

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge
—————

MATTHEW BLACKWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000062
—————

APPENDIX
—————

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

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 vs.) RECORD
7 MATTHEW TYLER BLACKWELL,)
8 DEFENDANT.) 2019-GS-42-4607 - 4611

9
10 August 27th, 2021

11
12 B E F O R E:

13 THE HONORABLE GRACE GILCHRIST KNIE, JUDGE.

14
15 A P P E A R A N C E S:

16 SPENSER H. SMITH
17 ESQ.
Attorney for the state

18 WILLIAM J. NOWICKI
19 ESQ.
Attorney for the Defendant

20
21
22
23 PAMELA E. GREEN
Circuit Court Reporter
24
25

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I N D E X O F W I T N E S S E S

(WHEREUPON, there were no exhibits marked during this hearing.)

1 P R O C E E D I N G S

2

3 THE COURT: If everyone is ready, I will call upon the
4 assistant solicitor, Ms. O'Brien, to identify the cases and
5 hand up the paperwork.

6 SOLICITOR O'BRIEN: Your Honor, would you like me to
7 call all of the cases?

8 (WHEREUPON, the Court nods affirmatively.)

9 SOLICITOR O'BRIEN: Okay. Before us today is defendant
10 Matthew Blackwell. He is here under Indictment 2019-4607
11 for the charge of murder, 2019-4607A for the charge of
12 possession of a weapon during a violent crime, 2019-460
13 for -- eight for the crime of attempted murder, 2019-4609
14 for the crime of attempted murder, and 2019-4610 for the
15 crime of trafficking meth in the first offense.

16 May I approach with the paperwork?

17 THE COURT: Yes, ma'am. Thank you.

18 Okay. Thank you.

19 At this time I will call upon the solicitor to first
20 state the offenses that Mr. Blackwell will be, will be,
21 excuse me, will be entering his pleas to and then the status
22 of any recommendations or negotiations.

23 SOLICITOR BULSA: Your Honor, Mr. Smith is gonna be
24 presenting the case.

25 THE COURT: Okay. Mr. Smith, sir?

1 SOLICITOR SMITH: Your Honor?

2 THE COURT: Can you hear me?

3 SOLICITOR SMITH: Yes, ma'am.

4 THE COURT: Okay. Yes, sir. Happy to hear from you.

5 SOLICITOR SMITH: He's pleading to the charges as she
6 announced, murder, two attempted murders, possession of a
7 weapon during a violent crime, and trafficking meth 10 to 28
8 first offense, and there is a negotiated -- the, the
9 negotiated max sentences on everything other than the
10 murder, two 30 year sentences on the attempted murder, and a
11 10 year sentence on the trafficking, and a five on the
12 weapon all to run concurrent with each other, and then a
13 negotiated cap of 40 years on the murder charge also to run
14 concurrent with the other charges. And the State is
15 dismissing a half mile charge that's connected to the
16 trafficking.

17 THE COURT: Okay. And I did see a note regarding
18 credit for time served. I need for somebody -- are, are
19 you -- Spenser, I don't know if you have a copy of this
20 information sheet but it says 853 days. April the 25th,
21 '19, to present gives him credit for the time that he has
22 been incarcerated since he was arrested in Cherokee County
23 on drug charges. The Spartanburg warrants weren't served
24 until later and he has been in SCDC since the plea in
25 Cherokee County.

1 Can, can somebody elaborate on the credit?

2 Okay.

3 SOLICITOR SMITH: I didn't discuss this with Mr.
4 Nowicki but he was picked -- he had the pending charges in
5 Spartanburg on the trafficking and the proximity charge, and
6 then he was investigated for the murder, and they
7 arrested -- when he was found in Cherokee, he had some
8 methamphetamine on him that led to charges in Cherokee
9 County.

10 We -- the warrants were pending from Spartanburg but
11 they didn't get served on him because he was in the Cherokee
12 County Detention Center. And about a month after or a month
13 or so after he'd been in that, we got him transported over
14 and we got the warrants served here, and then Mr. Blackwell
15 quickly resolved his charges in Cherokee, which resulted in
16 him getting a five year prison sentence. And according to
17 the statute, he shouldn't get credit for that cause he's
18 serving another active sentence.

19 But I just thought, out of fairness, and the fact that
20 he is obviously getting at least 30 years, to not punish him
21 for having moved forward on the Cherokee County case and
22 then not punish him for the fact that he wasn't transported.
23 He didn't have any control over the first issue and the
24 second issue. Obviously he could of left the charge pending
25 and, and he would of gotten all the credit.

1 So, I was -- give him credit to when he was arrested in
2 Cherokee County initially on the old trafficking warrant and
3 the, the charges in Cherokee that he picked up.

4 THE COURT: Okay. And so, in other words, he could of
5 waited and had all of this handled at one time and gotten
6 credit for all the time pending, right?

7 SOLICITOR SMITH: Yes, ma'am.

8 THE COURT: Okay.

9 SOLICITOR SMITH: I didn't think it'd be fair to
10 deprive him of that.

11 THE COURT: Okay. And, and, in your opinion under the
12 statute, do I have the authority to give him credit for
13 that?

14 SOLICITOR SMITH: well, the, the statute says you're
15 not suppose to get it if you're serving another sentence.
16 So, I don't know if, if we can but --.

17 THE COURT: Okay.

18 SOLICITOR SMITH: I don't -- I guess maybe just factor
19 it into your decision on whatever, whatever you do give him
20 time wise.

21 THE COURT: So, he's, he's gotten about three years
22 credit, right, 700 -- well, two---

23 SOLICITOR SMITH: And he---

24 THE COURT: Two and a half years I guess.

25 Okay.

1 SOLICITOR SMITH: Two years and four months, something
2 like that I believe.

3 THE COURT: Okay. Thank you, sir.

4 SOLICITOR SMITH: April, April of '19 to August of '21.

5 THE COURT: Okay. Thank you, sir.

6 All right. Mr. Nowicki, sir, is that your
7 understanding first of the offenses that Mr. Blackwell will
8 be entering his pleas to?

9 MR. NOWICKI: Yes, Your Honor.

10 THE COURT: And is that further your understanding of
11 the status of negotiations, that, in fact, there is a
12 negotiated sentence on four charges and a cap of 40 with
13 regard to the murder --

14 MR. NOWICKI: Yes, Your Honor.

15 THE COURT: -- instead of it being 30 to life?

16 MR. NOWICKI: Right.

17 THE COURT: Okay. Mr. Blackwell, sir, is that your
18 understanding?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Okay. Let me go ahead and place you under
21 oath.

22 Okay. If -- Ms. Camp can do it. I'm use to doing it
23 virtually and doing it myself.

24 So, yeah, Ms. Camp can do it.

25 (WHEREUPON, the Defendant was placed under oath at this

1 time.)

2 THE COURT: Okay. And so, Mr. Blackwell, sir, this is
3 the way this will work today.

4 Okay. In just a minute I'm going to go over a series
5 of questions with you regarding your understanding of the
6 offenses that you're entering your pleas to, your
7 understanding that this is a plea, not a trial --

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: -- your satisfaction with legal counsel and
10 then I'm going to ask how do you plead, guilty or not
11 guilty, okay---

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: ---as to all of the offenses. After that I
14 am going to hear from the State and anyone that wishes to
15 address me on behalf of the victims, and then I will hear
16 from Mr. Nowicki. Lastly I will hear from you, sir, and I
17 will allow you to tell me anything that you want to
18 concerning sentencing.

19 Okay?

20 THE DEFENDANT: (Nods affirmatively.)

21 THE COURT: But I -- right now, I want you to
22 understand that if there's a question, if you have a
23 question about anything during the plea hearing and you need
24 to talk to your lawyer, you let me know and we can take a
25 break to allow y'all to talk privately.

1 okay?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you understand that?

4 THE DEFENDANT: Yes, ma'am, I do.

5 THE COURT: And are you ready to go forward?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. Mr. Nowicki, if you want to have a
8 seat, you can, but I'm, I'm going to ask that Mr. Blackwell
9 remain standing.

10 okay?

11 MR. NOWICKI: Yes, ma'am.

12 THE COURT: Mr. Blackwell, sir, do you understand that
13 the purpose of the hearing today is for you to enter pleas
14 on the charges against you?

15 That would be as opposed to having a jury trial or a
16 bench trial on the charges against you.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And when you enter a plea, you waive not
19 only your right to a trial by jury, but you also waive your
20 right to confront witnesses against you, and your right to
21 remain silent.

22 Do you understand?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Sir, if you were to go forward and have a
25 trial, the burden of proof would not be on you and your

1 legal counsel. The burden of proof is on the State, on the
2 solicitor, to prove every element of every charge against
3 you beyond a reasonable doubt. You, sir, are presumed to be
4 innocent until proven guilty.

5 Do you understand?

6 THE DEFENDANT: Yes, ma'am, I do.

7 THE COURT: And, if you were to have a jury trial,
8 every member of your jury, all 12, would have to agree for
9 you to be found guilty.

10 Do you understand that?

11 It has to be a unanimous verdict.

12 Do you understand?

13 THE DEFENDANT: Yes, ma'am, I understand.

14 THE COURT: And so, understanding all of that,
15 Mr. Blackwell, is it your wish today to waive these very
16 important constitutional rights in exchange for pleas on
17 these charges?

18 THE DEFENDANT: Yes, ma'am, it is.

19 THE COURT: Sir, has anyone threatened you or coerced
20 you or promised you anything to get you to enter your pleas?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: And, Mr. Blackwell, don't be offended. I
23 ask everybody these next questions.

24 Okay. Are you today under the influence of alcohol,
25 drugs, or any intoxicant that would impair your judgment?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Do you suffer from any mental or physical
3 infirmity that would affect your ability in understanding
4 what we're doing?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Do you take any type of prescribed
7 medications?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: And are you satisfied with the services of
10 your legal counsel?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. Mr. Blackwell, I'm gonna go over the
13 charges against you.

14 Okay?

15 THE DEFENDANT: Okay.

16 THE COURT: Okay. Sir, I have a true billed indictment
17 and this is actually a two count indictment. It is action
18 or Indictment Number or Case Number 19-GS-42-4607 and this
19 is for the offense of -- offenses of murder and possession
20 of a firearm during the commission of a violent crime.

21 Sir, the potential penalty for this offense of murder
22 is normally 30 years to life in prison, and, with regard to
23 2019-GS-42-4607A, possession of a weapon during the
24 commission of a violent crime, the penalty is a mandatory
25 five years.

1 Okay. And so first let me ask you, with regard to this
2 indictment and the two counts, do you understand the
3 offenses that you're entering your pleas to?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Also, do you understand the potential
6 penalties?

7 THE DEFENDANT: Yes, ma'am, I do.

8 THE COURT: Okay. Further, with regard to the offense
9 of murder, this offense is classified as being violent and
10 most serious.

11 Do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you have any questions regarding that
14 for me or for Mr. Nowicki?

15 THE DEFENDANT: No, ma'am, I don't.

16 THE COURT: Okay. Sir, with regard to Indictment, true
17 billed, Indictments 19-4608 and 4609, these are both true
18 billed in -- indictments for the offenses of attempted
19 murder.

20 And, sir, so do you understand what the offenses that
21 you're entering your pleas to under these indictments for
22 attempted murder?

23 THE DEFENDANT: Yes, ma'am, I do.

24 THE COURT: And, sir, do you understand that the
25 potential penalty for these offenses is not more than 30

1 years?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Further, sir, do you understand that these
4 offenses are classified as violent and most serious?

5 THE DEFENDANT: Yes, ma'am, I understand.

6 THE COURT: Do you have any questions regarding this
7 classification for me or for Mr. Nowicki?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: And, sir, lastly, I have True Bill
10 Indictment 2019-GS-42-4610 and this is a true billed
11 indictment for the offense of trafficking in
12 methamphetamine.

13 Sir, you are pleading to that offense with a weight of
14 more than 10 but less than 28 grams first offense. The
15 potential penalty is a minimum of three years up to a
16 maximum of 10 years and a mandatory \$25,000 fine.

17 Sir, with regard to this indictment, and this offense,
18 do you understand what you're entering your plea to?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And do you understand the potential
21 penalty?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. Further, sir, this is
24 classified -- this offense is classified as being violent
25 and serious.

1 Do you understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you have any questions regarding that
4 classification for me or for Mr. Nowicki?

5 THE DEFENDANT: No, ma'am, I don't.

6 THE COURT: Okay. Thank you.

7 Now, further, Mr. Blackwell, this is coming before me
8 as a negotiated sentence and that tells me several things
9 about the case. That tells me that, before today, a lot of
10 time has been spent on this case from the solicitors
11 involved, from your attorney, and you. And I, I certainly
12 do, and, and I say this in every case where attorneys come
13 before me with negotiated sentences, I applaud the effort
14 that it takes to get ready and prepare, and you weren't in
15 -- you weren't in a local detention facility I'm assuming
16 when this was being negotiated and that required a lot of
17 effort and time as well.

18 What you need to understand is that I can accept the
19 negotiated sentences that are absolute or reject them. I
20 can not change them.

21 Do you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And if I decide to reject them after I hear
24 more about the facts of the cases, I would allow you and
25 your lawyer to regroup. Y'all would stand down today and

1 decide what y'all wanted to do, if you wanted to go forward
2 with the trial, or have your plea in front of a different
3 judge.

4 Do you understand that?

5 THE DEFENDANT: Yes, ma'am, I understand.

6 THE COURT: Okay. So, now, with regard to the
7 sentences that have been negotiated completely, as to
8 Indictment 19-4610, trafficking meth -- in meth or cocaine
9 base 10 to 28 first offense, the sentence that has been
10 negotiated is 10 years and a fine of \$25,000. The fine is
11 mandatory.

12 Do you understand?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: With regard to Indictments 19-4608 and 4609
15 for attempted murder, the sentences that have been
16 negotiated are 30 years.

17 Do you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And with regard to possession of a weapon
20 during the commission of a violent crime, 2019-4607A, the
21 penalty would be five years negotiated.

22 Do you understand?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And with regard to Indictment 19-4607,
25 which is the murder charge, I have been given a cap of 40

1 years. So, the range that I have discretion with as to that
2 is between 30 to 40 years.

3 Do you understand?

4 THE DEFENDANT: Yes, ma'am, I understand.

5 THE COURT: Okay. And there has been a question
6 brought up about credit for time served of 853 days.

7 sir, do you understand that that is also within my
8 discretion?

9 THE DEFENDANT: Yes, ma'am, I understand that.

10 THE COURT: Okay. All right. And so, Mr. Blackwell,
11 sir, understanding all of that, do you wish to enter your
12 pleas as to these offenses at this time?

13 THE DEFENDANT: Yes, ma'am, I do.

14 THE COURT: How do you plead?

15 THE DEFENDANT: I plead guilty.

16 THE COURT: Are you doing so freely, knowingly, and
17 voluntarily?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: sir, please be advised that in the event
20 that you wish to appeal any aspect of the plea hearing
21 today, you only have 10 days to do so in writing to this
22 Court.

23 Do you understand?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Okay. And so now I am going to hear from

1 the assistant solicitor regarding the facts and then I'm
2 going to ask you, sir, if that's what happened.

3 okay?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right. So you can be seated, sir, and
6 let me hear from Mr. Smith, and then, if Ms. Harris wishes
7 to address me, I will hear from her after Mr. Smith.

8 okay?

9 SOLICITOR SMITH: Thank you, Your Honor.

10 The trafficking is the first case. It occurred on June
11 the 12th of 2018. Spartanburg deputies set up a
12 controlled buy with a CI on the defendant in Spartanburg
13 County. It was over on the east side of Spartanburg.

14 The CI was searched pre and post and audio recording
15 equipment was given. The CI exchanged \$350 for drugs and
16 those drugs came back as 13 grams of meth. And
17 Mr. Blackwell was armed and showed a weapon during that CI
18 buy.

19 The murder occurred on January the 28th of 2019.
20 Deputies responded to Thomas Road in Spartanburg County for
21 a drive-by shooting.

22 During the shooting, Mr. Marcus Kirk was shot and
23 ultimately died from his injuries at the house. Witnesses
24 stated that they heard tire screaming -- squealing and
25 several gunshots and then Marcus said he was hit and fell to

1 the ground.

2 Ms. Harris, who is the fiancée of Mr. Kirk at the time,
3 told law enforcement that Marcus had left the residence with
4 a neighbor named Steve about an hour before this incident
5 happened to go buy weed from a guy named Hank. Steve is
6 known to make counterfeit money and she believed that Marcus
7 and Steve had probably paid Hank with counterfeit money.
8 She explained that Hank would know where they live.

9 Officers searched the residence and there was a bullet
10 hole through the front window of the house. It's kind of
11 near traditionally -- it's the front door of the house and
12 then there's two windows to the right that's the bedroom.
13 There was a hole through one of the windows that goes into
14 the bedroom. There was another hole between the two windows
15 that went into the siding. There was a hole in the garage
16 door at the house and a hole to the left of the front door.
17 Inside of the bedroom there was a hole in the TV and there
18 was a hole in a mirror that was inside of the bedroom.

19 They were not able to find the projectiles that had
20 gone through the garage and through the front door. But
21 they were able to recover both of the projectiles out of the
22 TV and out of the mirror. Ballistics test later showed that
23 the bullet in the TV was from a .40 caliber pistol and the
24 bullet in the mirror was from a .380.

25 Officers contacted Mr. Hank Wright, Bobby Hank Wright,

1 and he agreed to come in and speak with investigators. He
2 admitted to selling drugs to Marcus Kirk the night before.
3 He did state that there were two people with him during the
4 deal but refused to say who they were. He said that he only
5 got 20 bucks in counterfeit money and the rest was
6 legitimate and he was not that upset about it.

7 we later found out that the deal was for \$550. So, at
8 that time, he was representing it to be significant --
9 insignificant enforcement of the money.

10 They did continue to speak with Hank's wife, Yolanda
11 wright. She told investigators that Austin Bailey and Tyler
12 Bright were with her and Hank that night when they did the
13 drug deal. She also stated that a man named Matthew
14 Blackwell, the defendant, who is the brother of Austin
15 Bailey, had come over later.

16 she said Hank was very upset about the counterfeit
17 money and was talking about teaching Marcus a lesson.
18 Mr. Bailey says he called Mr. Blackwell because he knew that
19 he would have his back.

20 Your Honor, old -- the defendants were arrested.
21 Mr. Wright was arrested without incident. Mr. Bailey and
22 Mr. Bright were arrested together in a car in Spartanburg
23 County, and Mr. Blackwell was spoken to at the Cherokee
24 County Detention Center.

25 Mr. Bailey admitted to driving the car during the

1 shooting. Tyler Bright admitted to being in the rear
2 passenger side seat and was one of the people that fired at
3 the house. Hank wright admitted to being in the vehicle and
4 to selling a gun to Blackwell prior to the shooting so
5 Blackwell could shoot.

6 Bailey, Bright and wright were all consistent as to who
7 the two shooters were. That would be Blackwell and Bright
8 as well as the relative positioning of all of the people in
9 the car.

10 Mr. Blackwell attempted to give an alibi through his
11 girlfriend saying that he was at the lake. She was also in
12 jail from the charges in Cherokee and she did not back up
13 his version. Said she had been seeing -- did not see him on
14 Monday, which is when the incident occurred.

15 Your Honor, the, the -- I, I think, in general, the
16 three people that spoke were, were largely truthful about
17 what happened. One of the sticking points is what was the
18 initial plan to, to be when they went over to Mr. Kirk's
19 house. They also stated that it was initially to fight them
20 but that, once they drove past the house, they went down to
21 the bottom of the cul-de-sac, continued to talk, and it
22 became to shoot him.

23 The State doesn't believe that that's true. They give
24 statements about weapons being loaded prior to going.
25 Another thing I think that, that shows the premeditated

1 nature of this is they contact Mr. Blackwell, well, I think
2 only because he would be back up but because Mr. Blackwell
3 had a, a vehicle. They needed a different vehicle than the
4 one that had just been involved in the drug deal because
5 otherwise the victim would potentially be able to identify
6 them. I think that was part of the reason Blackwell was
7 brought in was to try to not be caught.

8 They did do cellphone examinations on all of the
9 defendants and it appears that they all left their
10 cellphones back at a house which, again, shows the
11 premeditated nature of, of the crime and the idea that they
12 were going to shoot, not to fight.

13 They all -- basically everybody was also armed in this
14 incident, Your Honor. Austin Bailey, the driver, had a .40
15 caliber pistol. Tyler Bright had a .380 and Mr. Blackwell
16 had a .40 caliber that he purchased from Mr. Wright in the
17 vehicle.

18 And, Your Honor, just one of the things that I find
19 disturbing about the case is Mr. Blackwell was initially
20 driving to Mr. Kirk's house. It, it was his car and
21 apparently, as the plan developed or whatever you believe,
22 if it was developed beforehand, he indicated that he wanted
23 to shoot at the house and that's why he purchased the gun
24 from Mr. Wright and then Mr. Bailey and Mr. Blackwell
25 actually switched seats. They say it occurred, or at least

1 Mr Bailey says that occurred down at the cul-de-sac.

2 And so Mr. Bailey took over driving the car.

3 Mr. Blackwell moved to the front passenger seat and then
4 proceeded to fire at the house.

5 Your Honor, I know I discussed earlier about the .40
6 caliber being pulled out of the mirror. We believe that's
7 significant, combined with the fact that Mr. Blackwell
8 possessed a .40 caliber, based off the information we have
9 from the other codefendants because, based off of what Ms.
10 Harris says about what they were doing prior to the
11 shooting, we believe that Mr. Blackwell is ultimately the
12 person that fired the fatal shot in this case.

13 Ms. Harris says that she and Mr. Kirk were basically
14 playing video games on the TV sitting on the bed. Mr. Kirk
15 was shot in the neck and the bullet that they came out of
16 the TV, which would be consistent with him sitting in front
17 of it, was a .40 caliber, which is what Mr. Blackwell had.

18 The .380 that Mr. Bright was shooting did penetrate
19 into the bedroom that they were in but it went into the
20 mirror, and I don't believe that is consistent with having
21 killed Mr. Kirk. There was no projectile inside Mr. Kirk
22 that we know of passed through his body and then into the
23 TV.

24 Your Honor, those would be -- well, it's -- sorry. Ms.
25 Harris and her mother, who is also Ms. Dorothy Harris, were

1 present in the house at the time. Those are the basis of
2 the attempted murder charges as well. Ms. Harris was
3 sitting right next to Mr. Kirk and then her mother was in
4 another room.

5 I do have his prior record at the appropriate time, and
6 then I would let Ms. Harris say anything that she would like
7 to.

8 THE COURT: Okay. Okay. Thank you.

9 Before I hear from Ms. Harris, let me ask,
10 Mr. Blackwell, is that what happened?

11 THE DEFENDANT: Yes, ma'am. Yes.

12 THE COURT: All right. Thank you.

13 I find there is a factual basis for the plea.

14 All right. Ms. Harris, is there anything that you'd
15 like to share with me, ma'am?

16 You're not required to but I'm happy to hear from you
17 if you wish to.

18 MS. HARRIS: I do want to clarify that it -- it's not
19 my mother. It's my grandmother. But other than that, there
20 is nothing that I really have to say that I have not said
21 before.

22 You know, this is an act of stupidity and ignorance and
23 it could have very well been -- you know, they could have
24 came over and fought him and settled like that and I
25 wouldn't have had to call Mr. Kirk's mother or his children

1 and explain to them that their father is gone. His oldest
2 son's birthday was the next day and that was the hardest
3 part of this was having to tell his son on his birthday that
4 his father is not going to be there and seeing the look on
5 those children's faces as we buried Mr. Kirk.

6 This, this is something that could of been easily
7 avoided if it was talked about amongst men and not children.
8 And, at this time, that is all I do have to say.

9 THE COURT: Thank you, ma'am. Thank you for being with
10 us today.

11 Okay. Okay. why don't, why don't I go ahead and get
12 the prior conviction history for the last 10 years and then
13 I'll hear from Mr. Nowicki.

14 Okay?

15 SOLICITOR SMITH: Yes.

16 Your Honor, 2013, possession of marijuana.

17 2014, possession of marijuana.

18 2015, possession of marijuana, unlawful carry, and
19 driving under suspension.

20 2017, possession of a controlled substance and domestic
21 violence third degree.

22 2019, a trafficking meth and possession of marijuana,
23 that's from the Cherokee incident.

24 Your Honor, the, the other codefendants in this case
25 are all on the trial docket for next week. They do not have

1 offers. None of them have been resolved. Hopefully we're
2 gonna be handling that after this.

3 Mr. Blackwell was the only person that did not confess
4 to his role. So, we were trying to take his -- resolve his
5 case first and then resolve the remaining ones. And, Your
6 Honor, I neglected, neglected to mention that as it
7 continued to develop, from what they said, it was -- the
8 entire amount of money was counterfeit.

9 THE COURT: Okay.

10 SOLICITOR SMITH: They did find that both at Mr. Kirk's
11 house and at Mr. Bobbie Wright's house.

12 THE COURT: Okay. The, the entire \$550.00 is -- okay.
13 All right.

14 SOLICITOR SMITH: Yes, ma'am.

15 THE COURT: Okay. All right. Thank you.

16 So, Mr. Nowicki, good morning again, sir.

17 Did you have an opportunity to review the evidence and
18 the discovery with your client?

19 MR. NOWICKI: Yes, I did. Mostly reviewed was because
20 of COVID and he was in the Kershaw Correctional Institute
21 that we had to do a lot by phone. And so, we did send him
22 what he could, everything, and I've discussed with him my
23 review of the evidence.

24 And so, I'm gonna -- yes, we -- we've gone over pretty
25 much what we could.

1 THE COURT: Okay. Do you need additional time to
2 review any more evidence with him or any other discovery?

3 MR. NOWICKI: No, Your Honor. Based on our
4 conversations, I, I think we're, we're fine.

5 THE COURT: Okay. Mr. Blackwell, is that correct, sir?

6 THE DEFENDANT: Yes, ma'am, it is.

7 THE COURT: Okay. well, let me ask the solicitor was
8 there any information that, that was not available to Mr.
9 Nowicki and Mr. Blackwell due to backup in testing or
10 anything like that?

11 SOLICITOR SMITH: Not to my knowledge.

12 MR. NOWICKI: No.

13 SOLICITOR SMITH: I did represent to him I believe that
14 the three that did cooperate with law enforcement were
15 likely to testify against him should he go to trial. But
16 they had all -- they were giving the same stories that
17 they'd given to law enforcement. Both of them -- no,
18 actually all three of them, once they hired attorneys, met
19 again with the solicitor's office and the sheriff's office
20 and gave even more detailed statements and obviously one of
21 them is his brother. I think that was gonna be significant
22 probably in his decision making to have his brother testify
23 against him.

24 THE COURT: Okay. Okay. And so, Mr. Nowicki, again,
25 sir, do you believe that you have reviewed, or based on your

1 forwarding information to Mr. Blackwell, that he has had an
2 opportunity to review all of the evidence and the discovery?

3 MR. NOWICKI: Yes.

4 THE COURT: Okay. Thank you.

5 All right. I'm happy to hear from you, sir.

6 MR. NOWICKI: Thank you, Your Honor.

7 May it please the Court?

8 THE COURT: Yes, sir.

9 MR. NOWICKI: Mr. Blackwell is 26 years old and he
10 completed the eighth grade. He has been employed. I mean
11 he did landscaping work, had worked with his dad also doing
12 like flooring, carpeting, hardwood.

13 Mr. Blackwell does not have any children and, during
14 this timeline, Mr. Blackwell was suffering from a drug
15 addiction. He was addicted to meth, and as you can see from
16 his record, I mean it looks like it started with marijuana
17 and progressed and he, he was not always in the right frame
18 of mind. You know, the drugs really hurt him and, you know,
19 he has admitted, admitted that to me.

20 Obviously, since he's been in prison, I mean he's
21 sobered up. But, during this time, with -- it was pretty
22 rough for Mr. Blackwell.

23 And, Your Honor, you know, this was a, a tragedy that
24 happened that shouldn't have happened and, you know,
25 condolences go to the family for this. This was a, was a

1 big mistake on the part of Mr. Blackwell and the other
2 codefendants.

3 Mr. Blackwell's dad has been in constant contact with
4 our office and we, we thought he was gonna be here today but
5 he's not. I believe it has to do with Mr. Blackwell. I
6 don't think he really wanted his dad here to be present for
7 all of this but he does have family support.

8 As I indicted before this, you know, this is a tragedy
9 and what's, what's difficult about all this is, you know,
10 it, it really started off because of a drug deal. And,
11 again, drugs are bad out there and, and, again, you know,
12 counterfeit money was used and we had the, you know,
13 codefendants and Mr. Blackwell getting upset over that and
14 just not in a right frame of mind.

15 It was a big mistake to try to use guns to solve a
16 problem. And, you know, in the mean time, guns were used.
17 They were fired and, unfortunately, we have somebody that is
18 dead because of that and it could have been a lot worse
19 because there were two people -- other people that were in,
20 in that residence.

21 Mr. Blackwell made a, a very poor choice in, in this
22 case and, and he knows it. He's remorseful. He's expressed
23 that to me and wants to apologize to the family. I believe
24 he has written a letter that he would like to read at the
25 appropriate time.

1 And, Your Honor, the, the thing with Mr. -- I mean
2 Mr. Blackwell's a young man, and, you know, only completing
3 the eighth grade and being add -- addicted to drugs, I'm not
4 saying that as an excuse for what has happened. But it
5 definitely was a problem at that time for him.

6 And, again, he's remorseful and just sorry that this
7 has happened and he's here, you know, taking responsibility
8 for that and not putting everybody through a, a difficult
9 trial and I -- we're asking mercy on the Court.

10 I, I believe a 30 year sentence, it would be fair in
11 something like this based on his age and, and based on, you
12 know, having a drug problem and, and all that. And, and 30
13 years is a long time, Your Honor, and I, I believe that the
14 30 years and have everything run concurrent with that, you
15 know, that -- that's gonna be a long sentence for a 26 year
16 old.

17 Thank you and if you'd like to hear from Mr. Blackwell.

18 THE COURT: Yes, sir, and I may not have made it clear
19 and let me address this to Mr. Blackwell.

20 The, the sentence that has been negotiated, sir, those
21 are concurrent.

22 Do you understand that?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. And does this in any way interfere
25 with your willingness to enter your plea?

1 THE DEFENDANT: No, ma'am, it doesn't.

2 THE COURT: You want to go forward or not?

3 THE DEFENDANT: Yes, ma'am, I do.

4 THE COURT: Want to?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. All right.

7 So, Mr. Nowicki, then I'm going to hear from

8 Mr. Blackwell unless there's anything else from anyone.

9 Mr. Smith.

10 SOLICITOR SMITH: We don't have anything, Your Honor.

11 THE COURT: Okay. All right. Sir, if you'll please
12 rise. I'm happy to hear from you.

13 THE DEFENDANT: Yes, ma'am, I just want to read my
14 letter --

15 THE COURT: Yes, sir.

16 THE DEFENDANT: -- if you don't mind?

17 THE COURT: Yes, sir, take your time.

18 THE DEFENDANT: On January 28th, 2019, I made a
19 mistake, a very poor decision. I may of -- run around on
20 drugs cost a man's life. No matter the reason why, there's
21 no excuse or to justify this case or the decision I made.
22 And I'm here today to accept responsibility for my actions
23 and putting this man's family through this.

24 I never intend for anyone to get hurt. What started
25 out as a scare tactic ended up being fatal and, for that, I

1 want to say to the family I apologize and I'm very sorry for
2 taking a loved one out of their lives. I don't expect
3 forgiveness for what I done. Just a little understanding
4 because I do want to let it be known that I know I really
5 messed up and I made a terrible, youthful mistake when I was
6 strung out on drugs and I'm ready to face the consequences
7 at this time.

8 THE COURT: Thank you, sir.

9 Is there anything else you'd like to tell me?

10 THE DEFENDANT: No, ma'am. That will be it.

11 THE COURT: Do you, do you agree with the statements of
12 your lawyer?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. All right. Thank you, sir.

15 Y'all can bear with me just one moment.

16 Okay.

17 (Pause.)

18 THE COURT: I do have a question for Mr. Nowicki and
19 Mr. Smith.

20 what would be the amount of time that Mr. Blackwell is
21 entitled to without the time for the drug charge -- the, the
22 Cherokee County charges?

23 Is there any separate time that he was incarcerated?

24 SOLICITOR SMITH: Be, be -- before he pled to those?

25 So just the time he -- I, I can figure it out.

1 Actually Ms. Leskanic did the direct indictment. He was
2 arrested in January like the other defendants.

3 THE COURT: Okay.

4 SOLICITOR SMITH: I think January 29th or January 30th
5 and then he went to the DOC on June 25th of 2019. So let me
6 --.

7 THE COURT: But there's no -- so there was no
8 independent time that he was incarcerated on these charges,
9 right?

10 He was all---

11 SOLICITOR SMITH: We did get him -- before he pled to
12 the Cherokee charges he was, he was transported over to
13 Spartanburg --

14 THE COURT: Okay.

15 SOLICITOR SMITH: -- had a bond hearing and then was
16 transported back to Cherokee and then pled guilty in June of
17 2019.

18 THE COURT: Okay.

19 SOLICITOR SMITH: But he was in the Cherokee Detention
20 Center. He's never really been in the Spartanburg County
21 Detention Center.

22 THE COURT: Okay. What I'm going to do to cover
23 everything, I will -- I'm going to, of course, check the box
24 that the defendant is to be given credit for time served
25 pursuant to SC Code 24-13-40, okay, to be calculated and

1 applied by the South Carolina Department of Corrections
2 and -- okay?

3 SOLICITOR SMITH: (Nods affirmatively.)

4 THE COURT: Okay. All right. Thank you.

5 SOLICITOR SMITH: Yes, ma'am.

6 THE COURT: Okay. With regard to the matter of the
7 State versus Matthew Tyler Blackwell, and as to Indictments
8 19-4608 and 4609 for the offenses of attempted murder, I
9 will accept the sentence that has been negotiated on behalf
10 of the State and order that the defendant be committed to
11 the State Department of Corrections for a period of 30
12 years. These are concurrent sentences.

13 Mr. Blackwell will be given credit for time served
14 pursuant to South Carolina Code 24-13-40 to be calculated
15 and applied by the South Carolina Department of Corrections.
16 The special conditions are there will be no contact with the
17 victims or the victim's family members. And I have
18 requested that Mr. Blackwell be referred to the Addiction
19 Treatment Unit if that is deemed appropriate during his
20 period of incarceration.

21 With regard to Indictment 19-4610, and the offense of
22 trafficking in methamphetamine or cocaine base 10 to
23 28 grams first offense, I am accepting the sentence that has
24 been negotiated on behalf of Mr. Blackwell and ordering that
25 he receive a or that he be committed to the State Department

1 of Corrections for a period of 10 years and pay a fine of
2 \$25,000.

3 This sentence is concurrent with his other sentences.
4 And, again, the same credit for time served will apply as
5 may be calculated by SCDC and the other conditions also
6 apply.

7 With regard to Indictment 19-4607A, possession of a
8 weapon during the commission of a violent crime, I am
9 accepting the sentence that has been negotiated on behalf of
10 Mr. Blackwell and ordering that he be committed to the State
11 Department of Corrections for a period of five years. This
12 is a concurrent sentence. And, again, he will be given any
13 time -- credit for time that he has spent at the detention
14 facility that SCDC calculates as appropriate.

15 Now, with regard to Indictment 19-GS-42-4607, and this
16 is for the offense of murder, I have taken into
17 consideration the, the solicitor's statements regarding the
18 time that Mr. Blackwell has spent at the Department of
19 Corrections after pled -- having pled to charges pending in
20 another county, that he did so quickly, and that had he not
21 done so quickly and done -- and pled to those charges at
22 this time, all of these sentences would be concurrent and he
23 would of gotten credit for any time spent at the local
24 detention facility since he was served with these charges.

25 And so I am ordering that the defendant be committed to

1 the State Department of Corrections for a period of 38
2 years. This is concurrent and he will be given any credit
3 for time served pursuant to South Carolina Code 24-13-40 to
4 be calculated and applied by the South Carolina Department
5 of Corrections. The special conditions again are that he
6 will have no contact with the victim's family members and he
7 will be referred to the Addiction Treatment Unit.

8 Mr. Blackwell, I wish you, sir, and the victim's family
9 members the very best in the future. That will conclude the
10 hearing.

11 Thank you.

12 MR. NOWICKI: Thank you, Your Honor.

13 SOLICITOR SMITH: Thank you, Your Honor. Thank you for
14 accommodating this through all the --

15 THE COURT: Yes, sir.

16 SOLICITOR SMITH: -- up and downs.

17 THE COURT: I'm glad, I'm glad to be of assistance
18 while my jury trial ended.

19 Okay.

20 SOLICITOR SMITH: Yes, ma'am.

21

22 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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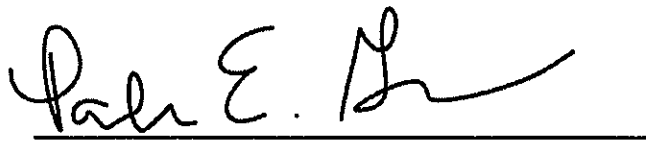
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 27th day of August, 2021.

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

July 25th, 2022



PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Spartanburg)
)
Matthew Blackwell, #380514)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF

2022-CP-42-02253

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kershaw C.I., 4848 Goldmine Hwy. Kershaw SC 29067
2. Name and location of Court which imposed sentence Spartanburg County Court Of General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder-Never seen the indictment, so I dont know the numbers
 - (b) two counts of attempted murder,-never seen indictments

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 SPARTANBURG COUNTY
 S.C. 29101

(c) Comm. of a weapon during a violent crime-never seen indictment

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

(a) _____

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) Counsel never consulted with me about appealing

(b) _____

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SOUTH CAROLINA
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(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) SEE SUPPORTING MEMORANDUM _____

(b) SEE SUPPORTING MEMORANDUM _____

(c) SEE SUPPORTING MEMORANDUM _____

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

(a) SEE SUPPORTING MEMORANDUM _____

(b) SEE SUPPORTING MEMORANDUM _____

(c) SEE SUPPORTING MEMORANDUM _____

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(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. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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SPARTANBURG COUNTY
AMY M. COX

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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?

- N/A
- N/A

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

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

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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) N/A
- (b) N/A
- (c) N/A

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. _____
 - _____
 - ii. _____
 - _____
 - iii. _____
 - _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea and sentencing
 - _____
 - _____
 - ii. _____
 - _____
 - _____
 - iii. _____
 - _____

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 SPARTANBURG COUNTY
 ANN W. COX
 Revised 3/2003

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

I want my sentence vacated

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

no

STATE OF SOUTH CAROLINA)
County of SPARTANBURG)

VERIFICATION

I, Matthew Blackwell, 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.

I hereby certify under the penalty of perjury, 28 U.S.C. § 1746 that the information stated is true to the best of my knowledge.

Matthew Blackwell

SWORN to and subscribed before me this _____ day of _____, _____.

Notary Public (L.S.)

My Commission Expires: _____

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SPARTANBURG COUNTY
AMY M. COX
Revised 3/2003

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

I, Matthew Blackwell, 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.

I hereby certify under the penalty of perjury, 28 U.S.C. § 1746 that the information ^{Applicant} stated is true to the best of my knowledge.

Matthew Blackwell

SWORN or affirmed to and subscribed before me this
_____ day of _____, _____.

Notary Public

My Commission Expires: _____

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SPARTANBURG COUNTY
AMY M. COX
Revised 3/2003

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Matthew Blackwell, #380514,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2022-CP-42-02253

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter "PCR") application filed on June 21, 2022 by Matthew Blackwell (hereafter "Applicant"). Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its August 2019 term, the Spartanburg County Grand Jury indicted Applicant for murder (count one) and possession of a firearm during the commission of a violent crime (count two) (2019-GS-42-04607), two counts of attempted murder (2019-GS-42-04608 and -04609), trafficking in methamphetamine (2019-GS-42-04610), and distribution of methamphetamine within one-half mile of a school or park (2019-GS-42-04611). Applicant was represented by William J. Nowicki, Esquire. Assistant Solicitor Spenser Smith of the Seventh Circuit Solicitor's Office prosecuted the case. On August 27, 2021, Applicant appeared before the Honorable Grace Gilchrist Knierim, circuit court judge, and pled guilty to a negotiated cap of forty years' imprisonment on the murder charge and to the maximum sentences on all other charges, running concurrently. The

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AMY W. COOK
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State dismissed the half mile charge connected to the trafficking charge. In accordance with the negotiations, Judge Knie sentenced Applicant to thirty-eight years' imprisonment on the murder charge, thirty years' imprisonment on each attempted murder charge, ten years' imprisonment on the trafficking charge, five years' imprisonment on the weapons charge, sentences running concurrently. Applicant did not pursue a direct appeal.

II. Statement of Facts

On June 12, 2018, Applicant was caught involved in a controlled buy with a confidential informant where he exchanged thirteen grams of methamphetamine for \$350. (Tr. 17). During this buy, Applicant was armed and showing a weapon. (Tr. 17).

On January 28, 2019, officers responded to a drive-by shooting. (Tr. 17). Witnesses stated that they heard screeching tires, several gunshots, and saw Marcus Kirk fall and hit the floor. (Tr. 17-18).

Ms. Harris, who was the fiancée of Marcus, told law enforcement that Marcus left the residence with a Steve about an hour before the incident to buy weed from a man named Hank. (Tr. 18). Steve was known to make counterfeit money that Harris believed was used to pay Hank with counterfeit money. (Tr. 18). She explained that Hank would know where they live. (Tr. 18).

Officers searched the residence and there was a bullet hole through the front window of the house. (Tr. 18). There was a hole through one of the windows that went into the bedroom. There was another hole between the two windows that went into the siding. (Tr. 18). There was a hole in the garage door and a hole to the left of the front door. Inside the bedroom there was a hole in the TV and there was a hole in a mirror that was inside of the bedroom. (Tr. 18). The projectiles that went through the garage and the front door were not found but recovered both projectiles out of the TV and out of the mirror. (Tr. 18). Ballistics test later showed that the bullet

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in the TV was from a .40 caliber pistol and the bullet in the mirror was from a .380. (Tr. 18).

Officers contacted Mr. Hank Wright, Bobby Hank Wright, and he agreed to come in and speak with investigators. (Tr. 18-19). He admitted to selling drugs to Marcus the night before. He stated that there were two people with him but refused to provide names. (Tr. 19). He stated that he only got twenty dollars in counterfeit money and the rest was legitimate and he was not upset. (Tr. 19). The deal was for \$550. (Tr. 19).

Officers spoke with Hank's wife, Yolanda Wright. She stated that Applicant, who is the brother of Austin Bailey, went over later. (Tr. 19). She said Hank was very upset about the counterfeit money and was talking about teaching Marcus a lesson. (Tr. 19). Mr. Bailey says he called Applicant because he knew he would back her up. (Tr. 19).

The defendants were arrested. Mr. Wright was arrested without incident. (Tr. 19). Mr. Bailey and Mr. Bright were arrested together in a car in Spartanburg County, and Applicant was spoken to at the Cherokee County Detention Center. (Tr. 19).

Mr. Bailey admitted to driving the car during the shooting. (Tr. 19-20). Tyler Bright admitted to being in the rear passenger side seat and was one of the people that fired at the house. (Tr. 20). Hank Wright admitted to being in the vehicle and to selling a gun to Applicant so he could shoot. (Tr. 20).

Bailey, Bright and Wright were all consistent as to who the two shooters were: Applicant and Bright. (Tr. 20). Applicant attempted to give an alibi through his girlfriend, saying that he was at the lake. (Tr. 20). She was in jail and did not back up his version. (Tr. 20). She stated she did not see him on the day of the incident. (Tr. 20).

The defendants stated that the plan was initially to fight them but that, once they drove past the house, they went down to the bottom of the cul-de-sac, continued to talk, and then

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decided to shoot. (Tr. 20). However, statements about weapons being loaded prior to going were given. (Tr. 20). They contacted Applicant because he would be back up but because Applicant had a vehicle. (Tr. 20-21). They needed a different vehicle than the one that had just been involved in the drug deal because otherwise the victim would have been able to identify them. (Tr. 21).

Officers conducted cell phone examinations on all of the defendants, and it appears that they all left their cellphones back at a house, which shows the premeditated nature of the crime and the idea that they were going to shoot. (Tr. 21). Austin Bailey, the driver, had a .40 caliber pistol. (Tr. 21). Tyler Bright had a .380 and Applicant had a .40 caliber that he purchased from Mr. Wright in the vehicle. (Tr. 21). Applicant was initially driving to Mr. Kirk's house. (Tr. 21). He indicated that he wanted to shoot at the house and that's why he purchased the gun from Mr. Wright and then Mr. Bailey and Applicant switched seats. (Tr. 21). Mr. Bailey stated that occurred at the cul-de-sac. (Tr. 21-22). Mr. Bailey took over driving the car. (Tr. 22). Applicant moved to the front passenger seat and fired at the house. (Tr. 22). The State argued that Applicant was the person that fired the fatal shot. (Tr. 22). Ms. Harris says that she and Mr. Kirk were basically playing video games on the TV sitting on the bed. (Tr. 22). Mr. Kirk was shot in the neck and the bullet that they came out of the TV, which would be consistent with him sitting in front of it, was a .40 caliber, which is what Applicant had. (Tr. 22). The .380 that Mr. Bright was shooting penetrated into the bedroom, but went into the mirror, which is inconsistent with the possible trajectory of the fatal shot. (Tr. 22). Ms. Harris and her mother, Ms. Dorothy Harris, were present in the house at the time. (Tr. 22-23). Ms. Harris was sitting right next to Mr. Kirk and her mother was in another room. (Tr. 23).

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III. Current Action before the Court

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

1. Ineffective assistance of counsel:
 - a. Erroneous advice to plead guilty.
 - b. Did not know the charges against him.
 - c. Failure to challenge the indictments/lack of service of indictments.
 - d. Failure to challenge whether Applicant's gun matched the gunshot would that killed the deceased, as per the autopsy.
 - e. Failure to challenge invalid arrest warrants.
 - f. Failure to investigate.
 - g. Failure to prepare defense for trial.
2. Involuntary plea:
 - a. Failure to receive indictment.
3. Subject matter jurisdiction lacking because he was not duly served with an indictment.

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

IV. Argument

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Effective assistance of counsel does not mean perfect or mistake-free representation. See *Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017) (“[A] defendant has a right to effective representation, not a right to an attorney who performs his duties ‘mistake-free.’” (citation omitted)); *Burt v. Titlow*, 571 U.S. 12, 24 (2013) (“[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]”); *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (“The Sixth

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Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. *Strickland*, 466 U.S. at 687-688.

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

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); *see Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel’s strategic decisions are to be afforded “‘strong presumption’ of reasonableness that the defendant must overcome); *Cullen v.*

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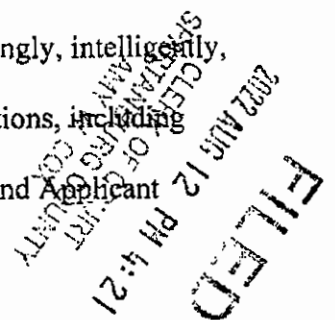
Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

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

Invalid Plea

Respondent contends that the plea was seemingly entered freely, knowingly, intelligently, and voluntarily. After the State called the case and put the charges and negotiations, including negotiations concerning credit for time served credits, on the record, Counsel and Applicant



stated he agreed with what the prosecutor stated concerning the charges and agreements. (Tr. 3-7). The Court confirmed Applicant understood that he could communicate privately with Counsel concerning any question he had regarding the plea hearing. (Tr. 8-9). Applicant stated he was pleading instead of going to trial. (Tr. 9). He stated he understood that by pleading he was waiving his right to a jury trial, to call and confront witnesses, and to remain silent. (Tr. 9-10). Applicant confirmed he wanted to waive these rights and plead. (Tr. 10). Applicant stated he was not under the influence of any drugs or alcohol, nor was he suffering from mental or physical disabilities impacting his understanding of the proceedings. (Tr. 10-11). Applicant stated he was satisfied with Counsel's services. (Tr. 11). The Court at the plea hearing went over all the charges with him in detail, including the charges, sentencing ranges, any violent, serious, and most serious distinction on all charges. (Tr. 11-14). The Court informed Applicant of the significance of a negotiated sentence, including that the Court is bound to the negotiations if the plea is accepted. (Tr. 14). Applicant stated he understood the sentencing ranges and fines on all charges. (Tr. 15-16). Applicant stated he was pleading guilty freely, knowingly, and voluntarily. (Tr. 16). He stated he understood he had ten days to appeal. (Tr. 16). Applicant agreed to the facts as recited by the prosecutor. (Tr. 16-23). He again confirmed he understood the Court was bound to the negotiations if the plea was accepted, that that did not impact his willingness to go forward with the plea, and that he wanted to continue with the plea. (Tr. 29-30). Thus, Respondent contends that the plea was seemingly entered freely, knowingly, intelligently, and voluntarily and cannot be withdrawn now.

Charges

Applicant claims his plea was involuntary because he did not understand the charges against him. However, the Court at the plea hearing went over all the charges with him in great

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detail, including the charges themselves, sentencing ranges, any violent, serious, and most serious distinction on all charges. (Tr. 11-14). Thus, Respondent contends that this allegation is seemingly refuted by the record but requests an evidentiary hearing to fully resolve the matter.

Indictments

Applicant claims Counsel was ineffective for failure to challenge the indictments or lack thereof and that the plea was involuntary because of the lack of indictments. Challenges to the indictment must be raised before a jury is sworn in. S.C. Code Ann. § 17-19-90 (2003). If non-jurisdictional defects apparent on the face of the document are not raised before then, they are waived. *Hooks v. State*, 353 S.C. 48, 577 S.E.2d 211, (2003), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *State v. Young*, 243 S.C. 187, 133 S.E.2d 210 (1963). Sufficiency of indictment is found when the offense is stated with enough specificity that the court knows what judgement to announce, and the defendant knows what he has to answer to and whether he can plead acquittal or conviction upon it and whether it apprises defendant of offense that is intended to be charged. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) *citing State v. Wilkes*, 353 S.C. 462, 465, 578 S.E.2d 717, 19 (2003).

Here, there is no indication Applicant was asserting indictment flaws prior to resolution of the case through the plea process. If he did not assert these claims prior to the resolution of the case, he waived his right to assert this claim and cannot be granted relief upon assertion of flaws now. However, even if this right was not waived, Applicant has not asserted with specificity the flaws he alleges are in the indictments. Consequently, Respondent is unable to ascertain whether this argument has merit. Thus, Respondent respectfully requests this Court to require Applicant, through Counsel, to file an amendment with greater specificity regarding claims made in the original application.

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Challenge Gun

Applicant claims Counsel was ineffective for failure to challenge the gun. However, this defense was seemingly waived when he entered an otherwise free, knowing, voluntary, and intelligent plea. Thus, Respondent contends Applicant likely cannot meet his burden of proof concerning the allegation but requests an evidentiary hearing to fully resolve the matter.

Arrest Warrants

Applicant claims Counsel was ineffective for advising him to plead guilty when the arrest warrants were allegedly invalid. Respondent contends there is seemingly nothing wrong with the indictments, that Applicant waived the right to assert this as a defense when he pled, and that he has failed to meet his burden of proof concerning either prong of the *Strickland* analysis. Regardless, Respondent requests an evidentiary hearing to fully resolve the matter.

Failure to Investigate

Applicant claims Counsel was ineffective for failure to investigate. *Strickland* makes clear that defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* At the PCR hearing, Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel’s failure to investigate is contingent on whether the evidence presented would have led Counsel to change his recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

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Applicant has failed to state what should have been investigated, how Counsel was deficient for failure to investigate, or how the recommendation as to the plea would have differed had Counsel investigated further. Thus, Respondent contends Applicant likely cannot meet his burden of proof concerning the allegation but requests a more definite statement and an evidentiary hearing to fully resolve the matter.

Prepare Defense

Applicant claims Counsel was ineffective for failure to prepare a defense for trial. However, this was seemingly waived when he entered an otherwise valid plea. Thus, Respondent contends Applicant likely cannot meet his burden of proof concerning the allegation but requests a more definite statement and an evidentiary hearing to fully resolve the matter.

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant's allegations. Applicant alleges that plea counsel was constitutionally ineffective, and the plea was invalid. However, he does not explain exactly what Counsel that constituted ineffective assistance of counsel or why the plea is now invalid and must be vacated. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 382, 143 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure

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Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

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

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

VI. Other Allegations Denied

Each and every other allegation in Applicant’s PCR application not explicitly admitted, qualified, or explained in this return is hereby denied by Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant’s court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRPC and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no 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

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

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VIII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

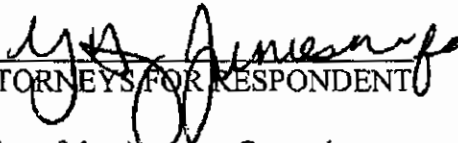
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By:  CFM
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-0386

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Matthew Blackwell, #380514

Applicant,

v.

State of South Carolina

Respondent,

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

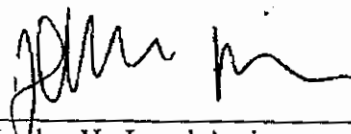
) Case No.: 2022-CP-42-02253

) Certificate of Service by Mail

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

Mr. Rodney W. Richey, Esquire.
Richey & Richey, PA
P.O. Box 10916
Greenville, SC 29603-0916

DATED this 9th day of August 2022.



Jordan H., Legal Assistant
For Respondent

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SPARTANBURG COUNTY
SOUTH CAROLINA

State of South Carolina)	
)	
County of Spartanburg)	
Matthew Blackwell,)	2022-CP-42-2253
)	
Applicant,)	
)	
v.)	Transcript
)	
The State of SC,)	of
)	
Defendant.)	Post-Conviction
)	Relief Hearing
)	
)	
)	
)	
)	
)	
)	

Date: October 17, 2022

Time: 10:32 a.m.

Location: Spartanburg County Courthouse

180 Magnolia St.

Spartanburg, SC 29306

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable Brian M. Gibbons

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

For the State: Chelsey Marto, Esq.
The Law Office of
Chelsey F. Marto, LLC
1122 Lady St.
Columbia, SC 29201

Also Present: William J. Nowicki, Esq.

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(SW) - Denotes State's Witness

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EXHIBITS

There were no exhibits entered during this hearing.

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HEARING

THE COURT: All right. Madam, A.G.

MS. MARTO: Good morning, Your Honor.

THE COURT: Good morning.

MS. MARTO: May it please the Court. We are here today in the case of "Matthew Blackwell vs. The State of South Carolina," Docket Number 2022-CP-42-2253. He's presently confined in the South Carolina Department of Corrections. August 2019, he was indicted for murder and possession of a weapon, two counts of attempted murder, trafficking methamphetamine, distribution of methamphetamine within one-half mile of a school or park. He was represented by Mr. William Nowicki, and Spenser Smith prosecuted the case.

August 27th, 2021, he appeared before the Honorable Grace Gilchrist Knie and pled guilty to a negotiated cap of 40 years imprisonment on the murder charge and the maximum sentences on all other charges. The State dismissed the half-mile charge, and in accordance with the negotiations, he was sentenced to 38 years imprisonment for the murder, 30 for each count

1 of attempted murder, ten for trafficking, five
2 for the weapons charge, sentences running
3 concurrently. He didn't pursue a direct
4 appeal. He filed this application June 21st,
5 2022. The return was made August 9th, 2022.

6 And with that, I'll turn it over to Mr.
7 Richey.

8 THE COURT: All right. Mr. Richey?

9 MR. RICHEY: We'll call Mr. Blackwell.

10 THE COURT: All right. Sir, come on up here.
11 All right. Thank you, sir.

12 (WHEREUPON, the applicant was sworn.)

13 THE COURT: All right. Thank you, sir. Just
14 make sure you talk really loud, so we can make
15 a good record of everything, okay?

16 THE APPLICANT: Yes, sir.

17 THE COURT: Thank you, sir. Mr. Richey?

18 DIRECT EXAMINATION OF MATTHEW BLACKWELL

19 BY MR. RICHEY:

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

21 A Matthew Blackwell.

22 Q And, Mr. Blackwell, are you in the Department of
23 Corrections right now?

24 A Yes, sir.

25 Q And what are you in there for?

- 1 A Right now I'm in there for murder, two attempted
2 murders, a weapon during a violent crime, and
3 trafficking charges.
- 4 Q Okay. Did you have a jury trial that you pled
5 guilty?
- 6 A I pled guilty.
- 7 Q Okay. And who represented you on those cases?
- 8 A Mr. Nowicki.
- 9 Q (Indicated that he couldn't hear the answer.)
- 10 A Mr. Nowicki.
- 11 Q Okay. Can you -- can you spell that? Do you -- do
12 you --
- 13 THE COURT REPORTER: I've got it.
- 14 MR. RICHEY: Okay.
- 15 THE COURT REPORTER: Uh-huh.
- 16 Q Okay. Okay. All right. And at the time of your
17 guilty plea, did you want to plead guilty or go to
18 trial?
- 19 A I mean, before I pled guilty, sir, I did say I
20 wanted to go to trial, like, three to four times,
21 yes, sir.
- 22 Q Okay. And -- and you discussed that with your
23 attorney?
- 24 A Yes. I told him that multiple times; I felt like I
25 wanted to go to trial.

- 1 Q And -- and what allegedly happened that the State
2 said that you did in the crime as far as you being
3 involved?
- 4 A I mean, sir, they was trying to say that I was
5 shooting out the window of a car, and I killed a
6 man is what they said.
- 7 Q Okay. And -- and you were not -- you supposedly
8 were not alone; is that correct?
- 9 A Sir?
- 10 Q You supposedly were not alone. There was other
11 people involved, correct?
- 12 A Yes, sir.
- 13 Q Okay. And -- and there was other people who were
14 supposed to have been shooting; one other guy,
15 correct?
- 16 A Yes, sir.
- 17 Q Okay. And -- and there was an issue about who
18 actually shot and killed the guy, correct?
- 19 A Correct.
- 20 Q With the guns, correct?
- 21 A Correct.
- 22 Q Okay. And it was your position that you didn't
23 fire the gun, correct?
- 24 A Sir?
- 25 Q Your position was that you did not shoot and kill

- 1 the guy, right?
- 2 A That's what I was saying?
- 3 Q That's your position. You didn't kill the guy,
4 right?
- 5 A Sir, I -- I never said anything, sir. That's --
- 6 Q Okay. Well, I'm asking you right now. You are not
7 guilty of killing the guy, right?
- 8 A No, sir.
- 9 Q Okay. And that's your position at the case, before
10 the guilty plea, and everything, correct?
- 11 A Yes, sir.
- 12 Q Okay. And -- and you told your lawyer that?
- 13 A Yes, sir.
- 14 Q Okay. And -- and during the case, did you and your
15 lawyer go over all the discovery in the case?
- 16 A I mean, he came to see me one time in person. I
17 spoke to him twice on the phone. Never really did
18 we go over it. Did not set down (verbatim) and go
19 over it, but --
- 20 Q Right.
- 21 A -- but he mentioned maybe one -- one or two things.
22 It really wasn't nothing, but other than that.
- 23 Q Okay.
- 24 A No.
- 25 Q Well, you had all the discovery; is that correct,

1 or do you know?

2 A As far as I know I had everything, I think.

3 Q Okay. And when you read over it, did your lawyer

4 answer all the questions you had about -- about the

5 discovery?

6 A I mean, sir, like I said, we never really did

7 discuss it. I might've asked him one to two

8 questions, but that was about it, though.

9 Q Okay. And do you believe that your plea was free

10 and voluntary?

11 A Sir?

12 Q Would you believe your guilty plea was voluntary?

13 A Was voluntary?

14 Q Yeah. Did you --

15 A Going off the word of my lawyer, yes.

16 Q Okay. And -- and what do you mean by going off the

17 word of your lawyer?

18 A I mean, when I was -- when I told him multiple

19 times that I wanted to go to trial, he kept

20 advising me to go ahead and take this plea that

21 we'd lose at trial if we did go.

22 Q Okay.

23 A So yes. I --

24 Q And did -- did you understand that if you pled

25 guilty, you would get a substantial sentence? Did

- 1 you understand that?
- 2 A (No response.)
- 3 Q That'd you would get a lot of time if you pled
- 4 guilty. Did you understand that?
- 5 A Would I get a lot of time if I pled guilty?
- 6 Q Let me -- Let me ask the question again.
- 7 At the time that you decided to accept a
- 8 guilty plea, okay --
- 9 A Okay.
- 10 Q -- were you aware that you were gonna get a lot of
- 11 time in jail?
- 12 A He informed me it'd be anywhere from 30 to 40
- 13 years, yes.
- 14 Q Okay. And did you want to do that?
- 15 A I mean, I told him that I would if he felt like
- 16 that he couldn't win at trial. Yes. I would,
- 17 because I didn't want to risk a life sentence.
- 18 Q Okay.
- 19 A So --
- 20 Q So -- so you took a guilty plea only based off your
- 21 lawyer telling you were not going to win; is that
- 22 correct?
- 23 A Yes, sir. I mean, I paid the man \$18,000. I
- 24 figured the man knowed (verbatim) what he was
- 25 talking about, so . . .

1 Q Okay. And so today do you believe that that advice
2 was good advice or bad advice?

3 A Well, when I sit back and actually went over it
4 myself and actually put some thought into it, sir,
5 I realized that I -- I -- that I shouldn't have
6 took the plea. I should have went on my own gut
7 feeling and went -- went to trial.

8 Q And at trial, you would've proved that you did not
9 actually kill the guy, correct?

10 A Yes, sir.

11 Q And -- and why -- tell me how your proof would have
12 been effective.

13 A Well, sir, for one, I -- I'll tell you now that
14 I -- like I said before, I wasn't even there --

15 Q Right.

16 A -- for one. Nobody can put me on the scene for
17 nothing. I -- I didn't get caught with no weapon.
18 And I understand I was with my girlfriend, and she
19 said I wasn't at the time. I understand that. I
20 don't know if she was scared or what, but, like I
21 said --

22 Q Right. Because in this case, when it came to you,
23 you -- you said you were with the girlfriend down
24 at the pond; is that correct? That you were
25 down --

- 1 A At the -- at the lake, yeah.
- 2 Q Right. At the lake/pond, okay. And the -- the
3 police went and talked to her, correct? And she
4 was nervous and upset; is that correct?
- 5 A Yes.
- 6 Q And -- and based off that, she did not corroborate
7 your story; is that correct?
- 8 A Correct.
- 9 Q Okay. And you believe -- you believe at trial, she
10 would have some change of heart; is that correct?
- 11 A Yes, sir.
- 12 Q She would have told the truth, right?
- 13 A Yes, sir.
- 14 Q Okay. And -- and you discussed that with your
15 lawyer, right?
- 16 A As far as that goes, no. I did not. Because, like
17 I said, we didn't really discuss it at all. He --
18 he kept advising me -- every time I mentioned
19 trial, he advised me to take the plea.
- 20 Q Well, let me ask you this: You had an alibi
21 witness, right? "I wasn't there" witness, right?
- 22 A Sir?
- 23 Q You had a witness, a young lady --
- 24 A Yes.
- 25 Q -- that was --

- 1 A Yes, sir.
- 2 Q -- showing that you were not there, correct?
- 3 A Yes, sir.
- 4 Q Did you discuss that with that witness with the
5 lawyer? Did you discuss --
- 6 A I -- I mean --
- 7 Q -- her testimony with him?
- 8 A I -- I mean, I as far as like he knew the same way
9 I knew it --
- 10 Q Yeah.
- 11 A -- sir.
- 12 Q Okay.
- 13 A She denied it the first time she was asked. She
14 said she wasn't with me. Like I said, why she did
15 it? I don't know why she said that.
- 16 Q And so you -- you also claim that your lawyer did
17 not properly investigate the case; that's
18 correct -- is that correct?
- 19 A I mean, sir, to my knowledge, I don't think he did
20 much of anything really.
- 21 Q Okay. And when you say "investigate," you mean
22 talking to this witness? At least talk to her,
23 correct?
- 24 A Correct.
- 25 Q Okay. And go through the discovery with you and

- 1 come up with some type of defense; is that correct?
- 2 A Yes, sir.
- 3 Q Okay. And at the guilty plea -- guilty plea, were
- 4 your parents there?
- 5 A No, sir. I asked them not to come, because I
- 6 didn't want them to witness that.
- 7 Q Okay. And did you talk to your lawyer about the
- 8 significance of them coming and not coming?
- 9 A No. I didn't. I didn't know whether it would make
- 10 a difference or not, sir.
- 11 Q Okay. He -- he didn't -- the lawyer didn't discuss
- 12 with you maybe your parents could help in
- 13 mitigation or anything? Mitigate your sentence?
- 14 A That I remember, no.
- 15 Q So you're -- you're asking this Court to vacate
- 16 your convictions and give you a new trial?
- 17 A I mean, yes, sir.
- 18 Q Okay. And you believe at a new trial, you would
- 19 have a better outcome?
- 20 A Yes, sir. I do.
- 21 Q And -- and you believe that based off the -- the
- 22 issues that you have raised, that if the lawyer had
- 23 done that, the outcome would have been different in
- 24 your case?
- 25 A Yes, sir.

1 Q And you believe you would have won at trial?

2 A Yes, sir. I do.

3 Q Okay.

4 MR. RICHEY: (To the applicant) Thank you.

5 Answer any questions the Attorney General may
6 have for you.

7 THE COURT: Madam A.G.?

8 MS. MARTO: Yes, Your Honor.

9 **CROSS-EXAMINATION OF MATTHEW BLACKWELL**

10 BY MS. MARTO:

11 Q Good morning, sir.

12 A Good morning.

13 Q So you stated that you pled guilty based upon the
14 advice of counsel, correct?

15 A Yes, ma'am. I did.

16 Q And you stated you did that because you were afraid
17 of receiving a life sentence at trial?

18 A Yes, ma'am.

19 Q And so at the time, you thought that it was in your
20 best interest to plead guilty?

21 A I mean, at the advice of my lawyer, yes.

22 Q And Counsel, from your understanding, thought it
23 was also in your best interest?

24 A I assume he did.

25 Q Are you aware of the charges you were facing?

- 1 A Yes, ma'am. I was aware, right.
- 2 Q And you knew you could be facing up to 40 years
3 imprisonment, right?
- 4 A Yes. I do.
- 5 Q And you received 38?
- 6 A Yes.
- 7 Q And did you talk about the rights you would be
8 waiving with Counsel?
- 9 A You talking about when the judge asked me before
10 I --
- 11 Q Yes.
- 12 A -- took the plea, yes. I do remember that.
- 13 Q Okay. So you talked about the plea process with
14 Counsel before the plea hearing; is that correct?
- 15 A Okay. Yes, ma'am.
- 16 Q Did he tell you what evidence was in the case?
- 17 A No, ma'am.
- 18 Q So --
- 19 A But as far -- as far as evidence, no. Like I said,
20 we never discussed evidence or nothing like that.
- 21 Q Did you see any papers that you may have gotten
22 from the State about the case?
- 23 A Ma'am?
- 24 Q Were there any papers that you saw that were given
25 to you or your counsel by the State related to the

- 1 case, or you didn't see any paperwork?
- 2 A As far as motion of discovery?
- 3 Q Yes.
- 4 A I mean, I received one, yes.
- 5 Q So you received a packet in response to the motion?
- 6 Is that what you're saying?
- 7 A I'm confused. You mean that --
- 8 Q What -- you --
- 9 A -- my motion of discovery, correct?
- 10 Q Okay. So you just received the motion, and not a
- 11 response to it? Is that what you're saying?
- 12 A Yeah. I'm really -- I'm really not aware of what
- 13 you're speaking about right this second.
- 14 Q So you stated that Counsel filed a motion for
- 15 discovery, right?
- 16 A Okay.
- 17 Q And you stated that you received one, right?
- 18 A Received the motion, correct.
- 19 Q Okay. So it was just the motion?
- 20 A Yeah.
- 21 Q You didn't receive anything after that motion?
- 22 A No. No, ma'am.
- 23 Q Is your girlfriend here to testify today, or no?
- 24 A No, ma'am.
- 25 MS. MARTO: No further questions.

1 THE COURT: Redirect?

2 MR. RICHEY: No other questions.

3 THE COURT: Thank you, sir. You can step
4 down.

5 (WHEREUPON, the applicant was excused.)

6 THE COURT: (To Mr. Richey) Call your next
7 witness.

8 MR. RICHEY: We call Mr. No . . . (Trying to
9 pronounce name.)

10 MR. NOWICKI: (To Mr. Richey) Nowicki.

11 THE COURT: Mr. Nowicki.

12 (WHEREUPON, the witness was sworn.)

13 DIRECT EXAMINATION OF WILLIAM NOWICKI, ESQ.

14 BY MR. RICHEY:

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

16 A William Nowicki.

17 Q And, Mr. Nowicki, do you recall representing
18 Matthew Blackwell?

19 A I do.

20 Q And were there the charges that are being discussed
21 in here today, the murder charges and those things?

22 A Yes, sir.

23 Q Okay. And you were present in the courtroom during
24 Mr. Blackwell's testimony; is that correct?

25 A That's correct.

1 Q And I'm gonna go over these issues with you in some
2 type of order if I can.

3 Mr. Blackwell stated that you did not
4 thoroughly go over discovery with him. You
5 presented it to him but didn't have any discussion
6 about it. Can you tell me if you discussed the
7 discovery with him?

8 A Yes. I did discuss the discovery with him.

9 Q And -- and did you discuss with him what -- what
10 made the State's case viable?

11 A Yes. I did.

12 Q Okay. And he had talked -- did he talk to you
13 about the young lady that he was with at the lake
14 that day when this supposedly had happened?

15 A He -- I was aware of the lady and of that -- or
16 what she had said, but he never told me anything
17 else.

18 Q He -- he didn't tell you that she could be
19 presented as an alibi? And I understand what she
20 told the cops, but did -- did he discuss with you
21 about her being a potential alibi, maybe?

22 A No.

23 Q Okay. And so, you had discussions with him about
24 this young lady, or no?

25 A No. I mean, not -- no. Other than just that was

- 1 in discovery --
- 2 Q Okay.
- 3 A -- which, you know, she gave a statement to the
- 4 police.
- 5 Q Okay. And prior to this guilty plea, did he -- did
- 6 he convey to you that he wanted a jury trial?
- 7 A He did.
- 8 Q Okay. And can you -- and did -- what was your
- 9 advice to him in regards to having a jury trial?
- 10 A Once I told him what was -- or advised him what was
- 11 in the discovery about the co-defendants, that they
- 12 would testify against him and put him in -- at the
- 13 scene and put a hand in his -- I mean, put a gun in
- 14 his hand and -- and that that gun, which I believe
- 15 was a 40, is -- that was the bullet that they found
- 16 in the deceased.
- 17 Q So this was a case where the -- the only evidence
- 18 that Mr. Blackwell was involved initially were the
- 19 co-defendants? There was no witness outside of the
- 20 co-defendants that could testify that he was at the
- 21 scene at the time?
- 22 A No.
- 23 Q Okay. And so the co-defendants put him at the
- 24 scene with a gun, correct?
- 25 A Correct.

- 1 Q And -- and during discovery, it was determined that
2 that gun that he supposedly had was the gun that
3 actually killed the person?
- 4 A That's correct.
- 5 Q And did you discuss those details with him about
6 the case?
- 7 A Yes. I did.
- 8 Q And when he said he wanted to go to trial, did you
9 discuss with him how that helped or hurt his case?
- 10 A Yes. I explained to him how that would hurt his
11 case.
- 12 Q Okay. Do you know any scenario where this case
13 should've went to a jury trial?
- 14 A No.
- 15 Q Okay. In terms of Mr. Blackwell discussed that he
16 believed that you did not investigate the case, can
17 you just tell me what type of investigation that
18 you did on the case?
- 19 A As far as investigation, obviously, went through
20 all of the discovery, all the witness statements.
21 I had reached out to the solicitor about
22 availability of the co-defendants, whether they're
23 gonna testify or not, and I was informed that they
24 would. Had reached out to law enforcement to see
25 if anything was -- anything was different from what

- 1 was in the discovery, and that was about it.
- 2 Q Okay. And did you -- in terms of there was two --
- 3 supposedly two shooters in the case; is that
- 4 correct?
- 5 A That's correct.
- 6 Q And there was some issue about -- I -- I understand
- 7 about the hand of one, hand of all, but there was
- 8 some issues about which gun actually killed the
- 9 guy; is that correct? Do you --
- 10 A No. I think it was --
- 11 Q -- which --
- 12 A -- pretty much said that it was the 40.
- 13 Q And did you discuss with him any about the hand of
- 14 one, hand of all?
- 15 A Yes.
- 16 Q Okay. And can you tell me what those discussions
- 17 were?
- 18 A No. I -- I don't exact -- mean in the exact words
- 19 or anything --
- 20 Q Right.
- 21 A -- but, I mean, I just told him about, you know,
- 22 one person is involved, and there's others with
- 23 them, and they know what's going on, that, you
- 24 know, they can be charged with the same thing.
- 25 Q And -- and do -- do you -- do you know, based off

1 your observation, whether -- whether he understood
2 that or not?

3 A I believe he understood.

4 Q And he -- he testified that he told his parents not
5 to show up for the guilty plea, because he didn't
6 want them to see him in this position. Did you
7 have any discussions about his parents being there
8 in terms of any mitigations to him?

9 A I asked him if he wanted any family there. He
10 said, "No," but I did reach out to his dad and did
11 advise his dad of when the sentencing would be, and
12 he was not present.

13 Q And -- and today, Mr. Blackwell's asking this Court
14 to grant him a new trial on these cases, so he can
15 stand trial on -- on these particular cases. You
16 know, if -- if Mr. Blackwell had insisted upon a
17 trial and wanted to go forward, that's something
18 you would've done regardless of the case?

19 A That's correct. That's his -- his decision.

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

21 Answer any questions the Attorney General may
22 have.

23 CROSS-EXAMINATION OF WILLIAM NOWICKI, ESQ.

24 BY MS. MARTO:

25 Q Good morning, sir.

- 1 A Good morning.
- 2 Q So it is your understanding Mr. Blackwell knew what
3 he was doing by pleading, right?
- 4 A Yes. I did.
- 5 Q And he had full knowledge of the evidence against
6 him?
- 7 A Yes.
- 8 Q And you discussed with him the charges?
- 9 A I did.
- 10 Q You discussed with him the rights he was waiving?
- 11 A Yes. I did.
- 12 Q And it was your understanding, he decided to plead,
13 because he would likely lose at trial?
- 14 A Yes.
- 15 Q And, also, because he would likely face a life
16 sentence if he was found guilty at trial?
- 17 A Right. That he was facing -- he could get a life
18 sentence.
- 19 Q And he -- he was fully aware of the fact that he
20 was pleading to a negotiated cap of 40 years? Is
21 that your understanding?
- 22 A That's correct.
- 23 Q And, again, it was Mr. Blackwell's decision not to
24 have his family present at the plea hearing,
25 correct?

1 A That's right.

2 Q And you, based upon your investigation of the case,
3 didn't see anything that would've been useful
4 regarding the girl?

5 A No. I was not aware of anything, and even still, I
6 mean, if she changed her -- or changed her mind or
7 whatever from the original -- or statement that she
8 gave, there still would be the credibility issue.

9 Q So you think she would've been impeached at trial?

10 A Definitely.

11 MS. MARTO: One moment, Your Honor.

12 THE COURT: Okay.

13 MS. MARTO: (To the Court) Nothing further.

14 THE COURT: Any redirect, sir?

15 MR. RICHEY: One moment, Your Honor.

16 THE COURT: Yes, sir.

17 REDIRECT EXAMINATION OF WILLIAM NOWICKI, ESQ.

18 BY MR. RICHEY:

19 Q The term at the General Sessions Court was held for
20 this trial. Do you know whether that term was
21 settled with this case done out the -- outside of
22 the term?

23 A I don't remember.

24 Q Okay. Let me clarify the question.

25 This wasn't a special term of General Sessions

1 called for some reason due to this case; do you
2 recall?

3 A I don't remember. I'm sorry.

4 Q Okay.

5 A I don't know.

6 Q Were there any -- do you recall -- were there any
7 other cases done that day? Do you recall? Were
8 they doing other cases?

9 A I mean, I -- I don't remember. I mean, I was just
10 focusing on -- on my case.

11 Q When -- when you got to court that day, was your
12 case the first case called? Do you remember that?

13 A I don't remember that, either. I'm sorry.

14 Q Thank you, sir.

15 MS. MARTO: (To the Court) Nothing further.

16 THE COURT: All right. Thank you, sir. You
17 can step down.

18 THE COURT: Mr. Richey, you can call your next
19 witness.

20 MR. RICHEY: No other witnesses.

21 THE COURT: All right. Applicant rests.

22 THE COURT: Any -- (To Mr. Richey) is that
23 correct?

24 MR. RICHEY: Yes, sir.

25 THE COURT: All right. Anything from the

1 State?

2 MS. MARTO: No witnesses --

3 THE COURT: Any further testimony?

4 MS. MARTO: -- Your Honor. Nothing further.

5 THE COURT: All right. Thank you, Mr.

6 Nowicki. You can step down.

7 (WHEREUPON, the witness was excused.)

8 THE COURT: All right. Let me hear arguments.

9 Mr. Richey?

10 CLOSING ARGUMENTS

11 MR. RICHEY: Thank you, Your Honor. May it
12 please the Court.

13 THE COURT: Yes, sir.

14 MR. RICHEY: Mr. Blackwell, in this case, he
15 testified that he wanted to pursue a trial at
16 all times. He testified that -- that he
17 believed that his lawyer gave him erroneous
18 advice to plead guilty. That he wanted to
19 pursue a jury trial. He also testified that
20 he had this witness. And I understand that he
21 also testified the witness said the opposite
22 that he was not with her, but it's his
23 position that -- that she was not being
24 truthful.

25 He also believes that the plea was not

1 voluntary, and -- because he relied upon his
2 lawyer's advice and he shouldn't have. Had he
3 known what he know now, that he would've
4 pursued a jury trial in this case.

5 Your Honor, he brought forth an issue in
6 his pleadings that he just -- he believed that
7 the Court lacks jurisdiction. And the reason
8 why I was asking the lawyer about the special
9 term that it's his position this was not a
10 valid term of General Sessions. I discussed
11 that with him, but he just wants that to be
12 put on the record that it was a not a valid
13 term of General Sessions -- was not a valid
14 term of General Sessions.

15 THE COURT: When -- when was the trial date?
16 When was it?

17 MR. RICHEY: It was August the 27th, 2001 --
18 2021. Excuse me.

19 THE COURT: All right.

20 MR. RICHEY: Well, that's his position, Your
21 Honor. And he's asking the Court to grant him
22 a new trial so he can go back and stand trial
23 for these cases?

24 THE COURT: Okay. Thank you. Madam A.G.?

25 MS. MARTO: Yes, Your Honor. Just briefly.

CLOSING ARGUMENTS

1
2 MS. MARTO: It would be the State's position
3 that Mr. Blackwell established that he decided
4 to plead based upon the advice of Counsel,
5 because he thought he would lose at trial and
6 would receive a life sentence. This was
7 substantiated by Counsel's own testimony
8 indicating the same. Counsel credibly
9 testified that the girlfriend wouldn't have
10 been -- based upon his investigation, wouldn't
11 have been favorable to the case, and that even
12 if he did present her at trial, she still
13 would have been impeached. He stated that
14 this case was a strong one for the State, and
15 that he likely wouldn't have succeeded at
16 trial.

17 It was, I believe, Applicant's testimony
18 he understood the charges and the rights he
19 was waiving. Again, that was substantiated by
20 Counsel. Counsel -- and the State's -- the
21 State argues that Counsel credibly testified
22 he reviewed and discussed all evidence with
23 Mr. Blackwell prior to the plea.

24 And it would be our stance that the
25 allegation that this was somehow heard outside

1 of a special term is without merit and
2 otherwise would've been waived by entering the
3 plea.

4 And so it is for those reasons we would
5 request you deny relief.

6 THE COURT: Thank you. Y'all can give me just
7 a second.

8 All right. Well, I'm -- on -- on this
9 matter of term, August 27th, 2021, and Judge
10 Knie had been granted jurisdiction by Court
11 Administration by the Supreme Court to hold
12 General Sessions, non-jury court, so that
13 allegation is -- is denied. And for that
14 reason -- so she did properly exercise
15 jurisdiction to hear this plea.

16 All right. As to the rest of the
17 allegations made, I respectfully deny the
18 Applicant's petition for post-conviction
19 relief for the grounds stated in the return by
20 the State. After having a factual
21 presentation, I find the testimony to not be
22 credible based upon my review of the record of
23 the case. Therefore, this application is
24 dismissed.

25 Ms. Marto, if you'll prepare an order.

1 Run it by Mr. Richey.

2 MS. MARTO: Yes, Your Honor.

3 THE COURT: All right. Thank you very much.

4 (Whereupon the within hearing was

5 concluded at 10:58 a.m.)

6 (*This transcript may contain quoted material.

7 Such material is reproduced as read or quoted

8 by the speaker.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

CERTIFICATE

I, Amber Payne, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the General Sessions Court for Spartanburg County, South Carolina on October 17th, 2022.

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

Amber Payne

Amber J. Payne, CVR

Date: 4/4/2023
Notary public for South Carolina
My commission expires August 12, 2029

RECEIVED

JAN 18 2023

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
 Matthew Blackwell, #380514,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT
 SC SUPREME COURT

Case No.: 2022-CP-42-02253

ORDER OF DISMISSAL

2022 DEC 22 AM 9:15
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

FILED

This matter comes before this Court by way of Applicant's post-conviction relief application filed June 21, 2022. Respondent made its return on August 9, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on October 17, 2022, at Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

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

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its August 2019 term, the Spartanburg County Grand Jury indicted Applicant for murder (count one) and possession of a firearm during the commission of a violent crime (count two) (2019-GS-42-04607), two counts of attempted murder (2019-GS-42-04608 and -04609), trafficking in methamphetamine (2019-GS-42-04610), and distribution of methamphetamine within one-half

mile of a school or park (2019-GS-42-04611). Applicant was represented by William J. Nowicki, Esquire. Assistant Solicitor Spenser Smith of the Seventh Circuit Solicitor's Office prosecuted the case. On August 27, 2021, Applicant appeared before the Honorable Grace Gilchrist Knie, circuit court judge, and pled guilty to a negotiated cap of forty years' imprisonment on the murder charge and to the maximum sentences on all other charges, running concurrently. The State dismissed the half mile charge connected to the trafficking charge. In accordance with the negotiations, Judge Knie sentenced Applicant to thirty-eight years' imprisonment on the murder charge, thirty years' imprisonment on each attempted murder charge, ten years' imprisonment on the trafficking charge, five years' imprisonment on the weapons charge, sentences running concurrently. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

On June 12, 2018, Applicant was caught involved in a controlled buy with a confidential informant where he exchanged thirteen grams of methamphetamine for \$350. (Tr. 17). During this buy, Applicant was armed and showing a weapon. (Tr. 17).

On January 28, 2019, officers responded to a drive-by shooting. (Tr. 17). Witnesses stated that they heard screeching tires, several gunshots, and saw Marcus Kirk fall and hit the floor. (Tr. 17-18).

Ms. Harris, who was the fiancée of Marcus, told law enforcement that Marcus left the residence with a Steve about an hour before the incident to buy weed from a man named Hank. (Tr. 18). Steve was known to make counterfeit money that Harris believed was used to pay Hank with counterfeit money. (Tr. 18). She explained that Hank would know where they live. (Tr. 18). Officers searched the residence and there was a bullet hole through the front window of the house. (Tr. 18). There was a hole through one of the windows that went into the bedroom.

SPARTANBURG COUNTY
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There was another hole between the two windows that went into the siding. (Tr. 18). There was a hole in the garage door and a hole to the left of the front door. Inside the bedroom there was a hole in the TV and there was a hole in a mirror that was inside of the bedroom. (Tr. 18). The projectiles that went through the garage and the front door were not found but recovered both projectiles out of the TV and out of the mirror. (Tr. 18). Ballistics test later showed that the bullet in the TV was from a .40 caliber pistol and the bullet in the mirror was from a .380. (Tr. 18).

Officers contacted Mr. Hank Wright, Bobby Hank Wright, and he agreed to come in and speak with investigators. (Tr. 18-19). He admitted to selling drugs to Marcus the night before. He stated that there were two people with him but refused to provide names. (Tr. 19). He stated that he only got twenty dollars in counterfeit money and the rest was legitimate and he was not upset. (Tr. 19). The deal was for \$550. (Tr. 19).

Officers spoke with Hank's wife, Yolanda Wright. She stated that Applicant, who is the brother of Austin Bailey, went over later. (Tr. 19). She said Hank was very upset about the counterfeit money and was talking about teaching Marcus a lesson. (Tr. 19). Mr. Bailey says he called Applicant because he knew he would back her up. (Tr. 19).

The defendants were arrested. Mr. Wright was arrested without incident. (Tr. 19). Mr. Bailey and Mr. Bright were arrested together in a car in Spartanburg County, and Applicant was spoken to at the Cherokee County Detention Center. (Tr. 19).

Mr. Bailey admitted to driving the car during the shooting. (Tr. 19-20). Tyler Bright admitted to being in the rear passenger side seat and was one of the people that fired at the house.

(Tr. 20). Hank Wright admitted to being in the vehicle and to selling a gun to Applicant so he

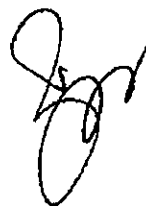
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Bailey, Bright and Wright were all consistent as to who the two shooters were: Applicant

and Bright. (Tr. 20). Applicant attempted to give an alibi through his girlfriend, saying that he was at the lake. (Tr. 20). She was in jail and did not back up his version. (Tr. 20). She stated she did not see him on the day of the incident. (Tr. 20).

The defendants stated that the plan was initially to fight them but that, once they drove past the house, they went down to the bottom of the cul-de-sac, continued to talk, and then decided to shoot. (Tr. 20). However, statements about weapons being loaded prior to going were given. (Tr. 20). They contacted Applicant because he would be back up but because Applicant had a vehicle. (Tr. 20-21). They needed a different vehicle than the one that had just been involved in the drug deal because otherwise the victim would have been able to identify them. (Tr. 21).

Officers conducted cell phone examinations on all the defendants, and it appears that they all left their cellphones back at a house, which shows the premeditated nature of the crime and the idea that they were going to shoot. (Tr. 21). Austin Bailey, the driver, had a .40 caliber pistol. (Tr. 21). Tyler Bright had a .380 and Applicant had a .40 caliber that he purchased from Mr. Wright in the vehicle. (Tr. 21). Applicant was initially driving to Mr. Kirk's house. (Tr. 21). He indicated that he wanted to shoot at the house and that's why he purchased the gun from Mr. Wright and then Mr. Bailey and Applicant switched seats. (Tr. 21). Mr. Bailey stated that occurred at the cul-de-sac. (Tr. 21-22). Mr. Bailey took over driving the car. (Tr. 22). Applicant moved to the front passenger seat and fired at the house. (Tr. 22). The State argued that Applicant was the person that fired the fatal shot. (Tr. 22). Ms. Harris says that she and Mr. Kirk were basically playing video games on the TV sitting on the bed. (Tr. 22). Mr. Kirk was shot in the neck and the bullet that they came out of the TV, which would be consistent with the .380 that Mr. Bright in front of it, was a .40 caliber, which is what Applicant had. (Tr. 22). The .380 that Mr. Bright



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was shooting penetrated into the bedroom, but went into the mirror, which is inconsistent with the possible trajectory of the fatal shot. (Tr. 22). Ms. Harris and her mother, Ms. Dorothy Harris, were present in the house at the time. (Tr. 22-23). Ms. Harris was sitting right next to Mr. Kirk and her mother was in another room. (Tr. 23).

Current Action Before this Court


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

1. Ineffective assistance of counsel:
 - a. Erroneous advice to plead guilty.
 - b. Did not know the charges against him.
 - c. Failure to challenge the indictments/lack of service of indictments.
 - d. Failure to challenge whether Applicant's gun matched the gunshot would that killed the deceased, as per the autopsy.
 - e. Failure to challenge invalid arrest warrants.
 - f. Failure to investigate.
 - g. Failure to prepare defense for trial.
2. Involuntary plea:
 - a. Failure to receive indictment.
3. Subject matter jurisdiction lacking because he was not duly served with an indictment.

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

1. Ineffective assistance of Counsel.
 - a. Failure to review discovery.
 - b. Failure to investigate alibi witness.
 - c. Failure to mitigate the sentence.
 - d. Brevity of time in consultation.
2. Involuntary Plea.
 - a. Applicant was coerced into pleading because he was afraid, he would face more time at trial.
 - b. Applicant only pled because he was misadvised by Counsel.
 - c. Failure to ensure parents were present for the plea.
3. The Court lacked subject matter jurisdiction because he was not properly indicted.

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


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Summary of the Testimony

Applicant Testimony

Applicant testified that he was incarcerated for murder, attempted murder, trafficking methamphetamine, and a weapons possession charge. He stated that he only met with Counsel one time in person and spoke to him two times by phone. He stated that Counsel did not tell him much about his case. He stated he initially wanted to go to trial and that he told Counsel this multiple times. He stated he only pled because Counsel stated he would lose at trial. He stated that Counsel told him he was looking at a thirty- to forty-year sentence if he pled. He stated that he now thinks the plea was a bad idea. He stated that Counsel told him his plea was voluntary.

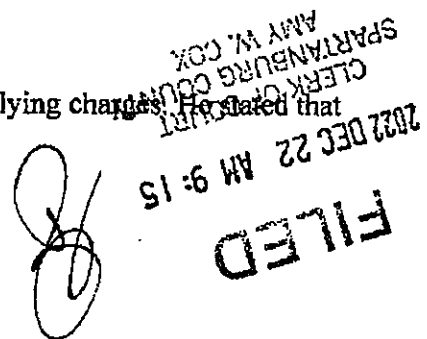
He stated he told Counsel he was not guilty of murder. He stated that the State said he shot someone outside a window when with multiple co-defendants. He stated he did not fire the gun.

Applicant testified that he was not present at the shooting but was with his girlfriend instead. He stated that his girlfriend could have been an alibi witness at trial. He stated he did not think Counsel properly investigated the case, specifically this alibi witness. He stated his girlfriend was not present at the PCR hearing.

He stated that his parents were not at the plea hearing because he told them not to come. He stated he did not discuss using them as mitigation evidence with Counsel. He stated that Counsel filed a discovery motion and that he knew the charges and the rights waived by pleading. Applicant claimed that the Court lacked subject matter jurisdiction because he was not properly indicted.

Counsel Testimony

Counsel testified that he represented Applicant on the underlying charges. He stated that



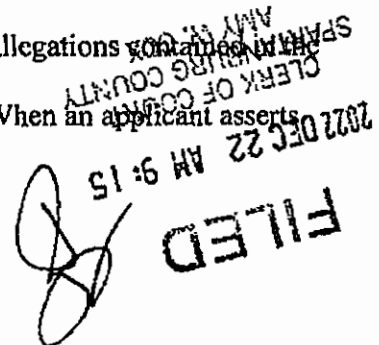
he did not think Applicant's girlfriend would serve as an alibi witness. He stated he discussed the discovery with Applicant and what made the State's case viable. He stated he talked to Applicant about what the girlfriend's testimony would be. He stated that Applicant told him he wanted to go to trial. He testified that the only evidence implicating Applicant was his co-defendant, who put Applicant on scene with the gun that killed the victim. He stated he talked to Applicant about this and how it would hurt his chances at trial. He stated that this case should not have proceeded to trial, given the facts and high likelihood of being found guilty. He stated he reviewed all the discovery with Applicant. He stated he discussed hand of one hand of all with Applicant and thought he understood those discussions. Counsel stated that he asked Applicant if he wanted his family at the plea hearing and informed his father of the hearing, but they were not present. He stated. Counsel stated he could not recall a special term of general sessions court occurring that week.

Findings of Fact and Conclusions of Law

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

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Buller v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts



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

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

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

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proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.

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

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

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

Involuntary Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant’s right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive.

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Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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

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

This Court finds the plea was freely, knowingly, intelligently, and voluntarily entered. After the State called the case and put the charges and negotiations, including negotiations concerning credit for time served credits, on the record, Counsel and Applicant stated he agreed with what the prosecutor stated concerning the charges and agreements. (Tr. 3-7). The Applicant confirmed Applicant understood that he could communicate privately with Counsel concerning

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any question he had regarding the plea hearing. (Tr. 8-9). Applicant stated he was pleading instead of going to trial. (Tr. 9). He stated he understood that by pleading he was waiving his right to a jury trial, to call and confront witnesses, and to remain silent. (Tr. 9-10). Applicant confirmed he wanted to waive these rights and plead. (Tr. 10). Applicant stated he was not under the influence of any drugs or alcohol, nor was he suffering from mental or physical disabilities impacting his understanding of the proceedings. (Tr. 10-11). Applicant stated he was satisfied with Counsel's services. (Tr. 11). The Court at the plea hearing went over all the charges with him in detail, including the charges, sentencing ranges, any violent, serious, and most serious distinction on all charges. (Tr. 11-14). The Court informed Applicant of the significance of a negotiated sentence, including that the Court is bound to the negotiations if the plea is accepted. (Tr. 14). Applicant stated he understood the sentencing ranges and fines on all charges. (Tr. 15-16). Applicant stated he was pleading guilty freely, knowingly, and voluntarily. (Tr. 16). He stated he understood he had ten days to appeal. (Tr. 16). Applicant agreed to the facts as recited by the prosecutor. (Tr. 16-23). He again confirmed he understood the Court was bound to the negotiations if the plea was accepted, that that did not impact his willingness to go forward with the plea, and that he wanted to continue with the plea. (Tr. 29-30). This Court finds the plea was freely, voluntarily, knowingly, and intelligently entered and cannot be withdrawn now.

Trial Tax

Applicant claims he was coerced into pleading because he was told if he did not plead, he would face more time in prison. Being informed that if he went to trial, he would face more time in prison does not rise to the level of coercion and is not enough to render the plea invalid. Accordingly, relief is denied on this ground.



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Mis-Advice by Counsel

Applicant claims his plea was coerced because he relied on the mis-advice of Counsel. However, this is seemingly only substantiated by Applicant's current regret over his own decision made to plead. Wishing one decided to plead in retrospect is not sufficient to undermine the plea. Accordingly, relief is denied on this ground.

Brevity of Time

Applicant alleges that Counsel was ineffective for brevity of time spent in consultation. "[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Id. See Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant claims that Counsel did not speak with him about the case enough. However, Applicant has failed to show how this brevity of time spent in consultation impacted Counsel's representation of Applicant. There is no indication that the results of the proceedings or the decision to plead would have been different had Counsel conferred with him more. Accordingly, Applicant has failed to establish ineffective assistance of counsel and this Court declines to grant relief.


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Failure to Ensure Parents were Present at Plea

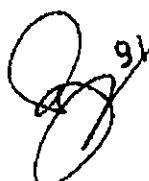
Applicant claims Counsel was ineffective for failure to ensure Applicant's parents were present for the plea. However, Applicant testified that he told his parents not to come and Counsel testified that he informed them of the plea hearing. Regardless, this issue has no bearing on Applicant's decision to testify or the outcome of the proceedings. Accordingly, relief is denied on this ground.

Failure to Review Discovery

Applicant claims Counsel was ineffective for failure to review the discovery. However, Counsel credibly testified that he reviewed and shared all discovery with Applicant and specifically told him what in the discovery made the State's case viable. Counsel presented the same to the Court at the plea hearing. (Tr. 25-26). Accordingly, this Court finds that Applicant's allegation is without merit and denies relief accordingly.

Failure to Mitigate the Sentence

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


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Counsel's failure to investigate and present mitigating evidence. *Council v. State*, 380 S.C. 159, 171, 670 S.E.2d 356, 362 (2008).

Counsel's chosen mitigation strategy was reasonable. He informed the Court of Applicant's employment history, his prior drug addiction, and Applicant's remorse over what happened. (Tr. 27-29). He also informed the Court that Applicant has a very supportive family, despite Applicant's decision to tell them not to appear at the hearing. (Tr. 27-28).

Further, Applicant has failed to show what his family could have offered in mitigation or how that would have impacted the proceedings. Thus, he has failed to meet his burden of proof concerning prejudice and relief is denied accordingly.

Failure to Investigate Alibi Witness

Applicant claims Counsel was ineffective for failure to investigate his girlfriend as an alibi witness. At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). One component of the duty to reasonably investigate the case includes a "duty [] to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable." *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993). "In most PCR cases in which the applicant seeks relief for that counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate

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court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks.” *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Counsel’s performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. *See e.g. Smith v. State*, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); *Edwards v. State*, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner’s statement to the police would be entirely consistent with the supposed witness’s statement at trial); *Glover*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was not deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. *See e.g. Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness’ testimony would have cast doubt on the sole witness’ identification of the petitioner and, thus, would have made a difference at trial).

This Court finds Applicant has not met his burden of proof. He has failed to present

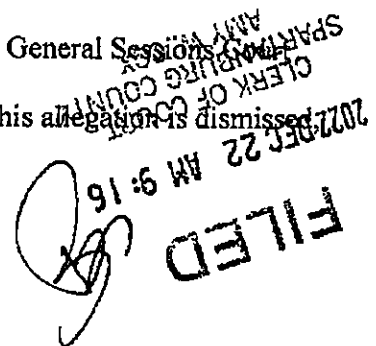
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her testimony would have consisted of or how it would have resulted in a different outcome. This Court also finds Counsel credible in his assertion that he knew what Applicant's girlfriend would testify to and thought that what she had to offer did not constitute an alibi. Further, this Court finds Applicant has not met his burden of proof concerning prejudice for failure to call the alibi to testify at the PCR hearing. *See Glover*, 318 S.C. at 498-99, 458 S.E.2d at 540 (to show Applicant was prejudiced by counsel's deficiency for failure to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or the testimony must otherwise be presented, consistent with the rules of evidence). Thus, relief is denied on this ground.

Subject Matter Jurisdiction

Applicant is alleging he is entitled to PCR relief because there were flaws in the indictment process, as it pertains to the date on the indictment sheet and the court calendar not lining up. Challenges to the indictment must be raised before a jury is sworn in. S.C. Code Ann. § 17-19-90 (2003). If non-jurisdictional defects apparent on the face of the document are not raised before then, they are waived. *Hooks v. State*, 353 S.C. 48, 577 S.E.2d 211, (2003), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *State v. Young*, 243 S.C. 187, 133 S.E.2d 210 (1963). Sufficiency of indictment is found when the offense is stated with enough specificity that the court knows what judgement to announce and the defendant knows what he has to answer to and whether he can plead acquittal or conviction upon it and whether it apprises defendant of offense that is intended to be charged. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) *citing State v. Wilkes*, 353 S.C. 462, 465, 578 S.E.2d 717, 19 (2003).

This Court finds that Applicant was properly indicted, and the General Sessions Court had subject matter jurisdiction over his criminal cases. Accordingly, this allegation is dismissed.



and relief denied.

Conclusion

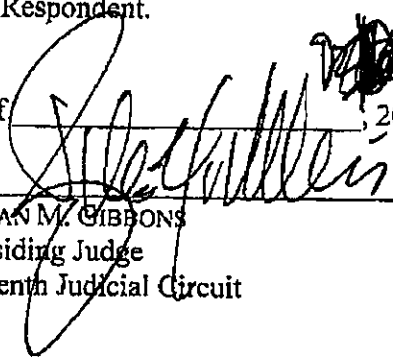
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this _____ day of _____, 2022.



 BRIAN M. GIBBONS
 Presiding Judge
 Seventh Judicial Circuit

_____, South Carolina.

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WITNESSES

Spartanburg County Sheriff's Office

James W. Owens

ARREST WARRANT NUMBER

COUNT ONE: 2019A4210100480

COUNT TWO: 2019A4210100459

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: AUG 23 2019

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 19-GS-42-4607

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS
AUG 26 2019

TERM

THE STATE
vs.

Matthew Tyler Blackwell

Indictment for
**MURDER AND POSSESSION
OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME**

SC Code 16-03-0010, 0020; 16-23-490
CDR CODE: 0116: 0549
CLASS: FEL-EXM: FEL/F

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

AUG 23 2019

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

COUNT ONE—MURDER

That Matthew Tyler Blackwell, did in Spartanburg County on or about January 28, 2019, feloniously, willfully and with malice aforethought, kill one Marcus Pierre Kirk, by shooting the victim with a firearm, and that the said victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

**COUNT TWO—POSSESSION OF FIREARM DURING
 COMMISSION OF A VIOLENT CRIME**

That Matthew Tyler Blackwell, did in Spartanburg County on or about January 28, 2019, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: MURDER, in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended

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


 ASSISTANT SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

James W. Brown

ARREST WARRANT NUMBER

COUNT ONE: 2019A4210100480

COUNT TWO: 2019A4219100459

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: AUG 23 2019

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **19-GS-42-4607A**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS
AUG 26 2019

TERM

THE STATE

vs.

Matthew Tyler Blackwell

Indictment for
MURDER AND POSSESSION
OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME

SC Code 16-03-0010, 0020; 16-23-490
CDR CODE: 0116; 0549
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

Jimmy W. Parker

ARREST WARRANT NUMBER

2019A4210100461

ACTION OF GRAND JURY

TRIA BILL

Foreperson of Grand Jury
Date:

AUG 23 2019

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 19-GS-42-4608

The State of South Carolina
County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 26 2019

TERM

THE STATE
vs.

Matthew Tyler Blackwell

Indictment for
ATTEMPTED MURDER

SC Code: 16-3-0029
CDR Code: 3410
Class FEL-A

WITNESSES

Spartanburg County Sheriff's Office

Jimmy W. Owen

ARREST WARRANT NUMBER

2019A4210100462

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury *AUG 23 2019*
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

19-GS-42-4609

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 26 2019

TERM

THE STATE
vs.

Matthew Tyler Blackwell

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-0029

CDR Code: 3410

Class FEL-A

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 23 2019 the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER

That Matthew Tyler Blackwell, did in Spartanburg County on or about January 28, 2019, with malice aforethought attempt to kill Dorothy Josephine Harris, by shooting at her inside an occupied dwelling, with the intent to kill the said victim, in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1978, as amended).

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


ASSISTANT SOLICITOR

WITNESSES

Spartanburg Sheriff's Office

Jerry W. Davis

ARREST WARRANT NUMBER

2019A4210100232

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury
Date: **AUG 23 2019**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **19-GS-42-4610**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 26 2019

TERM

THE STATE
vs.

Matthew Tyler Blackwell

Indictment for
TRAFFICKING IN METHAMPHETAMINE

SC Code: 44-53-376

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 23 2019 the

Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE

That Matthew Blackwell did in Spartanburg County on or about June 12, 2018, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess more than (10) ten grams of Methamphetamine, a schedule II controlled substance, in violation of §44-53-375, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


 ASSISTANT SOLICITOR

WITNESSES

Spartanburg Sheriff's Office

Jimmy W. Powers

ARREST WARRANT NUMBER

2019A4210100234

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

AUG 23 2019

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

19-GS-42-4611

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 26 2019

TERM

THE STATE
vs.

Matthew Tyler Blackwell

Indictment for

DISTRIBUTION OF
METHAMPHETAMINE WITHIN ONE-
HALF MILE OF SCHOOL
SC Code: 44-53-445

CLERK OF COURT
SPARTANBURG COUNTY
2019 AUG 28 AM 9:35

2021 AUG 31 AM 10:35
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

Wally Prosser
Spencer Smith

8/30/21

3

302

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 23 2019, the
 Grand Jurors of County present upon their oath:

DISTRIBUTION OF METHAMPHETAMINE
WITHIN ONE-HALF MILE

That Matthew Tyler Blackwell did in Spartanburg County on or about June 12, 2018, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Methamphetamine a schedule II controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school, a public playground or park; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Houston Elementary School, under provisions of §44-53-445 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such distribution not having been authorized by law.

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



 ASSISTANT SOLICITOR