

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Spartanburg County

S.C. SUPREME COURT

Honorable G.D. Morgan, Jr., Circuit Court Judge

ANDREW MURPHY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000939

APPENDIX

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

3
 4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
 5 PLAINTIFF,) OF
 6 VS.) RECORD
 7 ANDREW R. MURPHY,) 2018-GS-42-1439
 8 DEFENDANT.)

9
 10 June 3rd, 2019
 11 Gaffney, South Carolina
 12

13 B E F O R E:

14 THE HONORABLE J. DERHAM COLE, Judge.

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

16 JENNIFER JORDAN
 17 ASSISTANT SOLICITOR
 18 Attorney for the State

19 ANDREW JOHNSTON
 20 ESQ.
 Attorney for the Defendant

21
 22 MICHAEL WATTS
 23 Circuit Court Reporter

24
 25 Transcribed by Pamela E. Green, Circuit Court Reporter

1	<u>E X H I B I T S</u>			
2	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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P R O C E E D I N G S

THE COURT: All right. You are Andrew Ryan Murphy?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Johnston is your lawyer?

THE DEFENDANT: Yes, sir.

THE COURT: I have before me an indictment. Indictment Number 2018-GS-42, being a Spartanburg indictment, -02363 charging you, in Count 1, with the crime of murder, in Count 2, with the crime of possession of a firearm during the commission of a violent crime. That violent crime being the murder count raised in Count 1.

The State alleges in the indictment that you did, on or about February the 18th of 2018, willfully, and with malice aforethought, kill one Daeshawn Shaharee Brown by shooting him, and that he died as a proximate result of that gunshot wound. Count 2 of the indictment alleges that you did visibly display a firearm during the commission of that violent crime. That crime being murder set forth in Count 1.

As to the Count 1, the crime of murder, if convicted, or if you were to plead guilty, you could receive a sentence of life imprisonment. It requires a mandatory minimum sentence of not less than 30 years in jail. As to Count 2 of the indictment, it carries a potential sentence of five

1 years in jail.

2 You understand what you're charged with by way of the
3 indictment?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And how long has Mr. Johnston been
6 representing you on these charges?

7 THE DEFENDANT: Since February 2018.

8 THE COURT: Okay. And have you had plenty of time to
9 talk to him about your cases as well as your decision that
10 now you want to proceed with it?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And did he read the indictments to you or
13 allow you to read them?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: He explained the charges to you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Did he explain the potential sentences to
18 you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And did you tell him everything you know
21 about these allegations made against you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And did y'all discuss it?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And after discussing it, did you and he

1 determine whether or not you have a defense to either of
2 these charges?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you aware of any defense that you have
5 to either of these charges?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And what defense do you have?

8 THE DEFENDANT: No defense.

9 THE COURT: Okay. Well, let me start over with that
10 again.

11 You discussed with Mr. Johnston what you know about the
12 allegations made against you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And after you gave him the information that
15 you know related to these allegations, did y'all talk about
16 it?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And after y'all talked about it, did y'all
19 determine whether or not you had a defense to either of
20 these charges?

21 THE DEFENDANT: No, sir.

22 THE COURT: You didn't determine it?

23 THE DEFENDANT: Oh, we determined that I didn't -- I
24 have no defense.

25 THE COURT: You determined that you had no defense.

1 Okay. Now, how do you wish to proceed with the case?

2 THE DEFENDANT: I want to plead guilty.

3 THE COURT: Okay. All right. Do you understand that
4 these are Spartanburg County cases, and you're here in
5 Cherokee County today. Cherokee and Spartanburg Counties
6 are both in the Seventh Judicial Circuit. And so I can hear
7 cases in either and both counties. The circuit solicitor
8 operates in Spartanburg as in Cherokee Counties, but you
9 have a right to have this case heard in Spartanburg County
10 because it's a Spartanburg County case. And in order for me
11 to address it today or for you to enter a plea of guilty
12 today, you have to waive what's called venue. In other
13 words, you have to waive your right to have the matter heard
14 in Spartanburg County.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Did you discuss that with Mr. Johnston?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And what did you decide about that?

19 THE DEFENDANT: That I was gonna plead guilty in
20 Cherokee County.

21 THE COURT: Okay. So, you want to waive your right to
22 have it heard in Spartanburg?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. Did Mr. Johnston explain to you each
25 of the constitutional rights that you have that you must

1 give up if you want to plead guilty?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did he explain to you that you have the
4 right to remain silent?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And that, of course, means that you don't
7 have to say anything. You don't have to make any statement.
8 You don't have to testify either during the trial. You
9 don't have to answer any questions that relate to the
10 allegations made against you. You have an absolute right to
11 remain silent and to require the State to come into Court
12 with sufficient evidence to establish your guilt to the
13 satisfaction of a jury beyond a reasonable doubt. And you
14 don't ever have to assist the State in their efforts to
15 prove you guilty by you testifying or making statements or
16 answering questions that might tend to prove your own guilt.

17 However, if you wish to plead guilty today, you have to
18 give up your right to remain silent because, in order for me
19 to accept your plea of guilty, I have to be satisfied that
20 your decision to plead guilty was made by you freely and
21 voluntarily, that nobody's pressured you into it, nobody's
22 forced you into it, nobody's coerced you into it, and that
23 you've made that decision of your own free will and accord
24 understanding the consequences of that decision.

25 And so, in order for me to determine your knowledge and

1 the voluntariness of your decision, I have to ask you
2 questions. In order for me to ask those questions, you've
3 got to give up your right to remain silent because I've got
4 to get those answers, and the responses that you give me
5 might tend to prove you guilty of the crime the State claims
6 you committed.

7 So, do you understand that you do have an absolute
8 right to remain silent?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you wish to give that right up in order
11 to plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did Mr. Johnston also explain to you that
14 you have a right to confront and to examine any witness in
15 Court that would provide evidence against you as it relates
16 to these charges?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: In other words, you've got a right to
19 require the State to bring each of their witnesses into
20 Court. Those witnesses would have to take the witness
21 stand. They'll have to testify under oath or in your
22 presence.

23 You'd be able to see each witness. You'd, you'd be
24 able to hear what that witness has to say, and Mr. Johnston
25 would be able to cross-examine each of those witnesses as to

1 their testimony in order to test each witness' credibility
2 and the reliability of information that they're providing to
3 the Court. Excuse me.

4 Now, when you plead guilty, that process doesn't occur.
5 The witnesses don't take the witness stand to testify. Some
6 witness or some person who might be a witness might be here,
7 and that person might give you information, but you're not
8 gonna have a right to examine them as to what statement they
9 made.

10 Do you understand you have a right to confront and to
11 examine the witnesses in Court who provide the evidence
12 against you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that, if you plead
15 guilty, that won't occur?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you wish to give that right up in order
18 to plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did Mr. Johnston explain to you that you
21 have the right to have a jury trial, and have 12 jurors
22 determine whether or not you're guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you know how the jury's selected?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do -- you, you know there are 12 that
2 are selected?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you know how many of those 12 have to be
5 satisfied of your guilt beyond a reasonable doubt before you
6 could be found guilty of any crime the State claims you
7 committed?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How many?

10 THE DEFENDANT: All of them.

11 THE COURT: It has to be unanimous. All 12 must be in
12 agreement.

13 Now, if you have a jury trial, and you put the State to
14 the test of proving your guilt, you still would be able to
15 examine the witnesses, and you still would not have to
16 testify. You could still remain silent. Even if you don't
17 take the witness stand, you can call any other witness that
18 you wanted to to provide information while you remain
19 silent. However, if you wanted to testify, you'd be
20 permitted to. That would be your choice. You get to
21 decide.

22 Do you understand your right to have a jury trial?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And understanding that right, do you wish
25 to give it up in order to plead guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has anybody promised you anything or
3 offered you anything in return for your decision to plead
4 guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Has anybody forced you or coerced you or
7 pressured you in any fashion whatsoever, and that resulted
8 in your decision to plead guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you pleading guilty freely and
11 voluntarily?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: It was your decision?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you're satisfied with that decision?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. You're 26 years old?

18 THE DEFENDANT: Yes, sir.

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

20 THE DEFENDANT: I dropped out of college.

21 THE COURT: Where were you going to college?

22 THE DEFENDANT: Spartanburg Community.

23 THE COURT: And have you ever been married?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you ever had a child?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you ever had a job?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Doing what?

5 THE DEFENDANT: I was a machine technician before I
6 came in, but I had other positions before then.

7 THE COURT: All right. And who was -- what's your last
8 employment?

9 where were you, where were you working?

10 THE DEFENDANT: Alloy Systems.

11 THE COURT: And have you ever been treated for any type
12 of substance abuse or addiction?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: When?

15 THE DEFENDANT: 20 -- 2013 and 2014.

16 THE COURT: And where?

17 THE DEFENDANT: At SADAC.

18 THE COURT: And what kind of treatment did you receive?

19 THE DEFENDANT: Just counseling and group. Stuff like
20 that.

21 THE COURT: And what was that designed to address?

22 THE DEFENDANT: My addiction to alcohol.

23 THE COURT: To alcohol?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. And you suffer from that

1 condition today?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Well, do you drink alcohol now?

4 THE DEFENDANT: Not anymore.

5 THE COURT: No.

6 When did you quit?

7 THE DEFENDANT: February, 2018.

8 THE COURT: February of 2018?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Is that when you were arrested?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. Is there anything about any
13 condition that you have regarding alcoholism or some
14 addiction to alcohol or drugs that would affect your ability
15 to understand what you're doing now?

16 THE DEFENDANT: No, sir.

17 THE COURT: Okay. Have you ever been treated for any
18 type of mental illness or emotional disturbance?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And then when?

21 THE DEFENDANT: It was when I was a kid. Like around
22 eight or nine.

23 THE COURT: Where?

24 THE DEFENDANT: In Baltimore, Maryland at John Hopkins
25 I think.

1 THE COURT: And what were you being treated for?

2 THE DEFENDANT: I think anger issues.

3 THE COURT: All right. And did you overcome that
4 condition?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you suffer from that today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is there anything about that condition that
9 affects your ability to understand fully what you're doing
10 right now?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. I'm gonna ask the solicitor to
13 tell me about the facts as they contend the facts are. In
14 other words, this is what they would offer to prove at trial
15 before the jury if your case did go to trial before a jury.
16 So, listen to what they tell me because, when they finish,
17 I'll be asking you if you agree or disagree with their
18 version of, of the facts.

19 okay.

20 THE DEFENDANT: Yes, sir.

21 SOLICITOR JORDAN: Thank you, Your Honor.

22 At this time I would move what's been previously marked
23 as State's Exhibits 1 through 17 into evidence as part of
24 the factual basis of this plea, and I'll reference those
25 items as I go through the factual summary.

1 THE COURT: All right. Mr. Johnston, you have seen
2 these, these exhibits?

3 MR. JOHNSTON: I have, sir.

4 THE COURT: Have you shared those with Mr. Murphy?

5 MR. JOHNSTON: Yes, sir, at one time or other, yes,
6 sir.

7 THE COURT: Okay. All right. Ms. Jordan.

8 SOLICITOR JORDAN: Thank you.

9 Daeshawn Brown was 25 years old when he was shot in the
10 yard of [REDACTED] in Spartanburg County on
11 February 18th, 2018. Daeshawn was the current boyfriend
12 of the Defendant's ex-girlfriend, Sharell David, who lived
13 with her mother at [REDACTED]. Daeshawn was shot
14 in the upper left eyelid, and the bullet was through and
15 through.

16 I'm gonna now back up a few hours, several hours before
17 the murder. Your Honor, all of that is listed in No. 4 or
18 State's Exhibit No. 14 is Doctor Wren's autopsy report that
19 details the cause of death.

20 In hours leading up to the murder, the Defendant
21 carried on a Facebook conversation with his ex-girlfriend,
22 Sharell David. Those are referenced in State's Exhibit No.
23 13, which are Facebook messages with Sharell David, and I'm
24 just gonna highlight just a few.

25 The Defendant asked her y'all M.F. watch y'all self,

1 bret. That M.F. gonna feel me. I want this N word, man,
2 and then he concludes it with or he also put in there y'all
3 woke right. Y'all know the devil and God, right. I'm gonna
4 introduce you M.F. to darkness. He finishes it by saying we
5 need to stop cause I don't want to go through this BS, kill
6 this N word in your mama's yard, and you don't even want to
7 be with me.

8 Your Honor, the Defendant was killed across the street
9 from Sharell's mom's yard. The victim was killed. I
10 believe I may of said Defendant.

11 Daeshawn came to Sharell's house on the early morning
12 hours of Sunday, February the 18th, around three o'clock.
13 They hung out in her car in her mom's yard until around 8:19
14 or till a little bit before 8:19 when Brown left going to
15 the store. Sharell had just walked into the house when she
16 heard a gunshot. She looked out and saw Daeshawn laying on
17 the ground motionless and the Defendant running away.

18 Sharell identified the Defendant in the 9-1-1 call her
19 mother makes, you can hear her in the background, to the
20 first officers on scene, and in a written statement to law
21 enforcement that day. She provided officers with his cell
22 phone number, vehicle information, and tag number. The
23 9-1-1 call is State's Exhibit No. 6.

24 Your Honor, the shooting was captured on video from a
25 surveillance video at [REDACTED]. That is --

1 State's Exhibit No. 1 is a copy of the -- one section of the
2 video that has the shooting in it, and State's Exhibit No. 2
3 are two screenshots from that video.

4 The actions that are important to today last about 10
5 seconds on the video. You see the -- you see Daeshawn
6 walking down the street towards the end of the street, not
7 towards the end of the dead end. You see the Defendant
8 coming along wearing red pants, a black shirt or a black
9 jacket that appears to be collarless, and the red shirt.
10 I'm sorry -- red pull -- red hat. Sharell describes that he
11 had on a mask.

12 Your Honor, he approached -- Daeshawn turns around,
13 sees him approaching, tries to take off running, isn't able
14 to when the Defendant extends his left hand and shoots him.
15 He does fall down. The Defendant turns and runs back
16 towards the dead end road.

17 I point out that he shot with his left-hand just to
18 point out that the, the Defendant has a deformity or
19 disabled right-hand. The officers also note, when he is
20 interrogated, which is State's No. 15, the pre-interrogation
21 waiver form, that he uses his left-hand to sign the form.

22 The Defendant's car was located that day parked on
23 Lavendula Street and Tamara Way. Lavendula runs parallel to
24 El Camino Real and is the street just behind that road. It
25 was a 2008 Ford Fusion that was registered to Sharell. It

1 was missing two hubcaps on the passenger side, and the
2 Defendant's keys and his work ID were in the vehicle along
3 with a receipt from the Dorman Center Wal-Mart the night
4 before. That stuff becomes relevant in just a second as to
5 how it leads back to the Defendant.

6 A video from Peoples Tax, which is located at the
7 entrance to the neighborhood where El, El Camino Real and
8 Lavendula are located showed the Ford Fusion driving into
9 the neighborhood around 7:54AM. The vehicle had no hubcaps
10 on the passenger side. The Defendant, in two different
11 interviews with investigators with the Sheriff's Department,
12 stated that the Ford Fusion would not start after he parked
13 it there in the early evening hours of the 17th, and he
14 went back a couple of times to check on it.

15 He stated that he would park on that street, walk --
16 and Sharell would walk through a little path at the end of
17 the dead end in the woods to get there. He would do this
18 because her mother did -- didn't have -- didn't let her have
19 boyfriends in the house. That path is at the dead end road
20 and in the same direction the Defendant comes from, and is
21 seen going back to at the end of the murder. The Peoples
22 Video -- a photo from the Peoples video is State's Exhibit
23 No. 3.

24 After the Wal-Mart receipt was recovered from the
25 Defendant's vehicle, Investigator Nate Cantrell with the

1 Sheriff's Department in Spartanburg went to Wal-Mart, found
2 the video, found the Defendant on the video. He was wearing
3 red pants, black jacket, or a pullover, and a red Polo
4 black -- ball cap the day before. He was in the store
5 between the hours of 5:47PM and 6:04PM. His Ford Fusion was
6 also seen in the Wal-Mart video leaving about 6:06.

7 The Wal-Mart videos and -- are State's Exhibit No. 4,
8 and State's Exhibit No. 7 are photographs of where the
9 Defendant's car was found, and the items that were inside of
10 it.

11 Your Honor, the Defendant's red polo hat was found
12 within a mile as the crow flies from the scene of the murder
13 on Bethlehem Church Road. So, it's in the opposite
14 direction of where his car was found. DNA from the
15 Defendant was found on the red polo hat after testing. It
16 was one in 32 octillion as to him, him being the major
17 contributor. That is number -- State's No. 8 are the two
18 photographs of where the polo hat was found, and State's No.
19 12 is the SLED report.

20 Your Honor, Officer Cantrell went back and found
21 photographs of the Defendant wearing the red polo hat on
22 February the 13th, 2018, on Facebook. That was four days
23 prior to the Wal-Mart video and five days after the hat had
24 been found -- discarded within a mile of the murder.
25 There's also a film of the Defendant wearing a red polo hat

1 and what appears to be a black collarless shirt, and the
2 mask that was created per an examination by Brandon
3 Letterman at the Sheriff's Department on February 18th,
4 2018, at 1:38AM. That is State's Exhibit No -- it's
5 contained in State's Exhibit No. 11, which is a phone exam
6 by Brandon Letterman.

7 Sheriff's Department -- the Defendant was Mirandized
8 and found -- let me go back. He was found that day, on
9 February the 18th, in the afternoon at [REDACTED] Carson Avenue.
10 It took him several minutes to leave the residence when
11 officers came, but he did come out. He went to the
12 Sheriff's Department. He gave and -- he participated in an
13 interview with Sheriff's Department after his Miranda rights
14 were read to him and he waived those. State's No. 16 is a
15 DVD containing that first interview.

16 In that, he, he denied any involvement. He talked
17 about the vehicle, how he had left it there, had not been
18 working. He stated that he had his phone with him all day
19 and all night, and that -- he stated that he was making
20 threats via text messages to Sharell, but that, that was
21 just a bad fucking coincidence.

22 He also talked about smoking marijuana that day. He
23 goes I know I sent some text messages. He stated that he
24 had been drinking all night with his friends although he
25 appeared extremely coherent, sober, and carried on a clear

1 conversation with both officers.

2 Three days later he gave another interview to Sheriff's
3 Department officers William Gary and Nate Cantrell, State's
4 No. 17. In that he maintained his story that he didn't know
5 anything about the murder, talked about his car breaking
6 down. He described himself as having worn light tan pants
7 the night before when he was eating at a restaurant.

8 The Defendant's phone was found at [REDACTED],
9 which was the home where he was arrested. The Defendant
10 admitted having possession of the phone all night. The
11 phone data showed that between the times of 8:05 and 8:53 in
12 the morning of the murder that his phone was hitting off of
13 two towers within the coverage range of the murder location.
14 That's State's Exhibit No. 9 and 10.

15 Your Honor, that would be the State's findings as far
16 as facts or the State's showing as far as facts.

17 THE COURT: Any history?

18 SOLICITOR JORDAN: Yes, Your Honor.

19 He has, from 2012, a criminal domestic violence first.

20 In 2013, possession of a controlled substance, criminal
21 domestic violence second offense, and 2016 assault and
22 battery third.

23 THE COURT: All right. Mr. Murphy, you heard what the
24 solicitor just told me?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Is there anything you disagree with?

2 THE DEFENDANT: No, sir.

3 THE COURT: And you heard what she told me about your
4 history?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you agree with that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you still wish for me to accept your
9 pleas of guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. I'll accept them and hear from
12 Mr. Johnston.

13 MR. JOHNSTON: May it please the Court, Your Honor.

14 I've, I've talked with Andrew many times. Gone through
15 the vast amount of technical and documentary evidence that's
16 been compiled in this case looking, hoping to find a
17 defense, but was not able to find one.

18 The first, in fact, thing that such an overwhelming
19 amount of evidence and the trail that he left did
20 substantiate what he later told me that the killing of
21 Daeshawn was entirely unplanned because I can't imagine
22 anyone planning it more poorly than what occurred. As the
23 solicitor told you, this occurred in daylight, on video
24 surveillance, although they wouldn't necessarily have been
25 known, but it was in daylight, and it was very close to

1 where people who could have identified him could have seen
2 him. He loses his hat. He drove his car there, but he left
3 the scene on foot.

4 So, again, I think that, while the State's evidence is
5 extremely strong, it does show a man who made a quick and
6 unfortunate decision. What he tells me is that he had been
7 up for five days using stimulants of different kinds, hadn't
8 slept any, and also using heavy amounts of alcohol. He had
9 been continuing to talk with Sharell even though she had
10 started this relationship with Daeshawn. He had continued
11 to talk with her and she had continued to talk with him. In
12 fact, he tells me, at, at one point very close to the time
13 of Daeshawn's death, that Sharell still told him that she
14 loved him, and that she wanted him in his life meaning,
15 meaning Andrew.

16 Your Honor, I can only say that I've seen a few times
17 in what's now becoming a long career something that I have
18 come to identify as an obsessive kind of love, and that's
19 what I think is the situation here. The love became so
20 intense that it blocked out his reason, caused him to make
21 bad decisions. Sometimes this sort of thing can cause
22 people to commit suicide, and it -- occasionally it can
23 result in a person committing murder.

24 Many people may be struck by degrees of love that are
25 not necessarily returned, and most times folks just suffer

1 with it, and cry, and go on. But occasionally a person who
2 may be, for other reasons, susceptible to making some very
3 bad decision, decisions doesn't get any professional help,
4 and the circumstances present that can equal a very bad act.

5 When he was up, as, as was stated, he was up using
6 stimulants, drinking. He was with some friends. His
7 friends told him to go home, but he had to see her. And so
8 he went to her house expecting not to see Daeshawn there,
9 but to see her and to try to talk to her. But he saw him,
10 saw that they were together, and, at that point, his reason
11 became blocked out.

12 Your Honor, I, I looked to see if this could possibly
13 be a manslaughter case. There was certainly heat of
14 passion, but it was never coupled with any adequate
15 provocation. Andrew has told me that, during the course of
16 both of these men being interested in this woman, that
17 Daeshawn made some threats, sometimes rather serious
18 threats, but they were not contemporaneous with the killing.
19 It's my understanding that Daeshawn had purchased a gun, and
20 made sure that Andrew knew it.

21 Andrew is someone who has suffered from various mental
22 and emotional disturbances. I don't believe they rise to
23 the level in any way of a defense such as not guilty by
24 reason of insanity or guilty but mentally ill, but I do find
25 them significant, and I do find them mitigating.

1 He suffered exposure to lead poisoning as a child, and
2 I'd like to hand up to you some documentation that I
3 received that shows what he was treated for. Now, I only
4 recently got this information, and there is a sentence in
5 this psycho diagnostic evaluation that indicates that the
6 tester thought he might suffer from a neuropsychological
7 dysfunction, and I can say that I have no reason to believe
8 that he does suffer from any such neuropsychological
9 dysfunction.

10 Again, we've had many talks. Our discussions have
11 always been crystal clear. He has lived a normal life. He
12 was holding down a job as a machinist at Alloy Systems in
13 Spartanburg. He's had normal relationships with women in
14 the past. He had normal family relationships. But perhaps
15 there is something there that somewhere has affected him.

16 There's some things that happened to Andrew that I
17 think are also important. He told me that, at age eight, he
18 was molested by a family member, and that this lasted for
19 over two years. He was so ashamed of this that he never
20 told anyone except Sharell, not even his mother, who he's
21 very close to, that this had happened. He also had a
22 physical problem when he suffered from a testicular torsion
23 as a young child, which left him unable to father a child,
24 and this played into what happened because, when Sharell
25 began the relationship with Daeshawn, she quickly became

1 pregnant, and that was something that he could not do, and I
2 think that affected him, wounded his manliness so to speak,
3 but another perhaps even more serious situation occurred
4 when he was shot five times in the chest.

5 Now, I don't think he was an innocent bystander in
6 that, but, from what I understand, a man came to his house
7 and shot him five times, and he was shot in the chest. One
8 of the bullets went into his right arm where it permanently
9 affected his hand and fingers. Basically his fingers are
10 curled up all the time, and not very useful for things, and
11 that was, of course, his dominant hand, and that, that
12 brings me to his relationship with his father.

13 He didn't have much of a relationship with father, but
14 he did go to see his father during the summer I believe it
15 was his seventh grade year, and his father gave him alcohol,
16 his father beat him, and generally belittled him, and showed
17 him no love. And the next time that he saw his father was
18 after he'd been shot or I'm not even sure if his father came
19 to see him. I think they may of only spoken on the phone,
20 but even when he was lying in the hospital bed gravely
21 wounded his father had not a kind word for him.

22 Now, I will say that Andrew is blessed with a wonderful
23 mother. She has been a Rock of Gibraltar through this whole
24 situation for him, has a stepfather who has been supportive
25 of him, and so, all in all, he hasn't been without support,

1 but he's never gotten any real professional help for these
2 various things that have happened to him in his life.

3 I say this not to blame anyone or to shift culpability
4 on to any other person. Andrew's standing before you
5 accepting responsibility for what he did, but had, I, I
6 think, had the relationship between him and Sharell been
7 ended, that he could of accepted that and gone on. But it
8 wasn't ended and he kept talking with her, and there still
9 remained hope that they were going to be together.

10 He's had a normal life as I say, had normal
11 relationships with women, did a good public job where he was
12 a machinist. But I think he's suffered from substance
13 abuse, and while he got some treatment for it as he
14 mentioned, I think that was probably something that
15 contributed to this problem as well. The other thing I can
16 say, playing armchair psychologist, that I think he probably
17 suffers from undiagnosed PTSD from being shot five times.

18 The other day I went to see him and we'd been talking
19 about pleading -- about him pleading guilty, and he quietly
20 greeted me, and I asked him if he'd made a decision about
21 what he was going to do, and he said I did a terrible thing,
22 and I know I have to be punished. This shows to me that
23 this man can be rehabilitated. When a man can admit that
24 he's done wrong, even a terrible, terrible wrong, without
25 making excuses, I think it shows that he has a conscience,

1 and a conscience is something you can't grow. You either
2 got one or you don't.

3 He's intelligent. He's friendly. He's been learning
4 about the stock market, and he's tried to pass along what
5 he's learned about the stock market to some of the other
6 young guys there at the jail, and he and I've talked that,
7 even in prison, that he can be a positive force to others,
8 and he does want to do that. So, I would ask you to take
9 all of that into account.

10 He's 26 years old. He's going to be doing a long time
11 in prison no matter what the Court -- sentence the Court
12 imposes. I just ask you to be as merciful and lenient on
13 him as you possibly can.

14 Your Honor, he's got some family here.

15 If they could stand up?

16 (WHEREUPON, the parties comply.)

17 MR. JOHNSTON: And they're all very much in support of
18 him.

19 You can have a seat.

20 (WHEREUPON, the parties comply.)

21 MR. JOHNSTON: Your Honor, at the appropriate time I'd
22 like to have two members of the family come forward and
23 address you.

24 THE COURT: Now is the time.

25 MR. JOHNSTON: All right. Wait a minute, Ms. Atkins.

1 One at a time.

2 State your name.

3 MS. RICE: My name's Kenya Rice.

4 THE COURT REPORTER: Speak up please.

5 MS. RICE: My name's Kenya Rice. I'm (sic) might as
6 well say Andrews's my nephew. I met they family when they
7 moved up here, became real close with them, and now I look
8 at him as one of my own, but I prepared a statement if
9 that's okay.

10 Dear Honorable Judge. Ever since I met Andrew Murphy
11 he's been one of the most respectful and humble young men
12 I've ever met. He has always been willing to stop what he's
13 doing and lending a helping hand with helping me as far as
14 and even giving my son words of encouragement when he was
15 having trouble in school.

16 I've watched him go above and beyond for his mother and
17 his siblings, and growing into a young, hard working, I'm
18 sorry, young and hard working honorable young man. He
19 (indiscernible) to the plate and became Essick father for a
20 former girlfriend's children no questions asked. Even when
21 going through his long hardships, he always took the time to
22 listen to all of us.

23 In the two years -- I mean in the 10 years I have
24 met -- I'm sorry, Your Honor. I'm so sorry. I'm sorry.

25 I can truly say I'm honored to have known him and his

1 family, and consider him as one of my own. Like I said, my
2 nephew.

3 So, in conclusion, Your Honor, I am deeply saddened by
4 the loss that the Brown family has experienced, and I
5 understand that no words that we can say will ever change or
6 replace that and they will stay in my prayers. But if
7 anything, I just ask Your Honor if you can please have
8 leniency and mercy, and just take my words into
9 consideration.

10 Thank you, Your Honor.

11 THE COURT: Okay. Thank you.

12 MR. JOHNSTON: This is his mother, Your Honor.

13 MS. ATKINS: My name is Jaden Atkins. I prepared a
14 statement today, Your Honor, if you may -- if I may.

15 Dear Honorable Judge. May it please the Court.

16 My name is Jaden Atkins, cofounder and executive
17 director of Fine Life Coalition, a 501C3 nonprofit
18 organization, small business owner, self published author,
19 and the mother of Andrew Murphy. I have submit in this
20 letter to share with you the character of my son, Andrew
21 Murphy, and offer you a bit of history about him.

22 I gave birth to Andrew in California if he -- where he
23 began his life with my oldest son, myself, and his father
24 who was serving in the military at the time. His father and
25 I forced over a dislike and dismissive ways that he treated

1 Andrew. Within the first year of life his father and I
2 separated. I returned home to Baltimore with my mother. By
3 the time Andrew was three years old him and his older
4 brother was diagnosed with lead paint poisoning. Andrew had
5 the highest level of lead numerous -- after numerous
6 testing, Andrew was diagnosed with neuropsychology, I'm
7 sorry, neuropsychological dysfunction and anxiety disorder
8 amongst other things.

9 while learning how to address Andrew's medical issues,
10 I realized that the constant violence that Andrew and my
11 other children witnessed daily in the heart of Baltimore
12 City was not what I wanted for my children to continue to
13 experience. After leaving Baltimore, and moving to
14 Virginia, I began to see much improvement in Andrew's
15 behavior. Academically, he be -- he began to excel. Andrew
16 start making friends, and developing -- and developed an
17 enhance (phonetic) and charisma.

18 I began to get great reports from teachers, I'm so
19 proud, excuse me, from teachers at -- and Andrew became a
20 star pupil. At the age of nine Andrew had emergency surgery
21 due to testicular torsion. Knowing at that time we were
22 informed that Andrew probably wouldn't never father a child.
23 Within four months of Andrew's emergency surgery my five
24 year old daughter was assaulted, which devastated my family.

25 Devastated, defeated, and depressed, I uprooted my

1 family again and relocated to Spartanburg trying to provide
2 the best life I could for my children. Excuse me. I'm
3 sorry. In 2003 we became residents of Spartanburg where no
4 one -- we knew no one. Strangers became friends, and some
5 were more like family. We joined a church where the pastor
6 and his family encouraged us, motivated us, and helped us in
7 any way they could. I begin to see happy children,
8 especially Andrew.

9 Andrew displayed an overwhelming need to help people
10 and animals alike. Often he would sneak food out of the
11 house to give to his friends who did not have food to eat
12 until I told him that his friends was welcome to a meal.
13 That one time -- that one friend turned into many friends
14 over the years. Somewhere down the line he became the
15 protector, the person to fix everything for everyone.

16 Andrew began to minister to his friends outside the
17 church, and would often bring other teenagers to church with
18 him. My son volunteered for Shepherd's Heart Food Ministry
19 for several years. Andrew had his rough patches, but he
20 always was determined to make it right.

21 My son worked up to three jobs at a time to not only
22 help himself, but all as well. Up until his incarceration
23 my son was helping his mentor build his mentor's dream log
24 home, free labor, and appreciation for all of the things his
25 mentor has done for him. Before incarceration Andrew was

1 learning how to invest in stocks and bonds, building his
2 credit, and inquiring about loans to purchase property to
3 renovate and flip houses. Andrew was also instrumental in
4 the start up of a pilot program called Upstate Carpool
5 Group. In 2014 -- and he had volunteered for Fatherhood
6 Coalition.

7 I have loved -- I've loved watching him overcome
8 obstacles and making better decisions in his life, and being
9 a productive citizen while helping others to bridge the gap
10 to transportation through Upstate Carpool Group.

11 Your Honor, I would like to respectfully and humbly
12 address Mr. Brown's family.

13 To Mr. Brown's family, I am deeply, most deeply sorry
14 for the loss of your loved one by the hands of my son. I, I
15 can't find the words to articulate how truly sorry I am. I
16 pray to God every night for you -- and for you-all to find
17 closure and help me to find peace in knowing that my son
18 will be punished for the crime he committed.

19 Your Honor, I will grieve Mr. Brown until my last
20 breath.

21 Your Honor, I come to you as humble as I know how
22 begging and pleading for mercy on my son's life. I pray God
23 touch your heart with the (indiscernible) of my son.

24 Thank you for your time, Your Honor, and the Court.
25 Thank you so much.

1 THE COURT: Thank you, ma'am.

2 MR. JOHNSTON: Your Honor, I have just a few letters in
3 support of him, and he would like to address you at the
4 appropriate time.

5 (Pause.)

6 THE COURT: All right. Mr. Murphy, what would you like
7 to tell me?

8 THE DEFENDANT: I just wanted to address the family,
9 and let them know that I'm terribly sorry, and that it's not
10 a day that goes by that I don't regret and feel ashamed at
11 what I done. A lot of times I can't sleep because of the
12 guilt that weighs on me, and I think about what if it was my
13 mom that lost me. So, I know that it's nothing I can say
14 that can make them -- to make their -- ease their pain, but
15 I just hope that them seeing justice being served will bring
16 them to some type of, some type of peace in -- that they can
17 one day forgive me.

18 And I just want to address to my family and to the
19 Courts that I'm terribly sorry for what I've done, and
20 I'm -- I just want to better myself and take the time to
21 better those around me as well. I feel ashamed. I'm very
22 disappointed, not only in myself, but I'm disappointed and I
23 feel like a failure to myself, and my family, and my
24 community, and my nation because I've always felt, growing
25 up, that my life was suppose to be heading to a different

1 direction.

2 I just want to ask for forgiveness from everyone, and
3 for everyone to know that I'm not a monster or I'm not a
4 terrible person.

5 That's all, Your Honor.

6 THE COURT: Okay. Thank you.

7 Anything else?

8 SOLICITOR JORDAN: Yes, Your Honor.

9 On, on, on behalf of the State, I'd like the Court to
10 know that Investigator Nate Cantrell is here. He was the
11 lead investigator on this case.

12 Also present in the courtroom today is Sharell David.
13 I believe she would like to address the Court along with
14 Daeshawn's mother, Annmarie Minto, and Daeshawn's father,
15 Michael Brown. They're also present as well. I believe Ms.
16 Minto is also going to address the Court.

17 Your Honor, this is Ms. Annmarie Minto, Daeshawn's mom.
18 Michael Brown is Daeshawn's father.

19 THE COURT: All right. Who would like to speak first?

20 MS. MINTO: Yes, good afternoon. My name is Annmarie
21 Minto. I am the mother of Daeshawn Brown. He is my third
22 child born after six. He, he's a young father. He has six
23 children. Two of them he didn't get a chance to meet. He's
24 a, a brother, a cousin, a uncle to a lot of the family.

25 Daeshawn was killed by himself, and a lot of people

1 knew that. Daeshawn didn't have us there because we left
2 him. We relocated to Virginia and the only reason why that
3 Daeshawn was here is because he had some things that he's
4 obligated to do to take care of here.

5 His children were in Virginia, California,
6 Massachusetts. We scheduled a, a meeting that summer, the
7 year that Daeshawn lost his life, to meet his firstborn who
8 is seven, going on eight who is having a horrible time
9 trying to understand why she got to talk to her daddy on the
10 phone, but where is he. Why he didn't show up. He don't
11 love me.

12 Daeshawn was my little man, my backbone, besides my
13 husband. He was a big brother to his -- all of them. He
14 was like the mini me. He knew how to keep the family
15 together, and we all stayed together, and stayed -- all of
16 us. We were all originally -- first we was in South
17 Carolina. Then we relocated to Virginia because of a house
18 fire. Then we came back to South Carolina. Well, we were
19 forced to come back to South Carolina abrupt, kind of
20 abrupt. We were in the process of coming.

21 So, I'd like to just read the letter that his younger
22 brother, who was 14 at the time, who is still struggling
23 with the whole reality thing of how he lost his brother. He
24 did this essay in school. He didn't get to complete it, but
25 the teacher thought it was so compassionate because Anthony

1 struggled. He struggled and he's still struggling, and I
2 beg this Court to please work with me and help me because
3 it's a process. It's a process.

4 We're not used to being away from each other, Your
5 Honor. We all -- always together, every Sunday evening
6 together. There is not three days that goes by that we
7 don't all touch bases with each other, even including the
8 grandbaby on the phone. Everybody -- that's how united we
9 are, but my circle's broken. Life goes on and we try to
10 pull it together.

11 Now, Your Honor, read my---

12 THE COURT: You may.

13 MS. MINTO: ---son's letter.

14 Anthony Allister. He wrote this January 6th of 2019.
15 February 18th, 2018, that was the worst day of my life.
16 The reason why I say that because that's when I heard my
17 brother had been shot and killed. When I heard that I
18 blacked out. I didn't know what to do, cry, sit there, or
19 try to calm my mama down.

20 After that day my life felt like hell. Excuse my
21 language. So nights I try to think about it or try not to
22 think about it, but I can't do it. When I went to school I
23 felt so angry. I had so much hatred in my heart. I felt
24 like I wanted to die. I did not want to be this -- in this
25 world anymore.

1 But when I had enough confidence, I went to talk to
2 somebody, and, when I did that, I felt a little bit more --
3 I felt a little bit more relieved. I didn't feel so angry.
4 So, I decided to start talking to people more often about
5 what I'm going through, but I had started to think about my
6 brother. Then that hatred and anger came back but worse.

7 I had felt depressed. I hadn't been eating, talking.
8 I just felt so angry. I wanted to be in the streets. I
9 wanted to get in trouble. I wanted to smoke weed. I wanted
10 to sell drugs, talking to my mom, getting in trouble,
11 school, skipping. Then I remembered we talk for the first
12 time I broke somebody's window, which I had got caught and
13 got snitched on.

14 After that day I had to change my ways, stop being in
15 the streets. I went to school, helped my mom a lot, more
16 than I did. I wanted to make my brother proud.

17 I'm never going to stop until my dreams come true, and
18 that's just a small part of it because Anthony passion --
19 took ambitiontive (phonetic) and asked the school to please
20 give -- let him take advantage of that counseling that they
21 offer to a lot of the kids in school.

22 Daeshawn's obituary. I also wrote a small introduction
23 of my son. He was employed at Addidas. Daeshawn was a
24 unique spirit and he was an up and coming artist in the
25 music industry. He enjoyed cooking and spending time with

1 his family. Daeshawn loved and enjoyed life. He was a
2 young and loving father who was still learning the meaning
3 of life that ended too soon.

4 And was my son perfect?

5 No. Absolutely not.

6 Was he a beautiful spirit?

7 Yes, he was.

8 Would Daeshawn help anybody and give them the shirt off
9 his back?

10 Yes, absolutely. No question.

11 My son didn't deserve to die the way he did. I went
12 through a lot in my life, Your Honor. I been in my family
13 business since we -- my family are not from here. They're
14 from Jamaica and Cuba. We're not from here and people
15 always learn how to work hard for what we want, have a
16 conscience of whatever we do. And the things I've been
17 through, I have conscience regardless of all the pain and
18 suffering. It's not nobody's fault, and I didn't get
19 conscience. I just knew it was a right and a wrong, and I'm
20 trying to instill that in my children from the very
21 beginning.

22 I'm asking, I'm asking, Your Honor, please respectfully
23 give this man life. Give this man life. I don't have my
24 son no more. His father -- his kids don't have him no more.
25 I was -- talked to his four year old son on the phone

1 crying. I said what are we gonna tell him. Johnny, I can't
2 wait to see you. When you gonna bring me my daddy. I'm
3 gonna tell him, and I got the rest of life to do this, you
4 know, cause I'm a mother and a grandmother, and he will not
5 have no more youngins.

6 Thank you.

7 THE COURT: Thank you.

8 MR. BROWN: Good morning, Your Honor. My name is
9 Michael.

10 [REDACTED] is my birthday. The last time I talked to him
11 was on my birthday. I also have a son on my birthday.
12 That's his little brother that he will never know his
13 brother.

14 This year have been really hard. I'm trying to stay
15 strong for the family. All there is now is one boy, but
16 he's a baby. So, the next man that has to take care of all
17 of the stress on these girls that we have in our family,
18 going to work, crying, watching TV, and hearing the same
19 situation that come crying all the way on the phone, 2:00,
20 3:00 in the morning, even being strong for her, four o'clock
21 in the morning.

22 Put like a box over my family where my family pretty
23 much stays into a shell for the past nine months. They just
24 now starting to come out and talk, and having a little girl
25 that was eight years old came off the bus crying because she

1 heard somebody has her brother's name. That's hard.

2 My birthday was hard to celebrate. My anniversary's
3 hard to celebrate. I have to live with that for life just
4 to hear the numbers in my birthday, and I know what occurred
5 on that day.

6 I look at my round table. There's a chair that's empty
7 that is never gonna be able to forget. His kids know me as
8 Papa, but what he heard when he won't come back. The
9 hardest thing is to look at his kids to see him. It's hard
10 especially when you raise a kid up from middle school till
11 now, and the last thing you, you can't even drink a cup of
12 coffee cause he not having his coffee. You can't even
13 really eat breakfast cause he not having breakfast, and he's
14 not going to experience seeing 30. He's never going to get
15 to experience his first gray hair.

16 You suppose to grow old together. That won't happen.
17 Excuse me. Excuse me. But it's a screwed up birthday
18 present. It's a screwed up birthday present now, and I've
19 got to live with that forever.

20 MS. MINTO: Judge, can I add one more thing, Your
21 Honor?

22 THE COURT: You can.

23 MS. MINTO: Can I add one more thing?

24 THE COURT: Sure.

25 MS. MINTO: So my son lost his life February 18th,

1 2018. Daeshawn's little brother, that's his child that we
2 share together, Michael and I wanted the children, his
3 birthday's [REDACTED]. Michael's birthday is [REDACTED]. My
4 birthday is [REDACTED]. Our anniversary is February.
5 Daeshawn talked to us February 18th, 12:30A -- AM. That's
6 the last time.

7 Thank you.

8 THE COURT: All right. Thank y'all.

9 SOLICITOR JORDAN: Your Honor, coming up is Sharell
10 David. She is the, as you've already heard, she was
11 Daeshawn's current girlfriend. She also gave birth to
12 Daeshawn's youngest child after his death. He is named
13 after his father.

14 MS. DAVID: My name is Sharell David, and I wasn't
15 gonna speak, you know, but I stand on the truth, and all the
16 truth.

17 Me and Andrew, we met some years ago, but we, we
18 connected again. We were together for two years, and I
19 did -- I loved him. I fell in love with him.

20 But, during that two years, he did -- he had a
21 substance abuse problem, and he would drink. He would get
22 really violent. He would -- he would beat me. Like just a
23 whole different person when he was an alcoholic, and I put
24 up with it for two years until the day that I had my
25 daughter cause I let him, you know, take the role of being

1 in my daughter's life. I let him take that role, and then
2 he was throwing me and her to the ground, and my daughter's
3 crying. She was only about two years old at this point
4 looking at me like mama, and that's when I finally got the
5 strength -- finally got the strength to leave only cause I
6 loved that man, and I put up with him for so long.

7 Finally got the strength to leave. You know, moved on,
8 fell in love with somebody else. It was unexpected, but it
9 was very clear that I was done because I told him I couldn't
10 deal with his abuse anymore. So, that was the only thing I
11 wanted to address on that part.

12 I don't know what -- your decision you're gonna make
13 about the time. That has nothing to do with me. I just
14 wanted to state the facts. I did. I lost, I lost a lot of
15 people over this.

16 I was the only one that had to see this man in my front
17 yard, you know, like -- and now my son is gonna be looking
18 up at me and asking where his father is, you know. So,
19 that's all I wanted to speak was the facts of the situation.

20 Thank you.

21 THE COURT: Okay. Thank you, ma'am.

22 SOLICITOR JORDAN: Your Honor, if I could just briefly
23 add, the Defendant did admit, in his one, one if not both of
24 the statements he gave to law enforcement, that he did -- he
25 was abusive to Ms. David during their relationship. The

1 State does take a position that this was not a quick act,
2 that he made threats in the early morning hours, and he
3 pulled into that subdivision around 7:54, and he acted upon
4 it at 8:19 when he basically ambushed Daeshawn and shot him
5 once in the head at close range. \

6 THE COURT: All right. On Indictment 2019-GS-42-02363,
7 Count 1, charged with murder, Sentence of the Court is you,
8 Andrew Ryan Murphy, be confined to the South Carolina
9 Department of Corrections for the period of 50 years.

10 Indictment 2018-02363, Count 2, possession of a weapon
11 during the commission of a violent crime, the Sentence is
12 five years.

13 SOLICITOR JORDAN: Thank you, Your Honor.

14 MR. JOHNSTON: Thank you, Your Honor.

15 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

16

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18 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 3rd day of June, 2019.

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

June 22nd, 2020

PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of SpartanburgAndrew Ryan Murphy

Full name and prison number (if any) of Applicant

2020-CP-42- 01439

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE Correctional Institution
990 Wisacky Hwy, Bishopville, SC 29600
2. Name and location of Court which imposed sentence The Court of General Sessions Spartanburg South Carolina
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) 2018-GS-4202363 Murder 30 years - life
 - (b) 2018-GS-4202363A Poss. weapon during violent c.

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

- (a) 06/03/19, 50 years in State Department of Co.
 (b) June 3, 2019 5 years for poss. of weapon during violent crim.
 (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty XXX6-3-2019
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

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

NO

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

- (a) the name of each Court to which you appealed:
 i. _____
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. _____
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. _____
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. _____
 iii. _____

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

- (a) No knowledge of right to Appeal and how to Appeal
 (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Violation of 6th Amend. right to effective asst. counsel
- (b) Violation of 14th Amend. right to due process/equal P
- (c) Applicant expects + reserves the right to amend
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached page
- (b) See attached page
- (c) Applicant expects + reserves the right to
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

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(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. _____

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

(a) First PCR Filing
 (b) _____
 (c) _____

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

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

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

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

i. Andrew Johnston, PO Box 3252 Spartanburg
SC 29304-3252

ii. _____
 iii. _____

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

i. Sentencing

ii. _____
 iii. _____

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

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

NO

STATE OF SOUTH CAROLINA

County of Spartanburg

VERIFICATION

I, Andrew Ryan Murphy, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know 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.

Andrew Murphy

SWORN to and subscribed before me this 24th
Day of April, 2020.

James M. Mike (L.S.)
Notary Public

My Commission Expires: 09/04/29

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

I, Andrew Ryan Murphy, 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.

Andrew Murphy
Applicant

SWORN or affirmed to and subscribed before me this

14th day of April, 2020

[Signature]
Notary Public

My Commission Expires: 09/04/29

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09

The 6th Amendment of the U.S. constitution guarantees
 A defendant the right to effective assistance of counsel
 Strickland v. Washington 466 U.S. 668 104 S.Ct. 2052 80 L.ed
 2d 674 (1984)
 Lomax v State 379 S.C. 93, 665 S.E 2d 164 (2008)
 14 Amendment the right to equal protection and Due Process of
 Law.

A criminal defense attorney has a duty to investigate and present
 mitigating evidence of dysfunctional background Wiggins v. Smith
 539 U.S. 510 at 516 (2003)

Counsel performed deficiently by failing to investigate and
 present evidence that defendant had been suffering Major
 mental illness and Severe chronic depression at time of the crime
 Counsel failed to obtain Psychiatrist testimony and failed
 to obtain crucial Medical records and related info which would
 have allowed accurate diagnosis and explanation of defendant's
 Council v. State 380 S.C. 159 670 S.E 2d 356

- Counsel's failure to adequately investigate and present
 evidence during penalty phase was deficient performance

Williams v. Stirling U.S. Court of appeals 914 F.3d 302

Defense Council Failure to collect evidence of defendant's
 Neuro psychological deficiencies, defendant's brain damage
 and impairments of the frontal lobe

Ard v. State 372 S.C. 318, 331 642 S.E 2d 590 597 (2002) citing
 Trade v. Mainwright 667 F Supp 1456-1461 (SD Fla, 1986) Aff'd 825 F.2d 670

- Minimum Counsel has duty to interview potential witnesses and to
 make and independent investigation of the facts and circumstances
 of case

Von Dohlen v. State 360 S.C. 595-606-607 602 S.E 2d 738, 742-161
 L. Ed 2d 511 (2005)

- Counsel should have investigated presented mitigating Social history
 outlining defendant's mental deficiencies

Cherry v State 300 S.C. 115 500
 - Denial of Right to Appeal counsel failed to inform
 client of his right to Appeal and how to Appeal.

Frasier v. State 410 SE. 2d 572, 574 S.C.
 - Defendant has right to be informed of appeal and manner
 and method for taking appeal

State v. Matthews 591 SE 2d 49 358 SC 456

- Trial counsel's failure to request competency hearing
 to determine defendants fitness to stand trial constitutes
 ineffective assistance. Facts Defendant has history
 of Neuropsychological disorder

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 SPANISHBURG DISTRICT
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**STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG**

Andrew R. Murphy, #354829,
Applicant,

v.

State of South Carolina,
Respondent.

**IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT**

Case No.: 2020-CP-42-01439

**RETURN AND MOTION
FOR MORE DEFINITE STATEMENT**

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SPARTANBURG COUNTY
JAY W. COX

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter "PCR") application filed on April 28, 2020, by Andrew R. Murphy (hereafter "Applicant"). Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its May 2016 term, the Spartanburg County Grand Jury indicted Applicant for Murder (Count one) and Possession of Weapon during a Violent Crime (Count two) (2018-GS-42-2363). Applicant represented by Andrew Johnston, Esquire. Assistant Solicitor Jennifer Jordan of the Seventh Circuit Solicitor's Office prosecuted the case. On June 3, 2019, Applicant appeared before the Honorable J. Derham Cole, circuit court judge, and pled guilty as indicted to all offenses without any negotiations or recommendations. Judge Cole sentenced Applicant to fifty years' imprisonment for murder and five years for possession of a weapon during a violent crime, sentences running concurrently. Applicant did not pursue a direct appeal.

II. Statement of Facts

Applicant shot the victim, Dacshawn Brown, in the eyelid, on February 18, 2018. (Plea Tr. 15). The victim was Applicant's ex-girlfriend current boyfriend. (Plea Tr. 15). Several hours before the murder and while speaking with the victim's girlfriend, Applicant indicated an intent to harm the victim, which partially involved stating that he did not want to kill the victim in her mother's yard. (Plea Tr. 15-16).

The victim went to his girlfriend's and her mother's house that morning and hung out in her mother's yard until Applicant went to the store. (Plea Tr. 16). The girlfriend entered the house and then heard a gunshot. (Plea Tr. 16). She looked outside and saw the victim on the ground motionless and Applicant running away. (Plea Tr. 16). The victim was killed across the street from her mother's yard. (Plea Tr. 16).

The girlfriend identified Applicant in the 911 call her mother made, in a written statement, and when talking to responding officers. (Plea Tr. 16). The girlfriend gave responding officers Applicant's cell phone number, vehicle information, and tag number. (Plea Tr. 16).

The shooting was captured on a surveillance video. (Plea Tr. 16-17). The victim was seen walking down the street when Applicant approached the victim. (Plea Tr. 16-17). The victim tried to run away and Applicant shot him and then took off running. (Plea Tr. 17). Applicant was seen shooting the victim with his left hand because he has a deformity in his right. (Plea Tr. 17).

Applicant's car was found nearby, registered to the girlfriend, and was missing its hubcaps on the passenger side and with Applicant's keys, work ID, a Walmart receipt. (Plea Tr. 17-18). The vehicle was seen without hubcaps on the video footage. (Plea Tr. 18). Applicant told the officers twice that the car would not start after he parked it that day. (Plea Tr. 18). Applicant stated he parked the car down the street from the girlfriend's house because her mother did not

let her have boyfriends in the house. (Plea Tr. 18). Walmart footage showed Applicant wearing the same outfit he was wearing on the other video. (Plea Tr. 18-19).

After Applicant was indicted and waived his *Miranda* rights, he denied having involvement in the murder. (Plea Tr. 20). He admitted sending threatening texts to the girl but stated that was a coincidence. (Plea Tr. 20). Applicant stated he was drinking and smoking marijuana the night before and that day, but he appeared sober and coherent. (Plea Tr. 20-21).

Three days later he gave another interview, maintaining that he did not know about the murder. (Plea Tr. 21). He maintained possession of his cell phone at the time of the incident and his phone was hitting between two towers that that time that was within the coverage range of the murder location. (Plea Tr. 21).

III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. "Violation of 6th Amend. right to effective assistance of counsel."
 - a. "Counsel performed deficiently by failing to investigate and present evidence that defendant had been suffering major mental illness and severe chronic depression at the time of the crime."
 - b. "Counsel failed to obtain . . . testimony."
 - c. "Counsel failed to obtain crucial medical records and related info that would have allowed accurate diagnosis and explanation of depression."
 - d. "Counsel failed to adequately investigate and present evidence during penalty phase."
 - e. "Counsel fail[ed] to collect evidence of defendant's neuropsychological deficiencies, defendant's brain damage and impairments of the frontal lobe."
 - f. "At minimum, Counsel has the duty to interview potential witnesses and to make an[] independent investigation of the facts and circumstances of the case."
 - g. "Counsel should have investigated [and] presented mitigating social history during defendant's mental deficiencies."
 - h. "Denial of right to appeal."
 - i. "Counsel failed to inform Applicant of his right to appeal and how to appeal."
 - ii. "Defendant has right to be informed of appeal and manner and means of taking appeal."

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- i. "Counsel's failure to request competency hearing to determine defendant's fitness to stand trial constitutes ineffective assistance."
- i. "Defendant has history of neuropsychological disorder."
2. "Violation of 14th Amend. right to due process/equal protection."

Attached to and incorporated herein are the records of Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the current PCR application. Applicant reserved the right to amend the application and Respondent reserves the right to amend this Return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defendant's counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence,").

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Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant. “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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 690. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

Invalid Guilty Plea, Waiver of Rights

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the solemnity and truthfulness included in the guilty plea process. See *Blackledge v. Allison*, 41 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 528, 529 (2001). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 528, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made

by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leake*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.” *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

The plea hearing transcript reflects that the plea was entered freely, knowingly, voluntarily, and intelligently. Applicant stated he understood the charges, sentencing ranges, the elements of the crimes charged. (Plea Tr. 3-4). Applicant stated he had enough time to consult with Counsel and that Counsel explained the sentencing ranges and adequately explained the charges and indictments. (Plea Tr. 4). Applicant stated he did not have any defenses regarding the charges pled to. (Plea Tr. 5). Applicant stated he wanted to waive his right to have the matter heard in Spartanburg. (Plea Tr. 6). Applicant stated he understood he was waiving his right to remain silent, to testify or not testify at trial, the right to call and cross-examine witnesses, the right to a jury trial, and stated no one promised or threatened him into pleading. (Plea Tr. 6-11). When asked if a past history of alcoholism affected his ability to understand the plea, Applicant stated it did not and he quit drinking over a year before the plea hearing. (Plea Tr. 12-13). Applicant stated he continues to struggle with anger issues, but those issues did not affect his ability to understanding the decision to plead. (Plea Tr. 13-14). Thus, the record reflects the plea was entered freely, knowingly, voluntarily and intelligently. The right to call, present witnesses, to elicit testimony, and to present a defense were waived when Applicant entered his guilty plea and this right cannot be reasserted now.

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Failure to Investigate and Call or Present Witnesses

Applicant alleges Counsel was ineffective for failure to investigate into Applicant's mental health issues. *Strickland* makes clear that Counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. Whether Counsel was deficient for failing to investigate is considered based upon "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* Whether Applicant was prejudiced by Counsel's failure to investigate is contingent on if evidence presented would have changed Counsel's recommendation to plead. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Beyond an unsupported allegation that he was severely depressed and had significant mental health issues, Applicant has failed to show what these mental health issues specifically consisted of, how they impact him personally, or how they impacted the plea hearing or recommendation. He has also failed to show what Counsel failed to investigate or how that failure to investigate impacted his decision to plead. A more definite statement is needed for Respondent to ascertain whether or not this allegation has merit.

Failure to Mitigate Sentence or Present a Mental Health Defense

Applicant alleges Counsel was ineffective for failure to mitigate the sentence is refuted by the plea hearing transcript. Specifically, Counsel stated the murder was entirely unplanned and that it was a poor decision made by someone who was awake for five days straight, using stimulants of different kinds and heavy amounts of alcohol. (Plea Tr. 22-23). He also stated that Applicant made the decision out of an "obsessive love" of his ex-girlfriend, which led to poor decision-making. (Plea Tr. 23). Counsel also stated that Applicant was more prone to poor decision-making because of pre-existing issues he did not seek out professional

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help regarding. (Plea Tr. 24). Counsel stated that he found Applicant's mental health issues significant and mitigating, though not severe enough to rise to the level of not guilty by reason of insanity or guilty but mentally ill. (Plea Tr. 9). Counsel stated that Applicant suffered exposure to lead poisoning as a child, and provided substantiating documentation regarding this matter. (Plea Tr. 25). Counsel stated that in the psycho diagnostic evaluation provided to the court, there was sentence indicating that Applicant may have a neuropsychological dysfunction, but Counsel stated he had no reason to believe that is the case. (Plea Tr. 25). Counsel stated Applicant normal life, discussions between he and Applicant were crystal clear, that he had normal romantic and familial relationships. (Plea Tr. 25). Applicant also was molested as a child, which continued to impact him. (Plea Tr. 25). He was also physically abused by his father, who was seldom involved in his life. (Plea Tr. 26). Counsel stated he thought Applicant's issues with substance abuse and probably had issues with PTSD from being shot five times at one point in his life. (Plea Tr. 27). Thus, Counsel seemingly did his due diligence in bringing Applicant's mental health issues to the Court's attention when requesting the mental health concerns be a mitigating factor in sentencing. Additionally, Applicant unambiguously waived his right to present a defense when he entered his plea and, thus, cannot assert a defense now. That was probably not deficient on this ground.

Applicant claims Counsel failed to collect evidence or present medical records that would have allowed adequate explanation of depression, but fails to submit the records himself to the court of the PCR application or otherwise show what impact additional evidence would have had on the plea and sentencing processes. Applicant has failed to show what Counsel specifically did not do that he thinks would have changed the result of the plea. He also does not show what impact further mitigating the sentence would have had on the plea or sentence. Thus, a more

definite statement is needed for Respondent to ascertain whether or not this allegation has merit.

Failure to Request Competency Hearing

Applicant claims Counsel was ineffective for failing to request a competency hearing be convened. "Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea." *Matthews v. State*, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004) (citing *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595-96 (1992)). "In a PCR action, the petitioner must prove by a preponderance of the evidence that he was incompetent when he entered his guilty plea." *Id.* at 458-59, 596 S.E.2d at 50. "In order to find that petitioner's trial counsel was ineffective for refusing to request a *Blair* hearing on petitioner's competency to stand trial, petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of petitioner's proceedings." *Id.* at 459, 596 S.E.2d 50-51. Prejudice is found when the petitioner shows a "'reasonable probability' that he was either insane at the time [the crime was committed] or incompetent at the time of the plea." *Id.* (citing *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992)).

Beyond merely asserting that he has mental health issues and struggles with depression, Applicant has presented no evidence substantiating these assertions, nor has he specifically stated how his mental health issues would have affected his ability to validly enter the plea. A more definite statement is needed for Respondent to ascertain if this allegation has merit.

Failure to Inform of Right to Appeal

Applicant claims Counsel was ineffective for failing to tell him of his right to appeal. "[A]bsent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). "The bare assertion that a defendant was not advised of appellate

rights is insufficient to grant relief." *Id.* "One extraordinary circumstance[] . . . would arise when the defendant inquires about an appeal." *Id.*

Here, Applicant entered a valid plea. Thus, absent extraordinary circumstances, Applicant is not entitled to relief on this ground. Applicant did not indicate extraordinary circumstances existed in this case. However, a more definite statement is needed on this allegation for Applicant to ascertain whether or not this allegation has merit.

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

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant's allegations. Applicant alleges that plea counsel was constitutionally ineffective because of a failure to investigate, failure to interview and call witnesses and elicit testimony, failure to mitigate the sentence, failure to present a mental health defense, failure to request a competency hearing, and failure to inform of right to appeal. However, it does not explain exactly what Counsel did that constituted ineffective assistance of counsel. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR application, it is incumbent upon applicants 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). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRPC, requires civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief." Pursuant to Rule 12(e), SCRPC, Respondent moves to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of an evidentiary hearing. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in the Applicant's PCR application not explicitly admitted, qualified, or explain in this Return is hereby denied by the Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 12, SCRPC and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Cl. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no

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right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases."); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) ("When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record."); *see also* Rules 15(a)-(b), SCRCP (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to provide a new

definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

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Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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July 1, 2020

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

State of South Carolina	)	
	)	
County of Spartanburg	)	
Andrew Murphy,	)	2020-CP-42-01439
	)	
Applicant,	)	
	)	
v.	)	Transcript
	)	
The State of SC,	)	of
	)	
Defendant.	)	Post-conviction
	)	Relief Hearing
	)	
	)	
	)	
	)	
	)	
	)	
	)	

Date: April 19, 2022

Time: 11:22 a.m.

Location: Spartanburg County Courthouse

180 Magnolia St.

Spartanburg, SC 29306

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable G.D. Morgan Jr.

For the Applicant: Rodney Richey, Esq.
Richey and Richey Law Firm
33 Market Pointe Drive
Greenville, SC 29607

For the Defendant: Chelsey Marto, Esq.
SC Attorney General's Office
1000 Assembly St., Room 519
Columbia, SC 29201

Also Present: Andrew "Andy" J. Johnston, Esq.
Johnston Law Firm, LLC
P.O. Box 3252
Spartanburg, SC 29304

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(DW) - Denotes Defense Witness

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1 PROCEEDINGS

2 THE COURT: All right. We're ready to proceed
3 with the case of Andrew Murphy, Case No. 2020-
4 CP-42-01439. Ms. Marto?

5 MS. MARTO: Yes, Your Honor. May it please
6 the Court. Mr. Murphy is presently confined
7 in the South Carolina Department of
8 Corrections pursuant to orders of commitment
9 from the Spartanburg County Clerk of Court.

10 During its May 2018 term, the Spartanburg
11 Grand Jury indicted him for murder and
12 possession of a weapon during the commission
13 of violent crime.

14 ~~He was represented by Mr. Andrew~~
15 Johnston, and Assistant Solicitor Jennifer
16 Jordan prosecuted the case. On June 3rd,
17 2019, he appeared before the Honorable J.
18 Derham Cole and pled guilty as alleged to all
19 offenses without negotiation or
20 recommendation. He was sentenced to 50 years
21 imprisonment for murder and 5 years for
22 possession of a weapon during the commission
23 of a crime, sentences running concurrently.

24 No direct appeal was pursued. This
25 application was filed April 28th, 2020, and

1 the State's return was made July 1st, 2020.

2 And with that, I'll turn it over to Mr.

3 Richey.

4 THE COURT: All right. Mr. Richey?

5 MR. RICHEY: Thank you, Your Honor. We'll

6 call Mr. Murphy.

7 THE COURT: All right. Mr. Murphy, please

8 come up here and be sworn.

9 (WHEREUPON, the applicant was sworn.)

10 THE COURT REPORTER: Okay. You can have a

11 seat. Thank you.

12 DIRECT EXAMINATION

13 BY MR. RICHEY:

14 Q Sir, can you state your name, please?

15 A Andrew Murphy. I'm sorry.

16 Q And, Mr. Murphy, are you currently in the

17 Department of Corrections?

18 A Yes, sir.

19 Q Okay.

20 A Yes, sir.

21 Q Okay. And what are you there for?

22 A For murder.

23 Q Okay. And -- and who represented you on those

24 cases?

25 A Andrew Johnston.

1 Q And you have filed an application for post-
2 conviction relief because you believe Mr. Johnston
3 did not properly represent you; is that correct?

4 A Yes, sir.

5 Q Okay. And you believe that had he represented you
6 appropriately, that you would have won and the
7 outcome would have been better, correct?

8 A Yes, sir.

9 Q Okay. So you believe that he did not investigate
10 the facts and the circumstances in your case,
11 correct?

12 A Yes, sir.

13 Q Okay. And what do you believe he should have
14 investigated?

15 A Well, "Jacob vs. Horn" says, "Counsel's failure to
16 investigate the" --

17 Q No. No. Hold on. Hold on.. Remember you have to
18 -- you've got to talk to me and tell me.

19 A Oh, okay. Well, from -- from the research that
20 I've looked into that the counselor has a duty to
21 investigate all the circumstances around the case,
22 and he didn't investigate anything about the case.
23 None of that, along with my mental health
24 background. I have neuropsychological deficiencies
25 to my brain. I have proof of these -- these

1 deficiencies that I brought up here today that's
2 submitted into evidence. Things that he did not
3 investigate or things that would have been used to
4 better . . .

5 Q Okay. Let -- we're going to get to the medical
6 part, but what other things that he should have
7 investigated other than the mental health stuff?

8 A The circumstances around the case.

9 Q Okay. What is that? Explain those circumstances.

10 A The -- one of the main circumstances is that I was
11 going through a mental crisis at the time and that
12 I had been threaten and I had got shot by the --
13 the victims -- a group that are friends, you know
14 what I'm saying.

15 Q Yeah.

16 A And they tried to kill me, and they've been trying
17 to kill me.

18 Q Okay. Let's go back and discuss that -- the
19 circumstances. What happened in the case?

20 A What do you mean by that?

21 Q Meaning -- meaning what did you do? What happened?

22 A Oh. I went to go pop up my -- my ex-girlfriend.
23 She told me to come pick her up that morning, but,
24 I guess, during the night she changed her mind or
25 whatnot, and I went and popped up on her and he was

1 there and --

2 Q Who is "he"? Who is he?

3 A Daeshawn.

4 Q Is that her current boyfriend, or --

5 A The victim. They wasn't boyfriend and girlfriend
6 at the time.

7 Q Okay. Go ahead.

8 A But when I got there, I had walked past a car that
9 they was sitting in and when I walked past the car,
10 I looked in the car and I didn't see them there,
11 you feel (as spoken) what I'm saying?

12 Q Right.

13 A So when I walked past the car and went into her

~~14 laundry room to wait and called her --- which is in~~
15 evidence that I called her from Facebook -- and she
16 -- I seen her coming from the back -- from the
17 backyard. And when she came from the backyard, she
18 let the dog in. Once she let the dog in, she went
19 and go sit in the car. And once she sat in the
20 car, she didn't even close the door; she hopped out
21 of the car immediately.

22 So when she hopped out of the car, he hopped
23 out of the car on the other side, so I'm thinking
24 that they have saw me, you know what I'm saying.
25 So when he got out, he went to leave, like he was

1 about to go get a gun or something; that's what I
2 was thinking in that moment.

3 So I -- I was in fear, you know, I felt like
4 he was about to kill me. I'm -- I'm popped up on
5 his girl, and he's about to come over here and kill
6 me, you know. So I was in fear and I -- and I
7 acted on impulse. And it's clear that due to my
8 neurological deficiencies -- you understand, I have
9 impulsivity disorder, and not only just that, but a
10 learning disorder and a memory disorder, as well,
11 along with cortical dysfunction and a lot -- bunch
12 of other things.

13 Q Okay. Well, let me ask you this: Well, at the
14 time you pled, did your lawyer make any kind of
15 representation to you of how much time you'd get?

16 A He told me that we -- we're going to go in front of
17 a judge he has relationship with and that I was
18 going to get 30 years.

19 Q Okay.

20 A But he never --

21 Q Did you get 30 years?

22 A Sir?

23 Q Did you get 30 years?

24 A No, sir.

25 Q Okay. How much did you get?

1 A Fifty years.

2 Q Okay. And --

3 A He also didn't explain to me the difference between
4 the two charges of voluntary manslaughter and
5 murder. He had me believing that I didn't have no
6 argument at all, and it's in my -- the transcripts,
7 because the judge asked me, "What's the -- the
8 defense you guys have?" And I told him that we
9 didn't have a defense. And the judge had to re-ask
10 this question because he didn't think that I heard
11 him. And, from my understanding, I didn't have a
12 defense, but now I know that I did have a defense
13 and an argument for manslaughter.

~~14 Q So you're saying that you -- that your lawyer --~~
15 did your lawyer discuss with you the elements of
16 manslaughter versus murder?

17 A No. He didn't discuss the elements of none of
18 them. He told me I didn't have no argument, I only
19 talked to him three times since --

20 Q Okay.

21 A -- for the whole year and a half that I was in the
22 County.

23 Q Okay. So you were in jail the whole time this case
24 was pending, correct?

25 A Yes, sir.

1 Q And the time -- all the time you were in jail, did
2 he come by the jail and talk to you?

3 A Three times.

4 Q He did?

5 A Yes, sir.

6 Q Well, what did y'all discuss?

7 A The first time he came just to tell me he was my
8 lawyer. The second time that he had brought a
9 little bit of evidence and just looked at me and
10 wanted -- and was -- asked me -- he didn't even
11 asked me nothing. He was like, "Anything you want
12 to tell me?"

13 And I was like, "I mean, what -- what is it
14 that you want to know?"

15 And the third time he came to see me, he
16 pretty much -- to tell me that we ain't got no
17 argument. There's no argument or nothing, and you
18 can just go on ahead. You can get life or you can
19 plead to the -- plead to the thirty.

20 Q Okay. So -- so he just said, "Hey, you got to
21 plead or" --

22 A Yes.

23 Q -- "that's it"?

24 A Yes. Or I'm getting life.

25 Q And you did that?

1 A And that's what I did.

2 Q Okay. Do you -- and -- in looking at your case, do
3 you believe that you -- that your case fits
4 manslaughter instead of murder?

5 A Yes, sir.

6 Q Huh?

7 A Yes, sir.

8 Q And why is that?

9 A Because I have the -- the two prongs that is called
10 for, for manslaughter, which is sudden heat of
11 passions and legal provocation. Legal provocation
12 being that -- the fact I had been shot by this same
13 group of people and the fact that they'd been
14 ~~threatening me and trying to kill me and the fact~~
15 that I was going through a mental crisis right
16 before -- like days before the incident, I was
17 forced to Spartanburg Regional by Spartanburg
18 County Police Department to have a mental -- mental
19 health evaluation done.

20 Q Did you -- did you talk to your lawyer about that?

21 A I talked to him about all this.

22 Q And what did he say after all these discussions?

23 A He told me he was going to look into all these
24 things and he never looked into any of these things
25 and I have the evidence right here to prove it.

1 MR. RICHEY: Can I approach the witness, Your
2 Honor?

3 THE COURT: Yes.

4 MR. RICHEY: Thank you.

5 Q Sir, I want you to -- I'm going to give these back
6 to you, and I want --

7 A Uh-huh.

8 Q -- and I want you to go through them and explain
9 them.

10 MR. RICHEY: (To the court reporter) And
11 we're going to -- can we mark this as one
12 court exhibit?

13 MS. MARTO: No objection.

14 MR. RICHEY: Huh?

15 MS. MARTO: No objection.

16 MR. RICHEY: (To the court reporter) We're
17 going to mark all these, but can we mark all
18 these together as Applicant's 1?

19 (WHEREUPON, a stack of documents is
20 marked for identification as Applicant's
21 Exhibit No. 1.)

22 Q I'm going to give these documents back to you, sir.

23 A Okay.

24 Q And we're going to go through them. What's the
25 first document you have there?

1 THE COURT: (To the State) Any objection to
2 the admission of those documents?

3 MS. MARTO: No objection.

4 THE COURT: All right. So Applicant's Exhibit
5 No. 1 is admitted into evidence without
6 objection.

7 (WHEREUPON, Applicant's Exhibit No. 1 was
8 marked into evidence.)

9 DIRECT EXAMINATION CONTINUES

10 BY MR. RICHEY:

11 Q Okay. Let me do it this way: When you were young,
12 you had lead poisoning, correct?

13 A Yes, sir. When I was two years old.

~~14 Q Okay. You have a document of that as to that,~~
15 right?

16 A Yes, sir. This --

17 Q Take that document out.

18 A This is the lead -- lead poisonings test.

19 Q Okay.

20 A And they gave me -- they made me do a monthly lead
21 clinic.

22 Q And how old were you when that happened?

23 A I was three.

24 Q Okay. And then did you have any kind of follow-up
25 with that?

1 A Yes, sir.

2 Q When?

3 A I had monthly lead clinic.

4 Q When?

5 A Monthly lead clinic.

6 Q Okay. And how long did that last?

7 A I'm not sure. I know it lasted for a couple of

8 years until about 2000, the year 2000, when they

9 gave me another neuropsychological evaluation,

10 which I have that --

11 Q Okay. Do you have that with you?

12 A Yes, sir.

13 Q Okay.

14 A In January 18, 2000, I was given a -- a

15 psychodiagnostic evaluation to see if the -- if the

16 lead had gave me brain impairments, and it did. It

17 shows that I not only -- not only have impulsivity,

18 but hyperkinesis, visuospatial dysfunction,

19 perceptual impairment based on cortical --

20 THE COURT REPORTER: (To the applicant) Slow

21 down --

22 THE APPLICANT: I'm sorry.

23 THE COURT REPORTER: -- just a minute.

24 THE APPLICANT: I'm sorry.

25 THE COURT: Slow down. She's got to take down

1 everything --

2 THE COURT REPORTER: Yeah.

3 THE COURT: -- that you say, okay?

4 THE APPLICANT: I'm sorry. I'm so sorry,
5 y'all.

6 THE COURT REPORTER: Can you go back, start
7 again? Thank you.

8 A Okay. Well, the lead level was a high Level 29,
9 and it gave me hyperkinesis, that's on Page 2;
10 visuospatial dysfunction, that's on Page 3;
11 perceptual impairment based on cortical
12 dysfunction, and that's on Page 3, as well;
13 temporal lobe dysfunction with focusing problems in
14 ~~the hippocampus area, that's Page 4.~~

15 Q Slow down. Slow down a little bit.

16 A I just want to add that the hippocampus area is
17 where judgment and reason is.

18 Q Right.

19 A So it's saying that I'm deficient in that area.
20 Then they had gave me a Trail Making Test. It
21 shows evidence of impulsivity. Then I have
22 cerebral dysfunction traced back to parietal lobe
23 weakness, on Page 5; bilateral cortical
24 dysfunction; and a RAG performance and impulse --
25 impulsivity, also on Page 5. And then --

1 Q What's the date on those examinations?

2 A That's just one of them, and that was on January
3 18th, 2000.

4 Q Okay. Go ahead.

5 A The next evaluation that was done 07/01/02. And
6 this was when they had -- had to change my
7 medication that they had me on. The -- the lead
8 poisoning gave -- gave me neuropsychological
9 impairments, and they had put me on medicine. So
10 they seen that the -- the medicine wasn't helping
11 when it came to my impulsiveness and my aggression
12 or how intense my emotions can be at times. So
13 they had to change my medicine and put me on
14 Concerta 18 milligrams. And they --

15 Q Can you spell that? Spell that please?

16 A C-o-n-c-e-r-t-a, 18 milligram, and John Hopkins
17 said that, "The intensity of anger prompted the
18 treatment team to prescribe Concerta, that it
19 better addresses the issue of impulsiveness and
20 aggression." And this was in 2002.

21 I don't -- I -- I don't have the evaluation
22 that was done a couple days prior to the incident,
23 but I was in the -- I had mental health crisis and
24 had to be evaluated then, as well.

25 Q Did you tell your lawyer about that?

1 A I told him all this.

2 Q Okay.

3 A He -- he --

4 Q Okay.

5 A He didn't seem to find it important to investigate
6 my neuropsychological impairments, nor present them
7 to the -- to the courts or the -- the prosecution.

8 Q Okay. Go ahead, and you've got another document
9 you're holding.

10 A Oh. Right here is the email I had, because due to
11 his lack of coming to see me, like I said, I only
12 seen him three times the whole year and a half I
13 was in the County, so I constantly called him from
~~14 the County and I got my mom to call him. And his~~
15 paralegal was very disrespectful towards my mom,
16 just for checking up on the case and cussed her out
17 and whatnot -- and, I guess, Andrew made her do
18 a -- a formal letter of apology, and this -- this
19 letter of apology, here it is right here. It's the
20 evidence.

21 But I feel as though, based on those
22 difficulties, he -- he violated my due process,
23 because one, I do have a history of
24 neuropsychological impairments and I should have
25 had a -- a competency hearing.

1 Y'all got to bear with me. I've got a brain
2 impairment, so a lot of these words is kind of hard
3 for me to say. And I'm very anxious right now,
4 that's why the State has me on a bunch of different
5 medications to combat these chemical imbalances in
6 my brain.

7 Q Okay. And, so today, do you -- you understand what
8 you're doing?

9 A I feel for the most part I do, I think.

10 Q Okay. And you understand the purpose of this
11 hearing?

12 A Is to get a new trial?

13 Q Yeah.

14 A Okay. Yes.

15 Q Yeah.

16 A Then I do.

17 Q Okay. And you're of clear mind right now?

18 A Yes, sir.

19 Q And did the --

20 A Other than my mental health meds.

21 Q So you're -- you're prescribed medication right
22 now?

23 A Yes, sir.

24 Q Have you taken that medication?

25 A Yes, sir. I have to take it every day.

1 Q Did you -- had you taken it to the doses that
2 you're required to take?

3 A Yes, sir.

4 Q Okay. And so does it help you understand --

5 A Yes, sir.

6 Q -- what you're doing?

7 A It -- it helps with a lot of different things, not
8 just understanding, but my -- as you -- the Court
9 probably can tell, I have an impulsive disorder.
10 That's why I'm rambling over my words and stumbling
11 because I'm trying to get everything on record.

12 Q Well, I just want to make sure that -- that you
13 understand what this is all about.

14 ~~A Yes, sir.~~

15 Q Okay. All right. So do you have another document
16 up there?

17 A Yes, sir. This is -- this document right here is
18 just proof of the lead poisoning and the -- the
19 claim -- the settlement of all claims for Chase
20 Management, the --

21 Q Right.

22 A -- the -- the --

23 Q So that's a release that --

24 A Yeah. That's --

25 Q -- your parents got --

1 A That's --

2 Q -- from the settlement, right?

3 A Yeah. That's the settlement of all claims.

4 Q Okay. All right. Okay. And -- and you believe

5 that your attorney should have investigated these

6 allegations?

7 A Yes, sir.

8 Q Okay. And you brought them to his attention?

9 A Yes, sir.

10 Q And you believe if he had of investigated those

11 issues, you could have gotten at least a

12 manslaughter or something, correct?

13 A Yes, sir. Or at least a competency hearing.

14 Q Okay.

15 A And I asked him for that.

16 Q You asked him for a competency hearing?

17 A I asked him for it. And --

18 Q And what was his response?

19 A He looked at me. He said, "Do you think you need

20 one?"

21 I was, like, "Hell. I don't know. Maybe."

22 I'm sorry. I'm sorry, y'all. I'm sorry, Court.

23 Please -- you know.

24 Q No, no. You're fine.

25 A I'm sorry.

1 Q You're fine. You're fine. So one wasn't done,
2 correct?

3 A No. I never got the competency hearing.

4 Q Okay. And you are asking this Court -- you believe
5 that that -- that prejudiced your case or hurt your
6 case, correct?

7 A I feel as though that it violated my due process.

8 Q Well, did it hurt your case?

9 A Yes, sir.

10 Q Okay. And tell me how it hurt your case.

11 A Because if he would have did the proper
12 investigation like he was supposed to, then it
13 would have brought context to my case and maybe I
~~14 would have -- I -- not maybe, but I would have~~
15 insisted on going to trial and fighting for a
16 manslaughter versus telling me I have no argument,
17 at all. That I can either plead to murder or go to
18 trial that Monday and get life.

19 Q So the trial was set?

20 A Yeah. The trial was set --

21 Q Okay.

22 A -- and he wasn't prepared for trial. He had no
23 defense, no nothing.

24 Q Were you prepared to go to trial?

25 A I didn't have a defense.

1 Q Okay.

2 A That's my lawyer.

3 Q All right.

4 A I didn't go to school.

5 Q Okay.

6 MR. RICHEY: (To the applicant) Okay. Answer
7 any questions the Attorney General will have
8 for you, please.

9 MS. MARTO: (To the Court) Before I begin
10 cross-examination, I realized that I never
11 handed up the packet. Sorry about that.

12 (To the deputy) Thank you.

13 CROSS-EXAMINATION

14 BY MS. MARTO:

15 Q Good morning, sir.

16 A Good morning.

17 Q Okay. So concerning the facts of the case, do you
18 recall if this case was captured on video
19 surveillance?

20 A Yes, ma'am.

21 Q And it was?

22 A Yes, ma'am.

23 Q Okay. Did the State, state that they had text --
24 threatening texts from you sent to the victim
25 hours --

- 1 A No.
- 2 Q -- before?
- 3 A Not to the victim, no, ma'am.
- 4 Q Who were they sent to, your ex-girlfriend?
- 5 A Yes, ma'am.
- 6 Q Okay. But you were threatening to kill the victim,
- 7 correct?
- 8 A No, ma'am.
- 9 Q No? Was the shooting in broad daylight?
- 10 A Yes, ma'am.
- 11 Q Okay. And did your ex-girlfriend witness the
- 12 killing?
- 13 A No, ma'am.
- ~~14 Q She wasn't there?~~
- 15 A She was there, but she didn't witness it.
- 16 Q Okay. Did she see it?
- 17 A No, ma'am.
- 18 Q No? Okay. Now, in mitigation, Mr. Johnston
- 19 brought up the fact that you suffered from lead
- 20 poisoning, correct?
- 21 A Not that I know of.
- 22 Q Would you be surprised to find out that he did?
- 23 A No. But I know there wasn't an investigation done.
- 24 If he did bring it up, why didn't he investigate
- 25 the lead poisoning or the effects that it had on

1 me?

2 Q Okay. But you're not denying the fact that he
3 didn't bring it up at all -- that he brought it up?
4 It's just you wish he had expanded upon it,
5 correct?

6 A No. I don't remember him bringing it up.

7 Q Okay. Well, I'm looking at Page 25 of the
8 transcript, and Mr. Johnston's noted as saying, "He
9 suffered exposure to lead poisoning as a child, and
10 I'd like to hand you up some documentation I've
11 received that shows what he was treated for."

12 You don't recall any of that?

13 A Like I said, I have a neuropsychological deficiency
14 in my memory, so I don't.

15 Q Okay. And do you recall whether he brought up any
16 information about various mental and emotional
17 disturbances, or no?

18 A I don't -- I know he didn't bring up any mental
19 health thing, or anything about my
20 neuropsychological dysfunctions. I -- I believe he
21 even stated in there, "the plaintiff's armchair
22 psychologist," I believe the words he used, that he
23 don't believe that I have any dysfunction, but I
24 have proof that I brought today to court to prove
25 that I do have these impairments.

1 Q Now, do you recall ever telling the Court,
2 yourself, that you suffered from a mental illness
3 or emotional disturbance?

4 A No, ma'am.

5 Q Okay. I'm looking at Page 13 of the transcript,
6 starting with Line 17. It says, "Have you ever
7 been treated for any type of mental illness or
8 emotional disturbance?"

9 And you said, "Yes, sir."

10 And then the Court asked, "And then when?"

11 And you stated, "It was when I was kid, like,
12 eight or nine." And then you went on to state that
13 you were treated for that.

14 ~~You don't recall?~~

15 A Now that you say that, I do recall, but at eight or
16 nine -- there was evaluations done when I was
17 three, four, five, six, eight and nine, ten,
18 eleven, twelve, thirteen, fourteen, fifteen. All
19 the way up to 24 -- days before the incident.

20 Q Okay. So why didn't you, personally, bring up the
21 fact that you were still being treated?

22 A I wasn't being treated until I got to the State --
23 until the --

24 Q Okay.

25 A -- State said that I have a problem, and they

1 started to prescribe -- they prescribed me
2 psychiatric medicine to help with my imbalances.
3 Q And when the Court asked you, did you still suffer
4 from mental health disturbances that day, did -- do
5 you recall if you said yes?
6 A I can't recall. I have a deficiency with my
7 memory. It's in the -- the evaluation --
8 Q Right.
9 A -- that I just submitted to the Court.
10 Q Okay. Well, you wouldn't be surprised if you said
11 that, "Yes. It was still going on"; is that fair
12 to say?
13 A Would I be surprised?
14 Q Yeah.
15 A Yes. I would.
16 Q Okay.
17 A Because if I would have to have said that, doesn't
18 the prosecution also have the duty to investigate
19 the conditions of the case?
20 Q Now -- and it's really just the mental health and
21 emotional disturbances that you wish Counsel
22 investigated further, correct?
23 A No, ma'am. The circumstances, as well, around the
24 case, the fact that I was being threatened, and I
25 got shot by this group of people -- this same group

1 of people that has been conspiring to kill me. And
2 the fact that the -- the victim -- the -- the
3 girlfriend had bought him a gun in her name to kill
4 me, and she came and told me this, you feel what
5 I'm saying, afterwards -- after he got locked up
6 with the gun, days before the incident.

7 So not only was I going through a mental
8 crisis, I'm really in fear for my life. I'm
9 thinking at any point in time they can come kill
10 me, like they did, you feel what I'm saying? When
11 I got shot, they came to my front door. I opened
12 the front door, and they shot me five times in the
13 chest.

~~14 Q And, now, where was the incident that your charges~~
15 came from, where did that take place?

16 A At my ex-girlfriend's.

17 Q So you were fearing for your life and you showed up
18 at your ex-girlfriend's --

19 A No.

20 Q -- isn't that right?

21 A I popped up on her because we had scheduled to meet
22 each other that morning. So when I popped up on
23 her and went into her laundry room to call her, I
24 didn't realize that -- like -- and like the
25 evaluations says, I have visuospatial dysfunctions

3 So when she came from the back and got in the
4 car with him and hopped out immediately, I thought
5 I was seen. So when he hopped out the car, he
6 looked like he was going to go get a gun or backup
7 or whatever -- I don't know, at the moment I was
8 thinking, oh, man. I'm fixin' to get killed.
9 Because I shouldn't have popped up over there.

14 A No, ma'am. I've been being treated all my life,
15 all the way down to coming to South Carolina. When
16 I -- when we got down to South Carolina, that's
17 when my treatment stopped. I was on medication to
18 help combat these impairments.

25 (WHEREUPON, the applicant was excused.)

1 THE COURT: All right. (To Mr. Richey) Next
2 witness.

3 MR. RICHEY: Okay. I call Mr. Johnston.

4 (WHEREUPON, the witness was sworn.)

5 DIRECT EXAMINATION

6 BY MR. RICHEY:

7 Q Sir, would you state your name, please?

8 A Andrew Johnston.

9 Q Mr. Johnston, are you an attorney in Spartanburg?

10 A I am, sir.

11 Q Okay. Do you -- do you recall representing Mr.
12 Murphy?

13 A Yes, sir. I do.

~~14 Q And you were in the courtroom. I'm going to ask~~
15 you about the issues that were brought up.

16 About his mental health, did you have any
17 discussions with him about that?

18 A Yes.

19 Q And I'm going to give you the documents that were
20 brought to -- to court today. Do you remember
21 reviewing any of those documents or were they
22 brought to you or . . .

23 A Let -- let me look through, just --

24 Q Yes, sir.

25 A -- a moment. I don't recall Plaintiff's Exhibit

1 No. 1. I am well acquainted with -- (reviews
2 documents) -- they're all marked as one exhibit.

3 Q Yes, sir.

4 A So I --

5 THE COURT: (To the witness) Yeah. For the
6 record, I think all of them are marked as
7 Exhibit No. 1.

8 MR. RICHEY: Yes, sir.

9 A So, I just go through individually.

10 Q Individually, can you tell me --

11 A So --

12 Q -- if --

13 A So --

14 Q -- you recognize any of the --

15 A I don't --

16 Q -- documents in there?

17 A I don't recognize this first page here where it
18 says -- it -- it looks like it's an appointment for
19 him to get further looked at, because he had
20 been -- he had a high lead poisoning level. I
21 don't recall that particular document.

22 This page here, which is a -- a report from
23 Theron Pride (phonetic), a clinical summary, dated
24 6/28/02. I do not recall ever having seen this
25 document before. I don't -- don't recall that one.

1 I'm well acquainted with the psychodiagnostic
2 evaluation dated January the 18th of 2000, several
3 pages in length, and I did review that document
4 carefully.

5 The next is a civil settlement, like a release
6 form, where he got some money from, I guess, his
7 landlords or something -- something like that,
8 because he had been exposed to the lead when he
9 lived up in Baltimore. I am familiar with that; I
10 have a copy of that in my file.

11 I have a copy of the psychodiagnostic
12 evaluation in my file. To the best of my
13 knowledge, I don't have a copy of that clinical
~~14 summary from '02 in my file.~~

15 And the last is an apology that I made my
16 secretary write because Ms. -- his mother felt like
17 she had been disrespected, and I made my secretary
18 write that letter.

19 Q What --

20 A Or email, I should say.

21 Q When you reviewed the documents that you have, did
22 you believe that he needed to get a mental
23 evaluation?

24 A No, sir.

25 Q Okay. And did you based it off -- what did you

1 based that off of?

2 A I based it off my interactions with him. I didn't
3 get this information about the lead poisoning until
4 fairly late in the process. Although, I think his
5 mother probably had made me aware of it and I think
6 she was trying to get the records for me and I
7 think she did get, at least, that psychodiagnostic
8 summary for me, but it was rather late in the
9 process.

10 So what I based it off of were my interactions
11 with him, my review of the discovery materials that
12 were provided to me, this information that came
13 late that I just made reference to, and my
14 interactions with him.

15 Q And so did -- did he request an evaluation? Do you
16 recall that?

17 A I do not recall the conversation, specifically. He
18 -- he could have said, "Should I get one or do you
19 think I need one?" He certainly could have, but I
20 never came to the conclusion that he would. So
21 after reviewing the lead poisoning -- oh, and one
22 other thing.

23 I heard him make reference to something that
24 happened right before the crime, where he was taken
25 in for an evaluation of some kind. I don't

1 remember ever hearing about that before. It's not
2 in these documents here. I don't -- I have no
3 recollection of that. I believe that if I had
4 known about that, that would have been a relatively
5 simple matter for me to have gotten that to see if
6 there was anything in it. So I don't recall
7 anything about that.

8 Q Do you recall an incident prior to this where he
9 was shot at by somebody -- by the -- those folks?

10 A Well, I know what he told me about it. There was
11 never any evidence, to my knowledge. I think the
12 gentleman was shot, there was no doubt about that.
13 That some people came to his house and shot him.

~~14 What their motivations were and their -- their~~
15 identities, I don't think were ever established.
16 And I think it was entirely speculative on his part
17 that the victim of the crime that occurred later
18 had something to do with that.

19 Now, I, also, do not have a good concept, as I
20 sit here, of the lapse of time between that
21 shooting and the crime, but it struck me -- it
22 seems to me, as I sit here, that there was a
23 significant period of time that lapsed between
24 those incidents.

25 He -- he, also, tried to tell me that he had

1 been threatened by the victim, I want to say,
2 perhaps over Facebook, Instant Messaging, or
3 something like that, but I could never document any
4 of that. I could never find anything like that.

5 Q Okay. Did you discuss with him the elements of
6 manslaughter and murder and how it pertained to his
7 particular case?

8 A Yes. And he would not have been, in my opinion,
9 eligible for a charge of voluntary manslaughter or
10 self-defense or stand your ground; any of those
11 elements. Specifically, on the manslaughter, I
12 believe he was in the heat of passion, but there
13 was absolutely no adequate legal provocation. And
14 it is, of course, a two-pronged issue, and there
15 was nothing on that second issue that was of use --
16 that -- that I felt could be used.

17 The other thing is, the police had gotten
18 ahold of his cell phone or -- I think they also got
19 some materials from the young woman who was both
20 involved with him and involved with the victim, and
21 she was able to show some pretty serious threats
22 that Andrew made towards the victim, but through
23 her, basically, saying that he was going to kill
24 him in his -- in her mother's front yard, and
25 that's about where it happened.

1 Q Now, so what did -- do you believe that there was
2 any defense to this killing or shooting?

3 A Absolutely not.

4 Q Okay. Did you discuss that with him?

5 A Yes.

6 Q In terms of the potential sentence, did you tell
7 him that he was not going to get more than 30
8 years?

9 A Absolutely not. I told him it was my hope that he
10 would get 30 years and I told him that I did not
11 believe he would get life if he pled and he did
12 not.

13 Q Did he ever talk to you about having a jury trial?

~~14 A Yes. We talked about it many times. And --~~

15 Q And was it his decision not to have a trial,
16 or . . .

17 A Absolutely.

18 Q Okay. You talked with him about that decision?

19 A Yes.

20 Q Okay.

21 A And that was the better choice for him then, and,
22 as I sit here now, it was still the best choice.

23 MR. RICHEY: (To the witness) Thank you.

24 Answer any questions the Attorney General has
25 for you.

1 CROSS-EXAMINATION

2 BY MS. MARTO:

3 Q Good morning, sir. Now, all of the medical
4 documentation you saw was from Mr. -- came from Mr.
5 Murphy's childhood, correct? Did you ever see
6 anything more recent?

7 A No, ma'am.

8 Q And you did state that he suffered from lead
9 poisoning as a child, at the plea?

10 A I -- I pointed that out. I, also, pointed out --
11 he made a reference to me having said something as
12 an "armchair or amateur psychologist" or something,
13 I believe I used it -- did use words to that
14 effect. What I told -- what I was telling the
15 judge there was that I felt he probably had
16 undiagnosed PTSD from the shooting that had
17 occurred, because he was shot, like, five times,
18 and it left his right hand crippled. So I'm sure
19 that was a very traumatic event for him.

20 But neither the lead poisoning nor potential
21 PTSD or anything like that would have risen to the
22 level of not knowing the difference between right
23 and wrong, or lacking the capacity to conform his
24 conduct to the requirements of law, which would be
25 required for a "not guilty by reason of insanity."

1 To me, then, and to me, today, he comes across
2 as an intelligent individual, articulate, and
3 there's -- there was never any presentation of
4 anything to me that indicated he would have
5 suffered from something like hallucinations or
6 delusions or psychosis. Had I been presented with
7 anything remotely resembling that, I would have
8 requested he be evaluated at the State Hospital. I
9 never saw anything like that. Yes, apparently, he
10 did suffer some psychological issues as a result of
11 the lead poisoning, but again, not rising to the
12 level of a defense.

13 Q Now, concerning the manslaughter, do you recall
14 ~~whether you stated that there was a heat of passion~~

15 but no provocation, at the plea hearing itself?

16 A I don't remember exactly what I said. If you want
17 me to look at something, I can, but that is -- was
18 my opinion at the time, and it is my opinion today
19 that he did have a heat of passion, but that there
20 was absolutely no adequate legal provocation.

21 And what occurred in the incident -- he said
22 that his love-interest did not witness any --
23 anything. She did give a statement, and she saw a
24 lot. I cannot remember, as I sit here; I'd have to
25 look at her statement. But I think her statement

1 would have refuted any claims of adequate legal
2 provocation, based on what she saw. And she was
3 coming to court to testify.

4 Plus, you throw in the threats that -- that he
5 made against the victim to her, that she would have
6 been able to testify to. You have a situation
7 where he resented this individual because he was
8 involved with this woman that he loved, and he made
9 threats. That didn't stop it. And he -- he killed
10 the man.

11 Q Were these threats by text; is that what you're
12 referring to?

13 A I don't -- they were some sort of written
14 communication, I -- I can't say if they were
15 Facebook messages, now, or if they were texts. I
16 don't remember, but it's documented in the
17 evidence.

18 Q Okay. And --

19 A And they were very -- very graphic and specific.
20 It wasn't -- there was nothing veiled about them at
21 all.

22 Q And did those texts convey a message that he
23 intended to kill the victim?

24 A Absolutely. He intended to kill him if the victim
25 did not break off with the guy (as spoken), that he

1 intended to kill him.

2 Q Okay.

3 A And he said where he was going to do it, and that
4 is where he did it.

5 Q And that happened within eyeshot of the girlfriend,
6 correct?

7 A Well, as I say, she -- I -- I would have to see her
8 written statement, again, to remember precisely
9 what was said, but she was in the position where
10 she could identify him.

11 The other thing is, Andrew made a damaging
12 statement to the police. I want to say that he --
13 his first story was, you know, I wasn't -- I wasn't
~~14 there. They had found his car -- or the car that~~
15 he was driving, anyway, over there. They had found
16 his cell phone and showing that his -- his phone
17 was bouncing off the towers in that location. They
18 found a hat that had his hair in it that they
19 identified as being his hair through DNA
20 examination.

21 And so all of that would have refuted his --
22 his earliest claims that -- that he didn't know
23 anything about it.

24 Q Is there any other evidence, do you recall, in this
25 case that hasn't already been discussed?

1 A Well, there's a video of it. There was a video
2 from across the street at a -- at a -- at a
3 business. I don't remember now what kind of
4 business it was -- maybe it was a tax service or
5 something -- but, anyway, they had a video of the
6 actual killing. Now, it is from some distance
7 away, but my recollection of what's on that
8 video -- and I haven't watched it in several years
9 -- it's like my impression was that Andrew ran the
10 guy down and shot him, which would, again, really
11 make a self-defense or even a voluntary
12 manslaughter plea most difficult.

13 Q What would you say that your likelihood of success
14 at trial would have been?

15 A Zero.

16 Q And, now, how long have you been practicing
17 criminal law for?

18 A I've been a lawyer since 1985. I really started
19 into the practice of criminal law in about 1987.

20 Q And based upon that experience, you came away with
21 the impression that there was no insanity defense
22 or incompetency issue in this case?

23 A Not only was there not any insanity defense, but I
24 saw no reason to have him evaluated.

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

1 THE COURT: All right. (To Mr. Richey) Any
2 redirect?

3 MR. RICHEY: No other questions.

4 THE COURT: All right. Thank you, sir. You
5 may step down.

6 (WHEREUPON, the witness was excused.)

7 THE COURT: All right. Any other witnesses
8 from the Applicant?

9 MR. RICHEY: No, Your Honor.

10 THE COURT: All right. Anything from the
11 State?

12 MS. MARTO: No, Your Honor.

13 THE COURT: All right. Anything from the
14 parties?

15 MS. MARTO: No, Your Honor.

16 MR. RICHEY: No, sir.

17 THE COURT: All right. Thank you, both. I'll
18 take it under advisement.

19 MR. RICHEY: Thank you.

20 MS. MARTO: Thank you, Your Honor.

21 (Whereupon the within hearing was
22 concluded at 12:04 p.m.)

23 (*This transcript may contain quoted material.
24 Such material is reproduced as read or quoted
25 by the speaker.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) CERTIFICATE

I, Amber Payne, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina on April the 19th, 2022.

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

Amber J. Payne, CVR

Date: 9/24/2022
Notary public for South Carolina
My commission expires August 12, 2029

Appointment:
10/16/96 @ 8:30 AM

Patient Name: Murphy, Andrew
PAC #: 100-80-37
DOB: [REDACTED]
Date: 9/27/96

Dear Ms. Murphy:
Parent/Guardian

Your child was tested for lead poisoning on 8/16/96. We have just received the results,
Date of test

and they indicate that his/her lead level is high. He/she needs a repeat level within

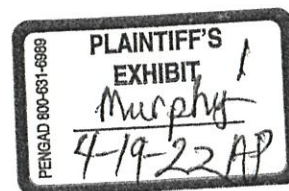
One month

Time frame. Level IIB-1 month
Level III-1 week
Level IV-48 hours

Lead clinic will be held on Monday - Friday mornings from 8:30-11am. Please call Ellen Wilkes at 706-2525 to make an appointment.

The PAC Staff

Level IIB, III, IV





JADA ATKINS <4jadaatkins@gmail.com>

My inappropriate behavior towards you today.1 message

Linda Tschappat

.Mon, Apr 23, 2018 at 4:04

<ltschappat@spartanburglegal.com>

PM

To: "4jadaatkins@gmail.com" <4jadaatkins@gmail.com>

Ms. Atkins:

I would like to apologize for twisting the words that you said to me today. Although I know you do not believe me, there really was not anyone in my office. I attempted to place the call on hold, which I obviously did not. I needed to try and collect my thoughts. I understand that being stressed is never an excuse to be rude to someone following up about a case. I have told Mr. Johnston of our conversation and he agrees that an apology is appropriate. Again I am sorry and will try to be more sensitive and professional when dealing with not only you but other clients and their family members.

I am truly sorry. I look forward to seeing you on Monday.

Linda S. Tschappat

Paralegal to Andrew J. Johnston,

Attorney-at-law

PO Box 3252

Spartanburg, SC 29304-3252

(o) 864-591-1093

(f) 864-591-1371

**JOINT TORTFEASOR RELEASE AND
SETTLEMENT OF ALL CLAIMS**

WHEREAS, Andrew Ryan Murphy and Aris Leshawn Murphy, minors, by their Mother and Next Friend, Jada Bullock Murphy, and Jada Bullock Murphy, individually (hereinafter the "Undersigned"), have sued Irving Sattell, Emily Sattell, Abby Sattell (formerly known as Abby Orman), and Chase Management, Inc., for injuries and damages allegedly sustained by the Undersigned, as a result of and by reason of the alleged exposure of Andrew Murphy and Aris Murphy to lead paint at a Baltimore City property known as [REDACTED] North Durham Street, as more fully appears in the case of Aris L. Murphy, et al. v. Irving Sattell, et al. in the Circuit Court for Baltimore City, Case No.: 94348046/CL189956 (hereinafter "the Occurrence"); and

WHEREAS, the Undersigned desires to settle this claim;

NOW, THEREFORE, for the sole consideration of Thirty-nine Thousand Dollars (\$39,000.00) (Thirty-four Thousand Dollars (\$34,000.00) of which was paid on behalf of Defendants, Irving Sattell, Emily Sattell, and Abby Sattell and Five Thousand Dollars (\$5,000.00) of which was paid by the Defendant, Chase Management, Inc.) paid to the order of Jada Bullock Murphy, individually and as Mother and Next Friends of Aris L. Murphy and Andrew Murphy, and Saul Kerpelman, Esquire, their attorney, the receipt of which is hereby acknowledged and agreed that said funds shall be distributed by their attorney, Saul Kerpelman, Esquire, in accordance with the mandates found in Section 13-401 et. seq., of Title 13 of the Estates and Trusts Article, Annotated Code of Maryland, the Undersigned hereby agree as follows:

1. That the Undersigned hereby release, acquit, and forever discharge Irving Sattell, Emily Sattell, Abby Sattell, Lawrence Polikoff, Chase Management, Inc.,

including their agents, principals, heirs, executors, administrators, predecessors, successors, privies, insurers, officers, directors, shareholders, partners, employees, and affiliated corporations (hereinafter "Defendants and Insurers") from any and all claims and demands of whatever nature, actions, and causes of actions, damages, punitive damages, costs, loss of service, expenses, attorneys' fees, costs of litigation, humiliation, embarrassment, mental anguish, injury to reputation, money benefits and compensation on account of or in any way growing out of, personal injuries, and other damages having already resulted or to result at any time in the future, whether or not they are in the contemplation of the Undersigned and the Defendants and Insurers at the present time, and whether or not they arise following the execution of this Joint Tortfeasor Release and Settlement of all Claims (hereinafter "Release"), as the result of and by reason of the Occurrence.

2. That the Undersigned agree that this Release represents the full and complete settlement between the parties to said Release regardless of the adequacy of compensation and that the Defendants and Insurers have no obligation to make any payment or do any act other than as set forth herein.

3. That the Undersigned agree that they are not releasing any claim or demand arising out of the Occurrence which has accrued or which may hereinafter accrue against any one other than the Defendants and Insurers.

4. It is understood and agreed by the Undersigned and each of them that this Release is in compromise of a disputed claim, and that the payment made herein is not to be construed as an admission of liability on the part of the Defendants and Insurers, and that the Defendants and Insurers do not admit any wrongdoing or liability, as any

including their agents, principals, heirs, executors, administrators, predecessors, successors, privies, insurers, officers, directors, shareholders, partners, employees, and affiliated corporations (hereinafter "Defendants and Insurers") from any and all claims and demands of whatever nature, actions, and causes of actions, damages, punitive damages, costs, loss of service, expenses, attorneys' fees, costs of litigation, humiliation, embarrassment, mental anguish, injury to reputation, money benefits and compensation on account of or in any way growing out of, personal injuries, and other damages having already resulted or to result at any time in the future, whether or not they are in the contemplation of the Undersigned and the Defendants and Insurers at the present time, and whether or not they arise following the execution of this Joint Tortfeasor Release and Settlement of all Claims (hereinafter "Release"), as the result of and by reason of the Occurrence.

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1. That the Undersigned hereby release, acquit, and forever discharge Irving Sattell, Emily Sattell, Abby Sattell, Lawrence Polikoff, Chase Management, Inc.,

wrongdoing or liability is expressly denied and disputed. It is further understood and agreed that the Defendants and Insurers enter into this Agreement merely to avoid litigation.

5. The Undersigned further agree that any award or verdict rendered against any other person in any other related claim or in the lawsuit filed by the Undersigned arising out of the allegations in the above-referenced civil action shall be reduced by the amount of the consideration paid by Defendants and Insurers or the pro rata share, whichever is greater, in accordance with the Maryland Uniform Contribution Among Tortfeasors Act, Article 50, Section 16, et seq. of the Annotated Code of Maryland. The Undersigned unconditionally promise and agree that any such verdict or award shall be reduced either by the amount of the consideration paid by the Defendants and Insurers or by the pro rata share, whichever reduction provides any non-settling parties with the greater benefit of the Joint Tortfeasor Release, whether or not the Defendants are determined to be Joint Tortfeasors. It is further understood and agreed that for the purposes of this Release and the prosecution of a claim against anyone other than the Defendants, the Defendants are considered Joint Tortfeasors with all other Tortfeasors liable to the undersigned for damages arising out of the occurrence to the same extent as if adjudged to be after trial on the merits. For purposes of this Release and a determination of any reduction in any award or verdict as referred to supra, Defendants shall be considered as constituting two tortfeasors. Should a contrary determination be made, however, it is still the parties' intent that such a finding will not affect the validity of this Release. This provision is intended to obviate the necessity and expense of having the Defendants herein being made parties on the record and obliged to

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participate at their expense in a trial merely for the purpose of determining if, in fact, they were joint tortfeasors so as to entitle any other alleged tortfeasor to a reduction of any verdict or award. This provision is further intended to protect the Defendants from any liability for contribution and/or indemnity. This provision in no way constitutes an admission of liability by the Defendants and Insurers, who deny all liability.

6. It is further understood and agreed that the Undersigned individually and jointly will indemnify, and hold the Defendants and Insurers harmless from any and all liability arising from any liens and/or subrogation claim for any compensation or medical payments due or claims to be due under the law of any state or federal government, or any claim for indemnification of any nature, or any regulation or contract and from any and all liability arising out of the claims, with the exception of the consideration recited herein. It is the intention of the parties to limit the Defendants' and Insurers' liability for all purposes to the consideration recited herein.

7. Andrew Ryan Murphy and Aris Leshawn Murphy, minors, by their Mother and Next Friend, Jada Bullock Murphy, and Jada Bullock Murphy individually, do hereby, for themselves, their heirs, administrators, executors, personal representatives, beneficiary(ies), and/or assigns, covenant with the Released parties and any and all other persons, firms, partnerships, and corporations which are or might be claimed to be liable to them as a result of the aforesaid occurrence, to indemnify and save any and all of them harmless from all claims and demands for damages, costs, loss of service, expenses, compensation, and medical expenses incurred, both past, present, and future, on account of or in any way growing out of the injuries sustained by them, past, present, or future, both to person and property.

participate at their expense in a trial merely for the purpose of determining if, in fact, they were joint tortfeasors so as to entitle any other alleged tortfeasor to a reduction of any verdict or award. This provision is further intended to protect the Defendants from any liability for contribution and/or indemnity. This provision in no way constitutes an admission of liability by the Defendants and Insurers, who deny all liability.

6. It is further understood and agreed that the Undersigned individually and jointly will indemnify, and hold the Defendants and Insurers harmless from any and all liability arising from any liens and/or subrogation claim for any compensation or medical payments due or claims to be due under the law of any state or federal government, or any claim for indemnification of any nature, or any regulation or contract and from any and all liability arising out of the claims, with the exception of the consideration recited herein. It is the intention of the parties to limit the Defendants' and Insurers' liability for all purposes to the consideration recited herein.

7. Andrew Ryan Murphy and Aris Leshawn Murphy, minors, by their Mother and Next Friend, Jada Bullock Murphy, and Jada Bullock Murphy individually, do hereby, for themselves, their heirs, administrators, executors, personal representatives, beneficiary(ies), and/or assigns, covenant with the Released parties and any and all other persons, firms, partnerships, and corporations which are or might be claimed to be liable to them as a result of the aforesaid occurrence, to indemnify and save any and all of them harmless from all claims and demands for damages, costs, loss of service, expenses, compensation, and medical expenses incurred, both past, present, and future, on account of or in any way growing out of the injuries sustained by them, past, present, or future, both to person and property.

8. It is further understood and agreed that the Undersigned will indemnify the Released Parties from any claim brought against them by any other person, corporation, or entity seeking indemnity or contribution with regard to any claim brought against such party for benefits paid as a result of the occurrence which is the subject of the occurrence that is more fully described in the Complaint filed in the matters of Aris L. Murphy, et al. v. Irving Sattell, et al. in the Circuit Court for Baltimore City, Case No.: 94348046/CL189956.

9. Concurrently with the execution of this Release, counsel for the Undersigned shall deliver to counsel for the Defendants an executed Dismissal with Prejudice of the Complaint as to Defendants. The Undersigned hereby authorize counsel for the Defendants and/or counsel for the Insurers to file said Dismissal with the Court and enter it as a matter of record.

10. The Undersigned represent and warrant that no other person or entity has any interest in the claims, demands, obligations, or causes of action referred to in this Release, except as otherwise set forth herein; that Undersigned have the sole right and exclusive authority to execute this Release and receive the sums specified in it; and that Undersigned have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Release.

11. This Release shall be construed and interpreted in accordance with the laws of the State of Maryland.

8. It is further understood and agreed that the Undersigned will indemnify the Released Parties from any claim brought against them by any other person, corporation, or entity seeking indemnity or contribution with regard to any claim brought against such party for benefits paid as a result of the occurrence which is the subject of the occurrence that is more fully described in the Complaint filed in the matters of Aris L. Murphy, et al. v. Irving Sattell, et al. in the Circuit Court for Baltimore City, Case No.: 94348046/CL189956.

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11. This Release shall be construed and interpreted in accordance with the laws of the State of Maryland.

12. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Release.

13. This Release contains the entire agreement between the Undersigned, the Defendants, and the Insurers with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each.

14. That the Undersigned represent prior to the signing of this Release they have read it, understood its terms and conditions, have been given an opportunity to consult with counsel and voluntarily sign it. Jada Bullock Murphy further acknowledges that she is the Mother of Andrew Ryan Murphy and Aris Leshawn Murphy, and signs this Release both individually, and as Mother and Next Friend of the minor Plaintiffs, Andrew Ryan Murphy and Aris Leshawn Murphy.

WITNESS MY HAND AND SEAL THIS 6th day of May, 2002.

THIS IS A RELEASE. READ BEFORE SIGNING.

12. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Release.

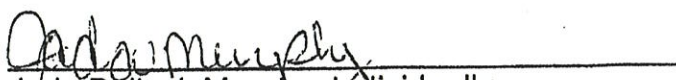
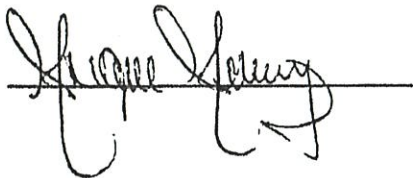
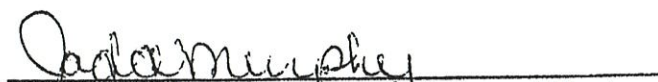
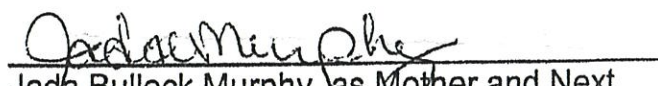
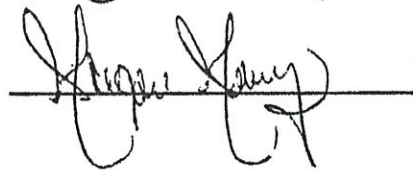
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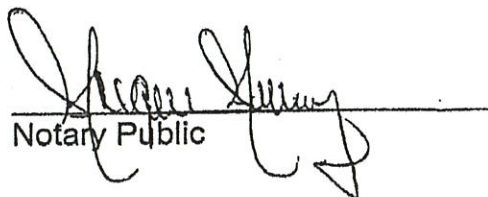
THIS IS A RELEASE. READ BEFORE SIGNING.

WITNESS:


Jada Bullock Murphy, Individually
Jada Bullock Murphy, as Mother and Next
Friend of Andrew Ryan Murphy
Jada Bullock Murphy, as Mother and Next
Friend of Aris Leshawn MurphySTATE OF MarylandCOUNTY OF Baltimore) To Wit:
)
)

I HEREBY CERTIFY that on this 6th day of May, 2002,
before me, a subscriber, Notary Public of the State and County aforesaid, personally
appeared Jada Bullock Murphy, Individually and as Mother and Next Friend of Andrew
Ryan Murphy and Aris Leshawn Murphy, also known to me as a person who executed
the foregoing instrument, and acknowledged that she executed the same as her free
act and deed.

AS WITNESS my hand and Notarial Seal.


Notary PublicMy Commission Expires: 2004

Morris S. Lasson, Ph.D., P.A.

1314 BEDFORD AVENUE, SUITE 211
BALTIMORE, MARYLAND 21208-3701

TELEPHONE (410) 486-0999
FAX No. (410) 602-1776

January 18, 2000

PSYCHODIAGNOSTIC EVALUATION

To: Saul E. Kerpelman, Esq.
The Equitable Building
Suite 600
10 N. Calvert St.
Baltimore, MD 21202

Re: Andrew Murphy
[REDACTED] Spring Street
Baltimore, MD
DOB: [REDACTED]/93
Age: 6.8
Date Tested: 1/09/00

Techniques Utilized: Review of Medical Records, Interview of Mother (Jada Murphy), Child Neuropsychological Questionnaire, Connor's Parent Rating Form, SRS Rating Scale, Interview of Patient, Lateral Dominance Examination, Wechsler Intelligence Testing, Wide Range Achievement Test, Trail Making Test, Wepman Auditory Discrimination Test, Bender Gestalt, Retentive Testing, Perceptual Motor Testing, Tactual Performance Test, Aphasia and Perceptual Screening, Grip Strength, Finger Oscillation. Projective Figure Drawings, Complex Visual Figure.

REASON FOR REFERRAL

This child was referred for a complete diagnostic evaluation to determine whether higher than acceptable levels of lead to which he was exposed is responsible for cognitive, social and/or emotional problems. A review of the medical records shows a Pb as high as 29.

HISTORICAL FACTORS

Andrew is the second of four children who currently lives with his mother in Baltimore City. His older brother was also exposed to lead and came to this office for evaluation. Mother stated that the pregnancy and delivery were within normal limits. He was delivered preeclampsia. The child walked, talked and was toilet trained at the expected ages. He began school in kindergarten and is currently a first grade student at Doctor Bernard Harrison Elementary School in Baltimore City. School records, as well as teacher evaluations, have been requested but have not yet been received.

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Following the lead exposure, mother stated that the child complained of headaches and became very clumsy. He would fall often and had difficulty keeping his balance. Ever since he began school, he has had behavior problems. Mrs. Murphy has been told by his teachers that he acts out and is difficult to control. The child can fall asleep even though it's not his regular bedtime. He also has nightmares. He has a history of crying and temper tantrums, as well as enuresis. There are times when the child becomes so excited that it's very difficult for mother to control him. Mother described Andrew as sensitive, easily embarrassed and easily upset. He does not enjoy adequate relationships with other children and does not seem to be liked by his peers. This is true both at home activities as well as at school. Mother stated that the child threatens to run away from home and intentionally breaks things. He was described as demanding, overly active and one who frequently lies rather than telling the truth. She has observed Andrew chewing on his clothes and blankets and feels that he does not appear to be a happy child.

Mrs. Murphy stated that there was a negative history for febrile seizures and other types of congestion. Andrew has never been to bang his head or engage in self-injurious behaviors. Mrs. Murphy stated that neither she nor the biological father had learning problems in school. Mother has completed her third year in college while father completed high school. There was also a negative history on her part for alcoholism, although the biological father has experienced alcoholic problems. There was a negative history on both sides for drugs and incarceration. Andrew's biological father does see him and seems to be interested in his welfare. As indicated, mother brought the child for the evaluation, and the father was not seen at this time.

CLINICAL OBSERVATIONS

Although Andrew cooperated with the examiner, he was reticent and extremely reserved throughout the entire testing. The only communication was when he was asked a question directly. The child showed evidence of impatience, impulsivity and spotty concentration. Hyperkinesis was present and increased as the session progressed. There were many times when the child had to be refocused on the tasks at hand and repetitions of instructions were necessary. Andrew appeared to have some problems hearing words and sentences and should be tested via audiometry to determine whether or not is any organic hearing problem. The child does have a speech impediment. For example, he pronounced speech as "if beef", strong as "scrong", triangle as "cryangle", etc. When he was asked to write his name, he had trouble maintaining the appropriate spaces between letters and keeping them on line. He did not know his correct address nor was he aware of his phone number. Andrew had difficulty following

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directions and appeared to be very frustrated himself when he was unable to comprehend the tasks at hand. This was evidenced by his shaking his head in a self-negating manner and his looking disappointed. He did not appear to be a very happy child and there was little spontaneity and enthusiasm during the entire testing situation. At the same time, there was no evidence of a psychotic disorder.

COGNITIVE FACTORS

The scores on the WISC-III were as follows:

Picture Completion 7	Arithmetic 8
Information 6	Block Design 6
Coding 10	Vocabulary 8
Similarities 7	Object Assembly 11
Picture Arrangement 10	Comprehension 8

The verbal score was 85, performance 93 and full scale I.Q. 87. Both the verbal and full scale were in the dull normal range while the 93 was in the low average areas. The intra test variability suggested optimum potential around the low average areas. An analysis of the specific tests involved showed average eye/hand coordination, skills in sequential relationships and part/whole organizational skills. At the same time, the patient was deficient in skills involving alertness to visual detail, fund for general information, verbal and spatial abstractions, arithmetical reasoning, expressive/receptive vocabulary and anticipatory logic.

Andrew was unable to recall very basic facts and information. For example, he did not know how many days there were in a week nor was he aware of the four seasons of the year or the months of the year in proper sequence. Although he received a scaled score of 10 on the coding, there were several erasures as well as marginally correct symbols. The child failed several of the more simplistic similarity items. Despite counting on his fingers in arithmetic, he was unable to add 2 plus 3 and other very basic arithmetic problems. On the block design subtest, there were reversals as well as other perceptual motor errors indicating visuospatial dysfunction. On the object assembly, the child had difficulty fitting the pieces together correctly and also emitted several illogical assemblies despite showing better potential with his average scaled score of 11.

Summarily from the cognitive testing, this child showed poor arithmetical skills, attention difficulties, visuospatial and perceptual impairment, language comprehension difficulties and impaired verbal reasoning. These deficiencies suggest neuropsychological dysfunction.

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ACHIEVEMENT FACTORS

Despite his status as a first grade student in January, the child showed reading, spelling and arithmetic scores at a kindergarten level. Andrew was actually only able to repeat 3 words correctly. He did not know such basic words as book, tree, animal, etc. He read the letter Q as "Koo." On the spelling segment, he was only able to spell 3 words and failed such basic words as make ("mac"), cook ("coc") and several others. In copying letters from dictation, he reversed the letters B and Y and wrote C instead of K. At the same time, he was able to recognize the letters of the alphabet, although he mispronounced them. On the arithmetic segment, there were several reversals: 5 was computed as "2" and 12 was computed as "21." Testing the limits showed that he was able to correct his calculations, but still recorded them in an unacceptable manner. On the oral arithmetic, he read 41 as "14." The achievement results are consistent with the cognitive results reported above and indicate poor arithmetical skills, attention difficulties and visuospatial-perceptual impairment. This appears to be based on cortical dysfunction.

PERCEPTUAL MOTOR FACTORS

The Bender Gestalt showed serious difficulties in sequencing, position and use of space. There was also evidence of collision, rotations, crossover and curvature problems and overlapping. This record is clearly indicative of a neuropsychological deficiency.

RETENTIVE FACTORS

* The child's visual, auditory and visual spatial memory appear to be erratic and deficient. He also showed weaknesses in encoding, storage, retrieval and awareness. This kind of pattern is indicative of temporal lobe dysfunction with focusing problems in the hippocampus area.

TRAIL MAKING TEST

Andrew was unable to follow the instructions and execute the connecting lines on this most simplistic test and showed evidence of impulsivity, carelessness and visuospatial deficiencies. His visual tracking skills appear to be below average. This is all consistent with the findings of the Bender reported above.

AUDITORY DISCRIMINATION TEST

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COMPLEX VISUAL DESIGN

Configurational elements were not retained and there was elaborate detail distortions, the overall interpretation is cerebral dysfunction which could probably be traced back to parietal lobe weaknesses.

LATERAL DOMINANCE EXAM

The patient favored his right eye and throws, writes and eats with his right hand. He also kicks with his right foot suggesting left cerebral dominance for verbal mediation.

TACTILE PERFORMANCE TEST WITH OCCLUDED VISION

On the Seguin Form Board, with his right, dominant hand, Andrew was only able to achieve 4 correct responses in 2.50. With his left, nondominant hand, he was only able to execute 1 successful response. With both hands and his eyes closed, he did slightly better with 6 responses in slightly over 5 minutes. On this particular test, the child had difficulty following directions and showed further evidence of erratic performance and impulsivity. His executive functioning skills were poor and underdeveloped. He was also inconsistent and unreliable in his plan of attack. The overall impression due to this poor tactile functioning is neurological dysfunction.

APHASIA AND PERCEPTUAL SCREENING

Andrew had difficulty understanding and following directions as well as enunciating multisyllabic words. His balance on his right foot with occluded vision was satisfactory, although his left foot was somewhat shaky. He was unable to identify numbers and letters traced on both his right and left fingertips at all. When presented objects with occluded vision, his overall score was 65%. These results together with his reading, memory, spelling and writing difficulties, as well as left/right confusion indicate bilateral cortical dysfunction.

FINGER OSCILLATION

With his right hand, the patient achieved a mean score of 31 after 5 separate trials. With his left, nondominant hand, his score was 24.9. The child's speed was under-average and belabored with both of his hands. There was no response overflow on the right side, but there was positive response that overflowed on the left.

GRIP STRENGTH

With his right, dominant hand, the child exerted an average of

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11.4 kg's of force. With his left, nondominant hand, his average was slightly higher at 12.3.

PERSONALITY FACTORS

The projectives were indicative of a dissatisfied, socially inept and immature young man who is totally frustrated by his academic failure despite his otherwise average potential. He does show social problems, as well as self-control difficulties. There is no evidence of psychosis.

CONNOR'S PARENTS' RATING SCALE

As evaluated by his biological mother, the following "T" scores were as follows:

Conduct Disorder 80, Anxious/Shy 61, Restless/Disorganized 84, Learning Problem 51, Psychosomatic 48, Obsessive/Compulsive 41, Antisocial 69 and Hyperactive/Immature 36.

It is quite evident that mother is having considerable difficulty controlling this young man and will need counseling in order to help her understand her son's needs, as well as giving him much more frequent positive reinforcement.

SUMMARY AND CONCLUSIONS

Summarily, Andrew Murphy was exposed to higher than acceptable lead levels during the early childhood stages. The current data show problems with presody, as well as weaknesses in memory, executive functioning skills, visuospatial skills and eye/hand coordination. His fragmented and erratic performances on the abstract spatial tests together with a well below average Bender Gestalt strongly suggest the presence of neuropsychological deficiencies. With reasonable psychological probability, this writer feels that there has been a causative relationship between the early lead exposure and the child's current erratic and below average functioning. It is also felt that he would be a significant risk for academic success unless he is provided with a comprehensive program that can address his neuropsychological needs. The examiner also feels that the child would benefit from short-term counseling and should be considered for medication to improve his focusing skills.

RECOMMENDATIONS

On the basis of the above, the following recommendations are made:

1. Andrew should be retested after his first year in school to determine what progress he has been able to make.

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2. Mother and teachers should work closely together in coordinating their efforts to help this child.
3. Audiometry.
4. Andrew should be seen by a pediatric neurologist to determine whether medication could be helpful.
5. Counseling for both Andrew and his mother could be very helpful. Andrew should learn better and more reliable self-control. Mother needs to learn positive reinforcement and how to manage him more effectively at home.



Morris S. Lasson, Ph.D., P.A.
Clinical Psychologist
Board Certified Forensic Examiner

MSL/srm

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Child & Adolescent Psychiatry
 Community Programs
 School Based Services Program

Jacquelyn Duval-Harvey, Ph.D.
 Director

1235 East Monument Street
 Baltimore, Maryland 21202
 Phone: (410) 614-4054
 Fax: (410) 614-9597

Richard D'Alli, MD
 Medical Director

Clinical Summary

Name: Andrew Murphy
 DOB: [REDACTED]-93
 Discharged: 07-01-02

Date: 06-28-02

Presenting Problem

Andrew was first brought to the attention of this school-based clinician in the month of Jan. 2001. His first grade teacher reported Andrew as having considerable difficulty in following directions and avoiding physical altercations with classmates. Andrew's biological mother, Jada Murphy, also noted Andrew's "...yelling, hitting and bullying other kids..." in addition to, his not following directions at school and sometimes at home. Andrew was currently repeating the first grade and was noticeably bigger than most his classmates.

Course of Treatment

Considering the difficulty Andrew's behaviors were having on his education, Dr. Irm Bellavia evaluated him for mental health services. Ms. Murphy consented to the school-based mental health intervention prior to seeking any special education services provided through the school. Dr. Bellavia, and this writer, assessed Andrew as having possible Anxiety Disorder, NOS; Disruptive Behavior Disorder, NOS; and with the need to rule out such things as Attention Deficit Hyperactive Disorder and a possible learning disorder as well. His history of lead toxicity left Andrew at risk for such possible difficulties.

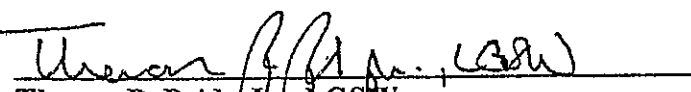
The school-based mental health program was able to offer Andrew individual, group, and family therapy that targeted his anxiety helping him develop healthier coping skills, including anger management. His treatment work consisted of developing prosocial skills and learning to solve problems using non-aggressive strategies. Through weekly individual and/or group play therapy sessions Andrew was encouraged to handle his frustrations. He was also engaged in positive peer interaction, during his groups, to further reinforce his ability to manage conflict with others appropriately. His program continued throughout the following school year and he remained in the regular educational setting.

Andrew met with moderate success having a consistent behavior plan that rewarded his effort to work positively with others. He responded favorably to teachers that had structured classroom environments, which provided consistent daily feedback in a firm but nurturing manner. His anger outbursts were significantly decreased in frequency and duration. However, when occasionally teased or taunted by classmates, the intensity of Andrew's anger prompted the treatment team to consider a medication trial of Concerta (18mg once a day), that better addressed this issue of aggression/impulsiveness.

Current Recommendations

1. Andrew should continue to have access to a mental health provider in the school (e.g., school social worker, school psychologist, school counselor, etc.). Continue work on helping Andrew with managing his anger, adjusting to new peers and school, helping him express his feelings and asking for help when he feels he needs it.
2. Andrew had a good second grade report card for the '01-'02 school year and worked well with a teacher that encouraged him. He continues to need a consistent teacher with a structured classroom environment that will help him stay on task. He has demonstrated the ability to do the grade level work and responds well to the opportunity to lead out during lesson activities. However, if he meets assignments that are frustrating to him, he'll need reminders to break things down and take his time.
3. Andrew should be on a daily behavior plan that encourages him to work positively with others, stay on-task, and follow classroom directions. Classroom expectations should be made clear and simple. Andrew does well with a routine and can become somewhat agitated when things change too suddenly. The rewards agreed upon by both teacher and him proved to be the most beneficial in helping him stay motivated and positive.
4. During the times Andrew might become real angry or agitated by either a peer, assignment, or direction; effective behavior interventions give Andrew an opportunity to calm himself down by either removing him or the stressor. He also responds better to firm nurturing commands opposed to hollered orders. When given clear limited choices, followed by positive feedback, (e.g., "Andrew, you can choose to sit there as long as you don't allow yourself to be bothered; or you can move yourself here and work on C and D; or I could choose for you, if you like?".... "Good job Andrew, I knew you could make a good choice.") Andrew frequently calms himself down.
5. Andrew's mother should also be apart of the behavior plan given her investment in her child's treatment and her request to continue or discontinue the medications should be reviewed with a mental health professional *only*. Daily or weekly notices should be sent home with Andrew given Ms. Murphy's habit of continually checking in on Andrew's behavior and his sometimes-inadequate verbal report.

Both Andrew and Ms. Murphy are a pleasure to work with and together maintain a positive mother-child relationship. She has good insight into Andrew's needs and has helped him tremendously over the past year and half to develop better coping skills. Andrew also has improved his ability to relate to others more positively and control his anger. He currently states his enjoyment of school and consistently attends. I know that Andrew will continue to meet with success in his next school and be found to be a pleasure to teach there as well.


 Theron P. Pride Jr., LGSW
 School Based Mental Health Clinician
 Johns Hopkins Hospital
 East Baltimore Mental Health Partnership

7-1-02
 Date

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Andrew Murphy, #354829,
Applicant,

v.

State of South Carolina,
Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
)
)
)

) Case No.: 2020-CP-42-01439
)
)

) **ORDER OF DISMISSAL**
)
)

This matter comes before this Court by way of Applicant's post-conviction relief application filed April 28, 2020. Respondent made its return on July 1, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on April 19, 2022, at the Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

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

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its May 2018 term, the Spartanburg County Grand Jury indicted Applicant for Murder (Count one) and Possession of Weapon during a Violent Crime (Count two) (2018-GS-42-2363). Applicant was represented by Andrew Johnston, Esquire. Assistant Solicitor Jennifer Jordan of the Seventh Circuit Solicitor's Office prosecuted the case. On June 3, 2019, Applicant appeared before the Honorable J. Derham Cole, circuit court judge, and pled guilty as indicted to all offenses without

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JANET W. BOX

any negotiations or recommendations. Judge Cole sentenced Applicant to fifty years' imprisonment for murder and five years' for possession of a weapon during a violent crime, sentences running concurrently. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

Applicant shot the victim, Daeshawn Brown, in the eyelid, on February 18, 2018. (Plea Tr. 15). The victim was Applicant's ex-girlfriend's current boyfriend. (Plea Tr. 15). Several hours before the murder and while speaking with the victim's girlfriend, Applicant indicated an intent to harm the victim, which partially involved stating that he did not want to kill the victim in her mother's yard. (Plea Tr. 15-16).

The victim went to his girlfriend's and her mother's house that morning and hung out in her mother's yard until Applicant went to the store. (Plea Tr. 16). The girlfriend entered the house and then heard a gunshot. (Plea Tr. 16). She looked outside and saw the victim on the ground motionless and Applicant running away. (Plea Tr. 16). The victim was killed across the street from her mother's yard. (Plea Tr. 16).

The girlfriend identified Applicant in the 911 call her mother made, as well as in a written statement and when talking to responding officers. (Plea Tr. 16). The girlfriend gave the officers Applicant's phone number, vehicle information, and tag number. (Plea Tr. 16).

The shooting was captured on a surveillance video. (Plea Tr. 16-17). The victim was seen walking down the street when Applicant approached the victim. (Plea Tr. 16-17). The victim tried to run away, and Applicant shot him and then took off running. (Plea Tr. 17). Applicant was seen shooting the victim with his left hand because he has a deformity in his right. (Plea Tr. 17).

Applicant's car was found nearby, registered to the girlfriend, and was missing two hubcaps on the passenger side and with Applicant's keys, work ID, a Walmart receipt,

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SPARTANBURG COUNTY
AMY W. COX

17-18). The vehicle was seen without hubcaps on the video footage. (Plea Tr. 18). Applicant told the officers twice that the car would not start after he parked it that day. (Plea Tr. 18). Applicant stated he parked the car down the street from the girlfriend's house because her mother did not let her have boyfriends in the house. (Plea Tr. 18). Walmart footage showed Applicant wearing the same outfit he was wearing on the other video. (Plea Tr. 18-19).

After Applicant was indicted and waived his *Miranda* rights, he denied involvement in the murder. (Plea Tr. 20). He admitted sending threatening texts to the girlfriend but said that was a coincidence. (Plea Tr. 20). Applicant stated he was drinking and smoking marijuana the night before and that day, but he appeared sober and coherent. (Plea Tr. 20-21).

Three days later he gave another interview, maintaining that he did not know about the murder. (Plea Tr. 21). He maintained possession of his cell phone at the time of the incident and his phone was hitting between two towers that that time that was within the coverage range of the murder location. (Plea Tr. 21).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Violation of 6th Amend. right to effective assistance of counsel."
 - a. "Counsel performed deficiently by failing to investigate and present evidence that defendant had been suffering major mental illness and severe chronic depression at the time of the crime."
 - b. "Counsel failed to obtain . . . testimony."
 - c. "Counsel failed to obtain crucial medical records and related info that would have allowed accurate diagnosis and explanation of depression."
 - d. "Counsel failed to adequately investigate and present evidence during penalty phase."
 - e. "Counsel fail[ed] to collect evidence of defendant's neuropsychological deficiencies, defendant's brain damage and impairments of the frontal lobe."
 - f. "At minimum, Counsel has the duty to interview potential witnesses and to make an[] independent investigation of the facts and circumstances of the case."

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- g. "Counsel should have investigated [and] presented mitigating social history during defendant's mental deficiencies."
- h. "Denial of right to appeal."
 - i. "Counsel failed to inform Applicant of his right to appeal and how to appeal."
 - ii. "Defendant has right to be informed of appeal and manner and method for taking appeal."
- i. "Counsel's failure to request competency hearing to determine defendant's fitness to stand trial constitutes ineffective assistance."
- i. "Defendant has history of neuropsychological disorder."
- 2. "Violation of 14th Amend. right to due process/equal protection."

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

- 1. Ineffective assistance of counsel:
 - a. Failure to prepare for trial.
 - b. Failure to investigate facts and circumstances surrounding the case.
 - c. Failure to request competency evaluation.
 - d. Failure to mitigate sentence down to voluntary manslaughter.
 - e. Failure to properly mitigate the sentence based upon Applicant's mental health issues.
- 2. Involuntary plea
 - a. Applicant's mental health issues caused him to not understand the plea proceedings.
 - b. Counsel told Applicant he would receive a thirty-year sentence if he pled.

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

Summary of the Testimony

Applicant Testimony

Applicant testified that he met with Counsel three times. Applicant testified that Counsel brought evidence with him on the second visit and on the third visit Counsel told Applicant that he did not have a defense. Applicant stated he thought that he could have received a voluntary manslaughter conviction instead of murder. Applicant testified that he talked to Counsel about these issues and Counsel never did anything for him.

He stated that he did not think Counsel investigated anything in his case. He stated he thought he might have received a lesser-included instruction had Counsel properly investigated

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the case. Applicant stated he had neurological and mental health issues. Applicant stated that he suffered lead poisoning as a child, and it gave Applicant brain damage. Applicant stated that he told Counsel about his mental health issues and that Counsel did not seem to care. Applicant stated he understood what was happening at the PCR hearing because he was keeping up with his medications. Applicant testified that he was nervous and struggled with compulsive disorder. Applicant stated he thought he should have received a competency evaluation.

Applicant stated that he went to see his girlfriend when the incident occurred. Applicant stated that Counsel told him that if he pled, he would receive a thirty-year sentence. Applicant stated that Counsel never discussed the elements of the offenses with him. Applicant stated Counsel was not prepared for trial.

On cross-examination, Applicant stated that he was caught shooting the deceased on video surveillance in broad daylight. Applicant stated that he did not think Counsel brought up his mental and neurological issues up at all at trial. Applicant stated he thought that Counsel did not think he had any mental impairments or dysfunctions. Applicant stated he remembered telling the Court about his mental health issues. Applicant stated he was not treated for mental health issues throughout his adulthood before prison. Applicant stated he wanted his attorney to look at his mental health issues and circumstances surrounding the crime.

Counsel Testimony

Counsel recalled certain mental health reports entered as exhibits at the PCR hearing, but not others. Counsel testified that he did not think Applicant needed a mental health evaluation based off his interactions with Applicant and the discovery materials. Counsel testified that he discussed the elements of murder with Applicant and that he would not have been eligible for a manslaughter instruction because of the lack of provocation. When asked if there was a defense

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in this kill, Counsel stated "absolutely not." Counsel stated that they discussed having a jury trial but stated that Applicant wanted to plead. Counsel testified that he believed the plea was in Applicant's best interest at the time, and still believed that was the case at the PCR hearing.

On cross-examination, Counsel testified that he has been practicing law since 1984 and, based upon that experience, he did not think a mental health evaluation was needed. Counsel testified that any PTSD Applicant had was not of such a nature that it permitted him to avoid criminal liability. Counsel testified that he never saw psychosis or delusions coming from Applicant during their interactions. Counsel testified that Applicant's love interest would have refuted any claims against adequate legal provocation necessary for a manslaughter instruction. Counsel testified that text messages from Applicant to the victim's girlfriend showed his intent to kill the victim. Counsel testified that Applicant's car, hat, and DNA were found at the scene of the killing and video surveillance captured the shooting from across the street. Counsel testified that there was "zero" chance of success at trial.

Findings of Fact and Conclusions of Law

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

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in

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application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

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

Second, counsel's deficient performance must have prejudiced the applicant.

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"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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

The court makes this determination based upon the totality of the evidence. *Id.* at 695.

Realistically, this matters "'only in the rarest case'" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

Involuntary Plea

This Court finds the plea was entered freely, knowingly, intelligently, and voluntarily. In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible").

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Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leake*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

The plea hearing transcript reflects that the plea was entered freely, knowingly, voluntarily, and intelligently. Applicant stated he understood the charges, sentencing ranges, and the elements of the crimes charged. (Plea Tr. 3-4). Applicant stated he had enough time

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consult with Counsel and that Counsel explained the sentencing ranges and adequately explained the charges and indictments. (Plea Tr. 4). Applicant stated he did not have any defenses regarding the charges pled to. (Plea Tr. 5). Applicant stated he wanted to waive his right to have the matter heard in Spartanburg. (Plea Tr. 6). Applicant stated he understood he was waiving his right to remain silent, to testify or not testify at trial, the right to call and cross-examine witnesses, the right to a jury trial, and stated no one promised or threatened him into pleading. (Plea Tr. 6-11). When asked if a history of alcoholism affected his ability to understand the plea, Applicant stated it did not and he quit drinking over a year before the plea hearing. (Plea Tr. 12-13). Applicant stated he continues to struggle with anger issues, but those issues did not affect his ability to understanding the decision to plead. (Plea Tr. 13-14).

Additionally, at the PCR hearing, Counsel stated that they discussed having a jury trial but stated that Applicant wanted to plead and that he believes the plea was in Applicant's best interest. Thus, the record reflects the plea was entered freely, knowingly, voluntarily, and intelligently and this right cannot be withdrawn now.

Thirty-Year Sentence

Applicant's claim that he thought if he pled, he would receive a thirty-year sentence is refuted by the record. Specifically, when asked if he understood he could be sentenced between thirty years and life imprisonment, Applicant answered affirmatively. (Tr. 3-4). Thus, even if Counsel had misinformed Applicant concerning the sentence he would receive when pleading, this issue was cured through course of the plea colloquy. *See Burnett v. State*, 352 S.C. 589, 592, 576 S.E.2d 144, 145 (2003) (citing *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998)) (stating that the guilty plea transcript will be considered in determining whether statements made by the plea judge cured any possible misadvice given by Counsel.). Accordingly, relief is denied.

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on this ground.

Mental Health Issues Impacting Voluntariness of Plea

Applicant claims his mental health issues rendered his plea involuntary, unknowing, and unintelligent. However, as outlined above, the plea transcript indicates that, despite his mental health issues, Applicant had a full understanding of what he was doing by pleading guilty. Additionally, Counsel credibly testified that he did not think a mental health evaluation was needed and that any PTSD Applicant had was not of such a nature that it permitted him to avoid criminal liability. Counsel also credibly testified that he never saw psychosis or delusions coming from Applicant during their interactions. Counsel further testified that it was Applicant's decision to plead and that the plea was in Applicant's best interest. Thus, this Court finds that Applicant's mental health issues were not of such a manner that it undermined the knowingness or voluntariness of the plea. Accordingly, relief is denied on this ground.

Failure to Prepare for Trial

Applicant claims Counsel was ineffective for failing to prepare for trial. However, Counsel credibly testified that after talking to Applicant about the options of pleading versus going to trial, Applicant decided to go to trial. Counsel is not required to prepare for trial when Applicant has elected to plead and, in doing so, has waived his right to a trial. Thus, this claim is without merit and this Court declines to grant relief as a result.

Failure to Investigate

Applicant's claim that Counsel was ineffective for failure to investigate is without merit. *Strickland* makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel

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claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* At the PCR hearing, Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel's failure to investigate is contingent on whether the evidence presented would have led Counsel to change his recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Applicant has failed to show any new evidence or witnesses that Counsel did not investigate fully, let alone anything that would have changed Counsel's recommendation as to the plea. Thus, relief is denied on this ground.

Competency Evaluation

Applicant claims Counsel was ineffective for failing to ensure a competency evaluation took place. "Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea." *Matthews v. State*, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004) (citing *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595-96 (1992)). "In a PCR action, the petitioner must prove by a preponderance of the evidence that he was incompetent when he entered his guilty plea." *Id.* at 458-59, 596 S.E.2d at 50-51. Prejudice is found when the petitioner shows a "'reasonable probability' that he was either insane at the time [the crime was committed] or incompetent at the time of the plea." *Id.* (citing *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)).

This Court finds Counsel was not ineffective on this ground. Counsel testified that he has been practicing law since 1984 and, based upon that experience, he did not think a mental health evaluation was needed. Counsel testified that any PTSD Applicant had was not of such a nature

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that it permitted him to avoid criminal liability. Counsel testified that he never saw psychosis or delusions coming from Applicant during their interactions. Further, given the clarity with which Applicant spoke at the PCR hearing, as well as the clarity with which he seemingly spoke at the plea hearing, this Court finds that there has been no showing of incompetency on the part of Applicant. Thus, Applicant has not established by a preponderance of the evidence that he was incompetent at the time of the plea. Instead, he by and large just reiterated the mental health concerns Counsel initially addressed in mitigation at the original plea hearing, where the plea was first found free, voluntary, knowing, and intelligent. Thus, Counsel was not required to request a mental health evaluation; largely because there was no need to request one.

Accordingly, no deficiency is found, and no prejudice has been established. Thus, relief is denied on this ground.

Failure to Properly Mitigate Sentence

Applicant alleges Counsel was ineffective for failure to mitigate the sentence. Counsel may be found deficient for failing to sufficiently investigate and present mitigating evidence. See *Council v. State*, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008) (finding it unreasonable for counsel not to further investigate the defendant's background and present even minimal mitigating evidence obtained); *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (finding it unreasonable when Counsel failed to investigate mitigating evidence beyond a couple retained records, including the presentence investigation report and social service records); *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (finding that Counsel was unreasonable for failing to evaluate the totality of available mitigation evidence). An applicant is prejudiced by this deficiency if there is a reasonable probability that a different sentence would have been imposed but for Counsel's failure to investigate and present mitigating evidence. *Council v. State*, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008).

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171, 670 S.E.2d 356, 362 (2008).

Counsel did use a reasonable mitigation strategy during sentencing that, in large part, encompassed the information Applicant wanted included: his mental health issues. Specifically, Counsel stated the murder was entirely unplanned and that it was a poor decision made by someone who was awake for five days straight, using stimulants of different kinds and heavy amounts of alcohol. (Plea Tr. 22-23). He also stated that Applicant made the decision out of an "obsessive love" of his ex-girlfriend, which led to poor decision-making. (Plea Tr. 23). Counsel also stated that Applicant was more prone to poor decision-making because of pre-existing issues he did not seek out professional help regarding. (Plea Tr. 24). Counsel stated that he found Applicant's mental health issues significant and mitigating, though not severe enough to rise to the level of not guilty by reason of insanity or guilty but mentally ill. (Plea Tr. 9). Counsel stated that Applicant suffered lead poisoning as a child and provided substantiating documentation regarding this matter. (Plea Tr. 25). Counsel stated that in the psycho diagnostic evaluation provided to the court, there was a sentence indicating that Applicant may have a neuropsychological dysfunction, but Counsel stated he had no reason to believe that is the case. (Plea Tr. 25). Counsel stated Applicant lived a normal life, discussions between he and Applicant were crystal clear, that he had normal romantic and familial relationships. (Plea Tr. 25). Applicant also was molested as a child, which continued to impact him. (Plea Tr. 25). He was also physically abused by his father, who was seldom involved in his life. (Plea Tr. 26). Counsel stated he thought Applicant's issues with substance abuse and probably had issues with PTSD from being shot five times at one point in his life. (Plea Tr. 27).

Counsel brought Applicant's mental health issues to the Court's attention when requesting the mental health concerns be a mitigating factor in sentencing and was not deficient

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on this ground. Further, there has been no showing that a different sentence would have been imposed had Counsel used a different mitigation strategy. Accordingly, prejudice is not found. Thus, this Court denies relief on this ground.

Failure to Mitigate Down to Voluntary Manslaughter

Applicant's claim that Counsel should have mitigated the sentence down to voluntary manslaughter is without merit. Counsel credibly testified that he thought there was no basis for a voluntary manslaughter charge because he did not think adequate provocation existed, given the timeline of events leading up to the murder. *See Reed v. Becka*, 333 S.C. 676, 684, 511 S.E.2d 396, 400-01 (Ct. App. 1999) (citing *State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *aff'd as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997)) ("[A] defendant has no constitutional right to plea bargain."). Additionally, there is no showing Applicant was entitled to a plea to voluntary manslaughter. Applicant also waived his right to a jury instruction to voluntary manslaughter. (Plea Tr. 3-4). Thus, the Court finds this claim is without merit and denies relief on this ground.

Conclusion

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

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

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counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 29th day of June, 2022.

[Signature]
G.D. MORGAN
Presiding Judge
Seventh Judicial Circuit

[Signature] South Carolina.

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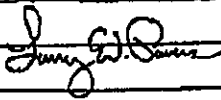
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WITNESSES

SCSO



ARREST WARRANT NUMBER

2018A4210200571 (Count One)

2018A4210200572 (Count Two)

ACTION OF GRAND JURY

True Bill

MAY 4 2018

Foreperson of Grand Jury
Date:

VERDICT


Foreperson of Petit Jury
Date:

DOCKET NO. 18-GS-42-2363

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 14 2018

TERM

THE STATE
vs.

Andrew Ryan Murphy

Indictment for

COUNT ONE-MURDER, COUNT TWO-
POSSESSION OF WEAPON DURING
VIOLENT CRIME

SC Code 16-03-0010, 0020, 16-23-460

CDR Code 116, 649

Class FEL-EXM

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

MAY 04 2018

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE-MURDER

The Defendant Andrew Ryan Murphy did in Spartanburg County on or about February 18, 2018, feloniously, willfully, and with malice aforethought, kill one [REDACTED] by shooting him and the victim died as a proximate result thereof. [REDACTED] violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

COUNT TWO- POSSESSION OF WEAPON DURING VIOLENT CRIME

That the defendant, Andrew Ryan Murphy, did in Spartanburg County on or about February 18, 2018, visibly display a firearm during the commission or attempted commission of a violent crime, to-wit: Murder, in violation of Code §16-23-490, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


 Assistant Solicitor