

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Clifton Newman, Circuit Court Judge

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May 03 2023

S.C. SUPREME COURT

TRAVIS J. MCFADDEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001190

APPENDIX

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INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED NOVEMBER 18, 2013	1
SENTENCING RECONSIDERATION HEARING DATED DECEMBER 16, 2016	29
NOTICE OF APPEAL.....	41
<u>ANDERS</u> BRIEF OF APPELLANT	43
ORDER DATED JULY 19, 2018.....	55
BRIEF OF APPELLANT	56
BRIEF OF RESPONDENT	66
<u>STATE V. McFADDEN</u> , UNPUBLISHED OPINION NO. 2020-UP-192 (Filed S.C. Ct. App. June 24, 2020).....	79
APPLICATION FOR POST-CONVICTION RELIEF	81
RETURN.....	88
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JUNE 28, 2022	98
ORDER OF DISMISSAL.....	156
INDICTMENT.....	176

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)
-----) GENERAL SESSIONS COURT
 2012-GS-43-0781

STATE OF SOUTH CAROLINA,)
)
 vs.)
)
TRAVIS JACQUEESE MCFADDEN,)
 DEFENDANT)
-----) TRANSCRIPT OF RECORD

NOVEMBER 18, 2013
SUMTER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE W. JEFFREY YOUNG

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

EDDIE DONNARD, ESQUIRE
ASSISTANT SOLICITOR

SHARON B. CLARK, ESQUIRE
ASSISTANT PUBLIC DEFENDER

MARGARET SULLIVAN,
CIRCUIT COURT REPORTER

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I N D E X

PLEA HEARING 3

1 * * * November 18, 2013 * * *

2 _____

3 MR. DONNALD: Please the court, Your Honor?

4 THE COURT: Yes, sir.

5 MR. DONNALD: Standing before you is Mr. Travis
6 Jacqueese McFadden. He's represented by Sharon Clark
7 from the Sumter County Bar. He is pleading guilty on
8 indictment number -- I am informed he's going to plead
9 guilty on indictment number 2012-0781. He's pleading
10 guilty -- that is the exact same, for your
11 convenience --

12 THE COURT: Okay.

13 MR. DONNALD: -- it's the exact same as the
14 previous plea.

15 THE COURT: All right.

16 MR. DONNALD: For the record, he's pleading guilty
17 to involuntary manslaughter.

18 THE COURT: Involuntary, not voluntary?

19 MR. DONNALD: No, sir. I apologize, voluntary
20 manslaughter -- thanks for catching that -- on a
21 reduced charge from a murder charge. That's count one
22 of the indictment. He is pleading guilty to strong
23 armed robbery. That is a reduction from armed robbery
24 on count seven of the indictment.

25 He's pleading as charged to criminal conspiracy,

1 which is count eight of the indictment. I'm handing up
2 his sentencing sheets and a copy of his indictment.

3 THE COURT: All right. Thank you.

4 (Whereupon, the defendant is sworn.)

5 MR. DONNARD: Your Honor, if I may, he's pleading
6 on the voluntary manslaughter under the hand of one is
7 hand of all -- hand of all theory. I tell you that
8 because the person who actually shot the deceased has
9 already pled guilty before you.

10 THE COURT: Right. Ms. Clark, you represent
11 Travis Jacquese -- how do you pronounce that? How do
12 you say it?

13 THE DEFENDANT: Jacquese.

14 THE COURT: Jacquese McFadden under indictment
15 2012-GS-43-781, counts one, seven and eight; is that
16 correct?

17 MS. CLARK: That's correct, Your Honor.

18 THE COURT: Have you had an opportunity to explain
19 to Mr. McFadden the charges contained in the
20 indictment, his constitutional rights, and the
21 consequences of his plea?

22 MS. CLARK: Yes, sir.

23 THE COURT: Do you think he's understood what
24 you've told him?

25 MS. CLARK: Yes, sir.

1 THE COURT: And does he intend to plead guilty or
2 not guilty?

3 MS. CLARK: Guilty, Your Honor.

4 THE COURT: And do you agree with his decision?

5 MS. CLARK: Yes, sir.

6 THE COURT: Okay. And based upon your
7 investigation of the facts and the circumstances, do
8 you believe that if this case were to go to trial under
9 the theories that they have, that there would be a
10 substantial likelihood he'd be found guilty beyond a
11 reasonable doubt?

12 MS. CLARK: Yes, sir.

13 THE COURT: And, Mr. McFadden, I need to ask you a
14 series of questions to make sure you're entering this
15 plea freely and voluntarily, knowingly and
16 intelligently. The first question I have is, are you
17 under the influence of alcohol or drugs today?

18 THE DEFENDANT: No, sir.

19 THE COURT: Are you taking any medications that
20 would cloud your judgment?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you aware of any physical,
23 emotional or nervous condition that would keep you from
24 understanding what's happening today?

25 THE DEFENDANT: No, sir.

1 THE COURT: Now, the indictment that you're
2 pleading guilty under, the charges of count one, seven
3 and eight -- count one, originally the charge was
4 murder, which they have reduced to voluntary
5 manslaughter. It says that Jimonte Jamal Gilbert,
6 Rhkeim Devontae Ingram, Robert Gerome McFadden, Travis
7 Major, Tobias Lorland McFadden and Travis Jacquese
8 McFadden, and Timothy Tyreese Singletary did in Sumter
9 County on or about December 26, 2011, wilfully and
10 feloniously and intentionally killed the victim,
11 Jayshwan Thompson, with malice aforethought either
12 expressed or implied, by means of shooting the victim,
13 Jayshwan Thompson, and the victim did die as a
14 proximate result thereof on December 26, 2011 in Sumter
15 County in Violation of Section 16-3-10 of the South
16 Carolina Code of Laws 1976 as amended.

17 As -- in reference to you, is what is stated in
18 this indictment the truth?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Under count seven, it reads that on
21 December 26, 2011 in Sumter County, South Carolina, at
22 10295 Lynches River -- River Road, Lynchburg, by use of
23 force, threats or intimidation, and while armed with a
24 deadly weapon, to wit a handgun, the defendant Jimonte
25 Jamal Gilbert, Rhkeim Devontae Ingram, Robert Gerome

1 McFadden, Travis Major, Tobias Lorland McFadden, Travis
2 Jacqueese McFadden and Timothy Tyreese Singletary Jr.,
3 did take and carry away goods and/or monies from the
4 person or immediate threat of Bahader El-Sokkary, the
5 owner of Money Saver Convenience Store with the intent
6 to permanently deprive him of possession thereof in
7 violation of Section 16-11-330(a) of the South Carolina
8 Code of Laws, 1976, as amended.

9 And as in reference to you in this charge, and
10 this is one that has been reduced to strong armed
11 robbery, is what's stated in this indictment the truth?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Count eight reads that
14 Jimonte Jamal Gilbert, Rhkeim Devontae Ingram, Robert
15 Gerome McFadden, Travis Major, Tobias Lorland McFadden,
16 Travis Jacqueese McFadden, and Timothy Tyreese
17 Singletary, Jr. did in Sumter County on or about
18 December 26, 2011, combining with each other, and/or
19 with other persons for the purpose of accomplishing a
20 criminal or unlawful object, or object that is neither
21 criminal nor unlawful, through criminal or unlawful
22 means; to wit, armed robbery, which we now know is
23 strong armed robbery, in violation of section 16-70-410
24 of the South Carolina Code of Laws, 1976 as amended.
25 As to what's stated in count eight, is it the truth?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Solicitor, what are the
3 facts?

4 MR. DONNARD: Your Honor, on or about December 26,
5 2011 at 10295 Lynches River Road at what is known as
6 the Money Saver Convenience Store, and that is in
7 Sumter County, Mr. McFadden -- this defendant, Mr.
8 McFadden, known as Travis McFadden, did enter into the
9 store, was in possession of a gun at some time --
10 during the store -- during an armed robbery that
11 occurred at that store, Judge.

12 It is our contention that there was a decision
13 made by six persons to rob a -- carjack a car from the
14 store. But while they were at the side of the road
15 waiting, they decided to turn what was a carjacking
16 into an armed robbery of the store. That armed robbery
17 was effected.

18 Mr. Travis McFadden, this defendant, put on a
19 disguise on his face. He entered the store. He became
20 armed with a handgun during that time.

21 The victims in this case, Judge, are Mr. Aaron
22 Smalls, who is present in the courtroom. He was
23 actually shot in the back after leaving the store. He
24 approached -- he came to the store in another car that
25 was completely unrelated to the robbery. Entered, saw

1 a robbery was going on, turned around to leave and was
2 shot in the back. His contention is this is the
3 defendant that shot him. Mr. Smalls believes this is
4 the defendant that shot him. There's a video of the
5 robbery, and that would -- that's what law
6 enforcement's contention is the video would portray as
7 well.

8 Mr. Bahar -- Bahader El-Sokkary is present in
9 the courtroom as well. He was the -- the clerk, -- and
10 he's actually the owner of that store. He was taken at
11 gun point. There was a gun battle or a -- a shooting
12 that occurred. I don't think "gun battle" is the right
13 word for it, but it was certainly Mr. -- the clerk and
14 the robbers were shooting at each other across the
15 countertop. The clerk, with his own gun, which was
16 subsequently taken from him and used against him.
17 Ultimately Mr. Smalls was shot.

18 There's another victim in the room named Siera
19 Douglas. She was a driver of the car Mr. Smalls exited
20 from. And the other victim, Mr. Jayshawn Thompson, was
21 in -- Ms. Douglas is also present in the courtroom.
22 She, in a panic, drove their car into the ditch, and
23 the persons who were engaged in the armed robbery then
24 approached the car that was in the ditch. Mr. Jayshawn
25 Thompson exited that car, was ultimately shot by a

1 handgun -- not by this defendant, but by another
2 defendant we believe. But we're allowing this Travis
3 McFadden to plead guilty to the voluntary manslaughter
4 under the hand of one is hand of all theory because he
5 was an active participant in the armed robbery and the
6 subsequent shooting of Mr. Jayshawn Thompson.

7 We do believe that we could prove that there was
8 a conspiracy that existed amongst all six persons in
9 order to effect this armed robbery together.

10 THE COURT: All right. Do you agree with the
11 facts as stated by the solicitor?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you, in fact, guilty of each of
14 these charges?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, do you understand that on the
17 voluntary manslaughter charge, that I can sentence you
18 up to 30 years in jail?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And that is a violent, most serious
21 offense, which means that you -- this would be one of
22 your strikes, and that you will have to serve at least
23 85 percent of whatever I sentence you to?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that on the robbery

1 -- common law robbery, strong armed robbery, that I
2 could sentence you up to 15 years in jail?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you understand on the
5 conspiracy charge, that I could sentence you up to five
6 years in jail?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And do you understand that if I decide
9 to run these consecutively, that I could sentence you
10 to a total of 50 years; do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, so you fully understand the
13 charges against you and the consequences of your plea?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Now, do you understand as
16 well that when you plead guilty, you waive certain
17 constitutional rights. The first right you waive is
18 your right against self-incrimination; not in this
19 courtroom or any other courtroom in this great nation
20 would you ever be required to come in and testify
21 against yourself. However, when you plead guilty,
22 you're doing that; do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: So, do you wish to waive your right
25 against self-incrimination at this time?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. You're also waiving your
3 right to have a jury trial. At a jury trial, I would
4 instruct the jury that they were to presume that you
5 were innocent, that -> and the twelve people that we
6 selected from Sumter County would listen to the
7 evidence. And only after they have determined that you
8 were guilty beyond a reasonable doubt, could you be
9 convicted. And that during that trial, if you decided
10 not to take the stand, I'll instruct them they couldn't
11 consider that against you.

12 Further, if there were any legal defenses you
13 had, you could raise them during that trial. Further,
14 Ms. Clark could cross examine the witnesses presented
15 by the State. And if y'all felt it was in your best
16 interests, she could call witnesses on your behalf.
17 But when you plead guilty, the State doesn't have to
18 prove anything, and you don't get to ask any questions
19 about the evidence; do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: So do you wish to waive your right to
22 have a jury trial and confront the witnesses against
23 you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Has anybody threatened you

1 in any way to get you to plead guilty?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anybody promised you anything to
4 get you to plead guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Is the only reason that you're
7 pleading guilty is because you are, in fact, guilty of
8 voluntary manslaughter, common law robbery, and
9 conspiracy?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, are you satisfied with the
12 services of Ms. Clark?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has she done everything that you've
15 asked her to do?

16 THE DEFENDANT: Yes, sir, she did every bit.

17 THE COURT: And she's been available to answer all
18 of your questions?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And has she done anything that you
21 wish she had not have done?

22 THE DEFENDANT: No, sir.

23 THE COURT: And do you need any more time to speak
24 with her at this time?

25 THE DEFENDANT: No, sir.

1 THE COURT: Now, have you understood all my
2 questions today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you have any questions for the
5 court?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you understand that -- has anybody
8 suggested to you how to answer these questions that I'm
9 asking you?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. And you understand that if
12 you change your mind about your decision to plead
13 guilty or the sentence that I give you, that you only
14 have ten days in which to file an appeal?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Mr. McFadden, under
17 indictment 2012-GS-43-781, under count one, which has
18 been downgraded to voluntary manslaughter from murder;
19 how do you plead, guilty or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: Under indictment 2012-GS-43-781, count
22 seven, which was originally indicted as armed robbery,
23 which has been reduced to strong armed robbery; how do
24 you plead, guilty or not guilty?

25 THE DEFENDANT: Guilty.

1 THE COURT: And as to the criminal conspiracy, how
2 do you plead, guilty or not guilty?

3 THE DEFENDANT: Guilty.

4 THE COURT: I find there's a substantial factual
5 basis for the plea. `I find this defendant has entered
6 into it freely, voluntarily, knowingly and
7 intelligently. He has had the advice of counsel, whom
8 he says he is well pleased. I will accept the plea.

9 What is his criminal history?

10 MR. DONNARD: Your Honor, he has a conviction for
11 criminal sexual conduct with a minor second degree in
12 2007. He has a conviction in 2011 for petit larceny
13 less than \$2,000.

14 THE COURT: Was he out on probation or anything
15 like that on this charge?

16 MR. DONNARD: Your Honor, I don't have that
17 information.

18 THE COURT: Mr. McFadden, is that a correct
19 statement of your prior criminal actions?

20 THE DEFENDANT: Yes, sir. I was on probation.

21 THE COURT: You were on probation at the time this
22 was committed?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is there anybody here from the
25 probation department?

1 MR. DONNARD: No, sir. I don't believe so, Your
2 Honor.

3 MS. CLARK: Probation is here.

4 THE COURT: Yes, sir.

5 PROBATION AGENT: Judge, I'm not sure -- I don't
6 have our computer with me, but I --

7 THE COURT: He tells me he thought he was on
8 probation at the time he committed this offense; can
9 you confirm that for me before I sentence him?

10 PROBATION AGENT: Sir?

11 THE COURT: Can you confirm that with me prior to
12 sentencing?

13 PROBATION AGENT: Yes, sir, I can.

14 THE COURT: All right. Thank you. All right.
15 Ms. Clark.

16 MS. CLARK: Yes, sir, may it please the court.

17 THE COURT: Yes, ma'am.

18 MS. CLARK: His family is telling me he wasn't on
19 probation --

20 THE COURT: Okay.

21 MS. CLARK: -- but I -- it wasn't a charge that
22 was in Sumter County, I don't believe as well, Your
23 Honor.

24 Mr. McFadden is 23 years of age. And as you
25 probably heard, most of these -- these young men, they

1 knew each other. And he has -- he's graduated from
2 high school. He went to Lake City High School. He was
3 working at roofing companies, Singletary Roofing
4 Company. So at the time of this incident, he was
5 employed.

6 He went out with them. And, Your Honor, this
7 transpired -- he's expressed to me from the very
8 beginning, Your Honor -- even though he did not give a
9 statement -- from the very beginning he has expressed
10 to me not only his remorse that this happened, but his
11 willingness to plead to what has gone on, and I think I
12 expressed that to the Solicitor from the very
13 beginning.

14 So he -- and even during this, Your Honor, we've
15 gone back and forth. I've explained to him what the
16 hand of one hand of all is, and how even if you don't
17 pull a trigger, your actions cause a result, then you
18 can be held accountable for it.

19 He has maintained to me that he did not pull a
20 trigger. And I know that the solicitor said --

21 THE COURT: Now, there was a -- I think the
22 statement was that he pulled the trigger on Mr. Smalls;
23 is that correct?

24 MS. CLARK: That's -- that's correct. That's what
25 they're saying, Your Honor, but he -- he maintains to

1 me that he has -- he did not. I mean, he has been
2 forthright, I think, from the very beginning --

3 THE COURT: Are you sure you want him to plead
4 guilty?

5 MS. CLARK: Well, he's --

6 THE COURT: I mean, if he's saying he didn't do
7 it.

8 MS. CLARK: Your Honor --

9 THE COURT: You're telling me now that he didn't
10 --

11 MS. CLARK: Well, he's pleading guilty under the
12 hand of one is the hand of all.

13 THE COURT: Okay.

14 MS. CLARK: He understands what that means. I
15 just wanted to point out, you know, we're not trying to
16 nitpick it, I just wanted you to understand what he
17 said to me thus far. He -- and he understands that he
18 has to pay for this crime. He's willing to pay for it.
19 He's very sorry, very remorseful.

20 He was in school, he was in tech school. He
21 should have been continuing on with that and he knows
22 that. He knows that this has been a mistake that's not
23 only ruined lives -- their lives, the victims' lives,
24 but it's ruined his as well. You understand, he knows
25 that there are long standing repercussions for this,

1 for everybody, and he is extremely sorry.

2 While he -- I should point out to the court as
3 well, he's been incarcerated since March of 2012 and
4 has not made bond. And even though, I think, the bond
5 was initially denied, he hasn't asked me to seek a bond
6 reduction or any of that, Your Honor, because he knew
7 he would have to pay for what he did. And he was
8 willing to do that again, like I said, from the
9 beginning.

10 While he's been incarcerated for this, his
11 mother passed, so it's been a difficult situation for
12 him so he knows that he's losing valuable time that he
13 could have had with his family. And, again, he's just
14 very, very sorry. He's not married. He doesn't have
15 any children.

16 We're asking the court to consider giving him a
17 sentence that's going to allow him at some point to
18 resume his life, and to try to be a productive person
19 in society. I think this is what he wants to do.
20 Again, he wants -- he's sorry and he -- he wants to pay
21 for what he did. He understands that this whole
22 situation got grossly out of hand. It shouldn't have
23 happened in the first place.

24 His family is here. It's the same family you
25 just saw, Mr. McFadden here to speak -- anybody who

1 might want to speak. His brother is here and has been
2 in contact with me, and I think they would like to
3 speak.

4 THE COURT: All right. Certainly. Please state
5 your name for the record.

6 MR. MCFADDEN: Johns (ph) McFadden. I'm Travis'
7 baby brother. Our mama just recently died. None of
8 this is easy. I mean, my brother was --

9 THE COURT: You've got to speak into the
10 microphone. I've got to hear you.

11 MR. MCFADDEN: My brother was there through thick
12 and thin, whatever I need he always gave it to me, as
13 well as my mom. After my mama had him, they thought
14 that she wouldn't be able to have no more kids, but she
15 had me. So her heart got weaker.

16 They put a trans -- a pacemaker inside her heart
17 on August 13th of this year, 2013. She passed away in
18 the hospital. Seeing my mama go through that in front
19 of my eyes, without my brother being there, it was
20 hard. He couldn't be there for her funeral. So the
21 preacher and me, by myself, out here, you know, I ain't
22 got nobody -- I mean, I got family, but my brother is
23 the only one that is close to me right now and he's the
24 only one that I got. So that's what I came to say.

25 THE COURT: Well, I'm sorry for your loss.

1 MR. MCFADDEN: Thank you.

2 THE COURT: Anyone else want to speak? State your
3 name again, we got to -- I'm doing a different record.

4 MS. MCFADDEN: Sylvenia McFadden. I'm Travis'
5 aunt also. The same as I asked for Tobias, I ask for
6 mercy. I mean, he's a good kid. He was on the right
7 path but, you know, he just got with the wrong crowd,
8 and this happened. But I just ask for mercy.

9 THE COURT: Okay. Thank you. Anyone else?

10 MR. MCFADDEN: My name is Danny McFadden. Travis
11 McFadden is my cousin. And all I can say is, he messed
12 around and got with the wrong crowd. He a good boy.
13 You know, he'll -- he'll go working and all, and doing
14 all he had to do until he got with the wrong crowd. I
15 just ask you -- can you look out for him, can you help
16 him.

17 THE COURT: Okay. Thank you.

18 MS. CLARK: That's it, Your Honor.

19 THE COURT: All right. Would he like to say
20 anything?

21 THE DEFENDANT: I would like to say I apologize
22 for my action, and every one else is. And I'm sorry
23 for your loss, the family members sitting here, I
24 apologize to them.

25 THE COURT: All right. Would the victims like to

1 say anything?

2 MR. DONNALD: Your Honor, the victims have
3 indicated they don't wish to address the court at this
4 time, but law enforcement would request --

5 THE COURT: All right. Who, in law enforcement,
6 would like to address the court?

7 MR. DONNALD: Your Honor, Sheriff Dennis would
8 like to address the court.

9 THE COURT: Yes. Sheriff Dennis.

10 SHERIFF DENNIS: Your Honor, if it please the
11 court, this occurred on December 26th, the day after
12 Christmas. And the owner of Money Saver, who is here
13 today, who has a convenience store in that community --
14 a small community, provides services to just about
15 everyone in that community, decided that evening that
16 he wanted to open his doors to provide services the day
17 after Christmas. Well, he decided to do that at
18 approximately 9:00.

19 And, Your Honor, I understand the Solicitor has
20 referred to "the gentleman". In law enforcement, our
21 profession, we refer to that group as thugs or gang
22 bangers that came into his store that night. Not only
23 came to his store that night, they attempted -- they
24 shot at the owner of the store several times. And
25 during that time Mr. Thompson and Mr. Smalls came up to

1 the store, and they not only shot Mr. Smalls, who may
2 never walk again, he also took the lives of the victim
3 -- Thompson's son.

4 Your Honor, we believe that our forensic team
5 and Investigator Addison, who did a great job in
6 preparing this case, and also they -- visiting their
7 Facebook, that this was a gang related -- gang -- call
8 them a gang. I did, at the time, let the State law
9 enforcement division to come in and investigate this
10 case as a gang related case.

11 I believe that there was no remorse, there were
12 no regards for safety and we ask the judge to take that
13 into consideration during these proceedings.

14 THE COURT: All right. Thank you. Anything else,
15 Solicitor?

16 MR. DONNARD: The court's indulgence?

17 (Pause.)

18 MR. DONNARD: No, Your Honor.

19 THE COURT: Ms. Clark, do you have anything else?

20 MS. CLARK: Your Honor, the only thing I would
21 just say is, I realize that this incident was
22 egregious. He understands that. It was bad. And it
23 happened unfortunately, but he is remorseful --

24 THE COURT: Well, it's just his opinion.

25 MS. CLARK: I understand. And so he is

1 remorseful. And I just would ask the court to consider
2 all of that. I mean, that's why he stands before you.
3 He knows what his situation is.

4 THE COURT: All right. Thank you.

5 MS. CLARK: Thank you.

6 THE COURT: All right. I'll break for five
7 minutes until we have another defendant. Yes, sir?
8 Let me give -- can you state on the record whether he
9 was -- can you state on the record whether Mr. Travis
10 McFadden was on probation at the time that this
11 incident occurred?

12 PROBATION AGENT: Yes, sir. It appears that the
13 case is still active. The case is from Florence
14 County. They've actually issued a warrant which is an
15 active -- which is an active warrant, which they issued
16 after he got this offense. The warrant hasn't been
17 served on him yet, but it appears that they'll want to
18 dispose of this case after he pleads guilty --

19 THE COURT: So they'll want that to run --

20 PROBATION AGENT: Run it concurrent. You need to
21 go ahead and tell me about it now because I'm going to
22 sentence him on it.

23 SHERIFF DENNIS: Your Honor, please, if the court
24 is of a mind, we'll contact Florence County tonight and
25 get the warrant over here in the morning. And we can

1 have that done at the same time that you sentence him
2 in the morning.

3 THE COURT: All right. Thank you.

4 MS. CLARK: I would just say, Your Honor, I don't
5 know anything about that case. I was appointed on this
6 case --

7 THE COURT: You were -- you were appointed on this
8 one.

9 MS. CLARK: Yes, sir.

10 THE COURT: All right.

11 MR. DONNARD: Your Honor, if it please the court,
12 the State calls Jimonte Gilbert...

13 (After a recess, the Court reconvened in the
14 McFadden case for sentencing.)

15 THE COURT: All right. The next two are ones
16 who I believe are the culprits in this, and I think
17 they were the ones who put this together. This
18 horrible situation probably would not have happened
19 without their planning. And this was, again, horrible.
20 You just think, one man is dead and one man is
21 paralyzed for life. And someone was saying that's a
22 sentence worse than death. I hope it's not, sir. I
23 hope it's not. I hope you can get your life back
24 together.

25 But for Travis Jaqueese McFadden, the sentence

1 is that on the criminal conspiracy, that you be
2 committed to the State Department of Corrections for a
3 period of five years. This will run concurrent to your
4 other charges -- or other sentences.

5 On the charge of common law robbery, strong
6 armed robbery, the sentence is that you be committed to
7 the State Department of Corrections for a period of 15
8 years.

9 On the charge of voluntary manslaughter, you are
10 committed to the State Department of Corrections for a
11 period of 30 years. Although this was one general time
12 frame, there were two victims, and these charges and
13 these sentences shall run consecutively.

14 Tobias Lorland McFadden, Mr. McFadden you seem
15 to be the man who put all this together, the sentence
16 for you is -- on the charge of criminal conspiracy,
17 that you be committed to the State Department of
18 Corrections for a period of five years. This will run
19 concurrent with your other charges.

20 And on the strong armed robbery, you're hereby
21 committed to the State Department of Corrections for a
22 period of 15 years.

23 On the charge of voluntary manslaughter, you're
24 committed to the State Department of Corrections for a
25 period of 30 years. These sentences shall run

1 consecutively. That is the ruling of the court. The
2 attorneys are notified they have ten days to file their
3 appeals or motions to reconsider.

4 Anything further from the State?

5 THE COURT: `Anything further from the defense
6 attorneys?

7 MS. CLARK: No, Your Honor.

8 THE COURT: Court is adjourned until 10:00
9 tomorrow morning.

10 (Whereupon, the hearing adjourned.)

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1 CERTIFICATE OF REPORTER

2

3 I, SHARON D. JONES, CERTIFIED COURT REPORTER, DO
4 HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
5 AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS
6 HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
7 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
8 GENERAL SESSIONS COURT FOR SUMTER COUNTY ON THE 18TH
9 DAY OF NOVEMBER, 2013.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
11 COUNSEL NOR INTEREST TO ANY PARTY HERETO.

12

13

4.24.17

14

15

Sharon D. Jones

16

17

SHARON D. JONES,
CERTIFIED COURT REPORTER
COMMISSION EXPIRES 9.22.2024

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STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Sumter	)	2012-GS-43-0781
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
TRAVIS JACQUEESE MCFADDEN,	)	
	)	
DEFENDANT,	)	

December 16, 2016
Sumter, South Carolina

BEFORE:

THE HONORABLE JEFFREY YOUNG, JUDGE.

APPEARANCES:

EDDIE DONNARD, ASSISTANT SOLICITOR
Attorney for the State

SHARON CLARK, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

> > > < < <

CERTIFICATE OF REPORTER 12

COURT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Acknowledgment Rights form	11	

1 MR. DONNALD: Your Honor, may it please the Court.

2 THE COURT: Yes.

3 MR. DONNALD: The next matter, the last matter for
4 this week -- the last matter for this year, I suppose --

5 THE COURT: \ I believe it is.

6 MR. DONNALD: -- will be Travis Jacquese McFadden,
7 and I'll get into -- I can give you a little bit of
8 background, but just for the record, he is here on a
9 motion to reconsider, sentence handed down by Your Honor
10 back in 2013. The exact date of that was November 18th,
11 2013. If it please the Court, I'll proceed, Your Honor.

12 THE COURT: Yes.

13 MR. DONNALD: Your Honor, Mr. McFadden was one of
14 seven codefendants who were charged with armed robbery and
15 murder and attempted murder in a case where there was a
16 convenience store robbery.

17 Everybody that was in the case pled guilty. It was
18 actually Mr. Finney's case at the time. It was one of the
19 first ones that I was dealing with when I came back to the
20 Solicitor's Office. In particular, Mr. McFadden was
21 represented -- let me back that up there.

22 There was more -- there was more than one
23 Mr. McFadden in this case.

24 THE COURT: Okay.

25 MR. DONNALD: Travis McFadden in this case was

1 indicted under indictment number 2012-0781. It is a
2 multiple-count indictment. I'm not going to put them all
3 on the record.

4 He ended up pleading guilty with a recommendation
5 from the State before Your Honor to a charge of voluntary
6 manslaughter which was a reduction from a murder charge.

7 THE COURT: On a murder charge which carried life.

8 MR. DONNARD: That's correct. He pled to common law
9 robbery, which was a reduction from armed robbery, and he
10 pled guilty to conspiracy, criminal conspiracy, common law
11 conspiracy.

12 There was a recommendation at the time by the State
13 of 20 years, 20 years of total sentence to be served
14 currently. At least that's my best recollection. I
15 haven't gone back and looked at the transcript.

16 Your Honor sentenced him to 30 years on the voluntary
17 manslaughter, 15 years consecutive on the strong armed
18 robbery and five years concurrent on the conspiracy charge
19 for a total of 45 years.

20 I would like to hand up the sentencing sheets that
21 have been certified. I didn't get them marked because
22 they're part of the Court's file.

23 I also would like to hand up, Your Honor, prior to
24 his plea Mr. McFadden, Mr. Travis McFadden, with the
25 assistance of his attorney, Ms. Clark, signed an

1 Acknowledgment of Rights Given up by Entering a Guilty
2 Plea. This was in the Court's file, as well, but I have
3 this marked as Court's Exhibit No. 1.

4 THE COURT: All right.

5 MR. DONNALD: The reason -- and I also have the
6 indictment if you wish to have a true copy of the
7 indictment, Your Honor. The reason that this has taken so
8 long to -- let me give you a little bit more background.
9 Mr. McFadden was sentenced to 45 years. Another
10 codefendant was sentenced to 45 years, and I think he was
11 McFadden, too. I'd have to go look at --

12 MS. CLARK: Tobias McFadden.

13 MR. DONNALD: Tobias McFadden was also sentenced to
14 45 years. In this particular case, Your Honor, Mr. -- a
15 group of guys pulled up in a car at the Money Saver
16 convenience store which is almost out of Sumter County.
17 It's barely in Sumter County, went in armed, took --

18 THE COURT: This was near Lynchburg.

19 MR. DONNALD: That's correct.

20 THE COURT: I remember the facts. I remember that.

21 MR. DONNALD: Okay, took -- they took the owner of
22 the shop, held him for ransom. A gentleman by the name of
23 Jayson -- Jayshawn Smalls -- not Jayshawn Smalls.

24 Y'all come up here, please.

25 Your Honor, I have with me in the courtroom Sierra

1 Duncan and Patricia Thompson.

2 Erissa Smalls went into the -- what was -- ultimately
3 one of persons who was deceased. I have with me Patricia
4 Thompson. Patricia Thompson is the mother of Jayshawn
5 Thompson. Jayshawn pulled up while the robbery was going
6 on. He was in a car, pulled up while the robbery was
7 going on.

8 THE COURT: Just happened to be there at the wrong
9 place at the wrong time.

10 MR. DONNARD: That's right. Ms. Duple (phonetic)
11 who was also here and is a victim, sister of Jayshawn, was
12 in the car, as well. She actually was a witness to this.

13 Jayshawn went in the store, bad time, turned around,
14 went to leave, and he got shot in the back. He is
15 paralyzed. He couldn't be here this morning because he
16 had a -- he had a doctor's appointment.

17 Ms. Duncan's fiancée was a gentleman by the name of
18 Erissa Smalls. I'm sorry. I got the names wrong. I
19 think I did that during the plea.

20 (Pause).

21 I got the names wrong. Eris got shot in the back.
22 Jayshawn is the one who is deceased. I apologize for
23 that, Your Honor. Jay--- Eris got shot in the back and is
24 a paraplegic as a result of that.

25 Just -- it's nothing other than not only bad place at

1 the wrong time. It was almost an errant shot, and then it
2 hit him right in the right spot to leave him paralyzed.

3 While the deceased went, got out to help, he ended up
4 being shot in the chest and was deceased by the time
5 paramedics arrived.

6 My -- the State's recommendation and with going
7 through the victims and everybody involved was for a
8 20-year sentence, as I have said. Now, as you know, and
9 the reason I handed up the Explanation of Rights is
10 because you're certainly not bound by any recommendation
11 that I made.

12 THE COURT: No.

13 MR. DONNALD: But --

14 THE COURT: -- and I specifically said in this one
15 that I was not bound.

16 MR. DONNALD: Yes.

17 THE COURT: I made sure everybody knew that.

18 MR. DONNALD: Yes, sir. Part of the reason -- I'm
19 telling you all of this to lay out the reason why it's
20 taken three years to get back. I didn't intend for it to
21 take three years.

22 I meant for some water to go under the bridge after
23 -- as a result of the guilty plea, and I wanted to discuss
24 with my victims who were here the possibility that if this
25 Mr. McFadden or the other Mr. McFadden, whose motion to

1 reconsider was already been denied, if they were willing
2 to forgo their rights to appeal or to PCR if the family
3 would agree to let me ask the judge to reconsider the
4 sentence back to the 20 years that I had originally asked
5 for.

6 I only tell you that to explain the time. I wanted
7 there to be enough time for that to be made in a rational
8 way. Now, I can tell you three years has passed. The
9 family is happy with His Honor's sentence and happy with
10 the 45 years. So it's not asking you to change the
11 sentence. I'm asking you to leave the sentence as it is.

12 The two -- the only other thing that I need -- I wish
13 to put on the record is that Tobias and Travis McFadden
14 who were the two shooters in this got additional -- the
15 other defendants got 20 years.

16 My recollection is that you sentenced them to the 45
17 because they were the active shooters on the scene that
18 afternoon, and so with that, that's my introduction. But
19 it's Ms. Clark's motion, and I'll let her make her motion.

20 THE COURT: Ms. Clark.

21 MS. CLARK: Yes, sir. May it please the Court. This
22 is my motion to reconsider. In all of the years that I've
23 practiced law, this is only the second one that I have
24 ever done, Your Honor. It, of course, is in your sound
25 discretion as to whether or not you choose to reconsider

1 the sentence you have imposed.

2 I'm just asking the Court to consider the fact that
3 at the time of this, Mr. McFadden and all of these young
4 guys were all young men.

5 I do have the sentences of everyone else, Your Honor.
6 Mr. McFadden, Travis McFadden, and Tobias McFadden are the
7 ones who got the lengthy sentences. The most lengthy
8 sentence imposed on any of the other codefendants was ten
9 years, Your Honor, which was suspended.

10 I'm just asking that if the Court would consider
11 reconsidering the sentence in light of the fact that at
12 the time the Solicitor did recommend the 20 years
13 concurrent that Mr. McFadden did not have an extensive
14 record; that at that time we all -- I think all of the
15 defendants by the time we got to the plea had spoken with
16 Mr...

17 (Pause).

18 With Eddie, I'm sorry.

19 MR. DONNARD: Donnard.

20 MS. CLARK: Yeah, I don't know. I had a brain
21 fart -- a brain pause for a minute, Your Honor. It just
22 wouldn't come out.

23 THE COURT: Is that on the record?

24 MS. CLARK: But I think that's how we have all spoken
25 with Mr. Donnard by that time, and you know, when I spoke

1 Mr. McFadden, we talked a lot about this plea and what was
2 going on.

3 We understood he gave up his rights, Your Honor, and
4 he had the -- he was at your mercy, plain and simple, and
5 he got this sentence.

6 I would just ask the court to possibly consider --
7 even if you're not willing to consider reduction of the
8 sentence -- to possibly consider changing it to a
9 concurrent sentence, Your Honor. We realize that this is
10 a most egregious matter. He --

11 THE COURT: Yeah, I mean, we got one guy who is
12 dead --

13 MS. CLARK: Yes, sir.

14 THE COURT: -- and another guy is permanently
15 disabled --

16 MS. CLARK: Yes, sir.

17 THE COURT: -- because of what they did, and these
18 were the shooters, right?

19 MS. CLARK: Yes, sir.

20 THE COURT: It doesn't get any more serious than
21 that.

22 MS. CLARK: Yes, sir. We understand that. I'm just
23 asking the Court to consider all of that and consider the
24 fact that he actually pled guilty to it and so forth.

25 THE COURT: Okay. And I think the Solicitor's Office

1 by letting him plead reduced his exposure from what I
2 would have had no reservation giving him a life sentence
3 without the possibility of parole. I intended for him to
4 get 45 years, and that is going to be my sentence.

5 Now, I appreciate your bringing this forward, but
6 what they did that afternoon was so despicable. I mean,
7 it's one thing to have somebody die. That's terrible, but
8 you made another man live with being a paraplegic for the
9 rest of his life, so I intended for him to serve every day
10 of the 45 years that I sentenced him to. So your motion
11 is respectfully denied. Thank you.

12 MS. CLARK: Thank you, Your Honor.

13 MR. DONNARD: Thank you, Your Honor. Thank you for
14 hearing us.

15 (WHEREUPON, Court's Exhibit No. 1 was marked for
16 identification only.)

17 (Whereupon, the proceedings were concluded.)
18
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

I, Karen Ambroziak, Official Court Reporter for the
5th 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
Sumter County, South Carolina, on the 16th day of
December, 2016.

May 2, 2017

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Honorable Clifton Newman, Circuit Judge

Case No.: 2021-CP-43-0929

Travis McFadden 357880.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Travis McFadden appeals the Honorable Clifton Newman's August 1, 2022 Order of Dismissal. Undersigned counsel received notice of entry of the order on August 15, 2022. A copy of the order on appeal is attached hereto.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

August 24, 2022

Zachary William Jones Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

Sumter County Circuit Court Clerk
215 N. Harvin St
Sumter, SC 29150

RECEIVED

AUG 26 2022

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Honorable Clifton Newman , Circuit Judge

Case No.: 2021-CP-43-0929

Travis McFadden 357880.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Zachary Jones Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549 and the Sumter County Clerk of Court. I further certify that all parties required by Rule to be served have been served this August 24, 2022.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

RECEIVED

AUG 26 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVIS JACQUEESE MCFADDEN,

APPELLANT

APPELLATE CASE NO 2016-002531

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
ARGUMENT	3
CONCLUSION.....	5
PETITION TO BE RELIEVED AS COUNSEL	6

TABLE OF AUTHORITIES

Cases

<u>Boykin v. Alabama</u> , 395 U.S. 238, 89 S.Ct. 1709 (1969).....	3
<u>State v. Armstrong</u> , 263 S.C. 594, 211 S.E.2d 889 (1975)	3, 4
<u>State v. Gaines</u> , 335 S.C. 376, 517 S.E.2d 439(1999)	4
<u>State v. Patterson</u> , 278 S.C. 319, 295 S.E.2d 264 (1982)	3

STATEMENT OF ISSUE ON APPEAL

Whether appellant's guilty plea was knowingly and voluntarily entered when he did not have a realistic picture of the sentencing possibilities?

STATEMENT OF THE CASE

On November 18, 2013, appellant appeared before the Honorable W. Jeffrey Young in Sumter County and pled guilty to voluntary manslaughter, common law robbery, and criminal conspiracy. He was sentenced to thirty (30) years for voluntary manslaughter, to fifteen (15) consecutive years for common law robbery, and to five (5) concurrent years for criminal conspiracy.

A motion to reconsider the sentence dated November 20, 2013, was filed on November 21, 2013. A hearing on the motion was held on December 12, 2016. The motion was denied by written order dated January 26, 2017. Sharon Clark, Esq. was plea counsel and Eddie Donald, Esq. was the assistant solicitor.

This appeal follows.

ARGUMENT

Appellant's guilty plea was not knowingly and voluntarily entered because he did not have a realistic picture of the sentencing possibilities.

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. A valid waiver of these rights cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), this Court held that the "essence" of Boykin, was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the states. In State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982), this Court held that for there to be a valid waiver under the due process clause of the three constitutional rights listed in Boykin, the record must clearly establish it.

In Boykin, supra, the U.S. Supreme Court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of rights occurring with the guilty plea.

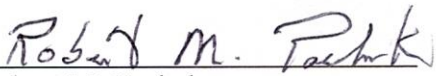
In this case appellant was indicted on an eleven count indictment on charges surrounding the armed robbery of a convenience store. Seven defendants were listed on the indictment. Appellant pled down from murder to voluntary manslaughter, from armed robbery to strong armed robbery, and to conspiracy. He did not plea to the other charges which included two attempted murder charges. The plea judge did explain what the maximum sentences were and that he could order them to be served consecutively. (11/18/13 tr. p. 10, line 16- p. 11, line 10).

It was not until the hearing on appellant's motion to reconsider the sentence that we find out the assistant solicitor had agreed to a twenty year sentence on voluntary manslaughter with all the sentences to be concurrent. (12/16/16 tr. p.4, lines 12-14). Plea counsel also testified that the assistant solicitor had recommended a twenty year sentence and that some of the codefendants got ten year sentences that were suspended. (12/16/16 tr. p. 9, lines 5-16).

In Gaines v. State, 335 S.C. 376, 517 S.E.2d 439(1999) this Court acknowledged that in State v. Armstrong cited above that at a guilty plea a judge should give a "realistic picture of all the sentencing possibilities." It is obvious appellant came into the guilty plea with knowledge that the assistant solicitor had recommended a twenty year sentence and that plea counsel passed this information on to appellant. Appellant thereby expected a twenty year sentence and not the forty-five year sentence he did receive. His plea was, therefore, not knowingly and voluntarily made.

CONCLUSION

Petitioner's guilty plea should be vacated.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of July, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Sumter County

 Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVIS JACQUEESE MCFADDEN,

APPELLANT

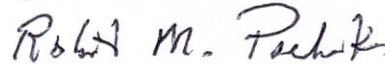
 PETITION TO BE RELIEVED AS COUNSEL

Counsel for Travis Jacquese McFadden states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge William Jeffrey Young, which was held on November 18, 2013 and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Travis Jacquese McFadden.

Respectfully Submitted,



 Robert M. Pachak
 Appellate Defender
 ATTORNEY FOR APPELLANT

This 3rd day of July, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Sumter County

 Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVIS JACQUEESE MCFADDEN,

APPELLANT

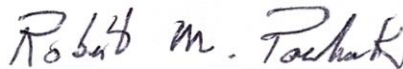
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):
- (2) November 18, 2013 transcript
- (3) November 20, 2013 Motion to Reconsider the Sentence
- (4) December 16, 2016 Motion Hearing Transcript
- (5) Order denying motion filed February 8, 2017

I certify that this designation contains no matter which is irrelevant to this appeal.

July 3, 2017



 Robert M. Pachak
 Appellate Defender

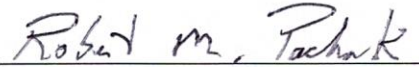
 South Carolina Commission on Indigent
 Defense
 Division of Appellate Defense
 PO Box 11589
 Columbia, SC 29211-1589
 (803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 3, 2017.



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Sumter County

 Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

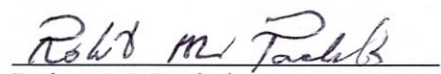
V.

TRAVIS JACQUEESE MCFADDEN,

APPELLANT

 CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Travis Jacquese McFadden, #357880, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 3rd day of July, 2017.


 Robert M. Pachak
 Appellate Defender
 ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
 this 3rd day of July, 2017.

 (L.S)
 Notary Public for South Carolina
 My Commission Expires: May 12, 2027

The South Carolina Court of Appeals

The State, Respondent,

v.

Travis Jacquese McFadden, Appellant.

Appellate Case No. 2016-002531

ORDER

Counsel has submitted a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and a motion to be relieved as counsel. We deny the motion to be relieved as counsel and direct the parties to brief the following issue and any other issue of arguable merit:

Whether a guilty plea can still be voluntary if the State does not disclose a sentencing recommendation to the plea court.

Appellant shall serve and file a brief on this issue within thirty days of the date of this order. Thereafter, respondent shall have thirty days to serve and file its brief.

D. Hanlin

FOR THE COURT

RECEIVED

JUL 19 2018

APPELLATE DEFENSE

FILED

July 19, 2018

Columbia, South Carolina

cc: Travis Jacquese McFadden, 357880
 Alan McCrory Wilson, Esquire
 John Benjamin Aplin, Esquire
 Robert M. Pachak, Esquire

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVIS JACQUEESE MCFADDEN,

APPELLANT

APPELLATE CASE NO 2016-002531

BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW 3

ARGUMENT

Appellant’s guilty plea was not voluntary because the State did not
disclose a sentencing recommendation to the plea court. 4

CONCLUSION.....6

TABLE OF AUTHORITIES

Cases

<u>State v. Vick</u> , 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009).....	3
<u>Anders v. California</u> , 386 U.S. 738 (1967).....	2
<u>Boykin v. Alabama</u> 395 U.S. 238, 89 S. Ct. 1709(1969).....	4
<u>Gaines v. State</u> , 335 S.C. 376, 517 S.E.2d 439(1999)	5
<u>In re M.B.H.</u> , 387 S.C. 323, 692 S.E.2d 541 (2010).....	3
<u>Jordan v. State</u> , 297 S.C. 52, 374 S.E.2d 683 (1988).....	5
<u>State v. Slocumb</u> , 412 S.C. 88, 770 S.E.2d 436 (Ct. App. 2015).	3
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827, (2001).....	3

STATEMENT OF ISSUE ON APPEAL

Whether a guilty plea can still be voluntary if the State does not disclose a sentencing recommendation to the plea court?

STATEMENT OF THE CASE

On November 18, 2013, appellant appeared before the Honorable W. Jeffrey Young in Sumter County and pled guilty to voluntary manslaughter, common law robbery, and criminal conspiracy. He was sentenced to thirty (30) years for voluntary manslaughter, to fifteen (15) consecutive years for common law robbery, and to five (5) concurrent years for criminal conspiracy.

A motion to reconsider the sentence dated November 20, 2013, was filed on November 21, 2013. A hearing on the motion was not held until December 12, 2016. The motion was denied by written order dated January 26, 2017. Sharon Clark, Esq. was plea counsel and Eddie Donald, Esq. was the assistant solicitor.

On July 3, 2017, a brief was filed pursuant to Anders v. California, 386 U.S. 738 (1967), along with a motion to be relieved as counsel. On July 19, 2018, this court issued an order denying the motion to be relieved and directed the parties to brief the issue contained herein.

This brief follows.

STANDARD OF REVIEW

Sentencing

“In criminal cases, the appellate court sits to review errors of law only.” State v. Vick, 384 S.C. 189, 197, 682 S.E.2d 275, 279 (Ct. App. 2009)(quoting State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). The appellate court is “bound by the trial court’s factual findings unless they are clearly erroneous.” Id. (quoting Wilson, 345 S.C. at 5-6, 545 S.E.2d at 829). The reviewing court “does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court’s ruling is supported by any evidence.” State v. Slocumb, 412 S.C. 88, 91, 770 S.E.2d 436, 438 (Ct. App. 2015). “A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support.” In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

ARGUMENT

Appellant's guilty plea was not voluntary because the State did not disclose a sentencing recommendation to the plea court.

In Boykin v. Alabama 395 U.S. 238, 89 S. Ct. 1709(1969) the U.S. Supreme Court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of rights occurring with the guilty plea.

In this case appellant was indicted on an eleven count indictment on charges surrounding the armed robbery of a convenience store. Seven defendants were listed on the indictment. Appellant pled down from murder to voluntary manslaughter, from armed robbery to strong armed robbery, and to conspiracy. He did not plea to the other charges which included two attempted murder charges. The plea judge did explain what the maximum sentences were and that he could order them to be served consecutively. (11/18/13 tr. p. 10, line 16- p. 11, line 10).

At no time during the guilty plea did the assistant solicitor tell the judge that the State had recommended a twenty year sentence. Plea counsel also did not inform the judge of the recommended sentence.

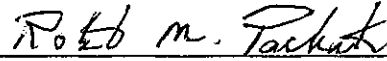
On November 21, 2013, plea counsel filed a motion to reconsider the sentence. A hearing was not held on that motion until December 16, 2016. The assistant solicitor told the plea judge that at the time of the guilty plea the State had a recommendation of a twenty-year sentence on voluntary manslaughter with all of the sentences to be concurrent (12/16/16 tr. pg. 4, lines 12-14). Plea counsel also testified that the assistant solicitor had recommended a twenty-year sentence and that some of the codefendants got ten-year sentences that were suspended. (12/16/16 tr. p. 9, lines 5-16).

In Gaines v. State, 335 S.C. 376, 517 S.E.2d 439(1999) this Court acknowledged that in State v. Armstrong cited above that at a guilty plea a judge should give a “realistic picture of all the sentencing possibilities.” It is obvious appellant came into the guilty plea with knowledge that the assistant solicitor had recommended a twenty-year sentence and that plea counsel passed this information on to appellant. Appellant thereby expected a twenty-year sentence and not the forty-five year sentence he did receive. His plea was, therefore, not knowingly and voluntarily made.

In Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988), the court held a plea attorney ineffective in failing to withdraw a guilty plea after the State reneged on a plea bargain. Perhaps appellant should also ask about counsel’s conduct in this case at the guilty plea.

CONCLUSION

Appellant's case should be remanded for specific performance of the plea recommendation.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of August, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

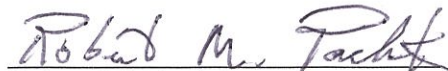
V.

TRAVIS JACQUEESE MCFADDEN,

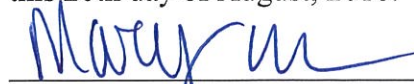
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Appellant has been served on Travis Jacqueese McFadden, #357880, at Lee Correctional Institution, 990 Wisacky Hwy, Bishopville, SC 29010, this 20th day of August, 2018.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of August, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of General Sessions

The Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2016-002531

THE STATE,

Respondent,

v.

TRAVIS JACQUEESE MCFADDEN,

Appellant.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

Post Office Box 11549
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(803) 734-3727

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

141 N. Main St.
Sumter, SC 29150
(803) 436-2185

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
STANDARD OF REVIEW.....	5
ARGUMENT	6
Appellant's guilty plea was not invalid where the State disclosed its sentencing recommendation to the trial judge, the trial judge elected not to follow that recommendation, and the trial judge subsequently exercised his discretion in sentencing Appellant to forty-five years' imprisonment.	
CONCLUSION.....	9

TABLE OF AUTHORITIES

Cases:

<u>Boykin v. Alabama</u> , 395 U.S. 238 (1969).....	7
<u>Dover v. State</u> , 304 S.C. 433, 505 S.E.2d 391 (1991)	7
<u>In re M.B.H.</u> , 387 S.C. 323, 692 S.E.2d 541 (2010).....	5
<u>State v. Elders</u> , 386 S.C. 474, 688 S.E.2d 857 (Ct. App. 2010)	5
<u>State v. Green</u> , 337 S.C. 67, 522 S.E.2d 602 (Ct. App. 1999).....	7
<u>State v. McKinney</u> , 278 S.C. 107, 292 S.E.2d 598 (1982)	6
<u>State v. Riddle</u> , 278 S.C. 148, 292 S.E.2d 795 (1982).....	7
<u>State v. Sheldon</u> , 344 S.C. 340, 543 S.E.2d 585 (Ct. App. 2001).....	5
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001).....	5

STATEMENT OF ISSUE ON APPEAL

Appellant's guilty plea was not invalid where the State disclosed its sentencing recommendation to the trial judge, the trial judge elected not to follow that recommendation, and the trial judge subsequently exercised his discretion in sentencing Appellant to forty-five years' imprisonment.

STATEMENT OF THE CASE

Appellant was indicted during the July 2012 term of the Grand Jury for Sumter County for murder, three counts of possession of a weapon during the commission of a violent crime, two counts of attempted murder, armed robbery, criminal conspiracy, carjacking, accessory before the fact to a felony, and accessory after the fact to a felony (2012-GS-43-0781). On November 18, 2013, Appellant pled guilty to voluntary manslaughter, strong-arm robbery, and criminal conspiracy before the Honorable W. Jeffrey Young in Sumter, South Carolina. Appellant was sentenced by Judge Young to thirty years' imprisonment for voluntary manslaughter, fifteen years' imprisonment for strong-arm robbery to be served consecutively to the sentence for voluntary manslaughter, and five years' imprisonment for criminal conspiracy to be served concurrently with the other sentences. On November 21, 2013, Appellant filed a Motion to Reconsider Sentence. Judge Young subsequently held a hearing on the matter on December 16, 2016 in Sumter, South Carolina. Judge Young issued an order denying the Motion to Reconsider Sentence on February 8, 2017. Petitioner timely filed a notice of appeal.

Appellant's appellate counsel initially filed an Anders brief and a petition to be relieved as counsel. Thereafter, on July 19, 2018, the Court of Appeals denied the petition to be relieved as counsel and directed the parties to brief the following issue from the plea hearing along with any other issues counsel believed were present and of arguable merit: "Whether a guilty plea can still be voluntary if the State does not disclose a sentencing recommendation to the plea court."

STATEMENT OF FACTS

At Appellant's guilty plea hearing, the solicitor explained that Appellant's charges stemmed from a conspiracy by Appellant and five others to carjack someone in front of the Money Saver Convenience Store in Sumter. R. p. 8. Appellant and his co-conspirators ultimately decided to rob the convenience store and effected an armed robbery. R. p. 8. The convenience store clerk, Bahader El-Sokkary, drew his own weapon and began shooting back and forth with the robbers. R. p. 9. Aarons Smalls was shot in the back as he fled the convenience store. R. p. 8. Smalls believed Appellant was the individual who shot him. R. p. 9. Smalls is paralyzed as a result of his injuries. R. pp. 25, 35. Another victim, Jayshawn Thompson, was also shot during the robbery and ultimately died from his injuries. R. pp. 6, 10.

After the solicitor's recitation of the facts, Appellant stated he agreed with the facts as stated by the solicitor. R. p. 10. Appellant stated that he understood he could be sentenced up to thirty years in jail, for voluntary manslaughter, up to fifteen years in jail for strong-arm robbery, and up to five years in jail for conspiracy. R. pp. 10-11. Appellant also indicated he understood that, if the trial judge ran the sentences consecutively, he could be sentenced to a total of fifty years. R. p. 11. Appellant subsequently pled guilty to voluntary manslaughter, strong-arm robbery, and criminal conspiracy. R. pp. 14-15. After hearing statements from Defense Counsel and Appellant's family, the trial judge sentenced Appellant to an aggregate of forty-five years' imprisonment. R. p. 26.

Appellant later filed a Motion to Reconsider sentence on November 21, 2013, requesting that the court review the record and its sentence and reconsider the sentence imposed. R. p. 29. During the hearing on the motion, Defense Counsel asked the court to consider the fact that Appellant and his co-conspirators were all young men. R. p. 38. Defense Counsel also argued:

I'm just asking that if the Court would consider reconsidering the sentence in light of the fact that at the time the Solicitor did recommend the 20 years concurrent that [Appellant] did not have an extensive record. . . . I would just ask the court to possibly consider - - even if you're not willing to consider reduction of the sentence - - to possibly consider changing it to a concurrent sentence, Your Honor.

R. pp. 38-39. During the hearing, the solicitor noted, "the State's recommendation and with going through the victims and everybody involved was for a 20-year sentence, as I have said. Now, as you know, and the reason I handed up the Explanation of Rights is because you're certainly not bound by any recommendation that I made." R. p. 36. The trial judge replied, "No. **And I specifically said in this case that I was not bound.**" R. p. 36. The solicitor agreed, stating, "yes." R. p. 36. The trial judge added, "I made sure everybody knew that." R. p. 36. The trial judge noted that Appellant and one of his co-defendants, Tobias McFadden, were given lengthy sentences because they were the shooters in the crime and one person died and another was permanently disabled. R. p. 39. The trial judge subsequently ruled:

And I think the Solicitor's Office by letting him plead reduced his exposure from what I would have had no reservation giving him a life sentence without the possibility of parole. I intended for him to get 45 years, and that is going to be my sentence. Now, I appreciate you bringing this forward, but what they did that afternoon was so despicable. I mean, it's one thing to have somebody die. That's terrible, but you made another man live with being a paraplegic for the rest of his life, so I intended for him to serve every day of the 45 years I sentenced him to. So your motion is respectfully denied. Thank you.

R. pp. 39-40.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). “On appeal, the trial court’s ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law.” State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs where the trial court’s conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010). A trial judge has broad discretion when sentencing within statutory limits. In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

| ARGUMENT

Appellant's guilty plea was not invalid where the State disclosed its sentencing recommendation to the trial judge, the trial judge elected not to follow that recommendation, and the trial judge subsequently exercised his discretion in sentencing Appellant to forty-five years' imprisonment.

Appellant asserts his guilty plea was not voluntary because the State did not disclose a sentencing recommendation to the plea court. Appellant specifically argues that he expected a twenty-year sentence and not the forty-five year sentence that he ultimately received. Appellant's argument lacks merit. Initially, Appellant's argument is not preserved for appellate review where Appellant failed to argue that his guilty plea was involuntary as a result of the trial judge not following the State's sentencing recommendation. Error preservation concerns aside, the record reveals that the trial judge was in fact well aware of the State's recommended sentence at the plea hearing and ultimately exercised his discretion to not follow that recommendation and sentence Appellant to a greater term of years because of the egregiousness of his crimes. Critically, Appellant indicated during the plea hearing that he was aware that the trial judge could sentence him to up to fifty years' imprisonment. The trial judge thus properly exercised his discretion with full knowledge of the facts of the case when he sentenced Appellant to imprisonment for a term of forty-five years.

As an initial matter, Appellant's argument is not preserved for appellate review. In his Motion to Reconsider Sentence and during the subsequent hearing, Appellant simply asked the Court to reconsider his sentence in light of his age and the fact that some of his co-defendants received lighter sentences. At no point during the hearing did Appellant allege that the State's recommended sentence was not disclosed to the trial judge during the guilty plea, nor did Appellant contend that his guilty plea was not knowing and involuntary as a result. Appellant's argument is thus not preserved for review. See State v. McKinney, 278 S.C. 107, 108, 292

S.E.2d 598, 599 (1982) (finding that the failure of the defendant to argue before the trial judge that his guilty plea was not knowing and intelligent precluded consideration of the issue on appeal).

Error preservation concerns aside, Appellant's argument lacks merit. In order for a defendant to knowingly and voluntarily plead guilty, the record must establish the defendant had a full understanding of the consequences of his plea. Boykin v. Alabama, 395 U.S. 238 (1969). To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed. Dover v. State, 304 S.C. 433, 434-45, 505 S.E.2d 391, 392 (1991). "The State's sentence recommendation is not binding on the trial judge." State v. Green, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (Ct. App. 1999). When the State fulfills its agreement to recommend a specific sentence, the fact that the trial judge does not accept the recommendation does not affect the validity of the plea. State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982).

In the current case, the record reflects that the trial judge was presented with the State's sentencing recommendation. While there is no specific mention in the transcript of Appellant's guilty plea of the State's sentencing recommendation, the State's recommendation was mentioned during the hearing on Appellant's Motion to Reconsider Sentence. During the hearing, the trial judge indicated that he was aware of the State's recommended sentence, noted he was not bound by the recommended sentence and he told the parties as much before the plea, and ultimately sentenced Appellant to a more significant term of imprisonment because of the heinous nature of his crimes. Since the trial judge specifically stated he was aware of the State's recommended sentence at the time of the guilty plea, it is clear that the recommendation was presented to the trial judge either in chambers or during a bench conference. Importantly,

Appellant indicated during the plea hearing that he was aware the trial judge could sentence him to up to fifty years' imprisonment, and still decided to plead guilty to the crimes. Appellant cannot claim that he was unaware he could receive a sentence beyond the State's recommendation where he specifically acknowledged he was aware he could be sentenced beyond that recommendation during the plea hearing. The trial judge was aware of the State's recommended sentence of twenty years; however, the trial judge was also aware of the fact that Appellant was one of the shooters in a horrific crime that killed one man and permanently paralyzed another. The trial judge thus properly exercised his discretion in sentencing Appellant within the applicable sentencing range to an aggregate term of imprisonment of forty-five years. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

BY: 
V. Henry Gunter, Jr.
Bar # 102259

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ATTORNEYS FOR RESPONDENT

December 10, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of General Sessions

The Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2016-002531

THE STATE,

Respondent,

v.

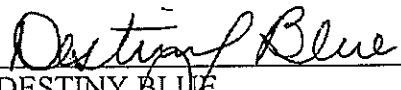
TRAVIS JACQUEESE MCFADDEN,

Appellant.

PROOF OF SERVICE

I, Destiny Blue, certify that I have served the Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: David Alexander, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.
This 19th day of December, 2018.



DESTINY BLUE
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Travis Jacqueese McFadden, Appellant.

Appellate Case No. 2016-002531

Appeal From Sumter County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2020-UP-192
Submitted May 1, 2020 – Filed June 24, 2020

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Senior Assistant
Deputy Attorney General William M. Blich, Jr., and Assistant
Attorney General Vann Henry Gunter, Jr., all of Columbia, and
Solicitor Ernest Adolphus Finney, III, of Sumter, for Respondent.

PER CURIAM: Travis Jacqueese McFadden asserts on appeal his guilty plea was not voluntary because the State did not disclose a sentencing recommendation to the plea court. We affirm pursuant to Rule 220(b), SCACR, and the following

authorities: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the [plea] judge. Issues not raised and ruled upon in the [plea] court will not be considered on appeal."); *State v. McKinney*, 278 S.C. 107, 108, 292 S.E.2d 598, 599 (1982) (requiring an appellant assert the involuntariness of a guilty plea before the trial court to preserve the issue for appellate review).

AFFIRMED.¹

WILLIAMS, KONDUROS, and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

County of Sumter

RECORDED

2021 JUN -1 PM 4:29

IN THE COURT OF COMMON PLEAS

Travis J. McFadden #357880

Full name and prison number (if any) of Applicant

JES C. HUBBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED TRUE COPY
OF ORIGINAL FILE

2021 CP-43-929

Barbara Snayper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINAINSTRUCTIONS - 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 Lee County Correctional Institution
2. Name and location of Court which imposed sentence Sumter County Judicial Center, 215 North Harvin Street, Sumter, SC 29150-4924
3. Name(s) of co-defendant(s) (if any) Tobias McFadden, Timothy Singletary, Travis Major, Rhkeim Ingram, Jimonte Gilbert, Gerome McFadden
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Strong Arm Robbery: M444992
 - (b) Conspiracy: M444994

(c) Voluntary manslaughter/Murder: M444679

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

(a) November 18, 2013

(b) Voluntary manslaughter 30 years, strong arm robbery 15 years (consecuti

(c) conspiracy 5 years (concurrent)

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?

Judgment of conviction and imposition of sentence

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

(a) the name of each Court to which you appealed:

i. Sumter county Judicial Center

ii. South Carolina Court of Appeals

iii. _____

(b) the result in each such Court to which you appealed:

i. I was Denied

ii. _____

iii. _____

(c) the date of each such result:

i. December 16, 2016

ii. June 24, 2020

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counseling
- (b) Prosecutor Misconduct
- (c) Involuntary Guilty plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel fail to withdraw from plea
- (b) Solicitor stated that I didnt committed voluntary manslaughter
- (c) I had a recommendation plea for 20 years which I accepted but I go 45 years Inste
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (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. motion of reconsideration
- ii. Appeal
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Sumter county Judicial center, 215 North harvin street
- ii. Sumter, SC 29150-4974
- iii. Division of Appellate Defense, 1330 Lady street, suite 401 Columbia, SC 29201-3332
- iv. _____

- (c) the disposition thereof:
- i. Denied
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
- i. December 16, 2016 - Motion of reconsideration
 - ii. June 24, 2020 - Appeal
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
 - ii. _____
 - iii. _____
 - iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- yes to the state
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. Ineffective assistance of counsel
 - ii. Involuntary guilty plea
 - iii. _____
- (b) the proceedings in which each ground was raised:
- i. Counsel didnt withdrawn from plea deal
 - ii. _____
 - iii. _____

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

(a) Prosecutor Misconduct - My attorney fail to present it to
 (b) the courts
 (c) _____

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

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

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. Sharon Baker Clark, 22 E. Liberty street
Sumter, SC 29151
 ii. Kathrine H. Hudgins,
1330 Lady street, suite 401, Columbia, SC 29201-3332
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. General session, Motion to reconsider
 ii. Appeal
 iii. _____

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

Im seeking for Voluntary manslaughter to be drop
and a better sentence

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

NO

STATE OF SOUTH CAROLINA)

County of Sumter County)

VERIFICATION

I, X Travis McFadden, 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.

X Travis McFadden

SWORN to and subscribed before me this 21
 day of May, 2021.

Debra Eastridge (L.S.)
 Notary Public

My Commission Expires: 3/3/2024

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

I, Y Traub McFadden, 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.

Y Traub McFadden
Applicant

SWORN or affirmed to and subscribed before me this
21 day of MAY, 2021.

Debra Eastridge
Notary Public

My Commission Expires: 3/3/2024

RECORDED
2021 JUN -1 PM 4:23
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	
Travis J. McFadden, #357880,	)	Case No.: 2021-CP-43-929
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed by Travis J. McFadden (Applicant) on June 1, 2021, and received by Respondent on June 7, 2021, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. In July 2012, the Sumter County Grand Jury indicted Applicant in a multi-count indictment (2012-GS-43-0781) for one count of murder, two counts of attempted murder, one count of armed robbery, one count of carjacking, one count of criminal conspiracy, and three counts of possession of a weapon during the commission of a violent crime. Sharon B. Clark, Esquire represented Applicant. Assistant Solicitor Eddie Donnalld prosecuted the case on behalf of the State.

Applicant's charges stemmed from a conspiracy between Applicant and five others to carjack someone in front of the Money Saver Convenience Store in Sumter. R. p. 8. Applicant and his co-conspirators ultimately decided to rob the convenience store and effected an armed robbery. R. p. 8. The convenience store clerk, Bahader El-Sokkary, drew his own weapon and began shooting back and forth with the robbers. R. p. 9. Aarons Smalls was shot in the back as he fled the convenience store. R. p. 8. Smalls believed Applicant shot him. R. p. 9. Smalls is paralyzed as

a result of his injuries. R. pp. 25, 35. Another victim, Jayshawn Thompson, was also shot during the robbery and ultimately died. R. pp. 6, 10.

On November 18, 2013, Applicant pleaded guilty to voluntary manslaughter, strong-arm robbery, and criminal conspiracy before the Honorable W. Jeffrey Young. Judge Young sentenced Applicant to thirty years' imprisonment for voluntary manslaughter, fifteen years' imprisonment for strong-arm robbery to be served consecutively to the sentence for voluntary manslaughter, and five years' imprisonment for criminal conspiracy to be served concurrently to the other sentences. On November 21, 2013, Applicant filed a Motion to Reconsider Sentence. Judge Young subsequently held a hearing on the matter on December 16, 2016, and issued an order denying the Motion to Reconsider Sentence on February 8, 2017. Applicant timely filed a notice of appeal.¹

Applicant's appellate counsel, Robert M. Pachak, then of the South Carolina Commission on Indigent Defense – Appellate Defense Division, initially filed an Anders brief and a petition to be relieved as counsel. Thereafter, on July 19, 2018, the Court of Appeals denied the petition to be relieved as counsel and directed the parties to brief the following issue from the plea hearing along with any other issues counsel believed were present and of arguable merit: "Whether a guilty plea can still be voluntary if the State does not disclose a sentencing recommendation to the plea court." Following briefing, the Court of Appeals affirmed the conviction by unpublished opinion issued June 24, 2020. The remittitur returned to the circuit court on July 20, 2020.

Attached to this Return and incorporated by reference are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina

¹ Applicant initially filed a notice of appeal on November 26, 2013. Thereafter, counsel filed a timely motion for reconsideration in General Sessions and moved to withdraw the appeal as premature. The Court of Appeals granted the motion by order filed January 9, 2014, and a remittitur issued February 5, 2014.

Department of Corrections, the guilty plea transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to withdraw from plea"
2. Prosecutorial Misconduct
 - a. "Solicitor stated that I didn't committed (sic) voluntary manslaughter"
3. Involuntary Guilty Plea
 - a. "I had a recommendation plea for 20 years which I accept but I got 45 years instead."

III. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing

professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show 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 v. Lockhart, 474 U.S. 52, 106 (1985).

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

IV. RESPONSE TO ALLEGATION OF PROSECUTORIAL MISCONDUCT

Applicant alleges the solicitor committed prosecutorial misconduct because he allegedly told the plea court Applicant did not commit voluntary manslaughter. However, it not clear whether Applicant intends this allegation to be a stand-alone claim of prosecutorial misconduct or a claim of ineffective assistance by plea counsel for failure to object to the alleged misconduct or

both. Regardless, Applicant bears the burden of proving actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

Applicant entered a plea to voluntary manslaughter, as a lesser-included offense of murder. During the plea hearing, when reciting the factual basis to support the plea, the solicitor conceded Applicant was not the shooter of the deceased victim, but the solicitor explained the State would have pursued a conviction based on the “hand of one, hand of all” theory of liability at trial. R. 9-10. Applicant also pleaded guilty to criminal conspiracy, and the shooter of the deceased victim was one of Applicant’s co-conspirators. R. 10. Moreover, Applicant informed the plea judge he agreed with the facts as recited by the solicitor and wanted to plead guilty to the charge of voluntary manslaughter. R. 10. Applicant received a significant benefit in doing so, as it reduced the potential range of punishment and removed life without parole (LWOP) as a sentencing option. R. 33. At the hearing on the motion to reconsider, Judge Young made clear he would have sentenced Applicant to LWOP had the State not agreed to reduce the charge. R. 39-40.

In State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999), the South Carolina Supreme Court stated that under “the hand of one, hand of all” theory, “one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.” Thus, the solicitor’s summary of the basis of the plea was legally correct, and he did not assert Applicant did not commit the crime to which he was pleading guilty.

Section 17-27-70(c) of the South Carolina Code authorizes the court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, because, the record conclusively refutes this allegation of prosecutorial

misconduct, and this allegation to should be denied and dismissed with prejudice.

V. RESPONSE TO ALLEGATION OF INVOLUNTARY GUILTY PLEA

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) 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, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing

State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

The record fully supports the knowing and voluntary nature of Applicant’s plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

VI. AMENDMENTS AND DISCOVERY PROCESS

Additionally, Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11(a), SCRCP. *Pro se* filings will not be considered at the PCR hearing. State v. Devore, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro*

se filing a nullity where person was represented by counsel); Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative continue the matter to permit adequate time to investigate and address the claims. See Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases... we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); see also Rules 15(a)-(b), SCRPC (explaining how to amend a pleading).

Pursuant to section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent, pursuant to Love as discussed above.

VII. DENIAL OF ALL OTHER ALLEGATIONS

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

VIII. PRAYER FOR RELIEF

WHEREFORE, Respondent requests an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and involuntary guilty plea. Respondent requests the allegation of prosecutorial misconduct be dismissed as a matter of law because the record conclusively refutes the allegation.

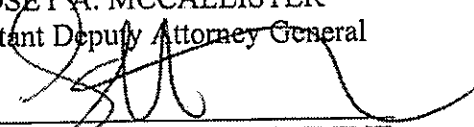
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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August 6, 2021

Jennifer Jennison
Jennifer Jennison, Administrative Coordinator
For Respondent

State of South Carolina	)	In the Court of Common Pleas
	)	Third Judicial Circuit
County of Sumter	)	Case No. 2021-CP-43-00929
	)	
Travis J. McFadden,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

June 28, 2022
Sumter, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge

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

James K. Falk, Esquire
Attorney for the Applicant

Megan Jameson, Esquire
Attorney for the Respondent State

Krystal J. Smith
Official Circuit Court Reporter III

I N D E X

WITNESS/DESCRIPTION	PAGE NUMBER
Post-Conviction Relief Hearing.....	4
Motion to Dismiss.....	7
Ruling on Motion to Dismiss.....	9
Warrant Issue.....	9
Travis J. McFadden	
Direct by Mr. Falk.....	13
Cross by Ms. Jameson.....	20
Redirect by Mr. Falk.....	28
Sharon B. Clark	
Direct by Mr. Falk.....	29
Cross by Ms. Jameson.....	33
Redirect by Mr. Falk.....	42
Applicant Rests.....	43
Edgar R. Donnald, Jr.	
Direct by Ms. Jameson.....	44
State Rests.....	47
Arguments of Counsel.....	47
Findings and Ruling.....	52
Court Reporter Certification.....	58

1	<u>E X H I B I T S</u>			
2				
3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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5		(No Exhibits Admitted)		
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20		<u>COURT REPORTER LEGEND</u>		
21	dashes --	intentional or purposeful interruption		
22		or change in thought		
23	ellipses . . .	trailing off		
24	[ph]	phonetically written		
25	[sic]	written as said		

1 JUNE 28, 2022

2 (WHEREUPON, the proceedings began at 2:46 p.m.)

3 MS. JAMESON: Your Honor, the next matter the State would
4 call is Travis McFadden. Does Your Honor have a packet or
5 would you like me to pass one up?

6 THE COURT: I do.

7 MS. JAMESON: Okay.

8 THE COURT: Let's see. Yep. Travis Jacquese McFadden.
9 (WHEREUPON, there was a pause in the proceedings, after
10 which the proceedings resumed as follows.)

11 THE COURT: All right. Good afternoon, Mr. McFadden.

12 THE APPLICANT: Good afternoon.

13 THE COURT: How are you today?

14 THE APPLICANT: All right. How are you doing?

15 THE COURT: Good. We are ready to do your PCR hearing.
16 Are you ready?

17 THE APPLICANT: Yes, sir.

18 THE COURT: All right. Very good. You may be seated,
19 and we'll hear from the State.

20 MS. JAMESON: May it please the Court. Megan Jameson on
21 behalf of the State.

22 This is the PCR matter of Travis McFadden versus the
23 State, Docket Number 2021-CP-43-0929. On December 26th of
24 2011, Mr. McFadden and six co-defendants entered a convenience
25 store in Sumter County, where they shot several people,

1 including one victim who died from his injuries and one who
2 was paralyzed from the injuries.

3 Thereafter, the Sumter County Grand Jury indicted Mr.
4 McFadden in a multi-count indictment for one count of murder,
5 two counts of attempted murder, one count of armed robbery,
6 one count of carjacking, one count of criminal conspiracy, and
7 three counts of possession of a weapon during the commission
8 of a violent crime. Sharon Clark was appointed to represent
9 Mr. McFadden, and Assistant Solicitor Edgar Donnalld prosecuted
10 the case.

11 Following plea negotiations with the State for a
12 recommended sentence of 20 years, Mr. McFadden appeared before
13 the Honorable Jeffrey Young on November 18th, 2013, and pled
14 guilty to voluntary manslaughter as a lesser-included offense,
15 strong-armed robbery as a lesser included offense, and
16 criminal conspiracy.

17 Judge Young sentenced Mr. McFadden to 30 years
18 imprisonment for voluntary manslaughter, 15 years imprisonment
19 for strong-armed robbery to be served consecutive to the
20 sentence for voluntary manslaughter, and 5 years imprisonment
21 for criminal conspiracy to be served concurrently with the
22 other sentences for an aggregate 45-year term of imprisonment.

23 On November 21st, 2013, Mr. McFadden, through counsel,
24 filed a timely motion to reconsider his sentence. While this
25 motion was pending, he also filed a direct appeal, which was

1 summarily dismissed without prejudice based on this pending
2 motion to reconsider his sentence.

3 On December 16th of 2016, Judge Young convened a hearing
4 on this motion, and then on February 8th, 2017, Judge Young
5 issued a written order denying the motion to reconsider and
6 affirming his sentence. Mr. McFadden then initiated another
7 direct appeal and, following briefing, the Court of Appeals
8 affirmed his plea and sentences.

9 He then filed this incident PCR action on June 1st of
10 2021, asserting the following claims:

11 That counsel was ineffective for failing to withdraw his
12 plea;

13 Prosecutorial misconduct because the solicitor stated
14 that he didn't commit voluntary manslaughter;

15 And an involuntary guilty plea because there was a
16 recommendation for 20 years, which he accepted, but he had got
17 a 45-year sentence instead.

18 The State made its return to the application requesting a
19 hearing on the claims of ineffective assistance of counsel and
20 involuntary guilty plea but moving for summary dismissal of
21 the prosecutorial misconduct claim as directly refuted by the
22 record, and Mr. McFadden is represented by James Falk.

23 It's the State's understanding we are going forward on
24 those issues as raised in his PCR application today. And for
25 the record, I wanted to confirm that Your Honor was previously

1 provided with the judge's packet, with the General Sessions
2 records, the appellate record, including the record on appeal,
3 with a full copy of the transcript and the records of the
4 current PCR proceeding, which are part of the record in this
5 case.

6 And at this time, the State would renew our motion to
7 dismiss the prosecutorial misconduct allegation. Mr. McFadden
8 entered into a plea for voluntary manslaughter as a lesser-
9 included offense to murder, and during the plea hearing, when
10 reciting the factual basis to support the plea, the assistant
11 solicitor conceded that applicant was not the shooter of the
12 deceased victim but explained that the State would have
13 pursued a conviction for murder based on a hand of one/hand of
14 all accomplice liability theory at trial. I'm specifically
15 referencing pages 9 and 10 of the record on appeal from the
16 plea transcript.

17 And moreover, Mr. McFadden informed the plea judge that
18 he agreed with the facts as recited [sic] by the assistant
19 solicitor, and he wanted to plead guilty to the charge of
20 voluntary manslaughter, and that is on page 10 of the record.
21 He received a significant benefit in doing so, as it reduced
22 his potential exposure from 30 years mandatory minimum day to
23 day up to a life without parole sentencing option. At the
24 hearing on the motion to reconsider, Judge Young made it clear
25 he would have sentenced Mr. McFadden to life without parole

1 had the State not agreed to reduce those charges.

2 In *State v. Langley*, our Supreme Court stated that under
3 a hand of one/hand of all accomplice liability theory, one who
4 joins with another to accomplish an illegal purpose is liable
5 criminally for everything done by his confederate incidental
6 to the execution of a common design or purpose. And
7 therefore, Assistant Solicitor Donnald's summary of the
8 factual basis for the plea was legally correct, and he did not
9 commit prosecutorial misconduct when he asserted the applicant
10 was not the shooter because he was still guilty of voluntary
11 manslaughter under an accomplice liability theory.

12 And so pursuant to Section 17-27-70(c) of the PCR Act,
13 which authorizes this Court to grant a motion for summary
14 dismissal when it's apparent from the pleadings that there's
15 no genuine issue of material fact, we would ask the Court to
16 dismiss that allegation of prosecutorial misconduct against
17 Assistant Solicitor Donnald at this time.

18 THE COURT: You want me to deal with the prosecutorial
19 misconduct allegation separately?

20 MS. JAMESON: Yes. A summary dismissal. We don't
21 believe there's a need for any additional testimony on that.
22 It is clear from the face of the allegation and the record
23 before this Court that that is not an issue of genuine merit
24 that needs to have any testimony taken and, as a matter of
25 law, that claim can be dismissed.

1 THE COURT: All right. Mr. Falk?

2 MR. FALK: Your Honor, it's certainly not the issue that
3 I think is strongest here, but my thinking is this is my
4 client's one bite at the apple. We're all here. He needs to
5 at least be able to take the stand and make a record as to why
6 he thinks he's a victim of prosecutorial misconduct.

7 THE COURT: I deny the motion at this time.

8 MS. JAMESON: Thank you, Your Honor.

9 MR. FALK: Your Honor, there's one thing. And as far as
10 going forward, we are certainly going forward on an
11 involuntary guilty plea. There is sort of a new twist on this
12 that I probably haven't made the State aware of sufficiently,
13 and it's something that my client called to my attention this
14 morning or this afternoon when I was speaking to him.

15 And honestly, I've never heard of this statute before,
16 but under S.C. Code 22-5-180, it says that no magistrate shall
17 deputize the persons swearing out a warrant in any case to
18 serve it. So -- and I certainly -- my understanding --

19 THE COURT: Read it again for me, please.

20 MR. FALK: Yeah. It's 22-5-180, and it says -- the
21 heading of the -- of the statute says swearer of warrant
22 precluded from serving it, and then it goes on to say no
23 magistrate shall deputize the person swearing out a warrant in
24 any case to serve it.

25 I'm really not familiar with the statute. My client

1 found a case from 1923 that sort of addresses probably its
2 predecessor, and we appreciate that in a plea case that any
3 kind of defects on the indictment, those types of things are
4 all typically waived as part of the plea, but we would make
5 the argument that that's something that my client should have
6 been made aware that he potentially had some defenses to the
7 arrest warrants that were served on him.

8 THE COURT: Ms. Jameson?

9 MS. JAMESON: Yes, Your Honor. This is an issue that I
10 am just learning about right now. When Mr. Falk mentioned
11 that statute to you before, I thought you were talking about a
12 case in Charleston County, not this case. I have not had an
13 opportunity to talk to law enforcement about this. I have not
14 had an opportunity to talk to the prosecutor about this, who I
15 did interview in advance of this hearing, nor did I have an
16 opportunity to talk to Ms. Clark about this.

17 This -- this leaves us in a little bit of a bind because
18 I don't want to preclude Mr. McFadden from being able to
19 present his issues today, but the State diligently reached out
20 to Mr. Falk multiple times in advance of this hearing. This
21 hearing has been continued before, and we've had absolutely no
22 notice of this issue. I have not done any legal research on
23 this issue.

24 And so if the Court is inclined to allow Mr. McFadden to
25 go forward on this issue, we'd ask that the record be left

1 open so we can submit any sort of briefing or memorandum or,
2 if necessary, affidavits in response to this allegation that I
3 had absolutely no notice of.

4 MR. FALK: And I appreciate that I'm giving them no
5 notice of this.

6 THE COURT: And of what significance is this statute?

7 MR. FALK: Well, because of all the warrants that he has,
8 only one of them was served by somebody who did not -- was not
9 the person who swore out the warrant, you know, and I think he
10 has six -- six other warrants, all of which the person who was
11 swearing out swore to the facts in the warrant was also the
12 same person who served the warrant.

13 THE COURT: Yeah, but he -- he is -- he was in court, and
14 he is here pursuant to an indictment returned by the Grand
15 Jury of Sumter County. He's not -- he didn't appear in court
16 pursuant to a warrant. He appeared pursuant to an indictment.

17 MR. FALK: Your Honor, I've only had five more minutes to
18 sort of get my arms around this issue otherwise prior to this.
19 So I'm just -- he would -- he would say that the -- that there
20 was a defect in the arrest warrants.

21 MS. JAMESON: Well --

22 THE COURT: And how would that pertain to this PCR case?
23 That a lawyer should have --

24 MR. FALK: Should have --

25 THE COURT: -- known the statute?

1 MR. FALK: Should have advised him that maybe there is an
2 issue with the validity on these arrest warrants.

3 MS. JAMESON: Your Honor, if I may briefly respond to
4 that, I respect the position that Mr. Falk is in. However,
5 Mr. Falk is the attorney in this case, was duly appointed to
6 represent him in this case, and he has a duty to raise issues
7 of merit to the Court, and it sounds like there hasn't even
8 been any investigation as to whether this case -- this new
9 issue has merit at this time.

10 THE COURT: All right. We'll leave this issue, the twist
11 that you say to the side. Is -- are you otherwise ready to
12 proceed?

13 MR. FALK: Yes, Your Honor.

14 THE COURT: Well, let's proceed.

15 MR. FALK: I'll call my client to the stand, Travis
16 McFadden.

17 THE COURT: Okay.

18 THE BAILIFF: Put your paperwork down. Put your left
19 hand on the Bible, raise your right hand. State your full
20 name for the record.

21 THE APPLICANT: Travis McFadden.

22 THE BAILIFF: Do you solemnly swear and affirm the
23 testimony to this Court to be the whole truth and nothing but
24 the truth, so help you God?

25 THE APPLICANT: Yes, sir.

TRAVIS MCFADDEN - DIRECT BY MR. FALK

1 THE BAILIFF: Thank you. Step around, sir. Okay. State
2 your full name and spell your last name for the record,
3 please, sir.

4 THE APPLICANT: Travis Jacquese McFadden. M-c-F-a-d-d-
5 e-n.

6 TRAVIS MCFADDEN, being first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FALK:

10 Q: Mr. McFadden, can you hear me?

11 A: Yes.

12 Q: All right. Why don't we just sort of go through this
13 list. Which arrest warrants did you have concerns with? And
14 what I want you to do is -- you've got them there. Tell me
15 the arrest warrant number on each one and the --

16 MS. JAMESON: Your Honor, if I may be heard briefly for
17 the record, I thought -- I think I might need some
18 clarification on Your Honor's previous ruling about leaving
19 this issue to the side. Are we going forward on that issue
20 regarding the arrest forms that the State had no notice of?

21 THE COURT: I'll need clarification on what the issue is,
22 and I don't know that an issue is really being raised. I take
23 it that by asking Mr. McFadden about what warrants he has a
24 problem with, then the issue raised in the PCR is not being
25 addressed. Is that --

TRAVIS MCFADDEN - DIRECT BY MR. FALK

1 MS. JAMESON: Yes, Your Honor. The issues that were
2 raised were ineffective assistance of counsel for failing to
3 withdraw from the plea when he received a sentence of greater
4 than 20 years pursuant to the recommendation, involuntary
5 guilty plea for exceeding the recommendation of 20 years when
6 he received a 45-year sentence, and prosecutorial misconduct
7 for the solicitor stating that he did not commit voluntary
8 manslaughter. None of them reference the arrest warrants.

9 THE COURT: Well, my -- my view is that any defect in an
10 arrest warrant is irrelevant to this case in that the case
11 came before the Court pursuant to an indictment returned by
12 the grand jury, and the -- the PCR relates to that grand jury
13 indictment and the case that stemmed from it.

14 Again, I don't know how that relates to the PCR claim
15 that we're here concerning. I think it's of no significance
16 really, but rather than -- than attempt to address the issue
17 where none of you all have -- have had an opportunity to
18 investigate it, we will not address it in this hearing.

19 And whatever problems, if any, that causes, we'll deal
20 with it in due time. We will not address this issue as part
21 of this PCR.

22 MR. FALK: I'm sorry. I misunderstood --

23 MS. JAMESON: Thank you.

24 MR. FALK: -- your previous ruling.

25 THE COURT: Yes, sir. Well, my previous ruling was put

TRAVIS MCFADDEN - DIRECT BY MR. FALK

1 it aside and let's deal with the reason that we're here, which
2 is the --

3 MR. FALK: Thank you, Your Honor.

4 THE COURT: -- the PCR allegation.

5 BY MR. FALK:

6 Q: Mr. McFadden, tell me a little bit about the discussion
7 -- well, first of all, who represented you in this case?

8 A: Sharon Clark.

9 Q: And how long had she been representing you?

10 A: Since 2012.

11 Q: And so -- and what was the date that you pled guilty?

12 A: November 18, 2013.

13 Q: Okay. And so what were your discussions with her about
14 the plea negotiations?

15 A: She advised me that the solicitor was offering me 20
16 years. At the time, I didn't know if I wanted to accept that
17 because I wasn't comfortable with it, but she had not -- her
18 sole intention as a lawyer is give me better advice on how to
19 go about my case.

20 Q: I'm sorry. I'm not sure I understood your answer.

21 A: She -- she -- she had offered me -- she said the
22 solicitor offered me 20 years, which I had accepted, but at
23 the same time, I wasn't sure whether I had wanted to accept
24 that because for the simple fact that I did not commit the
25 crime, which was murder that they had charged me with.

TRAVIS MCFADDEN - DIRECT BY MR. FALK

1 So when I did sit down and talk to her about it, she was
2 -- she was telling me basically like there ain't nothing she
3 really could have did for me. So I accepted the plea, not
4 knowing, you know, I ain't had to accept it.

5 Q: So what is your understanding of the hand of all/hand of
6 all?

7 A: I thought it was a law. I didn't know it was a theory at
8 the time. I thought it was a law. So I -- so --

9 Q: Now, what -- what is your understanding how that phrase
10 affected your --

11 A: Well, basically, when I -- when I heard that, I thought
12 since by me having a co-defendant, I thought, well, at least
13 if one of them get convicted, I would be convicted as well.
14 And that's basically what I understood for the hand of
15 one/hands of all.

16 Q: Okay.

17 A: I didn't -- I didn't know at the time it was a theory.

18 Q: That it was -- you're saying you didn't know it was a
19 theory?

20 A: I didn't know it was a theory. I thought it was a law.

21 Q: Okay. Now -- so tell me -- so she came back at some
22 point. When you went into court that day, did you know that
23 you were going to be entering a guilty plea?

24 A: Yes.

25 Q: Okay. And what was your understanding of the guilty

TRAVIS MCFADDEN - DIRECT BY MR. FALK

1 plea?

2 A: Well, from what I had talked to them earlier about, it
3 was supposed to be 20 years to me pleading to murder, which
4 was dropped down to the voluntary manslaughter, armed robbery
5 which was dropped to strong-armed robbery, and conspiracy to
6 20 years concurrent.

7 Q: Okay. And what kind of conversations did she have with
8 you about the possibility that the judge would not follow the
9 recommendation?

10 A: She didn't have a conversation with me. I didn't know
11 that the judge could have overthrown my plea at the time. I
12 didn't know that, and that's what happened.

13 Q: So is it fair to say that your expectation when you went
14 into court that day was that you thought this was a done deal
15 and you were going to get 20 years?

16 A: Right. That's correct.

17 Q: Okay. So did you hear Judge Young say something about
18 telling you that this -- you know, I could run these terms
19 concurrently and I could give you 30 years on the murder? Do
20 you remember him saying that as part of the plea hearing?

21 A: He said -- well, he said something like he could run --
22 if he were to run it consecutively, he could give me up to 50
23 years, but --

24 Q: Okay. But did -- had your trial -- had your attorney
25 prepared you for the fact that this could be a 50-year

TRAVIS MCFADDEN - DIRECT BY MR. FALK

1 sentence?

2 A: No, sir.

3 Q: Had you known that you were going to get a 50- or 45-year
4 sentence, would you still have pled guilty that day?

5 A: No, sir. No, I would not.

6 Q: Had you known you were going to get a 30-year sentence,
7 would you have pled guilty that day?

8 A: No, sir. No, I would not.

9 Q: Is there any amount of time over 20 years that you would
10 have still accepted?

11 A: No, sir.

12 Q: And what was your -- what was your theory? If you went
13 to trial, what would your -- what did you want your trial
14 strategy to be?

15 A: To attack all of these charges for one and call my co-
16 defendants to the stand and question them.

17 Q: And what type of information did you want your co -- what
18 did you think your co-defendants might say?

19 A: For one, they -- I'll deal with telling -- they would say
20 I wasn't the shooter for one.

21 Q: And it was clear that you were not the shooter here?

22 A: That's correct.

23 Q: And it was clear that you didn't even have a gun; is that
24 correct?

25 A: That's correct.

TRAVIS MCFADDEN - DIRECT BY MR. FALK

1 Q: Okay. You were just there?

2 A: Yes, sir.

3 Q: Was there ever discussion about if you went to trial --
4 were you ever explained a term called mere presence?

5 A: I don't understand.

6 Q: So was there a discussion with your trial lawyer about
7 the hand of one/hand of all? So your plea counsel, she talked
8 to you about the hand of one/hand of all; is that correct?

9 A: Not intentionally, but she -- she said -- she kept saying
10 it was the hands of one/hands of all, but she never really
11 broke it down to me for me to clearly understand it. She only
12 told me it was a theory. Basically, like, in my transcript
13 when the judge asked her why aren't you letting me plead to
14 voluntary manslaughter, which was murder at the time, she --
15 she said I was pleading because of hand of one/hands of all.
16 So clearly, she did not broke that down to me what the hand of
17 all as law meant.

18 Q: Did she tell you if you went to trial that the jury could
19 be instructed on hand of one/hand of all?

20 A: No, sir.

21 Q: Did she tell you if you went to trial, the jury could
22 also be instructed on what's called a mere presence? That
23 just because you were there doesn't mean that you were part of
24 the --

25 A: No, sir, she didn't. She didn't. She didn't really too

TRAVIS MCFADDEN - DIRECT BY MR. FALK

1 much talk about trial with me, like as far as breaking it
2 down. She just -- she basically just gave me simple
3 instructions on, you know, what my charges is and what they
4 carry and what the plea offer was.

5 Q: And do you understand that if you get relief today, what
6 will happen is all your cases will go back?

7 A: Yes, sir.

8 Q: And you understand that this judge could not change your
9 sentence?

10 A: Yes, sir.

11 MR. FALK: I have no further questions.

12 THE COURT: Ms. Jameson?

13 MS. JAMESON: Thank you. May it please the Court.

14 CROSS-EXAMINATION

15 BY MS. JAMESON:

16 Q: Mr. McFadden, you just testified a moment ago that you
17 never had a gun when you went to the store; correct?

18 A: That's correct.

19 Q: Do you recall the solicitor informing the Court that you
20 did, indeed, have a gun?

21 A: Yeah, but that was a lie.

22 Q: Well, you told Judge Young you agreed with the facts;
23 correct?

24 A: Correct.

25 Q: Including that you had a gun; correct?

TRAVIS MCFADDEN - CROSS BY MS. JAMESON

1 A: Yes. I was misled.

2 Q: Did you have a gun?

3 A: No, ma'am.

4 Q: Why didn't you correct the assistant solicitor when he

5 told Judge Young you had a gun?

6 A: At the time, I didn't know.

7 Q: You didn't know whether you had a gun or not?

8 A: No, I didn't know I could have spoken up.

9 Q: You also testified that you weren't aware that you could

10 receive more than 20 years; correct?

11 A: Correct.

12 Q: But Judge Young went over each potential sentence you

13 faced with you; correct?

14 A: Correct.

15 Q: On page 10 of the transcript, he asks you, now, you

16 understand that on the voluntary manslaughter charge, I can

17 sentence you to up to 30 years in jail, and you responded,

18 yes, sir; correct?

19 A: Correct.

20 Q: Okay. And then he questioned you about the common law

21 robbery, the strong-armed robbery. I could sentence you to up

22 to 15 years in jail, and you responded, yes, sir; correct?

23 A: Correct.

24 Q: And then he advised you -- and do you understand on the

25 conspiracy charge that I could sentence you to up to five

TRAVIS MCFADDEN - CROSS BY MS. JAMESON

1 years in jail, and you again responded, yes, sir, that you
2 understood; correct?

3 A: Correct.

4 Q: And then he told you -- and do you understand that if I
5 decide to run these consecutively, I could sentence you to a
6 total of 50 years. Do you understand that? And you
7 responded, yes, sir?

8 A: Yes.

9 Q: So you knew during your plea in front of Judge Young that
10 you could receive a sentence of up to 50 years; correct?

11 A: It's possible, but I didn't really knew. I didn't really
12 knew because I thought I was getting 20. That's what I signed
13 up for. So I didn't really knew that he could really over --
14 overthrow my plea.

15 Q: But he told you and asked you on the record did you
16 understand you could get 50 years; correct?

17 A: Right.

18 Q: And you told him you understood you could get 50 years;
19 correct?

20 A: Right.

21 Q: So you understood before your plea was accepted you could
22 get 50 years; correct?

23 A: Right.

24 Q: And you still went forward with that plea; correct?

25 A: Right. That's what my lawyer led me to believe.

TRAVIS MCFADDEN - CROSS BY MS. JAMESON

1 Q: You testified you accepted the State's plea offer for a
2 recommended 20 years to the lesser-included offense of
3 voluntary manslaughter because you didn't commit the murder;
4 correct?

5 A: Correct.

6 Q: But the -- the State was very clear during the plea that
7 they were pursuing charges against you based on accomplice
8 liability, hand of one/hand of all; correct?

9 A: Right.

10 Q: And told Judge Young that; correct?

11 A: Right.

12 Q: That you weren't the shooter?

13 A: Right.

14 Q: You testified that Ms. Clark talked to you about hand of
15 one/hand of all generally, but never broke it down for you?

16 A: Right.

17 Q: But specifically, did she tell you about the hand of
18 one/hand of all?

19 A: She just told me they could have hit me with that and
20 charged me with that, but she never said, like, whether it was
21 a theory or was it a law. She just told me they could charge
22 me with it.

23 Q: Are you aware that that is the law, that you can be found
24 guilty of murder based on the actions of your co-conspirators?

25 A: No, I wasn't. I wasn't aware of it.

TRAVIS MCFADDEN - CROSS BY MS. JAMESON

1 Q: Did you review your discovery with Ms. Clark?

2 A: Yes.

3 Q: And there were statements from your co-defendants;
4 correct?

5 A: Correct.

6 Q: And statements from witnesses; correct?

7 A: Correct.

8 Q: And they implicated you in your involvement in this
9 crime; correct?

10 A: Yes. My co-defendant, yes.

11 Q: Did Ms. Clark advise you whether your co-defendants would
12 likely testify against you if you proceeded to trial?

13 A: Yes.

14 Q: What did -- what did she advise you? That they would?

15 A: Yes, she said they would. They probably would.

16 Q: And you were originally charged with murder; correct?

17 A: Correct.

18 Q: And armed robbery; correct?

19 A: Correct.

20 Q: And you pled to lesser-included offenses for a
21 substantial benefit; correct?

22 A: Correct.

23 Q: Did you want to go to trial on a murder charge and risk
24 30 years day for day up to a life sentence?

25 A: Yes. Yes, to prove my innocence of it. Yes.

TRAVIS MCFADDEN - CROSS BY MS. JAMESON

- 1 Q: Even though you'd have co-defendants testify against you?
- 2 A: Right.
- 3 Q: Did you ask Ms. Clark to negotiate for a plea offer with
- 4 the State?
- 5 A: No. She came and told me that the solicitor was offering
- 6 20 years. So at the time I was thinking on it, and then when
- 7 I saw her again, I agreed to it.
- 8 Q: In addition to the substantial benefit of the lesser-
- 9 included offenses that you pled to, numerous other charges
- 10 were dismissed against you; correct?
- 11 A: Correct.
- 12 Q: So two counts of attempted murder were dismissed;
- 13 correct?
- 14 A: Correct.
- 15 Q: A carjacking charge was dismissed; correct?
- 16 A: Yes.
- 17 Q: And three counts of possession of a weapon during a
- 18 violent crime; correct?
- 19 A: Yes.
- 20 Q: And you want to go back and have a trial for murder,
- 21 armed robbery, two counts of attempted murder, carjacking, and
- 22 three counts of possession of a weapon during the commission
- 23 of a violent crime?
- 24 A: Yes.
- 25 Q: And I believe you testified to this on direct, but did

TRAVIS MCFADDEN - CROSS BY MS. JAMESON

1 Ms. Clark explain to you that it was just a recommendation
2 from the State?

3 A: I think she mentioned something like that.

4 Q: What specifically do you remember her mentioning about a
5 recommendation?

6 A: She haven't broken it down to me. She just told me it
7 was a recommendation of 20 years.

8 Q: What did you understand that to mean?

9 A: I thought that just was -- that was the deal. That was
10 -- that was it.

11 Q: But you do acknowledge you told Judge Young you knew you
12 could get 50 years; correct?

13 A: Correct. At the time, I wasn't myself.

14 Q: Were you told -- you told Judge Young during the plea
15 that you weren't having any mental problems, you weren't under
16 the influence, and you understood what was happening there
17 that day; correct?

18 A: Yes.

19 Q: Following the plea, did you ask Ms. Clark to withdraw
20 your plea?

21 A: Yes.

22 Q: And what was her response?

23 A: She just told me she was going to do a motion for
24 reconsideration.

25 Q: And she did indeed file a motion to reconsider your

TRAVIS MCFADDEN - CROSS BY MS. JAMESON

1 sentence; correct?

2 A: Correct.

3 Q: And you had a hearing on that motion before Judge Young;
4 correct?

5 A: Right.

6 Q: And she argued why your sentence should be reduced in
7 line with that 20-year recommendation; correct?

8 A: So far -- I mean it wasn't argued, but she stated
9 something.

10 Q: And you then had a direct appeal after that was denied;
11 correct?

12 A: Correct.

13 Q: And that issue was briefed to the Court of Appeals;
14 correct?

15 A: Right.

16 Q: And they denied your appeal and affirmed your sentence;
17 correct?

18 A: Right.

19 MS. JAMESON: No further questions, Your Honor.

20 The court: Mr. Falk?

21 MR. FALK: Your Honor, if I could, I should have asked
22 him when I had him on direct about his contention of
23 prosecutorial misconduct. Could I ask him to --

24 THE COURT: Yes, sir.

25 MR. FALK: -- articulate that now?

TRAVIS MCFADDEN - REDIRECT BY MR. FALK

1 THE COURT: Yes, sir.

2 REDIRECT EXAMINATION

3 BY MR. FALK:

4 Q: Mr. McFadden, one of the claims that you had made was
5 prosecutorial misconduct. Can you just explain what your
6 concerns are there?

7 A: Well, let me state that, for the record, I just want to
8 say prosecutorial misconduct, like the allegation is when the
9 solicitor said I didn't commit a certain crime, I didn't
10 understand why that crime wasn't dropped off of me due to the
11 fact that he understood it wasn't my charge and that due to
12 the fact that someone else pleaded guilty to that charge that
13 that was actually them did it.

14 Q: So you were concerned that they were still proceeding
15 with a murder charge against you, even though --

16 A: Right.

17 Q: -- they knew that you were not the person who pulled the
18 trigger?

19 A: Right.

20 MR. FALK: No further questions.

21 MR. JAMESON: No recross, Your Honor.

22 THE COURT: All right. Thank you. You may step down.
23 Any further witnesses?

24 MR. FALK: We'll call Ms. Clark to the stand.

25 THE COURT: All right. Ms. Clark?

SHARON B. CLARK - DIRECT BY MR. FALK

1 THE BAILIFF: Put your left hand. State your full name.

2 THE WITNESS: Sharon Baker Clark.

3 THE BAILIFF: Do you solemnly swear and affirm to the
4 testimony to this Court to be the whole truth and nothing but
5 the truth, so help you God?

6 THE WITNESS: I do.

7 THE BAILIFF: Thank you. Step around, please, ma'am.
8 State your full name and spell your last name for the record,
9 please, ma'am.

10 THE WITNESS: Sharon Baker Clark, C-l-a-r-k.

11 SHARON B. CLARK, being first
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FALK:

15 Q: Ms. Clark, can you tell me something about your
16 recollection of the plea discussions in this case?

17 A: Mr. McFadden and I discussed this case several times.
18 Excuse me. When we discussed the plea recommendation, one of
19 the things that I had discussed with the solicitor at the time
20 when they were talking about trying the case and so forth was
21 that he was offering pleas, and pleas would be offered, I
22 think, based on cooperation and other things like that.

23 I spoke with Mr. McFadden about it. Mr. McFadden had
24 never given a statement in this case. His co-defendants'
25 statements were the ones that were implicating him. I

SHARON B. CLARK - DIRECT BY MR. FALK

1 discussed with him when we got all the way down to the actual
2 recommendation, the recommendation of the 20 years.

3 One of the things I remember -- and it's been a while
4 ago, but I do remember that Mr. McFadden really didn't want 20
5 years because from the very beginning Mr. McFadden had spoken
6 about the fact that he had not shot the victim in this case,
7 and so the 20 years -- that still was a hard pill for him to
8 swallow. You know, I can't say that he readily jumped at
9 that, but I discussed with him that there was a 20-year
10 recommendation and that it is a recommendation. The judge can
11 do what he chooses to do.

12 In most cases, judges do follow the recommendation, but
13 in this one, he chose not to. And so we ended up in a very
14 disappointing situation for Mr. McFadden, really for all of
15 us. I wasn't expecting the judge to deviate so greatly from
16 this particular recommendation.

17 I do recall speaking with Mr. McFadden's family about
18 this recommendation out in the hall. I explained to them,
19 just as I explained to Mr. McFadden, that the judge did not
20 have to follow it, but I certainly had the expectation that he
21 probably would.

22 Q: You expected that he would?

23 A: Yes, I did.

24 Q: And did you tell Mr. McFadden that?

25 A: I'm sure I did. I'm sure I said that to him.

SHARON B. CLARK - DIRECT BY MR. FALK

1 Q: Was Judge -- was Judge Jeffrey Young -- was he -- was
2 this his circuit?

3 A: I think he was an at-large judge, if I'm not mistaken,
4 but he was from Sumter. So --

5 Q: Did you have --

6 A: I can't quite remember.

7 Q: Did you have a lot of experience pleading cases before
8 him or trying cases before him?

9 A: I probably had done very little work with Judge Young at
10 that time. Judge Young was a family court judge, and I had
11 done some cases with him there maybe. And as a -- as a
12 circuit court judge, I don't know that I had a lot of
13 experience with his particular sentencing because I really
14 wasn't actively doing a lot of criminal cases at that time. I
15 had been appointed to Mr. McFadden's case. And so -- but it's
16 been my experience that most judges follow the recommendation.

17 Q: Well, so how much criminal -- how many criminal cases had
18 you had prior to this?

19 A: Well, I used to be an assistant solicitor and a public
20 defender.

21 Q: Oh, okay.

22 A: So I had a lot of experience practicing, yes.

23 Q: Okay. But you got -- this was a -- I guess it's multiple
24 defendants. So there's, like, a conflict counselor?

25 A: Correct.

SHARON B. CLARK - DIRECT BY MR. FALK

1 Q: Okay.

2 A: That's exactly what happened.

3 Q: Did you try to reach out, you know, on any of the
4 listservs of any other people who had any experience before
5 with Judge Young?

6 A: No, I didn't.

7 Q: Did you -- what was your -- did you have an ex -- did you
8 have a conversation with him about the hand of one/hand of
9 all?

10 A: I talked with Mr. McFadden from the very beginning about
11 that, because from the beginning when I was appointed on the
12 case, I had in my case file the multiple statements of his co-
13 defendants. And we talked about conspiracy theories. I
14 talked with him about the hand of one is the hand of all. I
15 did. We talked about how he could possibly be convicted based
16 on the statements of the individuals if he went to trial.

17 We discussed trial. And we -- but we ended up -- once we
18 got this plea, we talked about the plea and he accepted the
19 plea, and so we moved forward on it. But yeah, I did discuss
20 that with him.

21 Q: Mr. McFadden just testified that, you know, 20 was the
22 highest number he would have accepted. Does that sound -- is
23 that consistent with you all's conversations?

24 A: Well, like I was saying to begin with --

25 Q: Right.

SHARON B. CLARK - DIRECT BY MR. FALK

1 A: -- he was balking at 20. He didn't really want to do 20
2 because Mr. McFadden firmly believed that because he did not
3 discharge a firearm that he could not be convicted of murder
4 or any of the charges in the indictment. And so, no, he
5 wasn't happy in any regard with it I don't think, you know,
6 and I can't blame him, but I mean, it's just the situation.

7 MR. FALK: No further questions.

8 THE COURT: Ms. Jameson?

9 MS. JAMESON: May it please the Court.

10 THE COURT: Yes.

11 CROSS-EXAMINATION

12 BY MS. JAMESON:

13 Q: Ms. Clark, do you recall when you were appointed to
14 represent Mr. McFadden approximately?

15 A: I do not know. I have my file here with me, though, but
16 I would -- I think it was probably a year, almost a year
17 before the plea came. I'm not quite certain.

18 Q: So you had sufficient time to investigate the case,
19 review discovery, and meet with your client?

20 A: Yes.

21 Q: Do you recall how many times you met with Mr. McFadden?

22 A: I do not.

23 Q: Do you have a ballpark? I mean more than six times?

24 A: It was probably more than six times. Mr. McFadden was
25 incarcerated. He -- I cannot remember if bond was set, but if

SHARON B. CLARK - CROSS BY MS. JAMESON

1 it was set, he did not make bond. He stayed incarcerated the
2 entire time. So I would go up to the jail.

3 Q: So you had access to him if you went to the detention
4 center?

5 A: That's correct.

6 Q: And I believe you touched on this briefly on direct, but
7 there were statements from co-defendants who implicated Mr.
8 McFadden?

9 A: Yes, there were.

10 Q: There were also statements from other witnesses that
11 implicated Mr. McFadden?

12 A: I don't know. Yeah, I think that is correct. I think
13 there were people who were not necessarily involved in the
14 active -- in the crime itself that did give statements, yes.

15 Q: Did you have any indication whether those co-defendants
16 would have testified against him had he proceeded to trial?

17 A: I did. The main person, I think, that had implicated Mr.
18 McFadden was, I believe, Mr. Ingram. I think Bubba something
19 they were calling him, but I had spoken with his attorney, and
20 he was going to testify, yes.

21 Q: Did you relay that to your client?

22 A: I did.

23 Q: Did you advise him the impact that you thought that would
24 have on a likely outcome?

25 A: I did. I explained to him that in a situation where

SHARON B. CLARK - CROSS BY MS. JAMESON

1 there are multiple co-defendants testifying against you, that
2 the likelihood of conviction actually probably increases, but
3 ultimately, the decision to go to trial or to plead was Mr.
4 McFadden's.

5 Q: If he had wanted to proceed to trial, would you have been
6 prepared to try this case?

7 A: I would have.

8 Q: And you testified you were previously a -- an assistant
9 solicitor and a public defender; correct?

10 A: That's correct.

11 Q: Had you tried General Sessions cases before?

12 A: Many.

13 Q: There's been some discussion about whether Mr. McFadden
14 had a gun or not. From your review of the discovery and your
15 conversations with your client, did he have a gun when he
16 entered the convenience store?

17 A: I don't remember that. I would say that Mr. McFadden
18 probably denied having a gun, but I don't quite remember that.
19 I do remember, though, that in the plea, I think, it was
20 indicated that he was not the shooter, and I think that I had
21 discussed that with the judge as well as part of the plea that
22 he was not the person who pulled the trigger.

23 Q: And that was explained to Judge Young that the State was
24 pursuing the charges of murder and then ultimately the lesser-
25 included of voluntary manslaughter based on accomplice

SHARON B. CLARK - CROSS BY MS. JAMESON

1 liability; correct?

2 A: That's correct.

3 Q: And I believe you testified you did explain the concept
4 of hand of one/hand of all to him?

5 A: Yes.

6 Q: Would that have been around the same time you were also
7 discussing co-defendants testifying against him and the impact
8 that would have had?

9 A: We discussed that from the very beginning because, again,
10 like I said, I had in my hand those statements, and Mr.
11 McFadden had told me from the beginning that he did not shoot
12 anyone. So we discussed that from the beginning.

13 Q: Did you discuss the mandatory minimum sentence he would
14 be facing for murder?

15 A: We did.

16 Q: As well as the maximum sentence of life without parole?

17 A: Right. That's correct.

18 Q: Did you discuss the sentences for armed robbery?

19 A: Yes.

20 Q: And criminal conspiracy?

21 A: Yes.

22 Q: Carjacking?

23 A: Yes.

24 Q: Armed robbery?

25 A: Yes.

SHARON B. CLARK - CROSS BY MS. JAMESON

1 Q: Attempted murder?

2 A: Yes.

3 Q: What sort of investigation did you do in this case?

4 A: We didn't hire any investigators because, again, from the
5 beginning, Mr. McFadden did not deny presence at the scene.
6 There was just a denial of how the co-defendants retold the
7 story, how they recited it. He had some issues with that. So
8 we didn't do it. We didn't hire an investigator, but we
9 certainly talked about what was going on and how this case was
10 unfolding.

11 Q: So he didn't deny his presence at the scene? It was a
12 level of culpability, not that he wasn't involved?

13 A: Right.

14 Q: And I believe you testified you attempted to speak with
15 the co-defendants who were represented by counsel; correct?

16 A: I spoke to their counsel. I spoke to specifically -- if
17 I recall correctly, I believe Calvin Hastie represented one
18 person. I think he actually represented Mr. Ingram. I may be
19 incorrect with that. And then I also spoke with, I think,
20 Charles Brooks, who represented one of the individuals. So,
21 yeah, I spoke with their counsel.

22 Q: And they indicated they would testify against your client
23 if he proceeded to trial?

24 A: They indicated -- they had already given statements, yes,
25 and they were going to testify in accordance with their

SHARON B. CLARK - CROSS BY MS. JAMESON

1 statements.

2 Q: And you conveyed this to your client?

3 A: I did.

4 Q: Did you discuss possible defenses with Mr. McFadden?

5 A: Yes.

6 Q: What viable defenses did you see?

7 A: Very little.

8 Q: Okay.

9 A: There were very little defenses to what had occurred. I
10 mean, when you are trying a case or if you try a case like
11 that with multiple co-defendants, your defenses may come up
12 during the trial. You may find out somebody testifies
13 inconsistently or such, that kind of thing, but we didn't
14 discuss multiple defenses. We just discussed basically how a
15 trial would unfold if we had it, but there wasn't a huge
16 discussion about a trial, at any rate, because I think the
17 intention always was that Mr. McFadden -- we were waiting to
18 see how all of this would unfold.

19 I spoke with the solicitor early on about the case, as I
20 recall, and, like I said, he was interested in who was going
21 to cooperate, who was going to admit culpability, that forth,
22 and I think that was the thing that we took from the
23 beginning.

24 Q: And you approached your client to see if he wanted to
25 cooperate or give a statement; correct?

SHARON B. CLARK - CROSS BY MS. JAMESON

1 A: I did.

2 Q: And he was not interested in doing that?

3 A: No, he was not.

4 Q: Did you advise him the implications that would have on
5 offers the State made?

6 A: I told him, yeah. Yes, I did.

7 Q: So you eventually got the recommended 20-year offer from
8 the State, and I believe you testified that you told applicant
9 and his family that you expected the judge would follow the
10 recommendation, but he did not have to; correct?

11 A: Right. That's correct.

12 Q: So you never promised him he would receive a 20-year
13 sentence?

14 A: I didn't promise it. No, ma'am.

15 Q: Did you explain to him that he could face up to 50 years
16 if Judge Young ran those sentences consecutively?

17 A: I don't know if I explained it like that. I don't know
18 if I told him he could face up to 50 years. I think that we
19 had discussed what each particular crime, each particular
20 charge on the indictment would carry, and what -- you know, I
21 think I explained to him -- I just don't know whether I
22 explained it to him like that. I don't -- I can't say that I
23 told him that he would be facing up to 50 years. I'm not sure
24 that I said that in that manner.

25 Q: Did you explain the possibility of consecutive sentences

SHARON B. CLARK - CROSS BY MS. JAMESON

1 to your client?

2 A: I did.

3 Q: Do you recall whether any of the six other co-defendants
4 had pled before Mr. McFadden or pled the same day?

5 A: It was one big plea. We were all in the courtroom at the
6 same time. So that -- I think it was -- I think it was about
7 six or seven defendants total, and all of them pled on the
8 same day at the same time. We were here kind of late that
9 night -- that day.

10 The -- and the way that Eddie -- Mr. Donnalld had set up
11 the plea, as I recall, he was pleading them based on what he
12 thought was the culpability. So you had some people who never
13 went inside of the store who pled and he made recommendations
14 on them. He had another set that I think may have gone in but
15 had cooperated, and he did a recommendation on them.

16 And then when Mr. McFadden and the other Mr. McFadden --
17 there were two Mr. McFaddens. When they pled, he prefaced the
18 plea with the recommendation and so forth and kind of put them
19 together, and then we each kind of took our turn with the
20 judge.

21 Q: Were there recommendations for higher than 20 years for
22 some of the co-defendants?

23 A: No. Nobody went to prison except the two Mr. McFaddens,
24 as I recall. Well, no, that's not correct. I think the other
25 ones got youthful offender sentences.

SHARON B. CLARK - CROSS BY MS. JAMESON

1 Q: And that included some people who cooperated and some
2 people who never entered the store; correct?

3 A: That's correct.

4 Q: After Judge Young exceeded the recommendation, did you
5 consider moving to withdraw the plea?

6 A: I think that I spoke with Mr. McFadden about that. I
7 just can't recall that conversation. I know that I went to
8 see him at the prison, I think on more than one occasion, and
9 we discussed the appeal, the motion to reconsider. I don't
10 remember whether we discussed the motion to withdraw. I just
11 don't.

12 Q: And ultimately, you decided to file a motion to
13 reconsider his sentence; correct?

14 A: I did.

15 Q: Why did you do that?

16 A: My hope was that the judge would reconsider the sentence,
17 that he would look at the matter -- and I think that I
18 actually discussed this with the solicitor as well -- and
19 possibly reconsider the sentence. I'd had a sentence
20 reconsidered once before by a judge, and I thought under this
21 circumstance that he would reconsider.

22 Q: And you had a hearing on your motion to reconsider;
23 correct?

24 A: We did. Uh-huh.

25 Q: What arguments did you make on Mr. McFadden's behalf?

SHARON B. CLARK - CROSS BY MS. JAMESON

1 A: I don't remember what arguments I made at this point. I
2 mean, I probably made the argument that he was a young person.
3 There was a recommendation. I may have argued his record
4 because I don't think that he had an extensive record, those
5 kinds of things.

6 Q: And Judge Young ultimately denied that motion and
7 affirmed his sentence; correct?

8 A: That's correct.

9 Q: And you did not represent him on appeal; correct?

10 A: No, ma'am. I filed the appeal, but the appellate --
11 Office of Appellate Defense took over.

12 Q: Are you aware of the disposition of that appeal? Was it
13 dismissed as a guilty plea or was it allowed to go forward
14 with briefing? Do you know?

15 A: I believe his appeal was allowed to go forward, and I
16 think it was ultimately denied or his sentence was affirmed.

17 MS. JAMESON: A moment's indulgence, Your Honor.

18 No further questions, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. FALK:

21 Q: You had said -- and I didn't realize this. You had said
22 that Travis McFadden wasn't the only person that got sentenced
23 that day; is that correct?

24 A: That's correct.

25 Q: And that there were other co-defendants that got

SHARON B. CLARK - REDIRECT BY MR. FALK

1 sentenced that day?

2 A: Everybody was sentenced that day.

3 Q: Okay. Did Judge Young follow the recommendations on the
4 others?

5 A: He did.

6 Q: So was Travis the only one where he didn't follow the
7 recommendation?

8 A: Travis and Tobias McFadden.

9 Q: Okay.

10 MR. FALK: One moment, Your Honor.

11 BY MR. FALK:

12 Q: Did the judge ever ask whether or not you wanted Mr.
13 McFadden to plead to voluntary manslaughter?

14 A: Did he ask me if I wanted him to?

15 Q: Yes.

16 A: I don't think so. I mean, the plea is Mr. McFadden's. I
17 don't -- I don't recall him asking me that at all.

18 MR. FALK: No further questions.

19 MS. JAMESON: No recross, Your Honor.

20 THE COURT: All right. Thank you. You may step down.
21 Next witness?

22 MR. FALK: We have no further witnesses.

23 THE COURT: For the State?

24 MS. JAMESON: The State would call Edgar Donald.

25 THE BAILIFF: Place your left hand on the Bible, raise

EDGAR DONNALD, JR. - DIRECT BY MS. JAMESON

1 your right hand, and state your full name.

2 THE WITNESS: Edgar Robert Donnalld, Jr.

3 THE BAILIFF: Do you solemnly swear and affirm to the
4 testimony to this Court to be the whole truth and nothing but
5 truth, so help you God?

6 THE WITNESS: I do.

7 THE BAILIFF: Thank you. Step around, sir. State your
8 full name and spell your last name for the record, please,
9 sir.

10 THE WITNESS: Edgar Robert Donnalld, Jr., D-o-n-n-a-l-d.

11 EDGAR DONNALD, JR., being first
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. JAMESON:

15 Q: Good afternoon, Mr. Donnalld. What was your involvement
16 in this case?

17 A: I was the assistant solicitor.

18 Q: Was this your case the whole time?

19 A: As best as I can remember.

20 Q: Can you give a short background of the facts of this
21 case?

22 A: To be honest with you, I really have a sketchy memory of
23 it. It was eight or nine years ago when the plea happened,
24 which would put the events about ten years ago. I remember
25 that there was an armed robbery of a convenience store, just

EDGAR DONNALD, JR. - DIRECT BY MS. JAMESON

1 like you said in your opening. That's really about all I
2 remember factually about the case.

3 Q: Do you recall giving the Court a factual recitation
4 during the plea?

5 A: Well, I've reviewed the transcripts, so I know that I
6 did, but other than that, I have no direct memory of it.

7 Q: Do you recall how accomplice liability theory or hand of
8 one/hand of all impacted this case?

9 A: Well, it was -- from the evidence that I had, it was
10 apparent that it was an attempted armed robbery that turned
11 into a shooting where someone was killed. So my theory would
12 have been that everybody -- all of the defendants that were
13 involved in orchestrating and participating in the armed
14 robbery would have been at least potentially guilty under a
15 hand of one/hand of all for any of the subsequent violence
16 that occurred.

17 Q: Including murder?

18 A: Including murder.

19 Q: And that is based on our case law at the time of this
20 plea; correct?

21 A: That's correct.

22 Q: And now; correct?

23 A: That's correct.

24 Q: Did you explain that Mr. McFadden was charged with murder
25 and ultimately allowed to plead to the lesser-included offense

EDGAR DONNALD, JR. - DIRECT BY MS. JAMESON

1 of voluntary manslaughter based on an accomplice liability
2 theory?

3 A: When you say did I explain, you mean to the judge --

4 Q: Yes.

5 A: -- during the plea?

6 Q: I apologize.

7 A: Yes, I did.

8 MS. JAMESON: A moment's indulgence, Your Honor.

9 BY MS. JAMESON:

10 Q: And in this case, there was a recommendation, not a
11 negotiation; correct?

12 A: That is correct.

13 Q: And do you recall whether Judge Young explained to Mr.
14 McFadden that he was not bound by the recommendation?

15 A: I -- I don't specifically recall it, but I know that the
16 transcript reflects that. I can say that I know that's in the
17 normal colloquy and had he deviated from the normal colloquy,
18 I would probably remember that.

19 Q: Had you appeared in front of Judge Young before?

20 A: Numerous times in Family Court and in General Sessions.

21 Q: And his standard colloquy is to explain the charges for
22 each sentence; correct?

23 Q: That's correct. And the maximum and minimum sentence,
24 and to explain that he could do -- he doesn't have to accept
25 recommendation and that he could sentence a person to

EDGAR DONNALD, JR. - DIRECT BY MS. JAMESON

1 consecutive sentences.

2 MS. JAMESON: No further questions, Your Honor.

3 THE COURT: Mr. --

4 MR. FALK: No questions, Your Honor.

5 THE COURT: All right.

6 MR. FALK: Thank you, Your Honor.

7 MS. JAMESON: Your Honor, I'd ask that Ms. Clark and Mr.
8 Donald be excused from their subpoenas.

9 THE COURT: Any objection?

10 MR. FALK: No objection.

11 THE COURT: All right. They're excused.

12 MS. JAMESON: The State has no additional witnesses to
13 call, Your Honor.

14 THE COURT: All right. No further witnesses. Any
15 argument?

16 MS. JAMESON: Yes, Your Honor.

17 Briefly, the claims that we are here for today are
18 ineffective assistance of counsel for failing to withdraw from
19 the plea, prosecutorial misconduct because the solicitor
20 stated he didn't commit voluntary manslaughter, and an
21 involuntary guilty plea when he received 20 -- or 45 years
22 rather than the 20 recommendation. The State submits that Mr.
23 McFadden has not met his burden of proof as to any of the
24 three claims.

25 Regarding the claim that counsel failed to withdraw from

1 the plea, counsel testified that she had advised her client
2 and his family before the plea that there was a recommendation
3 for 20 years, not that there was a negotiation for 20 years.
4 Mr. McFadden, when he was on the stand, affirmed that Judge
5 Young did review all those sentences with him, and he was
6 aware in his colloquy with the Court that he was facing up to
7 50 years -- 50 years.

8 And so the State would submit that this was not an
9 involuntary guilty plea, that Mr. McFadden went into this plea
10 with eyes wide open, understanding there was a recommendation
11 for 20 years, but that the judge could exceed that, and that
12 the plea was not involuntary.

13 Moreover, any allegation related to ineffective
14 assistance of counsel regarding Judge Young exceeding that 20-
15 year plea was preserved for appellate review. It is the very
16 issue that was briefed before the Court of Appeals. This is a
17 unique situation where not only did this case make it beyond
18 the Rule 203 of our appellate court rules threshold for a
19 guilty plea, the Court ordered full briefing.

20 And when Mr. McFadden's original counsel filed an *Anders*
21 brief indicating there was no merit, the Court of Appeals
22 denied the petition to be relieved as counsel and requested
23 full briefing on that issue. So this issue of the propriety
24 of the trial judge exceeding that sentence has already been
25 thoroughly vetted and denied.

1 There was some some questioning regarding the propriety
2 of Judge Young's actions. That's not the issue we're here for
3 today. We're here to look at counsel's conduct, and counsel
4 properly advised her client that he was facing up to 50 years
5 imprisonment, explained the recommendation, and explained what
6 a recommendation meant, and so we'd ask the Court to deny the
7 claims of ineffective assistance of counsel and involuntary
8 guilty plea.

9 Regarding the prosecutorial misconduct claim, the State
10 would stand by the argument made at the beginning of the
11 hearing when I moved to summarily dismiss the allegation. I
12 don't think anything has changed in regards to that. The plea
13 transcript from the record before your court make it clear
14 that the State was pursuing an accomplice liability theory
15 under a hand of one/hand of all.

16 When Assistant Solicitor Donnald stated to the Court that
17 Mr. McFadden was not the shooter, he also made it very clear
18 that he was -- the murder charges were pursued and then
19 ultimately the voluntary manslaughter plea was based on an
20 accomplice liability theory, which is a correct statement of
21 the law in South Carolina, and so we would ask the Court to
22 also dismiss the prosecutorial misconduct allegation as a
23 matter of law and deny this application in full.

24 THE COURT: All right. Mr. Falk?

25 MR. FALK: My client testified that 20 was the highest,

1 you know, that he was would have taken as a plea. I think
2 that testimony was certainly confirmed by trial counsel also
3 saying something to the same effect, that she knew that it was
4 hard to even get him to accept the 20. So as far as whether
5 or not he would have -- had he known he was going to get 45
6 years, I think it's pretty clear from the testimony that he
7 would have rather gone to trial than get a sentence of 45
8 years.

9 I'm not sure trial counsel was necessarily -- her
10 testimony necessarily said that she, you know, emphatically
11 told him that he could get 50 years. I think she said she
12 wasn't sure if she told him the full amount that he could get.

13 And it certainly -- from her testimony, it's certainly
14 realistic to think that my client thought he was going to get
15 the 20-year deal that was negotiated. She had testified that,
16 you know, in her experience, the judges will follow the
17 recommendation. She said most judges follow the
18 recommendation. And certainly even, you know, on that day
19 prior to him pleading, Judge Young had followed the
20 recommendations going in.

21 And so my client certainly may have had a sort of a
22 superficial notion that he could have gotten more, but I think
23 it's pretty clear that my client thought he was going to get a
24 20-year sentence that day. That's the only reason why he was
25 in court that day. And when he wound up getting 45 years, I

1 don't think that his trial counsel or plea counsel adequately
2 prepared him for the possibility that he could -- you know,
3 that Judge Young would deviate so far away from the
4 recommended sentence.

5 THE COURT: Any reply by the State?

6 MS. JAMESON: Yes. Just briefly, Your Honor, I did want
7 to touch on one point.

8 I believe that Mr. Falk mentioned that perhaps Ms. Clark
9 was not clear or hadn't gone into detail about the sentences
10 he faced. I specifically asked Ms. Clark if she advised him
11 he could receive consecutive sentences and if she had advised
12 him about the specific sentence for each of the charges he was
13 pleading guilty, and she unequivocally responded in the
14 affirmative that she had advised him of that.

15 That's sort of also buttressed by the record before this
16 Court where Judge Young clearly advises him one by one of all
17 the charges he's pleading guilty to, and he acknowledges he
18 understands he can get 50 years as a result of this plea and
19 then asked Judge Young to accept the plea and still go forward
20 with it. And so there is no evidence of probative value to
21 support a grant of relief on these claims.

22 THE COURT: And Mr. McFadden here, he was on probation at
23 the time?

24 MS. JAMESON: Yes, Your Honor, out of Florence County, I
25 believe, the record reflects.

1 THE COURT: Anything else, Mr. Falk?

2 MR. FALK: Yeah. I just don't think I mischaracterized
3 trial counsel's testimony. When she was asked about the 50
4 years, she says I'm not sure I told him that. That's all.

5 FINDINGS AND RULING

6 THE COURT: All right. I do not find any merit to this
7 post-conviction relief application. Mr. McFadden under oath
8 pled guilty, having been fully informed of his rights to trial
9 and the possible consequences of his guilty plea.

10 I do not find any deficiency in the performance of
11 counsel. She made no promises to him as to what the judge
12 would do. She -- it is clearly understood by him that it was
13 a recommendation which they all hoped that the judge would
14 follow, which the judge did not follow, which was the judge's
15 prerogative.

16 And Ms. Clark relayed to Mr. McFadden her -- her
17 aspirations for his sentence. She stated that it was a
18 recommendation that the judge did not follow that, in her
19 experience, most judges do. The judge, however, made clear
20 that he could impose the sentences under the law as he did.

21 The one part of the record that gives me a little bit of
22 pause and that is the judge in explaining to Mr. McFadden
23 states that if he disagreed or changed his mind about his plea
24 or his sentence that he could file an appeal within ten days.
25 Let's see. What page is that?

1 MS. JAMESON: Your Honor, I believe page 27 of the record
2 on appeal.

3 THE COURT: Page 27. He mentions that earlier as well
4 when he's going through the plea colloquy.

5 MS. JAMESON: Your Honor, I believe Page 14 there's also
6 a reference, lines 16 through 19 on page 14.

7 THE COURT: All right. Line -- page 14, line 16?

8 MS. JAMESON: I'm sorry, 11 to 14, Your Honor. I jumped
9 down a little bit, 11 to 14.

10 THE COURT: Pardon? What page?

11 MS. JAMESON: Page 14. And you understand that if you
12 change your mind about your decision to plead guilty or the
13 sentence I give you that you only have 10 days in which to
14 file an appeal, and Mr. McFadden responds in the affirmative,
15 yes, sir.

16 THE COURT: So the -- so he didn't have 10 days to change
17 his mind about the plea. He had 10 days to appeal the
18 sentence. So that's one area of pause on my part.

19 What do you think, Ms. Jameson?

20 MS. JAMESON: I think here it's clear if you change your
21 mind about your decision to plead guilty or the sentence. To
22 me, my interpretation of that is not that the Court can change
23 the sentence. If you change your mind about your decision to
24 plead guilty or you're unhappy with the sentence, you have 10
25 days in which to file an appeal, and he says, yes, sir. And

1 then I think page 27 also makes it clear they can also pursue
2 a motion to reconsider the sentence, which Ms. Clark did
3 timely do.

4 THE COURT: All right. Any comment on that, Mr. Falk?

5 MR. FALK: Your Honor, I sort of take a different view of
6 that because that struck me to be more similar to sometimes
7 we've heard judges telling -- telling defendants in cases that
8 I don't have to accept the negotiated plea, and if I don't
9 accept, you can withdraw your sentence.

10 And I can understand why Judge Young might have been
11 saying that here, but I think my client was certainly under
12 the impression at that point that, you know, if this didn't go
13 down the way that he thought it would go down, that he had the
14 right to -- using his exact words, to change his mind about
15 his decision to plead guilty. So that sounds like the judge
16 is -- so he's going into that plea thinking that he has the
17 opportunity to, you know, change his mind.

18 THE COURT: All right. So if -- if Mr. McFadden
19 misunderstood the judge or misinterpreted what the judge, how
20 does that impact Ms. Baker's performance, if at all?

21 MR. FALK: Just as far as what my client thought, just
22 whether my client thought that he, you know, would be stuck
23 with the decision if they go beyond what the recommendation
24 would be. I mean I -- you know, I think Ms. Clark certainly
25 didn't think that that would be an issue because she was

1 surprised when they went beyond the 45 -- the 20 years.

2 I mean, I think it goes to the fact that his plea was
3 involuntary. Not necessarily pointing the finger completely
4 on trial counsel, but the issue was that he had the
5 expectation at the time of that plea that he could withdraw it
6 if it would go beyond the 20 years.

7 MS. JAMESON: And, Your Honor, if I could just briefly
8 respond, that is -- that is not what this says. This does not
9 say anything about withdrawing your appeal. It says you have
10 10 days to file an appeal, and within 10 days of this, he did
11 timely file an appeal and a motion to reconsider his sentence.

12 And that first appeal was dismissed without prejudice
13 with leave to refile. After the motion to reconsider was
14 ruled upon, he did timely file a new notice of appeal. Ms.
15 Clark filed one on his behalf after the motion to reconsider
16 was denied and the sentence was affirmed, and he had the
17 benefit of full appellate review, which is unique in
18 situations of guilty pleas. As Your Honor is aware, the vast
19 majority of guilty pleas in South Carolina are summarily
20 dismissed on direct appeal pursuant to Rule 203. Here, he had
21 full appellate review of the propriety of Judge Young's
22 actions.

23 And I believe Your Honor's original inquiry to counsel
24 was how did Judge Young's performance or what he said impact
25 counsel's performance and the voluntariness of the plea. The

1 State submits that that is not an issue before the Court today
2 because that issue was already vetted by the Court of Appeals
3 and denied, and so that's the law of the case, but Judge
4 Young's actions were proper in this case.

5 MR. FALK: I'm just saying the interpretation. If you
6 change your mind about your decision to plead guilty. Okay?
7 It's not necessarily what Ms. Jameson was referring to, the
8 propriety of the plea.

9 THE COURT: All right.

10 MR. FALK: It's just the fact that I think he had the
11 notion that he could withdraw it.

12 THE COURT: Okay.

13 MR. FALK: And that's so --

14 THE COURT: Well, it's my finding and conclusion that
15 none of that -- that it does not bear on the performance of
16 counsel. Mr. McFadden pled guilty. The judge went through a
17 thorough colloquy with him.

18 The guilty plea form indicates a recommendation by the
19 State. The judge did not accept the recommendation. It
20 wasn't -- it wasn't a negotiations -- negotiation, and he is
21 not entitled to post-conviction relief, and there's no
22 evidence of prosecutorial misconduct.

23 And the -- I will not weigh in on the issue about the
24 warrant, though I do not believe it has any relevance to this
25 post-conviction proceeding.

1 So, Ms. Jameson, if you'd prepare an order for my review.

2 MS. JAMESON: Thank you, Your Honor.

3 THE COURT: And share it with Mr. Falk.

4 MS. JAMESON: Yes, Your Honor.

5 (WHEREUPON, the proceedings ended at 4:01 p.m.)

6

7 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina	)	
	)	Certificate
County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter III for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 57, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Sumter County, South Carolina, on the 28th day of June, 2022.

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

s/Krystal J. Smith

Court Reporter

Florence, South Carolina
January 31, 2023

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Travis J. McFadden, SCDC #357880,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2021-CP-43-0929

ORDER OF DISMISSAL

This matter comes before this Court by way of Applicant Travis D. McFadden's application for post-conviction relief challenging his guilty plea and sentence for voluntary manslaughter, strong-arm robbery, and criminal conspiracy based on allegations of ineffective assistance of counsel, prosecutorial misconduct, and involuntary guilty plea. James K. Falk, Esquire, was thereafter appointed to represent Applicant.

In response, Respondent the State of South Carolina filed a return and partial motion for summary dismissal, requesting an evidentiary hearing to resolve the claims of ineffective assistance of counsel and involuntary guilty plea as set forth in the application and moving for summary dismissal of prosecutorial misconduct claim.

An evidentiary hearing on this action was convened June 28, 2022, before this Court at the Sumter County Courthouse. Applicant appeared alongside counsel Falk. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Applicant proceeded forward on the claims raised in application. This Court heard testimony from Applicant, his former plea counsel, and the prosecutor.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismissed this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

FACTUAL AND PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined within the South Carolina Department of Corrections. On December 26, 2011, Applicant and six co-defendants entered a convenience store in Sumter County where they shot several people, including one victim who died from his injuries and one victim who was left paralyzed from his injuries. Thereafter, the Sumter County Grand Jury indicted Applicant in a multi-count indictment for one count of murder, two counts of attempted murder, one count of armed robbery, one count of carjacking, one count of criminal conspiracy, and three counts of possession of a weapon during the commission of a violent crime in a multi-count, multi-defendant indictment (2012-GS-43-0781). Sharon B. Clark, Esquire, was appointed to represent Applicant. Assistant Solicitor Edgar Donald of the Third Circuit Solicitor's Office prosecuted the case.

Following plea negotiations with the State, Applicant accepted a plea offer requiring him to enter guilty pleas to the lesser-included offenses of voluntary manslaughter and strong-arm robbery, and criminal conspiracy as indicted in exchange for the dismissal of all remaining counts and a recommendation from the State for a sentence of twenty years of imprisonment.

On November 18, 2013, Applicant appeared before the Honorable W. Jeffry Young, circuit court judge, and pled guilty to voluntary manslaughter, strong-arm robbery, and criminal

conspiracy pursuant to the plea agreement. Following a thorough plea colloquy with Applicant, Judge Young found Applicant's pleas were knowingly, intelligently, and voluntarily entered and accepted Applicant's pleas. Judge Young then sentenced Applicant to thirty years' imprisonment for voluntary manslaughter, fifteen years' imprisonment for strong-arm robbery to be served consecutively to the sentence for voluntary manslaughter, and five years' imprisonment for criminal conspiracy to be served concurrently to the other sentences, for an aggregate forty-five-year term of imprisonment.

On November 21, 2013, Applicant filed a motion to reconsider his sentence. While this motion was pending, Applicant prematurely filed a direct appeal, which the South Carolina Court of Appeals dismissed without prejudice. On December 16, 2016, Judge Young convened a hearing on the motion to reconsider the sentence. On February 8, 2017, Judge Young issued a written order denying the motion and reaffirming his sentence.

Thereafter, Applicant initiated a timely direct appeal and was represented by Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense-Office of Appellate Defense who originally filed a brief of appellant pursuant to Anders v. California, 386 U.S.738 (1967), along with a petition to be relieved as counsel. After a review pursuant to Anders, the Court of Appeals denied appellate counsel's petition to be relieved and ordered full briefing on the issue of whether a guilty plea can still be voluntary if the State does not disclose a sentencing recommendation to the plea court. Following briefing, the Court of Appeals affirmed his plea and sentences. State v Travis Jacquese McFadden, Unpub. Op. No. 2020-UP-192 (Ct. Ap filed June 24, 2020). The remittitur was returned to the circuit court on July 20, 2020.

ALLEGATIONS BEFORE THE COURT

In his *pro se* application for post-conviction relief, filed on June 1, 2021, Applicant alleges he is being held in custody unlawfully based on the following grounds:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to withdraw from plea"
2. Prosecutorial Misconduct
 - a. "Solicitor stated that I didn't committed (sic) voluntary manslaughter"
3. Involuntary Guilty Plea
 - a. "I had a recommendation plea for 20 years which I accept but I got 45 years instead."

As requested relief, Applicant states he is seeking "for voluntary manslaughter to be drop and a better sentence."

In response to the application, Respondent served a return and partial motion to dismiss, asking for a hearing to resolve Applicant's claims of ineffective assistance of counsel and involuntary guilty plea, and moving for summary dismissal of Applicant's claim of prosecutorial misconduct. Attached to this return and before this Court are the records from Applicant's general sessions proceedings, his appellate records (including the record on appeal with a complete copy of the transcripts from his general sessions proceedings), his SCDC records, and the records from this current PCR proceeding.

James K. Falk, Esquire, was appointed to represent Applicant in this proceeding pursuant to Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court (S.C. Sup. Ct. Order filed Oct. 6, 2008) and Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Counsel did not amend the application.

At the evidentiary hearing Applicant proceeded forward on the grounds as set forth in his

pro se application.

SUMMARY OF THE EVIDENTIARY HEARING

An evidentiary hearing was convened before this Court at the Sumter County Courthouse on June 28, 2022. Applicant was present alongside counsel Falk. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. Testimony was taken from Applicant, plea counsel Sharon B. Clark, and the prosecutor Edgar Donnalld.

At the start of the hearing, Respondent renewed its motion to dismiss the prosecutorial misconduct allegation. In support of this motion, Respondent argued that Applicant entered a plea to voluntary manslaughter as a lesser-included offense of murder. During the plea hearing, when reciting the factual basis to support the plea, the assistant solicitor conceded Applicant was not the shooter of the deceased victim, but the solicitor explained the State would have pursued a conviction based on the “hand of one, hand of all” theory of liability at trial. (R. p. 9-10). Applicant also pleaded guilty to criminal conspiracy, and the shooter of the deceased victim was one of Applicant’s co-conspirators. (R. p. 10). Moreover, Applicant informed the plea judge he agreed with the facts as recited by the solicitor and wanted to plead guilty to the charge of voluntary manslaughter. (R. p. 10). Applicant received a significant benefit in doing so, as it reduced the potential range of punishment and removed life without parole (LWOP) as a sentencing option. (R. p. 33). At the hearing on the motion to reconsider, Judge Young made clear he would have sentenced Applicant to LWOP had the State not agreed to reduce the charge. (R. p. 39-40). Respondent then cited State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999), wherein the South Carolina Supreme Court stated that under “the hand of one, hand of all” theory, “one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his

confederate incidental to the execution of the common design and purpose.” Respondent argued that based on the foregoing, the assistant solicitor’s summary of the basis of the plea was legally correct, and he did not assert Applicant did not commit the crime to which he was pleading guilty.

Respondent noted that S.C. Code Ann. § 17-27-70(c) authorizes the court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law” and, therefore, because the record conclusively refutes this allegation of prosecutorial misconduct, and this allegation to should be denied and dismissed with prejudice. The Court denied the motion to summarily dismiss the claim of prosecutorial misconduct and allowed Applicant to proceed with this issue.¹

Applicant testified first on his own behalf. He stated that counsel Clark was appointed to represent him in 2012. He testified that counsel advised him the State made a plea offer for a recommended sentence of twenty years of imprisonment, but he was not completely comfortable with this plea offer. He said he ultimately did accept the plea offer but was hesitant because he did not personally commit the murder. He testified that counsel did explain accomplice liability or the “hand-of-one, hand-of-all” theory to him but that he is now under the impression it is a legal theory rather than settled law. He elaborated that counsel failed to sufficiently explain accomplice liability to him so that he fully understood it. He stated he was aware of his plea proceeding in advance and understood the plea offer to be for a recommended sentence of twenty years of imprisonment. He

¹ At the start of the hearing, Applicant attempted to raise a new issue regarding the propriety of his arrest warrant for the first time. Respondent objected citing a complete lack of notice. After questioning by this Court, this Court finds this new allegation patently lacks merit and declined to allow Applicant to proceed forward on this issue.

testified that counsel never explained he could receive a sentence of greater than twenty years and did not prepare him for the possibility of a greater sentence, and he thought the plea offer was a “done deal” for twenty years of imprisonment. He testified he would not have pled guilty if he knew he could receive a sentence in excess of twenty years. He testified that he wanted to proceed to trial and present a defense that he was unarmed and did not fire a weapon. He testified that counsel did not really discuss a trial with him, but rather, she mainly discussed his charges and potential sentences. He testified his prosecutorial misconduct claims are because the prosecutor acknowledged during his plea proceeding that he was not the shooter, and therefore, he should not have been charged with murder.

On cross-examination, Applicant testified that he reviewed all discovery with counsel, including statements from co-defendants and witnesses. He testified he did not have a gun but lied and told law enforcement that he did have a gun. He testified that Judge Young went over the specific sentencing range for each offense with him on the record and that he told Judge Young he understood each potential sentence, understood they could be served consecutively, and understood he was facing a fifty-year sentence as a result of his plea. Despite this unambiguous colloquy with the plea court, Applicant testified he still was under the impression he could not receive a sentence of greater than twenty years as a result of his plea. However, he acknowledged that counsel told him the plea offer was just a recommendation. He testified that he was willing to accept the plea to voluntary manslaughter because he did not commit murder and understood that he was pleading based on his involvement in the crime under and accomplice liability theory. He testified that counsel explained to him “hand-of-one, hand-of-all” was the law and that this was the theory the State was proceeding under for the murder charge. He testified he knew his co-

defendants gave statements implicating him in the crimes and he was aware they would likely testify against him if he elected to proceed to trial. He said despite this, he still wanted to proceed to trial rather than enter a guilty plea. He testified he asked counsel to file a motion to withdraw his plea but she filed a motion to reconsider instead.

Next, Applicant presented testimony from plea counsel Clark. Clark testified that plea negotiations were on-going in this case and the State was motivated to offer plea agreements based on cooperation. She elaborated that Applicant never gave a statement to law enforcement and never expressed any interest in cooperating, and she explained that this would impact his plea negotiations with the State. She testified that Applicant was implicated in the crime by co-defendants. She testified that Applicant initially did not want the plea offer for a recommended twenty-year sentence because he stated he did not shoot the victim who died. She testified that she explained to Applicant that the plea offer was for a recommended sentence of twenty years but that this meant the court could give him a sentence that was below or above twenty years. She testified that she did advise Applicant that a plea court will generally go along with a recommendation. Counsel testified that she also explained the plea offer to Applicant's family and advised them the offer was a recommendation, what that meant, and that plea courts will generally go along with a sentence recommendation. Counsel testified that she had appeared before Judge Young "very little" as a circuit court judge but was familiar with him based on Judge Young's time on the family court bench. She elaborated that she was a former solicitor and public defender, and that she had a lot of prior criminal experience. She stated she was appointed because the public defender's office was conflicted out of this case based on the number of co-defendants charged in this crime. Counsel testified she explained accomplice liability and "the hand-of-one, hand-of-all"

theory to Applicant and how it impacted his case. She elaborated that they discussed that Applicant could still be convicted based on the statements and potential testimony of his co-defendants based on his involvement in the crime.

On cross-examination, counsel testified that she was appointed approximately one year prior to the plea and she had sufficient time to prepare the case. She testified she met with Applicant more than half-a-dozen times and Applicant was readily accessible because he was detained at the county detention center prior to his plea. She testified she reviewed the evidence in this case, which included statements from several co-defendants that implicated Applicant. She elaborated that these co-defendants were willing to testify against Applicant had the case proceeded to trial, which she confirmed in her personal discussions with counsel for these co-defendants. She testified that Applicant readily admitted he was at the scene. She testified that Applicant would have likely been convicted at trial and she conveyed this to Applicant. She elaborated there was very little she could use in terms of a viable defense but would have been prepared for trial had Applicant elected to proceed to trial. She testified she explained the elements of the offenses to Applicant as well as the potential sentences he faced if convicted. She testified she explained that even with the plea offer, he could still receive consecutive sentences. However, she testified she expected the plea court to go along with the recommendation and she conveyed this to Applicant.

Counsel testified that the plea court was advised on the recommendation of twenty years prior to the plea proceeding. She testified she was surprised with Applicant's sentence. She testified that she visited Applicant at the detention center following the plea and discussed the various options available to Applicant, including an appeal and a motion to reconsider the

sentence. She testified they ultimately elected to file a motion to reconsider the sentence and argued the plea court should reconsider the sentence and follow the recommendation based on Applicant's young age and his lesser role in the crime. She testified this motion was ultimately denied and she then innated an appeal on Applicant's behalf.

Respondent then called the prosecutor, then-Assistant Solicitor Edgar Donnal, as a witness. He described the crime as an armed robbery of a convenience store resulting in the shooting of numerous people. He stated the State's case was based on an accomplice liability theory because this was a conspiracy to commit and armed robbery that resulted in the murder of someone in the course of the robbery. He testified that he explained this to the plea court during the plea when he reviewed the factual basis for the plea. He testified that this plea offer was for a recommendation, not a negotiation, and that Judge Young was usually aware of these type of plea offers.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged he is entitled to post-conviction relief based on ineffective assistance of plea counsel, prosecutorial misconduct, and involuntary guilty plea. This Court finds these claims to be without merit and that Applicant has failed to meet his burden of proof.

Standard of Review

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;

3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCR.

Ineffective Assistance of Counsel and Involuntary Guilty Plea Standard

Applicant asserts that he is entitled to a new trial based on constitutionally ineffective assistance of counsel and an involuntary guilty plea.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary

hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable

miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it 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.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires 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. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” Strickland, 466 U.S. at 690.

An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” Id. The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466

U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry

“focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result

is being challenged.” *Id.* at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Findings as to Specific Claims Raised

Applicant has alleged ineffective assistance of plea counsel and involuntary guilty plea and asserts that as a result of these purported errors, he is entitled to have his guilty plea undone. This Court finds has failed to meet his requisite burden of proof as to each allegation. Each allegation is addressed below:

Allegation #1: Trial Counsel was ineffective for failing to move to withdraw his plea

Applicant first asserts trial counsel was constitutionally ineffective for failing to move to withdraw his guilty plea when he received a sentence in excess of the recommendation of twenty years. This Court finds Applicant cannot establish any deficiency of counsel. Counsel testified that she fully explained the plea offer to Applicant, what a recommendation meant, and that Applicant could receive a sentence in excess of twenty years as a result of his plea. She explicitly explained that Applicant could receive consecutive sentences as a result of his plea. She testified that immediately after the plea, she consulted with Applicant, and they ultimately elected to pursue a motion to reconsider the sentence in the hope that the plea court would follow the recommendation after additional consideration. This Court finds counsel’s performance was reasonable. This case is readily

distinguishable from Rolen v State, 384 S.C. 409, 683 S.E.2d 471 (2009), where our Supreme Court found that plea counsel was deficient for failing to move to withdrawal Rolen's plea where Rolen repeatedly maintained his innocence throughout the plea. Here, Applicant repeatedly affirmed his guilt throughout the plea and never indicated he did not want to plead guilty, but rather, only expressed displeasure when he was sentenced above the recommended sentence. This Court finds counsel's performance was reasonable, including her decision to pursue a motion to reconsider his sentence rather than a motion to withdrawal his plea, which, even with the sentence of fifty-years, was still a favorable resolution of Applicant's case in light of the substantial evidence and the dismissal of numerous serious charges. Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #2: Involuntary Guilty Plea for Exceeding the Recommended Sentence

Next, Applicant asserts that his guilty plea was involuntarily entered because he received a sentence in excess of the recommendation of twenty years. This Court finds this claim patently lacks merit and is clearly refuted by the record from the plea proceeding. See Rolen, 384 S.C. at 413, 683 S.E.2d at 474 (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)) ("When determining issues relating to guilty pleas, the [c]ourt will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing."). Here, the record firmly establishes Applicant was aware that he could receive consecutive sentences in excess of the recommendation for a total of fifty years imprisonment. (R. p. 11). Counsel similarly testified she advised Applicant he could receive consecutive sentences as a result of his guilty plea. Moreover, Applicant himself testified he was aware that the plea offer was for a recommended sentence. The

Court finds the record establishes the knowing, voluntary, and intelligent nature of Applicant's plea. Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #3: Prosecutorial Misconduct

Finally, Applicant asserts that he is entitled to relief based on a claim of prosecutorial misconduct because he was wrongly indicted for murder when he was not the shooter. This Court finds this allegation to be patently without merit. The record is abundantly clear that Applicant was prosecuted for the death of the victim based on an accomplice liability theory, not as the shooter himself. Applicant has failed to provide any evidence that he was not properly prosecuted under an accomplice liability theory and, in fact, he readily admitted that he was present at the scene and participated in the armed robbery. Accordingly, this Court denies and dismisses this allegation with prejudice.

CONCLUSION

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

This Court notes that if Applicant wishes to appeal this order, Applicant, though his counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is

directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant Travis D. McFadden shall remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this 1st day of August, 2022.

Clifton Newman
CLIFTON NEWMAN
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina

WITNESSES

Melissa Addison

SCSO

ARREST WARRANT NUMBER

M444967	M444968	M444969	M444678	M444679
M444680	M444681	M444732	M444970	M444971
M444972	M444973	M444974	M444975	M444976
M444977	M444978	M444979	M444980	M444981
M444982	M444983	M444984	M444985	M444986
M444987	M444988	M444989	M444990	M444991
M444992	M444993	M444994	M444995	M444996
M444997	M444998	M444999	M445000	M445001
M445002	M445003	M445004	M445175	M445176
M445177	M445178	M445179	M445180	M445181
M445182	M445183	M445319	M445320	M445321
M445322	M445323	M445324	M445325	M445326
M445327				

ACTION OF GRAND JURY

True Bill

Charles H. Finney III
Foreperson of Grand Jury

Date: 7/5/2012

VERDICT

Foreperson of Petit Jury

Date:

**AMENDED
DOCKET NO. 2012-GS-43-0781**

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

July TERM 2012

THE STATE

vs.

**JIMONTE JAMAL GILBERT
RHKEIM DEVONTAE INGRAM
TRAVIS MAJOR
ROBERT GEROME MCFADDEN
TABIAS LORLAND MCFADDEN
TRAVIS JACQUEESE MCFADDEN
TIMOTHY TYREESE SINGLETARY, JR.**

Indictment for

**Murder
Possession of a Weapon During a Violent Crime (3 cts)
Attempted Murder (2 cts)
Armed Robbery
Criminal Conspiracy
Carjacking
Accessory Before the Fact to a Felony
Accessory After the Fact to Felony**

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Murder
 Possession of a Weapon During a Violent Crime (3 cts)
 Attempted Murder (2 cts)
 Armed Robbery
 Criminal Conspiracy
 Carjacking
 Accessory Before the Fact to a Felony
 Accessory After the Fact to Felony

CERTIFIED TRUE COPY
 OF ORIGINAL FILE

At a Court of General Sessions, convened on July 5, 2012 the Grand Jurors of

SUMTER County present upon their oath:

DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

COUNT ONE - MURDER

That Jimonte Jamal Gilbert, Rhkeim Devontae Ingram, Robert Gerome McFadden, Travis Major, Tabias Lorland McFadden, Travis Jacquese McFadden and Timothy Tyrese Singletary, Jr. did in Sumter County, on or about December 26, 2011, willfully, feloniously, and intentionally kill the victim, Jayshawn Thompson, with malice aforethought, either express or implied, by means of shooting the victim, Jayshawn Thompson, and the victim did die as a proximate result thereof on or about December 26, 2011 in Sumter County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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

That Jimonte Jamal Gilbert, Rhkeim Devontae Ingram, Robert Gerome McFadden, Travis Major, Tabias Lorland McFadden, Travis Jacquese McFadden and Timothy Tyrese Singletary, Jr. did in Sumter County, on or about December 26, 2011, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, murder, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

**COUNT THREE - POSSESSION OF A WEAPON DURING THE COMMISSION
 OF A VIOLENT CRIME**

That Jimonte Jamal Gilbert, Rhkeim Devontae Ingram, Robert Gerome McFadden, Travis Major, Tabias Lorland McFadden, Travis Jacquese McFadden and Timothy Tyrese Singletary, Jr. did in Sumter County, on or about December 26, 2011, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in the attempted murder of Arris Jerome Smalls, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR JIMONTE JAMAL GILBERT, ROBERT GEROME MCFADDEN, TRAVIS MAJOR, TRAVIS JACQUEESE MCFADDEN AND TIMOTHY TYREESE SINGLETARY, JR. SHOWN THEREON:

COUNT FOUR - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Jimonte Jamal Gilbert, Rhkeim Devontae Ingram, Robert Gerome McFadden, Travis Major, Tabias Lorland McFadden, Travis Jacqueese McFadden and Timothy Tyreese Singletary, Jr. did in Sumter County, on or about December 26, 2011, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in the attempted murder of Bahader El-Sokkapy, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended

COUNT FIVE – ATTEMPTED MURDER

That Jimonte Jamal Gilbert, Rhkeim Devontae Ingram, Robert Gerome McFadden, Travis Major, Tabias Lorland McFadden, Travis Jacqueese McFadden and Timothy Tyreese Singletary, Jr. did in Sumter on or about December 26, 2011, violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Jimonte Jamal Gilbert, Robert Gerome McFadden, Travis Major, Travis Jacqueese McFadden and Timothy Tyreese Singletary, Jr. did with intent to kill, attempt to kill another person, Bahader El-Sokkapy, with malice aforethought, either express or implied, by shots being fired inside of the business during the commission of an armed robbery and shots being fired in the direction of the victim, Bahader El-Sokkapy.

COUNT SIX – ATTEMPTED MURDER

That Jimonte Jamal Gilbert, Rhkeim Devontae Ingram, Robert Gerome McFadden, Travis Major, Tabias Lorland McFadden, Travis Jacqueese McFadden and Timothy Tyreese Singletary, Jr. did in Sumter on or about December 26, 2011, violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Jimonte Jamal Gilbert, Robert Gerome McFadden, Travis Major, Travis Jacqueese McFadden and Timothy Tyreese Singletary, Jr. did with intent to kill, attempt to kill another person, Arris Jerome Smalls, with malice aforethought, either express or implied, by shooting the victim, Arris Jerome Smalls, in the back during the commission of an armed robbery.

COUNT SEVEN – ARMED ROBBERY

That on or about December 26, 2011, in Sumter County, South Carolina, at 10295 Lynches River Road, Lynchburg, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant(s) Jimonte Jamal Gilbert, Rhkeim Devontae Ingram, Robert Gerome McFadden, Travis Major, Tabias Lorland McFadden, Travis Jacqueese McFadden and Timothy Tyreese Singletary, Jr. did take and carry away goods and/or monies from the person or immediate presence of Bahader El-Sokkapy, the owner of Money Saver Convenience Store with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR JIMONTE JAMAL GILBERT, ROBERT GEROME MCFADDEN, TRAVIS MAJOR, TRAVIS JACQUEESE MCFADDEN AND TIMOTHY TYREESE SINGLETARY, JR. SHOWN THEREON:

COUNT EIGHT - CRIMINAL CONSPIRACY

That Jimonte Jamal Gilbert, Rhkeim Devontae Ingram, Robert Gerome McFadden, Travis Major, Tabias Lorland McFadden, Travis Jacqueese McFadden and Timothy Tyreese Singletary, Jr. did in Sumter County on or about December 26, 2011 combine with each other, and/or with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: armed robbery, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

COUNT NINE- CARJACKING

That in Sumter County on or about December 26, 2011, the Defendants Tabias Lorland McFadden, Rhkeim Devontae Ingram and Travis Jacqueese McFadden did take or attempt to take a blue in color Chevrolet Caprice bearing SC HIA569 from Ciera Lashea Dunkley by force and violence or by intimidation while Ciera Lashea Dunkley was operating the vehicle or in the vehicle; in violation of Section 16-3-1075 of the Code of Laws of South Carolina (1976), as amended.

COUNT TEN – ACCESSORY BEFORE THE FACT TO A FELONY

That Robert Gerome McFadden, did in Sumter County on or about December 26, 2011, advised or agreed with or urged or hired or in some way aided, counseled or encouraged the principal felon to commit the felony of Armed Robbery, by providing co-defendants with one or more handguns and also allowed his co-defendants the use of his vehicle, a 1999 Chevrolet Tahoe, for transport to and from the crime scene, in violation of the Common Law and Section 16-01-0040, S. C. Code of Laws, 1976, as amended.

COUNT ELEVEN – ACCESSORY AFTER THE FACT TO CLASS A FELONY

That Robert Gerome McFadden, did in Sumter County on or about December 26, 2011, knowing of the commission and completion of the felony of armed robbery, harbor or assist such felon after the fact by accepting and receiving a portion of the monetary proceeds from Jimonte Jamal Gilbert, Travis Major, Travis Jacqueese McFadden and/or Timothy Tyreese Singletary, Jr after the fact of an armed robbery of the Money Saver Convenience Store in which the co-defendants stole an undisclosed amount of money, in violation of the Common Law crime of Accessory After the Fact in commission of a class A felony.

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

Solicitor

Ernest A. Fanning III