

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

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

RECEIVED

Mar 15 2023

S.C. SUPREME COURT

DONALD PARTAKA,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001308

APPENDIX

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

STATE OF SOUTH CAROLINA,) TRANSCRIPT
PLAINTIFF,) OF
vs.) RECORD
DONALD ANTHONY PARTAKA,) 2017-GS-42-6105
DEFENDANT.)

April 22nd, 2019
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE J. DERHAM COLE, Judge.

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

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Attorney for the State

RYAN BEASLEY
ESQ.
Attorney for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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E X H I B I T S

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	<u>State's Exhibits</u>		
S-1	9-1-1 Call	4	
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1	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Defendant's Exhibits</u>		
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4	D-1	Doctor Swartz-Maddox Report		46
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P R O C E E D I N G S

(WHEREUPON, State's Exhibit Nos. 1 through 6 were marked for identification purposes only at this time.)

SOLICITOR BULSA: Please the Court, Your Honor?

Donald Partaka.

(Pause.)

SOLICITOR BULSA: Your Honor, this is State versus Donald Anthony Partaka. 2017-GS-42-6150, a two count indictment.

Count One is for murder. He's pleading guilty to voluntary manslaughter on that count. Count Two is possession of a weapon during the commission of a violent crime. He's pleading as charged to that. He's represented by Ryan Beasley.

THE COURT: All right. You are Donald Anthony Partaka?

THE DEFENDANT: Yes, sir.

THE COURT: Is it P-A-R-T-A-K-A?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Any objection to the body of the indictment being amended to reflect that?

SOLICITOR BULSA: No, sir, I apologize. I didn't realize it was wrong.

MR. BEASLEY: No, Your Honor.

THE COURT: All right. Mr. Partaka, I have before me

1 Indictment 2017-06105. That indictment charges you with two
2 crimes.

3 Count One of the indictment charges you with the crime
4 of murder. The State alleges that, on or about October the
5 11th of 2017, that you did willfully, and with malice
6 aforethought, kill one Laura Ashley Hood by shooting her
7 with a firearm, and that she died as a proximate result of
8 that gunshot wound.

9 Count Two of the indictment charges that you did, on
10 the same date, during the commission of that violent crime,
11 the crime of -- being murder, you did possess or visibly
12 display a firearm during the commission of that crime.

13 The crime of murder carries a potential sentence of
14 life imprisonment. It requires a mandatory minimum sentence
15 of not less than 30 years in jail. Whatever sentence you
16 receive you would serve day for day. A life sentence means
17 a life sentence. Thirty years means 30 years. Anything
18 between thirty and life means what it says.

19 You understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Count Two of the indictment charges
22 possession of a firearm during the, during the commission of
23 a violent crime. It carries an additional potential
24 sentence of up to five years in jail.

25 So, do you understand each of the charges contained in

1 each of the separate counts of the indictment?

2 Do you understand the charges set forth in this
3 indictment?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You understand the potential punishment or
6 penalties that could be imposed if you were convicted?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. The solicitor has indicated,
9 and you and your lawyer have indicated, by your signatures
10 on these sentencing documents, that you -- that the
11 solicitor's offered you, offered to allow you to, and that
12 you agree to plead guilty as to Count One, a lesser included
13 offense. That lesser included offense being the crime of
14 voluntary manslaughter.

15 Voluntary manslaughter carries up to 30 years in jail,
16 and then, Count Two, still carries up to five years, and
17 voluntary manslaughter is still classified as a violent
18 crime. So, that sentence can be imposed for Count Two.

19 So, do you understand the lesser included offense of
20 voluntary manslaughter?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you want to plead guilty to that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you had plenty of time to talk with
25 Mr. Beasley about your decision to plead guilty?

1 THE DEFENDANT: Yes, I have, Your Honor.

2 THE COURT: Has he been over the indictments with you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did he explain the allegations contained in
5 each count?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And did, did he tell you what the State
8 would have to prove in Court before you could be convicted
9 or found guilty of each of the charges?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did he also explain to you about the lesser
12 offense of voluntary manslaughter?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Did he explain what would have to be proven
15 in Court before you could be convicted of voluntary
16 manslaughter?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And he told you what kind of sentences
19 could be imposed for each?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you understand it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Did you tell him everything you know about
24 these allegations made against you?

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

1 THE COURT: And did y'all discuss whether or not you
2 have a defense to the charges of voluntary manslaughter, and
3 possession of a firearm during the commission of that crime?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you aware of any defense that you have
6 to the crime of voluntary manslaughter?

7 THE DEFENDANT: Would you repeat that, sir?

8 THE COURT: I said are you aware of any defense that
9 you have to the charge of voluntary manslaughter?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Well, what are you aware of by
12 way of defense?

13 THE DEFENDANT: What the penalties will be if plead --
14 whatever you decide.

15 THE COURT: No, my question is did you and Mr. Beasley
16 discuss everything you know about the facts that relate to
17 these allegations made against you?

18 THE DEFENDANT: Oh, yes, sir, we did.

19 THE COURT: In other words, did y'all discuss the facts
20 of the event occurring on October the 11th of the 2017?

21 THE DEFENDANT: Yes, sir, we did.

22 THE COURT: All right. And after you discussed the
23 facts and the event, did you and he determine whether or not
24 you had a defense to the charge of voluntary manslaughter?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. Do you have one?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: What is it?

4 THE DEFENDANT: (No response.)

5 THE COURT: Do you know what a defense is?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: What is a defense?

8 THE DEFENDANT: It's a lawyer helping me prove my
9 innocence or guilt or proving the facts in the case.

10 THE COURT: Okay. Well, that's not what a defense is.

11 A defense is some reason, either based upon the facts
12 that relate to the case or based upon the law that's
13 applicable to this case or based upon both, the facts and
14 the law, a defense is some reason why you should not be
15 convicted or found guilty of a crime that you are offering
16 to plead guilty to.

17 So, do you know of any defense that you have to the
18 charge of voluntary manslaughter?

19 In other words, do you know of any reason, factually or
20 legally or both, do you have any reason whatsoever why you
21 should not be guilty of voluntary manslaughter?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. Did Mr. Beasley explain to you
24 each of the Constitutional rights that you have that you
25 must give up if you want to plead guilty to voluntary

1 manslaughter, and possession of a firearm during the
2 commission of that crime?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did he explain your right to remain silent?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand it?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And do you understand that means that you
9 don't have to say anything?

10 You don't have to testify even during a trial. You
11 don't have to answer any questions. You don't have to make
12 any statements that relates to these charges. You don't
13 have to answer my questions right now unless you want to
14 plead guilty.

15 So, if you want to plead guilty, you have to give up
16 your right to remain silent because I have to ask you
17 questions in order to determine whether or not your decision
18 to plead guilty is freely and voluntarily made, and that you
19 understand the consequences of that decision, and that
20 nobody's forced you or pressure you into making that
21 decision.

22 So, do you understand you have the right---

23 THE DEFENDANT: Yes, sir.

24 THE COURT: ---to remain silent?

25 THE DEFENDANT: Yes, sir, I understand.

1 THE COURT: And do you wish to give that right up in
2 order to plead guilty?

3 THE DEFENDANT: Yes, sir, I do.

4 THE COURT: Did Mr. Beasley explain to you that you
5 have a right to confront, and to examine any witness in
6 Court that would provide evidence against you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that, if you plead
9 guilty, that process does not occur?

10 You would not be able to examine any witness as to what
11 they would provide the Court by way of testimony.

12 THE DEFENDANT: Yes, sir.

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

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Did Mr. Beasley explain to you about your
17 right to have a jury trial, and have a jury decide if you're
18 guilty or not?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you know how the jury is selected?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you know who selects them?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Who?

25 THE DEFENDANT: Half him and I, and half the defense.

1 THE COURT: Well, you and Mr. Beasley and the
2 prosecutor.

3 THE DEFENDANT: Correct, yes, sir.

4 THE COURT: They pick---

5 THE DEFENDANT: That's what I meant, sir.

6 THE COURT: Okay. They pick the jury from the larger
7 panel or pool of jurors, but once those jurors get selected,
8 they sit over there in the jury box.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you know how many jurors get selected to
11 participate in a jury trial?

12 THE DEFENDANT: A total of 13.

13 THE COURT: It could be.

14 Do you know how many jurors have to be convinced of
15 your guilt beyond a reasonable doubt before they can find
16 you guilty?

17 THE DEFENDANT: Over half.

18 THE COURT: Well, it takes 12 for a conviction.

19 THE DEFENDANT: All right.

20 THE COURT: And all 12 have to agree to a verdict.

21 And so, in order for you to be proven guilty, all 12
22 have to agree to that, and all 12 have to be convinced of
23 your guilt beyond a reasonable doubt.

24 Now, if you have a jury trial, you still don't have to
25 testify. You can't be made to take the witness stand.

1 Nobody can ask you any questions. You don't have to make a
2 statement. You can if you want to, but you can't be
3 required to because the burden's on the State to prove that
4 you're guilty. The burden is not upon you to prove that
5 you're innocent.

6 So, you understand you have the choice?

7 You can testify or not testify. It's all up to you.

8 THE DEFENDANT: Yes, sir, I understand.

9 THE COURT: Okay. But you understand, before the jury
10 can find you guilty, all 12 have to be convinced of your
11 guilt beyond a reasonable doubt?

12 THE DEFENDANT: Yes, sir, I do.

13 THE COURT: All right. And you understand, if you
14 plead guilty, you give that right up?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is that what you want to do?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. The Solicitor's indicated and
19 you have indicated that you want to enter a plea of guilty
20 to voluntary manslaughter.

21 Is that right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Other than the Solicitor
24 agreeing to let you plead guilty to a lesser offense than
25 that of murder, have you been promised anything or offered

1 anything that induced your decision to plead guilty?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you been threatened or coerced or
4 pressured by anybody in any way?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you pleading guilty freely and
7 voluntarily?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And was it your decision?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You're satisfied with it?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did Mr. Beasley explain to you that
14 voluntary manslaughter is classified as a violent offense
15 under the law?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand the significance of that
18 designation or classification?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did Mr. Beasley explain to you that
21 voluntary manslaughter is also designated and classified as
22 a most serious offense under the law?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand the significance of that
25 designation and classification?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did Mr. Beasley explain to you that
3 voluntary manslaughter is also designated and classified as
4 a no parole offense under the law?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you understand the significance of
7 that classification and designation?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you still want to plead guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you pleading guilty because you did
12 commit the crime by---

13 THE DEFENDANT: Yes.

14 THE COURT: ---shooting---

15 THE DEFENDANT: Yes, sir.

16 THE COURT: ---and killing Laura Ashley Hood, and that
17 you did so in, in perhaps a sudden heat of passion based
18 upon sufficient legal provocation?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you believe that, if your case went to
21 trial before a jury, that there's a reasonable probability
22 that a jury could find you guilty of the greater offense of
23 murder?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Or, if they were allowed to consider it,

1 the lesser offense of voluntary manslaughter?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And understanding what the negotiations
4 have been, and understanding your belief that you would be
5 convicted, do you prefer to plead guilty as opposed to going
6 to trial before a jury?

7 THE DEFENDANT: Yes, sir.

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

9 THE DEFENDANT: Yes, I am, Your Honor.

10 THE COURT: You're 60 years old?

11 THE DEFENDANT: Yes, sir.

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

13 THE DEFENDANT: I graduated high school.

14 THE COURT: Where?

15 THE DEFENDANT: Michigan. Glowan (phonetic), Michigan.

16 THE COURT: And have you ever been married?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you married now?

19 THE DEFENDANT: No, sir.

20 THE COURT: Were you divorced?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: When?

23 THE DEFENDANT: Twenty years ago or so, sir.

24 THE COURT: Do you have any children?

25 THE DEFENDANT: No, sir, not by her. No, sir.

1 THE COURT: Okay. Well, by anybody.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You do?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are those children grown?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And do live in South Carolina or somewhere
8 else?

9 THE DEFENDANT: Somewhere else, sir.

10 THE COURT: Okay. Have you ever been employed?

11 THE DEFENDANT: Oh, yes, sir. All my life.

12 THE COURT: Doing what?

13 THE DEFENDANT: Machinist, United States Navy, dye
14 setter, heavy equipment operator, plastic molding for over
15 20 years.

16 THE COURT: All right. And have you ever been treated
17 for any type of substance abuse or addiction?

18 THE DEFENDANT: Yes, I have, Your Honor.

19 THE COURT: And where were you treated?

20 THE DEFENDANT: For DWIs.

21 THE COURT: Where?

22 THE DEFENDANT: In, in Michigan.

23 THE COURT: And how many times were you convicted of
24 driving while under the influence?

25 THE DEFENDANT: Numerous times, Your Honor.

1 THE COURT: Well, give me a ball park number if it's
2 that many.

3 THE DEFENDANT: Five.

4 THE COURT: Okay. And when was the last time that you
5 were treated for substance abuse or addiction?

6 THE DEFENDANT: Twenty years ago I'm guessing, sir,
7 Your Honor.

8 THE COURT: Twenty years ago?

9 THE DEFENDANT: I'm guessing.

10 THE COURT: All right. And did you have any driving
11 under the influence convictions after that?

12 THE DEFENDANT: No, sir.

13 THE COURT: No.

14 So, you haven't had any of those in the last 20 years?

15 THE DEFENDANT: No, sir, I haven't drove -- driven or
16 --.

17 THE COURT: All right. Okay. All right. Do you
18 suffer from that condition today, an addiction to anything?

19 THE DEFENDANT: I'm an alcoholic, Your Honor.

20 THE COURT: Okay. And how long have you been in
21 custody?

22 THE DEFENDANT: Almost two years, Your Honor.

23 THE COURT: Okay. Have you had anything since you've
24 been in jail?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: And is there anything about your condition
2 that affects your ability today to understand fully what
3 you're doing?

4 THE DEFENDANT: No, Your Honor.

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

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Do you suffer, do you suffer from any such
9 a condition today?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: All right. I'm gonna ask the Solicitor to
12 tell me about the facts that relate to the case. That is
13 those facts as he would offer them at trial if your case did
14 go to trial.

15 So, listen to what he tells me because, when he's
16 through, I'll ask you if you agree or disagree with his
17 recitation of the facts.

18 okay?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. Mr. Bulsa.

21 SOLICITOR BULSA: Thank you, Your Honor.

22 The incident occurred on October the 11th of 2017 at
23 a residence on Patterson Road in the Campobello community.

24 Your Honor, this case was reported to 9-1-1 by the
25 Defendant. He called 9-1-1, 9-1-1 around seven o'clock and

1 they -- that evening claiming that he had shot an intruder
2 claiming that he had woken up, and there was somebody on his
3 couch. He confronted that person, and shot that person.
4 Thought he had killed him, and was calling 9-1-1 to tell.

5 Your Honor, I -- the State appreciates the Court
6 listening to the 9-1-1 call prior to this hearing. As the
7 9-1-1 call records, the Defendant is, I'll say, belligerent,
8 but he is telling what he believes occurred. The person he
9 shot comes to, and you can hear in the background that they
10 actually have some conversation while the 9-1-1 operator is
11 still on the line.

12 The State believes that there was words being said by
13 the victim to the effect, to the effect that she loved him,
14 and the Defendant commented no, you don't. There were a
15 couple of occasions when he would leave the phone and go
16 confront the victim again in his house.

17 The last time he went and shot her in the head right
18 between the eyes with a .22 rifle. It was disconcerting to
19 hear that. The victim's family couldn't even bring
20 themselves to listen to it. We described it to them. It
21 was an awful case.

22 The Defendant knew the victim, had worked with her some
23 at the Village Green Golf Course. The victim was suffering
24 from being an alcoholic herself. She had worked that day,
25 had gotten into a fight with her boyfriend because he caught

1 her with some alcohol. She was upset, left work, got
2 another friend to pick her up and drive her over to the
3 Defendant's residence.

4 She initially wanted to go to her friend, Joe Bell's
5 house. He said I've got people coming over. You can't stay
6 with me. So, she said how about Don's. So, Mr. Bell took
7 her to, to Don Partaka's house.

8 It's our understanding she got there around 5:30. We
9 don't know exactly what happened other than drinking was
10 going on. The victim's toxicology report reads that she was
11 .38. We don't know how much of that was partaken while she
12 was at Mr. Partaka's.

13 She was found, and I've got photographs I would like to
14 introduce to the Court as well as the 9-1-1 tape that Your
15 Honor has listened to, as well as the Defendant's statement
16 that Your Honor has also listened to, and I have additional
17 Exhibits, State's 3, 4, and 5, those are of the scene. I've
18 got one additional I'll comment on in a minute.

19 If Your Honor recalls the 9-1-1 call, he claims that
20 she was on the couch. He thought it was a man, and it's,
21 it's hard to understand how he could believe that she was a
22 man. He was face to face with her. In fact, he shot her
23 at -- the autopsy reads distant, but the size of that house,
24 it was in close proximity. It's our understanding that or
25 it's our belief that he should of at least known who he was

1 shooting.

2 Your Honor listened to the recording that he gave to
3 the police. He continues with this theme that he shot an
4 intruder. When the police confront him about it being a
5 woman, he then realizes that he shot his friend Ashley.

6 whether he was being honest and upfront, that's -- I --
7 we don't know. We understand the difficulty that would of
8 presented at trial, what a jury might think.

9 Your Honor, there's one part that you see her bloodied
10 body there after being shot. At the autopsy, Doctor Wren
11 found a blow to her head, State's Exhibit 6. In discussing
12 that with Doctor Wren, he believes that could of been made
13 by the sight on the .22 rifle suggesting that she was
14 clubbed at some point.

15 So, we don't know the full story of what happened in
16 that house. I don't believe the full story was told to the
17 9-1-1 operator nor to the police. She was wearing different
18 clothing when she was found. We thought there might of been
19 some sexual assault going on. We had a -- DNA run on some
20 swabs. They were not conclusive. So, we can't say that
21 that did happen.

22 She had some hair clutched in her hand that also was
23 inconclusive as to whose it was. Some parts of it were
24 hers, but there were other parts that were, were
25 inconclusive. They couldn't say whose it was.

1 The Defendant puts himself on a couch, and also puts
2 Ashley on a couch, but there was only couch in that room
3 that is clean enough, clear enough to be laid on. That's
4 the blue couch.

5 The couch where Ashley was, there was a pile of
6 clothes. Somebody was folding clothes that suggests she was
7 trying to help him get cleaned up.

8 This is an awful crime. The, the defense will bring
9 Doctor Swartz-Maddox up to speak. The defense gave Your
10 Honor a copy of her report in chambers. I don't know if
11 Your Honor's had an opportunity to read it yet, but, on Page
12 2, Doctor Swartz-Maddox documents the Defendant's version to
13 her as to what happened.

14 He gives a different version, Your Honor, and the
15 version to Doctor Maddox, he talks about hearing a noise
16 out -- at the door, seeing somebody outside, saying it
17 looked like a migrant worker's face. So, he's suggesting
18 that he's shooting at somebody outside, and he only tells
19 her about pulling a trigger one time. That's the way it's
20 documented in her report, which clearly he shot her once in
21 the leg. 9-1-1 operator was pleading with him not to fire
22 again, to just leave the room. She posed no danger to him,
23 Your Honor.

24 Yes, she had alcohol in her system. The police did not
25 run the Defendant's alcohol. You can hear how he is

1 speaking on the call. You can hear how he's speaking in the
2 interview. The officers asked him if he's drunk, and he
3 says yes, but he still appears to know what he's saying,
4 saying, and appears to be lucid. They give him some time to
5 basically settle. I think they leave for almost about an
6 hour, and come back to him, and then begin speaking to him
7 again, and he tells them a similar story. And then, when
8 they confront him with it being a woman, he says he can't
9 understand how that happened.

10 Your Honor, the victim's family would like to address
11 the Court at the appropriate time.

12 We'll hit -- as far as his criminal history, Your
13 Honor, the Defendant speaks of his DUI's in Michigan.
14 Apparently they must fall off after a certain number of
15 years because what I found was, in 2001, was a DUI, and then
16 he had, 2008, that marijuana charge. And then, 2012, a
17 public disorderly conduct.

18 I'm not sure when he moved to South Carolina, but
19 what's troubling is, when he called 9-1-1, he gave the
20 address of his residence as [REDACTED] I believe. That caused a
21 delay in the police being able to get there. Later in the
22 call, he -- it's corrected to [REDACTED]. If he'd given the
23 correct address, the police might of responded quicker, and
24 this might not of even happened.

25 So it's a terrible ordeal. As I said, the victim's

1 family would like to address the Court at the appropriate
2 time.

3 THE COURT: All right. Mr. Partaka, you heard what the
4 Solicitor just told me?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you agree or disagree with what he
7 stated?

8 THE DEFENDANT: I disagree.

9 THE COURT: Okay. Excuse me.
10 what do you disagree with?

11 THE DEFENDANT: Some of the words that he's -- that he
12 says I did, it didn't happen.

13 THE COURT: well, like what?

14 THE DEFENDANT: Like the -- like I shot from outside,
15 somebody was outside. There was -- nobody was outside.
16 There was somebody inside by the front door in the shadows.

17 THE COURT: All right. well, Mr. Partaka, as the
18 Solicitor indicated, I have listened to the 9-1-1 tape.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And I've also listened to and observed the
21 video that was made while you were at the detective office
22 giving them an, an interview and a statement.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And your lawyer could argue on your behalf
25 that you were highly or grossly intoxicated when all of

1 these events occurred including when you talked to the
2 police about---

3 THE DEFENDANT: Yeah.

4 THE COURT: ---the event.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And has Mr. Beasley explained to you that,
7 in order for any statement that you make that implicates you
8 in the commission of a crime, in order for that statement to
9 be allowed in evidence at a trial, the State has to show
10 that it was freely, voluntarily, knowingly, and
11 intelligently made. And that, if you are in custody, that
12 it has to be after you have been advised as to your
13 Constitutional rights.

14 The right to remain silent. Your right to have a
15 lawyer. Your right not to answer questions. Your right to,
16 to stop answering questions at anytime you want to, and your
17 right to have a lawyer whether you can afford one or not.
18 If you can afford one, you get one. If you can't afford
19 one, then one can be appointed before they talk to you. And
20 the State would have to establish that you understood those,
21 and that you freely and voluntarily gave them up when you
22 responded to questions.

23 And you have a right to have a hearing in Court for the
24 Court to determine whether or not any statement ought to be
25 admitted into evidence. That is whether or not it was

1 freely and voluntarily made by you.

2 And so, you know, your lawyer could argue the fact that
3 you were so intoxicated that you couldn't freely and
4 voluntarily understand your rights or give them up.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And the Court would have to make that
7 determination before the jury could consider any such
8 statement.

9 Now, if you plead guilty, do you understand that you
10 give up your right to challenge the voluntariness of, of any
11 statement that the State claims you made?

12 THE DEFENDANT: Yes, sir, I do.

13 THE COURT: And is that what you wish to do?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Is there anything else that you
16 disagree with that Mr. Bulsa told you?

17 THE DEFENDANT: No, sir.

18 THE COURT: Okay. Do you still want to plead guilty to
19 voluntary manslaughter?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you satisfied and confident that you
22 would be convicted of an unlawful homicide, either murder or
23 voluntary manslaughter, if you went to trial?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And so you prefer to enter a plea of guilty

1 instead?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. All right. I'll accept your plea,
4 plea of guilty, and I'll hear from Mr. Partaka and Mr.
5 Beasley.

6 SOLICITOR BULSA: Yes, sir.

7 THE COURT: And then I'll allow Ms. Hood's family to
8 speak.

9 SOLICITOR BULSA: Thank you, Your Honor.

10 MR. BEASLEY: Thank you, Your Honor.

11 Your Honor, this is probably one of the craziest cases
12 I've come across in my 17 years of practicing. I mean it's,
13 it's, it's all on tape. You have a 9-1-1 call, and, and,
14 you know, I, I understand---

15 THE COURT: It's graphic. I'll say that.

16 MR. BEASLEY: Very.

17 And, and, you know, it's -- during this interview, you
18 know, Don and I talked about it, I mean he's being the most
19 honest you could be. I mean over and over again, for three
20 hours, his story never changes. And, you know, we talked
21 about filing something to suppress the statement, but I was
22 like why would we cause I think -- I mean it's, it's good
23 for you. I mean it -- you've never wavered once.

24 And, and it even matches up with the 9-1-1 call. And
25 she had a. 38. I guarantee you he was either above or just

1 around it or just below it.

2 There's no way he would have to know how to come up
3 with scenarios or he would of been able to come up with
4 scenarios of self-defense or something else. In, in fact,
5 during the interrogation, the officers kept presenting all
6 these scenarios that he could of come up as to what
7 happened.

8 He went no. And they're like you realize it makes no
9 sense that you didn't realize that was a, a -- that, that
10 was a female. He goes I, I hear you, but I'm telling you I
11 thought it was a man. I thought it was somebody in my
12 house. They were on my couch. I mean he's telling the
13 9-1-1 operator, and were telling her, Ashley, which he
14 thought was a man, you're going to jail tonight. You're
15 going to jail. It doesn't sound like somebody that was --
16 had a motive to kill a girl that he's friends with.

17 It was nothing unusual for Ashley to come over to his
18 house. It was nothing unusual for Ashley to come over with
19 her boyfriend or Joe, the, the other friend, or even her
20 parents.

21 Ashley came over that night. She'd gotten in an
22 argument with her boyfriend. In fact, her boyfriend had
23 dumped a bunch of Crown Royal on top of her. And so, when
24 she got there, she was soaked in Crown Royal. So, he
25 allowed her to change clothes and put on some of his clothes

1 to get the, the alcohol soaked clothes off of her.

2 They drank a ton of Crown. He said they were doing
3 shots. So, I don't mean -- you saw -- you heard the, the,
4 the interrogation. I mean it never varied.

5 We took some shots of Crown. I fell asleep. I woke
6 up, and he thought she had left, which is another thing that
7 was not unusual, that her boyfriend would come pick her up
8 in the -- at, at night and take her back. But he thought
9 she was gone.

10 So, he clearly did not know it was her, and, you know,
11 we had a -- Donna Maddox give him an evaluation, and she
12 said it -- he suffers from dementia, and, obviously, alcohol
13 related dementia, and I think -- I want the Court to look
14 at -- even, even -- and he and I went over this so many
15 times, but, even if it was a, a migrant worker that was in
16 his house, he would still be guilty because he went back in
17 there and shot. There's no question. And I truly believe,
18 and I know he truly believes that he thought that's what it
19 was. He did not know it was her.

20 And I ask the Court, when you consider the sentence, I,
21 I ask you to consider it from the point of view that it was
22 a migrant worker because that is what he thought he was
23 doing. And it was still wrong. But that -- I, I would ask
24 the Court to consider -- look at it, look at it in that way.

25 He is so sorry and remorseful for the family. I mean

1 he loved her. He talks about her dad all the time, and I
2 mean, I mean, even in those interrogation interviews, he
3 just goes I just can't believe I did that. I -- he's like I
4 just feel so bad for the parents. I, I -- I'll -- her dad
5 is gonna -- I mean he's just -- he, he was -- I'm just glad
6 you got to see all that. It, it would -- I think still not
7 saying it makes him a -- not guilty or innocent, but -- and
8 it only mitigates maybe a little, but I'm glad you got to
9 see all that.

10 I don't know if you want to hear from his sister maybe
11 next.

12 THE COURT: I'll hear from whoever you'd like to call
13 next.

14 MR. BEASLEY: All right. Diana Partaka, his sister is
15 here.

16 Do you want her to stand over there or come up here?

17 THE COURT: She can stand next to him.

18 MR. BEASLEY: Okay. Come up.

19 MS. SHOEMACHER: Diana Lynn Shoemacher -- Partaka
20 Shoemacher.

21 THE COURT: All right. MS. Shoemacher, what would you
22 like to tell me?

23 MS. SHOEMACHER: Your Honor, obviously my heart is
24 hurting, and hurts for Mr. and Mrs. Hood and their family.
25 But, of course, my family as well.

1 I do know for a fact that my brother is an alcoholic,
2 and I do know for a fact that my brother's health was not
3 good. Memory's not good. But besides that, I also know
4 that my bother truly, truly thought this was an intruder.
5 If he ever in the world thought it was Ashley, this would
6 have never happened.

7 Alcohol played a role in it, yes. The sequence of
8 events through the daytime played a role in it. You know,
9 pouring alcohol over her head, Joe Bell picking her up,
10 taking her for more alcohol, taking her home, then pushing
11 her off on my brother, who he knows is an alcoholic.

12 So, the sequence of events and Jamie's suppose to be
13 picking Don up.

14 Did Ashley go outside to argue with Jamie?

15 Did he come back inside?

16 Don thought it was an intruder.

17 Your Honor, I don't know. Only two people, three
18 people, God, my brother, and Ashley, and I don't think my
19 brother remembers. I know he doesn't remember. He is not
20 deviated once.

21 My heart just hurts so bad for their family, and my
22 heart hurts for my brother because I know my brother is not
23 a murderer. I know that he was protecting his domain, but
24 alcohol did play a part. And, and, Your Honor, I'm truly
25 sorry. I'm truly sorry for the family, and I'm truly sorry

1 for my family, and I'm sorry for my brother as well.

2 That's all I really have to say, Your Honor.

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

4 MR. BEASLEY: Can we bring up Doctor Maddox?

5 DOCTOR MADDOX: Good afternoon, Your Honor.

6 THE COURT: Good afternoon.

7 DOCTOR MADDOX: Your Honor, I evaluated Mr. Partaka at
8 the detention center. I saw him March 15th of 2018.

9 And I, I did want to say, out of respect to Mr. Bulsa,
10 I think that was -- I think he misread my report that --
11 Mr. Partaka's report to me has been consistent. It was that
12 he saw a shadow by the door. Not outside the door.

13 So, I reread my report again. I'm not -- I don't think
14 I missed anything, but, if I did, I apologize to Mr. Bulsa.
15 But he, he was very clear that he woke up and saw a shadow
16 by the door, but he meant within the house. So, his story
17 has been somewhat consistent with me as well.

18 Anyway, Your Honor, just for the record, I evaluated
19 him today as well. I did diagnose him with an alcohol
20 dementia. So, I saw him today and also prior to this
21 hearing to make sure that he was still competent, and he, he
22 actually looked better, he looked better today than he did
23 when I saw him in March of 2018 at the detention center.

24 At the time I saw him he had given me a very
25 longstanding history of alcohol abuse since the age of 15.

1 He's had periods of sobriety, but he's lost relationships.
2 He actually was married to the same woman twice, and, and
3 he, he was only married to the one person, but the same
4 person on two different spans. Did have a child from
5 another, from another relationship.

6 He's worked his whole life. He was in the Navy. He
7 had done well early on, and, of course, as alcohol's ravaged
8 his brain, he's had a steady decline. At the time of this
9 offense he was working as a groundskeeper.

10 He -- when I evaluated him, he was very cooperative,
11 pleasant, but it was very clear that he had cognitive
12 deficits. He had trouble. He couldn't come up with names,
13 and you saw today kind of a little bit similar in his plea.
14 When he gets a little bit stressed, he has some difficulty
15 following conversations, but he's able to be redirected.
16 And, once he's given context, he, he can recall and, and
17 provide a history.

18 So, even though he has the dementia, it's my opinion
19 he's competent. He knows what he's doing. He can follow
20 and he's been able to assist in his defense.

21 He's had a long history of alcohol abuse. When I saw
22 him, I gave him some neurological testing, and also some
23 neurological psychology screening tests, and he did very
24 badly, Your Honor. He's conversationally in tact, but, when
25 you test his brain and you put him under time constraints,

1 it falls apart.

2 One of the tests I had him do is called the Trails, and
3 it's really easy. It -- it's a test with numbers and
4 letters, and you have the person figure out the pattern.
5 And, and this test, you go from a number to a letter, a
6 number to a letter.

7 He couldn't even do a very simple Trails test, which is
8 a sign of frontal lobe dysfunction. I kept giving him more
9 tests, and he did very poorly on them even though he gave
10 good effort.

11 So, because of that, out of an abundance of caution, I
12 referred him to a neuropsychologist. If you look at the
13 DSM-5 now when we diagnose dementia, we're suppose to have
14 neuropsychological testing or a -- or some kind of a scan of
15 their brain. You have to do more than just your clinical
16 opinion because dementia is much more than a clinical
17 diagnosis, and Doctor Brawley tested him.

18 Her test includes to -- a test to make sure he's not
19 malingering, and, and the test that she gives, it's called
20 the Test of Malingered Memory and basically, what it is, you
21 look at 50 faces. And then, after a short amount of time,
22 you have to circle which face you saw, and then, after a
23 longer period of time, you circle the face again, and he did
24 very well on that test. People with dementia should pass
25 that test and he did. He got 46 out of the 50 faces right.

1 So, he -- there was no evidence that he was trying to
2 play dumb or trying to act like he was more impaired than he
3 was, and he tested -- he, he came out with dementia, Your
4 Honor. He's impaired in almost all areas of his brain.

5 And so he's conversationally intact, but the point of
6 all this is he did -- he does not have a criminal
7 responsibility defense. He was intoxicated. So, even
8 though I listened to the tape as well, and had concerns
9 because it appears that he's talking, that it was very
10 graphic, but it's also my opinion, Your Honor, that --
11 knowing that -- the dementia he has, and also the fact that
12 he was intoxicated at the time, it's my opinion he couldn't
13 have come up with a story that quickly.

14 whatever he said at the time on that tape is what he
15 believed in my opinion. I don't think he had the capacity.
16 The part of his brain that's in charge of thought
17 processing, it's impaired.

18 So, I think the tape probably speaks for itself in what
19 he was thinking. I don't see him having that capacity to
20 come at that time, and, and come up with this defense at the
21 time of the, the call, and that's what I thought was
22 significant.

23 Other thing, Your Honor, I have some concerns about his
24 physical health. I'm gonna relay those to the Department of
25 Corrections with your permission, and I have the permission

1 of his attorney, and I will give them a copy of my report
2 upon this sentencing.

3 THE COURT: Okay. Thank you, Doctor Maddox.

4 DOCTOR MADDOX: You're welcome.

5 MR. BEASLEY: Your Honor, I just add a couple other
6 things.

7 You know, the fact he called 9-1-1 and gave the wrong
8 address obviously is because he's intoxicated. He even kept
9 asking the 9-1-1 operator when are they getting here, and,
10 you know, if he'd of given the right address, you know,
11 Ashley may have been alive, and -- but, you know, I, I just
12 think that goes to, if he was really trying to kill Ashley,
13 he would of -- he could of done it, and the fact is there's
14 never been any evidence, any motive of why he would of done
15 it, and there's never been any evidence that he ever thought
16 it was anybody but an intruder. I just think that's all
17 very important.

18 Do you want to hear from him last or the family and
19 then --?

20 THE COURT: I'll hear from him.

21 MR. BEASLEY: Okay. And, Your Honor, he, he wrote a
22 statement, and I typed it up for him. But I'll -- I'm sure
23 he's gonna probably add some stuff, but can you see it?

24 I'll be---

25 THE DEFENDANT: I need my glasses.

1 Your Honor, Mr. and Mrs. Ashley Wood -- I'm sorry,
2 Mr. and Mrs. Hood.

3 I'm so sorry for what happened. It's been a nightmare
4 for both of you and for me in the pain and grief that should
5 not have happened. I wish I could go back in time, and none
6 of this would of ever happened. We could all of been happy.
7 I know you'd of liked that, and you would understand what
8 happened that night.

9 I really thought she was a migrant worker and had
10 broken in. I had no clue it was Ashley. When they told me
11 it was Ashley, I lost it. I was totally devastated.

12 She was an incredible person. She was my friend, and I
13 would never have hurt her, but I would of helped her if she
14 needed help.

15 And, what happened to her, I'm so sorry, Mr. and
16 Mrs. Hood. I don't know if -- I didn't know it was Ashley.
17 She was my true friend, and I never would of shot her. I
18 wish I could take it back. I know that there's no words for
19 me that would help you heal better, but I hope you can find
20 it in your heart, Mr. and Mrs. Hood, to please forgive me.
21 Maybe some day you can sit down with me and I can tell you
22 what I believed happened.

23 That's all I have to say, Your Honor.

24 THE COURT: All right. Thank you, Mr. Partaka.

25 All right. Mr. Bulsa.

1 MRS. HOOD: My name is Diane Hood. I'm Ashley's
2 mother.

3 MR. HOOD: My name's Dossie Hood. I'm her father.

4 THE COURT: All right. Who would like to go first?

5 MR. HOOD: She's gonna -- she's got some stuff she
6 wanted to read. SO --.

7 THE COURT: Okay. Mrs. Hood.

8 MRS. HOOD: On the night of October the 11th, 2017,
9 my husband answered the door. An assistant from the
10 Spartanburg County Coroner's Office and an officer from the
11 Spartanburg County Sheriff's Department were there to
12 deliver the words that no parent wants to ever hear.

13 They gave us the devastating news that our daughter,
14 Ashley, had been murdered. She had been shot, shot twice
15 and killed by one of her co-workers.

16 Today, as we stand here in the Court, we don't know
17 what today will bring. The only thing that we know is that
18 today is not a day of joy. It's not a day of happiness.
19 It's not a celebration, and it's not a day of closure.
20 There is no closure for the loss of a child. We are here
21 because a beautiful life was taken, and two families whose
22 lives have changed forever.

23 The only thing that we pray for is that today will
24 bring an end to the emotional rollercoaster that our family
25 has endured. We received a life sentence the night our

1 daughter died, a lifetime of unimaginable grief like no
2 other, and a pain that we didn't know existed until now.

3 Mr. Partaka's story that night, after shooting Ashley
4 first in the leg, he called 9-1-1, and told them that he had
5 shot an intruder in his home, an intruder that he knew was
6 coming to his house. When Ashley arrived, and knocked on
7 the door, he opened the door and he let her in. An hour and
8 30 minutes later, Ashley, the intruder, was dead.

9 I feel almost certain that the first shot would have
10 disabled her. We have been told that Ashley could be heard
11 screaming and crying in the background on the 9-1-1 call why
12 did you shoot me, why did you shoot me.

13 It was then that Mr. Partaka shot her a second time.
14 This time in the head between her eyes. That was the shot
15 that ended her life.

16 We've not heard the 9-1-1 tape. We have been told it
17 is extremely graphic. No parent wants to hear their child,
18 in the last few minutes of their life, knowing it would be
19 the last time that they would ever hear their voice.

20 I can't begin to imagine those last few minutes for
21 Ashley. I can't imagine.

22 On the night that Mr. Partaka took Ashley, he took the
23 mother of her two sons. Ashley's oldest son, Isiah, a
24 United States Marine serving in our country in California,
25 learned of his mother's death on Facebook. He saw it on

1 Facebook before I had a chance to call and tell him.

2 Ashley never had the opportunity to see Isiah in his
3 dress blue uniform, but I know she saw him from heaven that
4 day, the day of her funeral, as he stood there so brave, so
5 strong, and he spoke of how she had taken him in. She
6 raised him and she loved him unconditionally when his own
7 birth mother gave him away, and walked out of his life.
8 Ashley, the woman that he called mom, a mother that taught
9 him how to drive, and taught him how to dance for his eighth
10 grade school dance.

11 Ashley's youngest son, Noah, 11 at the time, woke the
12 next morning, and wondered why he wasn't going to school
13 that day. I had the heart breaking task of telling him that
14 mom had been murdered. It was the hardest conversation of
15 my life.

16 Ashley had big and wonderful plans for Noah and her.
17 She use to read him stories. She taught him how to read and
18 write. She helped him with his homework. She took him to
19 the park, and she and Jamie took him camping. I feel sure
20 that she would of taught him how to drive and how to dance
21 too.

22 Little girls come into this world to be daddy's little
23 girls from the time they are born. They know that their
24 dads are big and strong, and they'll always be there to
25 protect them.

1 Ashley's daddy taught her how to play softball at a
2 very young age. He taught her well. She excelled in the
3 game. She, in turn, made him the proudest dad there at all
4 of her games as we sat and watched as she hit the ball over
5 the fence time after time after time.

6 But now daddy's little girl is gone. He wasn't there
7 on October the 11th to protect her. He lives with that
8 guilt and his loss every day.

9 Because of Mr. Partaka, our son, Aaron, is our only
10 living child. The death of his only sister has not, has not
11 been easy for him, the little sister that he grew up with,
12 that he got in trouble with, the one he always protected. I
13 hurt for him as I know he hurts for me and her dad.

14 As for Jamie, Ashley's boyfriend, he lost his best
15 friend. He lost his soulmate when Ashley died. Ashley was
16 his life, the love of his life, and I have no doubt that
17 they would of spent the rest of their lives together. His
18 sadness, his loneliness, it breaks my heart. He sleeps
19 every night with Ashley's ashes in an urn beside the bed
20 where she use to sleep, a beautiful urn that he helped me
21 choose for her funeral.

22 Ashley use to tell everyone she met my mom's a nurse.
23 She saves people's lives for a living. She's smart. She
24 knows everything. She can fix anything.

25 The night that Ashley died, a part of me died too. My

1 heart is broken. My soul is dead. My guilt is
2 overwhelming.

3 I have always heard that the death of a child is the
4 hardest pain that you will ever endure. That pain has now
5 become my life. I failed my daughter, the daughter that was
6 so proud of me for what I do, and the lives that I have
7 helped save. I couldn't save my own life's daughter (sic).
8 I will carry that guilt with me for the rest of my life.

9 At our dining room table, there's an empty chair. It's
10 Ashley's chair, the chair that she should of been sitting in
11 for Easter dinner yesterday. It's only purpose now is to
12 serve as a constant reminder that Ashley's dead.

13 As we stand, stand before the Court, and you, Your
14 Honor, I know that you can't begin to feel our pain. You
15 don't feel our loss, but I know you've heard our voices.
16 Hopefully you know what Ashley meant to us, how much she is
17 loved, and how much she is missed.

18 Today is the day of reckoning. Today you will decide
19 Mr. Partaka's sentence. Ashley didn't get the chance to
20 decide whether she would live or die. Mr. Partaka made that
21 decision for her. I pray to God and I ask of you that
22 Mr. Partaka receives the punishment he deserves.

23 Thank you.

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

25 All right. Anything else from anyone?

1 SOLICITOR BULSA: No, sir.

2 MR. BEASLEY: No, Your Honor.

3 THE COURT: Well, it goes without saying that events
4 like this are unfortunate. What's most unfortunate is that
5 they're not uncommon. A case like this is not unlike a
6 felony driving under the influence where someone is killed
7 in an accident. It's an accident. But the person who
8 caused the death engaged, voluntarily, in conduct where
9 there was a high risk that the result would occur, a death
10 would occur.

11 I personally believe that an alcoholic has a choice. I
12 think you can do the best you can to control it. It might
13 be difficult. But things you can control, if you can't
14 control drinking, you can control the use of a vehicle or
15 the use of a firearm, and the way you control that is that
16 you don't have a vehicle or you don't have any keys if
17 you're gonna be drinking. And, if you're gonna be drinking,
18 you don't have any firearms, and you don't have any bullets.
19 And, that way, you can't get in a car and accidentally kill
20 somebody. You can't pick up a rifle and accidentally shoot
21 somebody or shoot somebody thinking they're somebody else.

22 You just have to take those precautions. I'm sure that
23 Mr. Beasley has explained that voluntary consumption of
24 alcohol, even if you're an alcoholic, the voluntary
25 consumption of alcohol resulting in you being out of your

1 mind is not a defense to a criminal charge. Otherwise, half
2 the people that come into Court would not be guilty of
3 anything because most of them are on alcohol or drugs or
4 some other substance that alters their thinking.

5 It's unfortunate, but you, you have to make choices,
6 and, as I say, if you're gonna drink, you don't have keys.
7 You don't have a car. You don't have bullets. You don't
8 have guns. And that, that resolves the problem.
9 Unfortunately that was not done in this case.

10 Insofar as the Hood's are concerned, I understand that
11 they, they think you're guilty of murder. I don't think
12 that a jury would find that you acted with malice
13 aforethought. They could. Probably they wouldn't. They --
14 I, I listened to the 9-1-1 call, and I listened to the
15 interviews.

16 I think, it appears, it can be reasonably argued that
17 you really didn't know that Ashley Hood was the one that was
18 laying on your living room floor. And I think a jury could
19 find that reasonable, but the result is the same.

20 Ashley Hood is dead. It doesn't matter whether you
21 meant to kill her, whether you ran over her with a car,
22 whether you shot her in the head with a shotgun or a rifle,
23 and you meant to do it. The fact of the matter is your,
24 your conduct, and your engaging in voluntary conduct, and
25 drinking to excess, and getting drunk and being out of your

1 mind resulted in your use of a firearm, maybe by mistake
2 thinking it was somebody else, but you've killed somebody
3 who you say you cared about, and that's what's unfortunate,
4 and the Hood's lost someone they loved dearly.

5 And Mrs. Hood's right. My mother lost a child. I can
6 tell you that's what she said. There's nothing worse than
7 losing a child. Your children aren't suppose to go before
8 you do, and they'll live with that for the rest of their
9 lives, and you're gonna live with this for the rest of your
10 life.

11 So, in any event, I give you credit for the fact that
12 you likely were intoxicated. I give you credit for the fact
13 that you likely did not act with any malice towards Ashley
14 Hood. She was a friend. And I give you credit for coming
15 into Court and accepting responsibility for what you've
16 done, but you still have to receive the punishment that's
17 due for the conduct that you engaged in, and the result that
18 you created.

19 Does, does -- do y'all want this report from Doctor
20 Maddox to be made an exhibit?

21 MR. BEASLEY: I have no objection to it being---

22 THE COURT: Well, do you want it to be?

23 MR. BEASLEY: Yes. Yes, sir. Sounds good.

24 THE COURT: Okay.

25 (WHEREUPON, Doctor Maddox's report was marked as

1 Defendant's Exhibit No. 1 and received into evidence at this
2 time.)

3 THE COURT: All right. On Indictment 2017-06105, Count
4 One, an indictment for murder wherein you have entered a
5 plea of guilty to the lesser offense of voluntary
6 manslaughter, the Sentence of the Court is you, Donald
7 Anthony Partaka, be confined to the South Carolina
8 Department of Corrections for a period of 24 years. The
9 Defendant is to be given credit for your time he's entitled
10 to pursuant to 24-13-40.

11 Count Two, possession of a firearm during the
12 commission of that violent crime, Sentence of the Court is
13 you be confined to the South Carolina Department of
14 Corrections for a period of five years.

15 Good luck to you, Mr. Partaka.

16 SOLICITOR BULSA: Thank you, Your Honor.

17 THE DEFENDANT: Okay.

18

19

20 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

21

22

23

24

25

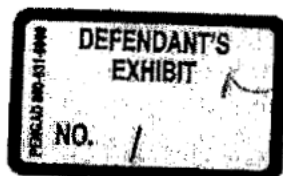
C E R T I F I C A T E

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 22nd day of April, 2019.

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

October 29th, 2019

PAMELA E. GREEN, Court Reporter



Donna Schwartz Maddox, MD
Consulting Forensic Psychiatrist

Re: Don Partaka

Date of Birth: [REDACTED]/58

Date of Evaluation: 3/15/18

Place of Evaluation: Spartanburg County Detention Center

Others present: Lisa Bostic, MD

Date of Report: 4/2/18

Date of Addendum: 10/21/18

Dear Mr. Ellis,

Thank you for referring Donald Partaka for psychiatric evaluation. I examined him at the Spartanburg County Detention Center from 1:30 pm until 2:45 pm on 3/15/18. My resident, Dr. Lisa Bostic accompanied me. He was cooperative and able to provide a history. Prior to evaluating him, I reviewed the discovery provided by your office, including the 911 tape of his call during the offense.

He is a 60-year-old male who reports he has been detained for five months. He described a pattern of drinking every day while in the community. He reported he was employed as a maintenance worker for a golf course. He stated he would drink 20 to 40 ounces of Mad Dog after work. He denied that he used any drugs or that he had poor health prior to his offense. He reports he is visited by his sister.

He reports his medical history is significant for a tonsillectomy as a child. He denied frequent strep throat as a child. He did have numerous scars on his head and face. He reported he ran into a clothesline as a child while chasing his nephew. He reported he was bit in the right side of his cheek by a dog. He reports numerous closed head injuries with an associated loss of consciousness due to bar room fights. He does report bilateral temporal headaches. He denied any allergies to medications. He denied hypertension but reported his blood pressure was "very high" when initially detained (alcohol withdrawal). He denied withdrawal seizures or hallucinations.

He reports he was raised in Detroit, Michigan. He moved to South Carolina six years ago. He reported he was in the US Navy from 1978-1982. He has two older brothers and one younger sister. He reported he "might have seen his father and mother hit each other when he was young." He stated his mother was German and Cherokee. He reported his mother is alive and 80 years old. He stated his father died from pneumonia in 1972. He reported he graduated high school. He stated he repeated the fourth grade. He stated he was slow in reading. He reported he had some suspensions for fighting. He stated he was "a talker." He denied being expelled. He reported he joined the navy after graduation.

He reported he was married for 15 years. He reported they did not have children. He blames himself for his marital issues. He reported he has one son out of wedlock who lives in Sioux City, Iowa.

In addition to witnessing his parents hit each other, he reported he was involved in a car accident in high school. He reported he was charged with DUI when he flipped his car senior year.

He reported the onset of sexual activity at age 14. He reported his older babysitter had sex with him. He does not view this as abuse. He reports between 25-50 lifetime partners. He does report one-night stands. He does report having sex with a prostitute. He denied engaging in any different behaviors when with a prostitute. He reported at the time of the offense, he did not have a girlfriend. He stated he had not had a partner for six years prior to the offense. "I gave up bars. I worked seven days a week. I would pick up liquor, go home and relax. I would have cookouts, but I did not pick up girls anymore."

He reported the onset of alcohol abuse at age 15. He has a paternal grandfather who was alcoholic. He reported he drank a pint of liquor daily, but stopped because whiskey made him "stupid." He later stated he drinks Bacardi and cokes. He reported he has not stopped drinking. He stated he got a DUI in 1978. He reported he served weekends in jail for 30 days. He stated he has not received any DUIs in South Carolina. He reported using marijuana and cocaine more than 20 years ago.

He denied any difficulties with the victim. "I helped her get a job. A friend, Joe Belle introduced us at a barbecue. She brought her boyfriend. I knew her two or three years. We were good friends. I was friends with her dad. He would come to my house and fish." He reported on the day of the offense, he purchased two 40 oz Mad dogs. He stated it was payday, a Wednesday. He stated Joe Bell called and asked if Ashley could stay with him because Joe had a date. Mr. Partaka reported this was not the first time Ashley stayed with him when she and her boyfriend argued. He reported Ashley had a bottle of Crown Royal. He states they may have had some shots with Joe before he left. He stated he drank beer and she was "hammering shots, four or five of them." He stated he took a nap. He stated "something woke me up. I picked my head up, looked around and she was gone. I looked towards the kitchen and the patio door. She was not there. I figured Jamie came while I was asleep, got her and didn't want to wake me up." He reported he was watching television and heard a noise by the door. He said he saw a shadow weaving. "You think if it was Ashely, she would have said something." He stated it looked like a migrant worker's face. "I see them out there all the time. I seen a flash in my head." He reported he sat up and grabbed his gun which is always back there. "I aimed for the knee. Pop pop. I thought I had already hit him in the head. I grabbed the gun and went to the door with the gun and called 911 and told them there was an intruder. Everything started escalating. I got more mad that someone was in my house while I was sleeping, and I didn't know it. I am very careful because I am secluded...I talked to the operator. Ashley was out of the picture in my mind. I use the word bitch all the time. I use it as a slang word. I say people drive like a bitch. She was not even in my mind. I didn't see her." He reported he waited for the police and felt

like he was in a daze. He reported when he learned the next morning it was Ashley, he "broke down." He reported he worked on the day of the offense until 2pm. He reported he ate lunch that day at 2:30 pm and did not eat supper. He denied he took any other medications or drugs on the day of the offense.

He reported he has drawn his gun on migrant workers who approached his house. He reported he also drew his gun on his boss who rents the house to him. "He owns the golf course." He reported he is "always on guard."

He denied any prior history of inpatient or outpatient psychiatric treatment.

Mental Status Examination

He was pleasant and cooperative. He had noticeable clubbing of his digits (seen in pulmonary disease). His speech was normal in rate and tone. His thinking was circumstantial. His affect was constricted. He was not suicidal. He was not psychotic. His judgment and insight are impaired due to his alcoholism.

He was able to concentrate and perform serial three subtractions. He performed above average on a test of verbal fluency. He was concrete when abstracting similarities between objects. He registered five items but exhibited confabulation when recalling them. He had difficulty reproducing a visual design. He exhibited an anomia during the interview when trying to think of the word for his legal discovery. He also had difficulty recalling the names of various persons.

Neurological Screening Examination:

He had lateral nystagmus. He did not have any frontal release signs. His Hoffman's sign was negative. His Rhomberg sign was negative. He was able to perform rapid alternating movements without perseveration.

Results of Neuropsychological Testing:

After evaluating him, I recommended he have neuropsychological testing to quantify the extent of his cognitive impairment. He was examined by Tora Brawley, PH.D. on 5/17/18. I reviewed her report and will summarize her findings. Her test results reveal a decline in intellectual functioning and serious deficits in multiple areas of cognition to include memory, learning, verbal fluency, attention/concentration and abstract reasoning. He also had asymmetrical motor functioning. Her results are consistent with dementia.

Opinions:

1. Mr. Partaka appears to be suffering from alcohol dementia.
2. He is presently competent to stand trial.
3. At the time of his offense, he was intoxicated and suffering from alcohol related dementia. Persons with his level of functioning would have difficulty creating a self protective statement. Persons with dementia can become paranoid, hallucinate and exhibit behavioral disturbances.
4. He is not eligible for a Not Guilty By Reason of Insanity defense due to his Voluntary Intoxication.

Donna S. Maddox, MD
Consulting Forensic Psychiatrist

2019-CP-42- 03334

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF *Spartanburg**Donald A. Parake #379920*

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

v.

State of South Carolina, *Bryan P. Sterling*

IN THE COURT OF COMMON PLEAS

section 17-27-45 (A)(c)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention *Broad River Correctional Institution*
2. Name and location of Court which imposed sentence *Spartanburg County Court*
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: *2017-A4210203 407*
 - (a) *S.C. Code § 16-03-0010*
 - (b) *S.C. Code § 16-03-0020*
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence: *April, 23, 2019*
 - (a) *For Voluntary Manslaughter 20 years, concurrent*
 - (b) *Possession of a firearm during the commission of a...*

Revised 3/2003 on back

5. A as B Page 01

Violent Crime - 4 years; a Total sentence of 24 years.

1

Covers Page NO(2) Paragraph(9)

My ATTORNEY, Ryan L. Beasley, who was in The Practice of law with Mr. Ellis Sloan, Mr. Sloan was my original ATTORNEY who set Price on an for my case To go To Trial. by jury. Mr. Sloan did leave The law firm, an went To work for The federal government, Upon This matter Mr Ryan L. Beasley P.A. attorney at law Took over my case.

Mr. Beasley did admit That he wanted /or Charged \$75,000 dollars To go To Trial, Mr Beasley did complain To me and also To my sister of The low cost That His Partner had accepted To defend my case.

My Counsel Ryan L. Beasley Told me That he was not filing a direct appeal. "Mr. Beasley did have a number of Procedural adnormalities including failure to adequately file direct appeal brief, and Passing the buck To me, when he had his employee bring me The notice That I had 10 days from The day of sentencing

To file an appeal of my conviction and sentence if I Choose To do so. Mr. Beasley's employee brought his letter The following day which left me 9 days To file appeal. Mr. Beasley did not give me any legal Paper or The address To The South Carolina Appellate Court.

By Mr Beasley's. non action To file direct appeal is ineffective assistance of Counsel, by me being a State Prisoner upon sentence of Court, My Counsel denied me fair Process, and The opportunity To Comply with The States procedures and obtain an adjunction on The merits of my case claim.

USCA Constitution Amend 6. (43 cases That cite This head line.

"The above covers Page NO(2) Paragraph NO(9)." 21

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒ ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Attorney Refused To do Direct appeal
- (b) I had no legal Paper or Address To appellate Court.
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective assistance of Counsel.

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 SPARTANBURG COUNTY
 AMY W. COX

Your honor The below States The grounds on which I'm being held in custody unlawfully. as a Plea offer, on advise of Counsel Ryan L. Beasley That I would recieve no more Than (10) Ten To (15) fifteen Years. If I Plea To The charges.

The Standard of adequate assistance of Counsel includes during The Plea bargain Process and not only To Trial This is guaranteed by The (6Th) sixth amendment applicable To The States Through The (14Th) fourteenth Amendment.

My Counsel, Ryan L. Beasley did not obtain, or if he did obtain The defendants right to recorded proceedings and Testimony before The State grand jury in preparing his defense which right is subject to limitations imposed by Statute and rule, necessarily poses Post-indictment, although secrecy is essential, whether a matter is under deliberation by The grand jury. Such concerns diminish following issuance of a true Bill of indictment, and Thus, a defendant is allowed To obtain and use The impeachment documents in Preparing a defense, and ensuring protection of his due-Process rights. U.S.C.A. Const. Amend. 14; code 1976, §§ 14-7-1700, 14-7-1720, 14-7-1770 Rules of Criminal Procedure Rule 5 - Evans v State 611, S.E. 2d. 510, 363 S.C. 495.

Council Ryan L Beasley did not investigate The Spartanburg Sheriffs Office when Petitioner was in an alcoholic state of mind "when The coerced confession" was given "Thus caused The deprivation on my / Portakas' Fifth Amendment right against compulsory self-incrimination" based on The alcoholic State coerced confession. See Duncan v Nelson 466 F.2d 939 (7th Circuit 1972) cert. den 409 U.S. 894 93 S.Ct. 116 34 L Ed 152 (1972)

2nd Page Covering paragraph (10) - Page (2)

ATTORNEY Ryan L. Beasley should have known to investigate a well known fact that Alcohol and other drugs that have affect on The Brain's pre-frontal cortex, which governs rational Thinking and decision-making. IT'S a fact that People who Struggle with alcohol misuse have a very distorted view of reality. To make any reference to any coerced confession given to The Spartanburg Sheriff's officer's. Counsel was ineffective when Counsel Presented "NO mitigating social history evidence to The Court at sentence. Then Mr Beasley - Counsel Told me that he will not file a brief on appeal, as "I am of The opinion that There is no merit to The appeal", Then sent a person from his office with a letter and Told me to file a brief in This matter on my own behalf.

My Counsel had a conflict on The matter. Counsel had no honor, and Should have provided more assistance to his client whom I feel that his role as a advocate requires him to support his client's appeal to The best of his ability, or should so advise The Court and request Permission to withdraw. His request should be accompanied by a brief referring to anything in my record that could arguably support The appeal.

Counsel was ineffective when he failed to furnish a brief to his paid client, and Time allowed me to raise any points that I so Choose, Then The Court and not Counsel - Then proceed's. Then The appellate Court would be able to fully examination of all The proceedings, to decide The Case. I have a right to a fair Process, Counsel's handling of my case with diligence to which defendant is entitled. My Counsel would have Given me my rights and opportunities on appeal.

if I could have given him more money, I'd be wrong that I was put in this situation since I could not afford the retention of his private Counsel. Counsel was ineffective in sentencing for failing to present evidence of the defendant's mental illness caused by alcoholic state of mind when he was startled by victim's presence in home. The defendant was clearly delusional, or paranoid which the diagnosis could have been made at trial, if Counsel had not given client advice that he would only receive 10 to 15 years on plea offer, defendant mistakenly believed his Counsel. Thus Counsel erroneous belief clearly constituted deficient representation. Counsel would have "nothing to lose" and "everything to gain" by presenting this evidence. See *Alexander v. State*, 402 S.E.2d 484 (SC. 1991) *Hinson v. State*, 377 S.E.2d 338 (SC. 1989) *Thompson v. State*, 531 S.E.2d 294 (SC. 2000).

When a trial counsel's deficiency is so pervasive as to render a particularized prejudice inquiry unnecessary for purposes of ineffective assistance claim, a defendant may be relieved of his burden to show prejudice. U.S.C.A. Const. Amend. 6th.

End of Argument's on and for Page (2) Paragraph (20)

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Arguments in an for Page 3 - 10-A

After The guilty verdict The defendant recieved on Plea offer by Counsel said he knew The judge and That I would recieve on 10 To 15 years at end of proceedings, led To a less favorable outcome I recieved more severe Terms. Counsels advise fell below The standard of adequate assistance of Counsel. My case is noticeable as of Missouri - v - Frye U.S. 132, S.Ct. 1399 L.Ed. 2 (2012) and also To Blaine Hafter v Anthony Cooper argued in The Supreme Court on October 31, 2011, Decided on March 21, (2012)

Arguments for Page (4) Paragraph 16(a)

My Counsel refused To go To Trial. and coerced me into The Plea offer of 10 To 15 years which I accepted on his promise which ended up being a "Ruse". I recieved a Total of 24 years. The Judge was bias / Prejudice Toward me when he commented The he himself had, had The same situation Rule 703, in his family. Doctor, Bradley will be Present at P.C.R. hearing as Expert witness Rule 704. Also my sister Diana L. Schumacher / Reta K. will be a P.C.R Trial as a witness on my behalf under Rule 701. Doctor, Bradley will bring The ultimate Issue Facts about Frontal lobes under Rule 704 and Rule 705.

The declaration of Rights - under The State of South Carolina I ask under § 9. Courts, a speedy Remedy on my P.C.R hearing. APPLICANT'S Rights was violated when my Attorney Ryan Beasley whom was Paid \$25,000 dollars for my Right under § 14 Trial by jury, with witnesses, defence, My Attorney Ryan Beasley refused To take my case To Trial. The representation of my Counsel was based on a Ruse when he Promised me That I would Recieve only

6

(10) Ten To (15) fifteen Years. I Donald A. Partaka do
 submitt at This Time Affidvit of Diana L. Schum-
 acher/Partaka a Total of (3) Three Pages notarized by
 Notary listed as Exhibit-1-A, letters from Attorney
 Ryan L. Beasley, Exhibit-1-B- and 1-C. Letters about
 appeal. APPLICANT demand a Speedy Trial Remedy
 §-9, and demands That my Attorney Ryan Beasley To
 be Present at P.C.R hearing To be Questioned.

APPLICANT Request a sentence Reduction To be
 as Promised by Counsel 10 To 15 years, or APPLICANT
 will demand a New Trial by Jury, so That I May
 have The jury To hear my witnesses. APPLICANT
 Request a court Apponited Counsel for P.C.R hearing.
 APPLICANT Request That This P.C.R can be Amended
 at any time for Counsel To be able To do his or her
 Brif. Thank You Your honor, with Kind Regards

Donald A. Partaka
 Donald A. Partaka

9-16-2019
 4460 Broad River Road
 Monticello Unit 142-A
 Broad River Correctional Inst.
 Columbia, S.C.
 29210

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- (a) After a guilty verdict The defendant recieved 24 years.
 (b) _____
 (c) _____

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

- (a) _____
 (b) _____
 (c) _____

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

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iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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) Attorney Ryan L. Beasley Refused To go To Trial and...

(b) _____

(c) _____

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

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- (a) your arraignment and plea? yes- Public Defender
- (b) your trial, if any? yes- Plea
- (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:
- Public Defender: Andrea Price- Public Defender Office
 - Ryan L. Beasley PA, 416 East North St. Greenville SC 29601
864-679-7777
 - Ryan L. Beasley PA 416 East North St. Greenville, S.C. 29601
- (b) the proceedings at which each such attorney represented you:
- Arraignment
 - Plea Bargain / unkept
 - Sentence / Plea agreement of 10 To 15 years was not kept.
19. State clearly the relief you seek in filing this application:
To recieve The 10 To 15 year Plea Promised by Ryan L. Beasley PA.
20. Are you now under sentence from any other court that you have not challenged?
NO

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STATE OF SOUTH CAROLINA

County of *Spartanburg*

VERIFICATION

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

Donald Anthony Partha

SWORN to and subscribed before me this *22nd*
day of *August*, 2019.

Kangra Dabera
Notary Public

My Commission Expires: *8/5/2024*



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SPARTANBURG COUNTY
AMY W. COX

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

I, Donald Anthony Portales 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.

Donald Anthony Portales
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of August, 2019.

Kameron Roberson
Notary Public

My Commission Expires: 8/5/2024



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SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA)

County of Spartanburg)Donald A. ParTaka)

Applicant,)

vs.)

State of South Carolina, Bryan)
P. Sterling)

Respondent.)

IN THE COURT OF COMMON
PLEAS

CA No.

MOTION FOR LEAVE TO

CONDUCT DISCOVERY

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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Applicant ParTaka by and through undersigned counsel, hereby moves, pursuant to S.C. Code Ann. §17-27-150, for leave to conduct discovery in this post-conviction relief action. In support of this motion, applicant apprises the Court of the following facts and legal principles:

1. Rule 5. Disclosure in Criminal Case (a)(b)(c)(d)(2)
(e2)(d1)(d2)

Rule 29. Post Trial Motions

Rule 32. Applicability Rule 405 - Rule 404

Rule 403 (1)(2) Rule 410 (3)(4)

2. Section 17-27-150 specifically authorizes discovery in noncapital post-conviction relief proceedings upon a showing of good cause. §17-27-150(A) ("A party in a noncapital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the

exercise of his discretion and for good cause shown grants leave to do so, but not otherwise").

3. Applicant submits that good cause exists for the authorization of discovery for the following reasons:

- Use of discovery procedures will expedite applicant's preparation for the evidentiary hearing, thus saving time and state resources;
- Information obtained through discovery will likely eliminate the need for a number of witnesses to be called to testify at the post conviction relief hearing;
- Permitting discovery will substantially reduce the likelihood that a last-minute continuance of the post-conviction relief proceedings will be necessary;
- Discovery will permit applicant to obtain necessary information through means other than in-court proceedings, such as depositions, interrogatories, affidavits, and documents produced by the prosecuting agencies; therefore, valuable court time can be used to present only relevant material and witnesses obtained through these sources;
- If discovery is not authorized, applicant will have no option but to pursue the information and materials he seeks to discover by subpoenaing individuals and files to the Post-conviction hearing.¹ If forced to rely on this method, applicant will almost certainly require additional time for investigation after gaining access to the information and materials he seeks, which will in turn require a continuance of the post-conviction relief proceedings. On the other hand, allowing pre-hearing discovery will facilitate full preparation by

¹It bears emphasis that applicant does not intend to seek discovery of any materials or information to which he could not gain access by compelling the appearance of witnesses or records custodians at the PCR evidentiary hearing. Rather, applicant seeks to invoke discovery simply as a means of obtaining and reviewing that information before the Court convenes a hearing on the merits of his grounds for relief. By doing so, applicant will be able to separate the relevant from the irrelevant, conduct any necessary follow-up information, and streamline his factual presentation without expending the scarce judicial resources and time that would be consumed if he were forced to wait until the commencement of an evidentiary hearing before being permitted access to the information he seeks.

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SPARTANBURG COUNTY
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applicant and clear the way for a the presentation of all facts supporting his claims for relief to be presented at a single evidentiary hearing.

WHEREFORE, ~~for all the foregoing reasons,~~ applicant submits that he has presented good cause for the invocation of discovery, and therefore respectfully requests, pursuant to §17-27-150, that the Court authorize him to conduct discovery as prescribed by the South Carolina Rules of Civil Procedure.

x Respectfully submitted,

Don Butaka

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SPARTANBURG COUNTY
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10f3 9-14-2019 Exhibit- 1-A
Affidavit of Diana L. Schumacher-Partka

To Whom It May Concern:

I am writing today with a heavy heart. My brother Donald Anthony Partka was in a situation at his residence on or around October 6, 2017.

Since that time my brother Donald has been incarcerated. My concern is originally hired an attorney, Sloan P. Ellis of Greenville, SC to represent my brother. Mr. Ellis and I had a contract for representation for the amount of \$25,000.00 plus extra costs for any expert witnesses and any necessary medical expenses.

Unfortunately, but fortune for Mr. Ellis he accepted a position as Assistant Prosecutor for the State of South Carolina. He informed me of this and explained to me and my brother Donald that his mentor in his office Ryan Beasley would be taking over Donald's case at the same contracted amount that Mr. Ellis and I agreed too.

I then ment with Mr. Beasley and his assistant and we discussed Donald's case. He then informed me that usually his charge for such a case would be between \$75,000 and \$100,000. But said that he would handle the case as contracted with Mr. Ellis.

I ment with Mr. Ellis a few times and many phone concerns that I had. It seemed that I had to contact him in order to get information on the case and why he was not meeting with my brother. Once I initlated my requests to see my brother and let him know what is going on with his case, he either send one of his assistants or himself perhaps once or twice within the year 1.5 that my brother was at the detection center in Spartanburg, SC.

During my conversation with Mr. Beasley he assured me that he had Donald's case handled and that after reviewing the video of his interrogation and the 911 call, and speaking with Donald and reading the investigation report that he felt that Donald had not once deviated from his recollection of the situation. He also told me that because of the severity of the crime, murder charge, that he did feel that my brother Donald truly felt that he had an intruder within his house.

Due to the circumstances involved with this case that 2 physicians were hired to evaluate Donald. The findings were that my brothers frontal lobes were shot and that his reasoning was compromised due to this condition. As well as, Donald also has alcoholic dementia, plus other health problems due to years of alcoholis. (Copy of report is attached on finding).

After findings from the doctors and all the reports and Donald recollection of this accident Mr. Beasley recommended that Donald's case be plea bargained to voluntary manslaughter. I asked Mr. Beasley what his thought was about the time that my brother would get if we chose to plea bargain? Mr. Beasley explained that because the person passed away and that Donald shot twice that Donald would surely get some time but the most would be 10 maybe 15 years at the most. So my brother and I agreed to accept Mr. Beasley's recommendation.

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2 of 3

At the time of trial the prosecutor, Mr. Beasley and the expert witness Dr. Tora L. Bradley and the judge went into his chamber. After returning both the prosecutor and Mr. Beasley presented their sides. Mr. Beasley at the time (I felt was not present). I felt like he was out the night before and his head was not into the game. The representation that I was promised was not present. He did not fight at all for my brothers cause. Court transcript would prove my point, as well as the Judge made a comment to the family of the deceased about understanding their lost, and that he himself had the same situation in his family. (I truly was astonished that judge would make such a prejudice comment during the trial). Plus when Dr. Bradley spoke it was as if she was not present and the judge did not even acknowledge her finds at all.

As well, unknown to me that the father was a retired sheriff deputy from Spartanburg county. . If I would have known this, I would have asked that this case be removed from Spartanburg County to another county. As my brother truly did not get a fair trial.

My personal feeling were Mr. Beasley did not represent my brothers case as he promised mostly likely due to the situation it as a charity case for him. And Mr. Beasley informed me many times that \$75,000.00 to \$100,000.00 would had been his charge so this case was well below his normal charged. Due to this situation After the judge said that my brother would be getting 24 years was stunned and I could not believe what was happening.

Between the judges comment to the family, Mr. Beasley not be mentally present and then telling me well we gave it our best shot, I was devastated. I asked Mr. Beasley about appealing this decision and he informed me that he does not do appeals. I found out after the fact that Mr. Beasley does do appeals, but at no extra cost and also my brother would have been better off with a trial hearing, but also Mr. Beasley would of had to put more work into the case and that is why he actually convince myself and my brother to accept a plea bargain. Understanding that my brother and myself and family has never been through anything like this. My brother Donald had a clear record with the exception of about 10 years ago a dui in Michigan.

So being said that we put my brother life in Mr. Bradley's hands and he failed us.

I am sincerely asking that my brothers case be re-try Donald's case. My brothers representation by Mr. Beasley and also the Judges comment to the mother of the victims family was a gross violation of his rights.

In conclusion, I ask that this case be reviewed with the court records and that my brother deserves a fair trial and at this point a jury trial would be asked so that our witnesses, expert witnesses be heard that will shed a different light in this case.

I thank you for your time and asked and pray for your consideration to review all the records in this case.

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If further questions are needed please feel free to contact me at 864-809-0383, or contact my brother who is held at the Broad River Correctional Facility.

Sincerely,

Diana L. Schumacher-Partake
Diana L. Schumacher-Partake

Further The Affiant Says Not.

Lyndell D. Long
Notary
Huron County, Ga
Expires 9/4/19
12/25/2025

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SPARTANBURG COUNTY
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Exhibit-1-B P. 18 + 55

P 13 + 55

P 16 - 55

RYAN L. BEASLEY, P.A.

ATTORNEY AT LAW

416 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601TELEPHONE (864) 679-7777
FACSIMILE (864) 362-8341
EMAIL RLB@RYANBEASLEYLAW.COM

April 23, 2019

By Hand Delivery

Dear Mr. Partaka:

This is to confirm that you were sentenced in Spartanburg County General Sessions Court on April 22, 2019 for Voluntary Manslaughter and Possession of a Firearm during the Commission of a Violent Crime and received a total sentence of 24 years.

You have 10 days from the date of sentencing to file an appeal of your conviction and sentence if you choose to do so.

Sincerely,

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SPARTANBURG COUNTY
AMY W. COX

Ryan L. Beasley, #9162
Ryan L. Beasley, P.A.
416 East North Street
Greenville, SC 29601
T: (864)679-7777 F: (864)672-1406

Exhibit- 1-c

State of South Carolina v. Donald Partaka Appeal
Warrant Numbers: 2017A4210203407 and 2017A4210203408

I, Donald Partaka, wish to appeal my sentence imposed on April 22, 2019 in Spartanburg County.



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Donald A. Partaka,	)	Case No.: 2019-CP-42-03334
S.C.D.C. No. 379920,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	(Counsel Appointed)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the application for post-conviction relief filed by Donald A. Partaka (Applicant) on September 18, 2019, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the December 2017 term of the Spartanburg County Grand Jury for murder and possession of a weapon during the commission of a violent crime (2017-GS-42-06105 Cts. I & II). Ryan Beasley, Esq. represented Applicant, and Derrick Balsa, Esq., of the Seventh Circuit Solicitor's Office, prosecuted the case. On April 22, 2019, Applicant pled guilty to the lesser-included offense of voluntary manslaughter, and as indicted for the weapon. The Honorable J. Derham Cole sentenced Applicant to imprisonment for concurrent terms of 24 years for voluntary manslaughter, and 5 years for the weapon. Applicant did not appeal his plea or his sentence.

II. STATEMENT OF THE FACTS

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

The incident occurred on October the 11th of 2017 at a residence on Patterson Road in the Campobello community.

Your Honor, this case was reported to 9-1-1 by the Defendant. He called 9-1-1, 9-1-1- around seven o'clock and they – that evening claiming that he had shot an intruder claiming that he had woken up, and there was somebody on his couch. He confronted that person, and shot that person. Thought he had killed him, and was calling 9-1-1 to tell.

Your Honor, I – the State appreciates the Court listening to the 9-1-1 call prior to this hearing. As the 9-1-1 call records, the Defendant is, I'll say, belligerent, but he is telling what he believes occurred. The person he shot comes to, and you can hear in the background that they actually have some conversation while the 9-1-1 operator is still on the line.

The State believes that there was words being said by the victim to the effect, to the effect that she loved him, and the Defendant commented no, you don't. There were a couple of occasions when he would leave the phone and go confront the victim again in his house.

The last time he went and shot her in the head right between the eyes with a .22 rifle. It was disconcerting to hear that. The victim's family couldn't even bring themselves to listen to it. We described it to them. It was an awful case.

The Defendant knew the victim, had worked with her some at the Village Green Golf Course. The victim was suffering from being an alcoholic herself. She had worked that day, had gotten into a fight with her boyfriend because he caught her with some alcohol. She was upset, left work, got another friend to pick her up and drive her over to the Defendant's residence.

She initially wanted to go to her friend, Joe Bell's house. He said I've got people coming over. You can't stay with me. So, she said how about Don's. So, Mr. Bell took her to, to Don Partaka's house.

It's our understanding she got there around 5:30. We don't know exactly what happened other than drinking was going on. The victim's toxicology report reads that she was .38. We don't know how much of that was partaken while she was at Mr. Partaka's.

She was found, and I've got photographs I would like to introduce to the Court as well as the 9-1-1 tape that Your Honor has listened to, as well as the Defendant's statement that Your Honor has also listened to, and I have additional

Exhibits, State's 3, 4, and 5, those are of the scene. I've got one additional I'll comment on in a minute.

If Your Honor recalls the 9-1-1 call, he claims that she was on the couch. He thought it was a man, and it's, it's hard to understand how he could believe that she was a man. He was face to face with her. In fact, he shot her at – the autopsy reads distant, but the size of that house, it was close proximity. It's our understanding that or it's our believe that he should of at least known who he was shooting.

Your Honor listened to the recording that he gave to the police. He continues with this theme that he shot an intruder. When the police confront him about it being a woman, he then realizes that he shot his friend Ashley.

Whether he was being honest and upfront, that's – I – we don't know. We understand the difficulty that would of presented at trial, what a jury might think.

Your Honor, there's one part that you see her bloodied body there after being shot. At the autopsy, Doctor Wren found a blow to her head, State's Exhibit 6. In discussing that with Doctor Wren, he believes that could have been made by the sight on the .22 rifle suggesting that she was clubbed at some point.

So, we don't know the full story of what happened in that house. I don't believe the full story was told to the 9-1-1 operator nor to the police. She was wearing different clothing when she was found. We thought there might have been some sexual assault going on. We had a – DNA run on some swabs. They were not conclusive. So, we can't say that did happen.

She had some hair clutched in her hand that also was inconclusive as to whose it was. Some parts of it were hers, but there were other parts that were, were inconclusive. They couldn't say whose it was.

The Defendant puts himself on a couch, and also puts Ashley on a couch, but there was only [one] couch in that room that is clean enough, clear enough to be laid on. That's the blue couch.

The couch where Ashely was, there was a pile of clothes. Somebody was folding clothes that suggests she was trying to help him get cleaned up.

(Tr. 19-23). The solicitor then briefly addressed Applicant's version of events as he articulated them to Dr. Swartz-Maddox. (Tr. 23-24). Upon inquiry by the Court, Applicant initially

contested the above articulated facts—namely that he ever said the person he shot at was outside. (Tr. 24-25). After Judge Cole explained some of the various defenses and challenges Applicant could raise to the statements he made in the 9-1-1 call, Applicant denied there were any other facts with which he disagreed and that he wished to plead guilty to voluntary manslaughter. (Tr. 25-28).

III. CURRENT APPLICATION

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

1. Ineffective assistance of plea counsel, in that:
 - a. “My Counsel Ryan L. Beasley told me that he was not filing a direct appeal. Mr. Beasley did have a number of procedural abnormalities including failure to adequately file direct appeal brief, and passing the buck to me when he had his employee bring me the notice that I had 10 days from the day of sentencing to file an appeal of my conviction and sentences if I choose to do so. Mr. Beasley’s employee brought his letter the following day which left me 9 days to file appeal. Mr. Beasley did not give me any legal paper or the address to the South Carolina Appellate Court.”
 - b. “I’m being held in custody unlawfully on a Plea offer on advise of Counsel Ryan L. Beasley that I would receive no more than (10) Ten to (15) fifteen years if I plea to the charges.”
 - c. Counsel “did not obtain, or if he did obtain, the defendant’s right to recorded proceedings and testimony before the state grand jury in preparing his defense which right is subject to [limitations]¹ imposed by Statute and rule necessarily [illegible] Post-indictment, although secrecy is essential [while] a matter is under deliberation by The grand jury, such concerns diminish following issuance of a True Bill of indictment and Thus a defendant is allowed to obtain and use the [empanelment] documents in Preparing a defense, and ensuring protection of his due process rights.”
 - d. Counsel “did not investigate the Spartanburg Sheriff’s Office when Petitioner was in an alcoholic state of mind ‘when the coerced confession’ was given, ‘Thus caused the deprivation on my/Partakas Fifth Amendment right against compulsory self-incrimination,’ based on the alcoholic state coerced confession.”
 - e. Counsel failed to present “mitigating social history evidence to the Court[.]”
 - f. Counsel “had a conflict on the money issue, Counsel had no honor, and should have been more assistance to his client whom paid and I feel that his role as

¹ Portions of the handwritten attachments to the application are obscured by the file clock stamp and this is Respondent’s best effort to read through said stamp.

advocate required him to support his client's appeal to the best of his ability, or should so advise the Court and request permission to withdraw. His request should be accompanied by a brief referring to anything in my record that could arguably support the appeal."

- g. Counsel "failed to furnish a brief to his paid client and time allowed me to raise any points that I so choose[.]"
 - h. Counsel was ineffective in sentencing "for failing to present evidence of the defendant's mental illness caused by alcoholic state of mind when he was startled by victim's presence in home[.]"
2. Applicant asserts he should be entitled to the presumption of prejudice under United States v. Cronin, 466 U.S. 648, 658 (1984).

Applicant requests relief as follows:

- "To receive the 10 to 15 year Plea Promised by Ryan L. Beasley P.A."

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

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Ineffective Assistance of Plea Counsel, Generally

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386

S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between Strickland's prejudice standard and a more-probable-than-not standard is

slight and matters ‘only in the rarest case.’” Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” Id. at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

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

Failure to File Notice of Appeal

Applicant alleges that he was denied the right to a direct appeal of his plea and sentence. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated

an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, “White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served.” Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)); White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Upon information and belief, Counsel fully appraised Applicant of his rights to file a notice of appeal and directed him precisely how to do so, but Applicant at no time expressed any desire to file an appeal to Counsel or his staff. Respondent denies Applicant is entitled to relief by way of this allegation.

Misadvice as to Expected Sentence

Applicant’s claim that Counsel was ineffective by misadvising him that he would receive only a ten to fifteen year sentence is defeated by the record. At the plea proceeding, the plea court informed Applicant of the offenses for which he was indicted, the lesser-included offenses

to which he was pleading, and the sentencing ranges available to the court in the context of each. (Tr. 4-6). Applicant affirmed he understood the charges and the potential punishments the court could impose. (Tr. 6, ll. 2-7; Tr. 6, ll. 19-21). Applicant affirmed that Counsel explained the same with him and the sentencing ranges available to the Court. (Tr. 7, ll. 2-20). Applicant further indicated, in a confused answer to an unrelated question, that he understood the sentence to be imposed was up to the plea court. (Tr. 8, ll. 11-14). The plea court specifically asked if anybody had promised Applicant anything in order to induce the decision to plead guilty, other than the State's offer of a lesser-included offense, and Applicant denied there were any inducing promises. (Tr. 13-14). Applicant knew all of the potential sentences and denied any promises to the contrary, and cannot now recant his solemn admissions to the plea court. Respondent denies Applicant is entitled to relief by way of this allegation.

Failure to Obtain Grand Jury Documents

Applicant's contention that Counsel was ineffective in failing to obtain the impanelment documents for the grand jury which indicted him is without merit. "A defendant has a constitutional right to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him." Evans v. State, 363 S.C. 495, 509 611 S.E.2d 510, 518 (2005). "'One who demands and is refused the right to be tried for crime charged against him only upon an indictment presented by a legal grand jury, in instances where such indictment is required, may thereafter justly take the position that he has been deprived of life, liberty or property without due process of law' in violation of the state constitution." Id. (quoting State v. Rector, 158 S.C. 212, 155 S.E. 385 (1930)). Challenges to the legality and sufficiency of the process of a county grand jury must be made before the jury renders a verdict

in order to preserve the error for direct appellate review, and the sufficiency of an indictment must be challenged before the jury is sworn. Id., 363 S.C. at 509-10 n.7, 611 S.E.2d at 518 n.7.

Upon information and belief, Counsel perceived no reason to investigate the validity of the grand jury which indicted Applicant or otherwise seek documents regarding the grand jury proceedings independent from the discovery provided by the State. Applicant presents no information or reason to believe any basis for challenging the indictment or the legality of the grand jury existed for Counsel to investigate. Applicant presents no reason to believe there was information provided to the grand jury which was not also provided through discovery. Applicant can show no deficiency on the part of Counsel, nor prejudice from the deficiencies alleged, and Respondent denies Applicant is entitled to relief by way of this allegation.

Failure to Investigate Applicant's Intoxication

Applicant's allegations that Counsel was ineffective in failing to adequately investigate his mental state and level of intoxication at the time of his confession to law enforcement are without merit. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant

of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

As reflected in the record, Counsel arranged for Applicant to be evaluated by Dr. Donna Schwartz-Maddox, who concluded Applicant suffered from alcohol related dementia. (Tr. 30, ll. 10-13; Tr. 33-37). Dr. Maddox testified to her findings regarding Applicant's condition, and explained Applicant's social history to the plea court: namely that he had suffered from alcohol abuse since the age of 15 and it ultimately ruined him. (Tr. 33-35). Dr. Maddox also explained her findings that Applicant lacked any defense that he was not criminally responsible, and noted that given his condition, he could not have fabricated the confession he gave to law enforcement. (Tr. 36, ll. 5-22).

Upon information and belief, Counsel, his associates, and his staff thoroughly reviewed the recordings of Applicant's confession to law enforcement, as well as Dr. Maddox' findings, and discussed the evidence with Applicant. Counsel and company discussed the substance of Applicant's confession with Applicant, as well as the circumstances leading to it. Counsel and company appraised Applicant of his observations, of the option of challenging the voluntariness of the statements, of the problems presented by voluntary intoxication, and of the likelihood of prevailing upon the challenge in the context of a then-pending plea offer. Fully appraised of the strengths and weaknesses of the case, Applicant opted not to challenge the voluntariness of the confession and instead accepted the State's offer to plead guilty to a lesser-included offense. Nothing further existed to warrant additional investigation by Counsel. Respondent denies Applicant is entitled to relief by way of these allegations.

Failure to Present Social History Mitigation

Applicant's claims that Counsel was ineffective in failing to present adequate social history evidence in mitigation are without merit. The record reflects that, through the previously cited testimony of Dr. Maddox, Counsel presented very substantial social history evidence in mitigation. Applicant does not offer what, if anything, was left out that was so substantial that it would have changed the outcome. Respondent denies Applicant is entitled to relief by way of these allegation.

Conclusion and Action Requested

Applicant can satisfy neither requirement of the Hill test, nor can he show he is entitled to relief under White v. State. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

V. RESPONSE TO CLAIM UNDER CRONIC

Applicant contends he should be entitled to a presumption of prejudice. "[T]he right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial." United States v. Cronic, 466 U.S. 648, 658 (1984). Generally speaking, attorneys are presumed competent to provide "the guiding hand that the defendant needs," such that "the burden rests on the accused to demonstrate" a violation of the Sixth Amendment. Id. However, there are "circumstances that are so likely to prejudice

the accused that the cost of litigating their effect in a particular case is unjustified.” Id.

Prejudice may be presumed *per se* in three circumstances: (1) when a defendant is completely denied counsel at a critical stage of his or her trial; (2) when there has been a constructive denial of counsel from an attorney’s complete failure to subject the prosecution’s case to meaningful adversarial testing; and (3) when circumstances of trial are such that the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that the presumption of prejudice is appropriate without inquiry into the actual conduct of the trial.

Nance v. Ozmint, 367 S.C. 547, 551-52, 626 S.E.2d 878, 880 (2006); Cronic, 466 U.S. at 659-60. “A finding of *per se* prejudice under any of these three prongs is ‘an extremely high showing for a criminal defendant to make.’” Nance, 367 S.C. at 552, 626 S.E.2d at 880 (quoting Brown v. French, 147 F.3d 307, 313 (4th Cir. 1998)). Presumption of prejudice as a standard is only used for those cases where counsel fails to “function in any meaningful sense as the Government’s adversary.” Id., 367 S.C. at 552, 626 S.E.2d at 881 (quoting Florida v. Nixon, 543 U.S. 175, 190 (2004)).

Applicant fails to make *any prima facie* showing that any of the three circumstances set forth above apply to the present matter. He was represented by counsel who investigated his case and obtained a favorable plea offer from the State despite the considerable strength of the prosecution’s case in light of the confession Applicant gave. Respondent denies Applicant is entitled to any presumption of prejudice under Cronic.

VI. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file

amendments to this application. Rule 11(a), SCRPC. *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 (Ct. App. 2016) (*Pro se* filing 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 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, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 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), SCRPC (explaining how to amend a pleading).

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

request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII. GENERAL DENIAL

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

VIII. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of plea counsel.

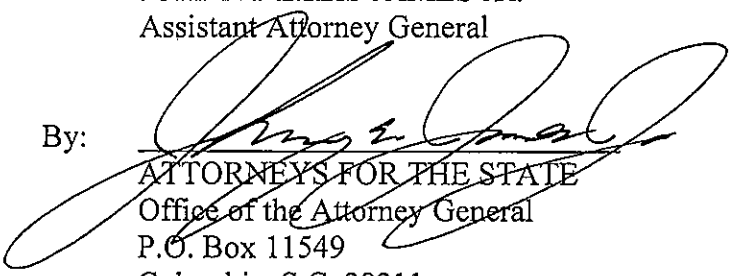
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By: 

ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

20 Nov., 2019

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

DONALD A. PARTAKA, #379920

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

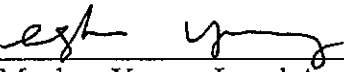
2019-CP-42-03334

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

DATED this the 20th day of November, 2019.



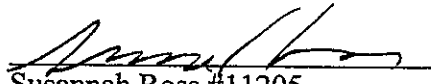
Meghan Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
DONALD PARTAKA,	)	AMENDED APPLICATION
APPLICANT.	)	
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	CASE # 2019-CP-42-3334

This matter comes before the Court by way of application of post conviction relief filed September 18, 2019, making a number of allegations of ineffective assistance of trial counsel. A Return was made on November 20, 2019. This application is intended to incorporate and add to Mr. Scrugg's application allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution due to ineffective assistance of trial counsel for:

- 1) failing to request a change of venue;
- 2) failing to conduct neurological testing to determine the extent of his dementia; and
- 2) failing to pursue a plea to guilty but mentally ill when the Applicant lacked the capacity to control his actions due to dementia.

Respectfully submitted,


 Susannah Ross #11205
 Attorney for the Applicant
 330 E. Coffee St,
 Greenville, SC 29601
 (864) 242-0029

Greenville, South Carolina
 This 8 day of April, 2022

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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

DONALD PARTAKA,
APPLICANT.

) AMENDED APPLICATION
)
)

v.

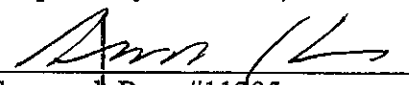
THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) CASE # 2019-CP-42-3334
)
)

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- 2) failing to pursue a plea to guilty but mentally ill when the Applicant lacked the capacity to control his actions due to dementia.

Respectfully submitted,



Susannah Ross #11205
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 8 day of April, 2022

State of South Carolina	)	
	)	
County of Spartanburg	)	
Donald Partaka,	)	2019-CP-42-03334
	)	
Applicant,	)	
	)	
v.	)	Transcript
	)	
State of South Carolina,	)	of
	)	
Defendant.	)	Post-conviction
	)	Relief Hearing
	)	
	)	
	)	
	)	
	)	
	)	
	)	

Date: April 20, 2022

Time: 2:09 p.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: Susannah Ross, Esq.
Ross and Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

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

Also Present: Diane Partaka
Ryan Beasley, Esq.

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(AW) - Denotes Applicant's Witness
(SW) - Denotes State's Witness

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1 PROCEEDINGS

2 THE COURT: All right. I think we're ready to
3 go with the next case: Donald Partocka (as
4 spoken) or Partaka, 2019-CP-42-03334. Are we
5 ready to proceed?

6 MS. MARTO: Yes, Your Honor.

7 THE COURT: All right. Ms. Marto?

8 MS. MARTO: May it please the Court.

9 Applicant is confined in the South Carolina
10 Department of Corrections pursuant to orders
11 of commitment of the Spartanburg County Clerk
12 of Court. He was indicted December 2017 for
13 murder and possession of a weapon during the
14 commission of a violent crime. He was
15 represented by Mr. Ryan Beasley, and Derrick
16 Bulsa prosecuted the case.

17 April 22nd, 2019, he pled guilty to the
18 lesser included offense of voluntary
19 manslaughter and as indicted for the weapons
20 charge. The Honorable J. Derham Cole
21 sentenced Applicant to imprisonment for
22 concurrent terms of 24 years for voluntary and
23 five years for the weapons charge. He did not
24 appeal his plea or sentence. The post-
25 conviction relief application was filed

1 September 18th, 2019, and the State's return
2 made November 20th, 2019. And with that, I'll
3 turn it over to Ms. Ross.

4 THE COURT: All right. Ms. Ross?

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

7 And this is Mr. Partaka. He pled guilty
8 and had a new lawyer. He hired one lawyer and
9 then ended up with that lawyer going to, I
10 believe, the Attorney General's Office and he
11 ended up with Mr. Beasley. He's alleging Mr.
12 Bealy -- Beasley failed to -- failed to
13 investigate and prepare for trial, challenge
14 whether a statement was knowingly and
15 voluntarily made, advising the applicant that
16 he'd likely get ten to 15 if he pled, failing
17 to present mitigating social history or
18 failing to appeal the case when he was
19 requested to do so, failing to request the
20 change of venue as the victim was the daughter
21 of a retired Spartanburg Police Officer,
22 failing to conduct neurological testing that
23 was advised in the report and testimony of Dr.
24 Donna Maddox and failure to preserve -- pursue
25 a guilty but mentally ill plea.

1 And with that we'd call Mr. Partaka.

2 THE COURT: All right. Mr. Partaka, come up
3 here and be sworn.

4 MS. ROSS: Judge, and I do note that some of
5 his -- his diagnosis from Dr. Maddox was some
6 dementia.

7 THE COURT: I saw that in the file.

8 (WHEREUPON, the applicant was sworn.)

9 **DIRECT EXAMINATION OF DONALD PARTAKA**

10 BY MS. ROSS:

11 Q Hi there. Now, we've talked about this before.
12 It's in my first letter. But you understand that
13 if you win here, you're back in the position you
14 were in before the plea?

15 A Yes, ma'am.

16 Q And you want to go forward?

17 A Yes.

18 Q You retained -- who did you retain to represent
19 you?

20 A At the first?

21 Q Uh-huh.

22 A It was Mr. Sloan (phonetic.)

23 Q And just to clarify, was it you that retained him?

24 A It was my sister.

25 Q Okay. And then who did you end up having to

1 represent you at your trial?

2 A Mr. Beasley.

3 Q And you've alleged he failed to investigate and
4 prepare you for trial; is that right?

5 A Yes.

6 Q What -- can you outline what your allegations are
7 for the Court?

8 A Yes. I -- I wrote a three-or-four-page letter here
9 stating how -- how I felt and what I think I know
10 about what happened.

11 Q Okay. Can you just -- just summarize that or go
12 through that for the record?

13 A Yes. I -- I could if I -- yes?

14 THE COURT: You can.

15 THE APPLICANT: Okay, Your Honor. I'm
16 standing here before you to ask for approval,
17 either relief of my case or an appeal to a new
18 hearing. Your Honor, there are so many things
19 that was wrong with my hearing, Your Honor,
20 but mostly the lack of defense concerning the
21 -- the importancy of my doctor, Dr. Tora
22 Brawley. She's an expert in psychology and
23 neuropsychology, Your Honor. By not being
24 able to present her full findings during my
25 evaluation and recommendations concerning my

1 dementia for reasoning, Your Honor -- the
2 judge did not give her the time of day, nor
3 did he ask her any questions at all about my
4 evaluation. Mr. Beasley asked me days
5 beforehand to write the family a letter of how
6 I felt about this terrible accident. Instead,
7 he handed me a piece of paper, which was about
8 five -- five lines that I did not write, nor
9 did I approve of.

10 Mr. Sloan was my first lawyer, but due to
11 the fact that he had a position as assistant
12 prosecutor for the State of South Carolina,
13 Mr. Sloan asked Mr. Beasley, his associate, to
14 take over this case. Mr. Beasley handles
15 these types of cases, but mainly on a high
16 volume --as far as moneywise -- which is
17 75,000 or much higher, Your Honor. And the
18 reason I say this is because the fact that Mr.
19 Beasley put very little effort into my case
20 and treated me like a charity case because of
21 the cost I paid to Mr. Ellis, which was a
22 smaller -- way smaller amount, and most
23 importantly, in the courtroom he did nothing,
24 Your Honor, in my defense. He did not fight
25 for me at all. I was appalled, Your Honor,

1 because he said nothing and acted like the
2 judgment had already been pronounced.

3 When my sister asked what happened, Mr.
4 Beasley said that he did not know, because I
5 should have only gotten ten to 15 years with
6 my plea deal that Mr. Beasley said I would
7 get, because he knew the judge well and told
8 me that's all I would get, Your Honor. After
9 court, my sister asked Mr. Beasley to appeal
10 the case. Mr. Beasley said he did not appeal
11 cases, which was untrue, Your Honor.

12 He -- he threw me under the bus, Your
13 Honor, without a care in the world. And my
14 sister defended me better than he did. Mr.
15 Beasley did not prepare me at all for court,
16 Your Honor, for the proceedings like the IE,
17 what to expect -- what to expect, and mainly
18 the questions the judge was going to ask me
19 concerning the time I might receive, Your
20 Honor. The judge did say I could get up to 30
21 years and I -- and he asked me if I understand
22 that and I said, "Yes," because Mr. Beasley
23 told me that I would only get ten to 15 years.
24 That's why I said "yes" to almost everything
25 the judge said.

1 At one point in time, Your Honor, I got
2 confused. That's when my doctor, Tora
3 Brawley, stepped in and told the judge, "This
4 is what happens when Mr. Partaka gets
5 confused. He does not comprehend at all
6 because of dementia and other things that come
7 into play." And she told the judge that, "Mr.
8 Partaka," which is me, Your Honor, "was going
9 to get a -- a CAT scan and other tests," Your
10 Honor, "for his illness."

11 Your Honor, if I knew I was not going to
12 get ten to 15 years, I would have gone to a
13 jury trial, but Mr. Beasley told me not to
14 worry at all. He just wanted this done and
15 out of his hands and walk away for good, Your
16 Honor.

17 I'm asking you for an appeal, Your Honor,
18 so I can show -- and most importantly, Dr.
19 Tora Brawley can show the Court that I did not
20 know that it was Ashley standing there in
21 front of me, Your Honor, at my house. All I
22 saw was a man with a beard and dark skin and
23 looked like a drifter. I've never seen -- I
24 never seen her. And -- and I thought that
25 that person broke into my house while I was

1 sleeping. And I need answers, Your Honor, in
2 what happened. I still do not remember a lot,
3 just bits and pieces that happened, Your
4 Honor. Thank you for your time, Your Honor.
5 That's all I have to say.

6 MS. ROSS: (To the Court) I have no further
7 questions.

8 THE COURT: All right. Cross?

9 **CROSS-EXAMINATION OF DONALD PARTAKA**

10 BY MS. MARTO:

11 Q Good afternoon, sir. Just a few questions, if you
12 don't mind.

13 Now, do you recall whether or not Dr. Maddox's
14 report was admitted at the plea hearing?

15 A Do I recall?

16 Q Yeah.

17 A I don't recall, because she -- she was never asked
18 anything that I remember.

19 Q Okay. Would you be surprised to find out that that
20 was entered at the plea hearing?

21 A I guess, because I -- I was so confused. I don't
22 remember that that was the case.

23 Q Okay.

24 A All I know was she was just standing there and
25 barely -- she wasn't allowed to say anything. She

1 wasn't asked anything or anything.

2 Q Now, you told the judge you wanted to plead,
3 correct?

4 A Yes. That's what my lawyer told me to plead.

5 Q Okay. But you decided to on your own, too, right,
6 under advice from your attorney?

7 A Under advice from my attorney, yes.

8 Q Okay.

9 A He said not to worry that -- that's -- what I said
10 was voluntary manslaughter, and I would get up to
11 ten to 15 years --

12 Q Okay.

13 A -- is what I was told to me and my sister.

14 Q And the judge set -- told you, though, at the plea
15 hearing that you could face up to 30 years, right?

16 A Yes. I do --

17 Q Okay.

18 A -- I do believe so.

19 Q And you still said you wanted to plead guilty at
20 the --

21 A Yes. Yes. I do.

22 Q Okay.

23 A I don't have the answers. I don't have the answers
24 of what happened. That's the whole -- that's the
25 whole deal about this whole situation.

1 Q And do you remember waiving your right to, like, a
2 jury trial to present witnesses --

3 A Yes.

4 Q -- all of that?

5 A Yes. Because I was told what -- what was going to
6 happen if I pled voluntary manslaughter.

7 Q And after the solicitor --

8 A Plea deal.

9 Q After the solicitor stated the facts, do you
10 remember agreeing with them?

11 A Excuse me?

12 Q Did you agree with the facts after the solicitor
13 put them on the record?

14 A Put what on the record?

15 Q The facts of the case that the State said you did.

16 A There's no denying that -- what I did. I'm not
17 denying anything I did. All I'm -- all I'm denying
18 is my case wasn't looked at. Something happened to
19 me that I did not recognize who that person was,
20 which was my friend.

21 Q Okay.

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

23 THE COURT: All right. Any redirect?

24 MS. ROSS: No, Your Honor.

25 THE COURT: All right. You may step down.

1 (WHEREUPON, the witness was excused.)

2 THE COURT: (To Ms. Ross) All right.

3 MS. ROSS: We call Diana Partaka.

4 (WHEREUPON, the witness was sworn.)

5 **DIRECT EXAMINATION OF DIANA PARTAKA**

6 BY MS. ROSS:

7 Q Hi there.

8 A Hi.

9 Q Can you just outline your part in this case?

10 A Well, my biggest part in this case, first of all,
11 is my brother. Second of all, is I'm the one that
12 actually hired the attorney for my brother for his
13 defense.

14 Q And that was Sloan Ellis, correct?

15 A Yes, ma'am. As well as the recommendation of
16 hiring Dr. Maddox and Dr. Brawley for evaluation
17 for his health.

18 Q Donald has alleged of the PCR ineffective
19 assistance of counsel, and I've talked to you about
20 it, as well. In what ways was Mr. Beasley
21 ineffective in your opinion?

22 A Well, again, I have a statement if I'm able to do
23 that, unless you have further questions. There --
24 there are several things first of all. Mr. Beasley
25 took over the case from Mr. Ellis. I had good

1 rapport with Mr. Ellis. I -- I guess if I was to
2 hire an attorney and I had met Mr. Beasley and I
3 had enough money to be able to hire him, first of
4 all, I probably wouldn't have, because there's just
5 certain things about personalities and being
6 comfortable with certain things that a person is
7 not comfortable with. But being said that, I had
8 no more money to be able to go and hire another
9 attorney for my brother, so we were at his mercy.

10 Q Okay. And why did you think he was ineffective?

11 A Well, I just don't think he sent -- like my brother
12 -- my brother would have questions. I mean,
13 neither one of us have ever been in the judicial
14 system like this. We've never been in a courtroom
15 like this. I don't know protocol. I don't know
16 what the procedures are. I didn't know what was
17 lying for my brother. I mean, you know, it was
18 something that was not within something I've ever
19 experienced or my brother's ever experienced.

20 Q But you understood he was charged with -- what were
21 you led to expect would happen?

22 A I didn't know to be honest. I wasn't led to -
23 I -- I didn't really know.

24 Q Okay.

25 A I didn't really know. I mean, all I knew was my

1 brother was not -- yes. My brother committed the
2 crime. I agree with that. He agrees with that.
3 Did he know it was Ashley? No.

4 Q Now --

5 A I truly believe it. He's not a violent person;
6 he's never been a violent person. When he gets
7 drunk -- when he is an alcoholic -- when he gets
8 drunk, he does lose his reasoning, his -- his whole
9 aspect of really what's going on. There is no
10 reasoning with that man or any other drunk. It
11 could be Ashley. She was intoxicated. Don was
12 intoxicated. Who knows. Jamie (phonetic) was
13 upset with her boyfriend; that's how the alcohol
14 got poured on her head. That's how she got changed
15 into different clothes, because she was all wet.

16 Q Well, were you there at the guilty plea -- at
17 Donald's guilty plea?

18 A You mean the first hearing?

19 Q No. His -- when he pled guilty to voluntary
20 manslaughter, were you there at that hearing? At
21 that plea?

22 A Was that at the detention center?

23 Q No. That would have been, probably, here in this
24 courthouse.

25 A Yes. Then I was. If he was here, I was here.

1 Q Okay. Did you hear the presentation of Mr. Beasley
2 during that guilty plea?

3 A As in?

4 Q Did you think his presentation was adequate -- Mr.
5 Beasley's presentation during this?

6 A I think Mr. Beasley did what he -- he thought he
7 needed to do to get this done. Was he adequate? I
8 don't think so, but then, you know, maybe I'm
9 prejudiced on that part because it's my brother.
10 But here's my thought: He did not -- he did not
11 thoroughly explain to this Court that my brother
12 sincerely has a health problem. He did not ask
13 this Court to understand that his actions that he
14 had at the time were a cause of this health
15 problem. My brother should have been evaluated
16 more than what was done. He was supposed to have
17 Doctor -- I think it was Dr. Brawley that was in
18 the courtroom, and Dr. Maddox is the one that did
19 the -- the testing.

20 Q I think it's the other way around.

21 A Either way. I -- you know, I get confused on all
22 that.

23 Q Okay.

24 A But she -- she did get to speak, but her -- her
25 actions of her speaking was like as Don stated, and

1 I agree, it -- it's like it was already done and
2 over with. Nobody listened; nobody cared.

3 Q Did you notice signs of your brother's dementia?

4 A I notice it all -- every time I talk to him.

5 Q Okay. Back then?

6 A Yeah. Definitely. I would tell my brother, "Hey,
7 listen, you know, I'm going to pick you up such-
8 and-such time. We need to go here, or we need to
9 do this." I took care of my brother a lot.

10 Q Was that alcohol-related only, or did he have
11 dementia all the time when he wasn't drunk?

12 A He -- even when he wasn't drinking, he had
13 problems. He would say, "Oh, I forgot."

14 Q Do you think he understood the -- what was going on
15 during the guilty plea; the questions and answers?

16 A No. Not at all.

17 Q Why not?

18 A Not at all. Like I -- for instance, when the judge
19 asked him what are my -- my thoughts were -- if the
20 judge asked him, "Were you coerced (as spoken)" --
21 I can't talk. My -- can I have some water or
22 something? My mouth is dry.

23 Q Sure.

24 A "You were coerced into" -- how do you say the word?
25 Just a little bit rattled right now.

1 Q Coerced?

2 A Say that again, ma'am.

3 Q Coerced or forced.

4 A -- "coerced into answering these questions"?

5 Don said, "Yes." Now, being said that, I

6 don't even think Don knows what that word is. And

7 if asked what that word meant and the definition of

8 it, could he actually give us that? I don't think

9 so. He may now, because he's been in prison for

10 five years, but I'm saying at the time --

11 Q Okay.

12 A -- I mean, he -- you have a lot of time when you're

13 sitting in there to look things up and to think

14 things up, but I don't think at that time my

15 brother was -- he's not stupid by any means, but,

16 yet, he's not literate enough to understand certain

17 words. And at the time, because of his situation,

18 most definitely not.

19 Q Now, were you -- were you told by Mr. Beasley to

20 expect a range of -- of time out of that?

21 A Definitely.

22 Q What were you told?

23 A I didn't pick this up out of the air. I didn't

24 make it up in my mind, nor did my brother. Mr.

25 Beasley was in the courtroom, did say to me we can

1 expect ten to 15 years. I did not know at that
2 time or explained to that if Don pleaded guilty to
3 this voluntary manslaughter that he would get -- if
4 -- if the judge, like for instance, said it was 25
5 years -- which he did -- 25 years, he -- he -- he'd
6 get 25 years and no parole. I did not know on top
7 of that, that because of the gun situation, that
8 there would be an actual five more years on that.
9 And I did not know he could not get parole. If
10 that would have been the case and I would have
11 thoroughly understand (as spoken) the judicial
12 system at the time -- I know a little bit more now.
13 I'm not as -- probably as knowledgeable as someone
14 who went to law school, but I do know I would have
15 asked -- no. I would have definitely said, "No.
16 Let's go to court. Let's have a trial. There are
17 too many holes in this situation on what happened
18 then what really transpired.

19 Q Now, after the plea, did you ever talk to Mr.
20 Beasley about reconsidering or appealing the case?

21 A I was so upset. I could not believe what the judge
22 said. When I walked out the -- as a matter of
23 fact, during the time that Mr. Beasley -- I'm just
24 going to go back for a second.

25 Mr. Beasley was talking. I turned around to

1 his associate or assistant, Ms. Owen, and looked at
2 her with a look like, "What is going on?" I
3 thought Mr. Beasley had been out the night before
4 to be honest with you. And I'm not making light of
5 that. I'm not making light of his intelligence.
6 I'm not making light of anything.

7 THE WITNESS: Mr. Beasley, you can laugh, but
8 this is how I felt.

9 Q Now --

10 A When we walked out of the courtroom, yes.

11 THE COURT: Ma'am --

12 A I asked --

13 THE COURT: Ma'am. Ma'am, just -- you just
14 answer the questions, I don't want have any --

15 THE WITNESS: Yes, sir.

16 THE COURT: -- comments like that again, okay?

17 Q Now, did you ever ask him to appeal the case?

18 A Yes. I did.

19 Q Did you ask him to move to reconsider the sentence?

20 A I asked him to appeal the case.

21 Q And --

22 A I asked what happened.

23 Q How did he respond when you asked him to appeal it?

24 A He does not do appeals.

25 Q Okay.

1 A He had his -- he had his assistant look it up,
2 write down a phone number, and give it to me and
3 said, "Call this number to get the appeal."

4 Q Okay. I have no further questions for you at this
5 time.

6 A I -- the only thing that I do have to say is --

7 Q Okay.

8 A -- the prosecutor actually in one of the statements
9 or whatever in the thing coming here to court, that
10 Don never appealed to have his sentence imposed or
11 appealed to for his sentence, but I -- within the
12 time limitations, I did take this -- he did sign
13 this, and I did take this to the county clerk's
14 office; it is stamped and dated, and he did ask for
15 an appeal.

16 Q Okay.

17 MS. ROSS: (To the Court) Okay. I would
18 offer this as Applicant's Exhibit 1.

19 THE COURT: Any objection?

20 MS. MARTO: No objection.

21 THE COURT: All right. Applicant's Exhibit 1
22 is admitted without objection.

23 THE COURT REPORTER: Hold on just a moment.

24 (WHEREUPON, the appeal letter was marked
25 for identification as Applicant's Exhibit

1 No. 1.)

2 MS. ROSS: (To the Court) And I believe
3 that's all the questions that I have.

4 THE COURT: Mr. Ross, for the record, what is
5 Exhibit Number 1?

6 MS. ROSS: For the record, Your Honor, I will
7 approach to hand this to you. It is just a --
8 a signed statement that he does wish to have
9 his --

10 THE COURT: Okay.

11 THE COURT REPORTER: Okay.

12 MS. ROSS: Oh, answer any questions that the
13 Attorney General --

14 THE COURT: All right. (To the State) Cross?

15 MS. MARTO: Yes, Your Honor.

16 CROSS-EXAMINATION OF DIANE PARTAKA

17 BY MS. MARTO:

18 Q Good afternoon, ma'am.

19 A Good afternoon.

20 Q Now, you were at the plea hearing, correct?

21 A Yes, ma'am.

22 Q And did you hear the judge tell your brother that
23 he could be sentenced up to 30 years?

24 A I did, ma'am.

25 Q Okay. Now, you stated that you didn't think that

1 your brother would understand what the word
2 "coerced" meant.

3 A Yep.

4 THE COURT REPORTER: Ma'am, can you speak up?

5 Q Did you --

6 THE WITNESS: That is correct. That is
7 correct.

8 Q Was there any indication that he -- did he ask the
9 Court what that meant at any point, or did he just
10 answer the question on his own?

11 A He just -- just said, "Yes." He said yes to most
12 things. There's a few that he did have to get
13 definition on, yes, ma'am.

14 Q Okay. Do you recall if Mr. Beasley brought up the
15 fact that he does have dementia?

16 A No.

17 Q Would you be surprised to find out that he did?

18 A I guess, no. Probably not. Maybe not. I don't
19 know. I mean, everything was -- that day was a
20 very emotional day --

21 Q Right.

22 A -- and so I -- I'm -- I reread things, so -- on the
23 transcripts, so that's -- and a lot came to light
24 that I did forget about and then I didn't remember.

25 Q Yeah. It was a very emotional experience I'm sure,

1 so your memory is a bit clouded, right?

2 A Yes, ma'am.

3 Q Now, were you present during any of the attorney
4 client meetings between him --

5 A No, ma'am. He was in the detention center at the
6 time.

7 Q Okay. And this case originated while your brother
8 was under the influence of alcohol, correct?

9 A Yes, ma'am.

10 Q So you were under the impression that if he pled,
11 he would only receive ten to 15 years, correct?

12 A That's what I was told.

13 Q So if you -- are you stating that -- if that was
14 not the case, and that he would face up to 30
15 years, you would have rather he went to trial on a
16 murder charge?

17 A I would have rather went to trial on a murder
18 charge, because I think there would have been more
19 things come to light than actually what came by the
20 plea bargain. He's already got 25 years, so, yes,
21 ma'am, I would have.

22 Q And why do you think that?

23 A Because I think my brother is not guilty. He's
24 guilty with the idea that he shot someone, and
25 unfortunately it was Ashley, but he's not guilty

1 with the idea that he was trying to protect his
2 domain.

3 Q Okay. And that came out at the plea hearing,
4 correct?

5 A I believe I said that, yes, ma'am.

6 Q Now -- and you filed that paper saying you wanted
7 an appeal with this court, correct?

8 A Yes, ma'am.

9 Q Spartanburg?

10 A Uh-huh.

11 Q Did you ever file anything like that in one of the
12 appellate courts?

13 A I didn't know anything about it? I don't know that
14 much about the judicial system, nor did I know I
15 was able to do that. All I was told was Mr.
16 Beasley doesn't file appeals, and I had to take
17 care of it.

18 Q Okay

19 A And I was given a phone number, but I did not know
20 that, ma'am. I'm sorry.

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

22 THE COURT: All right. (To Ms. Ross) Any
23 redirect?

24 MS. ROSS: Yes.

25 REDIRECT EXAMINATION OF DIANE PARTAKA

1 BY MS. ROSS:

2 Q Just how old was your brother at the time of --
3 well, how old is your brother now? Donald?

4 THE WITNESS: (To the Applicant) Don?

5 THE APPLICANT: Sixty-four. Sixty-four, now.

6 A Don's 64 years old. He's a year older than me. I
7 mean, I'm a year older than him. I'm sorry.

8 Q So given that the 25-year sentence is equivalent
9 to --

10 A To life in prison.

11 Q All right.

12 A Yes, ma'am.

13 THE COURT: All right. (To the State) Any
14 recross?

15 MS. MARTO: No further questions.

16 THE COURT: All right. You may step down.

17 THE WITNESS: Thank you, Your Honor.

18 (WHEREUPON, the witness was excused.)

19 MS. ROSS: Nothing further, Your Honor.

20 THE COURT: Is that it? All right. State?

21 MS. MARTO: Yes, Your Honor. We would call
22 Mr. Ryan Beasley.

23 THE COURT: All right. Mr. Beasley.

24 (WHEREUPON, the witness was sworn.)

25 DIRECT EXAMINATION OF RYAN BEASLEY, ESQ.

1 BY MS. MARTO:

2 Q Good afternoon, sir.

3 A Good afternoon.

4 Q Okay. So you represented Mr. Partaka when it came
5 to his plea proceedings, correct?

6 A I did.

7 Q Approximately how many times did you meet with him?

8 A I do not know. It was -- it was a bunch, though.

9 Q Okay.

10 A We had a lot to go through.

11 Q And what did y'all discuss during those meetings?

12 A We discussed the defenses that I saw in the case.

13 When I got the case, he was initially charged with
14 murder, and that was all the prosecutor was willing
15 to let him plea to. And -- and, you know, I was
16 pleading to the prosecutor that, you know, "Have
17 you listened to these tapes? It's obvious he
18 didn't know that this was Ashley." But listening
19 to the tapes, even if he -- even if he did consider
20 it not to be Ashley and to be a -- an intruder, the
21 problem I saw was that after he had shot this
22 intruder and stopped the -- the threat, so to
23 speak, and he was outside of his house on the 911
24 call the entire time talking to the 911 operator
25 explaining the situation and that it was an

1 intruder, and he truly believed it. I -- I never
2 doubted that. But he kept wanting to go back in
3 there and -- and finish it off, so to speak, and --
4 and that was where the problem arose for as far as
5 having a defense, and so I thought the -- the best
6 outcome and knowing even if we went to trial, it
7 would still come back as a -- possibly
8 manslaughter, because he did go back in there
9 and -- and shoot this person that he thought -- or
10 this intruder when there was no further threat.

11 So that was one of the issues and which is why
12 he and I -- if I could get it down to a
13 manslaughter to take that plea if we could, and --
14 and that took some convincing with the prosecutor
15 and -- and with the victim's family, because they
16 was, obviously, very upset about the situation.
17 But I think once they heard the 911 tape, they
18 realized that he -- she was not his intention. It
19 was somebody else he thought, but, unfortunately,
20 he was too drunk to realize what he was doing.

21 Q What did you think that -- if you took the case to
22 trial, what did you think that the most likely
23 result would have been?

24 A Well, it would be -- I think it would either been
25 murder or manslaughter.

16 A We -- so the -- the offer from the solicitor was 20
17 years, negotiated, or plead straight up. And so we
18 had weekly discussions about the pros and cons of
19 both. He, obviously, didn't want to -- didn't want
20 to do 20 years. And it was, you know, roll the
21 dice and let me try to argue for less, and -- and I
22 thought we had a good shot for getting less than
23 that. Did I promise him 15? No. He may have
24 asked what I thought personally, and I was, like,
25 ten to 15, but I would never promise a sentence or

1 guarantee a sentence or if that was the case, I
2 would have -- I would've had a negotiated sentence
3 with the solicitor if that was the case, but that
4 was not it. But, you know, he and I, you know,
5 through discussions, and with his sister, we -- we
6 thought he'd better go straight up and try to get
7 less.

8 Q Did he seem to understand the plea proceedings?

9 A Absolutely.

10 Q Did he seem to understand your conversations with
11 him about the case?

12 A Yes.

13 Q Okay. And he understood the rights he was waiving
14 by pleading, correct?

15 A Yes.

16 Q Okay. Now, did he ask you for a appeal?

17 A No. His sister -- now, it's been a long time --
18 but I think his sister called about possibly filing
19 an appeal, and we -- I think we helped her out and
20 sent some stuff to her or got him to sign it and
21 gave -- sent it to her so she could file it, but I
22 think that's all we did. I mean, I -- I
23 wouldn't -- I told them I wasn't doing the appeal.
24 I wasn't hired to do the appeal, and -- and that he
25 would be appointed somebody if he filed one.

1 Q Okay. But you attempted to assist him in filing --

2 A Yes.

3 Q -- the Notice of Appeal?

4 A Yes.

5 Q Okay. And -- now, what was your mitigation

6 strategy at the plea hearing?

7 A So we had Dr. Maddox here to obviously explain his

8 -- his dementia and his mental health, and we had

9 his sister here. And I went through his history.

10 I mean, he -- he's not a violent person. I mean,

11 he's a good person. I mean, he was a Navy veteran.

12 He just always had trouble with alcoholism, but,

13 you know, just went through his -- his life

14 history. He -- he was a good person. His sister's

15 a good person. They're a good family.

16 I mean -- and truly I -- I think the sentence

17 was truly unfair. He should have never got that

18 much time, and I tried to get the judge to look at

19 it through the lens of somebody that it was an

20 intruder in his house, because that's truly what he

21 believed and if he's going to -- and the way to

22 sentence him is to sentence him based on that

23 intruder and not as if it was Ashley, because he

24 truly didn't believe that. And that was, you know,

25 one of the things I tried to stress to the judge

1 during sentencing.

2 Q All right. And Dr. Maddox became involved in this
3 case, as well, correct?

4 A Very, yes. And she was -- and she was great, and
5 she met with Don, you know, even before we came out
6 and did our -- our plea to make sure he's okay and
7 -- and go through some more stuff with him. And so
8 we -- yeah. We did -- we did as much as I thought
9 we could.

10 Q Did she generate a report?

11 A Yes.

12 Q And that was entered at the plea hearing?

13 A Yes. It was.

14 Q Did you see any reason for a change in venue?

15 A No.

16 Q Did you think that he was going to be able to plead
17 guilty but mentally ill?

18 A No. Because -- and that was one reason we had Dr.
19 Maddox do a report. And she even put in her report
20 that that was not an option because of the
21 voluntary intoxication.

22 Q And now you believe that the plea was in his best
23 interest, correct?

24 A Yes.

25 Q And you still believe that today, correct?

1 A Yes. Just don't think the sentence was sufficient.

2 Q But it's still less than he would have received by
3 going to trial, correct?

4 A Probably.

5 MS. ROSS: Objection. But not objection.

6 THE COURT: What's the basis?

7 MS. ROSS: Well, that's supposition,
8 obviously, but never mind.

9 MS. MARTO: Yeah.

10 Q In your opinion, yeah --

11 A Yeah. Yes.

12 Q -- you think he would receive less time than he
13 would if he went to trial?

14 A (No audible response.)

15 MS. MARTO: One moment, Your Honor. No
16 further questions, Your Honor.

17 THE COURT: All right. Cross?

18 **CROSS-EXAMINATION OF RYAN BEASLEY, ESQ.**

19 BY MS. ROSS:

20 Q So did he, in fact, -- was an appeal perfected in
21 the case?

22 A I don't know.

23 Q But you didn't file an appeal?

24 A I didn't file it. I -- I gave it to them. I think
25 they filed pro se.

- 1 Q Okay. But you were asked to file an appeal?
- 2 A I think -- I don't think I was technically asked to
3 file. I think they were asking for assistance and
4 so I helped, I think, maybe draft something for Don
5 to sign and then they could send it in for an
6 appeal.
- 7 Q Okay. And as far as the Ms. Maddox's testimony --
8 I could be wrong. I don't have the report right in
9 front of me, but isn't it possible she said it was
10 -- she said that he had -- that he was competent,
11 correct?
- 12 A Yes.
- 13 Q But he did have dementia?
- 14 A Yes.
- 15 Q Now, she didn't just say alcohol-related dementia.
16 She had independence tests to verify dementia,
17 dementia --
- 18 A I think so.
- 19 Q -- correct?
- 20 A That sounds right.
- 21 Q All right. And so with that it would be hard to
22 say what he did or didn't absolutely understand
23 just because of dementia?
- 24 A I'm not a doctor. I don't know.
- 25 Q And so you didn't go and didn't try to do any kind

1 of request -- just listening to the 911 tape and
2 how crazy everything sounds for any kind of guilty
3 but mentally ill plea?

4 A I did not after -- once I got Dr. Maddox's report,
5 I thought that shut it down.

6 Q And, of course, if he had been correct in his
7 delusions, he would have been not violating the law
8 and just standing his ground in his home?

9 A Well, I -- that's what I would have loved to have
10 argued until I heard the entire 911 tape and
11 realized that he went back in the house and put one
12 between the eyes.

13 MS. ROSS: (To the Court) I have no further
14 questions.

15 THE COURT: All right. Any redirect?

16 MS. MARTO: Just briefly, Your Honor.

17 **REDIRECT EXAMINATION OF RYAN BEASLEY, ESQ.**

18 BY MS. MARTO:

19 Q Any discussion concerning the appeal came from Mr.
20 Partaka's sister, correct?

21 A I believe so.

22 Q Okay. And pretty much all of your other
23 conversations concerning the case was with Mr.
24 Partaka himself?

25 A Yes.

1 Q Okay. And you didn't see any red flags with
2 understanding his plea colloquy, correct?

3 A No.

4 Q And in your professional judgment, did you do
5 everything you reasonably could to assist Mr.
6 Partaka?

7 A Yes.

8 Q Thank you.

9 MS. MARTO: (To the Court) No further
10 questions.

11 THE COURT: All right. Any recross?

12 MS. ROSS: No, Your Honor.

13 THE COURT: All right. Thank you, Mr.
14 Beasley.

15 THE WITNESS: Thank you.

16 (WHEREUPON, the witness was excused.)

17 THE COURT: All right. Anymore witnesses?

18 MS. MARTO: No further witnesses, Your Honor.

19 THE COURT: All right. Anything from the
20 parties?

21 MS. ROSS: We'll just ask to certainly --
22 guilty but mentally ill, I'll leave that up to
23 Your Honor. It's certainly a complex
24 situation, because you have a -- a combination
25 between an ailment of dementia and voluntary

1 intoxication, so with that it's a difficult
2 situation, but guilty but mentally ill may
3 have been a way to recognize the degree of
4 mental illness that was involved in this case
5 that it seemed like it wasn't recognized.

6 I'd also add that defense counsel is upon
7 request required to file an appeal on behalf
8 of a -- of a defendant. I -- I believe that's
9 case law. I don't have it right in front of
10 me, but I think it's "State vs. White," but I
11 think that is the -- the standard in this
12 case. So I would ask you to consider that.

13 THE COURT: All right. Anything else?

14 MS. MARTO: Yes, Your Honor. Just briefly.
15 We would argue that a sign of mental illness
16 isn't necessarily enough to a warrant a guilty
17 but mentally ill plea in here. I think Mr.
18 Beasley testified that Dr. Maddox's report
19 showed that that wouldn't have been warranted
20 in this case.

21 Additionally, concerning the appeal, Mr.
22 Beasley testified that any discussions
23 concerning an appeal was with his sister and
24 not with the applicant himself. Seemingly,
25 the applicant himself never requested an

1 appeal from Mr. Beasley, and he stated that he
2 thought the sister asked for assistance with
3 an appeal, but never requested him to file one
4 specifically.

5 And so we would argue for those reasons
6 you should deny relief. Thank you.

7 THE COURT: Is the report of Dr. Maddox part
8 of the record?

9 MS. MARTO: Yes, Your Honor. It was entered
10 as a plea.

11 THE COURT: It was entered as -- I saw in the
12 transcript it was entered as an exhibit.

13 MS. MARTO: It was entered as an exhibit, Your
14 Honor. So, I mean, we would request you take
15 judicial notice of that since it is a part of
16 the record, but we don't typically get the --
17 all the exhibits sent to our office.

18 THE COURT: All right. Would -- does anybody
19 -- can anybody submit -- does anybody have the
20 report that they can submit to me?

21 MS. PARTAKA: I can, Your Honor.

22 MS. MARTO: The Clerk of Court should have it,
23 Your Honor. I can reach out.

24 THE COURT: All right. All right. Anything
25 else?

1 MS. ROSS: Judge, I just point out that I
2 think on that -- that form saying, "I would
3 request an appeal," I think that's signed by
4 Mr. Partaka, the court exhibit. And I did
5 not --

6 (WHEREUPON, a discussion among counsel
7 occurred. Sotto voce.)

8 MS. MARTO: Your Honor, Mr. Beasley did just
9 hand me a copy of the report, Your Honor.

10 THE COURT: Is it all right if I have this
11 copy?

12 MR. BEASLEY: Yes, sir.

13 THE COURT: All right. All right. Thank you.
14 All right. Anything else?

15 MS. MARTO: Nothing further, Your Honor.

16 THE COURT: All right. Ms. Ross, anything
17 else?

18 MS. ROSS: And just whatever -- I haven't read
19 the -- her statement was. I know in Dr.
20 Maddox's testimony I didn't see anything
21 regarding guilty but mentally ill, but
22 whatever she put in the report, I'll stand by
23 that.

24 THE COURT: Well, for the record, it looks
25 like in her report she gives the opinion --

1 and it's Opinion Number 4, "He is not eligible
2 for a not guilty by reason of insanity defense
3 due to his voluntary intoxication." Is one --
4 that's one of the four opinions. And I just
5 wanted to have that in the record.

6 All right. I will take it under
7 advisement. And I'll let you know of my
8 decision. Thank you, both.

9 MS. MARTO: Thank you, Your Honor.

10 MS. ROSS: Thank you, Judge.

11 (Whereupon the within hearing was
12 concluded at 2:52 p.m.)

13 (*This transcript may contain quoted material.
14 Such material is reproduced as read or quoted
15 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 20th, 2022.

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



Amber J. Payne, CVR

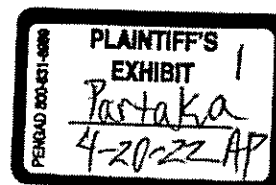
Date: 12/12/2022
Notary public for South Carolina
My commission expires August 12, 2029

State of South Carolina v. Donald Partaka Appeal
Warrant Numbers: 2017A4210203407 and 2017A4210203408

I, Donald Partaka, wish to appeal my sentence imposed on April 22, 2019 in Spartanburg County.



2019 MAY -1 AM 11:59



STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Donald Partaka, #379920,)
Applicant,)
)

Case No.: 2019-CP-42-03334

v.)
)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)
_____)

FILED
2022 SEP 15 11:10 AM
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

This matter comes before this Court by way of Applicant's post-conviction relief application filed September 18, 2019. Respondent made its return on November 20, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held on April 20, 2022, at the Spartanburg County Courthouse. Susannah Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's sister, Diana Partaka, testified, as did Counsel Ryan Beasley. 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 confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the December 2017 term of the Spartanburg County Grand Jury for murder (count one) and possession of a weapon during the commission of a violent crime (count two) (2017-GS-42-06105). Ryan Beasley, Esquire, represented Applicant, and Derrick Balsa, Esquire, of the Seventh Circuit Solicitor's Office, prosecuted the case. On April 22, 2019, Applicant pled guilty to the lesser-included offense

of voluntary manslaughter, and as indicted for the weapon. The Honorable J. Derham Cole, circuit court judge, sentenced Applicant to twenty-four years' imprisonment for voluntary manslaughter, and five years' imprisonment for the weapons charge. Applicant did not appeal his plea or his sentence.

Summary of Relevant Facts

On October 11, 2017, a 911 call was placed by Applicant, who stated he shot an intruder. (Tr. 19-20). Applicant claimed he had woken up and found someone on his couch. (Tr. 20). He stated he confronted and shot that person, thinking he called him. (Tr. 20). In the background of the 911 call, the victim woke up and began talking to Applicant. (Tr. 20). She stated she loved him, and Applicant stated he did not. (Tr. 20). The last time Applicant went to the victim he shot her between the eyes with a .22 rifle. (Tr. 20). Applicant knew the victim because they worked together. (Tr. 20). The victim got into a fight with her boyfriend the night of the incident and was picked up and taken to Applicant's home. (Tr. 20-21). Applicant seemingly did not realize he shot his friend Ashley until confronted by the police for shooting a woman. (Tr. 21-22). DNA swabs for a potential sexual assault were inconclusive. (Tr. 22).

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. Ineffective assistance of plea counsel, in that:
 - a. "My Counsel Ryan L. Beasley told me that he was not filing a direct appeal. Mr. Beasley did have a number of procedural abnormalities including failure to adequately file direct appeal brief, and passing the buck to me when he had his employee bring me the notice that I had 10 days from the day of sentencing to file an appeal of my conviction and sentences if I choose to do so. Mr. Beasley's employee brought his letter the following day which left me 9 days to file appeal. Mr. Beasley did not give me any legal paper or the address to the South Carolina Appellate Court."

SEP 15 AM 10:13
CLERK OF COURT
JAMES W. COLE
COURT REPORTER
JAMES W. COLE

- b. "I'm being held in custody unlawfully on a Plea offer on advise of Counsel Ryan L. Beasley that I would receive no more than (10) Ten to (15) fifteen years if I plea to the charges."
 - c. Counsel "did not obtain, or if he did obtain, the defendant's right to recorded proceedings and testimony before the state grand jury in preparing his defense which right is subject to [limitations]¹ imposed by Statute and rule necessarily [illegible] Post-indictment, although secrecy is essential [while] a matter is under deliberation by The grand jury, such concerns diminish following issuance of a True Bill of indictment and Thus a defendant is allowed to obtain and use the [empanelment] documents in Preparing a defense, and ensuring protection of his due process rights."
 - d. Counsel "did not investigate the Spartanburg Sheriff's Office when Petitioner was in an alcoholic state of mind 'when the coerced confession' was given, 'Thus caused the deprivation on my/Partakas Fifth Amendment right against compulsory self-incrimination,' based on the alcoholic state coerced confession."
 - e. Counsel failed to present "mitigating social history evidence to the Court[.]"
 - f. Counsel "had a conflict on the money issue, Counsel had no honor, and should have been more assistance to his client whom paid and I feel that his role as advocate required him to support his client's appeal to the best of his ability, or should so advise the Court and request permission to withdraw. His request should be accompanied by a brief referring to anything in my record that could arguably support the appeal."
 - g. Counsel "failed to furnish a brief to his paid client and time allowed me to raise any points that I so choose[.]"
 - h. Counsel was ineffective in sentencing "for failing to present evidence of the defendant's mental illness caused by alcoholic state of mind when he was startled by victim's presence in home[.]"
2. Applicant asserts he should be entitled to the presumption of prejudice under *United States v. Cronin*, 466 U.S. 648, 658 (1984).

By amendment dated April 8, 2022, Applicant, through PCR Counsel, alleged:

- 1. Ineffective assistance of counsel for:
 - a. Failure to request a change of venue.
 - b. Failure to conduct neurological testing to determine the extent of his dementia; and
 - c. Failure to pursue a plea to guilty but mentally ill when the Applicant lacked the capacity to conform his actions due to dementia.

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

- 1. Ineffective assistance of counsel for:

¹ Portions of the handwritten attachments to the application are obscured by the file clock stamp and this is Respondent's best effort to read through said stamp.

- a. Brevity of time spent in consultation and preparing the case.
 - b. Failure to file/handle his appeal.
 - c. Failure to pursue defense that Applicant thought he was protecting himself and his domain from an intruder.
 - d. Failure to move for change of venue.
 - e. Failure to conduct neurological testing.
 - f. Failure to pursue plea of guilty but mentally ill.
 - g. Failure to mitigate the sentence.
2. Invalid plea:
- a. Counsel informed Applicant he would serve between ten- and fifteen-years' imprisonment if he pled.
 - b. Applicant had issues with dementia, which prevented him from fully understanding the plea.

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

Summary of the Testimony

Applicant Testimony

Applicant stated he understood the purpose of the PCR hearing. He stated he has dementia. He stated that Counsel was his second attorney. He stated he put little work into the case and did not fight for him at all. He stated that Counsel's office informed him that Counsel does not handle appeals. He stated that the Court told him he could receive up to thirty years' imprisonment, but Counsel told him he would be sentenced between ten and fifteen years. He stated that he was confused throughout the plea proceedings, but Counsel told him not to worry. He stated he would have gone to trial but for Counsel being ineffective.

On cross-examination, Applicant stated that he did not recall Dr. Donna Maddox becoming involved in his case and submitting a report at the plea. He stated that he told the Court he wanted to plead and that he made the decision for himself. He stated that the Court told him he could be sentenced to thirty years' imprisonment. He stated that Counsel told him to take the plea.

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Sister Testimony

Applicant's sister testified that she hired the first attorney for Applicant. She testified that she would never have hired Counsel. She stated they were never in that position before. She stated that Applicant committed the crime and Applicant did not know the victim. She testified she was present for the plea hearing. She testified that Counsel did not thoroughly explain to the plea court that her brother had health issues, specifically dementia. She stated that Applicant had dementia problems even when he was not drinking. She stated that she did not think Applicant understood the plea process. She testified that Counsel told her that Applicant would be sentenced between ten and fifteen years. She stated she contacted Counsel's office and was told that he does not handle appeals.

On cross-examination, she testified that Applicant answered affirmatively to most questions at his hearing. She stated that she would have rather Applicant went to trial, even though she stated he acknowledged his guilt, though she stated he did it to protect his domain. She stated she filed a notice of appeal personally in the circuit court, not the appellate courts.

Counsel Testimony

Counsel testified that he met with Applicant multiple times. He stated they talked about potential defenses. He stated he pleaded to the prosecutor that Applicant did not know the victim was Ashley at the time. He stated that the issue was that Applicant was on the phone with 911 and that he thought the victim was an intruder, but that he went back and shot her again. He stated he thought that a trial would have resulted in a murder or voluntary manslaughter instruction. He stated that Applicant would be serving more time if he went to trial. He stated he never promised Applicant a specific sentence would be imposed. He stated that Applicant seemingly understood the proceedings and the rights waived. He stated that he helped draft some appeal material but told

Applicant he would be appointed an appellate attorney. He stated that Dr. Maddox and Applicant's sister spoke in mitigation of the sentence. He stated Dr. Maddox generated a report that was entered at the plea hearing. He stated he thought that the plea was in Applicant's best interest. He stated that he did not see a reason to change venues.

On cross-examination, Counsel stated he assisted in helping draft materials for an appeal, but that he did not handle the appeal itself. On re-direct, Counsel testified that he did everything in his professional judgement to help Applicant.

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 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 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), SCRPC ("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 executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "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).

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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.

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."). 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).

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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. Lecke*, 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).

Invalid Plea – Dementia

Despite Applicant's struggles with dementia, Applicant seemingly entered a free, voluntary, intelligent, and knowing plea. As a preliminary matter, this Court finds that the plea court was fully aware of Applicant's dementia when it accepted the plea. (Tr. 30). At the plea, Applicant confirmed he understood he was pleading to the lesser-included offense of voluntary manslaughter. (Tr. 6). He stated he understood the potential sentencing ranges, and that voluntary manslaughter is a violent crime. (Tr. 6). He stated he wanted to plead and that he had plenty of time to discuss the plea with Counsel, who informed him of the allegations, the State's burden of proof, and what the State would have to prove concerning the voluntary charge at trial. (Tr. 6-7). He stated that they discussed any possible defenses and the facts. (Tr. 8). Applicant stated he was unaware of any defense available to him. (Tr. 9). He stated that Counsel explained his rights to him, including the right to remain silent, call and confront witnesses, and the right to a jury trial.

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(Tr. 9-13). He stated that no promises beyond the ability to plead to the lesser-included offense were available to him and that he was pleading freely and voluntarily. (Tr. 13-14). He stated he understood voluntary manslaughter is a violent and most serious offense and that he understood the consequences of those distinctions. (Tr. 14-15). He stated that he understood he was not entitled to parole. (Tr. 15). He stated he was pleading because he is guilty and thinks that the jury could find him guilty of murder or voluntary. (Tr. 15). He stated he understood the negotiations and stated that they are preferred over trial. (Tr. 16). He stated that he does not have any substance abuse issues or mental health issues impacting his ability to understand what he was doing. (Tr. 16-19). Applicant agreed to the facts as stated by the State. He again confirmed that Counsel explained his right to remain silent, to present evidence, to a *Jackson v. Denno* hearing, the right to assert a defense. He stated that he discussed with Counsel how the plea was free and voluntary. He confirmed his intent to plead again. Thereafter, the plea was accepted. Applicant's dementia did not seem to impact his understanding of the plea process based upon this Court's review of the plea transcript. Additionally, at the PCR hearing, Counsel credibly testified that Applicant seemingly understood the proceedings and the rights waived. Thus, this Court finds the plea was entered freely, knowingly, intelligently, and voluntarily and cannot be withdrawn.

Brevity of Time

Applicant alleges Counsel was ineffective for brevity of time spent in consultation. "[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Id.* See *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by

neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant claims that Counsel did not speak with him about the case enough. However, at the plea hearing, Applicant stated that he was satisfied with Counsel and that he had enough time to talk to Counsel and that Counsel explained the allegations to him, what the State would have to prove at trial, including what the State would have to prove to secure a conviction for the lesser-included charge. (Tr. 6-7). Applicant stated that Counsel explained all his rights to him. (Tr. 9-13). Additionally, Counsel credibly testified at the PCR hearing that he met with Applicant multiple times to discuss the case. Beyond that, Applicant has failed to show how this brevity of time spent in consultation impacted Counsel's representation of Applicant. There is no indication that the results of the proceedings or the decision to plead would have been different had Counsel conferred with him more. Accordingly, Applicant has failed to establish ineffective assistance of counsel and this Court declines to grant relief.

Failure to File/Handle Appeal

Applicant claimed Counsel was ineffective for failure to file and handle his direct appeal. Counsel is required to make certain the defendant is made fully aware of the right to appeal following a trial. *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). However, absent 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, 459 S.E.2d 838 (1995). The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. *Id.* Instead, there must be proof that extraordinary circumstances exist such that the

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defendant should have been advised of the right to appeal. *Id.* Extraordinary circumstances may exist when there is reason to think that a rational defendant would want an appeal, such as when non-frivolous grounds for an appeal exist, or when the defendant reasonably demonstrates an interest in appealing. *Id.*; *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

Applicant testified that Counsel informed him that he did not handle appeals. Applicant's sister stated she attempted to handle the notice of appeal on her own but filed it in the wrong jurisdiction. Counsel credibly testified that he helped draft some appeal material but told Applicant he would be appointed an appellate attorney. Thus, this Court finds that Applicant was informed of his appeal and took the responsibility of filing the appeal on his own. This Court also finds that no extraordinary circumstances justifying filing an appeal exist in this case. Accordingly, relief is denied on this ground.

Failure to Pursue Defense – Intruder

Applicant claims Counsel was ineffective for failure to pursue a defense that Applicant thought that the person Applicant shot and killed was an intruder. However, the right to assert a defense was waived at the plea hearing after the Court explained what a defense is, and Applicant informed the Court that he was unaware of a tenable trial defense. (Tr. 5-6). Thus, the right to assert a defense was waived with the entry of an otherwise valid plea. Accordingly, this claim is dismissed without merit and relief denied.

Change of Venue

Applicant claims Counsel was ineffective for failure to request a change of venue. However, no reason for requesting a change of venue or why a change of venue would have changed the outcome was ever provided to the Court. Further, Counsel credibly testified he did not see a reason for a change of venue. Accordingly, relief is denied on this ground.

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 DISTRICT OF COLUMBIA
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Failure to Properly Mitigate the Sentence

Applicant claims Counsel was ineffective for failing 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, 171, 670 S.E.2d 356, 362 (2008).

This Court finds Counsel's mitigation strategy reasonable. At the plea hearing, Counsel stated that Applicant has been honest throughout the proceedings, that Applicant consistently held that he fired the gun because he thought he had an intruder in the home, and that Applicant suffered from dementia. (Tr. 29-30). Counsel also stated that Applicant loved the victim, was in disbelief over what happened, and was broken up about what happened. (Tr. 30-31). Applicant's sister also spoke in mitigation, stating that Applicant's health is poor, that he truly thought it was an intruder in the home, and that alcohol played a part in what happened. (Tr. 31-33). Dr. Maddox stated that she evaluated Applicant and diagnosed him with alcohol dementia and that he has a longstanding history of alcohol abuse. (Tr. 33-34). She stated Applicant has worked his own life, but that alcohol has ravaged his brain and led to a steady decline. (Tr. 34). She stated that he was very cooperative

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with her and clearly has cognitive deficits. (Tr. 34). She stated that she thought he was competent, despite his dementia. (Tr. 34). She stated that she conducted neurological testing and some neurological psychology screening tests, which he did poorly on. (Tr. 34). She stated he was referred to a neuropsychologist, who tested him, and he came out with dementia. (Tr. 35-36). Counsel again spoke in mitigation, stating that there was never any evidence that Applicant thought the person was someone other than an intruder and that Applicant was seemingly so intoxicated that night he gave 911 the wrong address. (Tr. 37). He then read a statement Applicant prepared, apologizing to the victim's family, stating he thought she was a migrant worker breaking into his house, and making clear how distraught he was over killing his friend. (Tr. 38). Thus, this Court finds the mitigation strategy reasonable. Additionally, the only subject specifically stated at the PCR hearing as something that should have been raised in mitigation was Applicant's dementia, alcoholism, and cognitive issues, which were clearly exhausted. This Court has not been presented with anything substantive that would have led to a lesser sentence if raised. Accordingly, relief is denied on this ground.

Failure to Conduct Neurological Testing

Applicant claims Counsel was ineffective for failure to conduct neurological testing. However, as stated above, Dr. Maddox conducted neurological testing and neurological psychology screening tests. (Tr. 34). He was also referred to a neuropsychologist for additional testing and was diagnosed with dementia. (Tr. 35-36). Counsel was not ineffective on this ground because he did ensure neurological testing occurred and used this in mitigation of the sentence. Additionally, because Counsel was not deficient on this ground, there is no prejudice. Accordingly, relief is denied on this ground.

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Failure to Pursue Guilty but Mentally Ill Plea

Applicant claims Counsel was ineffective for failure to pursue a guilty but mentally ill plea. A defendant is guilty but mentally ill when "at the time of the commission of the act constituting the offense, he has the capacity to distinguish right from wrong . . . but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law." S.C. Code Ann. § 17-24-20 (2014). Voluntary intoxication or drug use can be used to support a finding of guilty but mentally ill if the drug or alcohol use causes "permanent and irreversible brain damage which manifests itself in a mental illness." *State v. Hartfield*, 300 S.C. 469, 473, 388 S.E.2d 802, 804 (1990).

According to the record, applicant's alcohol abuse caused his dementia. However, there is no indication that his impairment or mental illness caused him to lack the capacity to conform. Instead, Applicant repeatedly showed he intended to fire the weapon, but that he did not know the person he was shooting was his friend. He stated he thought he was shooting a migrant farmworker instead. (Tr. 29-30). Additionally, Dr. Maddox credibly stated at the plea that she thought Applicant was competent. (Tr. 34). At the PCR hearing, Applicant did not present any credible evidence, in the form of mental health or competency evaluations or reports to challenge this understanding. Thus, this Court finds Applicant was not entitled to enter a guilty but mentally ill plea, and that Counsel was not deficient for failing to ensure Applicant could plead guilty but mentally ill when that was improper in the case. The Court finds no prejudice because Applicant could not have secured such a plea. Thus, relief is denied on this ground.

Ten- to Fifteen-Year Sentence

Applicant testified that his plea was entered involuntarily because Counsel told him that if he pled, he would receive a ten- to fifteen-year sentence. However, Counsel credibly testified that

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he never promised Applicant a certain sentence if he pled. Additionally, at the plea hearing, Applicant stated he wanted to plead to voluntary manslaughter while knowing what it carries. (Tr. 6). Thus, this Court finds Applicant to not be credible concerning this allegation and that he was not promised a certain sentence. This Court denies relief on this ground accordingly.

Conclusion

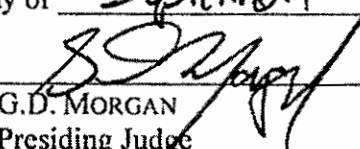
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the 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 of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on 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 8th day of September, 2022.


G.D. MORGAN
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

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WITNESSES
Spartanburg County Sheriff's Office
<i>James W. Davis</i>
ARREST WARRANT NUMBER
2017A4210203407 (Count One)
2017A4210203408 (Count Two)
ACTION OF GRAND JURY
<i>QE</i> TRUE BILL
Foreperson of Grand Jury Date: DEC 06 2017
VERDICT
Foreperson of Petit Jury Date:

DOCKET NO. **17-GS-42-6105**

The State of South Carolina
County of Spartanburg
Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 11 2017

TERM

THE STATE
vs.

Donald Anthony Partaka

Indictment for

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

SC Code 16-03-4010, 0020, 16-23-490

CDR Code 116, 648

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PS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

DEC 06 2017.

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

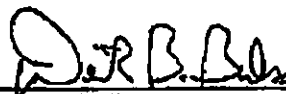
COUNT ONE-MURDER

The Defendant, Donald Anthony Partaka, did in Spartanburg County on or about
_____, October 11, 2017, feloniously, willfully, and with malice aforethought, kill one Laura
Ashley Hood, by shooting her and the victim died as a proximate result thereof, all in
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, Donald Anthony Partaka, did in Spartanburg County on or about
October 11, 2017, 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.


Deputy Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

SPARTANBURG

VS.

Donald Anthony Partaka

AKA:

Race: WHITE

Sex: M

Age: 60

DOB: [REDACTED]

SS#: [REDACTED]

Address:

Patterson Rd

City/State/Zip:

Cannonville, SC 29322

DL#:

SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Harmful Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Manslaughter / Voluntary manslaughter

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4206105

A/W#: 2017A4210203407

Date of Offense: 10/11/2017

S.C. Code § 16-03-0010: 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC

whichever is or Lawd Act)

☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense,☐ Defendant Waives Prosecution to Grand Jury,

(defendant's initials)

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

ATTEST:

[Signature]

SCB15264

[Signature]

Defendant

[Signature]

Attorney for Defendant

68707

SC Bar#

WHEREFORE, the Defendant is admitted to the

for a determinate term of 24 days/months/years as

and/or to pay a fine of \$ [REDACTED]; provided that upon the expiration of

of \$ [REDACTED]; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,

which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered FTUP

Total: \$ [REDACTED] plus 20% fee: \$ [REDACTED]

[REDACTED] days/hours Public Service Employment

Payment Terms:

☐ Set by SCOPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5 %)

\$

§14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§56-5-2993 (DUI Assessment)

\$12

\$

§56-1-286 (DUI Breath Test)

\$25

\$

Proviso (Public Def/Probation)

\$500

\$

§14-1-212 (Law Enforce. Funding)

\$25

\$

§14-1-313 (Drug Court Surcharge)

\$150

\$

§50-21-114 (DUI Breath Test Fee)

\$50

\$

§56-5-2942(f) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk:

KGMckinney

Court Reporter:

Pam Green

SCCA/217 (3-4-2018)

Presiding Judge

Judge Code:

Sentence Date:

[Signature] 2017
April 22, 2019

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

SPARTANBURG

VS.

Donald Anthony Partala

AKA:

Race: WHITE Sex: M Age: 60

DOB: [REDACTED] SSN: [REDACTED]

Address: [REDACTED] Patterson Rd

City/State/Zip: Camden, SC 29312

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0190 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-23-45The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Prosecution to Grand Jury, (defendant's initial)The plea is ☐ Without Negotiations or Recommendations, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY: [REDACTED]

SCB15264

BULSA, DERRICK

SC Bar#

Defendant

[REDACTED]

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the sentence is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence and:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOP.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-23-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-23-20 or 16-23-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered ☐ TTUP Total: \$ plus 20% fee: \$ days/weeks Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fines:	\$	
§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-3-2395 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$300	\$
§14-1-212 (Law Enforcement Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (DUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$400	\$
3% to County (if paid in installments)	\$	\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

Kg McKinney
Pam Green

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4206105A

A/W#: 2017/A210203408

Date of Offense: 10/11/2017

S.C. Code § 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-23-0190 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-23-45The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Prosecution to Grand Jury, (defendant's initial)The plea is ☐ Without Negotiations or Recommendations, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY: [REDACTED]

SCB15264

SC Bar#

Defendant

[REDACTED]

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the sentence is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-23-20 or 16-23-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered ☐ TTUP days/weeks Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

payments of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Coder

Sentence Date:

[REDACTED]
2017
April 24, 2019