3 shot and killed Robert Leon Shaw, III, who was his
4 brother. Your Honor, shot him in the chest with a
5 handgun in his mother's house. His mother was
6 present there close by when this happened. They had
7 been arguing back and forth at different times. He
8 went in the house. According to his mother he was
9 saying he wanted his phone charger back, and they
10 were arguing and carrying on and he pulled a gun and
11 he shot him and then ran out the door. Well first,
12 before he ran out the door he went over and started
13 kicking and stomping on his brother; and she grabbed
14 him by the hand, pulled him away, then he ran out
15 the door. He was apprehended I think a day or two
16 later?

17 THE INVESTIGATOR: That same night.

18 MR. CLEMENTS: That same night?

19 THE INVESTIGATOR: Yes, sir.

20 MR. CLEMENTS: And he told them where the
21 gun was. He gave a statement to law enforcement.
22 This is Investigator Michael Robinson of the
23 Florence Police Department who was the investigator
24 on the case. He said in his statement they were
25 arguing. And he told his brother that, you know, he

1 had just as much right to be there and his brother
2 said, I'm gonna put you out and was trying to grab
3 him by the arm and put him out. He said you ain't
4 putting me out and if you touch me again I'm gonna
5 shoot you. And he said evidently he didn't believe
6 him. And Mr. Shaw shot his brother.

7 Your Honor, Ms. Annie Colson last week
8 had, I think it was an emergency appendectomy, and
9 she's had some other problems. And we talked with
10 her, and we talked with his other brother, Your
11 Honor, his surviving brother. And they both talked
12 to me and said Mr. Shaw is not able to come because
13 of his work schedule. Ms. Colson is unable to come
14 right now because of her health situation. She's
15 got to go back in the hospital and have all kind of
16 stitches taken out of her abdomen. She's in pretty
17 rough shape still.

18 They told me, Your Honor, that they wanted
19 me to offer him a plea to voluntary manslaughter
20 instead of murder, the reason being is because they
21 have lost a son and a brother, and they didn't want
22 to crucify this son and brother and that what you
23 decided to give him they were fine with, Your Honor,
24 based on these circumstances. But even though we
25 believe it was -- it was no real legal provocation,

1 we do want to respect their wishes because they were
2 the family members of the victim and they're also
3 his family members and they ask that we offer him
4 the lesser included offense of voluntary
5 manslaughter. Anything Florence Police Department
6 would like to say through Investigator Robinson, I'd
7 ask the Court to consider what she has to say as the
8 investigator in this case.

9 THE COURT: Yes, ma'am, I'll be glad to
10 hear from you.

11 THE INVESTIGATOR: Thank you, Your Honor.
12 This incident was a tragic incident for this entire
13 family; and I'm sure that Ms. Colson, had she been
14 able to be, would be present today. She was very
15 helpful throughout the investigation and very
16 cooperative with law enforcement. When the actual
17 incident occurred Ms. Colson was actually standing
18 between her two sons, and the shot was fired over
19 the top of her shoulder. She was not struck. When
20 I arrived at the home she was -- she was very
21 elderly and was on her hands and knees at the foot
22 of her son trying to render assistance to him. But
23 she was a witness, she was present at the time of
24 the murder.

25 THE COURT: All right. Mr. Shaw, are you

1 guilty of voluntary manslaughter?

2 THE DEFENDANT: Your Honor, all I know is
3 I shot my brother. That's all I know. Whatever way
4 you want to look at it, I mean, you know it was
5 something that I didn't mean to do. And it didn't
6 happen like they say, but I am here to tell you that
7 I did pull the trigger and that's about all I can
8 say.

9 THE COURT: All right. Were you kind of
10 mad and upset at the time?

11 THE DEFENDANT: Well, not really mad and
12 upset. I'd just taken my medication and whatnot and
13 I have seizures. As a matter of fact, I had one
14 this morning. And I just went in the house to see
15 how she was doing. I asked her, mama, can I stay
16 for the night, you know, rather go back out in the
17 country because I didn't feel like driving. She
18 said, yes, so my brother knocked on me and told me
19 he wasn't going to let me stay there and a bunch of
20 other stuff went down. And she told him if I
21 couldn't stay he couldn't stay either, and turned
22 around and she went back around to her room. By the
23 time she got back around there I had already shoot
24 him. And I didn't mean to kill him; I just meant to
25 warn him. What he did, he grabbed me, snatched a

1 button off my shirt ---

2 THE COURT: But you did mean to -- you
3 didn't mean to fire the gun, that wasn't an accident
4 was it?

5 THE DEFENDANT: Sir?

6 THE COURT: You did mean to shoot him, I
7 mean, didn't you?

8 THE DEFENDANT: No. I just pulled the gun
9 out my pocket, and by time I got it up it when off.
10 That was it. And you know, he started toward me.
11 He reached down and picked up -- somebody helped
12 him, they push him off me twice. He reached down
13 and picked up something -- it was something; I don't
14 know what it was. But he start at me and I just
15 pulled the gun out my pocket and the gun went off
16 and hit him in the chest. I looked around ---

17 THE COURT: All right, Mr. Shaw ---

18 THE DEFENDANT: ---to see what was going
19 on and I killed him. I was shaking when I found out
20 what was going on. I had know I had shot him. I
21 didn't know what else to do.

22 THE COURT: All right, Mr. Shaw, my
23 question to you is are you guilty of voluntary
24 manslaughter?

25 THE DEFENDANT: Yes, sir. Yes, sir.

1 THE COURT: All right. When you plead to
2 voluntary manslaughter you have to give up any
3 defenses like accident.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You have to give up defense of
6 self-defense. And do you give up those defenses?

7 THE DEFENDANT: Yes, sir. Yes, I can.

8 THE COURT: Okay, all right. You had
9 mentioned that you had just taken your medicine when
10 this took place and that you kind of meandered
11 around, said you had a seizure today.

12 Mr. Floyd, have you had an opportunity to
13 consult with Mr. Shaw? Do you feel as though he
14 understands what we're doing here today?

15 MR. FLOYD: Yes, sir, Your Honor. I have
16 spoken to him back in the conference rooms here
17 today, and he certainly has seemed very responsive
18 and seems to answer my questions just fine. And
19 we've gone over the evidence in the case and he
20 understands or seems to.

21 THE COURT: All right. Mr. Shaw.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Tell me what your lawyer,
24 Mr. Floyd, is he here to help you and advise you of
25 your constitutional rights? Is that what his job

1 is?

2 THE DEFENDANT: Your Honor, I think that's
3 what it is.

4 THE COURT: Okay, very good. And what's
5 Mr. Clements' job, what's he supposed to do?

6 THE DEFENDANT: Well, I think he's, I
7 guess, he's supposed to prosecute me whatever and
8 that.

9 THE COURT: His job is to put you in jail;
10 isn't it?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. And the police
13 officer, what was her job in this thing?

14 THE DEFENDANT: To have them then bring me
15 to jail.

16 THE COURT: And then investigate it; isn't
17 that right?

18 THE DEFENDANT: Yeah.

19 THE COURT: All right. What's my job in
20 this thing?

21 THE DEFENDANT: Your job is to decide what
22 you want to do with me. I just hope you have mercy
23 on me. There's a lot of things that could happen
24 and didn't happen in this, but we're here now and we
25 just got to deal with it. That's all I can say.

1 THE COURT: Sounds like you understand
2 what's going on; don't you?

3 THE DEFENDANT: Yeah.

4 THE COURT: You've been in court before;
5 hadn't you?

6 THE DEFENDANT: Yes, sir, I have.

7 THE COURT: You understand what a guilty
8 plea is; don't you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. You understand if
11 I accept this plea that you're waiving any defense
12 of accident, self-defense, or that you were of
13 diminished capacity or that you were insane. You
14 understand you're waiving all those things?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And that's what you want to
17 do?

18 (Mr. Floyd and defendant confer.)

19 THE DEFENDANT: Yes, sir, Your Honor, I'll
20 do it.

21 THE COURT: Very good. Mr. Shaw, you
22 stand before me pleading guilty, but you don't have
23 to plead guilty to anything. You could exercise
24 your right to a jury trial. In that process the
25 jury would determine whether or not the State could

1 actually prove you guilty beyond a reasonable doubt.
2 I would charge the jury as a matter of law that
3 you're presumed to be innocent. No one could
4 require that you take the witness stand; however, if
5 you wanted to, you could. You could subpoena
6 witnesses on your own behalf. In addition to that
7 you and your lawyer could cross-examine the State's
8 witnesses, have an opportunity to eyeball them and
9 confront them as they testified against you. You
10 realize by pleading guilty you're giving up all
11 these rights?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Still wish to plead guilty?

14 THE DEFENDANT: Yes, sir, I do.

15 THE COURT: Are you indeed guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. There are no plea
18 negotiations other than reduction of the charge; is
19 that right?

20 MR. CLEMENTS: That's correct, Your Honor.

21 THE COURT: Is that right, Mr. Floyd?

22 MR. FLOYD: That's correct, Your Honor.

23 THE COURT: Is that right, Mr. Shaw?

24 THE DEFENDANT: That's what I understand,
25 yes, sir.

1 THE COURT: Mr. Shaw, are you satisfied
2 with your lawyer?

3 THE DEFENDANT: Sir?

4 THE COURT: Are you satisfied with your
5 lawyer?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You understood all your
8 conversations with him?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You need any additional time
11 to confer with him?

12 THE DEFENDANT: (No response.)

13 THE COURT: It's not a trick question. Do
14 you understand what you're doing? You want to talk
15 with your lawyer anymore?

16 (Mr. Floyd and defendant confer.)

17 MR. FLOYD: Your Honor, Mr. Shaw wants to
18 speak with me for a minute. Can we stand down?

19 THE COURT: Everybody stand right where we
20 are. We'll give you an opportunity to speak.

21 (Pause while attorney Floyd and defendant confer.)

22 THE COURT: All right, Mr. Shaw, have you
23 had additional opportunity to speak with your
24 lawyer?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Any complaints with your
2 lawyer whatsoever?

3 THE DEFENDANT: No, sir, I think
4 everything is going all right.

5 THE COURT: Very good. All right. Have
6 you understood all my questions?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have your answers been
9 truthful?

10 THE DEFENDANT: Yes, they have, sir.

11 THE COURT: You understand that you have
12 ten days to appeal any decision I might render here
13 today?

14 THE DEFENDANT: I do, sir.

15 THE COURT: All right. Has anybody
16 promised you anything, threatened you, pressured
17 you, mistreated you in any way, shape, or form in an
18 effort to get you to plead guilty here today?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Based on your
21 decision, your testimony here today, I find that you
22 have entered this plea freely and voluntarily,
23 knowingly and intelligently with the consent of
24 competent counsel with whom you say you're
25 satisfied. I'll accept your plea and be glad to

1 hear from you and your lawyer with regard to
2 mitigation.

3 MR. FLOYD: Thank you, Your Honor. Your
4 Honor, Mr. Shaw is now 59 years old. He is a
5 resident of Florence. He's lived here his whole
6 life I think except for about ten years or so when
7 he lived in New York back in the '70s. He has five
8 children. I think they're all grown now. They're
9 in their 40s and 30s. He's worked as a mechanic and
10 apparently is a very good mechanic, has been a good
11 mechanic in the past. He's had some health
12 problems, Your Honor. He's had seizures for which
13 he takes Dilantin, and I think he's also had some
14 kidney problems and high blood pressure and that
15 sort of thing.

16 Your Honor, I spoke with Bobby down at the
17 Detention Center and on a number of occasions, and
18 we've gone over his discovery and everything that's
19 been provided to us by the Solicitor. And Your
20 Honor, he sat down with the investigator in this
21 case I think shortly after the shooting happened.
22 He basically gave a full, complete statement and
23 told her, you know, what happened. And I think he
24 and his brother had been having a dispute that had
25 been ongoing. Before this night I think they'd been

1 having some problems before, and it all centered
2 around him being at his mother's house apparently.
3 And unfortunately, he took a gun in with him this
4 particular night or evening and they had a
5 confrontation. And then he said in a statement to
6 the investigator that told his brother, look, if you
7 touch me again and try to put me out here again I'm
8 gonna shoot you; and his brother, in fact, tried to
9 physically push him out of the house and he
10 unfortunately shot him.

11 Now he does disagree with some of the
12 details. He does not agree that his mother was
13 standing in the middle of them, or you know, there
14 was some details that he disagreed with, Your Honor.
15 But the fact of the matter is, is that he's given a
16 statement. He does agree that he pulled the gun and
17 he shot his brother. And it was all over this and,
18 Your Honor, he did say that he was -- he had taken
19 some medication. He said he had had something to
20 drink that day that this happened. And of course,
21 voluntary intoxication is not a defense to this.
22 And he understands that; but unfortunately, this
23 thing with he and his brother just got out of hand.
24 And it's a tragic thing. He's gonna have to live
25 with this for the rest of his life whether it's in

1 prison or out of prison. He's gonna have to live
2 with the fact he killed his brother and that's a
3 terrible thing. I think he is sorry for it, Your
4 Honor. He has expressed remorse to me a number of
5 times. I know when he gave a statement to
6 investigators, I don't even think when he started
7 giving a statement he realized his brother was dead,
8 or so he said. He found that out during the
9 questioning process I think. He expressed remorse
10 then. I do think he's truly sorry for what he did,
11 Your Honor.

12 I have gone over the fact with him that
13 this is a no parole offense so whatever time you
14 give him he can pretty much expect to serve it day
15 for day. He's 60 years old, or right at it. He's
16 59 going on 60. And I think voluntary manslaughter
17 is a minimum of two and a maximum of thirty and he
18 understands that range, that he would have to get at
19 least two and he could get up to thirty. And if you
20 give — whatever you give him he's gonna have to
21 serve it just about every day of it; he knows that.
22 But Your Honor, he's decided he wanted to enter the
23 plea, and we just ask if you could be as merciful as
24 possible to him. I do think he wants to say a few
25 words as well, Your Honor.

1 THE COURT: All right. Mr. Shaw, do you
2 agree with what your lawyer said?

3 THE DEFENDANT: Yes, sir, I do.

4 THE COURT: All right. What he said was
5 true?

6 THE DEFENDANT: Yes, sir, it's true.

7 THE COURT: I'll be glad to hear from you.

8 THE DEFENDANT: Well, Your Honor,
9 basically it just like this, but I -- my mother like
10 I said, was nowhere in the room when I shot my
11 brother. And to shoot over her shoulder, I would
12 have to miss him because both of them were just
13 about the same height so there was no way of that.
14 But anyway, whatever's been said whichever way it's
15 been done, I'm sorry, which doesn't carry a lot of
16 weight right now I know, yes, but it's something I
17 got to deal with. And whatever you do it's up to
18 you, have mercy on me, and let's see just where I go
19 with this and I thank you for whatever you do.

20 THE COURT: Very good. How long has he
21 been in jail?

22 MR. FLOYD: Your Honor, he's been in by my
23 count 292 days as of today.

24 MR. CLEMENTS: Since August 26th, 2010.

25 THE COURT: Mr. Floyd, you've gone over

1 with him the facts that a violent offense adversely
2 effects his custody status, and he understands that;
3 doesn't he?

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

5 THE COURT: All right. Mr. Shaw, on
6 indictment 2011-GS-21-0978, voluntary manslaughter,
7 the sentence of the Court is you be committed to the
8 State Department of Corrections for a period of 20
9 years. Give him credit for 292 days. Good luck to
10 you.

11

12 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 5th day of May, 2012.


FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA)
County of FLORENCE)

IN THE COURT OF COMMON PLEAS

bobby M SHAW
Full name and prison number (if any) of Applicant

CERTIFIED: A TRUE COPY

Christie R. Spain
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

2012 FEB - 8 PM 1:46
FILED
CLERK OF COURT
FLORENCE COUNTY, SC

v.
State of South Carolina)
)
)
)

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS B 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 ICC CORRECTIONAL INSTITUTION
990 WISACKY HIGHWAY BISHOPVILLE S.C. 29010
2. Name and location of Court which imposed sentence FLORENCE MUNICIPAL COURT
180 N. IRBY FLORENCE S.C. 29501
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) OFFENSE CODE 0116 - OFFENSE CODE 2364

- (b) _____
- (c) _____

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

- (a) 6-13-11
- (b) 20 YEAR
- (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?

YES

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:
 - i. COURT OF GENERAL SESSIONS
 - ii. COUNTY OF FLORENCE
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. MY APPEAL WAS DENY
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. 6-15-11
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. I WAS told that IT WAS
 - ii. TO LATE
 - iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) _____

- (b) _____
- (c) _____

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

- (a) I WAS DEPRIVED OF DUE PROCESS OF LAW
- (b) UNDER THE AMENDMENT 5-6-14
- (c) AND I'M NOT GUILTY OF THE CRIME.

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

- (a) I did Not GET A FAIR TRIAL
- (b) I did Not HAVE THE ASSISTANCE OF COUNSEL
- (c) I did Not GET EQUAL PROTECTION OF THE LAW

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

SENTENCE REVERSE AND VACATED

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of FLORENCE)

VERIFICATION

I, bobby SHAW, 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.

Bobby Shaw

SWORN to and subscribed before me this 7 day of Feb, 2012.

Debra Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, Bobby M Shaw, 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.

Bobby Shaw
Applicant

SWORN or affirmed to and subscribed before me this

7 day of Feb, 2012.

Delna Jones
Notary Public

My Commission Expires: 11-4-2015

FILED
2012 FEB - 8 PM 1:46
CLERK OF COURT
FLORIDA COUNTY, SC

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2012-CP-21-376.

Bobby M. Shaw, 208295)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN

Respondent, making its Return to the Application for post conviction relief (PCR) filed February 8, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2011 term of the Florence County Grand Jury for murder and possession of a weapon during commission of a violent crime (2011-GS-21-978). Scott P. Floyd, Esquire, represented Applicant.

On June 13, 2011, the Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable Michael Nettles sentenced Applicant to twenty years imprisonment. Applicant did not appeal the conviction or sentence.

Attached herewith and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction, and Applicant's SCDC records. Respondent will forward the

guilty plea transcript upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "I was deprived of due process of law under the amendment 5/6/14 and I'm not guilty of the crime."

Applicant seeks "sentence reverse and vacated" as a result of this proceeding.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either 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 alleges infringement of his rights under certain Amendments to the United States Constitution; however, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act (the Act) requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985). In an application for PCR, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. 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). Since the Applicant has failed to make even a prima facie showing, the State would submit that this allegation should be summarily dismissed for failing to meet the requirements of the Act. In any event, the State submits this allegation is so vague that it is impossible for the State to more

specifically respond.

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 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.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

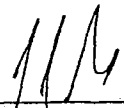
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

4/11, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2012-CP-21-376

BOBBY M. SHAW, #208295)

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:

Kevin M. Barth, Esquire
205 North Irby St.
Florence, SC 29503

DATED this 11TH day of April, 2012.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE)	CASE NO. 2012-CP-21-376
)	
BOBBY SHAW,)	
)	
Plaintiff,)	
)	
-vs-)	TRANSCRIPT OF RECORD
)	
STATE OF SOUTH CAROLINA,)	
)	
Defendant.)	
)	

October 17, 2012
 Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, Judge

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

KEVIN BARTH, Esquire
 Attorney for the Plaintiff

TYSON ANDREW JOHNSON, SR., Esquire
 Office of the Attorney General
 Attorney for the Defendant

KRYSTAL J. SMITH
 Court Reporter

I N D E X

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 OCTOBER 17, 2012

2 (WHEREAS this matter was scheduled for a PCR hearing, the
3 applicant/plaintiff appeared along with his counsel of
4 record. The hearing began at 9:59 a.m.)

5 MR. JOHNSON: Your Honor, this is Bobby M. Shaw versus
6 South Carolina. It's 2012-CP-21-376. Mr. Shaw was indicted
7 for murder and possession of a weapon during the commission of
8 a violent crime. He was represented by Scott Floyd and on
9 June 13th, 2011, he pled guilty to the lesser included offense
10 of voluntary manslaughter. Judge Nettles sentenced --
11 sentenced him to 20 years imprisonment. He did not appeal.
12 At this time, I'll turn it over to his counsel, Mr. Kevin
13 Barth.

14 THE COURT: Mr. Barth?

15 MR. BARTH: May it please the Court, Your Honor.

16 THE COURT: Yes, sir.

17 MR. BARTH: Mr. Shaw is ready to proceed and go forward.

18 THE COURT: All right. Now, you ---

19 MR. BARTH: I'm not sure how we'll ---

20 THE COURT: You -- Mr. Shaw is going to be your first
21 witness?

22 MR. BARTH: Yes, sir.

23 THE COURT: Let me -- Krystal, if - if -- if Mr. Shaw
24 testifies from where he is and speaks loudly, is that fine?

25 COURT REPORTER: Mm-hmm.

1 THE COURT: You don't need him to be ---

2 COURT REPORTER: Yeah, as long as he talks as loud as
3 Kevin does.

4 THE COURT: All right. Mr. Shaw, can you speak loudly so
5 that this young lady can hear you from where you're sitting
6 there?

7 PLAINTIFF: That's going to be tough at times because of
8 my ---

9 THE COURT: Well, why don't we do this? Why don't we
10 bring ---

11 MR. BARTH: Yes, sir.

12 THE COURT: --- Mr. Shaw around and let him sit here in
13 front of the witness stand and let him face Krystal and that
14 way you won't have to talk as loudly. Okay?

15 PLAINTIFF: Thank you, sir.

16 THE COURT: And Carl, if you would, hold the Bible for
17 him. All right and I'm going to get you to be placed under
18 oath, sir.

19 THE CLERK: Please place your left hand on the Bible and
20 raise your right hand as much as possible. Do you swear or
21 affirm the testimony you give in this case will be the truth,
22 the whole truth, and nothing but the truth, so help you God?

23 PLAINTIFF: I do.

24 THE CLERK: Please state your name for the record.

25 PLAINTIFF: Bobby M. Shaw.

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 THE COURT: All right.

2 MR. BARTH: Can you hear that, Your Honor?

3 THE COURT: Yeah.

4 MR. BARTH: (To court reporter) Can you hear that?

5 THE COURT: (To court reporter) Just let me know if you
6 can't hear; okay?

7 BOBBY M. SHAW, being first duly
8 sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. BARTH:

11 Q: Mr. Shaw, give us your full name, please, sir?

12 A: Bobby M. Shaw.

13 Q: Okay.

14 A: Bobby Marion Shaw.

15 Q: All right and, Mr. Shaw, how old are you?

16 A: Sixty-one coming February.

17 Q: All right. Where do you -- where are you residing right
18 now?

19 A: South Carolina Department of Corrections.

20 Q: How long have you been there?

21 A: About two years.

22 Q: Okay and you were originally indicted for murder; weren't
23 you?

24 A: Yes, sir.

25 Q: All right and that was for shooting your -- allegedly

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 shooting your brother?

2 A: Yes, sir.

3 Q: All right. Now, you went before Judge Nettles back in
4 June of 2011; didn't you?

5 A: Yes, sir.

6 Q: All right and you pled guilty at that point; didn't you?

7 A: Yes, sir.

8 Q: All right. Let's talk about before the guilty plea.

9 What was the state of your health at that point in time?

10 A: Well, I was pretty much fine, you know, except for the
11 fact that I was having these seizures and was on medication
12 for them.

13 Q: All right.

14 A: And other medications for other little problems I was
15 having, but as far as, you know, getting to move and all that,
16 everything was great except for that at that point.

17 Q: All right.

18 A: No medications.

19 Q: You told the judge that you were having seizures?

20 A: Sometimes.

21 Q: How often were you having seizures?

22 A: I might have a seizure every so -- maybe a month or maybe
23 two months. It all depends on the stress of whatever. I have
24 to take the medication. If the medication got too high, it
25 was more damaging to me than if it was not taken at all. So

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 that, you know, it kind of stayed good. I didn't really have
2 a problem with the seizures until I was incarcerated.

3 Q: All right. What medicine were you taking for your
4 seizures?

5 A: A medication called Dilantin, which the doctor told me it
6 wasn't to cure the seizures. It was to put distance between
7 them to give us some kind of idea of what we may be able to
8 get on to because these seizures were not stopping.

9 Q: Were you taking pain medicine or any other kind of
10 medicine at that point in time?

11 A: Well, I would take Tylenol, Tylenol 3 ---

12 Q: All right.

13 A: --- and stuff of that nature. I was on Ibuprofen 800 and
14 that wasn't doing it so I got into the Tylenol 3.

15 Q: Prior to your standing before Judge Nettles, did you have
16 a chance to talk to Mr. Floyd about this case?

17 A: Yes, sir. Mr. Floyd and the D.A. ---

18 Q: All right.

19 A: --- spoke to me I'd say an hour or so. In fact, it might
20 have been longer than that.

21 Q: Talk up just a little bit.

22 A: Mr. Floyd and Mr. Clements spoke to me pretty much an
23 hour or better back in the back.

24 Q: Trying to work out a deal with you?

25 A: Yeah. They were basically just telling me what was what

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 and that this was the best that they could do with this.

2 Q: All right.

3 A: And they were saying that they weren't going to -- the
4 State wasn't going to have anything to say to the judge and
5 recommend anything really and they would let the judge decide.

6 Q: All right. When you were talking about the -- you know,
7 what was what with the lawyers and with the D.A., did you ask
8 all the questions of Mr. Floyd you wanted to ask?

9 A: All that I could think of asking. At the point, they
10 were doing more talking ---

11 Q: Okay.

12 A: --- than they were listening. They were telling me what
13 was what.

14 Q: Did you understand what they were talking about?

15 A: In a round and about way, sir, but actually all of it,
16 no, sir. All I understood was the fact that they was telling
17 me that if you don't take this plea and it is pled down for
18 you, they told me that it could carry from two to thirty
19 years. They never did tell me what in-between that I would or
20 may receive even though that they didn't recommend anything to
21 the judge in along the way.

22 Q: All right. On that day when you were talking with Mr.
23 Floyd and the solicitor, had you been taking any medicine?

24 A: Yes, sir.

25 Q: What medicine did you take?

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 A: That morning before I came to the courtroom, I took 400
2 units of Dilantin.

3 Q: Okay.

4 A: And I took four other little pills for other little
5 troubles I was having.

6 Q: All right and how did all that affect you that morning?

7 A: Well, it keeps me basically a little off balance, you
8 know, I know and don't know.

9 Q: Tell me -- you're going to have to explain it more than
10 that. What do you mean you know and don't know?

11 A: I listen.

12 Q: Okay.

13 A: But as far as understanding everything I'm listening to,
14 it's not always the way it is and that's what they were doing
15 trying to keep -- they kept telling me. In other words, what
16 they kept on my mind is the fact that if I don't take this
17 plea, the judge will try you. You are guilty; you pled
18 guilty. You gave yourself up; you gave them the weapon.

19 Q: Okay. They were talking about a statement you gave law
20 enforcement; right?

21 A: Yes.

22 Q: Did you tell your lawyer and the prosecutor that you were
23 guilty?

24 A: I told them what I told the detective and I didn't fully
25 understand what she was asking me or what -- what kind of

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 drugs and alcohol I was on and so she asked me certain
2 questions and I answered them to the best of my knowledge.
3 Q: All right. Well, let's go back to the day that you were
4 talking to your lawyer and standing before the judge. You
5 were in there talking to the lawyer and the solicitor and they
6 were telling you your options; right?
7 A: Well, sir, they never did tell me in-between what he
8 might go with. When I learned that I was going to get twenty
9 years, all of this had -- all had been said and done.
10 Q: All right. Before that, did you understand that you
11 could have gone to trial that day?
12 A: No, sir. They didn't mention a thing to me. They told
13 me that I could be tried ---
14 Q: Okay.
15 A: --- for this crime and it would go back to the original
16 arrest.
17 Q: Why did you decide to stand up in front of the judge
18 instead of having a trial if you wanted a trial?
19 A: Because I was urged pretty well by the D.A. and my lawyer
20 that this was at this time or anytime that this would be my
21 best option ---
22 Q: Okay.
23 A: --- to take this.
24 Q: And at that urging, did you understand what your options
25 were, what you could do, what you couldn't do?

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

- 1 A: No, sir, I didn't. I was only going on what they say ---
- 2 Q: Did ---
- 3 A: --- and I still didn't understand really what I was
- 4 pleading to.
- 5 Q: Did the medicine have any effect on you at the time you
- 6 were having those discussions with the lawyers?
- 7 A: Sir, I would say yes because the medicine, it -- it's got
- 8 its affects you at any time once you take it and like I said,
- 9 I had four other medications along with that that morning,
- 10 that morning itself. I take it at a certain hour of the day
- 11 and it's supposed to pretty much put me to sleep or put me out
- 12 of it. In other words, I wouldn't be understanding any kind
- 13 of way on that medication alone, let alone the four other
- 14 different medications which I have no knowledge actually what
- 15 they were for at that time. I really still don't know.
- 16 Q: Do you still take them?
- 17 A: No, no. That was discontinued once I entered the
- 18 Department of Corrections.
- 19 Q: All right.
- 20 A: Only the Dilantin was continued ---
- 21 Q: All right.
- 22 A: --- with the understanding that it was a 400 unit thing
- 23 per day and that's that. No understanding so they tell me
- 24 that you're supposed to check this thing periodically to make
- 25 sure that the level is kept level because if it tilts, then it

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 could cause more damage than harm, with stroke, heart attack,
2 comatose, seizures, and all kind of stuff of that nature if
3 it's not regulated. It was not done that way and I've been
4 taking it like that since then. I've -- I've probably
5 complicated really from the time I reached R&E up until where
6 I am right now.

7 A month or so ago, what happened is I've been going
8 through this change telling them that the medication level was
9 too high and what it was doing to me. I've been sleeping now,
10 well, actually typically out. I go out and find myself in the
11 hospital taking my medication still and it naturally builds
12 the stuff up. In fact, I wouldn't know how long I've been out
13 or where I am.

14 Q: All right.

15 A: So I was rushed to the hospital a month or so ago and
16 they ran tests due to the fact that I was telling them about
17 the chest pains and the head and all that and so they ran
18 tests on me and the doctor concluded it's the Dilantin level
19 is high because there ain't nothing else wrong with you and
20 this thing could contribute to these problems and more. Yes,
21 sir.

22 Q: Did you -- did the Dilantin and its effects on you have
23 anything to do with whether you decided to have a trial or
24 plead guilty?

25 A: I don't know, sir. I was only going by what I was told

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 by ---

2 Q: Okay.

3 A: --- my lawyer and the D.A.

4 Q: All right. What did your -- what do you contend your
5 lawyer didn't do that he should have done for you?

6 A: He just shouldn't have -- he should have objected to a
7 lot of things: the fact that I was on the run for a few days,
8 stuff of that nature, and I was giving them the gun and stuff
9 like that that didn't happen. I asked him. I even stopped
10 the trial and took him in the back and he acted like he didn't
11 want to go with me, but anyway, we got back there with
12 everything going on and I said, sir, did you hear what that
13 D.A. doing out there? He said, everything's all right, come
14 on. We'll go back in.

15 We got back in there and it went to the end and that's
16 when I found out that I had pled to twenty years and no time
17 was discussed other than two to thirty, other than the time
18 that I could receive if I took that trial and it was assured
19 that I would be found guilty because of what I had told them.
20 I shot the fellow and gave them the weapon, turned it over.
21 The detective said that I was the easiest arrest that she had
22 ever made.

23 Q: Okay.

24 A: All of them were saying that, no problem. I even rode
25 from the spot of the incident to the jailhouse unrestrained.

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 Q: All right.

2 A: No problems, you know, so, you know, just ---

3 Q: Other than ---

4 A: I didn't understand nothing. I was only doing what I was
5 told.

6 Q: Did you explain that to Mr. Floyd?

7 A: I told Mr. Floyd about that.

8 Q: Did you tell him you didn't understand what he was
9 telling you?

10 A: I did.

11 Q: All right and what happened then?

12 A: Well, he kept talking to me.

13 Q: Okay.

14 A: Mr. Floyd visited me. Well, he visited the jailhouse
15 about I'd say three or four times before ---

16 Q: Okay.

17 A: --- the time of this and I would catch him out in the
18 lobby and ask what about my trial and he would tell me I don't
19 want nothing to do with your trial. He told me this three
20 other times, I don't know what to do, I just don't want
21 nothing to do with your trial.

22 All right, so he came back two -- a couple of days. I
23 think it was that Wednesday he came. We spoke about it and he
24 said, well, I've been chosen to represent you, he said, but I
25 haven't had a chance to look at your paperwork and I don't

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 know how I'm going to handle this and I looked at him and I
2 said, you told me three or four different times you didn't
3 want my trial. Now, you had to look this up, but it didn't
4 come to that.

5 So, you know, anyway he ended up representing me and I
6 got to the courthouse that morning and we were in the back, me
7 and the D.A., and we sat there and talked for a minute. So
8 anyhow ---

9 Q: Okay.

10 A: --- they finally convinced me that this was the best
11 option.

12 Q: All right and when he convinced you of that, that was a
13 decision you made to go ahead and stand up in front of Judge
14 Nettles?

15 A: Yes.

16 Q: All right. Now, when you were talking to Judge Nettles
17 and he asked you if you were on medication, you told him you
18 were taking one for seizures and you didn't know what the
19 other one was for; right?

20 A: Yes, sir.

21 Q: All right and when he asked you does it make you
22 understand things for better or worse and you said it doesn't
23 take me out of the picture, what did you mean by that?

24 A: I do, but I really don't understand. I'm listening to
25 what I'm saying, but I'm not a hundred percent of what I'm

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 understanding. I'm listening, trying to catch up with what's
2 going on here and holding, but as far as fully understanding,
3 no.

4 Q: If you had fully understood what you were doing that
5 morning, would you have pled guilty?

6 A: No, sir, I would not have.

7 Q: What would you have done? Asked for a trial?

8 A: I would have asked for a trial.

9 Q: Okay. At any point during the guilty plea, did you have
10 to take a break and go talk to your lawyer?

11 A: Yes, sir, I did.

12 Q: What was the reason for that?

13 A: Because he wasn't -- he wasn't saying anything. The D.A.
14 was steady talking about the things that they was talking
15 about, some of it was prior to the crime that I committed. It
16 was like he was was upset with the reason that it was sixteen
17 years since I've been back in General Sessions court in
18 anything and I'm wondering about that.

19 I just asked him, I said, man, I want to talk to you a
20 minute. I asked the judge could I speak with him and the
21 judge told me yeah, you take him back in the back and talk.

22 So Mr. Floyd acted at the time like he really didn't want to
23 be there. So we got back there and I asked him if I was ---

24 Q: Talk up just a little bit. You've got to talk a little
25 slower and a little louder, Mr. Shaw.

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 A: He acted like at the time when I asked about it that he
2 wasn't too pleased about me stopping the trial and taking me
3 in the back. So he asked the judge would it be all right and
4 the judge said yeah, sure, take him back there and speak to
5 him. We went back there and we spoke and I asked him about
6 this -- this -- these -- these lies these lawyers saying and
7 what my prior had to do with this. I've already served my
8 time for that and that was said. He just said, well, come on.
9 We'll go back and we went back in there.

10 We got back out there and the judge asked me at that
11 point was I satisfied with my lawyer. I told him I don't
12 know, sir. I think so.

13 Q: Okay and he asked you if you understood what you were
14 doing and you said I think so?

15 A: I think so.

16 Q: All right. There was some mention at the guilty plea
17 that you had had a seizure the day of the guilty plea. Had
18 you had a seizure that morning?

19 A: That morning. That's what they gave me as soon as I got
20 my medication ---

21 Q: Okay.

22 A: --- before I went to court.

23 Q: All right and after you -- do you remember about what
24 time you had the seizure that morning?

25 A: It should have been somewhere roundabout four or so.

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

- 1 Q: All right.
- 2 A: Four a.m. or so, at least that's when I came out of it
3 and realized that I had had one and it takes a minute or so
4 after you come out of that state of seizure. Like everything
5 is crazy and you have to sit there and let it come back to you
6 and it ---
- 7 Q: Did it come back to you between the time of the seizure
8 and the time you pled guilty?
- 9 A: No, sir, because I was kind of confused and really
10 listening to what I was told, thinking about the option of me
11 and my age and my health problems such as -- which was just
12 the seizures at that time, and 35 years to life meaning that
13 if I did the 35 years and survived the 35 years, to my
14 understanding and I'm not sure, but with life meaning that I
15 still wasn't going to get out. It was a life sentence period.
16 So I then thought about it. I said, well, the crime I
17 committed is already a life sentence, you know. You've got to
18 take that with you the rest of your life, which is true, and
19 it's not easy. You've got that.
- 20 Q: All right. Now, you mentioned you were still a little
21 bit out of it and a little confused. At what point did your
22 mind clear up? After the plea?
- 23 A: After the trial, period. I mean I ---
- 24 Q: Okay.
- 25 A: Sir, I went back to the jailhouse and I was thinking

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 about this thing and I wrote a letter to the judge somewhat
2 and asking about bringing me back to reduce it, to see if I
3 could get a reduction on it. I also wrote to the Public
4 Defender's Office ---

5 Q: Okay.

6 A: --- the night of the trial, January 13th of '11.

7 Q: What did you tell them? That you wanted a trial or you
8 wanted a reduction in sentence?

9 A: I asked the judge for a reduction in sentence if possible
10 to the judge. I spoke to the lawyer about -- what they call
11 that thing? An appeal, appeal. The judge said that I could
12 appeal it. I had ten days to appeal ---

13 Q: Okay.

14 A: --- whatever he set at that time. So we did it that
15 night and we sent it out and I'd gotten a letter back sometime
16 and the public defender told me that it was too late for the
17 appeal and it was too late to file a post-conviction ---

18 Q: Okay.

19 A: --- because of the time. I had ten days to do it and it
20 had expired, which I sent the letter back to them that day.
21 In other words, I wrote it that night and sent it out that
22 same night.

23 Q: Okay. Let me ask you this, Mr. Shaw, to make sure we're
24 right on this. You're asking for a new trial; right?

25 A: Uh ---

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

- 1 Q: You know this judge can't cut your sentence. We've
2 talked about that.
- 3 A: Yes, sir.
- 4 Q: All right. He can give you a new trial if he finds
5 that's what the law provides; you understand that?
- 6 A: I do.
- 7 Q: All right and is that what you're asking the judge to do
8 is give you a new trial?
- 9 A: Yes, sir, because I would like to have each and every one
10 who participated in it tell their story and see just where we
11 are at that point. There was so many things that went by me
12 that I just didn't catch and ---
- 13 Q: And if -- if you had not been confused on the day of the
14 plea, would you have asked for a trial or would you have pled
15 guilty?
- 16 A: I would have asked straight up for a trial.
- 17 Q: Okay and did you mention to your lawyer before you pled
18 guilty that you were confused and didn't understand what y'all
19 were doing?
- 20 A: I told him that I'd had that seizure that morning and I
21 had that medication and what the effects of that medication
22 was.
- 23 Q: All right. Did you see a doctor at any point between the
24 seizure and the guilty plea?
- 25 A: No, sir. They took me straight from the jailhouse. They

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 gave me the medication at the front desk on my way out
2 straight to the courtroom and after the plea, I really didn't
3 understand at all what was going on and the judge told me that
4 he was going to give me the twenty years. I think his exact
5 words was after he thought about a thing or two that he was
6 going to sentence me to twenty years in the Department of
7 Corrections.

8 Q: Okay.

9 A: And I said thank you, sir, you know, and I wasn't -- you
10 know, they took me out of the courtroom and it still didn't
11 really dawn on me about twenty years, ---

12 Q: Speak up now.

13 A: I said, now, twenty years, this don't sound right because
14 I told them what went down and then I told the lawyer, you
15 know, the man's lying, you know, and I spoke to the judge
16 after it all ended. I said, yeah, Your Honor, I'll go ahead
17 on with this, but the D.A. is -- he ain't telling the truth
18 about it no matter what they said and I let the judge know
19 that something's wrong with what the D.A. was doing. My
20 lawyer didn't object.

21 Q: And you think he should have?

22 A: I think so.

23 Q: All right.

24 A: Knowing what he was supposed to know if he had taken my
25 case and due to the fact that he had told me prior to that day

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 he wanted nothing to do with my case and ended up with my
2 case, I was -- my Rule 5 got to me and I think I saw the
3 lawyer that Wednesday, I'm not sure, and that Thursday I know
4 that the Rule 5 papers came to me at the jailhouse. I think
5 it was because my mind is messed up on it. I don't have my
6 paperwork here, but anyway, when I read the paper, this was
7 either just before I was tried which was a Monday morning.
8 They brought me down and I was tried Monday afternoon and I
9 started thinking about that thing.

10 After looking at the paper when I started looking at it,
11 I said something wrong with this and they'd already told me,
12 like I said, I hadn't had a chance to look at your paperwork
13 so I don't know how to represent you. So I'm in court that
14 Monday morning and this was like I say Wednesday, it was
15 Wednesday afternoon to the best of me. It couldn't have been
16 no more than Wednesday or Thursday, one of those two, but I'm
17 gambling on Wednesday afternoon. Like I said, when I take
18 that medication and then I was taking like three times a day
19 and they was going it to me two, two and two. At that time I
20 was taking that and Tylenol 3 with codeine.

21 Q: All right. Did you take Tylenol 3 with codeine and the
22 Dilantin the day you stood before the judge?

23 A: No. I don't think we had the Tylenol 3 that day. We
24 took the Dilantin and we took, like I say, four other little
25 pills. I don't know. I don't think one of them was -- was

DIRECT EXAMINATION OF BOBBY M. SHAW BY MR. BARTH

1 the codeine. I do know that they were somewhat for pain.

2 Q: Okay.

3 A: And something was to go along with the Dilantin to kind
4 of keep things stable, but I wouldn't guarantee it was the 3
5 at that point. At points they were giving me a 3 and at other
6 times they were giving me another tablet, you know, that was
7 supposed to be of the same deal, but they didn't want to give
8 me too much of the narcotic thing. In other words, narcotics
9 wasn't what they was going to give you unless the judge -- I
10 mean the doctor insisted that you had to have this.

11 Q: How long has it been since you've had your last seizure?

12 A: Yesterday morning.

13 Q: Yesterday morning?

14 A: Yesterday morning.

15 Q: All right and you've taken the medicine yesterday and
16 today?

17 A: Yesterday and I had a dose of it this morning.

18 Q: Okay.

19 A: Well, I don't get it again until the afternoon.

20 Q: All right.

21 A: The movement I had to make this morning, I won't get my
22 medication until this afternoon if they get me the pill out on
23 time.

24 Q: You've got -- you've got a clear head today and
25 understand what we're doing?

CROSS EXAMINATION OF BOBBY M. SHAW BY MR. JOHNSON

1 A: It's not really ever clear, but I think I got a pretty
2 fair understanding of what we're going through here and what
3 I'm telling you I know that this is all real and I understand
4 what you're asking me so I'd say it's pretty much clear, yes,
5 sir.

6 Q: All right and, Mr. Shaw, I'm going -- I'm going to turn
7 it over to the lawyer for the State and he's going to ask you
8 some questions. Okay?

9 A: Yes, sir.

10 Q: All right. Speak slowly and speak up for us.

11 A: All right, sir.

12 Q: All right.

13 CROSS EXAMINATION

14 BY MR. JOHNSON:

15 Q: Mr. Shaw, would it help you to turn you just a little
16 bit?

17 MR. JOHNSON: Your Honor, if that would be all right to
18 turn him? Is that all right?

19 THE COURT: I need for him just to speak up so that the
20 court reporter can hear him.

21 Q: Mr. Shaw, you're not here today saying that you didn't
22 shoot your brother; are you?

23 A: No. I'm not saying that I didn't shoot my brother. I'm
24 saying that it was an unintended thing, that I didn't realize
25 what was going on, and never meant for it to happen and it was

CROSS EXAMINATION OF BOBBY M. SHAW BY MR. JOHNSON

1 like if I was to really say what I know about it, it was more
2 like self-defense. My brother was coming at me with a knife
3 and I had gotten threatened several days prior to that. If I
4 had known that he was anywhere around when I made that stop, I
5 wouldn't have went that way, but since it was that way and I
6 just happened to have my gun in my pocket -- well, not my gun.
7 It was just a little old gun that I was carrying up for
8 somebody and I walked around the streets there and I wouldn't
9 want anything to go wrong and I just had it in my pocket and I
10 don't even realize how it went off, but I took it out of my
11 pocket.

12 Q: Yes, sir.

13 A: When I pulled him off, he came back to me. He was trying
14 to throw me off. My brother was a real rough customer ---

15 MR. BARTH: Talk -- talk up a little bit, Mr. Shaw. I
16 can't hear you.

17 A: My brother was a real rough customer in some ways and
18 when he got high he was like that. He wasn't -- if he was
19 sober, he was a gentleman, but if he ever started drinking or
20 whatever, he was a rough customer.

21 Q: And so if the court were to grant you a new trial today,
22 would you still freely admit that you did shoot your brother?

23 A: To my best knowledge, I would admit that I did shoot him.

24 Q: And you understand that's ---

25 A: That is what I think I done. I know that we was in it

CROSS EXAMINATION OF BOBBY M. SHAW BY MR. JOHNSON

1 together, I forced him off of me, and I told him not to
2 approach, don't touch me. So he started towards me again; he
3 got close enough to touch me. I pushed him back again. I'm
4 standing up against the fridge.

5 I'm already dizzy and dazed; I drank something like eight
6 quarts of beer that day and took 400 units of that Dilantin,
7 which I could drink just a little bit and take this
8 medication, but what's a little bit when you started drinking?
9 So I stopped drinking when I took that seizure thing and I
10 just went and just took 400 units and they just got to the
11 place to where I really just couldn't really walk, which is
12 another reason I decided to go in the house instead of walk
13 around a little.

14 Q: Yes, sir. Now, you understand you were originally
15 charged with -- with murder? You were indicted for murder.

16 A: That's right.

17 Q: And if you go back again, then that would be the charge
18 that you are facing would be a murder charge?

19 A: I understand that also.

20 Q: Which would carry significantly greater time than the
21 twenty years that you currently have?

22 A: Yes.

23 Q: And the charge of murder, you've already stated that you
24 would admit that you did shoot your brother?

25 A: As to my best knowledge, I shot my brother. I mean I'm

CROSS EXAMINATION OF BOBBY M. SHAW BY MR. JOHNSON

1 not trying to be funny with you or anything like that ---

2 Q: Yes, sir.

3 A: --- but in my condition and what we were going at, the
4 gun went off. That's all I know. My mother was standing
5 there that day. If she hadn't ducked, the bullet that hit him
6 in the chest would have hit her in the head. So they got that
7 juggled around to a point to where they were saying that if
8 she had turned her head, the bullet that hit him in the chest
9 would have hit her in the head, but she was never in the room.
10 She was in the house, not in the room.

11 She was under the influence of medications also, which is
12 another reason every day I go through there and I check on
13 her, not to mention I have keys to the door that they said
14 that I -- I don't know whether I admit it or not -- I kicked
15 the door in and went in and beat up on the guy and shot him
16 and killed him. That is the way they told me I did it.

17 Q: These details you're talking about, these were all
18 discussed at the plea; correct?

19 A: Well, I talked to him about that, yeah.

20 Q: Yeah?

21 A: But the deal with him was that, hey, this is your best
22 option. Take this plea or we're going to get 35 years. I'm
23 already 60 years old. I mean thirty-five years, if I make it,
24 you're talking about life. I got life already because I done
25 killed my brother. I got life anyway because I can't get rid

CROSS EXAMINATION OF BOBBY M. SHAW BY MR. JOHNSON

1 of that. I'm sorry, but that's a little too late now.

2 Q: I understand. I was -- I was trying to pay close
3 attention during the period when you were talking about some
4 of the finer details of the plea, such as the prior offenses
5 that you felt that you'd already served your time for, and
6 these are being brought out and discussed at your plea. Do
7 you remember that?

8 A: It seems at the trial that was what I was really being
9 tried for ---

10 Q: Okay.

11 A: --- rather than what I'd actually done and it's been like
12 over ---

13 Q: And I ---

14 A: I think it's close to twenty years and it's already been
15 sixteen years since I've been out of trouble, period. I
16 didn't think that that was appropriate. I mean what I done, I
17 done and really didn't do. That's all I've done. I served my
18 time; all that's gone. I didn't think that had any bearing or
19 should even been brought up at this.

20 Q: And -- and you also -- I tried to write down what you
21 said -- tell me if I got this wrong -- but you said they were
22 back and forth lies ---

23 A: Yeah.

24 Q: --- that were being told about you that day and I think
25 you asked for a meeting with your lawyer all before the plea

CROSS EXAMINATION OF BOBBY M. SHAW BY MR. JOHNSON

1 was over. You asked for a meeting with your lawyer and you
2 complained to him or you spoke with him about some of these
3 things are not true. I'm not sure what you said to him, but
4 I'm assuming you told him, look, these things are not true
5 that they're saying about me; right?

6 A: Yeah.

7 Q: But your medication didn't affect your ability to have
8 that communication with your lawyer; did it?

9 A: I don't know exactly what, but that medication, like I
10 say, at a certain time or another that medication depending on
11 what time you're taking it and how long it's supposed to last
12 or what's it's supposed to do, it's a mind-altering thing,
13 period, and that doesn't say that if I take it today, three or
14 four days, it's going to last just for these three or four
15 days or continue for five days or so and I not take a single
16 tab of it no more.

17 So it's a thing I can't really say what or how. All I
18 can tell you is what I understand and I understood at that
19 time and the fact that they were lying about about me running
20 and all that kind of nonsense. Turning myself in, yeah, I
21 done that. Giving them a weapon, no, I did not do that, and
22 the procedure they used to obtain a weapon ain't right.

23 Q: You were upset when they were -- they were trying to say
24 you were running or a fugitive or evading arrest. That upset
25 you as well; did it not?

CROSS EXAMINATION OF BOBBY M. SHAW BY MR. JOHNSON

1 A: Yes, it did.

2 Q: And you told your lawyer about that in the meeting that
3 you had?

4 A: I wanted to know why they wanted to put all this in front
5 of what we were actually dealing with this. It has no bearing
6 on that I would say.

7 Q: All right.

8 A: I'm in here for the charge of murder. They put me down
9 to this. Why are we over there about something that happened
10 pretty much twenty years ago?

11 Q: Yes, sir.

12 A: Like we buried that and that was why I was upset, you
13 know, at that point due to the fact that this was all going
14 on. Like I say, I was in and out of whatever we were talking
15 about. It was my understanding that I wouldn't even talk to
16 the D.A. and that he was supposed to be my lawyer.

17 Q: All right. So now, on direct examination with your
18 lawyer here, Mr. Barth, he was asking you about that point in
19 your plea when the Court asked you if you were on medication
20 and I think you responded that you were.

21 A: Yes, sir.

22 Q: I'm referencing for the Court and counsel, page 5, and
23 about line 3. Excuse me, line 1, and the Court asked you and
24 Mr. Barth asked you just a minute ago, well, does it make you
25 where you can understand things better or worse and your

CROSS EXAMINATION OF BOBBY M. SHAW BY MR. JOHNSON

1 answer, line 3, well, it weighs my mind for a little bit at
2 one point or another, but then it doesn't take me out of the
3 picture I don't guess.

4 A: That's true.

5 Q: Do you remember saying that? And then the Court asked
6 you a very important question: Do you understand what we're
7 doing here today? And your answer: I think so, Your Honor.

8 A: I think so, Your Honor. That was based on just what I
9 said about that medication and how it does at one point or
10 another.

11 Q: But your answer at that time was: I think so, Your Honor.
12 I understand what we're doing here today, but now you're
13 saying ---

14 A: Yes, sir.

15 Q: --- something different.

16 A: No. I'm telling you what -- what it is. I told him just
17 what he asked me. The question he asked me, I answered it to
18 the best of my knowledge.

19 Q: I'm just wondering why you didn't say to the Court at
20 that time, Your Honor, I can't do this today. I'm in and out.
21 I don't understand what's going on and we need to reschedule
22 this for another day.

23 A: Because I was told to go ahead on and take this, that
24 this was my best option and if I take it to trial, I would be
25 found guilty, no if or maybe. I would be found guilty and

CROSS EXAMINATION OF BOBBY M. SHAW BY MR. JOHNSON

1 thirty-five to life. With the way they see it, you have pled
2 guilty by surrendering. They told me that by me surrendering,
3 giving up the weapon, that was my guilty plea.

4 Q: Mm-hmm. There's another section I'd like to ask you a
5 couple questions about.

6 MR. JOHNSON: Just for the Court and counsel's reference,
7 it's page 14, 1 through 11.

8 Q: The Court is going through all the rights that you would
9 have if you chose a trial, that you'd be presumed innocent,
10 you wouldn't have to take the stand, you could subpoena
11 witnesses. The Court went through those and other rights that
12 you could avail yourself of if you chose a trial and then at
13 the end, around lines 9 and 10, you realize by pleading guilty
14 you're giving up all these rights and your answer at line 12
15 was, yes, sir.

16 A very important question again, the Court asked you do
17 you still wish to plead guilty. This is the point when you
18 answered that question. Do you remember what you told the
19 Court?

20 A: When that was?

21 Q: When the Court asked you do you still wish to plead
22 guilty, what did you tell the Court?

23 A: This is the whole thing? The whole ---

24 Q: Yes, sir. The Court had gone through your rights if you
25 chose a trial and then the last sentence was: You realize by

CROSS EXAMINATION OF BOBBY M. SHAW BY MR. JOHNSON

1 pleading guilty you're giving up all these rights? And you
2 said, yes, sir, line 12, and then the Court asked you at line
3 13, still wish to plead guilty? And do you remember what you
4 told the Court?

5 A: I told him, yes, sir, because I was only going -- I was
6 going on what I had been drilled into, telling me, hey, this
7 is it, this is your best way out. You take this. You are
8 going -- in other words, they were telling me was definitely
9 at trial, you're through. This, you may have a chance. Not
10 -- no understanding as to how much time the judge probably
11 would give me. The prosecution wouldn't recommend any time.
12 The judge said that what -- what the lawyer told me and the
13 prosecution told me, they said that the charge was two to
14 thirty. That's where it capped. All right?

15 I didn't know it was twenty until the end. That was when
16 I learned just what I had pled to. It still didn't really
17 dawn on me until later after I had gotten back to the
18 jailhouse and we started talking and I wrote back to the judge
19 and my lawyer then.

20 Q: So now, just let me try to understand what you just said.
21 You said if you plead, zero to thirty, but if you go to trial,
22 you're through. Did you just say that?

23 A: Thirty-five to life. Sixty years old.

24 Q: You're looking at life if you went to trial.

25 A: Exactly.

DIRECT EXAMINATION OF BOBBY M. SHAW BY THE COURT

1 Q: So you chose to plea to evade the harsher consequences of
2 a potential life sentence; didn't you?

3 A: Exactly, plus they told me maybe that would maybe be the
4 best and from what I just told you, thirty-five to life,
5 obviously I was sixty at that time. I mean, you know, you're
6 talking life if I did the thirty-five, ninety-five years old
7 and still got life. I was through so I figured what they was
8 telling me was the best option was to take the plea still not
9 knowing what the time of that plea that I might could get. I
10 understood that it carried from two to thirty, but I didn't
11 think due to the evidence and how things went that it would be
12 a twenty year thing.

13 MR. JOHNSON: Please answer any questions that Mr. Barth
14 or the Court may have for you.

15 MR. BARTH: No redirect, Your Honor.

16 DIRECT EXAMINATION BY THE COURT

17 THE COURT: Mr. Shaw, let me ask you this. If Judge
18 Nettles would have given you two years, would you be sitting
19 here today?

20 PLAINTIFF: No, sir. I would've done the two years
21 because I mean I know had to do something. Like I say, Your
22 Honor, at the time ---

23 THE COURT: So you ---

24 PLAINTIFF: --- whatever the time that's on paper, it
25 can't match what's in my heart. I done something that day.

DIRECT EXAMINATION OF BOBBY M. SHAW BY THE COURT

1 THE COURT: I understand that, but your whole problem
2 here today is that you got twenty years.

3 PLAINTIFF: And I don't think that it was a justified
4 sentence.

5 THE COURT: Okay.

6 PLAINTIFF: I was under the influence and particularly
7 with the evidence that was provided. I told them the truth
8 about what I knew at that point and this is what I'm saying to
9 you now and that's why I'm back here. Maybe a time cut or
10 something, anything that would help at this point, but if not,
11 I mean that's in your hands at this point. So I'm -- see, I
12 came to tell my story.

13 THE COURT: Okay. All right, sir. Thank you, sir.

14 PLAINTIFF: You're welcome, sir.

15 (Whereupon, the witness leaves the stand at 10:36 a.m.)

16 THE COURT: All right.

17 MR. BARTH: That would be our case, Your Honor.

18 THE COURT: All right. Mr. Johnson?

19 MR. JOHNSON: If I could have just a moment, Your Honor?

20 THE COURT: Yes, sir.

21 (Whereupon, there is a pause in the proceedings.)

22 MR. JOHNSON: Your Honor, we'll call Scott Floyd.

23 THE COURT: Okay. Mr. Floyd, if you'll come around to be
24 sworn, please, sir.

25 THE CLERK: Please place your left hand on the Bible and

DIRECT EXAMINATION OF SCOTT FLOYD BY MR. JOHNSON

1 raise your right hand. Do you swear or affirm the testimony
2 you give in this case will be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 WITNESS: I do.

5 THE CLERK: Please be seated and state your name for the
6 record.

7 WITNESS: My name is Scott Floyd.

8 SCOTT FLOYD, being first duly
9 sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. JOHNSON:

12 Q: Mr. Floyd, will you tell the Court how you came to
13 represent Mr. Shaw in this matter?

14 A: Yes. I was employed in the Public Defender's Office and
15 this case was approved for representation by the Public
16 Defender's Office and it appears from the notes in my file
17 this case was assigned to me on October 1st of 2010 and it
18 would have been, you know, sometime after that before I
19 actually physically received the file in my office.

20 Q: Now, you sat through the testimony of Mr. Shaw this
21 morning?

22 A: I did.

23 Q: And you understand the claim that he's making that he was
24 under medication and therefore he shouldn't have pled that day
25 or didn't understand it completely. I want to ask you about

DIRECT EXAMINATION OF SCOTT FLOYD BY MR. JOHNSON

1 your observations of Mr. Shaw and your experience in dealing
2 with defendants in pleas and trials. What were your
3 observations of Mr. Shaw with regard to whether or not he was
4 able to understand what was going on that day?

5 A: I did have the opportunity to speak to him before the
6 plea. In other words, we didn't -- he didn't just get there
7 and we marched straight into the courtroom. We sat down and
8 actually had a conversation in a conference room in that
9 courtroom where we did the plea. I can't remember if it was
10 on 10 or 11, but I do remember talking to him in a conference
11 room. I mean he appeared to me to be coherent. I mean we had
12 exchange back and forth as far as, you know, questions and
13 answers and that sort of thing. So I mean I didn't notice
14 anything that indicated to me that he was having a problem. I
15 mean he wasn't slurring his words. He didn't appear unsteady
16 on his feet or anything like that.

17 Q: Did he seem to understand the things you told him?

18 A: He seemed to.

19 Q: Did he ask questions in response?

20 A: I believe he did.

21 Q: Did he take exception or become upset with anything that
22 you told him or anything that happened that day?

23 A: No. He was -- he never became upset with me or
24 belligerent. He was -- he actually was very pleasant.

25 Q: Did he understand that his options were to plea to

DIRECT EXAMINATION OF SCOTT FLOYD BY MR. JOHNSON

1 manslaughter, which would give him up to thirty years, or in
2 the alternative to go to trial and face a potential life
3 sentence?

4 A: Yes. You know, sometimes clients want to hear directly
5 from the prosecutor whether or not he's willing to reduce the
6 charge or make a recommendation and I think in this particular
7 case, I believe Mr. Clements did tell him that he was -- he
8 was willing to reduce the charge if he pled to voluntary
9 manslaughter, but that he would not make any recommendation on
10 the sentence itself and that if he tried him, he was in fact
11 going to try him for -- on the murder charge and, you know,
12 that was basically it.

13 Q: Did there come a point in time in the plea when things
14 were said about his prior criminal record that he didn't like
15 and then he asked to speak with you?

16 A: You know, that could have happened. I don't specifically
17 remember him, you know, saying anything to me about the prior
18 criminal record, but certainly he might have.

19 Q: Sure.

20 A: I'm not denying that.

21 Q: Now, if you were of the opinion in this or any case that
22 your client was under the influence of medication and
23 therefore incapable of understanding, would you have postponed
24 the plea or what would you have done?

25 A: Oh, certainly. I mean I would have -- yes, I would have

CROSS EXAMINATION OF SCOTT FLOYD BY MR. BARTH

1 asked for a continuance if I thought he was under the
2 influence and couldn't understand what was going on.

3 Q: Has -- by the way, has that ever happened in a -- in a
4 case?

5 A: Well, certainly. I mean I've -- I've had people out on
6 bond before who have shown up here on their designated plea
7 day who appeared to me to be intoxicated and I've -- I've
8 normally just handled it by telling the solicitor, look, you
9 know, he's drunk. I don't feel comfortable going through with
10 his plea and, you know, but I mean we just handle it like
11 that. But I mean I've never had a -- a trial situation
12 postponed because of that.

13 MR. JOHNSON: Please answer any questions that Mr. Barth
14 or the Court may have for you.

15 MR. BARTH: May it please the Court. I just have a
16 couple, Mr. Floyd.

CROSS EXAMINATION

17
18 BY MR. BARTH:

19 Q: When the judge asked Mr. Shaw about having a seizure the
20 day of the plea ---

21 A: Yes, sir.

22 Q: --- had Mr. Shaw told you that before?

23 A: He did not tell me that before we stood up there ---

24 Q: Right.

25 A: --- to do the plea. When he mentioned it during his

CROSS EXAMINATION OF SCOTT FLOYD BY MR. BARTH

1 plea, at one point the judge allowed us to go back and talk.

2 Q: Right.

3 A: And he told me then after he'd said it in the courtroom
4 that he had had a seizure. I mean ---

5 Q: At any point, did you consider letting a doctor -- having
6 a doctor look at him and see what the effects of the seizure
7 were or the medicine he had taken?

8 A: I mean I asked him. I think what I did was asked him if
9 he -- you know, if he understood what he was doing and if he
10 understood my questions I mean and we just talked some more
11 and it appeared to me he did understand. So I mean I didn't
12 -- I did not do that.

13 Q: And he said today that -- that seizures made him feel a
14 little in and out, a little foggy, or a little fuzzy. Did he
15 give you any indication that that was the case on that day?

16 A: Well, I didn't notice any physical signs or symptoms of
17 that and like I said, in our conversations he appeared to be
18 coherent at that time.

19 Q: But he could have been in and out and maybe you just
20 didn't know; right?

21 A: I'm certainly not a doctor ---

22 Q: Okay.

23 A: --- and that could -- could be the case.

24 Q: And if he had been under the influence of medication or
25 had been under the effects of a seizure that made him foggy or

CROSS EXAMINATION OF SCOTT FLOYD BY MR. BARTH

1 fuzzy, I mean he shouldn't have pled guilty. He shouldn't
2 have made that kind of decision that day; should he?

3 A: If he was having trouble understanding because of
4 medication or whatever and didn't understand what he was
5 doing, then no, he shouldn't have pled if he didn't
6 understand.

7 Q: And now he mentions about self-defense and all that.
8 Those are legal defenses to a murder charge; aren't they?

9 A: Certainly.

10 Q: Okay. Okay, thanks, Scott.

11 A: Thank you.

12 THE COURT: Anything further?

13 MR. JOHNSON: No further questions and no further
14 witnesses, Your Honor.

15 THE COURT: Thank you, Mr. Floyd. You may step down.

16 WITNESS: Thank you.

17 MR. BARTH: And no reply, Your Honor.

18 (Whereupon, the witness leaves the stand at 10:44 a.m.)

19 THE COURT: All right. Then we'll hear from the
20 attorneys with any closing remarks you'd like to make.

21 MR. BARTH: May it please the Court.

22 THE COURT: Yes, sir, Mr. Barth.

23 MR. BARTH: Just very briefly. Your Honor has seen the
24 file and heard the testimony and over the years we've been
25 appointed on a bunch of these and seen a bunch of them. This

1 is really the first time I've seen one where the defendant I
2 mean told the judge he had a seizure, he was taking
3 medication, that he even took some he didn't know what they
4 were I mean and now we know that the seizures make him fuzzy-
5 headed and foggy-headed and hard to understand and things of
6 that nature. Then you throw the seizure medication on top of
7 it, you throw painkillers on top of it, which is what he was
8 taking and I'm certainly not faulting Mr. Floyd for not -- not
9 knowing that.

10 I mean that was obviously something that Mr. Shaw should
11 have said, but clearly I mean he was having problems. He
12 tells the judge in the plea when the judge says, you know, do
13 you understand what we're doing and he said, I think so. I
14 mean he even had to stop at one point and talk to the lawyer
15 and I mean clearly he was confused and ---

16 THE COURT: You know, that's the problem when you read a
17 transcript because if I ask you do you understand what I'm
18 telling you and you go, I think so or yeah, I think so, sure,
19 and ---

20 MR. BARTH: And I would ordinarily -- you -- I mean that
21 would be exactly right, but we're talking about somebody that
22 just told the judge I've had a seizure and I'm taking
23 medicine. I mean if that -- and that, to be honest with you,
24 does shed some light on whether he freely and voluntarily
25 entered into this and understood it.

1 I mean granted, Your Honor was probably on the money and
2 if he'd have gotten two years, he wouldn't be here because he
3 would have maxed out already, but I mean the fact of the
4 matter is it isn't a knowing and voluntary plea if, in fact,
5 he is under the influence of medications and the seizure. I
6 don't know the effects of a seizure. I've never had one, but
7 it's obviously an issue with -- you know, certainly it's mind-
8 altering for a while and when that colloquy started, I mean it
9 should -- it should have been set aside at some point and let
10 somebody look at him and see.

11 I just -- we've seen a bunch of these and all of that,
12 but I mean all the signs are there. He talks -- he talked
13 about being under the influence at the time of the incident.
14 He talked about it possibly being self-defense, all of those
15 things. I'm sure Mr. Floyd talked to him and explained all
16 that to him, the legal defenses to murder, but the issue we
17 have, Your Honor, with this one is simply that he was having
18 problems and he's gotten up here and testified to that and
19 like I said, I'm not faulting the fact that, you know, that
20 Mr. Floyd didn't catch it, but clearly this guy didn't
21 understand what he was doing at the time he pled.

22 THE COURT: Thank you, Mr. Barth. Mr. Johnson?

23 MR. JOHNSON: This falls in the category of the
24 overwhelming evidence cases where he doesn't deny that he shot
25 his brother. His mother was there as a witness so -- and we

1 don't see these that often. It's an overwhelming evidence
2 case where Mr. Shaw actually made a very wise decision when he
3 entered his plea and he seems to be making what would appear
4 to be an unwise decision today to try to -- while having a
5 manslaughter conviction to try to go back and face the murder
6 presumably hoping to get a manslaughter conviction again,
7 which doesn't make sense to me.

8 So I think the key here, Your Honor, is when he admitted
9 under oath just a few minutes ago that understanding potential
10 consequences that he chose to enter a guilty plea in order to
11 evade a harsher penalty which would have occurred at the
12 conclusion of a trial, he understood and he just told you that
13 he understood he was looking at up to thirty for voluntary
14 manslaughter and up to life for murder, and it was a very
15 knowing and voluntary decision to enter a plea that day.

16 He was even able to articulate the finer points of some
17 things that he didn't agree with that he heard during the plea
18 and he called his lawyer back to complain about it. He was
19 there. He was all there that day. He was mentally aware. He
20 was very acutely aware of what was going on and made
21 complaints about those things and he even -- I mean I think
22 medication -- it's easy to complain about medication. He said
23 his mother was on medication if I'm -- if I'm remembering
24 correctly. He's on medication today. One of the comments
25 that I wrote down was his head is never there.

1 Well, that's very telling, Your Honor. So we would -- we
2 would ask that the case be denied and the application be
3 dismissed.

4 THE COURT: Thank you, sir.

5 MR. JOHNSON: Thank you.

6 RULING OF THE COURT

7 THE COURT: I mentioned it earlier when I was speaking to
8 Mr. Barth and I'm going to expound just a tad on it and that
9 is, as a matter of fact, this is the first opportunity that
10 I've had to do post-conviction relief hearings with my current
11 law clerk and he and I were talking earlier this week because
12 yesterday he was reading the transcript from an earlier
13 hearing and how different it is to sit in a trial and to watch
14 and observe a trial and observe witnesses and how different it
15 all is when you have to simply just read a transcript.

16 You cannot tell from reading a transcript things such as
17 voice inflection and things of that nature and that's the
18 thing, you know, that we're -- we're told often as trial
19 judges when we take pleas and do things of that nature and
20 that's why we ask the questions of folks. Are you -- are you
21 under the influence of anything that would affect your ability
22 to understand these proceedings today?

23 And regardless of how a person answers that question, I'm
24 always and I'm sure Judge Nettles and all other judges are
25 always evaluating the person as they respond to our questions.

1 If I have any concern over an individual, regardless of what
2 his answer is, that he doesn't understand what it is he's
3 doing or what he's going over, I'll explore that further.

4 It does appear to me in this plea, based on Mr. Shaw's
5 earlier comment that he did have a seizure earlier and that he
6 did admit that he was on medication even that day for -- for
7 seizures, that Judge Nettles even went further to -- to verify
8 whether or not he was competent or understood what was going
9 on and he proceeded to ask him questions about the role of the
10 public defender, the role of the investigator, the role of the
11 solicitor, the role of the judge, as he went through the --
12 through the plea, which is something I don't know that I've
13 ever done, but certainly was Judge Nettles' way of clarifying
14 at least in his mind whether or not Mr. Shaw understood the
15 proceedings.

16 And so the fact that Judge Nettles proceeded with the
17 plea, I think he felt -- I mean I have no question he felt
18 confident that Mr. Shaw, even though he was on medication,
19 that it was medication that actually enhanced his ability to
20 understand rather than detract from it.

21 You pointed it out, Mr. Johnson, and I noted it when I
22 was going through the transcript that Mr. Shaw was alert and
23 cognizant and aware enough as the solicitor went through the
24 -- gave their rendition of the facts where he corrected those
25 areas of the facts that he didn't agree with and so he was

1 able to actually point out the areas in the solicitor's
2 colloquy that he disagreed with and made those corrections.

3 It does appear from -- from everything, even in light of
4 Mr. Shaw's testimony today, that at the time that he entered
5 this plea, I think he was aware of what he was doing. I don't
6 get the impression from the transcript and from the testimony
7 and from Mr. Floyd's testimony that there was concern
8 regarding -- I mean obviously there was concern regarding his
9 ability to understand, but I think that those concerns were
10 addressed and -- and that they were addressed in a fashion
11 where he was in fact -- or they were -- the Court, as well as
12 Mr. Floyd, was convinced that he did in fact understand the
13 proceedings.

14 Mr. Floyd in his testimony indicated he's had -- he's had
15 pleas where he didn't feel his client understood and withdrew
16 or backed off of proceeding with those pleas. That wasn't the
17 case here.

18 And then -- so, you know, there's that and then, of
19 course, my questions to Mr. Shaw today and what it appears to
20 the Court is that -- and I don't fault Mr. Shaw or in any way
21 criticize him at all. I'd probably be in the same boat he's
22 in and probably do the same thing, but it appears that his
23 purpose for this post-conviction relief is that he -- he feels
24 that the sentence was -- was too harsh based on the facts and
25 circumstances and that if Judge Nettles would have sentenced

1 to him something much lower that he wouldn't be here before
2 the Court today.

3 And so it does appear that this has been driven more that
4 he's not pleased with the sentence he received more so than
5 the -- the voluntariness and understanding of the plea he
6 entered. I don't think there's been anything in the record to
7 reflect that Mr. Floyd was ineffective in his representation
8 in any way.

9 I'm going to respectfully deny the application for those
10 reasons. Good luck to you, sir.

11 MR. BARTH: Thank you, Your Honor.

12 (Whereupon, the proceedings ended at 10:55 a.m.)

13

14 --- END REQUESTED TRANSCRIPT ---

15

16

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18

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1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF FLORENCE)

4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 Common Pleas for Florence County, South Carolina, on the 17th
12 day of October, 2012.

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

15

16

Krystal J. Smith

17

Court Reporter

18

19 Florence, South Carolina

20 December 31, 2012

21

22

23

24

25

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
 Bobby M. Shaw, # 208295,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS

12-CP-21-376

ORDER OF DISMISSAL

CONSUE REEL-SHEARIN
 CLERK
 CCCP & GS
 FLORENCE COUNTY, SC

2012 OCT 29 PM 3:04

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 8, 2012. Respondent made a timely Return. The Court convened an evidentiary hearing into the matter on October 17, 2012, at the Florence County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, Esquire. Tyson Andrew Johnson, Sr., Esquire of the South Carolina Attorney General's Office represented Respondent.

At the hearing, Applicant testified on his own behalf. Also testifying was Scott P. Floyd, Esquire. This Court had before it the PCR Application, the State's Return, the records of the County Clerk of Court, the transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at June 2011 term of the Florence County Grand Jury for Murder and possession of a weapon during the commission of a violent crime. Scott P. Floyd Esquire, represented applicant. On June 13, 2011, Applicant pled

cc: [unclear]
 [unclear]
 [unclear]

guilty to the lesser included offense of voluntary manslaughter. The Honorable Michael Nettles sentenced Applicant to twenty years imprisonment. Applicant did not appeal.

ALLEGATIONS

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "I was deprived of due process of law under the amendment 5/6/14 and I'm not guilty of the crime."

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 presented 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.

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064; 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within

the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Medication allegation and failure to object

Applicant testified his counsel was ineffective because he feels he should not have allowed him to enter a plea on the day he was under the influence of his medication. Applicant testified his state of health was fine, but he was having seizures and took medication for them. He indicates he told the judge of his medication. Applicant further stated his medication keeps him off balance – "I listen but I don't understand." Applicant also avers his counsel was ineffective for failing to object to the State's characterization of him as being "on the run" during his plea. Applicant indicated he stopped the plea at one point to ask counsel why he was not objecting to what he called "back and forth lies."

Counsel testified he met with Applicant in person for a length of time before his plea, and that Applicant appeared to be coherent and to understand what counsel was telling him. Counsel indicated that Applicant asked questions and seemed to understand the answers given by counsel.

Regarding Applicant's claim that his medication prevented him from understanding the nature of his plea, I find Applicant not credible. Applicant was mentally sharp enough to understand the plea he was entering, and even to disagree with the finer points of allegations made by the solicitor during the colloquy. Applicant asked counsel to meet with him in the interruption of the plea to address these issues. When asked by this Court if he would have filed a PCR if he had gotten a much lower sentence, he indicated he would have.

I find that counsel's performance was not deficient under these circumstances. Applicant has not overcome the presumption that counsel rendered effective assistance, nor has he proven prejudice in this case. I find counsel's actions were reasonable under prevailing professional norms, and therefore this claim is denied.

Other Allegations

No other allegations were raised or testified to at the PCR hearing. Therefore, any additional allegations raised in the PCR Application or amendment are deemed waived because no evidence was presented.

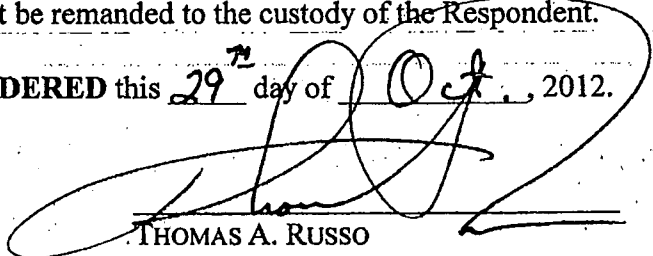
CONCLUSION

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 29th day of Oct., 2012.



THOMAS A. RUSSO
 Presiding Judge
 12th Judicial Circuit

Florence, South Carolina.

2012 OCT 29 PM 3:04
 CONNIE REEL-SHEARIN
 CCOP & GS
 FLORENCE COUNTY, SC

FILED

COPIES: A TRUE COPY

Connie Reel Shearin
 CLERK OF COURT
 FLORENCE COUNTY, SC

M-376790
STATE OF SOUTH CAROLINA
 County/ Municipality of
FLORENCE



THE STATE
against

BOBBY MARION SHAW
Address: //
FLORENCE SC 29503
Phone: (843) 245-5554 SSN: 251-90-8990
Sex:
Race: B Height 5-8 Weight: 185
DL: SC DL#: 090428667/I.D.
DOB: 02/21/1952 Agency ORI#: SC0210100
Prosecuting Agency: FLORENCE MUNICIPAL COURT
Prosecuting Officer: ROBINSON
Offense: MURDER / MURDER
Offense Code: 0116
Code/Ordinance Sec. 16-03-0010, 16-03-0020

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of
The accused
s to be arrested and brought before me to be
fealt with according to law.

Signature of Judge (L.S.)

RETURN
copy of this arrest warrant was delivered to
efendant BOBBY MARION SHAW
8-26-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
ORIGINAL
MUST BE RETURNED TO
FLORENCE MUNICIPAL COURT

STATE OF SOUTH CAROLINA
 County/ Municipality of
FLORENCE

AFFIDAVIT
8-26-10

Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 518

Personally appeared before me the affiant MICHAEL ROBINSON who
being duly sworn deposes and says that defendant BOBBY MARION SHAW
did within this county and state on 08/25/2010 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of FLORENCE)
in the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0010, 16-03-0020 / MURDER / 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:

THE DEFENDANT ASSAULTED HIS BROTHER/VICTIM (ROBERT SHAW) WHILE LOCATED AT THEIR MOTHER'S RESIDENCE,
IN THE CITY OF FLORENCE. THE DEFENDANT AND THE VICTIM WERE HAVING A VERBAL
ALTERCATION WHEN THE DEFENDANT PULLED A WEAPON FROM HIS POCKET AND FIRED ONE ROUND STRIKING THE
VICTIM IN THE CHEST. THE VICTIM WAS LATER PRONOUNCED DECEASED AT A LOCAL HOSPITAL. A WITNESS AT THE
SCENE, THE VICTIM'S MOTHER, IDENTIFIED THE DEFENDANT AS THE SHOOTER. THE DEFENDANT ADMITTED IN A TAPED
STATEMENT, AGAINST HIS PENAL INTEREST, TO SHOOTING HIS BROTHER. THE DEFENDANT IS A CONVICTED FELON AND
A REGISTERED SEX OFFENDER AND HE IS PROHIBITED FROM POSSESSING A FIREARM.

Signature of Affiant Michael Robinson
Affiant's Address FLORENCE POLICE DEPT., 180 N. IRBY.
FLORENCE SC 29501
Affiant's Telephone 843-665-3191

STATE OF SOUTH CAROLINA
 County/ Municipality of
FLORENCE

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY
It appearing from the above affidavit that there are reasonable grounds to believe
on 08/25/2010 defendant BOBBY MARION SHAW
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of FLORENCE) as set forth below
DESCRIPTION OF OFFENSE: MURDER / MURDER

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 the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
on 08/26/2010)

(L.S.)
MUNICIPAL COURT JUDGE
Judge Code: JUDGE 10920

Judge's Address BOX DD-CITY-COUNTY COMPLEX ROOM 506
FLORENCE SC 29501
Judge's Telephone 843-665-3148
Issuing Court: Magistrate Municipal Circuit

ORIGINAL

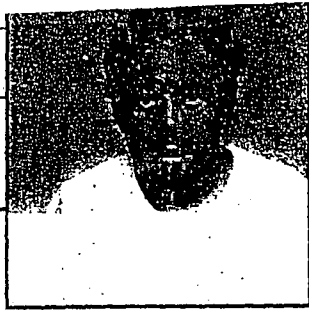
FILED
2010 SEP 14 PM 2:12
DORRIS REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

Case: 2010-008081

M-376791

STATE OF SOUTH CAROLINA
 County/ Municipality of
FLORENCE

THE STATE
against



BOBBY MARION SHAW

Address: [REDACTED] // [REDACTED]
FLORENCE SC 29503
Phone: [REDACTED] SSN: 251-90-8990
Sex: [REDACTED] Race: B Height: 5-8 Weight: 185
DL State: SC DL#: 090428667/I.D.
DOB: 02/21/1952 Agency ORI#: SC0210100
Prosecuting Agency: FLORENCE MUNICIPAL COURT
Prosecuting Officer: ROBINSON
Offense: UNLAWFUL POSSESSION OF WEAPON
Offense Code: 2364
Code/Ordinance Sec. 16-23-0030

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 law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant BOBBY MARION SHAW
on 8-26-2010

[Signature]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ORIGINAL
MUST BE RETURNED TO
FLORENCE MUNICIPAL COURT

STATE OF SOUTH CAROLINA

County/ Municipality of
FLORENCE

AFFIDAVIT

8-26-10

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

Personally appeared before me the affiant MICHAEL ROBINSON who
being duly sworn deposes and says that defendant BOBBY MARION SHAW
did within this county and state on 08/25/2010 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of FLORENCE)
in the following particulars:

DESCRIPTION OF OFFENSE: 16-23-0030 / UNLAWFUL POSSESSION OF WEAPON

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT ASSAULTED HIS BROTHER/VICTIM (ROBERT SHAW) WHILE LOCATED AT THEIR MOTHER'S RESIDENCE,
[REDACTED] IN THE CITY OF FLORENCE. THE DEFENDANT AND THE VICTIM WERE HAVING A VERBAL
ALTERCATION WHEN THE DEFENDANT PULLED A WEAPON FROM HIS POCKET AND FIRED ONE ROUND STRIKING THE
VICTIM IN THE CHEST. THE VICTIM WAS LATER PRONOUNCED DECEASED AT A LOCAL HOSPITAL. A WITNESS AT THE
SCENE, THE VICTIM'S MOTHER, IDENTIFIED THE DEFENDANT AS THE SHOOTER. THE DEFENDANT ADMITTED IN A TAPED
STATEMENT, AGAINST HIS PENAL INTEREST, TO SHOOTING HIS BROTHER. THE DEFENDANT IS A CONVICTED FELON AND
A REGISTERED SEX OFFENDER AND HE IS PROHIBITED FROM POSSESSING A FIREARM.

Signature of Affiant [Signature]
Affiant's Address FLORENCE POLICE DEPT., 180 N. IRBY
FLORENCE SC 29501
Affiant's Telephone 843-665-3191

STATE OF SOUTH CAROLINA

County/ Municipality of
FLORENCE

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 08/25/2010 defendant BOBBY MARION SHAW

did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of FLORENCE) as set forth below:

DESCRIPTION OF OFFENSE: WEAPONS / SALE OR DELIVERY OF PISTOL TO BE POSSESSED BY,
CERTAIN PERSONS UNLAWFUL; STOLEN PISTOL

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 the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
on 08/26/2010)

[Signature] (L.S.)
MUNICIPAL COURT JUDGE

Judge Code: JUDGE 10920

ORIGINAL

Judge's Address BOX DD-CITY-COUNTY COMPLEX ROOM 506
FLORENCE SC 29501

Judge's Telephone 843-665-3148

Issuing Court: Magistrate Municipal Circuit

Case: 2010-008081

FILED
2010 SEP 14 PM 2:12
DOMINIC REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

93

WITNESSES

Michael Robinson Florence Police Department

Empty lines for witness information.

E. L. CLEMENTS, III

ARREST WARRANT NUMBER

M376790 M376791

ACTION OF GRAND JURY

TRUE BILL

Samuel E. Jone

Foreperson of Grand Jury

Date: 6-9-11

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-21-0978

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2011

THE STATE

vs.

BOBBY MARION SHAW

Indictment for

MURDER, AND
POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME

2011 JUN -9 PM 2:53
CLERK
CRIME REEL - SHERIFF
OFFICE
FLORENCE, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 MURDER, AND
 POSSESSION OF WEAPON DURING COMMISSION
 OF VIOLENT CRIME

At a Court of General Sessions, convened on JUNE 09, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

CDR: 0116

16-03-0010,0020, 16-01-0060

That BOBBY MARION SHAW, JR. did in Florence County on or about August 25, 2010, feloniously, willfully and with malice aforethought kill one Robert Leon Shaw, III, by means of shooting him in the chest with a handgun, and that the said Robert Leon Shaw, III did die as a proximate result thereof; in violation of Sections 16-03-0010, 0020, and 16-01-0060, S.C. Code of Laws, 1976, as amended.

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

CDR: 1245

16-23-0490

That BOBBY MARION SHAW, JR. did in Florence County on or about August 25, 2010, was in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: a handgun, during the commission of a violent crime, to wit: the Murder of Robert Leon Shaw, III; in violation of Section 16-23-0490, 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.



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR

COUNTY OF Florence
STATE VS.

BOBBY MARION SHAW

AKA:

Race: B Sex: M Age: 59

DOB: SS#: [REDACTED]

Address: 306 E [REDACTED]

City, State, Zip: Florence, SC 29501

DL#: SID#:

*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

INDICTMENT/CASE#: 2011-GS-21-0978

A/W#: M376790

Date of Offense: 8/25/2010

S.C. Code §: 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0050, 16-01-0060 of the S.C. Code of Laws, bearing CDR Code # 0217
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Clements, III, E. L. SC Bar# 15295 Bobby Shaw Defendant Scott P. [Signature] Attorney for Defendant SC Bar# 12061

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

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 292 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$10500

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, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date: June 13, 2011