

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**May 01 2023**

S.C. SUPREME COURT

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Certiorari to Pickens County

Honorable Eugene C. Griffith, Circuit Court Judge

\_\_\_\_\_

RICHARD ANDREW HAGINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001317

\_\_\_\_\_

APPENDIX

\_\_\_\_\_

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA  
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 -VS- )  
 )  
 RICHARD ANDREW HAGINS, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

2018-GS-39-00009

TRANSCRIPT OF RECORD

DECEMBER 19, 2018  
PICKENS, SOUTH CAROLINA

BEFORE:

THE HONORABLE LETITIA H. VERDIN

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

SHANNON ODOM  
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JOHN DeJONG  
CHIEF PUBLIC DEFENDER

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

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WITNESS

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**EXHIBITS**

<b><u>NO</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>ID</u></b>	<b><u>EVIDENCE</u></b>
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(No Exhibits Were Presented During This Hearing)

1           **MADAM CLERK:** 2018-GS-39-9, the State versus Richard  
2 Hagins, pleading to voluntary manslaughter. Raise your right  
3 hand, please. Do you swear to tell the truth, the whole truth  
4 and nothing but the truth so help you God?

5           **MR. HAGINS:** Yes, ma'am.

6           **THE COURT:** Mr. Hagins, you're here today to plead to  
7 voluntary manslaughter. That carries two years up to 30  
8 years. It is classified as a violent and most serious  
9 offense. Is that your understanding?

10          **MR. HAGINS:** Yes, ma'am.

11          **THE COURT:** Have you discussed this charge with your  
12 lawyer?

13          **MR. HAGINS:** Yes, ma'am.

14          **THE COURT:** Are you happy with what your lawyer's done  
15 for you?

16          **MR. HAGINS:** Yes, ma'am.

17          **THE COURT:** Are you under the influence of drugs or  
18 alcohol ---

19          **MR. HAGINS:** No, ma'am.

20          **THE COURT:** --- here today? Has anyone forced you to  
21 plead guilty?

22          **MR. HAGINS:** No.

23          **THE COURT:** Has anyone promised you anything to get you  
24 to plead guilty?

25          **MR. HAGINS:** No, ma'am.

1           **THE COURT:** When you plead guilty you give up certain  
2 constitutional rights. One is your right to remain silent  
3 about these charges. Do you know that?

4           **MR. HAGINS:** Yes, ma'am.

5           **THE COURT:** You also give up your right to a jury trial.  
6 At that trial your attorney could call witnesses for you,  
7 cross-examine witnesses against you, and the State would have  
8 to prove your guilt beyond a reasonable doubt, but when you  
9 plead guilty you give up your right to a jury trial. Do you  
10 know that?

11          **MR. HAGINS:** Yes, ma'am.

12          **THE COURT:** And, let's see, this says you're 60 years  
13 old, is that correct?

14          **MR. HAGINS:** Yeah, 58.

15          **THE COURT:** Fifty-eight. How far did you go in school?

16          **MR. HAGINS:** Fourteen years.

17          **THE COURT:** All right. And what kind of work have you  
18 done since that time?

19          **MR. HAGINS:** Been electrician for 20 something years.

20          **THE COURT:** All right. And you understand that you were  
21 originally charged with murder. That charge was a day-for-day  
22 and carried a minimum of 30 years. You understand that?

23          **MR. HAGINS:** Yes, ma'am.

24          **THE COURT:** All right. And so you understand the benefit  
25 that you're getting from this plea here today?

1           **MR. HAGINS:** Yes, ma'am.

2           **THE COURT:** It's my understanding that the recommendation  
3 or the negotiations in this case are 25 years. Is that ---

4           **MR. DeJONG:** May I interrupt you there, Your Honor?

5           **THE COURT:** Yes.

6           **MR. DeJONG:** This is a bit of an unusual -- normally we  
7 don't try to talk down under that 25 years, but I have an  
8 agreement with Ms. Odom that I can try to get less ---

9           **THE COURT:** Okay. All right.

10          **MR. DeJONG:** I just wanted you to be aware of that, Your  
11 Honor.

12          **THE COURT:** Sure. I understand. You understand that the  
13 recommendation from the State is for 25 years? You understand  
14 that?

15          **MR. HAGINS:** Yes, ma'am.

16          **THE COURT:** And how do you plead to this charge, guilty  
17 or not ---

18          **MR. HAGINS:** Guilty. Yes, ma'am.

19          **THE COURT:** Okay. You've got ten days from today's date  
20 to appeal this plea if you so choose, but you must do so in  
21 writing to this Court. All right. Yes, ma'am.

22          **MS. ODOM:** Excuse me.

23          **THE COURT:** Take your time.

24          (Pause)

25          **MS. ODOM:** Shannon Odom on behalf of the State.

1           **THE COURT:** Why don't we take a break and you go get you  
2 a little cup of water.

3           (Pause)

4           **THE COURT:** Okay. Yes. Go ahead.

5           **MS. ODOM:** Thank you, Your Honor. Shannon Odom on behalf  
6 of the State. Your Honor, this occurred back on August the  
7 26th of 2016 here in Pickens County. The victim in the case  
8 was 54 year old Jeff Chandler. Mr. Chandler was renting a  
9 room from the Defendant.

10           On this day the Defendant had confronted Mr. Chandler  
11 about being behind on the rent. He was a hundred and ninety  
12 dollars (\$190.00) behind. They kind of went back and forth  
13 all day arguing, discussing, disagreeing about this, but  
14 ultimately the victim refused to pay. And the Defendant told  
15 him he was going to have to leave the home.

16           As the victim was preparing to leave, the Defendant  
17 continued to argue with him. The victim's girlfriend also  
18 lived in the home as well as another male. So all four people  
19 were at the home when this arguing was going on.

20           The victim's girlfriend was kind of used to the dynamic.  
21 She didn't want to hear the argument. She went into a bedroom  
22 and shut the door. She continued to hear arguing and then  
23 scuffling.

24           The victim opened the door to speak with his girlfriend  
25 and told her not to worry about the Defendant. At that time

1 she saw the Defendant jump on the victim's back and the two  
2 began to fight. The fight started inside and moved outside  
3 onto the porch. The girlfriend and the other man in the home,  
4 you know, they could hear everything, but they didn't get up,  
5 they didn't see anything.

6 When the front door opened again, the victim came back  
7 inside the home bleeding and was asking that 911 be called.  
8 At this time the victim's girlfriend saw the Defendant stab  
9 the victim repeatedly. In all there were ten stab wounds.

10 When the Defendant finished, he actually placed a knife  
11 in the victim's hand. At that point the Defendant called 911,  
12 and law enforcement responded. When they got there the victim  
13 was lying dead in the floor and his girlfriend was holding his  
14 head in her lap.

15 The Defendant tried to tell law enforcement that it was  
16 self-defense, however, he was unable to keep his story  
17 straight, and it changed several times. Ultimately the victim  
18 had four stab wounds in his back and six in his front. A stab  
19 wound had punctured his heart. And that proved to be the  
20 fatal blow.

21 Your Honor, the family members of the victim are present  
22 and would like to address the Court at the appropriate time.  
23 And I would like to address the Court at the appropriate time  
24 as well.

25 **THE COURT:** Sure. Mr. Hagins, you heard the facts as

1 stated by the solicitor. How do you plead, guilty or not  
2 guilty?

3 **MR. HAGINS:** Guilty.

4 **THE COURT:** I'll accept your plea as being freely and  
5 voluntarily made with the advice of extremely competent  
6 counsel with whom you say you're well satisfied, and the plea  
7 has a substantial factual basis. You said there's members of  
8 the victim's family that are here?

9 **MS. ODOM:** Yes, ma'am.

10 **THE COURT:** Yes.

11 **MS. CARMICHAEL:** My name is Patricia Carmichael. I am  
12 Jeff's oldest sister.

13 You heard the facts of how brutal his murder was. We  
14 went to the residence a few days afterwards. We saw the  
15 struggle -- where the struggle had been. It was horrific,  
16 horrific. I've never seen anything on any crime show that was  
17 as horrific as this.

18 Tables were turned, blood was down the walls where you  
19 could tell he struggled trying to stay upright. Witnesses  
20 also said that Jeff tried to make amends with Andy and tried  
21 to buffer the situation, and Andy would have no part of it.  
22 He just kept attacking him, got on top of him and stabbed him  
23 over, and over, and over.

24 We just saw a video of his confession in the district  
25 attorney's office. And there was no remorse there. There

1 were so many lies. So many times he changed his story.

2 What we would like to really ask the Court, I would like  
3 to read some -- something that my oldest daughter wrote. We  
4 just want to give some idea of what this void or what this ---

5 **THE COURT:** All right.

6 **MS. CARMICHAEL:** --- action has left a void within us.

7 **THE COURT:** All right.

8 **MS. CARMICHAEL:** And we would also -- we would have loved  
9 for the murder charge to stand. We also want closure,  
10 especially at this time of the year, this very difficult ---

11 **THE COURT:** I understand.

12 **MS. CARMICHAEL:** --- time of the year, ---

13 **THE COURT:** I understand.

14 **MS. CARMICHAEL:** --- to have another Christmas without  
15 him.

16 What we would like to really ask and plead with you is to  
17 uphold the recommendation for 25 years with -- we don't want  
18 that 85 percent, but I don't know if that's just standard. We  
19 just want the maximum ---

20 **THE COURT:** I understand.

21 **MS. CARMICHAEL:** --- that he can get.

22 **THE COURT:** I understand.

23 **MS. CARMICHAEL:** We would like to be able to forgive him.

24 I would like to read something that my daughter ---

25 **THE COURT:** Okay. Go right ahead.

1           **MS. CARMICHAEL:** Okay. This is my oldest daughter, Karla  
2 Brown, who had a very close relationship with Jeff.

3           I'm trying to think of what to say today to justify -- to  
4 justly describe to the Court how our lives have been deeply  
5 affected by the life and death of Jeff Chandler.

6           My mind keeps returning to him every -- of his bright,  
7 contagious smile. To be around Jeff was to be happy. His  
8 infectious, playful sense of humor, those laughing eyes, his  
9 endless energy for passion and passion for life have  
10 significantly impacted my life and all who knew him.

11           Memories flood my mind, him teaching his nieces and  
12 nephews how to fish, his ability to tell a joke just like his  
13 father, him belting out Barry White or Percy Sledge while  
14 twirling Dannie, his mom, around the living room. He was the  
15 type of person you called if you needed a laugh, or an ear to  
16 listen, or just practical advice on just about anything.

17           And so gifted. He was a talented -- talented  
18 horticulturist and landscape artist. You could sense his  
19 excitement as he talked about his vision for a garden or a  
20 yard. Some of my favorite moments with him were simply --  
21 were simple, yet precious. He helped me plan my first cactus  
22 garden, taught me how to clean a catfish and tried to teach me  
23 how to shag.

24           Through him we learned not to take life so seriously, to  
25 slow down and appreciate God's blessings to love one -- and to

1 love one another. How many times have I or we reached for a  
2 phone, oh, just to hear, hey, baby girl, one more time. We  
3 were robbed of his light through an act of violence,  
4 cowardice, and greed. But his legacy will live on through all  
5 of us here today and countless others who were blessed to have  
6 our lives illuminated by his bright spirit.

7 **THE COURT:** Thank you.

8 **MS. CARMICHAEL:** Thank you.

9 **THE COURT:** Thank you.

10 **MR. BUCHANNON:** My name is Adam Buchannon. Jeff was my  
11 uncle. He wasn't a perfect man, and I was a troubled child.  
12 Mom and dad wasn't around. His mom was my mom.

13 Papa was a drunk, so he was one of the only male role  
14 models that I had. He gave me guidance and advice, the  
15 courage to change the boy I was to become a man. He gave me  
16 my love for the outdoors. He showed me a six-hour hike or a  
17 30 minute sitting beside a wash bowl could relieve eight  
18 years' worth of stress.

19 I remember getting a phone call, my heart sank. I felt  
20 sick and just overcome with pain. But nothing felt worse than  
21 having to tell my kids and seeing the pain in their eyes. I  
22 know nothing can bring him back. I just hope that you can  
23 take as much time from him as he's took from ours.

24 **THE COURT:** Thank you, sir. Thank you. Are there  
25 others?

1           **MS. CHANDLER:** I'm Jeff's oldest sister, Charlene  
2 Chandler, one of his oldest sisters. And I remember when I  
3 got burned and sent to the burn center in the Augusta, Georgia  
4 -- he was the only one that could drive my husband to Augusta  
5 to see me.

6           And he told me, he said, Charlene, just hang in there,  
7 baby. He said, God is with you and so am I. He said, don't  
8 forget, you've got love in you, and I've got love for you, and  
9 I'll never forget you. You hold on.

10           So then when I got released from the burn center I was  
11 sent to Patewood Rehabilitation for burn center -- burn  
12 patients. And my brother, Jeff, and my nephew, Adam, and my  
13 sister, Robin, come after me. And he stopped me and said, I  
14 know you're hungry. And I said, yeah, I want Burger King from  
15 -- Burger King, a whopper. And I didn't have no money.

16           And I had to smoke because you couldn't smoke cigarettes  
17 in the -- Patewood -- in rehab.

18           **THE COURT:** Okay.

19           **MS. CHANDLER:** And I asked him for a cigarette. And he  
20 said, Charlene, you haven't had a cigarette, and you're not  
21 going to get one from me. I said, come on, Jeffro. And he  
22 says, okay, I'm going to give you one, but that's it.

23           So then my nephew here had bought me a pack of  
24 cigarettes. And he got so mad. And he said, Charlene, you  
25 know you can do this. He said, I'll stand behind you one

1 hundred percent. And I know he would.

2 **THE COURT:** Yeah.

3 **MS. CHANDLER:** And he did.

4 And then when the cop showed up at my door on August the  
5 27th, I was fixing my husband and me some coffee. And I  
6 thought, oh, Lord. And he said, ma'am, are you Ms. Chandler?  
7 And I said, yes, I am. And he said, do you have a brother  
8 named Jefferson Chandler? And I said, oh, Lord, don't tell me  
9 he's back in jail.

10 The officer looked at me and he said, no, ma'am. He  
11 said, your brother's dead. I said, no, he can't be. I just  
12 talked to him last night. He said, honey, your brother's  
13 dead. He said, Andy Hagins took his life, stabbed him to  
14 death. I said, no, no, no, he didn't. And he said, ma'am,  
15 just sit down.

16 So I remember at his memorial we spoke of him. Jeff was  
17 funny. He used to always make you laugh. If he was standing  
18 here today, he'd make us laugh. But we ain't got that no  
19 more. We ain't got it. And this man right here standing  
20 before me took that from us, my family. That's all I have to  
21 say.

22 **THE COURT:** Thank you, ma'am. Thank you.

23 **MS. BUCHANNON:** I'm Robin Buchannon. Jeff was my baby  
24 brother. We was a year and one month apart. And we had an  
25 older brother, Timmy. He was a year and one month older than

1 me. And I was a year and one month older than Jeff. And we  
2 was like this.

3 They taught me how to climb trees, jump a train,  
4 crawfish, do all kind of construction work, be the tomboy that  
5 I am today. He taught me how to fish, clean a catfish, put  
6 the worm on the hook, all that good stuff.

7 And he was just -- we done everything together. We were  
8 always together. And I don't have him no more ---

9 **THE COURT:** Yeah.

10 **MS. BUCHANNON:** --- because of that man right there. And  
11 I don't, I mean, I pray to God every day that He gives me the  
12 strength to forgive this man one day, but I'll never forget  
13 what he took from us.

14 **THE COURT:** I understand.

15 **MS. BUCHANNON:** My grandchildren, what he took from my  
16 grandchildren. My grandchildren loved that man. Oh, my Lord.  
17 Uncle Jeff, Uncle Jeff. I mean, you know, and they don't have  
18 that no more.

19 **THE COURT:** Yeah.

20 **MS. BUCHANNON:** He took so much from so many of us that  
21 it's really, I mean, you can't really express it all.

22 **THE COURT:** Yeah. Well, I thank y'all ---

23 **MS. BUCHANNON:** Thank you, Your Honor, for listening.

24 **THE COURT:** I thank you all for being here. And I'm just  
25 so sorry for your loss. He sounds like he really was a very

1 special man. But thank you for being here and being here on  
2 his behalf.

3 **MS. ODOM:** Thank you, Your Honor.

4 **THE COURT:** Yes, ma'am, you said you wanted to speak.

5 **MS. ODOM:** Just briefly, Your Honor. I did want to  
6 highlight the Defendant's record that dates back to 1976 that  
7 started with a grand larceny. He has two distributions of  
8 Diazepam, '83 and '84, as well as a couple of DUIs, possession  
9 of marijuana. In 1998 he had reckless homicide, possession of  
10 controlled substance in '02, assault and battery in '06, and  
11 then a pointing and presenting from 2011 or he did point a gun  
12 at a neighbor.

13 Your Honor, this was a very violent and brutal crime. We  
14 would ask that you sentence the Defendant to no less than 25  
15 years. He has credit for 845 days.

16 The victim was a good guy who's going to be missed by  
17 many, many people. And the Defendant didn't just take his  
18 life, but he took everything that he ever would have had. He  
19 took every opportunity to spend time with his family, to just  
20 live life and enjoy it. The Defendant took that from the  
21 victim and the victim's family.

22 And the 25 years will never be enough. It will not be  
23 enough to bring this victim back. But we ask that you do go  
24 along with that.

25 **THE COURT:** Well, thank you. I appreciate it. And I

1 appreciate your words on behalf of this family as well. Yes,  
2 sir.

3 **MR. DeJONG:** Thank you, Your Honor. May it please the  
4 Court?

5 **THE COURT:** Yes.

6 **MR. DeJONG:** As you heard, 50 -- he is 58 years of age.  
7 Just about anything that you give him, 20 or greater, he's  
8 probably going to die in prison. I mean, he's going to have  
9 to serve 85 percent of it. He recognizes that.

10 I will share with the Court that Mr. Hagins has never  
11 tried to avoid what he did. He's never tried to minimize it.  
12 He's one of the few clients I have that I had to get after him  
13 to call me from the jail. He was very, very quiet. Then I'd  
14 get after him, he'd call me a time or two, and then I wouldn't  
15 hear from him again. I'd get after him again.

16 He has a high school diploma, Your Honor, that he earned  
17 from Irmo, down around Columbia. Went to Greenville Tech for  
18 two years, just took some general curriculum classes, thinking  
19 about going back to college.

20 I did ask him about meds, Your Honor. He says he's on a  
21 couple of meds down at the jail. He says he doesn't know what  
22 they are. I asked him if it affected his ability to  
23 understand what was going on or what he was doing today. He  
24 said it did not.

25 I will share with Your Honor that he's been on disability

1 since 2002. As he shared with you, he was an electrician.  
2 Sometime before 2002 he injured his back. Before that, in  
3 1998, he had a car wreck. I don't know if that was the record  
4 that Madam Solicitor alluded to or not, but he crushed his  
5 ankle there. So between his crushed ankle and his back  
6 injury, he was granted disability.

7 He was born in Aiken, South Carolina, Your Honor. He  
8 came up to this part of the country 20 years ago. He said  
9 he's lived up here approximately 20 years. His parents are  
10 deceased.

11 He has two brothers, one that lives in Greenville, one  
12 that lives in Beaufort. And according to Mr. Hagins, they  
13 lead quite a successful life. He unfortunately turned out to  
14 be a little bit of the black sheep in the family. As I shared  
15 with you, he's done electrical work all of his life.

16 The incident at hand, Your Honor, did arise over rent  
17 money. My client -- doesn't rise to any defense, but said the  
18 -- Mr. Chandler had said he would pay him the rent the day  
19 before. The next day came, he didn't pay his rent. They got  
20 into an argument. Again, according to my client, there was  
21 some alcohol involved on both sides and possibly some drugs as  
22 well.

23 My client says he called 911. I'm not sure about the  
24 litany the solicitor went into, but we'll accept that for the  
25 moment. He was there when law enforcement arrived. He didn't

1 try to run. Been in jail since that time.

2 Fully cooperated with law enforcement, cooperated with  
3 them to such an extent he didn't leave me anything to work  
4 with. And he says on this day that Mr. Chandler just pushed  
5 his switch, he couldn't handle it anymore, and that's what  
6 happened.

7 You can probably tell by listening to his prior record,  
8 Your Honor, he had an alcohol problem. He also had an  
9 addiction problem to Oxycontin. He told me that he got that  
10 cleaned up some years back, before he went to jail this time.

11 It is a tragic thing, Your Honor. And I could not stand  
12 here and say it is not. But I would ask you to at least  
13 consider something somewhat less than 25 years in light of his  
14 age, in light of the fact that it is an 85 percent sentence,  
15 Your Honor.

16 Mr. Hagins, is there anything you would like to share  
17 with the Judge?

18 **MR. HAGINS:** Yeah, I'd just like to apologize ---

19 **THE COURT:** No, no, no. To me.

20 **MR. HAGINS:** --- to the family ---

21 **THE COURT:** To me. Go ahead.

22 **MR. HAGINS:** I'd just like to apologize to the family and  
23 families, my family and Jeff's family. It was just a big -- I  
24 don't know. I don't even remember doing it.

25 **THE COURT:** All right. Well, you know, I think what your

1 attorney says is correct and probably that a 25 year sentence  
2 probably means that you'll never be released from the  
3 Department of Corrections. I agree with him that that's  
4 probably the case. And so that's the sentence, 25 years,  
5 credit for 846 days. Good luck ---

6 **MR. DeJONG:** Thank you, Your Honor.

7 **THE COURT:** Good luck to you all.

8 (Hearing Ended at 12:22 pm)

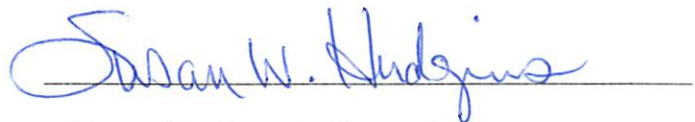
9 (End of Requested Transcript of Record)

## Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 19th day of December 2018.

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

March 26, 2020



Circuit Court Reporter

**WITNESSES**

Anthony Raines

Pickens County Sheriff's Office

8/27/2016

**ARREST WARRANT NUMBER**  
2016A3910100977

**ACTION OF GRAND JURY**

~~TRUE BILL~~

~~RE~~ JAN 22 2018

*For person of Grand Jury*  
*Blair A. Phillips*

**VERDICT**

*Foreperson of Petit Jury*  
Date:

DOCKET NO. 2018-GS-39-0009  
DGB  
The State of South Carolina  
County of Pickens

COURT OF GENERAL SESSIONS  
JAN 22 2018 TERM 2018

THE STATE

vs.

RICHARD ANDREW HAGINS

Indictment for

0116

MURDER

VIOLATION § 16-03-0010, 0020

Certified Copy

*Handed P. Vallentyne*  
Clerk of Court  
Pickens County, SC  
Dated *Jan 22 2018*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )

INDICTMENT FOR  
MURDER

At a Court of General Sessions, convened on

**JAN 22 2018**

the Grand Jurors of Pickens

County present upon their oath:

That RICHARD ANDREW HAGINS did in Pickens County, on or about the 26th day of August, 2016, unlawfully and with malice aforethought kill JEFF CHANDLER by means of stabbing the victim multiple times, and that JEFF CHANDLER died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

**Certified Copy**

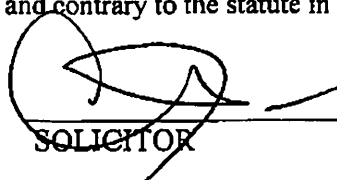
*Harold P. Walker*

**Clerk of Court**

**Pickens County, SC MS**

Dated *Jan 22 2018*

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



SOLICITOR

BAR # 100344

**WITNESSES**

Anthony Raines

Pickens County Sheriff's Office

8/27/2016

**ARREST WARRANT NUMBER**  
2016A3910100978

**ACTION OF GRAND JURY**

**TRUE BILL**

**Date**

JAN 22 2018

Foreperson of Grand Jury  
*Beth Phillips*

**VERDICT**

24

Foreperson of Petit Jury  
Date:

DOCKET NO. 2018-GS-39-0010  
DGB

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JAN 22 2018

TERM 2018

THE STATE

vs.

RICHARD ANDREW HAGINS

Indictment for

0549

POSSESSION OF A WEAPON DURING THE  
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

certified copy

*Richard P. Williams*  
Clerk of Court  
Pickens County, SC  
*[Signature]*

STATE OF SOUTH CAROLINA )  
COUNTY OF PICKENS )

INDICTMENT FOR  
POSSESSION OF A WEAPON DURING THE COMMISSION OF A  
CRIME

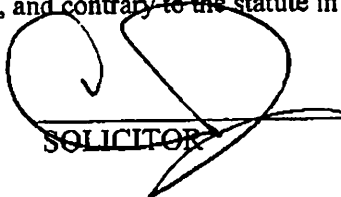
At a Court of General Sessions, convened on **JAN 22 2018** the Grand Jurors of Pickens

County present upon their oath:

That RICHARD ANDREW HAGINS did in Pickens County, on or about the 26th day of August, 2016, possess or visibly display a knife during the commission or attempted commission of a violent crime, to wit: Murder. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Cancelled Copy  
Handwritten Signature  
Clerk of Court  
Pickens County, SC  
Dated Jan 22 2018

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

  
SOLICITOR BAR # 100344

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Pickens
STATE VS.

INDICTMENT/CASE#: 2018GS3900009
A/W#: 2016A3910100977
Date of Offense: 8/26/2016
S.C. Code § : 16-03-0010, 0020
CDR Code #: 0116

Richard Andrew Hagins
AKA:
Race: WHITE Sex: M Age: 58
DOB: -1958 SS#:
Address: Quiet Lane
City, State, Zip: Easley, SC 29640
DL#: SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Manslaughter, Voluntary

SENTENCE SHEET
2 years - 30 years
CONVICTED OF or PLEADS

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Shannon Odom, SC Bar# 0077891
Defendant: Richard A. Hagins
Attorney for Defendant: DEJONIA W. SC Bar# 01620

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
The Defendant is to be placed by the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:
Set by SCDPPPS Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Certified Copy

Recipient:
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Def. Other: Clerk of Court Pickens County, SC

Table with 3 columns: Description, Amount, Total. Includes items like Assessments, Surcharges, and Probation fees.

Clerk of Court/ Deputy Clerk: Howard P. Wellborn
Court Reporter: Susan Hudgens

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge: [Signature]
Judge Code: 2102
Sentence Date: 12/19/18

FORM 5

2020-CP-39-00082

IN THE COURT OF COMMON PLEAS

2020 JAN 22 A 9 38

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA  
APPLICATION FOR

POST-CONVICTION RELIEF

STATE OF SOUTH CAROLINA )

County of Pickens )

Richard Andrew Hugins )  
Full name and prison number (if any) of Applicant )

Richard Andrew Hugins )  
252152 )

State of South Carolina )

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lieber CI, SCDC, Ashky B-01  
136 Wilbourn Av. PO Box 265 Ridgely, S.C. 29472
2. Name and location of Court which imposed sentence Pickens County  
Courthouse 214 E. Main St. B220 Pickens, S.C. 29671
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
N/A  
(a) Manslaughter (voluntary)  
(b) \_\_\_\_\_

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) December 19, 2018 25 years in Dept. of Corr.
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty ✓
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. - None -
    - ii. - None -
    - iii. - None -
  - (b) the result in each such Court to which you appealed:
    - i. - None -
    - ii. - None -
    - iii. - None -
  - (c) the date of each such result:
    - i. - None -
    - ii. - None -
    - iii. - None -
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. - None -
    - ii. - None -
    - iii. - None -
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) was not advised by counsel
  - (b) not given sixth amendment right

- (c) Totally unaware of procedure to follow
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: (see additional page)
- (a) ineffective assistance of counsel (see addit. page)
- (b) Denial of sixth amendment (see additional page)
- (c) Denial of Rule 5(b)(1) (A) (see additional page)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) No information or advice from counsel resulting in conviction
- (b) Counsel made decision without my knowledge
- (c) Had evidence to support disclosure
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. - None -
- ii. - None -
- iii. - None -
- iv. - None -
- (b) the name and location of the Court in which each was filed:
- i. - None -
- ii. - None -
- iii. - None -
- iv. - None -

(continued from original)

①

10a. The first thing I advised counsel was my mental health issues and past medications prescribed. Letting him know records were easily accessible for the last twenty (20) years. I also informed him that I could not read legible without my reading glasses. The first thing he stressed to me is that we could not talk in any detail, in the county jail or phone, about my case because of bugs, listening devices. No talking to other inmates because they had informants in the population. That was the main part of our first meeting excluding introductions. All the meetings with counsel, John DeJong, public defender, lasted less than four hours in twenty-eight months. Approximately one-half of that time, two hours, was watching a DVD in his office, at myself sitting in the back of a patrol car, at the scene, at the time of the incident. We never had a discussion because there was nothing to discuss. He sent a junior partner to the original indictments, murder and possession of a weapon during a violent crime. De not have a chance to speak. He sent his paralegal to the county jail the second time. The first time I was transported to his office he was not available. He never interviewed any witnesses or discussed the remaining part of the "Motion of Discovery." He also was

(2)  
aware of two major drug charges, pending in Greenville County, that I was out on bond on. Also he never informed that both of them had been dismissed on 9/2016. I never was aware of any of this until I finally got a pair of reading glasses 7/2019. Still having problems getting transcripts of the proceedings. Totally unprofessional.

b. Was never aware of any of my rights especially the sixth amendment of the U.S.

c. My counsel sent the state's Request for Reciprocal Discovery and the state's Request for Notice of Alibi and/or Insanity Defense, pursuant to Rule 5, South Carolina Rules of Criminal Procedure. But to my knowledge never followed up.

d. One more thing is that the first time I went to trial is when I was approached with the plea deal to a lesser charge of manslaughter, only if I waited to go in front of Judge Verdin, solicitor's choice. Only thing my counsel did was advise me that it was the best thing to do.

(c) the disposition thereof:

- i. - None -
- ii. - None -
- iii. - None -
- iv. - None -

(d) the date of each such disposition:

- i. - None -
- ii. - None -
- iii. - None -
- iv. - None -

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

- i. - None -
- ii. - None -
- iii. - None -
- iv. - None -

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

No

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

(a) which grounds have been presented:

- i. - None -
- ii. - None -
- iii. - None -

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

- i. - None -
- ii. - None -
- iii. - None -

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

- (a) No
- (b) No
- (c) No

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

- (a) your arraignment and plea? Public Defender's Office
- (b) your trial, if any? No
- (c) your sentencing? John DeJong, Esq. Public Defender
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
No

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

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

- i. John Dejong, Esq.  
214 East Main St. Pickens, S.C. 29671

- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. Plea Deal, Sentencing

- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

Sentence Reduction, new trial/concerning  
motion of discovery evidence.

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

No

2020 JAN 22 A 9 38  
CLERK OF COURT  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
County of \_\_\_\_\_ )

VERIFICATION

I, Richard Andrew Hegin 252152, 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.

Richard A. Hegin

SWORN to and subscribed before me this 7th  
day of JANUARY, 2020

Lide K. B. (L.S.)  
Notary Public

My Commission Expires: 6-20-26

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

I, Richard A. Hagins 252152, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Richard A. Hagins  
Richard A. Hagins Applicant

SWORN or affirmed to and subscribed before me this 7<sup>th</sup> day of January, 2020.

Linda K. B...  
 Notary Public

My Commission Expires: 6-20-26

CLERK OF COURT  
 SICKENS COUNTY  
 SOUTH CAROLINA

2020 JAN 22 A 9 38

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF PICKENS ) A IN #9 THE THIRTEENTH JUDICIAL CIRCUIT  
2020 JUN 17 )

Richard Andrew Hagins, #252152, CLERK OF COURT Case No.: 2020-CP-39-82  
Applicant, PICKENS COUNTY  
SOUTH CAROLINA )

v. )

RETURN AND PARTIAL  
MOTION TO DISMISS

State of South Carolina, )  
Respondent. )

The State (Respondent), making its return to the application for post-conviction relief filed by Richard Andrew Hagins (Applicant) on January 22, 2020, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. During its January of 2018 term, the Pickens County Grand Jury indicted Applicant for murder (2018-GS-39-9) and the possession of a weapon during the commission of a violent crime (2018-GS-39-10). Applicant was represented by Chief Public Defender John W. DeJong (plea counsel) and Assistant Solicitor Shannon Swords Odom of the Thirteenth Circuit Solicitor’s Office prosecuted the case. On December 19, 2018, Applicant appeared before the Honorable Letitia H. Verdin (plea court) and pleaded guilty to the lesser-included offense of voluntary manslaughter. The terms of Applicant’s plea agreement was that he would plead guilty to the lesser-included offense, the State would recommend Applicant be sentence to imprisonment for twenty-five years, and that Applicant retained his right to argue for a lower sentence before the plea court. In accordance with the Sate’s sentencing recommendation, the plea court sentenced Applicant to imprisonment for twenty-five years, with credit for time served. On that same day, the State dismissed the indictment for the possession of a weapon. Applicant did not appeal his conviction or sentence.

## II. Current Application

In his application for post-conviction relief, Applicant alleges he is entitled to post-conviction relief based on multiple grounds, which the undersigned interprets as follows: (1) plea counsel was constitutionally ineffective for failing to adequately prepare for trial, (2) plea counsel was constitutionally ineffective for failing to advise Applicant of his rights, especially his rights under the Sixth Amendment of the United States Constitution, (3) plea counsel was constitutionally ineffective for failing to follow-up with the State after moving for discovery, (4) plea counsel was constitutionally ineffective for failing to do more in plea negotiations on Applicant's behalf, and (5) Applicant did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence.

Applicant prays that the Court grant him post-conviction relief by reducing his sentence or granting him a new trial "concerning motion of discovery evidence." Attached to this return and incorporated by reference are the records of the Pickens County Clerk of Court regarding the subject conviction and the offense dismissed in accordance with the plea agreement, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's plea hearing, and the post-conviction relief application. Respondent reserves the right to amend this return upon receipt of any relevant materials.

## III. Summary Dismissal Based on Statute of Limitations

Applicant's claims that he received the ineffective assistance of counsel should be summarily dismissed because his application was not filed in compliance with the filing procedures laid out in the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (the Act). Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and

admissions and agreements of fact” and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view them in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

The Uniform Post-Conviction Procedure Act requires as follows:

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

S.C. Code Ann. § 17-27-45(A). The South Carolina Supreme Court has held 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).

In this case, Applicant was sentenced on December 19, 2018, and he did not appeal his conviction or sentence. Therefore, the application for post-conviction relief was due to be filed on or before December 19, 2019. Applicant’s application was not filed until January 22, 2020, a date which occurred after statutory filing period had already expired. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act, with the exception of the claim that Applicant did not knowingly and voluntarily waive his right to direct appellate review, which Respondent addresses later herein.

#### IV. Response to Applicant's Direct Appeal Claim

Applicant claims that he did not knowingly and voluntarily waive his right to direct appellate review by writing in his application for post-conviction relief that he was not advised by plea counsel of his right to appeal, was not advised of his Sixth Amendment right, and was unaware of the procedures to follow in order to effect an appeal.

The one-year limitations period in which to file an application for post-conviction relief does not apply where the defendant alleges he was denied a direct appeal due to ineffective assistance of counsel. Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002). In White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the South Carolina Supreme Court held that, even though the post-conviction relief court may find that an applicant did not voluntarily and intelligently abandon his right to a direct appeal, the PCR court does not have jurisdiction to grant a belated appeal. However, when an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 39-40.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When counsel has consulted with the defendant regarding the right to appeal, "Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." Id. at 478 (underlining added). In order to establish he was prejudiced by counsel's failure to file an appeal,

Applicant must show he would have appealed absent counsel's deficient performance. See Id. at 484. "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981).

Respondent submits Applicant cannot meet his burden showing he is entitled to a belated appeal pursuant to White. During Applicant's plea hearing, the plea court informed him that he had the right to appeal and was required to do so in by writing to the Court within ten days of the entry of his guilty plea, which would have cured any deficiency on the part of plea counsel if plea counsel did not inform Applicant of his right to appeal if he was required to do so. See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citations omitted) (concluding that any alleged deficiency in plea counsel's advise to Holden was cured by the plea court's colloquy), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). However, because this allegation may raise questions of fact not conclusively refuted by the record, Respondent requests an evidentiary hearing to fully resolve the matter. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV. Denial of All Other Allegations

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

#### V. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by counsel, that attorney and not the Applicant is the only individual

authorized to file amendments to this application for post-conviction relief. See Rule 11, SCRCP. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 238-39, 834 S.E.2d 196, 199-200 (2019), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

#### VI. Conclusion

WHEREFORE, Respondent requests that the Court summarily dismiss the claims that Applicant received the ineffective assistance of counsel and convene an evidentiary hearing on Applicant’s claim that he did not knowingly and voluntarily waive his right to a direct appeal.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH  
Assistant Attorney General

By: s/Taylor Zane Smith  
S.C. Bar No.: 103282  
ATTORNEYS FOR RESPONDENT

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

April 10, 2020

STATE OF SOUTH CAROLINA )  
 COUNTY OF PICKENS )  
 )  
 Richard Andrew Hagins, #252152, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 Respondent, )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-39-82

**CERTIFICATE OF SERVICE**

2020 JUN 17 A 11:39  
 CLERK OF COURT  
 PICKENS COUNTY  
 SOUTH CAROLINA

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court’s Order “RE: Operation of the Trial Courts During the Coronavirus Emergency” (Appellate Case No. 2020-000447), dated April 3, 2020), “a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer’s primary email address listed in the Attorney Information System (AIS).”
3. Undersigned has served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

**Don A. Thompson, Esquire**  
**thompson\_legal@aol.com**

DATED this 10th day of April, 2020.

s/Taylor Zane Smith  
 ATTORNEY NAME  
 Assistant Attorney General  
 S.C. Bar No.: 103282

Office of the Attorney General  
 Post Office Box 11549  
 Columbia, SC 29211

(803) 734-3737  
 TSmith@scag.gov



ALAN WILSON  
ATTORNEY GENERAL

2020 JUN 17 A 11:49

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

June 15, 2020

The Honorable Harold P. Welborn, Jr.  
Clerk of Court - Pickens County  
Post Office Box 215  
Pickens, SC 29671-0215

**Re: Richard Andrew Hagins, 252152 v. State of South Carolina**  
**2020-CP-39-0082**

Dear Mr. Welborn:

Enclosed please find the original **Return and Partial Motion to Dismiss** of the Respondent in the above-captioned case for filing in your office.

Sincerely,

s/Taylor Zane Smith  
Taylor Z. Smith  
Assistant Attorney General

TZS/jacc  
Enclosures

cc: Don A. Thompson, Esquire

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2020-CP-39-00082
COUNTY OF PICKENS	)	
	)	
	)	
	)	
RICHARD A. HAGINS,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

March 22, 2022  
 Greenville, South Carolina

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR., JUDGE

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

DON A. THOMPSON, ESQ.  
 Attorney for the Applicant

TAYLOR Z. SMITH, ESQ.  
 Attorney for the Respondent

CHERYL A. SMITH  
 Circuit Court Reporter

INDEX

(AW) - Denotes Applicant's Witness  
 (RW) - Denotes Respondent's Witness

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EXHIBITS

	<u>NO</u> <u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 9:57 a.m.)

MR. SMITH: This is the case of Richard A. Hagins v. State. The case number is 22-CP-39-00082.

Mr. Hagins is serving out a prison sentence in the South Carolina Department of Corrections. He was indicted in January of 2018 for murder and possession of a weapon during the commission of a violent crime.

In December of 2018, he went before Judge Verdin and pled to voluntary manslaughter. And the State had a recommended sentence of 25 years, and Judge Verdin followed that. Mr. Hagins did not appeal and has since filed this application for postconviction relief. The State has moved to dismiss it on the basis that it is late. He was -- Mr. Hagins was sentenced December 19, 2018, and he did not appeal. And according to the Uniform Postconviction Procedure Act, his application should have been filed on or before December 19th or 20th of 2019, and he did not file until January of 2020. So it's late. The only claim that would not be subject to that, potentially, could be his claim that he was denied his right to a direct appeal, and that really depends upon what he says his reason was for missing the filing deadline. So, you know, it's a pretty simple motion based on a late filing.

THE COURT: All right. Mr. Thompson?

1 MR. THOMPSON: Thank you, Judge. I've talked with  
2 Mr. Hagins, and I told him I thought we probably were  
3 going to lose this motion.

4 Both Mr. Smith is correct in that he was sentenced on  
5 December 19th of 2018, and the filing with the clerk of  
6 court in Pickens was January 22nd of 2020, which was a  
7 little bit over three months -- I mean 13 months past his  
8 sentence date. I was hoping I might be able to argue  
9 that, well, it was caught in the mail somehow, but,  
10 unfortunately, the signature page on the application where  
11 he dates it -- signs it and dates it is dated January the  
12 7th. So that's beyond the 12 months also. So  
13 unfortunately, as I've told Mr. Hagins, we don't have a  
14 defense to the statute of limitations.

15 THE COURT: We had this come up yesterday and read  
16 the Supreme Court that says if it's filed in the mailroom  
17 within the time, then if it's delayed, it's good. But  
18 this doesn't appear to be the case in this situation.

19 MR. THOMPSON: That's correct.

20 THE COURT: I'm very sorry.

21 DEFENDANT HAGINS: Can I ask a question?

22 THE COURT: Sure.

23 DEFENDANT HAGINS: Does the Corona Virus have  
24 anything to do with that? Until I find out -- the public  
25 defender told me he was going to file a direct appeal.

1       Until I found out, that's the only reason I filed. I  
2       didn't know nothing about the PCR or nothing. I mean, I  
3       was unaware of all that. He -- he informed me he was  
4       going to file a direct appeal, and then I just never heard  
5       from him again.

6               THE COURT: I don't believe the direct appeal issue  
7       is in front of me.

8               MR. SMITH: Well, Your Honor, in all candor to the  
9       Court, there is a case called Wilson v. State. The  
10      citation is 348 S.C. 215. It's a 2002 Supreme Court case.  
11      And it says that the statute of limitations will not bar a  
12      claim that an applicant was denied his right to a direct  
13      appeal if that reason for that delay was his belief that  
14      -- or the delay was due to ineffective assistance of  
15      counsel. So if Your Honor does find that Mr. Dejong was  
16      ineffective in not filing a notice of appeal, that would  
17      save that claim from the statute of limitations.

18              And in all candor, again, I can't remember the  
19      citation now, but I believe there's case law saying that  
20      if an applicant can prove to the Court that the reason he  
21      filed his application late is that he believed his direct  
22      appeal was pending, that that may save the application  
23      from the statute of limitations, too. But I'm -- I can't  
24      remember that exactly. We may need to look that up, so --  
25      make sure that I'm citing that correctly, that last part.

1 MR. THOMPSON: Perhaps we need to take some testimony  
2 from Mr. Hagins as to his belief on what was happening  
3 with the appeal.

4 THE COURT: I don't think that would be bad. I think  
5 that would be a good idea. So let's place Mr. Hagins  
6 under oath. I'm going to -- the clerk of court is going  
7 to appear momentarily.

8 THE CLERK: Mr. Hagins, will you raise your right  
9 hand?

10 WHEREUPON,

11 RICHARD A. HAGINS

12 After having been duly sworn, testified as follows:

13 THE CLERK: Please state your full name for the  
14 record.

15 THE WITNESS: Richard A. Hagins.

16 THE CLERK: Thank you.

17 THE COURT: All right. Mr. Thompson, go ahead.

18 MR. THOMPSON: Thank you, Your Honor. If it please  
19 the Court.

20 THE COURT: Uh-huh.

21 DIRECT EXAMINATION

22 BY MR. THOMPSON:

23 Q Mr. Hagins, you are -- what -- where are you located  
24 at now?

25 A I'm at Evans Correctional Institution in

1 Bennettsville, South Carolina.

2 Q Okay. To speed things up a little bit, on December  
3 the 19th, 2018, you pled guilty, did you not, to a  
4 manslaughter charge?

5 A Yes, sir. On the times that I went and received over  
6 15 years, like if I got over 15 years, he would file a  
7 direct appeal right away.

8 Q Okay. Let's back up just one second. Who was your  
9 attorney?

10 A John Dejong.

11 Q Okay. The public defender?

12 A Yes, sir.

13 Q Now, wasn't there a recommendation in your case of  
14 25 years?

15 A That he never said -- he said 15.

16 Q Okay. And I believe you just said that he said that  
17 if you got over 15, he would file a direct appeal?

18 A Yes, sir.

19 Q Okay. Did you expect him to file an appeal?

20 A Yes, sir.

21 Q And backing up again, what kind of sentence did you  
22 get?

23 A They gave me a 25-year sentence.

24 Q All right. And were you -- when did you learn that  
25 no appeal had been filed?

1 A After -- I never got -- I never got -- received  
2 anything after a year, and I went ahead and found out that  
3 I could file a PCR. But I didn't have no idea about the  
4 statute of limitations. I did it all on my own through  
5 the law library. I had no help, and I filed it on my own.

6 Q Just to make sure, you were under the understanding  
7 that an appeal was being filed; is that correct?

8 A Yes, sir.

9 MR. THOMPSON: All right. I don't believe I have any  
10 further questions regarding that, Judge.

11 THE COURT: All right. Mr. Smith?

12 CROSS EXAMINATION

13 BY MR. SMITH:

14 Q Mr. Hagins, when did you learn that you did not have  
15 a direct appeal pending?

16 A I didn't know there was a statute of limitations on a  
17 direct appeal. I just took for granted he was giving me  
18 his word that he was going to file a direct appeal in case  
19 I got over 15 years. He stood there and told me  
20 15 minutes before I went into the courtroom. That's the  
21 only reason I took that plea bargain. Plus, I had two --  
22 I was out on bond on two other charges, and he did not  
23 tell me that they had been dropped in 2016. I mean, he  
24 was so ineffective, it was unreal. I mean, really.

25 Q Mr. Hagins, when did you learn that you did not have

1 the direct appeal pending?

2 A I never learned it. I never -- I never -- never do.  
3 I thought he had it in the process. And the time, because  
4 of that COVID and everything, I thought it was getting  
5 delayed. And that's why I filed a postconviction to back  
6 it up just in case because somebody said I needed to file  
7 a postconviction. That's why I filed it.

8 Q Well, at some point you came to believe that you did  
9 not have a direct appeal pending, right?

10 A No. I never did. I thought -- I thought since I  
11 never got anything in the mail or anything and then they  
12 give me a court date -- the first original PCR date, and I  
13 thought -- finding that other thing out. I had no idea  
14 because I've got a mental health problem. I had no idea  
15 that that was going to cancel out or whatever, and there  
16 was a statute of limitation. He went and he filed a  
17 Chapter 5 for me because of my mental health condition.  
18 And he said he was going to do all that, and he never did.  
19 I mean, I don't understand. I mean, my mental health is  
20 bad, you know. And I don't understand what he thought I  
21 was agreeing to, seriously.

22 Q So, Mr. Hagins, you filled out your application for  
23 postconviction, right?

24 A Yes, sir. I did it myself.

25 Q Okay. So on here when you wrote the reason you did

1 not appeal is because you were, A, not advised by counsel,  
2 and, B, not given Sixth Amendment right, and, C, totally  
3 unaware of procedure to follow, doesn't that indicate that  
4 you were aware at some point that you did not have a  
5 direct appeal pending?

6 A The only reason I did that is because I looked it up  
7 on the law app, and it said that that's what I could file  
8 for, ineffective assistance of counsel. And he did not --  
9 he denied me my constitutional right, sir.

10 Q Okay. So when did you look that up on the law app?

11 A It was November of -- no. It was January of 2019, I  
12 think, or 2020. 2020, January. I mean, back at  
13 Christmastime, right after I never got anything in the  
14 mail about the direct appeal, I went ahead and took a lot  
15 on what I thought was right and filed it on my own. And  
16 that's why it was like a month late. 30 -- that's 30 days  
17 later.

18 Q Okay. So your testimony is that Mr. Dejong promised  
19 you that he would file a notice of appeal?

20 A Yes, sir.

21 MR. SMITH: Okay. Your Honor, no more questions now.  
22 But I think I would like to question Mr. Dejong about  
23 this, too.

24 THE COURT: Okay. Mr. Thompson, do you have any  
25 other witnesses?

1 MR. THOMPSON: No, sir.

2 THE COURT: All right. Well, then, let's see. Can  
3 we get . . .

4 MR. SMITH: I'll say this, Your Honor. I think for  
5 the purpose of the motion, I think you're required to rely  
6 upon what Mr. Hagins says about this. And, I mean, I  
7 think at least his testimony, if you take it at face  
8 value, is enough for him to overcome the bar to the  
9 statute of limitations, at least with respect to his  
10 direct appeal claim, meaning that it's something that I  
11 could rebut moving forward. But I -- at that point I  
12 don't think that this is a matter of law anymore.

13 THE COURT: Well, you know, he filed this thing on  
14 January 7th when he signed it, and that's about 12 -- less  
15 than three weeks, less than 20 days from the statute  
16 running. So, Mr. Smith, if you're telling me that the law  
17 allows that, for his belief that there was an appeal that  
18 should have been filed, and it's clear he was certain of  
19 it because that's why he was waiting to hear back from ---

20 DEFENDANT HAGINS: Yes, sir.

21 THE COURT: --- the direct appeal, so if that's the  
22 case, we can at least protect him as to that issue.

23 Now, what about the other case you told me?

24 MR. SMITH: Well, Your Honor, it jogged my memory a  
25 little bit. I believe that there is case law saying that

1 if the application was filed late, that if the reason was  
2 the applicant actually believed that he couldn't file yet  
3 because the direct appeal was pending, that that could  
4 save it. But I can't put my hand on that at the moment,  
5 so I apologize for that.

6 MR. THOMPSON: Let me ask this. Since he believed  
7 that there was a direct appeal in process, can we grant  
8 him a belated appeal now?

9 MR. SMITH: Well, the problem is is that's a factual  
10 finding, too, that I think that I can rebut with testimony  
11 from Mr. Dejong. But I'm only speaking for purposes of a  
12 motion to dismiss, which is just, I think, if he -- that I  
13 can rebut his testimony. But for the purpose of the  
14 motion, I think the Court is to take his assertions at  
15 face value.

16 THE COURT: Okay. Well, then at that case I think  
17 I'm clear that I can deny your motion to dismiss.

18 THE WITNESS: You're going to deny it, sir?

19 THE COURT: Isn't that the proper ruling, Mr. Smith?  
20 Because you made the motion to dismiss and not the  
21 applicant, correct?

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

23 THE COURT: So I'm going to deny your motion. That  
24 way the application stays pending; isn't that right?

25 MR. SMITH: I believe that's correct, Your Honor.

1           THE COURT: So I want Mr. Hagins to understand, by me  
2 denying the motion to dismiss, that means he's actually  
3 prevailing today.

4           DEFENDANT HAGINS: Yes, sir.

5           MR. SMITH: Well, from the State's position, it would  
6 be insofar as the motion to dismiss is denied and that we  
7 can move forward and -- with the hearing and potentially  
8 rebut his testimony.

9           THE COURT: Okay. Well, then I'm going to deny your  
10 motion to dismiss and we can move forward with the  
11 hearing.

12          MR. SMITH: Okay. So, Your Honor, I talked to  
13 Mr. Thompson in the last couple of weeks about this case,  
14 and it's my understanding that they have no additional  
15 claims other than those raised in the application. And my  
16 summary of those is that Mr. Hagins is raising claims that  
17 Mr. Dejong was ineffective for not preparing for trial  
18 adequately, for not advising Mr. Hagins of his rights, for  
19 failing to follow up somehow with the State after moving  
20 for discovery, for not doing more in plea negotiations,  
21 and then for not filing a notice of appeal. And I'd like  
22 to just verify that those are the issues we're going to  
23 address today.

24          MR. THOMPSON: Yes, it is.

25          THE COURT: What was the second one? So not fully

1 prepared. Then the third was not following up on some  
2 belated discovery. What was the second one?

3 MR. SMITH: Failing to advise Mr. Hagins of his  
4 rights.

5 THE COURT: Okay.

6 MR. SMITH: And so I'm -- let's see. I see that  
7 Mr. Dejong is still listed as an attendee.

8 THE COURT: I want to get him in so we can see him.  
9 I don't like this not being able to see him. So we're  
10 going to have to either eject him and then ask him to sign  
11 back in. But this -- I don't understand why the WebEx  
12 does this occasionally, but it does, from time to time,  
13 have somebody that signs in the courtroom, but they're not  
14 able to be selected as a panelist.

15 MR. DEJONG: I'll sign back -- I'll sign out, Judge,  
16 if you can hear me, and sign back in.

17 THE COURT: And I heard you. So give that an attempt  
18 so we can get you in here.

19 And I'm going to ask Ms. Odom if she can hear to do  
20 the same.

21 MR. DEJONG: Okay. Give me just a moment, please,  
22 Your Honor, if I can figure out how to get out of here.

23 (Pause in proceedings.)

24 THE COURT: I think we were trying to get everybody  
25 in. Now, Mr. Thompson, it's your opportunity to call your

1 witnesses.

2 Unmute him, Patrick.

3 MR. THOMPSON: I had myself muted.

4 THE COURT: There we are. I've got you.

5 MR. THOMPSON: We would call Mr. Hagins. I guess  
6 he's still under oath.

7 THE COURT: Yes. He was placed under oath.

8 And I remind you, Mr. Hagins, you're still under  
9 oath.

10 DIRECT EXAMINATION

11 BY MR. THOMPSON:

12 Q Mr. Hagins, I won't go back through all the  
13 preliminary stuff of where you're housed and when you were  
14 convicted and all.

15 You have filed a postconviction relief application;  
16 is that correct?

17 A Yes. Yes, sir.

18 Q Okay. I wasn't sure if you could hear me or not.

19 A Yeah. I hear you.

20 Q Now, I believe earlier you indicated Mr. Dejong was  
21 your attorney in this; is that correct?

22 A Yeah. That's who I ended up with, unfortunately.

23 Q All right. And one of the things you've alleged is  
24 you received ineffective assistance of counsel.

25 A Yes, sir.

1 Q Can you tell us what you mean by that? How was  
2 Mr. Dejong ineffective?

3 A Okay. I only met with him a few times, okay. He  
4 came to the Pickens County jail one time, and he told me  
5 not to discuss anything because they have listening  
6 devices in there. So we couldn't even talk about the case  
7 at all. Then he said don't talk to nobody else because  
8 they've got people in there, like snitches or whatever.  
9 So I waited to go to his office, right?

10 Okay. So the first time I went to his office, he  
11 wasn't even there. They had to send me back. So I come  
12 back to his office a second time, and all he does is show  
13 me a video of me sitting in the back of the police car for  
14 two hours. And that's the only thing he showed me about  
15 the motion for discovery. He didn't go over anything with  
16 me about the witnesses or what kind of evidence they had  
17 or anything.

18 Q Okay. Now, in your postconviction relief  
19 application, you raised some issue as to mental health  
20 issues that you have.

21 A Yeah. I told him I needed to file a Chapter 5  
22 because of my mental health condition, and he needs to  
23 call my psychiatrist, my personal psychiatrist to get all  
24 the records and everything. He failed to do all that. He  
25 didn't do that.

1 Q What kind of mental health issues do you have?

2 A I've been on medication for over 20 years, sir, and  
3 I've got acute bipolar disorder.

4 Q Okay. What kind of medication were you on at that  
5 time?

6 A I'm on Xanax and Adderall.

7 Q Did you understand your discussions with Mr. Dejong?

8 A Not when -- thinking about it now, no, not really. I  
9 didn't understand what he was trying to do. He was trying  
10 to tell me not to say anything, and I couldn't understand  
11 that, you know. Once I think back on it, I said I wonder  
12 why he didn't ask me any questions. But then he talked  
13 about the listening devices. And I said maybe that's why  
14 he didn't talk about the case. I didn't -- I -- I was so  
15 unaware of everything. He didn't tell me about -- he said  
16 he was going to file a direct appeal if I got over  
17 15 years. That's what he told me.

18 Q All right. Let me ask you this. You indicate in  
19 your PCR application that he never interviewed any  
20 witnesses.

21 A No. And he never interviewed a witness. He only  
22 spent two hours with me in two and a half years.

23 Q What witnesses did you want him to interview?

24 A I wanted the two witnesses that they had the written  
25 statements from, the two people that were at the house.

1 Q And they had statements from them, didn't they?

2 A Yes, sir. I think so, yes, sir.

3 Q Okay. Did you ever see those statements?

4 A I -- I had a motion of discovery, but I see -- I read  
5 a little bit of it. But everything I started reading,  
6 none of it -- none of it happened like that. I mean -- I  
7 mean, seriously, I mean, they get -- they found the one  
8 guy that left. They said the incident happened and he  
9 left, and they didn't find him a day later and got his  
10 statement. And then the girl was there. She was my  
11 ex-girlfriend and he was sleeping with her, you know. And  
12 that's just one thing after another, you know.

13 I was unaware I could direct appeal, and if I'd have  
14 known, I could have filed a motion and I'd have done it  
15 directly after I went to court.

16 Q Let's stay on point, okay?

17 A Yes, sir.

18 Q You were aware of the statements given by the two  
19 people; is that correct?

20 A Yeah. I'm aware.

21 Q Now, in your ---

22 A Not exactly what the content of it, but I -- yes,  
23 sir.

24 Q Okay. In your postconviction relief application, you  
25 also raised the issue that there were two drug charges

1 pending in Greenville County that you were out on bond  
2 for. How did that affect this case?

3 A He used that saying that if I -- that they were going  
4 to use that against me. If I didn't take that plea  
5 bargain for manslaughter, then they were going to go ahead  
6 and give me a murder charge because of in light of the  
7 bonds for two major drug charges. They've been dropped  
8 since 2016.

9 Q So ---

10 A He failed to tell me they'd been dismissed.

11 Q Well, did you not know they'd been dismissed?

12 A No, sir.

13 Q Where had you been since 2016?

14 A I'd been in jail.

15 Q In Pickens County?

16 A Yes, sir.

17 Q On this murder charge?

18 A Since 2016.

19 Q Okay. On this murder charge?

20 A Yes, sir. And bond.

21 Q Now, you also allege you weren't aware of your  
22 rights, especially the Sixth Amendment right. What are  
23 you talking about there?

24 A Okay. The thing about it is I didn't know that I  
25 could -- I can't remember how the Sixth Amendment goes. I

1 have it written down. I didn't bring any paperwork with  
2 me. But the thing about it is, he denied to tell me what  
3 my rights were and that I had a failure to ask for a  
4 trial. He acted like that I had to take the plea bargain  
5 because that's the best deal I was going to get. I mean,  
6 that's what he said.

7 Q Okay. If you'd gone to trial, you'd have gone to  
8 trial on the murder charge, correct?

9 A Yes, sir.

10 Q And you know that carries up to life.

11 A Yes, sir.

12 Q A minimum of 30 years.

13 A They've got me doing 21 years now.

14 Q Well, what I'm getting at is, is the murder carries a  
15 minimum of 30 years and a maximum of life; do you  
16 understand that?

17 A Yes, sir. But -- yes, sir.

18 Q Okay. Now, you've also raised some issues about  
19 reciprocal discovery. What are you talking about there?

20 A I can't -- I'm blanking on the reciprocal part. But  
21 I had it all -- I was writing all of it -- when I had all  
22 the notes put down that I sent that I think you have, all  
23 the -- all the things I've outlined. I've outlined  
24 original motion of discovery, and I sent it to the lady in  
25 Columbia. Remember I told you? The original lady they

1 gave me as a lawyer.

2 Q And who was that?

3 A All of that material, all the guidelines and all the  
4 -- I had it all outlined and everything in parenthesis,  
5 and I had cases that cited stuff and all that. I had it  
6 all. I sent it to her. And I sent it to her ---

7 Q Is that not papers you've sent to the attorney ---

8 A Sir?

9 Q Is that not the papers you sent to the attorney  
10 general?

11 A No. I sent -- I guess it was. I think the attorney  
12 general wasn't -- whoever took my initial defense on the  
13 postconviction, sir.

14 Q Well, okay. I'll just let that lie.

15 Now, you say the first time that you discussed the  
16 plea with Mr. Dejong was when you were ready for trial?

17 A Sir?

18 Q When was the first time you discussed a plea with  
19 Mr. Dejong?

20 A 15 minutes before I went in the courtroom.

21 Q Were you set for a trial at that point in time?

22 A I didn't know whether it was a trial or whatever. I  
23 know I had a trial, and they got it postponed, and then he  
24 came to me with that deal.

25 Q And you plead to manslaughter; is that correct?

1 A Yes, sir. On his recommendation.

2 Q All right. Who made the decision?

3 A Using his recommendation, I made the decision.

4 Q Okay.

5 A Because I thought he was the lawyer and he knew all  
6 about the law and everything.

7 Q I know we've covered this, but let's just make sure.  
8 On the issue of appeal, what were you told about an  
9 appeal?

10 A I told him that he had to go file a direct appeal  
11 because I got over 15 years.

12 Q And who told you that?

13 A Mr. Dejong.

14 Q Okay. When was it he told you that?

15 A 15 minutes before we went in the courtroom.

16 MR. THOMPSON: Thank you. Answer any questions  
17 Mr. Smith may have.

18 CROSS EXAMINATION

19 BY MR. SMITH:

20 Q Yes. Mr. Hagins, I'm going to ask you again about  
21 the application. Why did you file your application late?

22 A I filed it because I thought there was an appeal  
23 pending, and I just -- for some reason somebody told me  
24 about a year, and that's when I -- the only way I had to  
25 do my own PCR and everything. Because they said something

1 about a statute of limitations. You hear about an appeal,  
2 and that was right before Christmas that day, about 2019.

3 Q Okay. At your guilty plea hearing, didn't you agree  
4 with Judge Verdin that you talked about voluntary  
5 manslaughter with Mr. Dejong?

6 A I -- I told him that I did not have my glasses and I  
7 couldn't read. And he said that he's giving his word that  
8 what I came and what he told me, and I can't remember, but  
9 I told him I can't -- I can't -- I wear reading glasses,  
10 and he knew that I could not read any kind of paperwork.

11 Q I'm asking you about what you talked about with Judge  
12 Verdin. Didn't you tell Judge Verdin that you talked  
13 about it with Mr. Dejong?

14 A What, the 25 years?

15 Q The voluntary manslaughter charge.

16 A Yeah. Reduce the murder, yeah. I agreed to take a  
17 voluntary manslaughter charge.

18 Q Okay. Didn't you tell Judge Verdin that you were  
19 happy with what Mr. Dejong had done for you?

20 A Not that I remember, sir. I was all -- I don't  
21 remember any of that.

22 Q You don't remember that part?

23 A No, sir. I don't remember a lot of that stuff. I  
24 only remember being in jail for two and a half years.

25 Q You don't remember a lot of it?

1 A I don't remember all of it. None of it.

2 Q Okay.

3 A The whole time I was in Pickens County jail up to  
4 past when I got to SCDC, I don't remember it.

5 Q Well, you just testified a minute ago that Mr. Dejong  
6 talked with you about this stuff 15 minutes before you  
7 went into court that day. So you don't remember the  
8 15 minutes before ---

9 A He said if I plead to voluntary manslaughter, that I  
10 would not get more than 15 years.

11 Q So you remember that part.

12 A Yeah. That's because of the numbers.

13 Q And then your memory cuts off right after that when  
14 you go into court?

15 A Do what now?

16 Q Your memory ends there when you walk into the  
17 courtroom?

18 A No. I vaguely remember being in the courtroom. But,  
19 you know, that's it, sir.

20 Q Do you vaguely remember that conversation with  
21 Mr. Dejong or is that clear to you?

22 A I just remember the 15 years. That's all I remember,  
23 sir, you know.

24 Q Okay.

25 A Because I would have never took it to a 25-year

1 charge because of my age.

2 Q But you did take that deal, though, right?

3 A I guess I did because I said -- I pled guilty.

4 Q Okay. And so after you heard the prosecutor,  
5 Ms. Odom, go into the evidence against you, you agreed  
6 with Judge Verdin that you still wanted to plead guilty?

7 A She never went into the evidence she had against me.  
8 She never mentioned a thing about any evidence.

9 Q She didn't bring that up at all at your guilty plea  
10 hearing?

11 A No, sir.

12 Q Okay. At your guilty plea hearing, didn't Judge  
13 Verdin list your rights that you could have if you went to  
14 trial?

15 A I don't -- I don't remember that part if she did,  
16 sir.

17 Q Okay. Didn't you agree with her that you understood  
18 those rights?

19 A I -- I don't know. I guess -- I guess I did. That's  
20 what you say I did. I don't -- I don't remember. I  
21 really don't. Because of my mental health, I do not  
22 remember.

23 Q So your mental health affects your ability to  
24 remember things?

25 A Yes, sir.

1 Q Okay. And that's the bipolar?

2 A Yeah. That -- that and a couple other things. I  
3 can't remember all the names of them.

4 Q Okay. Didn't Judge Verdin tell you at your guilty  
5 plea hearing that you had the right to appeal?

6 A Yeah. I think so. I think he -- I think I said yes,  
7 that he was going to appeal it. That's like I told you.  
8 He told me he was going to appeal, well, right before we  
9 went into court if I got more than 15 years.

10 Q Didn't Judge Verdin tell you you had to do so in  
11 writing within 10 days?

12 A Not that I remember, sir. That was Mr. Dejong's  
13 responsibility, sir.

14 Q You don't remember her telling you about that?

15 A No, sir.

16 Q You mentioned something earlier in your testimony  
17 about other charges. Can you explain that for me?

18 A Sir?

19 Q Can you explain for me what you meant by you had  
20 other charges pending?

21 A I got -- in 2015 I caught an attempt to distribute  
22 drug charge and a possession charge, and I was out on bond  
23 on that charge in Greenville County.

24 Q Do you know those case numbers?

25 A No, sir.

1 MR. SMITH: Your Honor, may I beg the Court's  
2 indulgence for a moment and I'll -- I honestly do not know  
3 that I had notice that Mr. Hagins was going to testify  
4 about this, and I really have no idea what case number  
5 he's referring to, so I'd like to look that up if I could  
6 have a moment.

7 THE COURT: You may have a moment.

8 (Pause in proceedings.)

9 MR. SMITH: Your Honor, may I have just a minute?  
10 I'd like to call Ms. Odom and talk to her off the record  
11 if I can for a minute.

12 THE COURT: Okay.

13 MR. SMITH: Because I'd like -- I think I may have  
14 follow-up questions with Mr. Hagins, but since I was not  
15 aware that he was going to testify about this, I don't  
16 know at this point that I know enough to even ask him the  
17 questions.

18 THE COURT: Okay. You may give her a call. I'm  
19 going to mute the courtroom for a moment. So y'all just  
20 stand by.

21 Go ahead.

22 MR. SMITH: Thank you.

23 (Pause in proceedings.)

24 MR. SMITH: Okay. I'm good when everyone else is.

25 THE COURT: Okay. Go ahead.

1 MR. SMITH: Okay. Your Honor, I have no more  
2 questions for Mr. Hagins.

3 MR. THOMPSON: No follow-up, Your Honor.

4 THE COURT: Okay. All right. Any more witnesses,  
5 Mr. Thompson?

6 MR. THOMPSON: No, sir.

7 THE COURT: All right. Mr. Smith?

8 MR. SMITH: Your Honor, I'd call Mr. John Dejong as a  
9 witness.

10 THE COURT: All right. Mr. Dejong, Ms. White is  
11 going to place you under oath, so stand by.

12 THE CLERK: Mr. Dejong, please raise your right hand.  
13 WHEREUPON,

14 JOHN DEJONG

15 After having been duly sworn, testified as follows:

16 THE CLERK: Please state your full name for the  
17 record.

18 THE WITNESS: John William Dejong, last name spelled  
19 D-E-J-O-N-G.

20 DIRECT EXAMINATION

21 BY MR. SMITH:

22 Q Mr. Dejong, when were you admitted to practice in  
23 South Carolina?

24 A When was I admitted to practice? Oh, me. 1975, I  
25 believe.

1 Q Okay. Are you still admitted to practice now?

2 A I am basically retired, but I maintain my license.

3 Q Okay. Can you give me a brief summary of your legal  
4 career?

5 A I was in private practice for a number of years. I  
6 worked for the solicitor's office in both Greenville  
7 County and Pickens County for a few years, and then I was  
8 public defender in Pickens County for 21 years.

9 Q Okay. So a substantial portion of your work has been  
10 devoted to criminal law?

11 A That is correct.

12 Q How did you come to be involved in Mr. Hagins's  
13 murder case?

14 A We were appointed by the Pickens County clerk of  
15 court.

16 Q Do you know when you were appointed?

17 A I do not have that exact date. If you can give me a  
18 moment. I believe that would have been August 31, 2016.

19 Q Okay. Were you appointed to represent Mr. Hagins in  
20 only his case concerning murder and possession of a  
21 weapon?

22 A Yes, sir.

23 Q Okay. Did you represent him at that time on any  
24 other charges?

25 A I did not.

1 Q Okay. Did you know at the time if he had any other  
2 cases pending?

3 A If you're referring to perhaps what he alleges as  
4 Greenville County charges, I cannot say I was aware of  
5 that. If we discussed that at all, I would have told him  
6 that I did not represent him on the Greenville County  
7 charges.

8 Q Okay. Did you tell him that he had to plead to  
9 voluntary manslaughter to avoid some penalties and some  
10 unrelated drug cases?

11 A Are you asking me whether I shared with him to avoid  
12 additional penalties he should plead to voluntary  
13 manslaughter?

14 Q Correct.

15 A No.

16 Q Okay. While you represented Mr. Hagins, on how many  
17 occasions did you meet with him?

18 A I have no record of that. I know I brought him to  
19 the office on two different occasions to look at videos.

20 Q Were those the only two times you met with  
21 Mr. Hagins?

22 A Oh, no, no, no, no, no. Obviously -- well, maybe not  
23 obviously, but I did meet with him down at the Pickens  
24 County jail.

25 Q Okay. You mentioned that you had him brought to your

1 office twice. The first time you did that, were you there  
2 when he arrived?

3 A I cannot say. The first time he came was 6/12 of  
4 '17. And we -- and he was correct. We looked at the  
5 in-car video and we listened to the 9-1-1 call.

6 The second time he was brought up was 1/5 of 2018,  
7 and we watched the rest of the tapes.

8 And I think, in the process of trying to answer that,  
9 I didn't answer your question.

10 Q So on that first time that you had him brought to  
11 your office, you were there and did meet with him and talk  
12 with him.

13 A As far as I recall. Because if I had not been there,  
14 we would have sent him back to the jail, and I have no  
15 record of that.

16 Q Okay. When you met with him at the jail, did you  
17 tell him not to talk about his case at all while you were  
18 there with him?

19 A No. Mr. Hagins jumbled a little bit. I did tell him  
20 there were certain things that if he told me in my office,  
21 and he certainly had the ability to do that, certain  
22 things I would not -- did not want him to discuss on the  
23 phone. The over 21 years I was there, I was never really  
24 comfortable with our phone calls, that is our -- mine and  
25 my client's were being recorded. They were not supposed

1 to be, but what is supposed to be and what is not is often  
2 two different things. I did share with him not to talk to  
3 his other inmates not so much that they were planted  
4 snitches, but there were people that if he said something,  
5 they would certainly try to take advantage of that for  
6 their own benefit.

7 Q Okay.

8 A I don't -- I never shared with him that there were  
9 listening devices at the jail itself.

10 Q Okay. So when you met with him in the jail, did you  
11 discuss his case with him?

12 A Yes. I believe -- I believe he was given a copy of  
13 his discovery.

14 Q Okay. Outside of your meetings with him, you  
15 mentioned that maybe you had talked on the phone, but did  
16 you communicate any kind of letter outside of your  
17 meetings?

18 A No. I never communicated with him by letter. It was  
19 either in person at the jail or on the telephone. And it  
20 was shared with him calls from the jail to my office were  
21 free, and anytime he wanted to talk to me, that he could  
22 call me and I would come down and talk to him.

23 Q Okay. So you remember specifically three different  
24 meetings with Mr. Hagins. Do you believe you met with him  
25 more than that or is that all the ---

1 A It would have been more than that. Certainly, there  
2 were meetings when the plea offer came in. But, again, as  
3 to how many, I know it was more than three. That's for  
4 sure.

5 Q Okay. Those meetings you had with him, do you have  
6 any idea how long they lasted?

7 A Oh, probably anywhere from 15 minutes to going over  
8 discovery probably an hour to two hours, something like  
9 that.

10 Q Okay. You mentioned that you gave a copy of the  
11 discovery to Mr. Hagins. Did you go over all of it with  
12 him? Or how did you handle that?

13 A No. I went over all of it with him. Now, I did get  
14 -- I did get some medical records from I think it was  
15 Springbrook Mental Health records. I can't honestly say I  
16 went over those records with him, but I did get them.

17 Q Whose records were those?

18 A Pardon me?

19 Q Whose records were those?

20 A Those were Mr. Hagins's records, basically mental  
21 health records.

22 Q Okay. Did you review them yourself?

23 A I did.

24 Q Did you talk about the facts of the case with  
25 Mr. Hagins?

1 A I certainly did, yes.

2 Q Okay. Did you discuss anything like potential  
3 defenses?

4 A I don't know that we discussed any potential  
5 defenses, quite candidly. And the discovery, as it was  
6 portrayed where they didn't have any potentially -- well,  
7 I don't want to say potentially -- remotely there may have  
8 been a self-defense claim, but I do not believe we would  
9 have prevailed on that.

10 Q Okay. Did you do any independent investigation in  
11 preparation for trial?

12 A Could you repeat that, please, sir.

13 Q Did you do any independent investigation in  
14 preparation for trial?

15 A Not up to the point that -- the case was not  
16 scheduled for trial when he actually came up to plead  
17 guilty. Certainly, I would have prepared, but I did not  
18 speak to any of the witnesses prior to this plea.

19 Q Okay. Why didn't you speak to the witnesses?

20 A At that point in time, I didn't really see a need to  
21 speak to them. I had their written statements, all of  
22 what Mr. Hagins mentioned, plus there was a couple more  
23 written down.

24 Q Okay. When did Mr. Hagins decide to plead guilty?

25 A Well, if I might back up from that just a little bit,

1 I went over and over with him his rights to trial, which  
2 he said he understood and I believe he did. We talked  
3 about potential punishments, and if he was convicted of  
4 murder, that carried a minimum of 30 years, a maximum of  
5 life, and life was a life without parole. If on the 30,  
6 for example, he would have to serve that day for day. So  
7 -- or we discussed all of that. He indicated to me at  
8 that point in time he really didn't want to risk going to  
9 trial and potentially having to serve life.

10 So I started probably before then, but I started  
11 trying to negotiate with the solicitor's office for a  
12 deal. We did -- I think Ms. Odom was the second or third  
13 solicitor we had on the case. I did deal with Ms. Odom.  
14 We swapped some emails, and we finally came up with the  
15 voluntary manslaughter. I think my offer at her was 15,  
16 which she did not accept. And then I don't know if we  
17 went -- and I believe her offer -- well, her  
18 recommendation was 25 years.

19 Q Okay. And that's the offer Mr. Hagins finally  
20 accepted?

21 A Well, we didn't accept the 25 years. So we were  
22 allowed to not necessarily plea without recommendation,  
23 because, obviously, Ms. Odom made a recommendation. But  
24 it was more in the lines, as I understood it, of a  
25 straight-up plea. Because very candidly, we did a little

1 judge shopping, and we had Judge Verdin coming in. I did  
2 recommend to Mr. Hagins if he was going to plead guilty, I  
3 recommended that he plead guilty in front of Judge Verdin.

4 I sent an email -- see if I've got eyes on here. I  
5 sent an email to Ms. Odom on November the 6th of 2018  
6 saying that Mr. Hagins would plead to voluntary for  
7 15 years. That may be where Mr. Hagins came up with  
8 15 years. I don't know. She sent me back an email saying  
9 that she would offer 27 years, which, again, we did not  
10 accept that. Then I think Ms. Odom was on leave for some  
11 period of time, but she retained -- she retained the case  
12 even while she was on leave.

13 Q Did you tell Mr. Hagins that Ms. Odom had rejected  
14 the 15-year offer?

15 A I did.

16 Q Did he give you any reason to believe that he did not  
17 understand what you were telling him about that?

18 A No. Indeed -- well, I passed on that rejection. And  
19 then I'm not sure. At that point in time, I believe  
20 voluntary manslaughter was already on the table, if I'm  
21 not mistaken, because I went down to the jail and talked  
22 to Mr. Hagins about pleading to voluntary. He still  
23 assured me he did not want to go to trial or risk a life  
24 sentence. But I told him, at that point in time, you do  
25 not have to make up your mind right now. Think about it

1 for a little bit. It was not a 15-minute thing, I assure  
2 you. And then I told him to call me and let me know what  
3 his response, if he wanted to do that or if he actually  
4 wanted to go to trial on the case. He did subsequently  
5 call me or I saw him at the jail, I'm not sure which, in  
6 which he indicated he wished to plead guilty to voluntary  
7 manslaughter.

8 Q How far in advance of the guilty plea hearing did  
9 that particular conversation take place?

10 A It was rather substantial because when we had that  
11 conversation, I don't think any of us knew exactly, at  
12 that point in time, when Judge Verdin would be back in  
13 Pickens County.

14 Q Okay. Did you discuss the 25-year deal with him any  
15 more after that conversation before the guilty plea  
16 hearing?

17 A I don't think so. And I don't recall that there was  
18 ever -- it was ever offered by way of -- I can't think of  
19 the words I'm looking for right now. But it wasn't  
20 offered ultimately as part of the deal. The deal was we  
21 would plead to voluntary manslaughter, possession of a  
22 weapon would be trumped.

23 And the reason Judge Verdin was selected, not to  
24 offend any other judge, but we thought we might get a  
25 better sentence from Judge Verdin.

1 Q So you said that that was -- there was a substantial  
2 amount of time from when Mr. Hagins told you he wanted to  
3 take the deal and when he actually plead guilty?

4 A Yes, sir.

5 Q Okay. At any point did you tell Mr. Hagins that if  
6 he pled guilty, he would only be sentenced to 15 years in  
7 prison?

8 A No, sir.

9 Q I want to turn back to your trial preparation. And  
10 would you have done more trial preparation if Mr. Hagins  
11 had not told you that he was going to plead guilty?

12 A Absolutely.

13 Q Did Mr. Hagins ask you to do any specific active  
14 investigation that you did not do?

15 A I don't recall that he did.

16 Q What did you tell Mr. Hagins about his constitutional  
17 trial rights?

18 A His constitutional trial rights? That he had an  
19 absolute right to a jury trial; that we would put  
20 12 people in the jury box, they would decide whether he  
21 was guilty or innocent based upon the evidence; that he  
22 had a right to remain silent, and that right to remain  
23 silent, if he chose to do that, could not be used against  
24 him, that nobody could force him to testify; the burden of  
25 proof was on the State to prove his guilt beyond a

1 reasonable doubt. And it's been a while since I've been  
2 over all those rights, but that's pretty much the gist of  
3 it.

4 Q Okay. Did he give you any reason to believe he did  
5 not understand those?

6 A No.

7 Q Okay. So you testified earlier about looking at some  
8 health records for Mr. Hagins. Did you have any concerns  
9 about his mental competency?

10 A No. I reviewed them. I saw nothing in there that  
11 would have raised an issue of competency in my opinion.  
12 Of course, I'm not a doctor. That was my opinion.

13 Q When you would meet with Mr. Hagins and talk with  
14 him, was he able to communicate with you and you could  
15 understand what he said and he understood what you said?

16 A Certainly, I understood what he was telling me, and I  
17 believed that he understood my side of the conversation as  
18 well.

19 Q Okay. So when you would tell him something and then  
20 you'd have further conversation on that point or he'd ask  
21 you a follow-up question, was the follow up from him  
22 responsive to what you had already talked about?

23 A Yes.

24 Q Okay. Did you have any reason to believe that  
25 Mr. Hagins had some serious memory issues that prevented

1 him from remembering things from one meeting to the next?

2 A No.

3 Q Okay. So when you represented Mr. Hagins, did you  
4 tell him that he had a right to seek direct appellate  
5 review of his conviction and sentence?

6 A That, I cannot honestly say that I did. I'll be very  
7 candid. I did not routinely speak to my clients about  
8 their right to appeal a guilty plea. I did appeal some,  
9 but normally I did not talk about it. And I, frankly, do  
10 not recall a conversation with Mr. Hagins about appealing  
11 his case.

12 Q Okay. Do you remember Mr. Hagins asking you to file  
13 an appeal on his behalf?

14 A I do not.

15 Q Did you tell Mr. Hagins that you would appeal his  
16 sentence if it was more than 15 years?

17 A I have no recollection of that at all.

18 Q In the course of your representation of clients, did  
19 you make promises like that?

20 A No. I never made an appeal contingent upon time. I  
21 had kind of my own rule of thumb when it came to a jury  
22 trial, but not on a guilty plea.

23 Q Okay. So does promising that you would appeal if the  
24 sentence was more than 15 years, does that sound like a  
25 promise that you would have made to Mr. Hagins?

1 A No. Absolutely not.

2 Q Okay. If Mr. Hagins had asked you to file an appeal,  
3 would you have done so?

4 A Yes, sir, I would.

5 Q Did you have any reason to believe that a rational  
6 defendant in Mr. Hagins's situation would have wanted to  
7 appeal?

8 A If you'd repeat that, please, sir.

9 Q Did you have any reason to believe that a rational  
10 defendant in Mr. Hagins's case would want to appeal?

11 A No.

12 Q Okay. Do you have any notes in your file or letters  
13 saying that Mr. Hagins asked for an appeal or that you  
14 promised to file one?

15 A Not at all.

16 Q Okay. Did you have any conversation with Mr. Hagins  
17 about entering his guilty plea 15 minutes before his  
18 guilty plea hearing?

19 A Well, certainly I discussed with him as I shared  
20 earlier much longer than 15 minutes before his guilty  
21 plea. Now, I might have rehashed what we had talked about  
22 prior to going into the courtroom, but that was not the  
23 first time that we had talked about that by any means.

24 Q Okay. When you mentioned earlier that you had gone  
25 over the discovery with Mr. Hagins, did that include the

1 witness statements?

2 A Yes.

3 Q Okay.

4 A The witness statements were both written, and I  
5 believe they were -- I know at least one was videotaped.  
6 Maybe the others were as well. But they were all written  
7 statements.

8 MR. SMITH: Okay. All right. Thank you. No more  
9 questions.

10 THE COURT: All right. Mr. Thompson?

11 MR. THOMPSON: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. THOMPSON:

14 Q Just a few follow-up, Mr. Dejong.

15 A Yes, sir.

16 Q You say you had Mr. Hagins's mental health records;  
17 is that correct?

18 A Yes. From -- from Springbrook. Now, that was the  
19 only facility. And I think that's the only one he shared  
20 with me, as I recall, because I would have written -- or  
21 gotten a consent to go to Springbrook because that's where  
22 he told me his records would be.

23 Q Do you recall whether or not there was anything in  
24 those records that might indicate that he had trouble  
25 understanding or needed some special attention to

1 understand what was going on?

2 A No, sir.

3 Q Okay. Now, as to the 15 years, I believe you  
4 testified that you were going to try to get him a 15-year  
5 sentence.

6 A I had offered Ms. Odom to plead to voluntary for 15,  
7 but she rejected it.

8 Q All right. And you relayed that to Mr. Hagins.

9 A Yes, sir, I did.

10 Q Okay. Do you know how far in advance of his plea you  
11 relayed that to him?

12 A Let me see. I spoke to her on -- well, that was the  
13 other solicitor. The offer made, 30 years. Here it is.  
14 Let me see. Well, actually, on August the 31st of 2018,  
15 she offered him 27 years for voluntary manslaughter, and  
16 then she said she would like, if I had any counteroffers,  
17 to please get in touch with her. And then in November I  
18 wrote her and said that we would plead to voluntary for  
19 15 years -- or email, actually. So -- and that was  
20 rejected. And then everything kind of fell apart after  
21 that.

22 Q Was there ever any discussion about pleading with the  
23 State recommending 25 and you trying to talk the judge  
24 into 15, in other words, open up where you can argue for  
25 less than what they were recommending?

1 A Well, yeah. Because we did not, again, accept their  
2 recommendation. I don't know that I told him that I would  
3 try to get him 15, but certainly try to get him something  
4 less than 27 -- 25 or whatever it was.

5 Q So you did have that discussion with Mr. Hagins?

6 A Yes.

7 Q And I believe in the plea you tried to get less than  
8 25; is that correct?

9 A I believe I did, yes, sir.

10 Q Okay. Now, I believe you said that -- just a couple  
11 more questions. I believe you said that routinely you did  
12 not discuss appealing with people who did guilty pleas.

13 A In all candor, I did not.

14 Q Okay. So you don't believe that you discussed the  
15 right to appeal with Mr. Hagins.

16 A I would say that I, in all probability and all  
17 honesty, I probably did not.

18 Q Okay. Now, if you would have seen something in the  
19 plea that you thought would be an issue for appeal, would  
20 you have appealed at that point in time?

21 A Oh, certainly, yes.

22 Q Okay.

23 A I did not see any issues in the plea that in my  
24 opinion would have been appealable.

25 Q But you never told Mr. Hagins you would appeal or

1 would not appeal for him.

2 A I did not.

3 Q Okay. And I believe you testified he never mentioned  
4 the appeal.

5 A That I never mentioned the appeal?

6 Q No. That Mr. Hagins never asked you to appeal.

7 A I don't recall that.

8 Q At any point in time during your representation, did  
9 you discuss the right to appeal with Mr. Hagins?

10 A Did I what now?

11 Q At any point in time, from the time you started  
12 representing Mr. Hagins until his plea, did you ever, at  
13 any point in time, say you have the right to appeal if  
14 this doesn't go right?

15 A I can't say that I did.

16 MR. THOMPSON: Okay. Thank you. I have no further  
17 questions.

18 THE COURT: All right. Mr. Smith, anything further?

19 MR. SMITH: One or two follow-up, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. SMITH:

22 Q Mr. Dejong, was it your practice to file a notice of  
23 appeal if a client asked you to do so?

24 A Absolutely. I filed many, many notices of intention  
25 to appeal.

1 Q Do you have any reason to believe that you deviated  
2 from that practice in Mr. Hagins's case?

3 A Not at all. If he would have requested an appeal, I  
4 don't know what day of the week he pled guilty, but if it  
5 was anywhere from the beginning of the week to the middle  
6 of the week, if he had requested that, the notice of  
7 intention to appeal would have gone out that same week.  
8 If it was the latter part of the week, it would have gone  
9 out the beginning of the following week.

10 Q Okay. So either way you would have -- you have no  
11 reason to believe that you would not have filed one if he  
12 had asked.

13 A No. I certainly believe if he had asked, I would  
14 have filed one.

15 MR. SMITH: Okay. Thank you. No more questions.

16 THE COURT: All right. Any other witnesses?

17 MR. SMITH: Yes, Your Honor. I'd also call Ms. Odom  
18 as a witness.

19 THE COURT: All right. Ms. Odom, Ms. White's going  
20 to place you under oath.

21 THE CLERK: Ms. Odom, please raise your right hand.

22 WHEREUPON,

23 SHANNON ODOM

24 After having been duly sworn, testified as follows:

25 THE CLERK: Please state your full name for the

1 record.

2 THE WITNESS: Shannon Swords Odom.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. SMITH:

6 Q Ms. Odom, when were you admitted to practice law in  
7 South Carolina?

8 A November of 2009.

9 Q Okay. What's your current position?

10 A Assistant solicitor.

11 Q Okay. How did you come to be involved in  
12 Mr. Hagins's murder case?

13 A The solicitor who had the case before me left our  
14 office to go into private practice, and the case was  
15 reassigned to me.

16 Q Okay. Did you turn over the discovery to Mr. Dejong  
17 or was that done before you started working on the case?

18 A That was done before I received the case.

19 Q Okay. Can you summarize your communications with  
20 Mr. Dejong about plea options for Mr. Hagins?

21 A Yes. In August of 2018 I emailed John and  
22 essentially said, before I went out on leave, that I  
23 wanted to discuss the case with him. The solicitor -- the  
24 prior two solicitors before me had each offered straight  
25 up to murder. I told him that I could offer a plea to

1 voluntary manslaughter. I would like it to be negotiated,  
2 though, in that I would like a negotiated 27 years.

3 We spoke while I was on maternity leave, and I called  
4 into our office to have my victim advocate make a note in  
5 the file.

6 My note from October, spoke with John last Friday,  
7 October the 12th about the case. He's interested in an  
8 offer. He's going to the jail this week to discuss it  
9 with the defendant. He wanted to make sure I was firm on  
10 negotiated, and I told him I was. He said he would let me  
11 know a counteroffer.

12 We spoke again in November, at which point the  
13 defendant was brought over to the courthouse so he could  
14 speak with John. And we ultimately worked out a  
15 recommendation of 25 years.

16 And if I could just elaborate on that a little bit.  
17 In other circuits when "recommendation" is checked, that  
18 is taken at face value, and that means the State will  
19 recommend whatever, the defense will recommend whatever,  
20 and that it's just up to the judge. In this circuit, when  
21 we say "recommended," the defense does not argue against  
22 it. And if they want to argue against it, then it's a  
23 straight-up plea, and it's not a recommendation.

24 But John and I were able to work out that I would  
25 recommend 25 and he would ask for something different,

1 which is a negotiation in and of itself. And so we did  
2 end up going back several -- back and forth several times  
3 from 27 negotiated voluntary, down to I would recommend 25  
4 and he would ask for whatever.

5 Q Okay. So Mr. Dejong negotiated a concession from the  
6 standard practice in the circuit?

7 A Yes.

8 MR. SMITH: Okay. Okay. Thank you. No more  
9 questions.

10 THE COURT: Mr. Thompson?

11 MR. THOMPSON: Just one, Judge.

12 CROSS EXAMINATION

13 BY MR. THOMPSON:

14 Q Ms. Odom, do you have any personal knowledge of the  
15 communications between Mr. Hagins and Mr. Dejong?

16 A I was not around or with them when they had their  
17 private communications.

18 MR. THOMPSON: Okay. Thank you. Nothing further.

19 THE COURT: All right. What else, Mr. Smith?

20 MR. SMITH: That's the State's case, Your Honor.

21 THE COURT: All right. I think I understand what  
22 happened here. I want to read the record a little bit and  
23 review these notes. But I'll take it under advisement and  
24 let y'all know very quickly.

25 MR. THOMPSON: Thank you, Your Honor.

1 THE COURT: Anything else?

2 MR. SMITH: That's all I've got for this one, Your  
3 Honor.

4 (WHEREUPON, proceedings concluded at 11:33 a.m.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )

COUNTY OF PICKENS )

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 22nd day of March, 2022.

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

November 28, 2022

Cheryl A. Smith

Cheryl A. Smith, CVR-M

Court Reporter



of murder. John W. DeJong (“plea counsel”) represented Applicant at that guilty plea hearing. Assistant Solicitor Shannon Swords Odom (“the solicitor”) of the Thirteenth Circuit Solicitor’s Office prosecuted the case. At the plea hearing, the solicitor presented the following recitations of facts:

[T]his occurred back on August the 26th of 2016 here in Pickens County. The victim in the case was 54 year old Jeff Chandler. Mr. Chandler was renting a room from [Applicant].

On this day [Applicant] had confronted Mr. Chandler about being behind on the rent. He was a hundred and ninety dollars . . . behind. They kind of went back and forth all day arguing, discussing, disagreeing about this, but ultimately the victim refused to pay. And [Applicant] told him he was going to have to leave the home.

As the victim was preparing to leave, [Applicant] continued to argue with him. The victim’s girlfriend also lived in the home as well as another male. So all four people were at the home when this arguing was going on.

The victim’s girlfriend was kind of used to the dynamic. She didn’t want to hear the argument. She went into a bedroom and shut the door. She continued to hear arguing and then scuffling.

The victim opened the door to speak with his girlfriend and told her not to worry about [Applicant]. At that time she saw [Applicant] jump on the victim’s back and the two began to fight. The fight started inside and moved outside onto the porch. The girlfriend and the other man in the home, you know, they could hear everything, but they didn’t get up, they didn’t see anything.

When the front door opened again, the victim came back inside the home bleeding and was asking that 911 be called. At this time the victim’s girlfriend saw [Applicant] stab the victim repeatedly. In all there were ten stab wounds.

When [Applicant] finished, he actually placed a knife in the victim’s hand. At that point [Applicant] called 911, and law enforcement responded. When they got there the victim was lying dead in the floor and his girlfriend was holding his head in her lap.

[Applicant] tried to tell law enforcement that it was self-defense, however, he was unable to keep his story straight, and it changed several times. Ultimately the victim had four stab wounds in his back and six in his front. A stab wound had punctured his heart. And that proved to be the fatal blow.

Plea Tran. 7-8. In accordance with the solicitor’s recommendation, the plea court sentenced

Applicant to imprisonment for twenty-five years, with credit for time served. On that same day, the solicitor dismissed the indictment for possession of a weapon.

Applicant did not appeal his conviction or sentence.

#### **CURRENT PROCEEDING**

In his *pro se* application for post-conviction relief, filed on January 22, 2020, Applicant raised multiple claims, which this Court interprets as follows: (1) Applicant did not knowingly and voluntarily waive his right to direct appellate review; (2) plea counsel was constitutionally ineffective for not preparing for trial adequately; (3) plea counsel was constitutionally ineffective for not advising Applicant of his rights, especially his rights under the Sixth Amendment; (4) plea counsel was constitutionally ineffective for not following up with the solicitor after moving for discovery; and (5) plea counsel was constitutionally ineffective for not doing more in plea negotiations. At the start of the March 22, 2022, hearing before this Court, Applicant clarified that he had no other claims to put before the Court other than these. This Court finds that Applicant has abandoned and waived all claims but these, and will address only these in this order.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Pickens County Clerk of Court for Applicant's conviction and sentence; Applicant's records from the Department of Corrections; the transcript from Applicant's guilty plea hearing; and all filings in this matter. Set forth below are the relevant findings of facts and conclusions of law with regards to the claims that Applicant advanced at the evidentiary hearing, as required by S.C. Code Ann. §17-27-80 (1985).

*Applicant's claim that he did not knowingly and voluntarily waive his right to direct appellate review.*

Applicant raises a claim that he did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence. Applicant testified before this Court that plea counsel told him that he could appeal if the sentence imposed was greater than fifteen years in length, and that plea counsel told him that about that fact fifteen minutes before the plea hearing began. He testified that he filed his application after the one-year statute of limitations had already expired because he believed at the time that his direct appeal was pending. He testified that he could not remember everything that happened at his plea hearing because he has mental health problems that were affecting his memory. He affirmed that the plea court told him that he had the right to appeal, and testified that plea counsel told him that he would appeal on Applicant's behalf. He testified that he did not remember if the plea court said that the notice of appeal had to be filed within ten days of the plea hearing.

Plea counsel testified before this Court that he had been appointed to represent Applicant. He testified that Applicant told him that he did not want to risk getting a life sentence, so he worked out a plea deal with the solicitor. He testified that he could not say definitively that he discussed with Applicant that Applicant had the right to appeal. He testified that he did not routinely discuss the right to appeal with clients who pleaded guilty. He testified that he most likely did not discuss the right to appeal with Applicant. He testified that he did not remember Applicant's ever asking him to appeal. He testified that he had not recollection of telling Applicant that he would file a notice of appeal if Applicant's sentence was greater than fifteen years' imprisonment. He testified that he did not make such promises to his clients because he did not make an appeal contingent upon the time that the client received. He testified that he would have appealed if Applicant had asked him to do so. He testified that he had no reason to believe that a rational defendant in

Applicant's position would have wanted to appeal. He testified that he would have filed a notice of appeal or discussed doing so with Applicant had he seen an appealable issue come up during the plea hearing. He testified that he had no letters or notes in his file indicating that Applicant ever asked him to appeal. He testified that he never told Applicant that he either would or would not appeal. He testified that it was his routine to appeal if asked to do so by a client, and that he had no reason to believe that he deviated from that practice with respect to Applicant.

In *White v. State*, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the South Carolina Supreme Court held that a post-conviction relief court does not have jurisdiction to grant a belated appeal. However, when an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. *Id.* at 119, 108 S.E.2d at 39-40; *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986) (providing the procedure for appeals in post-conviction relief cases where there is an issue concerning an applicant's knowing and voluntary waiver of the right to direct appellate review); Rule 243, SCACR. (the appellate court rule that applies specifically to appeals in post-conviction relief matters).

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000). When counsel has consulted with the defendant regarding the right to appeal, "[c]ounsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." *Id.* at 478. In

order to establish that he was prejudiced by counsel's failure to file an appeal, an applicant must show he would have appealed absent counsel's deficient performance. *See Id.* at 484.

This Court finds that Applicant has failed to prove that plea counsel informed him of his right to appeal. Applicant's testimony that plea counsel told him of the right to appeal and promised to appeal depending on the length of the sentence that the plea court imposed is not credible. Plea counsel's testimony that he did not discuss the right to appeal with Applicant, and that he did not routinely do so with clients who were pleading guilty, is credible. Applicant's testimony that plea counsel told him that he was appealing on Applicant's behalf is not credible. Plea counsel's testimony that he did not tell Applicant that he was appealing, and that he had no notes or letters in his file indicating that he did so, is credible. Applicant's testimony that he filed his application late because he thought that his direct appeal was pending is not credible.

This Court finds that Applicant has failed to prove that plea counsel had a duty to inform Applicant of the right to appeal because Applicant has not proven that he "reasonably demonstrated to counsel that he was interested in appealing." *Id.* at 480. Applicant provided this Court with no credible evidence that he informed plea counsel that he would like to appeal. Plea counsel credibly testified that he had no memory of Applicant's ever asking him to appeal, that he had no note or letter in his file indicating that Applicant ever told him to appeal, and that he routinely appealed for clients who asked him to do so and had no reason to think that he deviated from that routine with respect to Applicant. Additionally, Applicant has not proven that plea counsel had a reason to think "that a rational defendant" in this situation would have wanted to appeal. *Id.* Applicant's sentence was lower than the maximum sentence that he could have received, and he was avoiding, by taking the plea deal, a potential life sentence, the fear of which

plea counsel credibly testified had motivated Applicant's engaging in plea negotiations in the first place.

This Court finds that Applicant has failed to prove that he did not knowingly and voluntarily waive his right to direct appellate review because he has failed to prove that plea counsel was required to inform him of his right to appeal, because he has failed to prove that plea counsel actually informed him of his right, and because he has failed to prove that he gave any indication to plea counsel that he wanted to appeal. This claim is denied and dismissed with prejudice.<sup>1</sup>

*Applicant's claim that plea counsel was constitutionally ineffective for not preparing for trial adequately.*

Applicant testified before this Court that plea counsel met with him only on a few occasions. He testified that plea counsel met him at the detention center once. He testified that plea counsel told him not to discuss anything because there were listening devices installed in the detention center, which prevented plea counsel and Applicant from discussing the case. He testified that, on his second visit to plea counsel's office, plea counsel did not more than play a video for Applicant of Applicant sitting in the back of a police car for two hours. He testified that

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<sup>1</sup> At the evidentiary hearing, this Court initially denied Respondent's motion to dismiss all claims, except the claim that Applicant did not knowingly and voluntarily waive his right to direct appellate review, as barred by the statute of limitations. In light of the testimony presented following that ruling, and this Court's factual findings, which are presented in this order, all claims except the direct appellate review claim are, in addition to those reasons presented in the remainder of this order, barred as a matter of law because they were not presented in a timely application. An application must be filed within one year of the entry of judgment or the issuance of a remittitur, whichever is later. S.C. Code Ann. § 17-27-45(A). The application was filed about six months too late. Applicant's non-credible testimony that his application was late due to his belief that his direct appeal was pending does not serve to save his application from its untimeliness. *See Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002) (reversing the PCR court's dismissal of the application due to its untimeliness because the policy of previous opinions would be frustrated if the applicant was denied his right to a direct appeal due to his lawyer's ineffectiveness and then, as a result, was denied his right to put forth post-conviction relief claims).

plea counsel did not discuss with him anything about the witnesses or the evidence against him. He testified that he told plea counsel to get his mental health records, but that plea counsel did not do so. He testified that plea counsel never interviewed witnesses, and that he wanted plea counsel to interview the two witnesses who gave statements to law enforcement officers.

On cross-examination, Applicant testified that he could not remember what plea counsel told him about voluntary manslaughter and that plea counsel knew that he could not read. He testified that he did not remember telling the plea court that he was happy with plea counsel's representation of him, and denied that he would have done so because he had been in jail for two years by that point. When asked if he informed the plea court that he wanted to plead guilty after hearing the solicitor's recitation of facts, he testified that the solicitor did not go into the evidence. He testified that he could not remember what the plea court went over with him at the plea hearing due to his mental health issues.

Plea counsel testified before this Court that he had no record of the number of his meetings with Applicant, but he knew that he had Applicant taken to his office on two occasions to watch video recordings. He testified that he met with Applicant on more than those two occasions because he also met with Applicant at the detention center. He testified that there were more than three meetings, but he was not sure about the number. He testified that he did not tell Applicant when they met at the jail that they could not discuss the case, but explained that he told Applicant not to discuss certain things on the jail phone or with others at the jail, lest those communications be used against Applicant. He testified that he told Applicant that he would meet him at the jail if Applicant called him (by a free phone call) to set up the meeting. He testified that their meetings lasted anywhere from twenty minutes to two hours. He testified that he gave to Applicant a copy of the discovery and that he reviewed all of it with him. He testified that he got Applicant's health and

mental records and reviewed them. He testified that he discussed the facts of the case with Applicant. He testified that he was not sure that he discussed potential defenses with Applicant because he did not see any that applied, and that he felt that Applicant would not have prevailed on a self-defense argument. He testified that he did not need to interview witnesses because he already had their statements. He testified that he would have done more to prepare for a trial if Applicant had not told him that he wanted to plead guilty. He could not recall Applicant's ever having asked him to do any specific acts of investigation.

All defendants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). A post-conviction relief applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of his lawyer "so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in *Strickland*. First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). In order for a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, the applicant must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of

counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." *Id.* (citations omitted). The "preeminent authority for all" courts when they are considering an applicant's claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable . . . . A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

*Id.* at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). An applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. "The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen." *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

Second, the deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for [the lawyer's] unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "Representation is an art, and an act or omission that is unprofessional in one case may be sound of even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense." *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (quotation omitted). With respect to a guilty

plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 59. A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) that counsel was deficient and (2) that there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether a lawyer's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. at 697. Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, *Strickland* requires the post-conviction relief applicant to prove that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. *Id.* at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not

invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” *Garren v. State*, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see *Jamison v. State*, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). The South Carolina Supreme Court has instructed that:

The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

*State v. Inman*, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). “[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” *Jamison*, at 468, 765 S.E.2d at 129 (citations omitted).

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel’s performance with respect to his pre-trial preparation. Plea counsel’s credible testimony establishes that he reviewed all of the discovery with Applicant. Applicant’s testimony that plea counsel did not discuss the evidence with him is not credible. Applicant complained that he felt that plea counsel did not meet with him a sufficient number of times, but he did not supply any evidence that the number of meetings was inadequate as a constitutional matter or that there was any need for plea counsel to meet with him on more occasions. Plea counsel credibly testified that Applicant had the ability to contact him to set up additional meetings, so the fact that Applicant did not do so is an indication that he was satisfied at the time with the frequency of the meetings. Applicant’s testimony that plea counsel would not discuss the case with him at the detention center

is not credible, and plea counsel's testimony that he merely told Applicant—soundly, in this Court's view—not to discuss his case over the phone or with others at the detention center is credible. Applicant articulated two things that he wanted plea counsel do so as part of his pre-trial preparation. The first was for plea counsel to get his mental health records, and plea counsel credibly testified that he did so. The second was for plea counsel to interview two witnesses; although plea counsel did not do so, he did review those witnesses' statements to law enforcement officers, which was sufficient under the circumstances. Plea counsel credibly testified that he would have done more pre-trial preparation had Applicant not decided to plead guilty. Applicant's testimony that he did not tell the plea court that he was satisfied with Applicant's representation of him is not credible. In summary, plea counsel did everything that Applicant asked him to do or either had a justifiable reason for not doing it.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that he would have proceeded to trial instead of pleading guilty but for the alleged deficiency in plea counsel's performance. A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing *Kibler v. State*, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). An "applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." *Bannister*, at 303, 509 S.E.2d at 809; *see also Dempsey*, at 370, 610 S.E.2d at 815 (holding that the PCR court's finding that Dempsey was prejudiced by trial

counsel's failure to call an expert at trial to rebut the State's expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing). An applicant's "mere speculation" what a witness's testimony at trial would have been "cannot, by itself, satisfy the applicant's burden of showing prejudice." *Glover*, at 499, 458 S.E.2d at 540. Applicant has presented this Court with no evidence whatsoever that plea counsel's allegedly inadequate investigation affected the outcome of the case or Applicant's decision to plead guilty. On the contrary, plea counsel's credible testimony proves that Applicant pleaded guilty because he wanted to avoid the risk of receiving a life sentence.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for not preparing for trial adequately because he has failed to prove that there was any deficiency in plea counsel's performance and has failed to prove that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

***Applicant's claim that plea counsel was constitutionally ineffective for not advising Applicant of his rights, especially his rights under the Sixth Amendment.***

Applicant testified before this Court that he could not remember the basis for his raising this claim; he did, however, testify that plea counsel failed to inform him that he had the right to a trial. This Court finds that Applicant has failed to provide any evidence and argument in support of the claim as raised in the application, and denies and dismisses it with prejudice, and will not address it further. This Court will address Applicant's allegation that plea counsel did not inform him of his right to a trial.

Applicant testified before this Court that plea counsel did not inform him of his right to a trial. He testified that plea counsel first discussed the plea deal with him about fifteen minutes before the plea hearing began. He testified that he had been about to go to trial when he entered his guilty plea. He testified that he decided to take the plea deal based upon plea counsel's



recommendation, but agreed that the decision had been his own. He testified that he did not remember going over his rights with the plea court due to his mental health issues.

Plea counsel testified before this Court that he reviewed with Applicant the right to a trial, that Applicant told him that he understood that right, and that he believed that Applicant understood it. He testified that he explained to Applicant that Applicant had the right to a jury trial, that twelve jurors could decide Applicant's guilt based on the evidence admitted, that Applicant had the right to remain silent, which could not be used against him, and that the prosecution had to prove guilt beyond a reasonable doubt. He testified that Applicant gave him no reason to believe that he did not understand his explanation of those rights. He testified that Applicant told him that he did not want to risk a trial and a resulting life sentence, at which point he had plea counsel engage with the solicitor in plea negotiations. He testified that Applicant repeated to him later that he did not want to risk a trial and a life sentence.

The Due Process Clause requires that a defendant enter a guilty plea voluntarily, knowingly, and intelligently. *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). The defendant must be aware of, among other things, the right to be tried by a jury. *Id.* (citations omitted). This Court finds that Applicant has failed to prove that plea counsel did not inform him of his right to a jury trial. Applicant's testimony to that effect is not credible, while plea counsel's testimony that he did inform Applicant of the right is credible. Applicant's testimony that he did not know of the right to a trial is thoroughly contradicted by his testimony that he was proceeding to a trial but accepted the plea deal at the last minute. Even if plea counsel had failed to inform him of the right, that deficiency would have been cured by the plea court's colloquy with Applicant. *See Holden v. State*, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citations omitted) (concluding that any alleged deficiency in plea

counsel's advice to Holden was cured by the plea court's colloquy), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The plea court advised Applicant of the rights that he would give up by pleading guilty, and Applicant affirmed that he understood those rights, and told the plea court that he still wanted to plead guilty. Plea Tran. 5-6.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for not informing him that he had the right to a trial because he has failed to prove that there was any deficiency in plea counsel's performance and because the plea court's colloquy with Applicant would have cured any such deficiency. This claim is denied and dismissed with prejudice.

***Applicant's claim that plea counsel was constitutionally ineffective for not following up with the solicitor after moving for discovery.***

Applicant presented no evidence or argument at the hearing before this Court in support of his claim that plea counsel was ineffective for not following up with the solicitor after moving for discovery. Applicant's complete failure to support his claim is fatal to it. This claim is denied and dismissed with prejudice.

***Applicant's claim that plea counsel was constitutionally ineffective for not doing more in plea negotiations.***

Applicant testified before this Court that he had two drug charges pending in Greenville County, that plea counsel told him that the solicitor would use those charges against him in this case if he did not plead guilty to voluntary manslaughter, and that plea counsel did not tell him that those drug charges had been dismissed already. He testified that he first discussed the plea deal with plea counsel about fifteen minutes before his plea hearing began. He testified that he did not remember telling the plea court that he had been satisfied with plea counsel's representation of him.

Plea counsel testified before this Court that he began engaging with the solicitor in plea negotiations at Applicant's request. He testified that he exchanged emails with the solicitor until they finally settled on the plea deal that Applicant accepted. He testified that he also arranged it so that Applicant could plead guilty before the plea court. He testified that he informed Applicant when the solicitor rejected Applicant's counter-offer. He testified that he was not sure whether or not he was aware of any pending charges in Greenville County; but, he said, he would have told Applicant, if they discussed any, that he did not represent Applicant on those charges. He testified that he would not have told Applicant to plead guilty to voluntary manslaughter in order to avoid some penalty with respect to those other alleged charges.

The solicitor testified before this Court that Applicant's case had been assigned to her at the Solicitor's Office after her predecessor in the case left the Office. She summarized her plea negotiations with plea counsel, testifying, among other things, that she and plea counsel agreed, against the common practice in the Circuit, that the solicitor would make a sentencing recommendation and that plea counsel would argue for less time.

This Court finds that Applicant has failed to prove that there was any deficiency in plea counsel's performance with respect to plea negotiations. "[A] defendant has the right to effective assistance of counsel during the plea bargaining process." *Bell v. State*, 410 S.C. 436, 440-41, 765 S.E.2d 4, 6 (Ct. App. 2014) (quoting *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009), *abrogated on other grounds by Smalls*). Applicant has not proven that there was anything that plea counsel should have done in negotiations that he did not do or that Applicant asked plea counsel to do anything that he did not do. Plea counsel and the solicitor credibly testified about the plea negotiations, and their testimony establishes that the negotiations were involved, extensive, and ultimately achieved a result that Applicant accepted. Plea counsel's credible testimony proves that



he communicated all plea offers to Applicant and that he communicated Applicant's counter-offer to the solicitor. Applicant's affirmation to the plea court that he was satisfied with plea counsel's representation of him discredits any allegation from him now that he was unsatisfied with plea counsel's negotiations on his behalf. Applicant's testimony that plea counsel convinced him to plead guilty in order to avoid some penalty with respect to charges that allegedly were pending in another county is not credible. Plea counsel's testimony that he would not have discussed the matter with Applicant or told Applicant that he should plead guilty to voluntary manslaughter due to the alleged pending charges elsewhere is credible.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that he would have proceeded to trial but for the alleged deficiency in plea counsel's performance. Plea counsel's credible testimony proves that Applicant was interested in pleading guilty once he learned that he would be facing a potential life sentence if he were to be found guilty at trial.

This Court finds that Applicant has failed to prove that plea counsel was constitutionally ineffective for not doing more in plea negotiations because he has failed to prove that there was any deficiency in plea counsel's performance and because he has failed to prove that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

A handwritten signature in black ink, appearing to be the initials 'JM' or similar, located at the bottom right of the page.

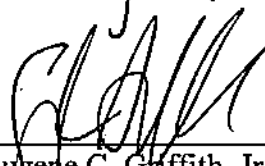
CONCLUSION

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

**IT IS THEREFORE ORDERED:**

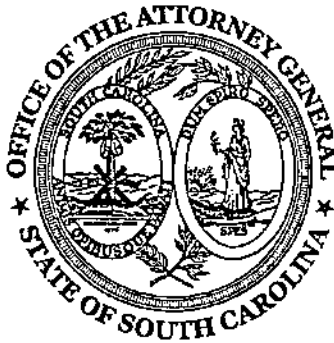
1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29<sup>th</sup> day of August, 2022.

  
 \_\_\_\_\_  
 Eugene C. Griffith, Jr.  
 Presiding Judge

Newberry, South Carolina

2022 SEP -9 A 11: 10  
 CLERK OF COURT  
 PICKENS COUNTY  
 SOUTH CAROLINA



2022 SEP -9 A 11: 09  
CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

ALAN WILSON  
ATTORNEY GENERAL

September 7, 2022

The Honorable Harold P. Welborn  
Pickens County Clerk of Court  
Post Office Box 215  
Pickens, South Carolina 29671-0215

Re: Richard A. Hagins, #252152 v. State of South Carolina  
2020-CP-39-00082

Dear Mr. Welborn:

Enclosed is the original Order of Dismissal in the above-referenced matter, which was signed by the Honorable Eugene C. Griffith, Jr., on August 29, 2022. On September 2, 2022, Judge Griffith's office hand-delivered it to me so that I could forward it to you for filing. Please file it and serve the parties with a file-stamped copy.

Thank you for your help.

Sincerely,

Taylor Z. Smith  
Assistant Attorney General

TZS/wjc

cc: Don A. Thompson (with enclosure)  
The Honorable Eugene C. Griffith, Jr. (with enclosure)