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THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson, Administrative Law Judge
Docket No.: 11-ALJ-15-0035-AP
Appellate Case No. 2012-213320

Dallas Ferrell #239855,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

RECORD ON APPEAL

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RECEIVED
MAY 17 2013
SC Court of Appeals

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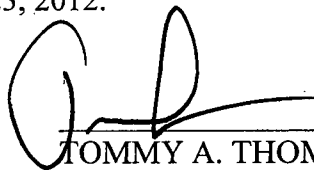
NOTICE OF INTENT TO APPEAL

RECEIVED

OCT 31 2012

SC Court of Appeals

Dallas Ferrell appeals the order of the Honorable Shirley C. Robinson dated October 22, 2012. The Attorney for the Appellant received a filed copy of this Order from the Administrative Law Court on October 23, 2012.



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October 30, 2012

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000003

000002

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson, Administrative Law Judge
Docket No.: 11-ALJ-15-0035-AP

Dallas Ferrell #239855,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

CERTIFICATE OF SERVICE BY MAIL

RECEIVED

OCT 31 2012

SC Court of Appeals

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Attorney for Appellant certify that I have served a copy of the Notice of Intent to Appeal on Tommy Evans, Legal Counsel for the South Carolina Department of Probation, Parole and Pardon Services, and the Administrative Law Court on October 30, 2012 by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

Tommy Evans, Esq.
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Administrative Law Court
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October 30, 2012

OCT 22 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Dallas Ferrell, #239855,

Docket No. 11-ALJ-15-0035-AP

Appellant,

vs.

ORDERSouth Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

This case is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Dallas Ferrell ("Appellant"), an individual incarcerated with the South Carolina Department of Corrections. On May 16, 2011, the South Carolina Department of Probation, Parole and Pardon Services ("Department") notified Appellant that because he had executed an irrevocable waiver of parole, he would never be considered for parole. Appellant now challenges the Department's decision.

BACKGROUND

Following a jury trial, Appellant was found guilty of the following charges: Murder, Conspiracy, four counts of Criminal Sexual Conduct, House Breaking and Arson. On April 2, 1983, the jury recommended and the Court imposed the death penalty upon Appellant. Appellant subsequently filed a direct appeal, and the South Carolina Supreme Court remanded the case to Circuit Court for the purpose of conducting another sentencing hearing with regard to the Murder conviction. Prior to the commencement of the second sentencing hearing, Appellant entered into negotiations whereby he would receive a life sentence instead of the previously imposed death sentence. As part of the negotiations, Appellant entered into a "Contractual Agreement Waiving All Rights to Parole" ("Contractual Agreement"). Additionally, Appellant, along with his attorneys, the Solicitor and Counsel for the Department executed another document captioned "Irrevocable Waiver of Parole." Both documents were filed with the Court on May 20, 1997.

In the Contractual Agreement, Appellant acknowledged that he would be eligible for parole in twenty (20) years from the date of his initial imprisonment on the Murder charge;

however pursuant to the terms of the Contractual Agreement, Appellant further acknowledged that he would be denied parole for the rest of his life. The Contractual Agreement also states that Appellant would neither apply for nor accept a Pardon for the offense of Murder. Furthermore, Appellant waived any claim of double jeopardy regarding the death sentence if the State sought to reinstate such sentence if Appellant breached the Contractual Agreement.

On June 30, 1998, Appellant filed an application for Post Conviction Relief (PCR) alleging ineffective assistance of counsel, involuntary guilty plea and double jeopardy violation. The issues were not heard on the merits as the case was dismissed because it was filed outside of the statute of limitations period. On May 5, 2011, Appellant's attorney informed the Department that Appellant wanted to "exercise his right to parole." By letter dated May 16, 2011, the Department notified Appellant that due to the Contractual Agreement and the Irrevocable Waiver of Parole, he would not be scheduled for parole consideration before the Parole Board.

Appellant subsequently filed a Notice of Appeal with the ALC on June 15, 2011.

DISCUSSION

An individual has a right to ALC review of a final decision of the Department only when that decision affects a liberty interest for which due process is required. See Furtick v. S.C. Dep't of Probation, Parole and Pardon Services, 352 S.C. 594, 599, 576 S.E.2d 146, 149, 150 (2003); see also Sullivan v. S.C. Dep't of Corrections, 355 S.C. 437, 586 S.E.2d 124, 127 (2003) (explaining the nature of the right to ALC review). In Furtick, the South Carolina Supreme Court stated that the "permanent denial of parole eligibility implicates a liberty interest sufficient to require at least minimal due process." Id. at 599, 575 S.E.2d at 149 (emphasis in original). Therefore, the Department's determination in this matter is subject to review by the ALC.¹

¹ It is questionable whether or not the ALC has jurisdiction in this matter as it appears Appellant is attempting to challenge the validity of his sentence, and as such, it is more appropriate that this matter be brought as a PCR action. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999).

Although Appellant is appealing the decision of the Department to permanently deny him parole eligibility, that denial was based upon an agreement reached between the parties during Appellant's sentencing hearing. Appellant is essentially challenging the conditions of his sentence based upon coercion, ineffective assistance of counsel, and competency. See e.g., Wade v. State, 308 S.C. 52, 419 S.E.2d 781 (1992) (affirming PCR Court's findings regarding issue of whether or not individual entered a guilty plea as a result of coercion); Pierce v. State, 338 S.C. 139, 144, 526 S.E.2d 222, 224 (2000) (discussing the elements a PCR applicant must establish regarding a claim of ineffective assistance of counsel); Reed v. Ozmint, 374 S.C. 19, 647 S.E.2d 209 (2007) (discussing the standards to determine competency of an individual who waives the right to a direct appeal of a PCR application).

Notably, Appellant's PCR application was based upon coercion, ineffective assistance of counsel, and competency. Appellant should not be permitted a second bite at the apple due to his own neglect. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) ("Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than 'one bite at the apple'. . . ."); Zaman v. S.C. State

The Department's decision to permanently deny Appellant parole eligibility was made pursuant to the Contractual Agreement signed by Appellant, his attorneys, the Solicitor, and the Department's counsel. A "plea bargain rests on contractual principles, and . . . each party should receive the benefit of the bargain." State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994) (citing U.S. v. Ringling, 988 F.2d 504 (4th Cir. 1993)). A "plea agreement can faithfully be enforced and specific performance promotes judicial economy" and thus, a waiver of rights as part of a plea agreement should be enforced. State v. Dingle, 376 S.C. 643, 652, 659 S.E.2d 101, 106 (2008).

The facts of this case are similar to those in Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008). In Spoone, the Supreme Court upheld a defendant's waiver of the right to appellate, post-conviction, and habeas review in exchange for the State's withdrawal of intent to seek the death penalty. The Spoone Court reasoned that defendant's waiver was made voluntarily, knowingly, and intelligently, and thus, should be enforced. Additionally, the Court determined that the Defendant's waiver was made voluntarily, knowingly, and intelligently based upon several factors: the "straightforward" text of the written plea agreement; the defendant was represented by two attorneys, both of whom attended the plea hearing and signed the written plea agreement, along with the defendant; and the background, experience and conduct of the accused. Id. at 144, 665 S.E.2d at 608. The Spoone Court also noted that although the defendant had only a ninth grade education, the text of the agreement was straightforward and the trial court specifically asked the defendant about the waiver "in plain language." Id.

Here, the record on appeal clearly demonstrates that Appellant's Irrevocable Waiver of Parole was voluntarily, knowingly, and intelligently made. Appellant, upon the advice and in the presence of both of his attorneys, signed the document. Furthermore, in the Contractual Agreement, Appellant waived all future parole considerations so that he may serve the rest of his natural life within the South Carolina Department of Corrections rather than the State seeking the Death Penalty in the second sentencing trial of his Murder conviction. Appellant acknowledges in the Contractual Agreement that he discussed the case with his attorneys, including his options and his rights, and that he "voluntarily and intelligently has decided to enter into the Contractual

Bd. of Med. Exam'rs, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) ("One cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it.").

However, because of the questionable nature of jurisdiction in this matter, coupled with the interests of judicial economy, the Court will address Appellant's request for relief.

Agreement with the Solicitor in consideration and exchange for the State's agreement not to seek the death penalty." The Appellant's attorneys also attested that to the best of their knowledge, Appellant fully understood the terms of the Contractual Agreement and made a knowing, intelligent, and voluntary decision to enter into the Contractual Agreement after discussion with counsel.

Finally, Appellant and his attorneys appeared before the trial judge at a May 20, 1997 sentencing proceeding to formalize and seek judicial approval of the Contractual Agreement and the Irrevocable Waiver of Parole. The judge questioned Appellant regarding the agreement and waiver: Appellant stated he understood the charges he had been convicted of and had reviewed the Contractual Agreement. In fact, the trial court published the agreement for the record by reading aloud line by line through paragraph 12 of the agreement. After each line was read, Appellant and his attorneys confirmed the statements were correct. Appellant further stated that he was not under the influence of drugs, alcohol, or medication, and that he did not suffer from any condition, mental or physical, that could affect his judgment or understanding.²

At no point during the sentencing hearing did Appellant state anyone made a promise, assurance, or inducement of any kind to induce him to enter into the Contractual Agreement and Irrevocable Waiver of Parole, other than what was covered in the agreement. No indication was given that someone used threats, coercion, force, pressure or intimidation to cause him to enter into the agreement.³ Appellant stated numerous times that he entered into the Contractual Agreement and Irrevocable Waiver of Parole voluntarily and of his own free will. He further stated that he was satisfied with his attorneys' representation. The trial judge made a final inquiry to Appellant if he fully understood the ramifications of the agreement and that it was irrevocable. Appellant answered "yes, sir."

In sum, the record on appeal clearly demonstrates that Appellant's waiver was voluntarily, knowingly, and intelligently made. The Department made its final determination

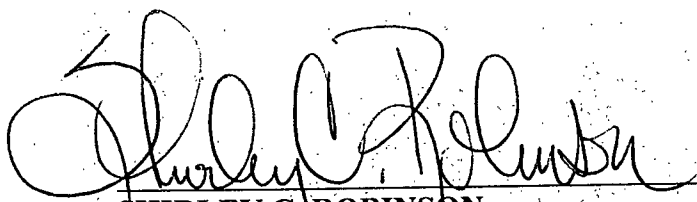
² Appellant indicated that he had been institutionalized for a mental problem for six months, but that it occurred so long ago that he did not remember any details. Appellant again stated that he understood the Contractual Agreement, did not have any questions about it, and agreed with the terms.

³ In his PCR Application, Appellant states that he was threatened and coerced into signing the Contractual Agreement by the Solicitor and both of his attorneys. However, Appellant's PCR application was dismissed, without adjudication on the merits, as Appellant filed the application outside of the statute of limitations period. Nonetheless, Appellant was given ample opportunity to inform the trial judge during the sentencing hearing of any threats or coercion by the parties regarding the contractual agreement. He did not do so.

that Appellant may not be considered for parole on his current life sentence based upon the clear and unambiguous terms of his negotiated sentence and the Contractual Agreement. Pursuant to that Agreement, the State is prohibited from seeking to execute Appellant, and Appellant is prohibited from seeking parole. Both parties received a benefit from the bargain. Accordingly,

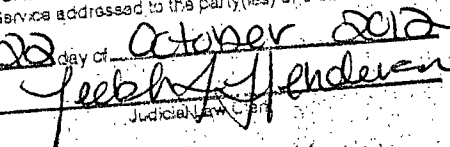
IT IS THEREFORE ORDERED that the Department's decision to permanently deny parole eligibility to Appellant is **AFFIRMED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

October 22nd, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date
served this order in the above entitled action upon all
parties to this cause by depositing a copy hereof,
in the United States mail, postage paid, or in the interagency
Mail Service addressed to the party(ies) or their attorney(s).

This 22 day of October, 2012
By: 
Judicial Law Clerk

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THE STATE OF SOUTH CAROLINA
Administrative Law Court

11-ALJ-15-0035-AP

DALLAS FERRELL #239855,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

BRIEF OF APPELLANT

FILED

OCT 18 2011

SC ADMIN. LAW COURT

TOMMY A. THOMAS
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ATTORNEY FOR APPELLANT

STATEMENT OF THE ISSUE ON APPEAL

1. Whether the Appellant's liberty interest in being granted the right to seek parole was violated when the Department of Probation, Parole and Pardon Services denied him access to parole based upon an "Irrevocable waiver of parole" and "Contractual Agreement Waiving all right to parole" signed by the Appellant.
2. Whether the Appellant is entitled to the statutory right to seek parole consideration as said agreement is not a valid waiver of his right to seek parole.

STATEMENT OF THE CASE

The Appellant was tried by Jury in Florence County. He was found guilty of Murder, Conspiracy, four counts of Criminal Sexual Conduct, House Breaking and Arson. On April 2, 1983, following the guilty phase of the trial, the Jury recommended and the Court imposed the sentence of death.

The Appellant filed a Direct Appeal. The South Carolina Supreme Court remanded the case to the Circuit Court for the purpose of conducting another sentencing hearing. Said hearing was to determine the punishment to be imposed for the Murder conviction.

Prior to the convening of a second sentencing hearing, the Appellant negotiated a sentence of life rather than risk the return of another death sentence. As a result of these negotiations the appellant entered into a "contractual agreement waiving all right to parole". On May 20, 1997, the Appellant signed a document captioned "irrevocable waiver of parole". The "Contractual agreement waiving all rights to parole" was signed by Dallas Ferrell, the Appellant, Dudley Saleeby, Jr., Solicitor, Carl N. Lundberg, Counsel for Probation, Parole and Pardon Services, Richard W. Strobel and Darryl J. Corbin, Attorney's for Mr. Ferrell. Both of these documents were filed with the Court on May 20, 1997.

Pursuant to the Contractual Agreement, the Appellant acknowledged that he would be eligible for parole in twenty (20) years from the date of his initial imprisonment on the Murder charge. But because of his agreement, he would be denied parole after he becomes eligible for the rest of his life.

The agreement additionally states that the Appellant would never apply for, nor accept a Pardon for the offense of Murder and that the Appellant waives any claim of double jeopardy regarding the sentencing proceeding being reimposed should he breach the contractual agreement.

On June 30, 1998, an Application for Post Conviction Relief was filed alleging ineffective assistance of counsel, involuntary guilty plea and double jeopardy violation. The issues were not heard on the merits. The case was dismissed on the State's Motion as being outside of the Statute of limitations, by order of the Court on July 11, 2000, The Honorable James E. Brogdon, Jr., presiding.

On May 5, 2010, through his attorney Tommy Thomas, an inquiry was made with the South Carolina Department of Probation, Parole and Pardon Services requesting that he be considered for parole.

By letter dated May 16, 2011, the South Carolina Department of Probation, Parole and Pardon Services indicated that in the opinion of the Department, the Appellant "was not and should not be considered for parole."

A timely Notice of Appeal was filed. The Appeal follows:

ARGUMENT

a) Whether the Appellant's liberty interest in being granted the right to seek parole was violated when the Department of Probation, Parole and Pardon Services denied him access to parole based upon an "Irrevocable waiver of parole" and "Contractual Agreement Waiving all right to parole" signed by the Appellant.

In this matter, the Appellant is seeking to be considered for Parole. The Appellant has never been considered and is not appealing a denial of the Board after a full hearing. The Appellant does have a liberty interest and stake in this matter. In Al-Shabazz v. State, 338 S.C. 354, 527 S.E. 2d 742 (2000) the Court held that an inmate may seek review of a final decision in an administrative matter pursuant to the administrative procedures act. The Court found that such an action will insure due process which consists of Notice, a Hearing, and Judicial Review.

The Administrative Law Court has jurisdiction in the case presented. The permanent denial of parole eligibility implicates a liberty interest sufficient to require at least minimal due process and thus review by the Administrative Law Court. Furtick v. South Carolina Department of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2003). The Court has determined that an Inmate has the right of review after a final decision that he is ineligible for parole. Sullivan v. S.C. Department of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003). Therefore, the Court has proper jurisdiction in this case.

b) Whether the Appellant is entitled to the statutory right to seek parole consideration as said agreement is not a valid waiver of his right to seek parole.

The legal research in this case indicates that there are no direct cases that consider an inmate's waiver of parole eligibility. However, there are a number of cases that do address the issues of waiver of the right to appeal as well as waiver of the right to seek Post Conviction Relief. There appears to be two categories of case law discussing the validity of an individual's waiver of certain rights. One is the Defendant's waiver of Appellate and PCR rights in Capital cases and second the waiver of Post Conviction Relief in a non-capital case.

The Appellant's case is significant in the fact that Mr. Ferrell was initially sentenced to death and the sentence was later over turned by the South Carolina Supreme Court. This case was remanded back for a second hearing regarding the penalty phase.

The Court has addressed in State v. Downs 369 S.C.55, 631 S.E.2d 79 (2006), the issue of waiver of Appellate rights in death penalty cases and has reached the conclusion that a waiver is valid as long as it meets two prongs. The Court found that the standard for determining whether an appellant or PCR applicant is competent to waive the right to a direct appeal or PCR includes a cognitive prong and an assistance prong under Singleton v. State, 313 SC 75, 437 S.E.2d 53 (1993). Failure of either prong is sufficient to find that the waiver was not freely, voluntarily, knowingly and intelligently given, Downs Supra.

The Court in Reed v. Ozmidt, 374 S.C. 19, 647 S.E. 2d 209 (2007), addresses the issue of the waiver of an appeal of a Post Conviction Relief decision in a capital case. The Court, in reference to Singleton, sets forth the following standard to determine competency to waive the right to a direct appeal or Post Conviction Relief. The first prong is the cognitive prong which can be defined as: whether a convicted defendant can understand the nature of the proceedings, what he was tried for, the reason for the punishment, or the nature of the punishment. The second prong is the assistance prong which can be defined as: whether the convicted defendant possesses sufficient capacity or ability to rationally communicate with counsel.

The Court has considered waiver of a Defendant's Post Conviction Relief rights in a non-death penalty case, in the case of Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008). The Court concluded that a waiver given in conjunction with a plea must be knowingly, voluntarily, intelligently and freely given. The court in making its determination that the Petitioner made his waiver knowingly, voluntarily and intelligently looked beyond the plea colloquy. The Court

additionally looked at the particular facts and circumstances of the case, including: 1) The background, experience and conduct of the accused, 2) the text of the plea agreement, and 3) the transcript of the plea hearing. The Court has in capital cases noted that although they recognized that the Circuit court Judge who saw and heard the witness is in a better position to evaluate their credibility they are not bound by the Circuit Courts findings or rulings. Reed (Supra).

In the Contractual Agreement at hand, the document states that Dallas Ferrell signed the Contractual Agreement acknowledges and attests to the following:

- a. That he is mentally and legally competent.
- b. He has full understanding of the terms and provisions of the Contractual Agreement.
- c. He has read the Contractual Agreement in detail.
- d. He has had ample opportunity to discuss and has discussed at length the terms and provisions of this agreement with his attorneys.
- e. That he understands that the provisions of the contractual agreement are permanent and irrevocable, such that he should never be entitled to apply for parole, be given the consideration for parole or be granted parole.
- f. That he understands that the provisions of the contractual agreement are permanent and irrevocable, such that he shall never apply for a pardon or accept a pardon.
- g. That it is the purpose and intent of this contractual agreement that Dallas Ferrell live the remainder of his natural life in a correctional facility in a secure confinement.

While the Appellant acknowledges that the agreement appears to be all encompassing, there also appears to be evidence that the Appellant's waiver of parole was not freely and voluntarily given. In the Plea transcript before the Honorable Paul M. Burch on May 20, 1997, reference is made to the Appellant's diagnosis and treatment for a mental illness.

"THE COURT: Have you ever been institutionalized for any mental problem?

MR. FERRELL: Yes, sir.

THE COURT: Tell me about it.

MR. FERRELL: I was in the Medical University Hospital in Charleston for six months. They said I was schizophrenic.

THE COURT: All right, and when was that?

MR. FERRELL: It's been so long ago, I don't even remember.

THE COURT: All right. Since you have been incarcerated, have you had any treatment for any mental condition?

MR. FERRELL: No, sir." (Plea Transcript pg 7, Lines 2-15.)

In addition, the Appellant in his Post Conviction Relief Application attached a statement to question #10. The Appellant states:

"During my second sentencing I was many times threatened by the solicitor of Florence, SC. I was told in the presence of my Attorney's (Richard W. Strobel and Darryl Corbin) that if I did not sign this contractual agreement, I would be placed back on death row. I had already spent (11) years of my life on death row, constantly in fear of my life. I did not want to go back. There were discrepancies in my first sentencing in which my rights was infringed. It was Court Ordered that I be resentenced. Due to the Double Jeopardy laws, the solicitor's office could not reseek the death sentence. At the time I entered into this ... said agreement, I was

unaware of these laws. My lawyers were present but did not make me aware of the Double Jeopardy Laws of the United States. They did just the opposite. They advised me to sign the Agreement. I was scared and coerced into this agreement. I will go further to say I feel there was a conspiracy set forth against me between the Public Defender's Office and the Solicitor's Office of Florence County, SC. There is no denying insufficient council on the part of the Public Defender's Office. I am attaching the Aforesaid contractual agreement hereto as proof of my allegations set forth in this statement."

For the foregoing reasons and based upon the record:

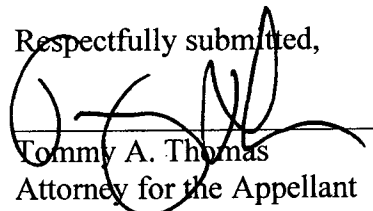
The Appellant would submit that:

- 1) The Court has jurisdiction to hear this matter.
- 2) That there exists evidence that the appellant was not competent to enter into the contractual agreement waiving all right to parole and irrevocable waiver of parole.
- 3) That the issue of competency was not resolved by the Lower Court.
- 4) That the contract and waiver were not entered into voluntarily, knowingly, intelligently and freely.
- 5) That there is evidence to support the finding that the two prongs of cognitive and assistance fail and that the failure of one or both prong would require a finding that the waiver and contract were not freely, voluntarily, knowingly and intelligently given.
- 6) That the Court must look beyond just the Plea transcript and signed documents. The Court must look at the particular facts and circumstances of the case including 1) The background, experience and conduct of the accused, 2) the text of the plea agreement, and 3) the transcript of the plea hearing.

CONCLUSION

That the Court has proper jurisdiction to hear this matter and that the Appellant is entitled to an Order of the Court directing that the South Carolina Department of Probation, Parole and Pardon Services schedule the Appellant for a parole hearing.

Respectfully submitted,



Tommy A. Thomas
Attorney for the Appellant

October 18, 2011

THE STATE OF SOUTH CAROLINA
Administrative Law Court

11-ALJ-15-0035-AP

DALLAS FERRELL #239855,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Attorney for Appellant certify that I have served the Brief of Appellant and Motion to Supplement the Record on Appeal on Benjamin Aplin, Legal Counsel for the South Carolina Department of Probation, Parole and Pardon Services on October 18, 2011 by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

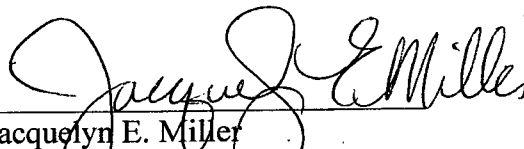
Benjamin Aplin, Esq.
Legal Counsel
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FILED

OCT 18 2011

SC ADMIN. LAW COURT

October 18, 2011


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STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 11-ALJ-15-0035-AP

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

DALLAS FERRELL, #239855, ... APPELLANT

v.

SOUTH CAROLINA DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES, ... RESPONDENT

BRIEF OF RESPONDENT

J. Benjamin Aplin
Assistant Chief Legal Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

ATTORNEY FOR THE RESPONDENT

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<u>State v. Chaffee</u> , 285 S.C. 21, 328 S.E.2d 464 (1984)	2,3,4
<u>State v. Dingle</u> , 376 S.C. 643, 659 S.E.2d 101 (2008)	7
<u>State v. Thrift</u> , 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994)	6

STATUTES

S.C. Code Ann. § 17-27-20 to -50 (2003)	7
S.C. Code Ann. §§ 16-3-20 & 24-21-610 to -670 (2007)	7

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether Respondent (the Department) properly declined Appellant's request to be considered for parole where Appellant irrevocably waived parole consideration as part of a negotiated plea with the State, and where Appellant received the benefit of his bargain?

RESPONDENT'S STATEMENT OF THE CASE

Appellant and his co-defendant, Jonathan Chaffee, were indicted for the offenses of criminal conspiracy, murder, criminal sexual conduct in the first degree (four counts), armed robbery, larceny, housebreaking, and arson. At the first phase of a bifurcated trial, both were found guilty on all counts except armed robbery. At the second phase of the bifurcated trial, the jury found that both should die by electrocution on the murder count. On April 2, 1983, the jury unanimously recommended a sentence of death based finding the statutory aggravating circumstances of rape, housebreaking, and physical torture, beyond a reasonable doubt. On the same day, the Honorable James M. Morris found as an affirmative fact that the evidence on the case warrants the imposition of the Death Penalty and that its imposition is not a result of prejudice, passion or any other arbitrary factor. Judge Morris then sentenced Appellant to death by electrocution in the manner provided by law. (R.p.13-p.17). Sentences for terms of years were imposed on the other counts.

Appellant and Chaffee filed direct appeals, and in a published opinion the South Carolina Supreme Court affirmed the convictions and death sentences. State v. Chaffee, 285 S.C. 21, 328 S.E.2d 464 (1984). In that opinion, the Supreme Court described the facts as follows:

At about 4 o'clock in the afternoon on May 10, 1982, Jonathan Chaffee, age 23, and Dallas Ferrell, age 24, went to the home in Florence of Mrs. Adele Baroody, an eighty-one year old widow, for the ostensible purpose of getting a drink of water. She allowed them to enter her home and supplied their needs; upon the arrival of her daughter-in-law, Mrs. Elizabeth Baroody, at the home the two men left. The daughter-in-law left shortly after their departure. Soon thereafter, the two men returned to the home and with the use of force entered through a door. Ferrell held a gun on Mrs. Baroody while Chaffee proceeded to disrobe and assault her. Through force, they carried her upstairs and onto a bed where both committed rape upon her body, both regularly and by way of the anus. They then strangled her by wrapping her own panty hose around her neck creating pressure with the "tourniquet." A mop handle was also rammed into her chest, and she was cut about the breasts with a broken light bulb. Her feet were tied to the

bed posts.

Thereafter, they stole property from the house and in order to destroy the evidence of their crimes set fire to the building and left. When neighbors saw smoke coming from the building, the fire department was called and arrived about 6 o'clock p.m. to extinguish the blaze.

The daughter-in-law of Mrs. Baroody gave to the police officers descriptions of the men she had seen in the home of Mrs. Baroody. Using these descriptions, they located both defendants in the vicinity and detained them.

Each of the defendants, on separate days and acting independently of each other, gave a video taped confession demonstrating in the home of Mrs. Baroody how they committed the crimes. The testimony of each, as included in the respective confessions, is consistent with the evidence supplied by other witnesses. The confession of each is also consistent with the other although each has some details not included by the other. The convictions are based in large measure on these two confessions. Neither testified at either stage of the trial.

Chaffee at 24-25, 328 S.E.2d at 465.

Following affirmance of their convictions and sentences on direct appeal, State v. Chaffee, 285 S.C. 21, 328 S.E.2d 464 (1984), cert. denied, 471 U.S. 1009, 105 S.Ct. 1878, 85 L.Ed.2d 170 (1985), Chaffee and Ferrell each sought post-conviction relief. While their post-conviction relief applications were pending, the United States Supreme Court decided Skipper v. South Carolina, 476 U.S. 1, 106 S.Ct. 1669, 90 L.Ed.2d 1 (1986), holding that the exclusion of evidence of adjustability to life in prison violated the constitutional principles established in Lockett v. Ohio, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) and Eddings v. Oklahoma, 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982). After denial by the Circuit Court of post-conviction relief, the Supreme Court granted writs of certiorari to consider the contentions of both defendants. The Court held that denial of right to present evidence of adaptability to prison life in capital murder case was unconstitutional. It reversed the circuit

court and remanded the matter to the sentencing court for the sole and exclusive purpose of conducting another sentencing hearing to determine the punishment to be imposed for the crime of murder. Chaffee v. State, 294 S.C. 88, 362 S.E.2d 875 (1987).

Instead of risking another death sentence, Appellant and his attorneys negotiated a sentence of life imprisonment, which included a "Contractual Agreement Waiving all Rights to Parole." (R.p.6-p.11). On May 20, 1997, Appellant executed an "Irrevocable Waiver of Parole." (R.p.5). On the same day, in conjunction with the re-sentencing proceeding, the "contractual agreement" was executed and signed by: (1) Appellant, (2) Twelfth Circuit Solicitor Dudley Saleeby, Jr., (3) Appellant's defense attorneys, Richard W. Strobel and Darryl J. Corbin, and (4) the Department's Chief Legal Counsel, Carl Lundberg.

Appellant did not file a direct appeal from the re-sentencing proceeding. On June 30, 1998, however, he filed an Application for post-conviction relief (PCR) in the Florence County Court of Common Pleas. The State made its Return on March 9, 1999, and its Amended Return and Motion to Dismiss on December 11, 1999, requesting that the Application be summarily dismissed as barred by the statute of limitations. A hearing into the matter was convened on December 17, 1999, at the Florence County Courthouse before the Honorable James E. Brogdon, Jr. Appellant was present at the hearing and was represented by Henry Anderson, Jr., Esquire. The State was represented by Assistant Attorney General J. Benjamin Aplin.¹ In an Order dated July 11, 2000, the Court denied and dismissed the Application with prejudice because the Applicant failed to file within the time mandated by statute. (Supp.R.p.31-p.74).

¹ As indicated in the caption of this Brief, Mr. Aplin now serves as Assistant Chief Legal Counsel for the Department, and is the author of this Brief.

On May 5, 2011, Counsel for Appellant wrote a letter to Respondent (the Department) stating that Appellant wished to “exercise his right to parole.” In letter dated May 16, 2011, the Department notified Appellant that due to his contractual agreement waiving all rights to parole and his irrevocable waiver of parole, he would not be scheduled for parole consideration before the Parole Board. (R.p.3-p.4). Appellant timely served and filed a notice of appeal with the Administrative Law Court (ALC) (R.p.1), and on October 18, 2011, he submitted a Brief in support of his appeal. This Brief of Respondent follows.

ARGUMENT

The Department properly declined Appellant’s request to be considered for parole where Appellant irrevocably waived parole consideration as part of a negotiated plea with the State, and where Appellant received the benefit of his bargain.

The ALC’s jurisdiction to hear a final decision of the Department is derived from the decisions of the South Carolina Supreme Court in Al-Shabbaz v. State, 338 S.C. 354, 527 S.E.2d 724 (2000), and Furtick v. S.C. Dept. of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2002). In Al-Shabbaz, the Supreme Court created a new avenue by which inmates could seek review of some final decisions of a state agency in “non-collateral” matters related to a conviction or sentence. The Court held that inmate could appeal those final agency decisions to the ALC and ultimately to the Court of Appeals pursuant to the Appellate Court Rules. In Al-Shabbaz, the Court recognized that “these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed; and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits or

custody status.” Id., at 369.

The Court noted that the appealable final decision in Furtick arises in the latter manner, where an inmate alleges that the Department erroneously determined that he was not eligible for parole. The Court held that, in order to determine whether an inmate’s claim against the Department is entitled to review by the ALC under the procedures set forth in Al-Shabbaz, it is first necessary to determine whether the inmate has a liberty interest in gaining access to the Parole Board. Furtick, at 149. The Court determined that the “*permanent denial of parole eligibility*” by the Department, “implicates a liberty sufficient to require at least minimal due process.” Id. (emphasis in original). Here, since the Department’s final decision involves the permanent denial of parole eligibility, the Department agrees that the court has jurisdiction over this appeal.

As to the substantive claim, Appellant contends he is entitled to the statutory right to seek parole consideration because the irrevocable waiver of parole made as part of his negotiated plea with the State is not a valid waiver of his right to seek parole. He argues there is evidence to suggest Appellant was not competent to enter into the contractual agreement waiving parole, and that as a result the irrevocable waiver was not entered into voluntarily, knowingly, intelligently and freely. The Department disagrees and submits the Appeal should be denied and dismissed as without merit.

“A plea bargain rests on contractual principles,” and therefore, “each party should get the benefit of the bargain.” State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994). Thus, where a defendant’s waiver of rights is made voluntarily, knowingly, and intelligently, that waiver has been upheld. Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008) (affirming the

defendant's waiver of the right to appellate, post-conviction, and habeas review in exchange for the State's withdrawal of intent to seek the death penalty). Indeed, because a plea agreement can be faithfully enforced and specific performance promotes judicial economy, a waiver of rights as part of a plea agreement should be enforced. State v. Dingle, 376 S.C. 643, 659 S.E.2d 101 (2008). The right to apply for post-conviction relief is a statutory right. S.C. Code Ann. § 17-27-20 to -50 (2003). Likewise, the right to be considered for parole is a statutory right. S.C. Code Ann. §§ 16-3-20 & 24-21-610 to -670 (2007). In Spoone, the Supreme Court held the PCR court correctly enforced the defendant's waiver of both his constitutional and statutory rights where that waiver was knowing and voluntary. The same principle should apply to Appellant.

Here, despite the self-serving claims in Appellant's 1998 PCR Application, the evidence overwhelmingly demonstrates Appellant's waiver of parole was knowingly, freely, and voluntarily given. In his signed "Irrevocable Waiver of Parole," Appellant states that: "Being fully advised of my rights by my attorneys, I wish to make the following irrevocable waiver of parole consideration." He says he waives parole consideration so that he can serve the rest of his natural life within the penal system of the South Carolina Department of Corrections, acknowledges the waiver is irrevocable, that it is a knowing, intelligent, and voluntary decision made upon the advice of his attorneys, with a full understanding of the consequences. Appellant describes the bargain struck with the Solicitor and the Department, and references the contractual agreement executed along with the waiver. He asks the Parole Board not to consider him for parole at any time during his life, not to consider any request for parole consideration made on his behalf by any other person, and to enter into its official records that he is not eligible for parole. (R.p.5).

Next, in the "Contractual Agreement Waiving all Rights to Parole," Appellant explains he discussed the case with his attorneys, including his options and his rights, and that he "voluntarily and intelligently has decided to enter into the following Contractual Agreement with the Solicitor in consideration and exchange for the State's agreement not to seek the death penalty." He acknowledges and attests that: (a) he is mentally and legally competent; (b) he has a full understanding of the terms and provisions of the contractual agreement; (c) he has read the contractual agreement in detail; (d) he has had ample opportunity to discuss, and has discussed at length, the terms and provisions of the contractual agreement with counsel (e) he understands the provisions of the contractual agreement are permanent and irrevocable such that he shall never be entitled to parole, or be granted parole; (f) he understands the provisions of the contractual agreement are permanent and irrevocable and that he shall never apply for a pardon or accept a pardon; and (g) that it is the purpose and intent of the contractual agreement that he live the remainder of his natural life in a correctional facility in secure confinement. Counsel for Appellant also attest that to the best of their knowledge, Appellant fully understands the terms of the contractual agreement and has made a knowing, intelligent, and voluntary decision to enter into the contractual agreement after discussion with counsel such that Appellant has a full understanding of the consequences of his actions. (R.p.6-p.11).

Finally, both Appellant and his attorneys appeared before Judge Burch at a May 20, 1997, sentencing proceeding to formalize and seek judicial approval of the contractual agreement and the irrevocable waiver of parole. First, Richard Strobel explained that he read the documents with Appellant word by word, sentence by sentence, paragraph by paragraph, and explained the agreement to Appellant. Strobel said Appellant fully understood the agreement and wanted to

proceed. (Supp.R.p.3, line 13-p.4, line 10). Next, Daryl Corbin confirmed Strobel's comments. (Supp.R.p.4, lines 11-17). Then, Appellant was questioned by Judge Burch. He said he fully understood the charges he had been convicted of, and had reviewed the contractual agreement. Appellant said he was not under the influence of drugs, alcohol, or medication, and did not suffer from any condition, mental or physical, that could affect his judgment or understanding. He claimed he had been institutionalized for a mental problem for six months, but it was so long ago he did not really remember it, and provided no additional details. Appellant said he understood the contractual agreement, did not have any questions about it, and agreed with the terms.

Appellant sat with his attorneys and followed along with the Solicitor while the agreement was published for the record. Judge Burch paused periodically to ensure Appellant didn't have any questions. (Supp.R.p.6, line 3-p.17, line 6). Indeed, the court went line by line through paragraph 12 of the agreement, where Appellant had attested to his competency and understanding of the agreement. After each line, Appellant confirmed the statements were correct. (Supp.R.p.17, line 7-p.18, line 21). Mr. Strobel and Mr. Corbin also acknowledged their representations from the agreement. (Supp.R.p.18, line 22-p.19, line 7). Next the Solicitor and the judge worked through the same process with the irrevocable waiver. (Supp.R.p.19, line 8-p.22, line 16).

Appellant said nobody had made any promise, assurance, or inducement of any kind to induce him to enter the contractual agreement and waiver other than what was covered in the agreement. He said nobody had used threats, coercion, force, pressure or intimidation to cause him to enter the agreement. Appellant said he entered the contractual agreement and waiver voluntarily and of his own free will and accord, and wanted to go forward to execute the written

documents. He said he was satisfied with his attorneys' representation, that they had answered all of his questions, and had done everything he asked them to do in the case. (Supp.R.p.22, line 19-p.24, line 12). Judge Burch asked one last time if Appellant fully understood the ramifications of the agreement, and that it was irrevocable. Appellant answered "Yes, sir." (Supp.R.p.24, line 19-p.25, line 4). Appellant, his attorneys, and the Solicitor then executed the Contractual Agreement and the Irrevocable Waiver on the record. They each signed the contract and initialed each page. (R.p.6-p.11).

The Department submits this evidence shows Appellant made a free, knowing, and voluntary decision to irrevocably waive his right to parole. In fact, he signed a contract waiving that right. The Department made the final determination that Appellant may not be considered for parole on his current life sentence based on the clear and unambiguous terms of his negotiated sentence and the "Contractual Agreement Waiving all Rights to Parole." Pursuant to that contractual agreement, the State is prohibited from seeking to execute Appellant, Appellant is prohibited from seeking parole, the Department is prohibited from scheduling Appellant for a parole hearing, and the Parole Board is prohibited from considering Appellant for parole on his current life sentence. Appellant received the benefit of this bargain. As the Supreme Court held in *Spoone* in regard to the PCR court, the Department submits this Court should enforce the waiver and dismiss this appeal. Therefore, the Department submits the decision to permanently deny parole eligibility should be affirmed.

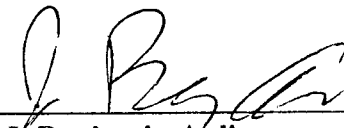
CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests that the final decision of the South Carolina Department of Probation, Parole and Pardon Services be affirmed.

Respectfully submitted,

J. Benjamin Aplin
Assistant Chief Legal Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

BY: 

J. Benjamin Aplin
Assistant Chief Legal Counsel

Columbia, South Carolina
November 7, 2011

THE STATE OF SOUTH CAROLINA
Administrative Law Court

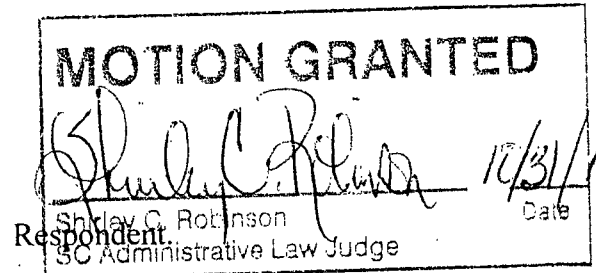
11-ALJ-15-0035-AP

DALLAS FERRELL #239855,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,



MOTION TO SUPPLEMENT THE RECORD ON APPEAL

That the Appellant, through Counsel, would respectfully request that he be allowed to supplement the Record on Appeal as follows.

1. That Counsel for the Appellant has been searching for copies of the transcript of record from the May 20, 1997 plea and sentencing of the Appellant, Dallas Ferrell. That upon inquiry through Court Administration, counsel was informed that Betty S. Gum was the Court Reporter in this plea and that Ms. Gum has retired and that all her records have been destroyed. Therefore the transcript of this plea and sentencing was not available.
2. That upon further inquiry, copies of certain documents were located at the South Carolina Supreme Court. The following records were found:
 - a. Plea transcript dated May 20, 1997.
 - b. Application for Post Conviction Relief.

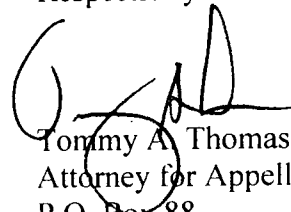
FILED

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SC ADMIN. LAW COURT

- c. State's Return.
 - d. Amended Return and Motion to Dismissed.
 - e. Post Conviction Relief Hearing transcript.
 - f. Order of Dismissal.
 - g. Clerk of Court Records.
 - h. South Carolina Department of Corrections Record.
3. That upon review of these documents, Counsel for Appellant has determined that the following documents should be added to the Appeal:
- i. Trial Transcript dated May 20, 1997
 - ii. Application for Post Conviction Relief.
 - iii. Return.
 - iv. Amended Return and Motion to Dismiss
 - v. Order of Dismissal.
4. Counsel for the Appellant is informed and believes that these documents are necessary for the Court to have all the information before it and crucial to make a full and complete ruling in this matter.

Respectfully submitted,


 Tommy A. Thomas
 Attorney for Appellant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

October 18, 2011

CERTIFICATE OF SERVICE
 (This is to certify that the undersigned has this date
 served the above captioned motion upon all
 parties to this cause by depositing a copy thereof
 in the United States mail, certified mail, or by the overnight
 Mail Service addressed to the party(ies) or their attorney(ies).
 This 31 day of October 2011
 By: Jeckin Henderson
 Local Law Clerk

FILED

OCT 31 2011

SC ADMIN. LAW COURT

1 STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
2 COUNTY OF FLORENCE) 83-GS-21-27
3

4 The State of South Carolina,)
5 Plaintiff,)
6 -VS-) TRANSCRIPT OF RECORD
7 Dallas Ferrell,)
8 Defendant.)
9

10 May 20, 1997
11 Marion, South Carolina

12 B E F O R E:

13 HONORABLE PAUL M. BURCH, Judge.
14

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

16 DUDLEY SALEEBY, JR., Esquire
17 Office of the Solicitor
18 City-County Complex, Room 1101
19 180 N. Irby Street, MSC-Q
20 Florence, South Carolina 29501
21 Attorney for the State

22 RICHARD W. STROBEL, Esquire
23 P. O. Box 349
24 Florence, South Carolina 29503
25 AND

DARYL J. CORBIN, Esquire
P. O. Box 447
Florence, South Carolina 29503-0447
Attorneys for the Defendant

BETTYE S. GUM
OFFICIAL REPORTER

1 THE COURT: Okay, Solicitor, State versus
2 Ferrell?

3 MR. SALEEBY: That's correct. Your Honor, if
4 it please the Court, the matter before you is
5 captioned Florence County Indictment Number 83-GS-21--
6 27, the State against Dallas Ferrell. He stands here
7 with his Court-appointed counsel, Mr. Richard Strobel
8 and Mr. Daryl Corbin.

9 His purpose in appearing in front of you is to
10 formalize and have judicial approval if he continues
11 to go through with a contractual agreement which will
12 waive his rights to parole on that Indictment Number
13 83-GS-21-27, and also a separate irrevocable waiver of
14 parole addressed to the South Carolina Board of
15 Probation, Parole and Pardon Services.

16 He executes this and the Court approves the
17 procedure, then the re-sentencing hearing that was
18 mandated by our Supreme Court when they remanded the
19 decision on post conviction relief would be suspended
20 and we would not go through that second procedure
21 seeking the death penalty and Mr. Ferrell in essence
22 is giving up his right to parole. This agreement
23 spells all that out in detail and Mr. Strobel and Mr.
24 Corbin have indicated to me that they've spoken with
25 Mr. Ferrell and he wants to do that, and I have spoken

1 with the victim's son and he is in agreement with
2 allowing this to proceed, and what I would suggest,
3 Your Honor, is that we examine Mr. Ferrell and his
4 counsel in detail on the record that this is, in fact,
5 what he wants to do and he does so voluntarily and
6 with consent and once the Court has approved that,
7 then we would allow the parties involved to sign the
8 document.

9 THE COURT: Okay. Who is lead counsel?

10 MR. STROBEL: I am.

11 THE COURT: Anything you'd like to put on the
12 record at this time?

13 MR. STROBEL: Your Honor, I have met privately
14 with Dallas Ferrell. I have read the agreement with
15 him fully, word by word, sentence by sentence,
16 paragraph by paragraph, explained it to him. He
17 seemed to know quite a bit since seventeen years
18 behind bars, but we questioned every part of it. He
19 understands it fully. He wants to do it. In fact, he
20 executed that intent in writing last week. I've had
21 him to read the documents himself to see if, in fact,
22 him reading it himself is exactly what I had read to
23 him. He's done so. He tells me that fully this is
24 what he wants to do and he is ready and willing to
25 execute the necessary documents today to fulfil his

1 and my understanding and the Court's understanding as
2 to what he is, in fact, doing.

3 He understands fully that he is giving up his
4 right to be tried by a jury to determine what
5 punishment he is to have and he fully understands that
6 he would have to remain in prison for the rest of his
7 natural life, never seeking parole or probation and
8 fully understanding this, he wants to execute the
9 necessary documentation that would express this
10 agreement that he is willing to enter into.

11 THE COURT: Mr. Corbin, anything you'd like to
12 put on the record at this time?

13 MR. CORBIN: Your Honor, I was present during
14 the time Mr. Ferrell did examine the agreement and Mr.
15 Strobels did explain the contents to him. Mr. Ferrell
16 did acknowledge he wants to proceed with the terms of
17 that particular agreement.

18 THE COURT: Okay. All right, Mr. Ferrell,
19 good morning to you.

20 MR. FERRELL: Good morning, sir.

21 THE COURT: I'm Paul Burch and I'm a Circuit
22 Judge for the Fourth Circuit, but I've been assigned
23 to Marion County this particular week and I have been
24 assigned to handle your matter by the Chief Justice of
25 the Supreme Court. I appreciate you appearing here

1 this morning and I appreciate you working with your
2 attorneys in regards to this matter, and I need to ask
3 you a few questions, okay?

4 MR. FERRELL: Yes, sir.

5 THE COURT: I need to know your age.

6 MR. FERRELL: Thirty-eight.

7 THE COURT: I need your education.

8 MR. FERRELL: Seventh grade.

9 THE COURT: I understand that you have been
10 incarcerated now about seventeen years?

11 MR. FERRELL: Yes, sir.

12 THE COURT: What was your occupation before
13 incarceration?

14 MR. FERRELL: Mostly construction labor.

15 THE COURT: And where are you from?

16 MR. FERRELL: Florence.

17 THE COURT: All right. I understand that
18 you're before the Court for -- it's a fairly unique
19 thing that we have before the Court here and what we
20 are discussing is a contractual agreement in effect
21 waiving all rights to parole. I think as the
22 Solicitor explained, you were convicted of murder.
23 You received a death sentence. The conviction was
24 affirmed. However, the sentence was reversed and
25 remanded back to the Circuit Court for a hearing.

1 Is that your understanding?

2 MR. FERRELL: Yes, sir.

3 THE COURT: All right. You fully understand
4 the charges that you have been convicted of and you
5 have reviewed this contractual agreement with your
6 attorneys?

7 MR. FERRELL: Yes, sir.

8 THE COURT: Are you under the influence of any
9 drugs ---

10 What was that? If somebody is that sleepy
11 you've got to yawn out loud, we'll find a place for
12 you to sleep. This is a very important matter I'm
13 taking up, up here, and that kind of behavior is
14 totally uncalled for. Sheriff, if you catch anybody
15 doing that, bring them before me.

16 I apologize for that.

17 Are you presently under the influence of any
18 drugs, alcohol or medication?

19 MR. FERRELL: No, sir.

20 THE COURT: All right. You are not on any
21 type of prescribed medication?

22 MR. FERRELL: No, sir.

23 THE COURT: Do you suffer from any condition,
24 mental or physical, that could be affecting your
25 understanding or judgment at this time?

1 MR. FERRELL: No, sir.

2 THE COURT: Have you ever been
3 institutionalized for any mental problem?

4 MR. FERRELL: Yes, sir.

5 THE COURT: Tell me about it.

6 MR. FERRELL: I was in the Medical University
7 Hospital in Charleston for six months. They said I
8 was schizophrenic.

9 THE COURT: All right, and when was that?

10 MR. FERRELL: It's been so long ago, I don't
11 even remember.

12 THE COURT: All right. Since you have been
13 incarcerated, have you had any treatment for any
14 mental condition?

15 MR. FERRELL: No, sir.

16 THE COURT: Concerning this negotiated
17 contractual agreement, I ask you now do you understand
18 it?

19 MR. FERRELL: Yes, sir.

20 THE COURT: Do you have any questions about
21 it?

22 MR. FERRELL: No, sir.

23 THE COURT: Do you agree with the terms?

24 MR. FERRELL: Yes, sir.

25 THE COURT: All right. To make sure we meet

1 all requirements, especially -- I believe it was the
2 Thrift case, and just to make sure there's not any
3 questions about it, Solicitor, I'm gonna ask you at
4 this time if you would to publish the contractual
5 agreement, stopping at the various paragraphs that you
6 see fit to stop at to ask if there's any questions he
7 may have. Would you do that for me?

8 MR. SALEEBY: Judge, while I was doing that,
9 would it be permissible with the Court if the
10 Defendant and his counsel could sit there and look at
11 their copy of it so that they can follow along as I
12 read it?

13 THE COURT: Yes, sir. If y'all want to take
14 the table and pull those chairs around, that would be
15 fine.

16 MR. STROBEL: I'm fine, Your Honor.

17 THE COURT: All right. Okay.

18 MR. SALEEBY: Your Honor, I publish this into
19 the record and I will start with State of South
20 Carolina, County of Florence, In The Court of General
21 Sessions, Indictment Number 83-GS-21-27, the State
22 versus Dallas Ferrell, Defendant. "Contractual
23 Agreement Waiving All Rights To Parole."

24 "Background. This document is a contractual
25 agreement between Dallas Ferrell, the Defendant in the

1 above captioned case, Dudley Saleeby, Jr., Solicitor
2 of the Twelfth Judicial Circuit, and his successors in
3 said office.

4 Dallas Ferrell understands that he was tried
5 on the above captioned indictment and was found guilty
6 of the crimes of murder, conspiracy, criminal sexual
7 conduct, four counts, grand larceny, housebreaking,
8 and arson. At the guilt phase of said trial, the jury
9 recommended and the Court imposed the sentence of
10 death. As to the other counts on the indictments,
11 which guilty verdicts were returned, the Court
12 sentenced the Defendant to separate terms of years
13 totaling a hundred and forty-five years to be
14 conserved -- served consecutive to each other and to
15 the murder sentence.

16 By decision of the South Carolina Supreme
17 Court, this matter has been remanded to the Circuit
18 Court for the sole and exclusive purpose of conducting
19 another sentencing hearing to determine the punishment
20 to be imposed on Dallas Ferrell for the crime of
21 murder.

22 Dallas Ferrell has discussed this case with
23 his counsel, Richard W. Strobels and Daryl J. Corbin.
24 Dallas Ferrell understands that if the State were to
25 proceed to seek the death penalty on the murder

1 charge, a jury would be impaneled to decide his
2 sentence. He understands that this jury could impose
3 the death penalty. He is also aware that the jury
4 could sentence -- impose the sentence of life
5 imprisonment and that if the jury were unable to agree
6 regarding punishment, the Court would sentence him to
7 life imprisonment.

8 After having discussed his Constitutional
9 rights and his alternatives with his counsel, Dallas
10 Ferrell freely, voluntarily and intelligently has
11 decided to enter into the following contractual
12 agreement with the Solicitor in consideration and
13 exchange for the State's agreement not to seek the
14 death penalty."

15 I would stop there, sir, in case anything ---

16 THE COURT: Anything questions whatsoever ---

17 MR. FERRELL: No, sir.

18 THE COURT: --- to the point that we have come
19 to?

20 MR. FERRELL: No, sir.

21 THE COURT: Are you sure?

22 MR. FERRELL: Yes, sir.

23 THE COURT: You fully understand all that?

24 MR. FERRELL: Yes, sir.

25 THE COURT: All right. At any time you may

1 have a question, let me know or at least tug on your
2 attorney's sleeve and let him know, okay?

3 MR. FERRELL: Yes, sir.

4 THE COURT: All right.

5 MR. SALEEBY: "Agreement. Paragraph 1.
6 Dallas Ferrell understands that he stands convicted of
7 the crime of murder as a result of a jury verdict
8 rendered on March 30, 1983. He stipulates with the
9 Solicitor to the fact that the following aggravating
10 circumstances as defined by Section 16-3-20(c)(a)(1)
11 have been established in this case. Quote, 'The
12 offense of murder of Adell Baroody was committed while
13 Dallas Ferrell was engaged in the commission of the
14 crimes of housebreaking (now designated burglary) and
15 rape (now designated as criminal sexual conduct).'"
16 Judge, you want me to proceed unless there's a
17 question?

18 THE COURT: Any question at this time?

19 MR. FERRELL: No, sir.

20 THE COURT: You may proceed.

21 MR. SALEEBY: "Paragraph 2. Dallas Ferrell as
22 part of this contractual agreement agrees to waive for
23 all time any right to contest the existence of these
24 aggravating circumstances. He understands that if he
25 should breach any provision of this contractual

1 agreement, he will not be allowed to contest the above
2 stipulated circumstances of aggravation at any future
3 judicial or administrative proceedings.

4 He further acknowledges that should he breach
5 this agreement, the State will have the right to
6 submit proof in support of additional aggravating
7 circumstances to include, but not limited to, physical
8 torture."

9 THE COURT: Any questions?

10 MR. FERRELL: No, sir.

11 MR. SALEEBY: "Paragraph 3. Dallas Ferrell as
12 part of this contractual agreement acknowledges that
13 he will be sentenced to life imprisonment on the
14 offense of murder. He acknowledges that he will be
15 eligible for parole in twenty years from the date of
16 his initial imprisonment on the murder charge, but
17 that because of this agreement, he will be denied
18 parole after he becomes eligible for parole for the
19 remainder of his life."

20 THE COURT: Any question?

21 MR. FERRELL: No, sir.

22 MR. SALEEBY: "In consideration and exchange
23 for the State's agreement not to seek the death
24 penalty at this time and to recommend a life sentence,
25 Dallas Ferrell agrees that he will never apply for,

1 accept parole, pardon, commutation of his sentence,
2 reprieve, or any other form of relief from life
3 imprisonment. In exchange for the State's agreement
4 to waive the seeking of the death penalty, the
5 undersigned Dallas Ferrell has executed a document
6 entitled 'Waiver of Parole,' a complete executed copy
7 which is attached hereto and made a part hereof and
8 designated as Exhibit A, with the understanding that
9 the original will be transmitted immediately to the
10 South Carolina Department of Probation, Parole and
11 Pardon Services upon the entry of sentence herein and
12 the commitment of the Defendant to the South Carolina
13 Department of Corrections.

14 In said document, as in this contractual
15 agreement, Dallas Ferrell completely and irrevocably
16 waives for all time any consideration for parole. The
17 undersigned Dallas Ferrell further agrees that he will
18 never request parole consideration and will never
19 agree to abide by the conditions of any parole should
20 it be offered to him.

21 He understands and accepts and agrees that
22 this means he will spend the remainder of his natural
23 life in the Department of Corrections and that he will
24 not be released for any reason at any time.

25 The undersigned Dallas Ferrell further agrees

1 that he will never apply for or accept a pardon for
2 the offense of murder."

3 THE COURT: Any question?

4 MR. FERRELL: No, sir.

5 THE COURT: You understand it fully to this
6 point?

7 MR. FERRELL: Yes, sir.

8 THE COURT: Okay.

9 MR. SALEEBY: Dallas Ferrell further agrees
10 that if he breaches any aspect of this agreement, he
11 shall immediately thereafter be returned to the
12 jurisdiction of the General Sessions Court of Florence
13 County for sentencing on the charge of murder. He
14 understands, acknowledges and agrees that in case of
15 such breach, (a) he shall be subject to the imposition
16 of the sentence of death, and (b) his stipulation of
17 the aggravating circumstances of housebreaking,
18 burglary and rape (criminal sexual conduct) shall be
19 fully established the same as if proven by competent
20 evidence."

21 Shall I go ahead?

22 THE COURT: Any questions?

23 MR. FERRELL: No, sir.

24 MR. SALEEBY: "Dallas Ferrell specifically
25 acknowledges that if he applies for consideration of

1 parole or signs any document agreeing to abide by
2 conditions of parole or any other form of release,
3 such action shall constitute a breach of this
4 contractual agreement and he shall be subject to being
5 re-sentenced in accordance with Paragraph 5 of this
6 contractual agreement. Any other breach of the terms
7 of this contractual agreement by Dallas Ferrell shall
8 also result in such re-sentencing.

9 The Solicitor specifically reserves the right
10 to seek the death penalty in the event of any breach
11 of this contractual agreement by Dallas Ferrell.

12 Dallas Ferrell expressly waives any possible
13 claim of double jeopardy regarding the sentencing
14 proceeding in the event of his breach of this
15 contractual agreement.

16 Dallas Ferrell affirmatively states and agrees
17 that the imposition of a life sentence is not
18 excessive, but is appropriate for the crime he
19 committed.

20 (10) The parties agree that the South
21 Carolina Department of Probation, Parole and Pardon
22 Services will note in their records, including those
23 stored electronically, that Dallas Ferrell has
24 irrevocably waived his right to be considered for
25 parole.

1 This agreement will constitute the basis for a
2 finding under Section 24-21-640, South Carolina Code
3 of Laws, 1976, as amended, that Dallas Ferrell will
4 never have circumstances that warrant parole and no
5 investigation or consideration regarding any parole
6 for Dallas Ferrell will ever be instituted.

7 The attorney for the South Carolina Department
8 of Probation, Parole and Pardon Services has read the
9 contractual agreement and affixed his signature to it
10 acknowledging that the South Carolina Department of
11 Probation, Parole and Pardon Services and the South
12 Carolina Board of Probation, Parole and Pardon
13 Services has received notice that Dallas Ferrell has
14 irrevocably waived his right to be considered for
15 parole."

16 **THE COURT:** Any question?

17 **MR. FERRELL:** No, sir.

18 **MR. SALEEBY:** "(11) Dallas Ferrell agrees
19 that Dudley Saleeby, Jr., Solicitor of the Twelfth
20 Judicial Circuit, and his successors in office, shall
21 have the right to enforce this contractual agreement
22 in accordance with the terms set out herein.

23 He agrees that the Solicitor, his successors
24 and assigns, shall also have the right to enforce the
25 contractual agreement by action for a specific

1 performance or injunctive relief in the sole
2 discretion of the said Solicitor.

3 He expressly waives any claim, defense or
4 contention that Dudley Saleeby, Jr., his successors or
5 assigns, is without standing or not a proper party to
6 bring such suit.

7 Paragraph Number 12. Dallas Ferrell, signing
8 the contractual agreement, acknowledges and attests to
9 the following: He is mentally and legally
10 competent" ---

11 THE COURT: Let's take that step by step.
12 Is that correct?

13 MR. FERRELL: Yes, sir.

14 THE COURT: All right.

15 MR. SALEEBY: "He has full understanding of
16 this (sic) terms and provisions of this contractual
17 agreement."

18 THE COURT: Correct?

19 MR. FERRELL: Yes, sir.

20 MR. SALEEBY: "He has read the contractual
21 agreement in detail."

22 MR. FERRELL: Correct.

23 THE COURT: All right.

24 MR. SALEEBY: "He has had ample opportunity to
25 discuss and has discussed at length the terms and

1 provisions of contractual agreement with his counsel."

2 MR. FERRELL: Yes, sir.

3 THE COURT: Okay.

4 MR. SALEEBY: "He understands that the
5 provisions of this contractual agreement are permanent
6 and irrevocable, such that he shall never be entitled
7 to apply for parole, be given consideration for parole
8 or be granted parole."

9 MR. FERRELL: Yes, sir.

10 MR. SALEEBY: "He understands the provisions
11 of this contractual agreement are permanent and
12 irrevocable and he shall never apply for a pardon or
13 accept a pardon."

14 THE COURT: Is that correct?

15 MR. FERRELL: Yes, sir.

16 MR. SALEEBY: "It is the purpose and intent of
17 this -- of his contractual agreement that Dallas
18 Ferrell live the remainder of his natural life in a
19 corrections facility in secure confinement."

20 THE COURT: Is that correct?

21 MR. FERRELL: Yes.

22 MR. SALEEBY: "Paragraph 13. Counsel for
23 Dallas Ferrell, by virtue of their signatures
24 subscribed below, attest that to the best of their
25 knowledge, Dallas Ferrell fully understands the terms

1 of this contractual agreement and he has made a
2 knowing, intelligent and voluntary decision to enter
3 into this contractual agreement after thorough
4 discussion with counsel such that he has a full
5 understanding of the consequences of his action."

6 MR. STROBEL: I do.

7 MR. CORBIN: I do.

8 MR. SALEEBY: And, Judge, there's a signature
9 line and then we have attached Exhibit A which is
10 captioned "Irrevocable Waiver of Parole." It's in
11 memo form as provided or as I was instructed or
12 advised to do by the Probation, Parole and Pardon
13 Services Agency. It's from Dallas Ferrell. The date
14 is blank. It would be filled in today, but it
15 provides as follows:

16 "Paragraph Number 1." They are not numbered,
17 but it's the first paragraph. "I understand that if
18 at some date in the future I would become eligible for
19 parole consideration, I also understand that I may
20 waive consideration for the parole privilege. Being
21 fully advised of my rights by my attorneys, I wish to
22 make the following irrevocable waiver of parole
23 consideration."

24 Second paragraph. "I, Dallas Ferrell, hereby
25 waive parole consideration so that I may serve the

1 rest of my natural life within the penal system of
2 South Carolina Department of Corrections. This waiver
3 is irrevocable. It is my knowing, intelligent and
4 voluntary decision to make this waiver and I make it
5 upon the advice of my attorneys and with the full
6 understanding of the consequences."

7 Do you want to examine him on that?

8 THE COURT: Any questions?

9 MR. FERRELL: No, sir.

10 THE COURT: You fully understand that?

11 MR. FERRELL: Yes.

12 MR. SALEEBY: The next paragraph. "I make
13 this waiver for the following reason: I have not
14 agree- -- I have agreed not to seek parole as part of a
15 plea agreement in my case. In exchange for my
16 agreement not to seek parole, the State has agreed not
17 to seek the death penalty for a murder that I have
18 been convicted of committing. See entire contractual
19 agreement between the Solicitor and me which is
20 attached to this waiver of parole.

21 It is my solemn obligation to abide by the
22 terms of the contractual agreement.

23 THE COURT: Do you understand that?

24 MR. FERRELL: Yes, sir.

25 MR. SALEEBY: "Furthermore, under the terms of

1 the contractual agreement, if I should request
2 consideration for the parole privilege, I will be in
3 breach of the contractual agreement and I am to be
4 immediately returned to the jurisdiction of the Court
5 of General Sessions for the Twelfth Judicial Circuit
6 for re-sentencing on the charge of murder. I would
7 then be subject to the death penalty on that charge."

8 THE COURT: Do you fully understand that?

9 MR. FERRELL: Yes, sir.

10 THE COURT: Okay.

11 MR. SALEEBY: I understand that the South
12 Carolina Department of Probation, Parole and Pardon
13 Services has the duty to consider all inmates for
14 parole. However, I waive my right to be considered
15 for parole now and at any time in the future. I have
16 given up that right as part of my contractual
17 agreement with the Solicitor and the South Carolina
18 Department of Probation, Parole and Pardon Services.

19 It is my understanding and intention that my
20 waiver of the right to request parole consideration be
21 absolutely irrevocable."

22 THE COURT: Any question about that?

23 MR. FERRELL: No, sir.

24 THE COURT: You fully understand it?

25 MR. FERRELL: (Nods in the affirmative.)

1 MR. SALEEBY: "Therefore, I ask the South
2 Carolina Board of Probation, Parole and Pardon
3 Services to take the following actions with regard to
4 the issue of my parole eligibility: (1) Not to
5 consider me for parole at any time during my life; (2)
6 Not to consider any request of parole consideration
7 made on my behalf by any other person; (3) To
8 specifically enter into your official records that I
9 am not eligible for parole; (4) To notify the
10 Solicitor of the Twelfth Judicial Circuit of the State
11 of South Carolina immediately if I should breach any
12 of the terms of the attached contractual agreement."

13 THE COURT: Any questions?

14 MR. FERRELL: No, sir.

15 THE COURT: You understand it in full?

16 MR. FERRELL: Yes, sir.

17 THE COURT: All right. Let me go a little
18 further here.

19 Has anybody made any promise to you of any
20 kind to cause or induce you to enter into this
21 contractual agreement and waiver other than what was
22 covered in the agreement?

23 MR. FERRELL: No, sir.

24 THE COURT: Has anybody made any assurances to
25 you of any kind to cause you to enter into this

1 agreement and waiver other than what is covered in the
2 agreement?

3 MR. FERRELL: No, sir.

4 THE COURT: Has anybody made any inducement to
5 you of any kind to cause you to enter into this
6 contractual agreement and waiver other than what is
7 covered in the actual agreement?

8 MR. FERRELL: No, sir.

9 THE COURT: Has anybody used any threats,
10 coercion, force, pressure or intimidation to cause you
11 to enter into this contractual agreement or waiver?

12 MR. FERRELL: No, sir.

13 THE COURT: Have you entered into this
14 contractual agreement and waiver voluntarily and of
15 your own free will and accord?

16 MR. FERRELL: Yes, sir.

17 THE COURT: All right, and knowing all these
18 things I've gone over now, I ask you do you wish to go
19 forward and enter into this agreement and waiver and
20 execute it and sign it?

21 MR. FERRELL: Yes, sir.

22 THE COURT: I ask you now are you satisfied
23 with your attorneys' efforts, their representation in
24 this case?

25 MR. FERRELL: Yes, sir.

1 THE COURT: Any problem with their
2 representation, I want to hear it at this time?

3 MR. FERRELL: No, sir.

4 THE COURT: Have they answered all your
5 questions?

6 MR. FERRELL: Yes, sir.

7 THE COURT: Have they done everything that
8 you've asked them to do concerning this matter?

9 MR. FERRELL: Yes, sir.

10 THE COURT: If you can think of any problem
11 whatsoever, I want to hear it at this time.

12 MR. FERRELL: I can't think of any.

13 THE COURT: Okay. Gentleman, can you think of
14 anything that the Court may have overlooked that I
15 need to inquire in?

16 MR. SALEEBY: No, sir.

17 MR. STROBEL: No, sir.

18 MR. CORBIN: No, sir.

19 THE COURT: Any questions?

20 MR. FERRELL: No, sir.

21 THE COURT: Now is the time. You fully
22 understand the ramifications of this agreement?

23 MR. FERRELL: Yes, sir.

24 THE COURT: It's irrevocable. There's no
25 coming back to it. You understand?

1 MR. FERRELL: (Nods in the affirmative.)
2 THE REPORTER: He nodded yes.
3 THE COURT: You need to answer.
4 MR. FERRELL: Yes, sir.
5 THE COURT: Okay, thank you.
6 All right, let me have just a second, please.
7 All right. Madam Clerk, who has the original?
8 MR. SALEEBY: Right here, sir.
9 THE COURT: Solicitor, if you will hand the
10 original to Madam Clerk and come around and have Mr.
11 Ferrell execute the document along with all the
12 attorneys involved.
13 MR. SALEEBY: Are you gonna start with the
14 Exhibit first, Judge, which only requires his
15 signature?
16 THE COURT: That will be the very last page.
17 We need Mr. Dallas Ferrell to execute that before you,
18 Madam Clerk.
19 MR. SALEEBY: If you would, fill in the dates.
20 THE COURT: And that is the 20th of May.
21 MR. SALEEBY: Judge, in addition to the
22 signatures, if we could have all the parties initial
23 every page.
24 THE COURT: All right. How many -- do you
25 just want one executed?

1 MR. SALEEBY: Yes, sir, because I need to --
2 this needs to be sent to the Department of Probation
3 and Parole to have Mr. Lundburg sign, acknowledging
4 that he has received it, ---

5 THE COURT: Okay.

6 MR. SALEEBY: --- and then that is the copy
7 that will be filed and certified. I'll take care of
8 that.

9 THE CLERK: Can you sign the last page and
10 everybody initial it or ---

11 MR. SALEEBY: No, because that only calls for
12 his signature. That's next to the last page, and then
13 we've got ---

14 (Mr. Ferrell signs document.)

15 THE COURT: Mr. Ferrell executed the back
16 page, ---

17 MR. SALEEBY: Yes, sir.

18 THE COURT: --- the waiver of parole?

19 All right, we'll have him sign the next to the
20 last page where it says "Dallas Ferrell." That's the
21 actual contractual agreement.

22 (Mr. Ferrell signs document and places his
23 initials on document.)

24 THE COURT: We need Mr. Strobel to sign.

25 MR. SALEEBY: Richard, and then Daryl to sign

1 it and initial all the pages, and then me.

2 THE COURT: Let the record reflect that Mr.
3 Ferrell has executed both documents and now Mr.
4 Strobel is going to execute as his attorney, ---

5 (Mr. Strobel signs document and initials
6 document.)

7 THE COURT: --- as well as Mr. Corbin.

8 (Mr. Corbin signs document and initials
9 document.)

10 THE COURT: Now the Solicitor will be
11 executing.

12 (Mr. Saleeby signs document and initials
13 document.)

14 MR. SALEEBY: That's everybody but Mr.
15 Lundburg and that -- I'll see that it's shipped to him
16 for that purpose.

17 THE COURT: Okay.

18 All right, the next procedure we have to go
19 through is to complete the sentencing process, and
20 Madam Clerk, I will need a sentence sheet prepared.

21 Anything, Mr. Strobel?

22 MR. STROBEL: Dallas Ferrell has requested a
23 copy of the executed instrument. I would request Mr.
24 Saleeby when he gets Mr. Lundburg to sign, that he
25 would send a copy to me so I can forward same to him.

1 THE COURT: All right.

2 MR. SALEEBY: With any luck, Judge, if Mr.
3 Lundburg is in his office, we'll have somebody take it
4 to Columbia today, if he's there, ---

5 THE COURT: Okay.

6 MR. SALEEBY: --- and once that's done, then
7 it will be filed in the Clerk of Court's Office in
8 Florence County with the original indictment and then
9 I'll send at least two copies to Mr. Strobel.

10 THE COURT: If he would like a -- I guess we'd
11 call it a blind copy, if you'll take care of that.
12 You're welcome to copy mine.

13 MR. STROBEL: Well, I have that.

14 THE COURT: All right. Anything in regards to
15 the sentence?

16 MR. SALEEBY: No, sir.

17 MR. STROBEL: No, sir.

18 MR. CORBIN: No, sir.

19 THE COURT: Mr. Ferrell?

20 MR. FERRELL: No, sir.

21 THE COURT: Anything you'd like to say at this
22 time?

23 MR. FERRELL: No, sir.

24 THE COURT: Solicitor?

25 MR. SALEEBY: No, sir. The Agreement says it

1 THE COURT: All right.

2 MR. SALEEBY: With any luck, Judge, if Mr.
3 Lundburg is in his office, we'll have somebody take it
4 to Columbia today, if he's there, ---

5 THE COURT: Okay.

6 MR. SALEEBY: --- and once that's done, then
7 it will be filed in the Clerk of Court's Office in
8 Florence County with the original indictment and then
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10 THE COURT: If he would like a -- I guess we'd
11 call it a blind copy, if you'll take care of that.
12 You're welcome to copy mine.

13 MR. STROBEL: Well, I have that.

14 THE COURT: All right. Anything in regards to
15 the sentence?

16 MR. SALEEBY: No, sir.

17 MR. STROBEL: No, sir.

18 MR. CORBIN: No, sir.

19 THE COURT: Mr. Ferrell?

20 MR. FERRELL: No, sir.

21 THE COURT: Anything you'd like to say at this
22 time?

23 MR. FERRELL: No, sir.

24 THE COURT: Solicitor?

25 MR. SALEEBY: No, sir. The Agreement says it

1 all.

2 THE COURT: Okay. All right, the sentence for
3 the offense of murder is as follows: The Defendant,
4 Dallas Farrow (sic) -- wait a minute, wait a minute.
5 That's F E R R E L L.

6 THE CLERK: I'm sorry.

7 THE COURT: --- as follows: The Defendant,
8 Dallas Ferrell, is committed to the State Department
9 of Corrections to be imprisoned for a term of his
10 natural life.

11 All right.

12 MR. STROBEL: Thank you, sir.

13 MR. CORBIN: Thank you, Judge.

14 THE COURT: Thank you, gentleman.

15 MR. SALEEBY: Thank you, sir.

16 THE COURT: Thank you, Solicitor.

17 MR. SALEEBY: Appreciate it.

18 THE COURT: Good luck to you, sir.

19 CONCLUSION OF TRANSCRIPT OF RECORD.

20

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23

24

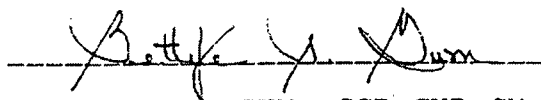
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF HORRY)
3

4 I, the undersigned Bettye S. Gum, Official
5 Court Reporter for South Carolina Court
6 Administration, do hereby certify that the foregoing
7 is a true, accurate and complete Transcript of Record
8 of all the proceedings had and evidence introduced in
9 the re-sentencing of the captioned case, relative to
10 appeal, in the Court of General Sessions for Florence
11 County, South Carolina.

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

15
16 October 12, 1999

17
18 
19 BETTYE S. GUM, CCR-CVR-CM

20 Official Reporter
21
22
23
24
25

STATE OF SOUTH CAROLINA

County of SUMTERDALLAS FERRELL #239855
Full name and prison number (if any) of Applicant.

vs.

SUMTER COUNTY
Name of Respondent.

In the Court of Common Pleas

98-CP-21-983

CERTIFIED; A TRUE COPY
APPLICATION FOR~~POST-CONVICTION RELIEF~~CLERK OF COURT, C.R. & G.S.
FLORENCE COUNTY, SC

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 it clear to which question any such continued answer refers.

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

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

- Place of detention EVANS CORR INST. CHERAW UNIT Room B-236
P.O. Box 29512-5202 BENNETTSVILLE S.C. 29512
- Name and location of Court which imposed sentence GENERAL SESSIONS SUMTER Co.
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - 83-GS-21-27 (MURDER - CRIMINAL CONSPIRACY -
 - CRIMINAL SEXUAL CONDUCT - 4 COUNTS - GRAND LARCENY -
 - HOUSE BREAKING.)
- The date upon which sentence was imposed and the terms of the sentence:
 - (ORIGINAL SENTENCE) APRIL 01 1993
 - RESENTENCE - MAY 20 - 1997 - THIS P.C.R. IS
 - RESTRAINED TO THE RESENTENCING STAGE.

STATEMENT IS AS FOLLOWS

FILED

 30 10 10 AM '98
 CLERK OF COURT
 FLORENCE COUNTY, SC

98-CP21-98B 32

THE FOLLOWING STATEMENT PERTAINS TO QUESTION # (4) OF MY APPLICATION FOR POST-CONVICTION RELIEF:

STATEMENT IS AS FOLLOWS:

I, DALLAS FERRELL WAS SENTENCED TO DEATH BY ELECTROCUTION ON THE DATE APRIL 01, 1983. MY SENTENCE WAS THEN UNDER DIRECT AUTO-MATIC APPEAL AS WITH ANY CASE CONCERNING CAPITAL PUNISHMENT AS A RESULT OF MY APPEAL THERE WERE DISCREPANCIES FOUND IN THE SENTENCING STAGE OF MY TRIAL. MY CONSTITUTIONAL RIGHTS WERE INFRINGED UPON THEREFORE THE JUDGE ORDERED ME TO BE RE-SENTENCED. UNDER THE DOUBLE-JEOPARDY CLAUSE, THE SOLICITORS OFFICE COULD NOT RE-INVOKE THE DEATH PENALTY ON ME AGAIN. ON THE DATE OF MAY, 20, 1991 NOT KNOWING THE DOUBLE JEOPARDY LAWS I ENTERED INTO A CONTRACTUAL AGREEMENT WITH THE SOLICITOR'S OFFICE OF FLORENCE S.C. I SIGNED THIS AGREEMENT OUT OF FEAR FOR MY LIFE. THE SOLICITOR MANY TIMES PROMISED ME IF I DID NOT SIGN THIS AFORE SAID AGREEMENT HE WOULD AGAIN PLACE ME ON DEATH ROLL. I HAD COUNSEL PRESENT AND I DIDN'T KNOW WHY HE DID NOT ADVISE ME OF THE DOUBLE JEOPARDY LAWS, HE CONVELED ME INTO SIGNING THE AGREEMENT IN WHICH IS THE WORST POSSIBLE CASE SCENARIO THAT I COULD OF RECEIVED. THIS IS MISLEADING BY NOT ONLY THE SOLICITOR BUT MY LAWYERS AS WELL. DUE TO THIS AGREEMENT I AM SERVING LIFE WITHOUT PAROLE. END OF STATEMENT

FILED
JUN 30 10 10 AM '98
DENISE B. PIERCE
CLERK
FLORENCE COUNTY, SC

5. Check whether a finding of guilty was made
- (a) after a plea of guilty YES
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
YES - AUTOMATIC APPEAL DUE TO DEATH SENTENCE
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. STATE SUPREME COURT COLUMBIA S.C.
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. JUDGE RULED FOR MY CASE TO BE RE-SENTENCED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. (approx) MAY 20, 1986
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. I ENTERED INTO A CONTRACTUAL AGREEMENT W/ THE SOLICITORS OFFICE
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) STATEMENT IS AS FOLLOWS
- (b) _____
- (c) _____
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) STATEMENT IS AS FOLLOWS
- (b) _____
- (c) _____

FILED
 JUN 30 10 10 AM '86
 DEAN W. PARKER
 CLERK
 SUPREME COURT
 COLUMBIA S.C.

34

THE FOLLOWING STATEMENT PERTAINS TO QUESTION # (9) OF MY APPLICATION FOR POST CONVICTION RELIEF:

STATEMENT IS AS FOLLOWS:

I WOULD LIKE TO ADVISE THE COURT THAT I AM NOT CONTESTING THE FACT THAT I AM DOING A LIFE SENTENCE. WHAT I AM CONTESTING IS THE MISREPRESENTATION OF COUNSEL BY ALLOWING AND ADVISING ME TO ENTER INTO A CONTRACTUAL AGREEMENT WITH THE SOLICITOR OF FLORENCE S.C. I WAS NOT ONLY COHERSED INTO, BUT ALSO SCARED INTO SIGNING THIS AGREEMENT. I FEEL THAT THERE WAS COHERSION ON THE PART OF THE SOLICITOR'S OFFICE AND PUBLIC DEFENDER'S OFFICE. I WAS NOT MADE AWARE OF THE DOUBLE JEOPARDY LAW IN WHICH THE SOLICITOR WAS THREATENING ME WITH. I ONLY SEEK THAT THIS AFORESAID CONTRACTUAL AGREEMENT I AM ATTACHING HERETO BE MADE VOID AND I RECEIVE A CHANCE FOR PAROLE AFTER SERVING (30) YEARS. THERE IS NO DOUBT MY RIGHTS WERE INFRINGED IN NOT ONLY THE FIRST SENTENCE STAGE BUT THE SECOND ONE AS WELL.

END OF STATEMENT.

BERNICE B. DIXON
CLERK OF COURT
FLORENCE COUNTY, S.C.

JUN 30 10 10 AM '98

FILED

42

THE FOLLOWING STATEMENT PERTAINS TO QUESTION # (10) OF MY APPLICATION FOR POST CONVICTION RELIEF:

STATEMENT IS AS FOLLOWS:

BERNICE N. PARKER
CLERK & SS
FLORENCE COUNTY, SC

JUN 30 10 10 AM '98

FILED

DURING MY SECOND SENTENCING I WAS MANY TIMES THREATENED BY THE SOLICITOR OF FLORENCE S.C. I WAS TOLD IN THE PRESENCE OF MY ATTY'S (RICHARD W. STROBEL AND DARRYL J. CORBIN) THAT IF I DID NOT SIGN THIS CONTRACTUAL AGREEMENT I WOULD BE PLACED BACK ON DEATH ROW. I HAD ALREADY SPENT (11) YEARS OF MY LIFE ON DEATH ROW. CONSTANTLY IN FEAR OF MY LIFE, I DID NOT WANT TO GO BACK. THERE WERE DEFICIENCIES IN MY FIRST SENTENCING IN WHICH MY RIGHTS WERE INFRINGED. IT WAS COURT ORDERED THAT I BE RESENTENCED. DUE TO THE DOUBLE JEOPARDY LAWS, THE SOLICITOR'S OFFICE COULD NOT RE-SEEK THE DEATH SENTENCE. AT THE TIME I ENTERED INTO THIS AFORESAID AGREEMENT I WAS UNAWARE OF THESE LAWS. MY LAWYERS WERE PRESENT BUT DID NOT MAKE ME AWARE OF THE DOUBLE JEOPARDY LAWS OF THE UNITED STATES. THEY DID JUST THE OPPOSITE, THEY ADVISED ME TO SIGN THE AGREEMENT. I WAS SCARED AND COERSED INTO THIS AGREEMENT. I WILL GO FURTHER TO SAY I FEEL THERE WAS A CONSPIRACY SET FORTH AGAINST ME BETWEEN THE PUBLIC DEFENDERS OFFICE AND THE SOLICITOR'S OFFICE OF FLORENCE CO. S.C. THERE IS NO DENYING INSUFFICIENT COUNSEL ON THE PART OF THE PUBLIC DEFENDERS OFFICE. I AM ATTACHING THE AFORESAID CONTRACTUAL AGREEMENT HERE TO AS PROOF OF MY ALLEGATIONS SET FORTH IN THIS STATEMENT. END OF STATEMENT

50

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? (NO) UNDER SENTENCE NOW SERVING

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

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

51

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) 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) STATEMENT IS AS FOLLOWS
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

17. If you answered "yes" to one or more parts of (16), list:

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

- i. CHARLES GODINEN - PUBLIC DEFENDER FOR SUMTER Co.
- ii. DAVID BRUCK - PUBLIC DEFENDER FOR COLUMBIA S.C.
- iii. RICHARD STROBEL & DARRYL CORBIN - PUBLIC DEFENDER FOR FLORENCE S.C.

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

- i. DEATH PENELTY TRIAL
- ii. APPEAL PROCESS
- iii. CONTRACTUAL AGREEMENT

18. State clearly the relief you seek in filing this application.

I SEEK THAT THE CONTRACTUAL AGREEMENT BE MADE VOID SO
I CAN BE ABLE TO GO UP FOR PAROLE AFTER 20 YEARS.

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

NO

THE FOLLOWING STATEMENT PERTAINS TO QUESTION # (18) OF MY APPLICATION FOR POST CONVICTION RELIEF:

STATEMENT IS AS FOLLOWS:

THIS IS THE FIRST STEP OF ACTION THAT I HAVE TAKEN ON THE SECOND SENTENCING OF MY TRIAL. I ENTERED INTO THIS APPRAISED CONTRACTUAL AGREEMENT ON MAY, 20, 1997. I SIMPLY TOOK TIME TO STUDY MY CASE AND GET PROFESSIONAL ADVICE BEFORE CARRYING THROUGH WITH THIS P.C.R. I ALSO DELAYED OUT OF FEAR OF THE TREATS PLAINLY STATED WITHIN THIS AGREEMENT. TODAY I SET ASIDE MY FEARS AND PROCEED ON MY QUEST FOR JUSTICE.

END OF STATEMENT

STATE OF SOUTH CAROLINA

County of _____

98-CP-21-980

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VERIFICATION

I, _____, 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.

[Signature]

SWORN to and subscribed before me this 25th
day of JUNE, 1998
[Signature] (L.S.)
Notary Public

BERNICE B. PARKER
Clerk & CS
FLORENCE COUNTY, SC

JUN 30 10 10 AM '98

FILED

My Commission Expires: 8-1-99

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

I, _____, 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 therefor.

[Signature]

Applicant

SWORN or affirmed to and subscribed before me this

25th day of JUNE, 1998
[Signature]
Notary Public

My Commission Expires 8-1-99

54

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	98-CP-21-983
	)	
Dallas Ferrell, 239855,	)	
	)	
Applicant,	)	
	)	
vs.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its return to the application for post-conviction relief filed June 30, 1998 would respectfully show this Court:

I.

The Applicant is presently confined in the Evans Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Florence County. The Applicant was indicted at the January 1983 term of the Court of General Sessions for Florence County for six (6) counts of Conspiracy, one (1) count of Murder, four (4) counts of Criminal Sexual Conduct, one (1) count of Armed Robbery, one (1) count of Grand Larceny, one (1) count of Housebreaking, and one (1) count of Arson. The death penalty was sought. He was represented by Richard Strobel, Esquire and Darryl Corbin, Esquire. On March 30, 1983, the Applicant proceeded to trial by jury pursuant to which the Applicant was found guilty of four (4) counts of Criminal Sexual Conduct one (1) count each of Murder, Conspiracy, Grand Larceny, Housebreaking and Arson. He was sentenced to death. His sentence was overturned on appeal and he was remanded for re-sentencing. On May 20, 1997 the Applicant

signed a plea agreement and was sentenced by the Honorable Paul Burch to confinement for a period of life with eligibility for parole in 20 years.

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject conviction; the Applicant's records from the South Carolina Department of Corrections; and the application for post-conviction relief. The re-sentencing transcript will be forwarded when it is received by this office.

II.

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

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.
3. Double jeopardy violation.

III.

In his first allegation the Applicant asserts that he was denied effective assistance of trial counsel. The Respondent submits that the extensive guilty plea record speaks for itself as to the competency of counsel. When an ineffectiveness claim is presented the defendant must show that counsel's representation was deficient. Deficient representation amounts to conduct that is not objectively reasonable under the circumstances. Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052 (1984). In addition, the defendant must show that the outcome of his proceeding was prejudiced and it is reasonably probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. The Respondent submits

that the Applicant's attorney demonstrated a normal degree of skill, knowledge and professional judgment that is expected of an attorney who practices criminal law. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, supra; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, supra, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. The Respondent submits that the Applicant cannot meet the prejudice requirement.

In addition, the Respondent submits that, if this Court finds that the Applicant's plea was voluntary and intelligent, said voluntary and intelligent plea of guilty results in a waiver of any non-jurisdictional defects and defenses, including the alleged defect of ineffective assistance of counsel. Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); LoPiano v. State, 270 S.C. 563, 243 S.E.2d 448 (1978).

Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent interprets the Applicant's second allegation to be that he did not plead guilty freely and voluntarily. However, the transcript reflects that the pleas were knowingly and

voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

Nevertheless, the allegation of the Applicant not having pled guilty knowingly, voluntarily and intelligently probably raises questions of fact which may not be conclusively refuted by the record presently before this Court. Therefore, the Respondent requests that an evidentiary hearing be held in order to fully resolve this issue.

V.

In his third allegation he contends that he was subjected to double jeopardy because he didn't know that a death sentence could not be sought against him again. Respondent would respectfully submit that the double jeopardy clause has not been violated. The Double Jeopardy Clauses of both the United States and South Carolina Constitutions protect against multiple punishments for the same offense and second prosecutions for the same offense after an acquittal, a conviction, or an improvidently-granted mistrial. When there are multiple punishments imposed in the same trial, the Double Jeopardy Clause does no more than prevent the sentencing judge from prescribing greater punishment than the legislature intended. Missouri v. Hunter, 459 U.S.

359 (1983); State v. Wilson, 311 S.C. 382, 429 S.E.2d 453 (1993). In the instant case, the Applicant was sentenced under S.C. Code Ann. 16-3-20. That section provides for a maximum sentence of death or a term of imprisonment for life. Therefore, the legislature intended for persons convicted of Murder to receive up to a sentence of life. Since the trial court's sentence did not exceed the punishment prescribed by statute, it does not violate Double Jeopardy.

Moreover, this issue is not one which can be raised in a post-conviction relief proceeding which is not a substitute for a direct appeal. Claims which could or should have been raised in a direct appeal cannot be asserted for the first time in a post-conviction relief proceeding. See Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); Sellers v. Boone, 261 S.C. 462, 200 S.E.2d 686 (1973) (double jeopardy). His allegations to the contrary must be denied and dismissed.

VI.

The Respondent therefore requests that this court convene an evidentiary hearing to be held solely on the issues of whether the Applicant received effective assistance of counsel and whether the Applicant pled guilty knowingly, voluntarily and intelligently.

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

WHEREFORE, having made its Return, the Respondent requests that a hearing be held in this matter.

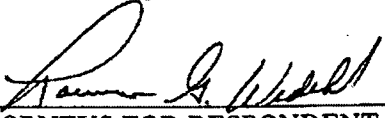
Respectfully submitted,

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Deputy Attorney General

TERESA KNOX
Assistant Deputy Attorney General

LAWRENCE G. WEDEKIND
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Columbia, South Carolina.
march 9, 1999.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Dallas Ferrell, 239855,

Applicant,

vs.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

98-CP-21-983

AMENDED RETURN AND MOTION
TO DISMISS

The Respondent, making its amended return and motion to dismiss to the application for post-conviction relief filed June 30, 1998 would respectfully show this Court:

I.

The Applicant is presently confined in the Evans Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Florence County. The Applicant was indicted at the January 1983 term of the Court of General Sessions for Florence County for six (6) counts of Conspiracy, one (1) count of Murder, four (4) counts of Criminal Sexual Conduct, one (1) count of Armed Robbery, one (1) count of Grand Larceny, one (1) count of Housebreaking, and one (1) count of Arson. The death penalty was sought. He was represented by Richard Strobel, Esquire and Darryl Corbin, Esquire. On March 30, 1983, the Applicant proceeded to trial by jury pursuant to which the Applicant was found guilty of four (4) counts of Criminal Sexual Conduct one (1) count each of Murder, Conspiracy, Grand Larceny, Housebreaking and Arson. He was sentenced to death. His sentence was overturned on appeal and he was remanded for re-sentencing. On May 20, 1997 the Applicant

signed a plea agreement and was sentenced by the Honorable Paul Burch to confinement for a period of life with eligibility for parole in 20 years.

The records of the Florence County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the application for post-conviction relief were included with the State's original return.

II.

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

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.
3. Double jeopardy violation.

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C.468, 469 S.E.2d 606 (1996). The Applicant was re-sentenced on the offense(s) he challenges in this Application on May 20,

1997. This Application was filed on June 30, 1998, well after the one year statutory filing period had expired.

A motion for summary judgement may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the Application for Post-Conviction Relief for failure to file within the time mandated by statute.

IV.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests that the Application be summarily dismissed.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

98-CP-21-983

Dallas Ferrell, 239855,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 30, 1998. The Respondent (the State) made its Return on March 9, 1999, and its Amended Return and Motion to Dismiss on December 11, 1999, requesting that the Application be summarily dismissed as barred by the statute of limitations. A hearing into the matter was convened on December 17, 1999, at the Florence County Courthouse. The Applicant was present at the hearing and was represented by Henry Anderson, Jr., Esquire. The State was represented by J. Benjamin Aplin of the South Carolina Office of the Attorney General.

At the hearing, the State moved to dismiss the Application for the reasons set forth in its Return and Motion to Dismiss. The Applicant argued his Application should not be dismissed pursuant to the statute of limitations. This Court also had before it the pleadings; the records of the Florence County Clerk of Court regarding the subject convictions; and the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate the Applicant is presently confined in the Evans Correctional Institution of the South Carolina Department of Corrections pursuant to orders of

[Handwritten signature]

commitment of the Clerk of Court for Florence County. The Applicant was indicted at the January 1983 term of the Court of General Sessions for Florence County for six (6) counts of Conspiracy, one (1) count of Murder, four (4) counts of Criminal Sexual Conduct, one (1) count of Armed Robbery, one (1) count of Grand Larceny, one (1) count of Housebreaking, and one (1) count of Arson. The death penalty was sought. He was represented by Richard Strobel, Esquire and Darryl Corbin, Esquire. On March 30, 1983, the Applicant proceeded to trial by jury pursuant to which the Applicant was found guilty of four (4) counts of Criminal Sexual Conduct and one (1) count each of Murder, Conspiracy, Grand Larceny, Housebreaking and Arson. He was sentenced to death. His sentence was overturned on appeal and he was remanded for re-sentencing. On May 20, 1997 the Applicant signed a plea agreement and was sentenced by the Honorable Paul Burch to confinement for a period of life with eligibility for parole in 20 years.

B. ALLEGATIONS

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.
3. Double jeopardy violation.

C. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the arguments presented at the PCR hearing. Set forth below are the relevant findings of fact and



conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

This Court finds that this application for PCR should be summarily dismissed for failure to comply with the filing procedures of the Act. S.C. Code Ann. § 17-27-10 to -160 (1976 & Supp. 1997). The Act reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a) (Supp. 1998).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

The Applicant was convicted of the offense(s) he challenges in this Application on May 20, 1997.

This Application was filed on June 30, 1998, after the one year statutory filing period had expired.

At the PCR hearing, the Applicant argued his allegations should not be barred by the statute of limitations because; although he was aware of the statute and the Peloquin case, he did not believe the case applied to him. This Court is not persuaded by the Applicant's arguments. Therefore, this Court finds that it must summarily dismiss the Application for PCR for failure to file within the time mandated by statute.

D. CONCLUSION

In conclusion, this Court finds that it must summarily dismiss this Application for PCR because the Applicant has failed to file within the time mandated by statute. Therefore, this application for PCR must be denied and dismissed with prejudice.

*H's
Jen*

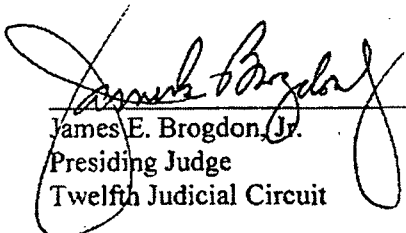
74

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 11 day of July, 2000.


James E. Brogdon, Jr.
Presiding Judge
Twelfth Judicial Circuit

Flenna, South Carolina.

#4

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

July 21, 2011

The Honorable Jana Shealy
Clerk, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

RE: Dallas Ferrell, #239855 v. S.C. Department of Probation, Parole and Pardon Services

Dear Ms. Shealy:

Please find enclosed for filing the *Record on Appeal* dated July 21, 2011, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Benjamin Aplin".

J. Benjamin Aplin
Interim Deputy Director for Legal Services

JBA.:dn

Enclosures

cc: Tommy Thomas, Esquire

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 11-ALJ-15-0035

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

DALLAS FERRELL, #239855 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, ... RESPONDENT

RECORD ON APPEAL

J. Benjamin Aplin
Interim Deputy Director for Legal Services

Tommy Evans, Jr.
Legal Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 11-ALJ-15-0035

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

DALLAS FERRELL, #239855 APPELLANT

v.

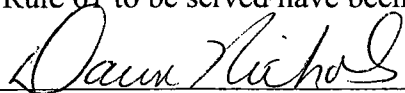
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, ... RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant to counsel for Respondent, certify that I have served the within *Record On Appeal*, dated July 21, 2011, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 21st day of July, 2011, addressed to:

Tommy Thomas, Esquire
PO Box 88
Irmo, South Carolina 29063

I further certify that all parties required by Rule 61 to be served have been served.



Dawn Nichols
Executive Administrative Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

00001

Dated Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

ATTACHMENT

On May 5, 2011, Mr. Ferrell made inquiry to the Department of Probation, Parole and Pardon Services about being considered for Parole. The agency notified Mr. Ferrell through counsel that he had executed an "Irrevocable waiver of parole" and would not be considered for parole.

Mr. Ferrell is informed and believes that the contract for waiver of parole is not a valid contract and as such is not enforceable. The Mr. Ferrell contests the validity and enforceability of this Agreement.

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI HALEY
Governor



KELA THOMAS
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9324
www.state.sc.us/ppp

May 16, 2011

Tommy Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063

RE: Dallas Ferrell, #239855: Indictment No. 83-GS-21-27

Dear Tommy:

I am in receipt of your May 5, 2011, letter written on behalf of the above referenced inmate, Dallas Ferrell. In your letter, you state that Mr. Ferrell, wishes to "exercise his right to parole." I remember we talked briefly about parole waivers on the telephone, but after receiving your letter, I pulled the Department's file on Mr. Ferrell, and have now had a chance to examine the contents of that file in detail.

It appears that Mr. Ferrell was tried by a Florence County jury and convicted of murder, conspiracy, four counts of criminal sexual conduct, grand larceny, housebreaking, and arson. On April 2, 1983, following the guilt phase of the trial, the jury recommended and the court imposed a sentence of death. Mr. Ferrell filed a direct appeal, and the South Carolina Supreme Court subsequently remanded the matter to the circuit court for the sole and exclusive purpose of conducting another sentencing hearing to determine the punishment to be imposed for the crime of murder. Instead of risking another death sentence, Mr. Ferrell and his attorneys negotiated a sentence of life imprisonment, which included a "Contractual Agreement Waiving all Rights to Parole." On May 20, 1997, Mr. Ferrell executed an "Irrevocable Waiver of Parole." On the same day, the previously described "contractual agreement" was signed by: (1) your client, (2) Twelfth Circuit Solicitor Dudley Saleeby, Jr., Mr. Ferrell's defense attorneys, (3) Richard W. Strobel and (4) Darryl J. Corbin, and (5) the Department's Chief Legal Counsel at that time, Carl Lundberg. This contract appears to be binding on all parties. I have enclosed copies of the contract, waiver, and sentencing

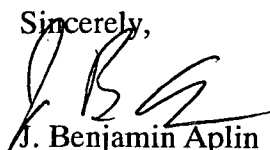
JBA

documents for your review.

Based on internal reviews in 1997 and again in 2002, it is the opinion of the Department that Mr. Ferrell's case may not and should not be considered for parole by the Parole Board. I would suggest that if you wish to pursue this matter further, you contact the Solicitor's Office and coordinate whatever steps are required to convene a sentencing hearing on whether Mr. Ferrell should be re-sentenced to death or life in prison as directed by the Supreme Court.

Thank you for your letter.

Sincerely,



J. Benjamin Aplin
Assistant Chief Legal Counsel

JBA:dkn

cc: The Honorable Edgar L. Clements, III
Richard W. Strobel, Esquire
Daryl J. Corbin, Esquire
Dudley Saleeby, Jr., Esquire

EXHIBIT A

IRREVOCABLE WAIVER OF PAROLE

TO: South Carolina Board of Probation, Parole and Pardon Services
FROM: Dallas Ferrell
DATE: May 20, 1997

FILED
MAY 20 P 4:31
BERNICE B. PARKER
CLERK OF COURT
FLORENCE COUNTY, S.C.

I understand that at some date in the future, I will become eligible for parole consideration. I also understand that I may waive consideration for the parole privilege. Being fully advised of my rights by my attorneys, I wish to make the following irrevocable waiver of parole consideration:

I, Dallas Ferrell, hereby waive parole consideration so that I may serve the rest of my natural life within the penal system of the South Carolina Department of Corrections. This waiver is irrevocable. It is my knowing, intelligent and voluntary decision to make this waiver, and I make it upon the advice of my attorneys and with a full understanding of the consequences.

I make this waiver for the following reason. I have agreed not to seek parole as part of a plea agreement in my case. In exchange for my agreement not to seek parole, the State has agreed not to seek the death penalty for a murder that I have been convicted of committing. (See entire Contractual Agreement between the Solicitor and me which is attached to this Waiver of Parole). It is my solemn obligation to abide by the terms of the Contractual Agreement.

Furthermore, under the terms of the Contractual Agreement, if I should request consideration for the parole privilege, I will be in breach of the Contractual Agreement and I am to be immediately returned to the jurisdiction of the Court of General Sessions for the Twelfth Judicial Circuit for resentencing on the charge of murder. I would then be subject to the death penalty on that charge.

I understand that the South Carolina Department of Probation, Parole and Pardon Services has the duty to consider all inmates for parole; however, I waive my right to be considered for parole now and at any time in the future. I have given up that right as part of my Contractual Agreement with the Solicitor and the South Carolina Department of Probation, Parole and Pardon Services. It is my understanding and intention that my waiver of the right to request parole consideration be absolutely irrevocable.

Therefore, I ask the South Carolina Board of Probation, Parole and Pardon Services to take the following actions with regard to the issue of my parole eligibility: (1) not to consider me for parole at any time during my life; (2) not to consider any request for parole consideration made on my behalf by any other person; (3) to specifically enter into your official records that I am not eligible for parole; (4) to notify the Solicitor of the Twelfth Judicial Circuit of the State of South Carolina immediately if I should breach any of the terms of the attached Contractual Agreement.

CERTIFIED: A TRUE COPY

Bernice B. Parker

CLERK OF COURT, C. P. & G. S.
FLORENCE COUNTY, S. C.

Dallas Ferrell
DALLAS FERRELL

000096

000096

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE

CERTIFIED: A TRUE COPY IN THE COURT OF GENERAL SESSIONS
INDICTMENT NO. 83-GS-21-27

The State,

vs.

Dallas Ferrell,

Defendant.

CLERK OF COURT, C. P. & G. CONTRACTUAL AGREEMENT
FLORENCE COUNTY, S.C. WAIVING ALL RIGHTS TO PAROLEBERNICE B. PARKER
CCCP & GS
FLORENCE COUNTY, S.C.

1997 MAY 20 P 4:31

FILED

BACKGROUND

This document is a Contractual Agreement between Dallas Ferrell, the Defendant in the above captioned case, Dudley Saleeby, Jr., Solicitor of the Twelfth Judicial Circuit; and his successors in said office.

Dallas Ferrell understands that he was tried on the above captioned indictment and found guilty of the crimes of murder, conspiracy, criminal sexual conduct (four counts), grand larceny, housebreaking and arson. At the guilt phase of said trial, the jury recommended and the Court imposed a sentence of death. As to the other counts on the indictment to which guilty verdicts were returned, the Court sentenced the Defendant to separate terms of years totaling 145 years to be served consecutive to each other and to the murder sentence. By decision of the South Carolina Supreme Court, this matter has been remanded to the Circuit Court for the sole and exclusive purpose of conducting another sentencing hearing to determine the punishment to be imposed on Dallas Ferrell for the crime of murder.

Dallas Ferrell has discussed this case with his counsel, Richard W. Strobel and Darryl J. Corbin. Dallas Ferrell understands that if the State were to proceed to seek the death penalty on the murder charge, a jury would be impanelled

D.F.
PWS
QJ
PJS
CML

to decide his sentence. He understands that this jury could impose the death penalty. He is also aware that the jury could impose a sentence of life imprisonment and that, if the jury were unable to agree regarding punishment, the Court would sentence him to life imprisonment.

After having discussed his constitutional rights and his alternatives with his counsel, Dallas Ferrell freely, voluntarily and intelligently has decided to enter into the following Contractual Agreement with the Solicitor in consideration and exchange for the State's agreement not to seek the death penalty.

AGREEMENT

1. Dallas Ferrell understands that he stands convicted of the crime of murder as a result of a jury verdict rendered on March 30, 1983. He stipulates with the Solicitor to the fact that the following aggravating circumstances, as defined by Section 16-3-20(C)(a)(1), have been established in this case:

The offense of murder of Adele Baroody was committed while Dallas Ferrell was engaged in the commission of the crimes of housebreaking (now designated as burglary) and rape (now designated as criminal sexual conduct).

2. Dallas Ferrell, as part of this Contractual Agreement, agrees to waive for all time any right to contest the existence of these aggravating circumstances. He understands that if he should breach any provision of this Contractual Agreement, he will not be allowed to contest the above stipulated circumstances of aggravation at any future judicial or administrative proceeding. He further acknowledges that should he breach this agreement, the State will have the right to submit proof in support of additional aggravating circumstances to include, but not limited to, physical torture.

3. Dallas Ferrell, as part of this Contractual Agreement, acknowledges that he will be sentenced to life imprisonment on the offense of murder. He acknowledges that he will be eligible for parole in twenty years from the date of his initial imprisonment on the murder charge, but that because of this agreement, he will be denied parole after he becomes eligible for parole for the remainder of his life.

4. In consideration and exchange for the State's agreement not to seek the death penalty at this time and to recommend a life sentence, Dallas Ferrell agrees that he will never apply for or accept parole, pardon, commutation of his sentence, reprieve, or any other form of relief from life imprisonment.

In exchange for the State's agreement to waive the seeking of the death penalty, the undersigned, Dallas Ferrell, has executed a document entitled "Waiver of Parole," a complete executed copy which is attached hereto, made a part hereof, and designated as Exhibit A, with the understanding that the original will be transmitted immediately to the South Carolina Department of Probation, Parole and Pardon Services upon the entry of sentence herein and the commitment of the defendant to the South Carolina Department of Corrections. In said document, as in this Contractual Agreement, Dallas Ferrell completely and irrevocably waives for all time any consideration for parole. The undersigned, Dallas Ferrell, further agrees that he will never request parole consideration and will never agree to abide by the conditions of any parole should it be offered to him. He understands, accepts and agrees that this means he will spend the remainder of his natural life in the Department of Corrections and that he will not be released for any reason at any time.

The undersigned, Dallas Ferrell, further agrees that he will never apply for or accept a pardon for the offense of murder.

5. Dallas Ferrell further agrees that if he breaches any aspect of this agreement, he shall immediately thereafter be returned to the jurisdiction of the General Sessions Court of Florence County for sentencing on the charge of murder. He understands, acknowledges and agrees that in case of such breach:

- (a) he shall be subject to the imposition of a sentence of death;
- (b) his stipulation of the aggravating circumstances of housebreaking (burglary) and rape (criminal sexual conduct) shall be fully established the same as if proven by competent evidence.

6. Dallas Ferrell specifically acknowledges that if he applies for consideration for parole or signs any document agreeing to abide by conditions of parole or any other form of release, such action shall constitute a breach of this Contractual Agreement and he shall be subject to being resentenced in accordance with paragraph five (5) of this Contractual Agreement. Any other breach of the terms of this Contractual Agreement by Dallas Ferrell shall also result in such resentencing.

7. The Solicitor specifically reserves the right to seek the death penalty in the event of any breach of this Contractual Agreement by Dallas Ferrell.

8. Dallas Ferrell expressly waives any possible claim of double jeopardy regarding the sentencing proceeding in the event of his breach of this Contractual Agreement.

9. Dallas Ferrell affirmatively states and agrees that the imposition of a life sentence is not excessive, but is appropriate for the crime he committed.

10. The parties agree that that South Carolina Department of Probation, Parole and Pardon Services will note in their records, including those stored electronically, that Dallas Ferrell has irrevocably waived his right to be considered for parole. This agreement will constitute the basis for a finding

under Section 24-21-640, South Carolina Code of Laws (1976), as amended, that Dallas Ferrell will never have circumstances that warrant parole and no investigation or consideration regarding any parole for Dallas Ferrell will ever be instituted. The attorney for the South Carolina Department of Probation, Parole and Pardon Services has read the Contractual Agreement and affixed his signature to it acknowledging that the South Carolina Department of Probation, Parole and Pardon Services and the South Carolina Board of Probation, Parole and Pardon Services has received notice that Dallas Ferrell has irrevocably waived his right to be considered for parole.

11. Dallas Ferrell agrees that Dudley Saleeby, Jr., Solicitor of the Twelfth Judicial Circuit, and his successors in office, shall have the right to enforce this Contractual Agreement in accordance with the terms set out herein. He agrees that the Solicitor, his successors and assigns, shall also have the right to enforce the Contractual Agreement by action for specific performance or injunctive relief in the sole discretion of the said Solicitor. He expressly waives any claim, defense or contention that Dudley Saleeby, Jr., his successor or assigns, is without standing or not a proper party to bring such suit.

12. Dallas Ferrell, signing the Contractual Agreement, acknowledges and attests to the following:

- (a) He is mentally and legally competent;
- (b) He has full understanding of this terms and provisions of this Contractual Agreement;
- (c) He has read the Contractual Agreement in detail;
- (d) He has had ample opportunity to discuss, and has discussed at length, the terms and provisions of this Contractual Agreement with his counsel;
- (e) He understands the provisions of this Contractual Agreement are permanent and irrevocable such that he shall never be entitled to apply for parole, be given consideration for parole, or be granted parole;
- (f) He understands the provisions of this Contractual Agreement are permanent and irrevocable and he shall never apply for a pardon or accept a pardon;

- (g) It is the purpose and intent of his Contractual Agreement that Dallas Ferrell live the remainder of his natural life in a corrections facility in secure confinement.

13. Counsel for Dallas Ferrell by virtue of their signatures subscribed below, attest that to the best of their knowledge, Dallas Ferrell, fully understands the terms of this Contractual Agreement and he has made a knowing, intelligent, and voluntary decision to enter into this Contractual Agreement after thorough discussion with counsel such that he has a full understanding of the consequences of his actions.

Dallas Ferrell

DALLAS FERRELL

Defendant

May 20, 1997

Dudley Saleeby, Jr.
DUDLEY SALEEBY, JR., SOLICITOR
Twelfth Judicial Circuit

Richard W. Strobel
RICHARD W. STROBEL
Attorney for the Dallas Ferrell

Carl N. Lundberg
CARL N. LUNDBERG
Attorney for the SCDPP&FS

Darryl J. Corbin
DARRYL J. CORBIN
Attorney for Dallas Ferrell

CERTIFIED: A TRUE COPY
Connie R. Galt
CLERK OF COURT, C. P & G. S
FLORENCE COUNTY, S. C.

FILED
MAY 20 P 4:31
BERNICE B. PARKER
CCCP & GS
FLORENCE COUNTY, S.C.

SENTENCE

000102

STATE OF SOUTH CAROLINA

CASE NO. 83 21
97-GS-33-27

MARION COUNTY

Sentence for the offense of MurderThe Defendant Dallas Ferrell is committed to the StateDepartment of Corrections/County for a term of of his natural life. months/years and/or~~to pay a fine of \$ _____; provided upon the service of _____ months/years~~~~and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*~~~~the balance suspended with probation for _____ months/years. Pub~~

Restitution

For Physical Injury \$ _____

Yes ☒ No ☐

Property Damage \$ _____

to be paid _____

to clerk for _____

Other Conditions _____

FILED
1997 MAY 20 4:29
BERNICE B. PARKER
CCJP & GS
FLORENCE COUNTY, SCDate: May 20, 1997Paul M. Burch
Presiding Judge

*Costs and Assessments

Non-waivable \$ _____

Not waived \$ _____

Total \$ _____

CERTIFIED: A TRUE COPY

Connie K. Glee
CLERK OF COURT, C. P & G. S
FLORENCE COUNTY, S. C.

Rec'd FDC

Donald C. Grier
5/21/97Martha L. Sayers
Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF GENERAL SESSIONS
Indictment No. 83-GS-21-27

The State,
vs.
Dallas Ferrell,
Defendant.

RECOMMENDATION OF SENTENCE
Death Penalty
(RE: Adele Baroody)

WE, THE JURY in the above entitled case, having found
beyond a reasonable doubt the existence of the following statutory
aggravating circumstance or circumstances, to wit: RAPE,

HOUSEBREAKING, PHYSICAL TORTURE

now recommend to the Court that the Defendant, Dallas Ferrell, be
sentenced to death for the murder of Adele Baroody.

- Foreman Nora H. Martin
- Juror Paul H. Packer
- Juror Bobby R. Johnson
- Juror Jeffery Spann
- Juror William R. Gault
- Juror Dwendele H. Mack
- Juror Louis Davis Jr.
- Juror Mary McLeod
- Juror Marion Kelly
- Juror Cynthia Hillman
- Juror Sammie Carter
- Juror Charles T. Hedding

CERTIFIED: A TRUE COPY
Connie B. Bree
CLERK OF COURT
FLORENCE COUNTY

April 2, 1983
Sumter, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF GENERAL SESSIONS

The State)

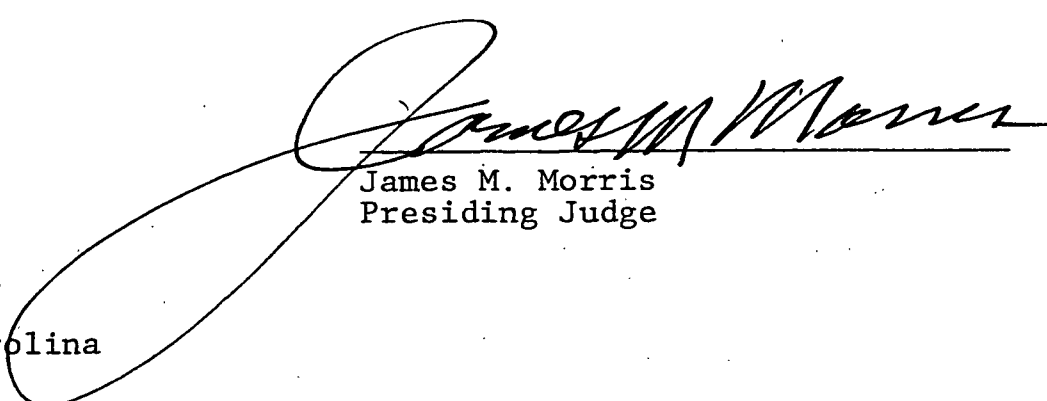
vs.)

Dallas Ferrell,)

Defendant.)

AFFIRMATION OF DEATH SENTENCE

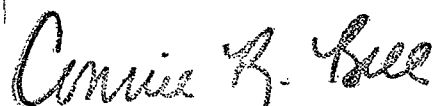
As the Presiding Judge in the above-entitled action, and prior to the imposition of the Death Penalty upon the Defendant, Dallas Ferrell, I find as an affirmative fact that the evidence of the case warrants the imposition of the Death Penalty and that its imposition is not a result of prejudice, passion, or any other arbitrary factor.


James M. Morris
Presiding Judge

April 2, 1983

Sumter, South Carolina

CERTIFIED: A TRUE COPY



CLERK OF COURT, C. P & G. S
FLORENCE COUNTY, S. C.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF GENERAL SESSIONS
Indictment No. 83-GS-21-27

The State,

vs.

Dallas Ferrell,

Defendant.

STATUTORY INSTRUCTIONS

In determining whether to recommend that the Defendant, Dallas Ferrell, be sentenced by the Court to life imprisonment or to death, for the murder of Adele Baroody, you may consider the following statutory aggravating circumstances:

1. Rape
2. Housebreaking
3. Physical Torture

CERTIFIED: A TRUE COPY

Constance R. Hall
CLERK OF COURT, C. P. & G. S.
FLORENCE COUNTY, S. C.

You may also consider the following statutory mitigating circumstances:

1. The Defendant has no significant history of prior criminal conviction involving the use of violence against another person.
2. The murder was committed while the Defendant was under the influence of mental or emotional disturbance.
3. The Defendant was an accomplice in the murder committed by another person and his participation was relatively minor.
4. The age of the Defendant at the time of the crime.
5. Any other mitigating circumstances otherwise authorized or allowed by law.

April 2, 1983

Sumter, S. C.

James M. Morris
James M. Morris
Presiding Judge

000106

000106

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF GENERAL SESSIONS

The State,

vs.

Dallas Ferrell,

Defendant.

RECOMMENDATION OF SENTENCE

Life Imprisonment

WE, THE JURY in the above-entitled case, recommend
to the Court that the Defendant, Dallas Ferrell, be sentenced
to Life Imprisonment.

Foreman _____

April 2, 1983

Sumter, South Carolina

CERTIFIED: A TRUE COPY

Connie R. [Signature]

CLERK OF COURT, C. P. & G.
FLORENCE COUNTY, S. C.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF GENERAL SESSIONS

The State,)

vs.)

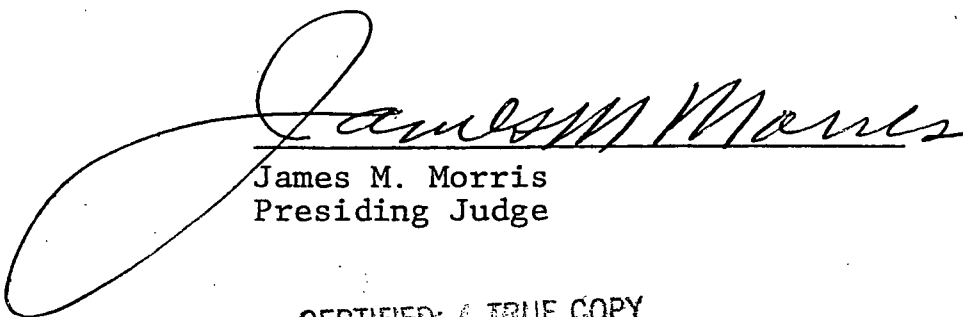
Dallas Ferrell,)

Defendant.)

SENTENCE

The Defendant, Dallas Ferrell, has been found by the Jury to be guilty of the offense of murder. The Jury has recommended that the Defendant should be sentenced to death.

It is, therefore, the Judgment of the law and the Sentence of the Court that the Defendant, Dallas Ferrell, be taken to the County Jail of Sumter County, and thence to the State Penitentiary, henceforth to be kept in close and safe confinement until the 5th day of August, 1983, upon which day between the hours of six o'clock A. M., and six o'clock P. M., the Defendant, Dallas Ferrell, shall suffer death by electrocution in the manner provided by law.


James M. Morris
Presiding Judge

April 2, 1983

Sumter, South Carolina

CERTIFIED: A TRUE COPY


CLERK OF COURT, C. P & G. S
FLORENCE COUNTY, S. C.

000108

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STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 11-ALJ-15-0035

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

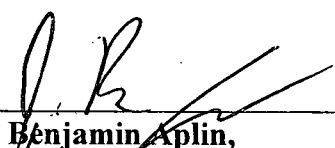
DALLAS FERRELL, #239855 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, ... RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.



J. Benjamin Aplin,
Interim Deputy Director for Legal Services

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

July 21, 2011

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson, Administrative Law Judge
Docket No.: 11-ALJ-15-0035-AP

Dallas Ferrell #239855,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

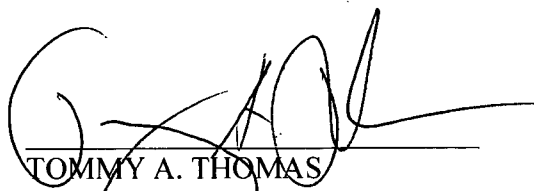
Respondent.

RECEIVED
MAY 17 2013

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 210 (g) of the South Carolina Appeals Court Rules and with the South Carolina Supreme Court Order dated August 13, 2007 and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.



TOMMY A. THOMAS
P.O. Box 88
Irmo, SC 29063
(803) 732-5507
ATTORNEY FOR APPELLANT

April 24, 2013

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson, Administrative Law Judge
Docket No.: 11-ALJ-15-0035-AP

Dallas Ferrell #239855,

Appellant,

vs.

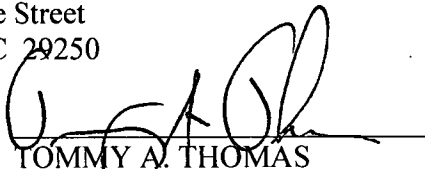
South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Secretary to the Attorney for the Appellant, hereby certify that I
hand delivered, a copy of the Record on Appeal, to Tommy Evans, Esq., at:

Tommy Evans, Esq.
SC Department of Probation
Parole and Pardon Services
2221 Devine Street
Columbia, SC 29250



TOMMY A. THOMAS

P.O. Box 88

Irmo, SC 29063

(803) 732-5507

ATTORNEY FOR APPELLANT

April 26, 2013

DP 04709

APR 29 2013

SC Court of Appeals