

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Richland County

Honorable George M. McFaddin, Circuit Court Judge

FLOYD G. OWEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001542

APPENDIX

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	)	
County of Richland	)	2017-GS-40-07153
	)	2017-GS-40-07155
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
FLOYD OWEN,	)	
	)	
DEFENDANT,	)	

August 20, 2019
Columbia, South Carolina

BEFORE:

THE HONORABLE DEANDREA BENJAMIN, JUDGE.

APPEARANCES:

VANCE EATON, ASSISTANT SOLICITOR
Attorney for the State

RHODES BAILEY, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 FLOYD OWEN, after being duly sworn,
2 testified as follows:

3 THE COURT: All right. Yes, sir.

4 MR. EATON: May it please the Court. Vance Eaton for
5 the State. Standing before you is Floyd Owen and his
6 attorney, Rhodes Bailey, with the Public Defender's
7 Office.

8 Your Honor, Mr. Owen is here to enter his guilty plea
9 to charges of murder, burglary in the first degree,
10 conspiracy and possession of a weapon during the
11 commission of a violent crime.

12 While he's entering his plea today, sentencing on
13 Mr. Owen will be deferred to a later date, Your Honor, if
14 that is okay with the court.

15 THE COURT: Is that correct; Mr. Bailey?

16 MR. BAILEY: Yes, Your Honor; that's correct.

17 THE COURT: And have you explained to your client the
18 charges contained in the indictments, the possible
19 punishment and his Constitutional Rights?

20 MR. BAILEY: Yes, Your Honor.

21 THE COURT: And how does he wish to plead?

22 MR. BAILEY: Guilty, Your Honor.

23 THE COURT: And do you agree with his decision to
24 plead guilty?

25 MR. BAILEY: I do, Your Honor.

1 THE COURT: All right. And you are Floyd Owen? Is
2 it Owen?

3 THE DEFENDANT: Owen.

4 THE COURT: Owen?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And you're pleading guilty to possession
7 of a weapon during a violent crime, criminal conspiracy,
8 burglary first and murder; is that correct?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And how old are you, sir?

11 THE DEFENDANT: Thirty-five.

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

13 THE DEFENDANT: All the way.

14 THE COURT: High school?

15 THE DEFENDANT: Yeah.

16 THE COURT: Are you on probation or parole?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Within the last 24 hours, have you taken
19 any medication, drugs or alcohol?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: All right. Listen closely to the
22 Solicitor as he states the facts.

23 MR. EATON: Your Honor, I'll be fairly brief today.
24 In the wee morning hours of December 6th, 2017, Mr. Owen
25 and his codefendant, Charles Brandon Barham, devised a

1 plan to murder the victim, Charles Kusko, in his home on
2 Budon Court.

3 The State alleges that Mr. Barham gave Mr. Owen a
4 gun, drove him to Budon Court; that the two went up to the
5 house; that Mr. Owen broke into the house and shot
6 Mr. Kusko in his bed. Mr. Barham then drove Mr. Owen
7 away.

8 This case went somewhat cold until it was revived by
9 CPD's cold case with some leads, with some witnesses that
10 ultimately led to Mr. Owen's confession to the murder of
11 Mr. Kusko.

12 Present in the courtroom are Mr. Kusko's brother,
13 Andrew, and his daughters, Lauren and Caitlin. They
14 understand that today is just the entry of the guilty plea
15 and that sentencing will be at another time. So my
16 understanding is they did not need to address the Court
17 today, Your Honor.

18 THE COURT: Thank you.

19 All right. Sir, you've heard the Solicitor state the
20 allegations in the case. Do you agree with the
21 allegations as stated by the Solicitor?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And is that what you're pleading guilty
24 to?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. Do you understand -- you
2 understand that murder carries 30 to life? Do you
3 understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: The possession of a weapon during the
6 violent -- during a violent crime carries up to five
7 years?

8 MR. BAILEY: Your Honor, I should have written those
9 on there. I'm really sorry.

10 MR. EATON: I'm sorry, too, Your Honor.

11 MR. BAILEY: Yeah, that's my fault.

12 THE COURT: She's learning. It's okay. First day on
13 the job.

14 MR. BAILEY: Okay.

15 THE COURT: So she has to learn how to do it, too.

16 All right. Criminal conspiracy carries up to five
17 years and burglary carries 15 to life. Do you understand
18 that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Knowing that, you still wish to plead
21 guilty?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you understand I can run these
24 consecutive, and two of these carries up to life in
25 prison? Do you understand that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Knowing that, you still wish to plead
3 guilty?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right. And, sir, you understand that
6 burglary first and murder are classified as violent most
7 serious offenses, meaning, sir, that on the -- well, on
8 the life -- on the murder is non-parolable, you understand
9 that?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And most serious means it serves as a
12 strike under our two-strike law. So if you were to get
13 another strike, the State could move before the Court for
14 a life without parole. Do you understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right. And for purposes of the
17 Department of Corrections, you'll be classified as violent
18 and a felon. Do you understand that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Knowing all of that, you still wish to
21 plead guilty?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. You understand when you plead
24 guilty, you give up certain important Constitutional
25 Rights. You have the right to a jury trial. At a jury

1 trial, the State would have to prove you guilty beyond a
2 reasonable doubt.

3 You and your attorney would have the opportunity to
4 cross-examine any witnesses that they would present. You
5 would not have to testify. The burden is on the State to
6 prove you guilty beyond a reasonable doubt.

7 If you decided that you were not going to testify, I
8 would instruct the jurors that they could not hold that
9 against you; that they could not even discuss the fact
10 that you did not testify in their deliberations. Do you
11 understand that, sir?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Knowing that, sir, you still wish to
14 plead guilty?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Also, sir, if you had any defenses --
17 although you're not required to present any evidence under
18 our Constitution; however, if you had any defenses to
19 advance, you would be given the opportunity to present
20 those defenses, but by pleading guilty, you waive your
21 right to a jury trial and give up all of those important
22 Constitutional Rights. Is that what you wish to do?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. And you have been represented
25 by Mr. Bailey. Are you satisfied with his representation?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Do you need any more time to speak with
3 him?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: And have you met with him for as long and
6 as necessary for him to properly represent you?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you have any further questions for him
9 today?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: And are you completely satisfied with his
12 representation?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Is anyone forcing you to plead guilty
15 today?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: Has anyone promised you anything in
18 exchange for your plea of guilty today?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: And are you pleading freely and
21 voluntarily?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Has anyone coerced you or threatened you
24 into pleading guilty today?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: And you're pleading guilty because you
2 are guilty of these charges; is that correct?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And, sir, have you understood all of my
5 questions?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Have you answered them truthfully?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And the answers that you have given --
10 I'm sure your attorney has gone over with you the
11 questions that I was going to ask. The answers that you
12 have given today have been your answers; is that correct?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. So you wish for me to accept
15 this guilty plea to these charges; is that correct?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: You understand you have the right to
18 appeal the guilty plea and sentence of this court within
19 ten days. Do you understand that, sir?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. Thank you.

22 I find there is a substantial factual basis for this
23 plea. I find that the defendant's decisions to plead
24 guilty is freely, voluntarily, knowingly and intelligently
25 made; that he is represented by counsel to whom he has

1 indicated to me that he is completely satisfied with.

2 I will accept your plea.

3 Anything else from the State?

4 MR. EATON: Not from the State, Your Honor.

5 THE COURT: Anything from the defense? If not, I
6 would defer sentencing.

7 To the victims, thank you all for being here today.

8 I'll be glad to hear from them today or at
9 sentencing. It's up to them, or both.

10 MR. EATON: Yes, ma'am. In talking to them, I think
11 it will make sense just to wait until the day of
12 sentencing, Your Honor.

13 THE COURT: All right. Thank you.

14 Sorry for your loss to the victims that are here
15 today.

16 All right. Thank you.

17 MR. EATON: Thank you, Your Honor.

18 (Whereupon, the proceedings were concluded.)
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Richland County, South Carolina, on the 20th day of
August, 2019.

April 13, 2021

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

State of South Carolina	)	In the Court of General Sessions
	)	Fifth Judicial Circuit
County of Richland	)	2017-GS-40-07153
		2017-GS-40-07154
		2017-GS-40-07155
		2017-GS-40-07156

State of South Carolina,	)	
	)	
vs.	)	Transcript of Record
	)	
Floyd Gregory Owen,	)	
	)	
Defendant.	)	
	)	
	)	

November 18, 2019
Columbia, South Carolina

B E F O R E:

The Honorable DeAndrea Gist Benjamin, Judge

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

R. Vance Eaton, Assistant Solicitor
Attorney for State of South Carolina

J. Rhodes Bailey, Esquire
Attorney for Defendant

Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Circuit Court Reporter
Certified Verbatim Reporter - Master
Certificate of Merit
Realtime Verbatim Reporter - Master

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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C-1	Forensic Psychological Assessment	10	
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PROCEEDINGS

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 11:21 a.m.)

THE COURT: Yes, sir.

MR. EATON: Floyd Owen.

(Whereupon, the defendant came forward.)

THE COURT: Yes.

MR. EATON: Your Honor, this is, as you know, Floyd Owen and his attorney, Rhodes Bailey. Again, I don't think I need to recap anything for the Court.

I'll just -- you know, I -- I think in reference specifically to Mr. Owen, I need to point out that as -- as Mr. Barham's attorney, you know, said in pretrial, they brought up this *Dean* case and -- and making deals with cooperating codefendants, as Mr. Owen testified, there -- there was no deal, no promise of -- of any sort. So I -- I -- I don't think I need to say anything, because Your Honor was there. Your Honor saw exactly what happened and -- and how the trial against Mr. Barham played out. So I don't -- I don't need to tell you about it.

But, you know, these guys acted as a judge, jury, and executioner, Your Honor. So I'll -- but -- but unless you want to hear more about -- about him or the -- you know, the facts, given that you presided over the trial, I -- I

1 -- I'm going to be of -- of few words because of the --
2 because of the *Dean* case and the way that played out in
3 pretrial with Barham.

4 THE COURT: All right. I'll be glad to hear from the
5 victims if they wish to speak again.

6 MS. BARNES: Your Honor, my name is Laurin Barnes.
7 And I am the oldest daughter of Charles Kusko, Jr.

8 You know, it's hard to know what to say in this
9 situation because it's very complicated. You know, as you
10 would expect -- or when I speak to people about the case,
11 people assume that I have more anger toward Mr. Owen
12 because he was the one who pulled the trigger. However,
13 you know, there is a special type of person who is a family
14 member who can kill their own family member, which, you
15 know, that's, again, disturbing.

16 You know, for so long, I had so much anger at Mr. Owen
17 and -- and I hated him. I -- like, when I saw him I court,
18 I literally -- it -- it just was disgusting to me. But
19 then, he got on the stand and he did the right thing. For
20 that, I am appreciative.

21 You know, I -- we all wish we could turn back time and
22 get our dad back. That's -- that's not going to happen.
23 But for him to own up to his actions and to appear
24 remorseful, that just speaks volumes. Again, he can't take
25 back what he did and he obviously knows that.

1 I want to let you know that about a month and a half
2 after this happened, the murder of my dad, Floyd Owen
3 reached out to me. And he said, "I'm sorry about your dad.
4 We had our ins and outs, but he didn't deserve that."

5 At that time, of course, you know, I didn't know what
6 -- I knew it was him, but I had no confirmation of facts.
7 But I just think that says a lot, even though he did
8 something that effectively ruined our lives as we knew
9 them, he does feel bad for it.

10 And so with that said, I mean, he murdered our father
11 while he was sleeping. I think his punishment kind of
12 speaks for itself.

13 THE COURT: Thank you.

14 MS. HUFFSTETLER: Your Honor, I'm Kaitlin Huffstetler,
15 the youngest daughter of Charles Andrew Kusko, Jr. I've
16 waited so long for this day to come to be able to be in
17 front of you, having Floyd, the man who murdered my father,
18 be able to listen and have to hear what I have to say, to
19 be able to walk in the room and see myself and Laurin and
20 see Charles in us. We are the voice for our father.

21 My dad was such a loving, caring, and giving father.
22 He always knew how to make me laugh and smile. He was a
23 very handy guy who knew a lot about everything. And I've
24 recently been doing small house renovations. And I -- I
25 would love to be able to call him and show him my progress.

1 I know he would be proud of me. If you knew my dad, he
2 would always tell everyone how proud he was of me and my
3 sister.

4 On September 6th, 2015, Floyd Owen turned my entire
5 world upside-down. He deliberately chose to take my dad's
6 life, and I will never be able to forgive him for that.
7 Because of his actions on -- because of his actions,
8 September 5th, 2015, was the last day I was able to hear my
9 dad's voice. The heartache of him not being here will
10 never go away.

11 However, I am thankful that Floyd is taking
12 responsibility for his actions. He will -- did get on the
13 stand and tell the truth of what happened that night. I
14 know nothing is going to bring my dad back. But all I'm
15 asking for is justice to be served for our dad's murder.
16 Thank you.

17 THE COURT: Thank you, ma'am.

18 MS. QUICK: Hello. I am Cheryl Quick, Laurin Barnes
19 and Kaitlin Huffstetler's -- are my daughters with Charles
20 Kusko. Words still cannot adequately describe the horrific
21 ordeal -- ordeal that Brandon and Floyd have put Laurin and
22 Kaitlin through the past four years. It has been heart-
23 wrenching to see the insurmountable pain, stress, and grief
24 they have experienced because of Floyd's and Brandon's
25 actions in murdering their dad.

1 After receiving the news about their dad's murder,
2 Laurin and Kaitlin went from living a normal life to what I
3 can best describe as a living hell. They had to deal with
4 the tragedy and sudden loss of their dad while, at the same
5 time, being overcome with fear, anxiety, worry, and grief
6 resulting from his murder. This angst has been their life
7 day in and day out, which no one should ever have to
8 endure.

9 As their mother, I did my best to comfort and provide
10 -- provided support. Unfortunately, there was just not
11 much I could say or do to take away the pain or trauma.
12 Laurin and Kaitlin did not deserve to have their dad taken
13 from them, and Charles did not deserve to be murdered.

14 Everyone that knew Charles could tell you how proud he
15 is -- or was -- of Laurin and Kaitlin. Both of them wear a
16 necklace with their dad's imprint of his thumb. There is a
17 quote which states: God gave you a fingerprint that no one
18 else has so you can leave an imprint that no one else can.

19 Charles did leave his imprint as a great dad who loved
20 them unconditionally. I know he's still incredibly proud
21 of the girls' amazing strength and the pursuit of justice
22 for him.

23 Although I do not personally know Floyd Owen, perhaps
24 in his adolescence life, he felt acceptance and approval by
25 being the person who did anything regardless of the

1 repercussions. It's hard for me to comprehend or try to
2 make sense of this senseless and murderous act.

3 I was here every day at his coconspirator, Brandon
4 Barham's, trial for a week with my daughters. I do have to
5 say that I am grateful for Floyd's confession of what
6 happened Labor Day weekend in 2015. This finally led to
7 having their dad's murder case solved and also prevented
8 Laurin and Kaitlin from going through the emotional toll of
9 two trials.

10 I do believe Floyd was remorseful. But there's some
11 other things that he didn't get to hear in the trial that
12 he needs to know that he made Laurin and Kaitlin suffer.
13 The first responder that found Charles after you shot him
14 said that you could smell the remains for two city blocks.
15 After their dad's body was removed, that didn't go away.
16 They had to deal with all of that after. And no one should
17 ever have to do that.

18 You left his poor dog, Lucy, who she constantly has
19 nightmares. We love her, and she is a great fit in our
20 family. And she has a special place in our hearts.

21 Although Brandon Barham devised the plan and provided
22 the gun, drove the car, I do know that it doesn't change
23 the fact -- fact that Floyd did take the gun, pull the
24 trigger, which shot and killed Charles. It is time for
25 Laurin and Kaitlin to get justice for the murder of their

1 dad. Floyd does need to be held accountable for his
2 actions, for his crimes he committed, and sentenced
3 accordingly. However, I do believe, based on his
4 testimony, that he is remorseful and, if he could go back,
5 would not do the same thing. Thank you.

6 THE COURT: All right. Thank you, ma'am.

7 All right. Anything else?

8 MR. EATON: Oh, just his record -- excuse me, Your
9 Honor -- 2006, receiving stolen goods; '07, financial-card
10 theft; 2008, burglary second-degree -- it was referenced in
11 the trial -- 2008, petit larceny; and 2009, DUS.

12 THE COURT: All right. Thank you.

13 Yes, sir.

14 MR. BAILEY: Thank you, Your Honor. And -- and first,
15 I'd like to put a -- a forensic psychological assessment
16 from Dr. Susan Knight, just to make it part of the record,
17 Your Honor.

18 (Whereupon, Court's Exhibit 1 was marked for
19 identification.)

20 MR. BAILEY: And I've already -- obviously, the -- I
21 presented it to the Court and -- and the -- and the
22 solicitor earlier. But I -- I don't think it's necessary
23 to go through -- to go through the whole thing, Your Honor.

24 So I -- I've gotten to know Floyd very well. I've
25 represented him since the summer of -- of 2017. And, you

1 know, that's the thing about -- about this type of a job.
2 I've -- I've represented businesses, but I've also
3 represented a lot of people charged with -- charged with
4 crimes.

5 And, you know, Floyd was a good client. He -- he
6 always was straightforward with me. He always told me the
7 truth. And very early on, he showed remorse.

8 And this is something -- you know, this was a cold
9 case. It had happened about almost two years before. And
10 once he had been in -- in -- you know, interviewed by the
11 police a few times, he -- he gave a full confession. It's
12 all -- it's all recorded. You know, the -- and it -- and
13 it just sort of poured out of him, you know.

14 Floyd has had a tough life, which -- which -- which
15 was -- which was emphasized in the report. And -- and I --
16 and I'll get to that in a second. But he -- he did feel
17 real remorse.

18 And not only did he feel remorse and take
19 responsibility for it, he testified at a trial. And there
20 were -- there were -- there were good lawyers on both sides
21 of this trial. But without Mr. Owen's testimony and
22 without his desire to -- to bring closure and -- and try
23 and make up for the fact that he -- that he killed Mr.
24 Kusko in whatever way he could, I don't think there
25 would've been -- would've been a conviction there.

1 So Floyd was raised by his dad and his stepmom. He
2 was abandoned by his mom very early on in -- in -- in
3 Indiana. And she just sort of dumped him on his dad. And
4 his dad did the best to raise him. His stepmom tried.

5 But it haunted his -- it haunted him his entire life.
6 Why didn't my mama -- why didn't my mom love me? Why
7 doesn't -- and I've -- I've looked at this extensively.
8 I'm not just sort of -- you know, I -- I -- I'm not just
9 sort of speculating here.

10 His -- his mom didn't even get in touch with him until
11 his 20s. But he always felt abandoned. He always felt
12 unloved. He didn't really know -- he -- he didn't really
13 know what a normal family was -- was -- was like.

14 Early on he had some learning-disability issues. His
15 IQ had -- there are various IQ tests, but it always was
16 usually consistently in -- in -- around in the 80s. He --
17 he was, you know, in special classes. He felt sometimes
18 ostracized and separated. And I think, from that, came a
19 need to try and get along with people and -- and -- and --
20 and a need to -- and a need to fit in.

21 He tried to join the military when -- when he was 18.
22 He was -- he was removed during boot camp for -- for kidney
23 issues at that time. And he would hope to find some kind
24 of structure in the military, where he couldn't even find
25 it at school and he couldn't ever find, sort of, love at

1 home.

2 Well, after that he didn't have a place to go. In his
3 teens he ended up staying with -- with individuals that
4 really took advantage of him sexually. And he did what he
5 had to do to sort of live, and he worked odd jobs where he
6 could.

7 At some point he found some normalcy in his life. He
8 had struggles on and off -- serious struggles on and off
9 with drugs. But he did have -- he did start -- you know,
10 start a family. And -- and -- and he tried his best.

11 And I've talked to -- I've talked to family members
12 who love him. I've talked to, you know, in -- in-laws that
13 -- that love him and care about him. We didn't feel it was
14 necessary to bring everybody in here to talk today. His
15 stepmom and -- it -- was going to be here with his dad, but
16 she has fallen ill just in, sort of, the last week.

17 But I -- you know, I -- I think these things are --
18 it's not to evade responsibility or not take
19 responsibility, which -- which Floyd, you know, certainly
20 does in this -- in this case, Your Honor. But -- but once
21 I really did a deep dive in his youth and his life and,
22 sort of, what he had -- what he had -- what he had been
23 brought up with and what he had dealt with, I think it -- I
24 think showed how -- how emotionally broken and -- and --
25 and fragile he was and open to finding acceptance with --

1 with other people.

2 You know, it -- I -- I do believe, Your Honor, that
3 this wouldn't have happened had Brandon not set up this
4 plan. And again, I -- I'm not -- I'm not -- I'm not -- not
5 -- I'm not pushing this all off on Brandon. I mean, you
6 know, Floyd killed Mr. Kusko. I think that's very clear.

7 But it was Brandon's plan. It was Brandon's idea. It
8 was Brandon's gun. It was Brandon saying, "Hey, let's go
9 kill him; I'll drive you there right now."

10 And, you know, a lot of times you have people that
11 have other people do their dirty work for them or that push
12 them in -- in that situation. That does not absolve --
13 that does not absolve Floyd at all. But I -- but I think
14 it shows this wasn't -- you know, it -- it isn't something
15 that he just would -- I don't think, on any given day, he
16 would just decide to murder somebody or -- or execute this
17 kind of thing on his own.

18 He -- he said he felt relief after he finally came
19 clean about it. He knew he was going away to prison for --
20 for many, many years. He really did have a genuine
21 interest in -- in -- in helping the -- the daughters of --
22 of -- and family of Mr. Kusko because he felt like,
23 although he couldn't go back -- and we've heard this theme
24 a lot this morning -- "you know, if I could go back in
25 time, if we could -- if we could change our actions, if --

1 you know, if -- if Mr. Kusko could be saved" -- these were
2 things that Floyd had asked himself, as I know the family
3 and everybody else had asked.

4 And -- and his -- you know, I -- I can't tell you how
5 many hours I've talked to him about this, Your Honor. You
6 know, he -- he felt like his only choice or the only thing
7 he could to try -- try to do better for them and -- and for
8 Mr. Kusko was -- was to cooperate and was to -- was to
9 help, you know, Brandon, who otherwise would -- would --
10 would -- would still be free today, Your Honor.

11 I would ask you to consider 30 years in this case,
12 Your Honor. He has -- he has been in since June 7th, 2017.
13 Statutorily, that -- that is -- that is the -- the start of
14 a -- of a murder sentence. He didn't get a reduction for
15 manslaughter or anything like that. He pled to murder
16 without, as the state said, any promise of anything. And I
17 -- and I think that shows his -- his willingness to
18 cooperate.

19 And the law does see he and Brandon as equal. I guess
20 Mr. -- Mr. Eaton said something to the effect of when you
21 -- when you act in conjunction with somebody. But in this
22 case he took -- he took responsibility. And he went and he
23 -- and he testified, which is hard. He got called back on
24 the stand two times after the one time, which I know is
25 difficult enough. He got called again later.

1 And -- and my understanding is that -- that transport
2 screwed up today and put him on the same bus as -- as
3 Brandon and then Brandon yelled and -- yelled at him the
4 whole time and -- tell everybody that -- that he was a --
5 that he was a rat and a snitch. So, I mean, this is
6 something that's going to follow him the rest of his life,
7 even just doing the right thing in this situation, Your
8 Honor.

9 And I'm hoping -- I mean, I -- I think we'll check and
10 make sure that they're transported on different --
11 different vans on -- on -- on the way out. But, you know,
12 I mean, I -- I -- I think there is a difference between
13 these two men, the crime they committed, and what they have
14 done since -- since that time. And I would ask the -- the
15 Court to -- to -- to consider 30 years in this case, Your
16 Honor.

17 THE COURT: All right. Thank you.

18 Anything else from the state?

19 MR. EATON: Just one second, Your Honor.

20 (Off the record briefly.)

21 MR. EATON: Nothing else from the state, Your Honor.

22 THE COURT: All right. And to the -- and once again,
23 to the family, I think actually the -- the oldest daughter,
24 your name is -- is it ---

25 MS. BARNES: Laurin.

1 THE COURT: Laurin -- that's what I thought -- said
2 earlier that this -- you know, she had mixed emotions and
3 this is -- is -- this is a -- a difficult, different
4 situation. And from the Court's perspective -- and Mr.
5 Eaton will tell you this and most -- you know, this is an
6 execution-style murder in which, in most cases, is -- this
7 type of case, you would -- he -- the -- if there was a
8 conviction, it would likely be life in prison.

9 So in considering the type of murder, the -- this was
10 a cold case. I believe it was two years after Investigator
11 Reese got on the case and questioning of the case that, at
12 some point, Mr. Owens confessed and then, at some point, he
13 did testify in court, and also him pleading and taking
14 responsibility and not putting the family through two
15 trials. So even the Court has to consider all of those
16 things in coming to a sentence and also the sentence of the
17 codefendant, who did -- did have a trial in the matter.

18 For those reasons and -- and -- and taking everything
19 in totality of the circumstances -- the trial, the
20 confession -- sir, on Indictments 2018 -- 2017-GS-40-7153,
21 -7155 -- that is the burglary first-degree and the murder
22 -- I am going to sentence you to 48 years in the Department
23 of Corrections. On the ---

24 MR. BAILEY: Did you said -- did you say 48 years,
25 Your Honor?

1 THE COURT: Yes, sir.

2 And on the 2017-GS-40-7156/7157, it's State Department
3 of Corrections for 5 years. All of those sentences will
4 run concurrent. I don't think any of them have a
5 statutorily -- do any of them have -- statutory don't have
6 to be ran consecutive, I don't think.

7 MR. EATON: I don't think so, Your Honor.

8 THE COURT: All sentences run concurrent. He'll be
9 given credit for the time that he has served.

10 All right? Thank you. Thank you all again. I know
11 it's been a long morning. Thank you all for your patience
12 here this morning.

13 MR. EATON: Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. BAILEY: All right. Thank you, Your Honor.

16 (Whereupon, the proceeding was concluded at 11:43
17 a.m.)

18 --- END OF TRANSCRIPT OF RECORD ---

19

20

21

22

23

24

25

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR-M, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Richland County, South Carolina, on the 18th day of November, 2019.

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



Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Official Court Reporter

Columbia, South Carolina
February 4, 2021

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

The State of South Carolina,)
)
)
)

vs.)
)
)
)

Floyd Owen,)
)
)
)
Defendant.)

IN THE COURT OF GENERAL SESSIONS

**Warrant Number: 2017A4021601400,
 2017A4021601402, 2017A4021601401,
 ,2017A4021601403**

2019 NOV 25 PM 3:33

**NOTICE OF MOTION
 AND MOTION TO RECONSIDER**

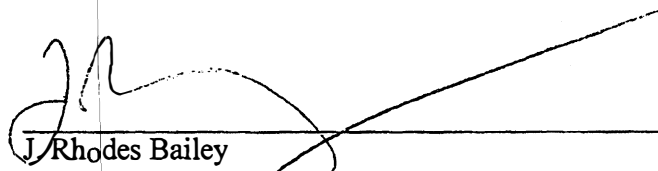
**TO: THE HONORABLE DEANDREA BENJAMIN
 VANCE EATON, ASSISTANT SOLICITOR, FIFTH JUDICIAL CIRCUIT**

PLEASE TAKE NOTICE that, as soon as this may be heard, the defendant will move through his attorney, J. Rhodes Bailey, for reconsideration of the Court's sentence entered on November 18, 2019 by the Honorable DeAndrea Benjamin.

November 18, 2019, Defendant pled guilty to murder, burglary first degree, criminal conspiracy, and use of a weapon during a violent crime. Defendant was sentence to forty-eight years on the murder and burglary charges, and five years on the conspiracy and weapon charges (all sentences running concurrently).

Counsel respectfully requests that this Court reconsider the sentence imposed on Mr. Owen.

Respectfully,


 J. Rhodes Bailey
 Attorney for Defendant
 Richland County Public Defender's Office
 P.O. Box 192
 Columbia, South Carolina 29202
 (803) 765-2592

Columbia, South Carolina

This 26 day of November, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
STATE OF SOUTH CAROLINA)
vs.)
Floyd Owen)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

Warrant Number: 2017A4021601400-1403

2020 MAY 26 PM 2:30

This matter came before the Court on written motion by and through Counsel for the above-referenced Defendant. The Defendant pled guilty to murder, burglary first degree, criminal conspiracy, and use of a weapon during a violent crime. This Court sentenced to forty-eight years on the murder and burglary first degree and five years on the conspiracy and weapon charges with all sentences running concurrently.

The Defendant now moves before this Court requesting reconsideration of the imposed sentence. After review, this Court has determined the Motion to Reconsider the sentence imposed on the Defendant is denied.

IT IS SO ORDERED.


The Honorable DeAndrea G. Benjamin,
Presiding Judge
Fifth Circuit Court

Columbia, SC
May 26, 2020

STATE OF SOUTH CAROLINA

County of RichlandFloyd Gregory Owen #339771

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2020CP400 5454

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee County Correctional
2. Name and location of Court which imposed sentence Richland County
Judicial Center 1701 Main St Columbia SC 29201
3. Name(s) of co-defendant(s) (if any) Charles Brandon Barkham
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder
 - (b) 1st Degree Burg

2020 NOV 18 PM 12:41
JEANETTE W. MCBRIDE
C.C.P. & G.S.

LEE COUNTY
FILED

(c) Conspiracy / (D) Weapon during Violent Crime

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

(a) Murder 11-18-19 48 years

(b) First Degree Burg 11-18-19 48 years

(c) Conspiracy 11-18-19 5 years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

~~i. _____~~

~~ii. _____~~

~~iii. _____~~

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

~~i. _____~~

~~ii. _____~~

~~iii. _____~~

(c) ~~the date of each such result:~~

~~i. _____~~

~~ii. _____~~

~~iii. _____~~

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

i. _____

ii. _____

iii. _____

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

(a) ~~Because~~ I was told by ^{my} lawyer that could not appeal a guilty plea

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Uneffective Assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion for reconsideration
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Richland County Judicial Center 1701 Main St Columbia SC 29201
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. Motion to Reconsider

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. November 26 2019

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

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

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

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

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

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

i. Rhodes Bailey 1701 Main St. Columbia SC
29201

ii. _____

iii. _____

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

i. My Plea

ii. My Sentencing

iii. My Motion to Reconsider

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

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

No

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Floyd Gregory Owen, 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.

Floyd G. Owen

SWORN to and subscribed before me this 13th day of Nov, 2020.

James M. Mike (L.S.)
Notary Public

My Commission Expires: 09/04/2029

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT	
	)		
Floyd G. Owen, #339771	)	2020-CP-40-5454	
	)		
Applicant	)		
	)		
v.	)	RETURN & MOTION	FOR MORE
	)	DEFINITE STATEMENT	2021 MAY -6 PM 12:40
State of South Carolina,	)	(Counsel Appointed)	DEANDREA G. BENJAMIN
	)		CLERK
Respondent	)		

In response to Applicant Floyd G. Owen's action for post-conviction relief (PCR) commenced November 18, 2020, Respondent, the State of South Carolina, makes this return:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted at the December 2017 term of the Richland County Grand Jury for murder (2017-GS-40-7153), first-degree burglary (2017-GS-40-7155), criminal conspiracy (2017-GS-40-7157), and possession of a weapon during commission of a violent crime (2017-GS-40-7156). Assistant Public Defender John Rhodes Bailey represented Applicant. Assistant Solicitor Richard V. Eaton of the Fifth Circuit Solicitor's Office prosecuted the case.

Applicant pled guilty as indicted on August 20, 2019, before the Honorable DeAndrea G. Benjamin. After deferring sentencing to November 18, 2019, Judge Benjamin, without negotiations or recommendation, sentenced Applicant to forty-eight years imprisonment for murder, forty-eight years for first degree burglary, and five years each for criminal conspiracy and possession of a weapon, to be served concurrently. Applicant filed a motion for reconsideration of his sentence, which was denied November 26, 2019.

II. FACTS GIVING RISE TO THE CONVICTION

The incident giving rise to the charges occurred on December 6, 2017 (Plea Tr. 5). At the guilty plea proceeding, Assistant Solicitor Eaton gave the following factual recitation in support of the pleas:

In the wee morning hours of December 6th, 2017, Mr. Owen and his codefendant, Charles Brandon Barham, devised a plan to murder the victim, Charles Kusko, in his home on Budon Court.

The State alleges that Mr. Barham gave Mr. Owen a gun, drove him to Budon Court; that the two went up to the house; that Mr. Owen broke into the house and shot Mr. Kusko in his bed. Mr. Barham then drove Mr. Owen away.

This case went somewhat cold until it was revived by CPD's cold case with some leads, with some witnesses that ultimately led to Mr. Owen's confession to the murder of Mr. Kusko.

Plea Tr. 4-5.

III. CURRENT APPLICATION

Applicant commenced this PCR action on November 18, 2020. Applicant asserts he is being held in custody unlawfully, alleging:

1. "Uneffective Assiata of Counsole"¹

Attached herewith and incorporated herein are the Richland County Clerk of Court records regarding the subject conviction, Applicant's SCDC records, the plea transcript, and the records of this PCR action. Respondent reserves the right to amend this return upon receipt of any relevant materials

IV. MOTION FOR A MORE DEFINITE STATEMENT

The Uniform Post-Conviction Procedure Act requires applicants to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). In an application for post-conviction relief, it is incumbent upon the applicant to make a

¹ Respondent reads the application as raising a claim of ineffective assistance of counsel.

prima facie showing entitling them 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. 385, 140 S.E.2d 784 (1965). Rule 71.1(d), SCRPC, provides appointed PCR counsel “shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”

Here, Applicant has failed to state with any specificity the facts giving rise to his allegation of ineffective assistance of counsel, as required by section 17-27-50. Additionally, Applicant’s allegation that Counsel did not perform in his best interest is not supported by any other additional information in the application. Therefore, Respondent moves pursuant to Rule 12(e), SCRPC, and Rule 71.1(d), SCRPC, to require Applicant, through PCR counsel, to provide a more definite statement of his allegation of ineffective assistance of counsel.

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.” Accordingly, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in 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 application for failure to state a claim.

V. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant’s allegations of ineffective assistance of plea counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). “[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel’s alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to “eliminate

the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, Respondent requests an evidentiary hearing to fully resolve the issues once Applicant, through counsel, provides a more definite statement of the allegations. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

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

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

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VII. ANY AND ALL OTHER ALLEGATIONS

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

VIII. CONCLUSION

WHEREFORE, Respondent moves for a more definite statement and the opportunity to respond to the more definite statement if necessary. Once a more definite statement is provided,

respondent requests an evidentiary hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

YASMEEN E. KLEIN
Assistant Attorney General

By:


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

May 4, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
 FLOYD G. OWEN ,	)	 CASE NO.: 2020-CP-40-05454
	)	
Applicant,	)	
v.	)	AMENDMENT TO APPLICATION
	)	FOR POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

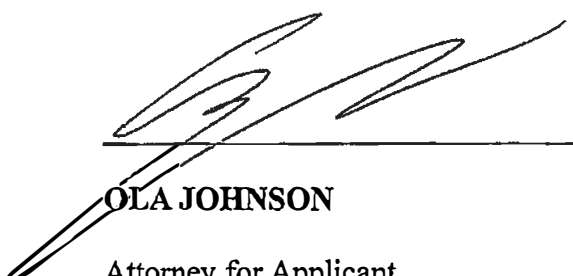
FILED
RICHLAND COUNTY
MAY 17 AM 10:30
CLERK OF COURT
W. McBRIDE
C. S. P. & G. S.

Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief. This amended complaint adopts and includes all grounds in the original application filed November 18, 2020, by Applicant. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to JOHN RHODES BAILEY as follows:

1. Prior to the guilty plea, Applicant's counsel failed to explain the details of the Applicants plea.
2. The Applicant believed he would be eligible for parole in 85% of his sentence based on statements made by counsel and by the court describing a Murder sentence as non-parolable (p.7).

3. Applicant's counsel, failed to file an appeal after the applicant requested this.
4. Applicant's counsel gave the court a sentencing report right before the sentencing and the court did not have time to review it (p. 10).
5. Applicant's was informed by counsel that he would receive a negotiated sentence of 30 years.
6. Applicant's counsel, failed to meet with the applicant a sufficient number of times to properly review the evidence and discuss this case with applicant.
7. Applicant's counsel, failed to properly investigate this case.
8. Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



OLA JOHNSON

Attorney for Applicant

P.O. Box 549

Lexington, SC 29071

This 13 day of May, 2022.

I N D E XWITNESSPAGE

Floyd G. Owen	
Direct Examination by Mr. Johnson	5
Cross-Examination by Mr. Barlow	13
John Rhodes Bailey	
Direct Examination by Mr. Barlow	20
Cross-Examination by Mr. Johnson	31
Certificate of Reporter	37

E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held May 25, 2022,
2 beginning at 2:27 PM.)

3 BAILIFF: Come to order. Remain seated.

4 THE COURT: Thank you-all very much.

5 Mr. Barlow?

6 MR. BARLOW: Yes, sir.

7 THE COURT: Do you want to call it, sir?

8 MR. BARLOW: All right, Your Honor.

9 May it please the Court? Russ Barlow on behalf of
10 the State of South Carolina. This is the post-conviction
11 relief matter of Mr. Floyd G. Owen versus State, Case
12 Number 2020-CP-40-05454, out of Richland County.

13 Your Honor, the -- Mr. Johnson, our Applicant's
14 counsel, he filed an amendment and at this time we would
15 just request that Applicant's counsel state specifically
16 whether he's moving forward on those allegations or the
17 initial PCR application.

18 THE COURT: What might you say, Mr. Johnson?

19 MR. JOHNSON: Well, Your Honor, I filed it and I
20 put the language in there that we're adopting and
21 including all the grounds in the original application.
22 There is not a whole lot in the original one and mine
23 has seven and -- but we're going forward on all those.

24 THE COURT: All right. Gentlemen, to avoid getting
25 caught up, we've got another case this week that might

1 run out of time.

2 How long do you think it's gonna take, Mr. Johnson?

3 MR. JOHNSON: I don't think it will take -- well, I
4 think it would be equal to the one you just had, Judge.

5 THE COURT: That's fine. That's fine. Because, if
6 not, I'm trying to scramble how to finish it all this
7 week --

8 MR. JOHNSON: Yes, sir.

9 THE COURT: -- but take your time, Mr. Johnson,
10 okay?

11 MR. JOHNSON: Yes, sir.

12 THE COURT: I'm ready.

13 MR. JOHNSON: Thank you, Judge. I call Mr. Owen at
14 this time.

15 BAILIFF: Raise your right hand and place your left
16 hand on the Bible.

17 THE COURT: Do you want me to do it?

18 BAILIFF: Yes, you can.

19 THE COURT: I'm sorry. I couldn't hear.

20 BAILIFF: Yes.

21 (Whereupon, Floyd G. Owen was duly sworn by the
22 Court.)

23 THE COURT: Is that a yes or no?

24 THE APPLICANT: Yes, sir.

25 THE COURT: All right.

1 Mr. Owen, it might help if you pull that mask down
2 when you testify so I can hear you.

3 THE COURT: Mr. Johnson.

4 MR. JOHNSON: Thank you, Judge.

5 FLOYD G. OWEN,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. JOHNSON:

9 Q. Mr. Owen, were you represented by Mr. Rhodes Bailey as
10 your attorney in this case?

11 A. Yes, sir.

12 Q. Okay. And when you were represented by Mr. Bailey, do
13 you recall having a conversation with him about this guilty
14 plea and discussing the details of the plea?

15 A. Yes, sir.

16 Q. Do you feel like he did a sufficient job of explaining
17 to you what the details would be?

18 A. In some things.

19 Q. Okay. And do you feel like he did a sufficient job of
20 explaining what -- whether or not this murder charge would
21 be -- or whether it would be parole eligible or would it be
22 a day for day? Did he explain that to you?

23 A. There was a lot of things explained. I mean, I --
24 I was due to testify against my co-defendant, so the
25 prosecutor promised me one thing in a meeting. I mean, I

1 know it wasn't in writing. I found out now that it wasn't
2 in writing, so it doesn't hold anything, but I don't --
3 some of the stuff I understood, some of the stuff I didn't.
4 I mean, I understood I did something wrong and I understood
5 I was pleading guilty to what I did. I feel like I was
6 admitting guilt, but the majority of the rest I don't -- I
7 didn't understand it.

8 Q. Okay. When the statement was made by the Court about
9 the murder charge being non-parolable --

10 MR. JOHNSON: And that statement, I'm referring to
11 line 8, page 7 of the transcript, Your Honor, that I've
12 cited in my amended application.

13 BY MR. JOHNSON:

14 Q. When that statement was made, were you under the
15 impression that that meant this was a -- murder was a
16 no-parole charge where you could make parole in 85 percent
17 of the sentence?

18 A. Yeah.

19 Q. Okay. Did your attorney ever explain to you that
20 it was a day for day sentence? Because it was murder,
21 you have to serve all of it, you can't make parole in
22 85 percent. Did he tell you that?

23 A. Yeah, it was explained afterwards.

24 Q. After the plea?

25 A. Yeah.

1 Q. Okay. And as --

2 A. Because I think he even asked Judge Benjamin like
3 towards the end if it was parolable or if it was
4 85 percent, I think. I mean, I don't know. I was in
5 kind of a fog.

6 Q. Okay. And do you remember having a conversation with
7 counsel about wishing to file an appeal?

8 A. Yes.

9 Q. And what did he state to you about that?

10 A. I believe he said it wasn't an appealable offense,
11 but I don't think I really understood. Like I knew I was
12 pleading guilty, but I -- honestly I thought I was pleading
13 guilty to thirty years.

14 Q. Okay.

15 A. I mean, I really did.

16 Q. Your attorney told you you were gonna receive thirty
17 years?

18 A. He said that that's what we were going for.

19 Q. Okay.

20 A. The prosecutor even -- when I went to meet with them
21 one of the times about my co-defendant, you know, he told
22 me before -- before I even said anything he said, you know,
23 we're gonna need you to testify and everything, we're gonna
24 make sure you get less time than Brandon, and -- and we see
25 how that turned out.

1 Q. So did your attorney tell you you could get more time
2 than thirty years or more time than the co-defendant? Did
3 he ever tell you that?

4 A. Unh-unh.

5 Q. No?

6 A. (Shakes head.)

7 Q. What did he tell you the sentence was -- the potential
8 sentence was for murder?

9 A. Thirty to life. I was told I'd get a life sentence
10 if I went to trial, so I just kept my mouth shut and sat in
11 county like I was told to do.

12 Q. Okay. And how many times did the attorney meet with
13 you to prepare this case and discovery -- go through
14 evidence and look through discovery?

15 A. He kind of just came down there and just kind of gave
16 me in a nutshell what was going on and we -- we really
17 didn't -- we really didn't go over anything. I mean, I --
18 from the start, you know, going into county, I -- I knew
19 what I did and I knew I deserved to go to prison for it. I
20 mean, I guess --

21 Q. Did he --

22 A. Huh?

23 Q. Did he give you a physical copy of your printed
24 discovery?

25 A. (Shakes head.)

1 Q. Are you shaking your head no? Is that what --

2 A. No. Yeah, I didn't -- no, I didn't have any of that.

3 Q. Did he ever review any audio video recordings with you
4 that were in the evidence?

5 A. (Shakes head.) No, sir.

6 THE COURT: Okay.

7 BY MR. JOHNSON:

8 Q. Yeah, you have to answer out loud.

9 A. My bad.

10 Q. And how many times did he come down there to the jail
11 to talk to you?

12 A. Five, six.

13 Q. Five, six?

14 A. I mean, he was in -- he was in and out. He had other
15 people in my dorm that was under him.

16 Q. Okay. And did you ask him to deliver a copy of
17 discovery to you?

18 A. No, I -- I just was being told just to sit and --

19 Q. Uh-huh.

20 A. -- relax, don't -- you know, don't go up for a bond
21 because more than likely I'm not gonna get one. I mean,
22 I was at my preliminary hearing and my co-defendant was
23 going up for a bond in general sessions and I -- I don't
24 know. I just I kind of feel like I was just kind of --
25 since I was so willingly to just say hey, I did it, you

1 know, I know I did something wrong and take -- you know,
2 take responsibility for my actions, I feel like it just --
3 let's just do whatever, you know, with him.

4 Q. Yeah.

5 A. You know, I -- I don't really feel like I had a say
6 in it.

7 Q. Did a private investigator working for your attorney,
8 did they ever come talk to you, kind of work your case?

9 A. No, sir.

10 Q. You said no?

11 A. (Nods head.)

12 Q. Okay. And when you -- I know we touched on it
13 before, just to be clear, you asked about -- you asked
14 your attorney to file appeal and he said you could not do
15 that? Is that true?

16 A. He told me PCR, but I didn't know what a PCR was at
17 the time.

18 Q. Did he say you could file an appeal or no?

19 A. No, he said I couldn't file an appeal.

20 Q. Okay. But you wanted one?

21 A. Honestly, I don't really know what I wanted. I didn't
22 know what I was eligible for or --

23 Q. Uh-huh.

24 A. I just -- I didn't know.

25 Q. Did you ask him for an appeal?

1 A. Yeah, he -- after I was sentenced, he -- he told me
2 what I needed to do.

3 Q. Okay.

4 A. That I needed to file a PCR.

5 Q. Okay. And is there anything else that concerned you
6 about preparation for this plea about a sentencing report?
7 Was there a sentencing report handed up by counsel that you
8 remember he gave to the judge?

9 A. I don't even know what that is.

10 Q. You don't recall any type of reports being handed up?

11 A. No, sir.

12 Q. Okay. And anything else regarding discussion of the
13 elements of the charge or evidence that you can remember
14 with counsel?

15 A. No.

16 Q. Okay. All right. And do you feel like you
17 voluntarily entered this plea or were you coerced by the
18 situation?

19 A. I don't feel like I was coerced. I mean, I -- I felt
20 like I was doing what was right. I mean, I did something
21 wrong. Again, you know, I mean, I feel awful for what I
22 did.

23 Q. Uh-huh. But you thought you were gonna get thirty
24 years?

25 A. Yeah, that and I -- I don't know. I feel like

1 nobody really got my side of the story. Like, I mean, I
2 understand -- I understand that I took somebody's life and
3 nobody -- nobody gets that right to do that to somebody,
4 but I just don't feel like I ever got to tell my side.

5 Q. Did your attorney explain to you you had a right to a
6 jury trial?

7 A. Yeah.

8 Q. He did?

9 A. Yeah.

10 Q. All right.

11 A. I was -- I was so scared of getting a life sentence
12 because that's what I kept getting told, that if I went
13 to trial I'd get a life sentence, that I felt like I
14 just needed to sit down. I mean, I felt like I'd already
15 did what was right and came forward and told, you know,
16 what I did and everything else, but, I mean, I -- I got
17 forty-eight years. I mean, that's basically a life. I
18 max out in 2065. I'll be 81 years old. The average life
19 expectancy of a white male in American is 81 and a half
20 years, so I basically got a life sentence.

21 Q. Is there anything else you want to mention about your
22 counsel's representation of you?

23 A. No, sir.

24 MR. JOHNSON: Okay. No more questions, Your Honor.

25 THE COURT: Mr. Barlow.

1 MR. BARLOW: Yes, sir. Thank you.

2 CROSS-EXAMINATION

3 BY MR. BARLOW:

4 Q. Good afternoon, Mr. Owen. So today you're here
5 alleging ineffective assistance of your plea counsel,
6 correct?

7 A. Yes.

8 Q. Just for the record, I want to confirm that you
9 understand if you were successful here today that you
10 would be retried for all matters with which you were
11 originally indicted on and that you're facing a life
12 sentence plus thirty years if convicted on all three
13 charges?

14 A. Yes.

15 Q. Before you pled, how many times did you meet with your
16 attorney?

17 A. Five times.

18 Q. And during those five meetings, did your attorney go
19 over discovery with you?

20 A. I -- no.

21 Q. I'm sorry, could you repeat that?

22 A. No.

23 Q. Okay. Did your attorney discuss the elements of the
24 offenses that you were charged with?

25 A. I believe so.

1 Q. Do you recall discussing any possible defenses with
2 your attorney?

3 A. I don't think there really was a defense. I mean,
4 they were more interested in getting my co-defendant since
5 I'd already wrote a statement on myself. That was their
6 main -- I guess their objective with me.

7 Q. So you didn't --

8 A. They didn't really have a case against Brandon, so
9 they wanted me to help them and I kind of just, I guess,
10 put more focus into that and just sitting -- sitting tight
11 than I did worrying about myself.

12 Q. So you're saying there were no possible defenses
13 because you confessed?

14 A. (Nods head.) Yes.

15 Q. Did you provide any leads or witnesses to your
16 attorney to investigate?

17 A. Leads into what?

18 Q. Leads on any information that would -- I believe one
19 of the -- yeah, one of the claims here is that he failed
20 to investigate the case. Did you provide him with any
21 information or leads for him to investigate?

22 A. I mean, like I said, again, I -- I confessed. I
23 thought basically what I was doing right there was giving
24 a guilty plea, you know, so I basically just left it in
25 his hands. I just didn't question anything. He just

1 said that, you know, we were still waiting and sitting.

2 I mean, like I said, I think they were more worried about
3 trying to get Brandon at that point than they were worried
4 about me.

5 Q. Do you recall telling the judge that you understood
6 that the murder charge was non-parolable?

7 A. No, sir.

8 Q. Do you recall the judge asking you if you understood
9 the particular charge you were pleading to was a violent
10 and most serious offense?

11 A. No.

12 Q. Do you recall the judge asking if you understood the
13 two strike law and explaining it to you?

14 A. I remember talking about that.

15 Q. Do you recall the judge informing you that you give
16 up certain rights when you plead guilty such as a jury
17 trial?

18 A. Yeah, I do remember. Yes.

19 Q. Do you recall telling the judge that you were
20 satisfied with plea counsel's representation?

21 A. No. No.

22 Q. Do you recall telling the judge you did not need any
23 more time with your plea counsel?

24 A. Are you talking about when I was pleading guilty?

25 Q. Yes.

1 A. Yeah. I thought -- I thought I was there just to
2 plead guilty and that's about the only thing I really
3 understood about it.

4 Q. Do you recall telling the judge that you had met
5 with plea counsel for as long and as necessary for him to
6 properly represent you?

7 A. (Shakes head.) No.

8 Q. Do you recall telling the judge that you did not have
9 any further questions for plea counsel that day?

10 A. Unh-unh. No.

11 Q. Do you recall the judge asking you a second time
12 if you were completely satisfied with plea counsel's
13 representation and you answered in the affirmative?

14 A. I really don't remember much that day period. I
15 really don't. I just know I was standing in front of the
16 judge. I knew I was pleading guilty, confessing to what
17 I did, and that's about as much as I understood about it.

18 Q. Do you recall telling the judge that no one forced
19 you to plead guilty?

20 A. Uh-huh.

21 Q. Do you recall telling the judge that no one had
22 promised you anything in exchange for your plea of guilty?

23 A. Yes.

24 Q. And, Your Honor, just to back up on that one question
25 so I can get verbal answer, do you recall telling the judge

1 that no one was forcing you to plead guilty?

2 A. Yeah, nobody was forcing me to plead guilty.

3 Q. And do you recall telling the judge you were pleading
4 guilty freely and voluntarily?

5 A. Yes.

6 Q. Do you recall telling the judge that no one had
7 threatened you or coerced you into pleading guilty?

8 A. Yes.

9 Q. Do you recall telling the judge you were pleading
10 guilty because you are guilty of these charges?

11 A. Yes.

12 Q. Do you recall telling the judge you understood all
13 the questions?

14 A. I guess, yes. I mean, I -- I understood that I was
15 pleading guilty. That's what I understood. What --
16 honestly, I was sitting there thinking thirty years
17 literally in my head; thirty years, thirty years, thirty
18 years.

19 Q. Do you recall telling the judge you answered all the
20 questions truthfully?

21 A. I guess.

22 Q. Do you recall telling the judge you understood that
23 you had the right to appeal the guilty plea and sentence
24 of the Court within ten days of the sentence?

25 A. No.

1 Q. At sentencing do you recall the judge discussing his
2 consideration of your sentence, that you confessed, you
3 testified against your co-defendant, took responsibility
4 for your actions and did not put the victim's family
5 through two trials?

6 A. I do remember that. I don't remember the judge saying
7 that, but I think I remember Lauren's mom saying that.

8 Q. Did you ever tell your counsel that you wanted to go
9 to trial?

10 A. No, I was too scared to.

11 Q. Was it your decision to plead guilty?

12 A. Most definitely.

13 Q. Did you ask plea counsel to appeal your guilty plea?

14 A. Are you talking about after I got sentenced?

15 Q. Correct.

16 A. I don't think so. The only thing I got from him was
17 that I needed to -- when I got where I was going I needed
18 to apply for a PCR.

19 Q. Right. If I'm correct, I believe though on direct you
20 testified that you did ask him to appeal?

21 A. I guess, man. I don't know.

22 Q. Do you know what grounds he would appeal?

23 A. No. I mean, I -- honestly, I mean, I just heard
24 from my counsel two weeks ago. I mean, that's as much
25 preparation as I had for this. I mean, I -- I didn't even

1 know what a PCR was. I mean, my parents have been telling
2 me don't listen to anybody that I've been locked up with
3 because, you know, there's a bunch of jailhouse lawyers
4 back there. I mean, I just don't feel like I got a fair
5 shake with any of this.

6 MR. BARLOW: I beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 MR. BARLOW: Your Honor, nothing further from the
9 State.

10 THE COURT: Mr. Johnson.

11 MR. JOHNSON: Nothing further, Your Honor.

12 THE COURT: Thank you very much, sir. You may be
13 seated.

14 (Witness excused.)

15 THE COURT: Anything else, Mr. Johnson?

16 MR. JOHNSON: That's it, Judge.

17 THE COURT: All right. Mr. Barlow.

18 MR. BARLOW: Yes, sir. Thank you.

19 At this time we'd call Mr. J. Rhodes Bailey.

20 BAILIFF: Step up and be sworn.

21 (Whereupon, John Rhodes Bailey was duly sworn by
22 the bailiff.)

23 BAILIFF: Have a seat and state your full name
24 for the record.

25 THE WITNESS: My name is John Rhodes Bailey.

1 Rhodes, R-H-O-D-E-S.

2 JOHN RHODES BAILEY,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BARLOW:

6 Q. Good afternoon, Mr. Bailey. Thank you for being here
7 again. How long have you been practicing law?

8 A. Fifteen years.

9 Q. And how much of that has been criminal law?

10 A. Two-thirds of it. Well, I mean, on and off, but ten
11 years in the public defender's office.

12 Q. And were you appointed or retained in this case?

13 A. Our office was appointed.

14 Q. Okay. And about how long before the plea?

15 A. I first got this one in June of 2017 and the plea was
16 -- sorry. Excuse me. I'm sorry. The plea was 2019.
17 Gosh, was it November of 2019? I'm sorry. I should have
18 looked at this. Oh, shucks. I grabbed the wrong envelope
19 when I was down there. Maybe the Court can enlighten me --
20 maybe you can enlightened me with the day the plea was.

21 Q. The date of the plea in this case --

22 A. Wait a minute. I think I found it. November -- no.

23 Q. August of 2019.

24 A. Okay. Sorry.

25 Q. Does that sound correct?

1 A. I think that sounds right.

2 Q. Okay. And approximately how many times did you meet
3 with the Applicant?

4 A. A lot of times. I mean, probably at least ten or
5 twelve times. I can't tell you the exact number right now,
6 but quite a few times.

7 Q. Did you discuss the elements of the charges and what
8 the State was required to prove with them?

9 A. Yes.

10 Q. And would you briefly characterize the State's
11 evidence in this case.

12 A. The most evidence they had against Floyd was that
13 he had -- he had given a confession. He had signed
14 confessions, he had given audio confessions. What
15 happened was this was a case where the -- where Mr. Kusko,
16 the victim, the decedent, had been killed a few years
17 before, and at some point Mr. Owen was -- was arrested
18 for an armed robbery. It was just a regular kind of armed
19 robbery thing. He was brought up on charges and they --
20 the police started asking about this murder case again and
21 then they -- they went to his girlfriend and -- and told
22 his girlfriend she was gonna get in trouble if she didn't
23 talk to them and then she said Floyd confessed to the
24 killing, then they went to Floyd and said we're gonna, you
25 know, lock your girlfriend up if you don't tell us what's

1 going on, and then he spoke with them and he confessed,
2 and there were -- there was an audio recording of it.

3 So the biggest -- I mean, the biggest evidence
4 against him was just -- was confessions because it was at
5 that point sort of a -- it was a cold case. Not a super
6 cold case, but it was a cold case. So Floyd's confession
7 was -- a very thorough confession was a lot of the evidence
8 against him.

9 Q. Did you file a Rule 5 or Brady motion?

10 A. Yes.

11 Q. And did you review that discovery with Mr. Owen?

12 A. Yes. We didn't go over every audio recording, but he
13 -- he didn't seem to scrutinize that because he remembered
14 the -- talking to the police.

15 Q. Did you discuss the punishments associated with the
16 offenses?

17 A. Yes. Yes, that it carried life. I mean, honest -- I
18 mean, actually technically murder is punishable by death,
19 but we're in Richland County so it was kind of unlikely.

20 Q. Did you inform him of his right to a jury trial?

21 A. I did.

22 Q. And did he ever express to you that he wanted a jury
23 trial?

24 A. No. I -- I prepared kind of strategically how to
25 handle one, but he wasn't -- he was not interested in a

1 jury trial.

2 Q. Did Mr. Owen ever tell you that he did not understand
3 something that you were explaining to him?

4 A. I think he usually understood. I know he had had some
5 learning disabilities when he was younger because I know
6 of extensive mitigation research from working this case,
7 going through medical records, hiring a psychological
8 expert, but I was -- but he usually would understand
9 everything I was saying. And he would usually ask me if
10 he didn't understand something and I'd repeat it.

11 Q. Did you enter into any plea negotiations on behalf of
12 Mr. Owen?

13 A. I tried very hard to get the solicitor to give me a
14 guaranteed number. The -- for a while I tried to get it
15 under the manslaughter territory, which was not likely to
16 happen because they had a strong enough case against him,
17 but at some point they said he would have to plead to
18 murder, which, of course, there is a mandatory minimum of
19 thirty and, you know, I advised Floyd of his -- you know,
20 of his right to trial. I said, you know, I'm gonna be
21 honest, this is the best -- the best bet for you, the best
22 case scenario would be thirty if you plead to murder, but
23 he didn't have any interest in going to trial. And they
24 -- they -- I will say that law enforcement continuously
25 reached out to me about wanting him to testify because his

1 co-defendant was out on bond. His co-defendant -- I mean,
2 essentially the co-defendant, Brandon, said they were --
3 they were doing a bunch of drugs one night and he said it
4 was -- the victim was Brandon's uncle and Brandon said hey,
5 you know, my uncle, I don't like him, you don't like him,
6 and they started talking about they didn't like him and
7 he says I've got a gun, let's go kill him, and -- and
8 Brandon drove him in his truck, then gave him a gun and
9 said now you go to the back or something to that effect
10 and Floyd -- Floyd, you know, fully confessed to it a
11 few years later and then Brandon -- Brandon bonded out
12 and was, you know, free this whole time while, you know,
13 Floyd was in.

14 And Floyd was, you know, very -- always very
15 forthcoming with me about what had happened, very
16 remorseful early on, and -- and the State would frequently
17 say will you please get him to cooperate with us because,
18 you know, we think Brandon -- the prosecutor told me, he
19 said Brandon -- I believe Brandon is the principal, very
20 clearly, I believe this was Brandon's show mainly and
21 that, you know, Floyd acted, you know -- and, again, Floyd
22 never said it wasn't -- he didn't do anything wrong. I
23 certainly never said Floyd wasn't culpable, but, I guess,
24 Brandon had sort of this reputation of being slippery.

25 So eventually -- you know, I tried to -- I tried to

1 leverage, you know, to get -- to get the best deal for my
2 client, which is just that he would get out of prison one
3 day for cooperating. It was never a -- it was never gonna
4 be a, you know, wonderful deal. He was never gonna come
5 out of anywhere like a young man, but, you know, he also
6 kind of -- I mean, also was very much the subject, you
7 know, and he had already confessed, you know, to it.

8 So, you know, we talked about it. I mean, the
9 investigator called me a lot. You know, as a defense
10 lawyer, you know, most defense trial lawyers are not --
11 you know, they don't enter this business to go out and be
12 the informant lawyer, but that's what happens sometimes
13 in the best interest of your client. And I liked Floyd a
14 lot and, you know, I said here's the deal, you know, it's
15 a big deal to testify against somebody, you're not gonna
16 get a huge benefit out of it, but you may get the promise
17 of -- of getting out one day, and I'm gonna ask for thirty.
18 I'm gonna ask for thirty.

19 So -- so when he said the word "thirty" over and over
20 again, which is what I told him I wanted, I didn't -- you
21 know, they never promised. I tried to get a prosecutor to
22 promise me. I --

23 Q. So -- I didn't mean to interrupt you. That was
24 actually my next question because Applicant has alleged
25 that you told him he would receive a negotiated thirty-year

1 sentence and do you recall that?

2 A. Right, and here's the thing. Prosecutors frequently,
3 at least in Richland County and a lot of state courts, will
4 not promise a particular sentence because then they will
5 say -- then they have to disclose that potentially to the
6 other defense counsel or at least that's their policy they
7 say, right? Well, I can't promise you thirty because then
8 when you testify at trial the co-defendant's gonna say hey,
9 but you're gonna get thirty for this, right, so it's always
10 kind of vague. But the solicitor was real interested in
11 his cooperation. He seemed to be appreciative. I don't
12 think the solicitor did enough to show appreciation of --
13 the conviction I don't think. I mean, I wish I could have
14 gotten more assurances. I asked for assurances over and
15 over again from the prosecutor, but, you know, in the end
16 we went -- you know, that was -- it had to be straight up.
17 You know, it was -- it was a situation where, again --
18 well, some cases prosecutors are excited to try because
19 they get to try cases and they're slam dunks for them, and
20 this was clearly a slam dunk for them.

21 Q. Did you inform Mr. Owen of the details and the
22 consequences of his plea?

23 A. Yes.

24 Q. And did you inform Mr. Owen that a murder charge was
25 non-parolable?

1 A. Yes, I'm pretty sure I did.

2 Q. Day for day?

3 A. I definitely would have -- there's no reason I would
4 have told him that -- that he would have gotten parole.
5 And I heard his testimony earlier saying that I had asked
6 the judge -- I definitely didn't ask the judge if it was
7 parolable, but I can understand he was confused. Looking
8 at the transcript, I saw that I did say -- the judge
9 sentenced him to forty-eight years and I asked as I
10 frequently have when a sentence was a little bit of a
11 surprise to me, I said I'm sorry, Judge, did you say forty
12 -- did you say forty-eight and she's like yes, I did say
13 forty-eight or something to that effect. You know, my
14 hearing isn't always perfect. I spent much of my youth
15 playing loud rock music in bands, so I -- but, you know, I
16 was disappointed. I was hoping it would only be thirty or
17 forty.

18 Q. Did you -- did you ever tell the Applicant that he
19 would only serve 85 percent?

20 A. I -- I'm pretty confident I wouldn't have said that.
21 I'm -- you know what, he might be confused because I might
22 have said I would like to get them to -- let you plead to
23 manslaughter because if it's manslaughter, thirty --
24 manslaughter means you get out at 85, and I -- you know,
25 as lawyers we -- we crunch these numbers and say them

1 quickly all the time and it might have -- that might have
2 hung in his brain, but I think I was pretty -- I was pretty
3 obvious why a murder plea at thirty was not as favorable
4 as a manslaughter plea at thirty.

5 Q. Did your -- did Mr. Owen ever indicate to you that he
6 wished to go to trial or that he wished to plea?

7 A. He was not interested in a trial. I mean, a trial
8 would have been a last ditch effort if -- you know, if
9 there were no other -- I mean, I would have been happy to
10 do it had he wanted to do it, but he was not interested.

11 Q. Do you stand by your counsel that you provided
12 Mr. Owen today?

13 A. I do. I worked really hard in Floyd's case. I
14 got him a -- I got a psychological evaluation for a
15 presentencing report. He was a really damaged child.
16 There were a lot of issues. I -- I don't think that
17 the Court really -- I worry that maybe the Court didn't
18 examine the report very much and I avoided talking about
19 -- I referenced the report in court, but at the time it
20 made more sense to not make a huge -- to not discuss the
21 details of the report in part because -- you know, in
22 part because it kind of had sensitive information to the
23 families, both to Floyd's family and the victim's family,
24 and I just kind of thought I -- I didn't want to belabor
25 negative things of the deceased victim. I didn't think it

1 was necessary to get a result, you know, and they seemed
2 like nice folks and they seemed appreciative that Floyd,
3 you know, was the reason that co-defendant was convicted.

4 You know, Floyd had a very difficult history with
5 the victim. I mean, the victim in this case, they had a
6 really complicated history, and I think he was just
7 generally traumatized by being young and going through
8 some rough things. I'm not just saying about the victim,
9 I'm saying generally a lot of stuff, and, you know, I wish
10 that -- I felt the judge was gonna pay more attention to
11 the presentencing report. You know, if I had to do it
12 over, I would have put more emphasis on it and maybe put
13 more stuff on the record. It was in the record, but I
14 didn't talk about it, but, you know, you never know what
15 people are gonna consider or what they're gonna read, you
16 know.

17 Q. We're gonna get to the sentencing report in just a
18 second. Let me ask you did Mr. Owen ever indicate that
19 he wished to appeal his plea conviction?

20 A. Look, I think I know where the confusion is. He -- he
21 did not ask for an appeal. We did a motion to reconsider
22 sentence and I -- I mean, you don't have to be a criminal
23 defense lawyer to confuse that, right? Or to not -- to not
24 not confuse that. So I filed a motion to reconsider the
25 sentence and Judge Benjamin denied it without a hearing I

1 believe as late as -- it might have been as late as -- I
2 mean, the note I have was August of 2020, but that -- I
3 don't know if that's right, but I think that's right, so
4 she did it without a hearing. And I mailed the letter. At
5 that point, Floyd was already at SCDC, and I sent it to
6 him, and I -- and I told him -- I advised him of his PCR
7 rights. I always advise my clients of their PCR rights.

8 Q. All right. Now in regards to the sentencing report,
9 do you recall giving the sentencing report to the judge
10 before sentencing?

11 A. Yes.

12 Q. Okay. And is it common practice to do it when you did
13 it?

14 A. Yeah, because you want -- I mean, now state court is
15 a little obviously wilder than the Federal court where
16 people spend -- you know, have all these filings
17 presentencing and everything and it's a -- things move
18 more quickly, but at the same time I -- I wanted to make
19 sure that the judge and her clerk had a chance to read it,
20 I wanted to make sure that the State had a chance to see
21 it because you always want opposing counsel to fully see
22 everything, and I don't remember exactly how much time, but
23 I remember I -- I gave the report to them ahead of time.

24 Q. Well, Applicant asserts that the sentencing report was
25 given late. Would you agree with that allegation?

1 A. I gave it to them before the plea and I cannot -- I
2 cannot remember specifically how. I remember -- I think,
3 if I remember correctly, and I swear I hit my forties and
4 my memory is not what it used to be, the -- I seem to also
5 remember walking by Judge Benjamin maybe with opposing
6 counsel and saying, Your Honor, I submitted a sentencing
7 report earlier to your clerk, I assume you got it, I just
8 want to make sure you got it. Because I was -- to me it
9 was very important.

10 So as to whether it was early enough, I can't say.
11 I don't remember exactly, but I planned really hard on --
12 for this plea and mediation -- not mediation, sorry,
13 mitigation and so I would have made a real effort to try
14 and, you know, get -- I wanted -- I wanted the Court to
15 see it.

16 MR. BARLOW: Thank you, Mr. Bailey. Answer any
17 questions Mr. Johnson has for you.

18 THE WITNESS: Sure.

19 THE COURT: Mr. Johnson.

20 MR. JOHNSON: Thank you, Judge.

21 CROSS-EXAMINATION

22 BY MR. JOHNSON:

23 Q. Mr. Bailey, just to point out, on page 10 of the
24 transcript you had this report marked as an exhibit, and
25 this was during the sentencing, and is it your testimony

1 that you actually gave this copy to the judge to review
2 prior to that?

3 A. Yes. Yes, it is my -- yes.

4 Q. All right. And when you had the conversation with
5 Mr. Owen regarding sentencing, you said you did
6 specifically tell him that murder was a day for day
7 sentence, you cannot get out before you serve the entire
8 sentence?

9 A. I'm sure that would have happened because I was
10 explaining to him why I wanted manslaughter instead of
11 murder, like why it made a difference to be below that
12 threshold of the day for day thirty to life.

13 Q. Okay. And you did explain -- or what did you state
14 to Mr. Owen regarding the details of the plea as far as
15 his rights and what he was doing? Did you explain all the
16 rights that he was giving up?

17 A. Yes, I have a questionnaire that I do -- that I did
18 with every client I ever -- I'm pretty sure every client
19 I represented in the public defender's office in general
20 sessions where I went through all their rights, and that's
21 two -- there are two reasons for that. One is obviously
22 you want to inform your client of their rights fully and
23 you have a checklist. Even though I did it literally
24 thousands of times, you go through everything. Two, when
25 they get in front of the judge, the judge is gonna ask them

1 the same questions, so I make sure they understand these
2 concepts before they go in front of the judge so it's not
3 new or it's not a surprise.

4 Q. Okay. And after your motion to reconsider you said
5 was denied, did you have a conversation with Mr. Owen
6 about filing an appeal or did you mail him a letter? How
7 did you handle that?

8 A. I sent him a letter and, I assume, in SCDC. I
9 remember because Judge Benjamin in this and one other case
10 I had a pending motion to reconsider. And I didn't do a
11 ton of motions to reconsider. You know, I do them only
12 when I think it really could potentially make a difference
13 and him and another client I filed motions to re -- well,
14 now if a client asks me to file a motion to reconsider, I
15 have to do it, but I remember this being a -- you know, a
16 thing where I -- we talked about it, he said he wanted me
17 to do one, I thought it was worth a shot, and filed one.
18 And then I think -- I think when I sent him the -- the
19 final order to him in -- at SCDC, I think I said, you know
20 -- I think I also wrote -- I mean, I could be wrong,
21 Mr. Johnson, but I think I also wrote, you know, you can
22 still file a PCR a hundred days -- I mean, sorry, one year
23 past X date. I think I did.

24 Q. Did you explain -- after the Court talked about ten
25 days to a file an appeal, did you explain to Mr. Owen that

1 the ten days would run after the decision on the motion to
2 reconsider, that that clock started then?

3 A. I think I would have, that I would have told him. I
4 mean, that's just what I automatically tell the client.

5 Q. All right. And you didn't put that in writing though?

6 A. I didn't -- I didn't put that it was tolling the
7 appeal period.

8 Q. Okay.

9 A. I mean, I don't think I did.

10 Q. Okay. And as far as the thirty years, did you have
11 a conversation with my client where he -- did he tell you
12 he thought he was getting thirty?

13 A. I told him it was my hope that we could get him close
14 to thirty, nothing over forty. That was what I wanted --
15 or what I wanted to try to get for him and, you know, that
16 -- I wanted him -- you know, I wanted him to have a chance
17 to get out of prison and see -- you know, to see his son
18 as an adult or, you know, even if he was older.

19 Q. Okay. And you said you met with him ten to twelve
20 times. Was that at the Richland jail?

21 A. Yeah. And, honestly, I met with him a bunch, so it
22 might have been more than that because I think -- I mean,
23 it probably -- I don't remember specifically, but it was
24 a lot. I met with -- it was my policy -- let's say you're
25 in a housing unit at Alvin S. Glenn. I always felt it was

1 rude to go into a dorm and see one client and ignore the
2 others unless I was really in a big hurry, so I would try
3 -- I never ignored everybody, but I would try to at least
4 sit down and say hey, I'm waiting on this or hey, I don't
5 have anything new for you today or at least touch base.
6 So, I mean -- and Floyd -- you know, was very like hands-on
7 case because we have a lot of mitigating -- the whole -- we
8 had a lot of mitigation to do, so I talked to him a lot.
9 It might have been more. It could have easily been way
10 more than twelve because I had him for like two years, so.

11 Q. Okay. And -- but the doctor you hired, this was --
12 just to clarify, this report was from a Dr. Susan Knight.
13 You retained that person to interview Mr. Owen?

14 A. Yes.

15 Q. Okay. And you felt like after doing that that was to
16 address any issues about competence?

17 A. No, that was -- this was different. I didn't think
18 it was a competence issue. I was -- this was purely for
19 mitigation. You know, I thought -- I thought we had -- I
20 thought he was open -- I thought Floyd was highly open to
21 suggestion with the co-defendant Brandon. I thought he
22 had trauma. I -- I know he was abused a lot as a kid and
23 a teenager and I thought he was -- I thought it could be
24 potentially relevant for a mitigation situation.

25 Q. You didn't feel there was competency issue?

1 A. No, I didn't think so.

2 Q. All right.

3 MR. JOHNSON: No more questions, Your Honor.

4 THE COURT: Mr. Barlow?

5 MR. BARLOW: Nothing from the State, Your Honor.

6 THE COURT: Thank you, sir.

7 (Witness excused.)

8 THE COURT: Mr. Barlow, anyone else, sir?

9 MR. BARLOW: No, sir. That's it, Your Honor.

10 THE COURT: All right. Mr. Barlow, Mr. Johnson, I
11 think you know my style, my method, by now; that is, I'll
12 take this under consideration. I don't like to issue --
13 I don't like to rush through rulings, I like to ponder
14 things, so I will issue the ubiquitous e-mail ruling very
15 soon.

16 MR. JOHNSON: Yes, sir.

17 MR. BARLOW: Thank you, sir.

18 (Whereupon, the proceedings were concluded at
19 3:10 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced
in the hearing of the captioned case in Circuit Court
on the 25th day of May, 2022.

This transcript may contain quoted material.
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I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

January 17, 2023

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Floyd G. Owen, #339771,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2020-CP-40-5454

ORDER OF DISMISSAL

2022 OCT 14 AM 9:59

RICHLAND COUNTY
FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant Floyd G. Owen on November 18, 2020. Respondent made its Return and Motion for a More Definite Statement on May 6, 2021. Applicant, through counsel, amended his application on May 17, 2022. An evidentiary hearing was held on May 25, 2022, at the Richland County Courthouse before the Honorable George M. McFaddin, Jr. Applicant was present and represented by Ola A. Johnson, Esquire. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant and his Plea Counsel, J. Rhodes Bailey, Esquire, testified at the hearing. Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections, serving a forty-eight-year sentence. In December 2017, the Richland County Grand Jury indicted Applicant for murder (2017-GS-40-7153), first-degree burglary (2017-GS-40-7155), criminal conspiracy (2017-GS-40-7157), and possession of a weapon during the commission of a violent

crime (2017-GS-40-7156). Assistant Public Defender J. Rhodes Bailey represented Applicant. Assistant Solicitor Richard V. Eaton of the Fifth Circuit Solicitor's Office prosecuted the case.

Applicant pleaded guilty as indicted on August 20, 2019, before the Honorable DeAndrea G. Benjamin. After deferring sentencing to November 18, 2019, Judge Benjamin, without negotiations or recommendation, sentenced Applicant to forty-eight years imprisonment for murder, forty-eight years for first-degree burglary, and five years each for criminal conspiracy and possession of a weapon, to be served concurrently. Applicant filed a motion for reconsideration of his sentence, which was denied on November 26, 2019.

FACTS GIVING RISE TO THE CONVICTION

The incident giving rise to the charges occurred on December 6, 2017 (Plea Tr. p. 5). At the guilty plea proceeding, Assistant Solicitor Eaton gave the following factual recitation in support of the pleas:

In the wee morning hours of December 6, 2017, Mr. Owen and his codefendant, Charles Brandon Barham, devised a plan to murder the victim, Charles Kusko, in his home on Budon Court. The State alleges that Mr. Barham gave Mr. Owen a gun, drove him to Budon Court; that the two went up to the house; that Mr. Owen broke into the house and shot Mr. Kusko in his bed. Mr. Barham then drove Mr. Owen away. This case went somewhat cold until it was revived by CPD's cold case with some leads from some witnesses that ultimately led to Mr. Owen's confession to the murder of Mr. Kusko.

(Plea Tr. pp. 4-5)

CURRENT ACTION BEFORE THIS COURT

Applicant *timely* commenced this PCR action on November 18, 2020, alleging he is being held in custody unlawfully for the following reasons:

1. "Uneffective Assistance of Counsel"¹

¹ Respondent interpreted Applicant's claim as ineffective assistance of counsel.



On May 17, 2022, Applicant amended his application to allege the following:

1. Ineffective Assistance of Plea Counsel
 - a. Prior to the guilty plea, Applicant's counsel failed to explain the details of the Applicant's plea.
 - b. The Applicant believed he would be eligible for parole in 85% of his sentence based on statements made by counsel and by the court describing a Murder sentence as non-parolable (p. 7).
 - c. Applicant's counsel, failed to file an appeal after the applicant requested this.
 - d. Applicant's counsel gave the court a sentencing report right before the sentencing and the court did not have time to review it (p. 10).
 - e. Applicant was informed by counsel that he would receive a negotiated sentence of 30 years.
 - f. Applicant's counsel, failed to meet with the applicant a sufficient number of times to properly review the evidence and discuss this case with applicant.
 - g. Applicant's counsel, failed to properly investigate this case.
 - h. Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

At the PCR hearing, Applicant proceeded on the allegations in his amended applications.

SUMMARY OF EVIDENTIARY HEARING TESTIMONY

APPLICANT'S TESTIMONY

On direct examination, Applicant testified that he recalled the conversation with Plea Counsel about the guilty plea. Applicant testified that he thought Plea Counsel did a sufficient job in some ways. When asked whether or not Plea Counsel explained parole was a day for day, Applicant responded that many things were explained to him. Applicant testified that he was due to testify against his codefendant, and State promised him one thing. Applicant testified that some things he understood and some things he did not. Applicant testified that he agreed that he knew it was 85% and that it was explained to him afterward that it was day for day. Applicant testified



that when he asked Plea Counsel about filing an appeal that Plea Counsel told him it was not an appealable defense. Applicant testified that he thought he was pleading guilty to thirty years.

Applicant testified that the prosecutors approached him, asked him to testify against his codefendant, and told him that they thought he would get less time than Brandon. Applicant testified, "see how that turned out." Applicant testified that he was told the sentencing range was thirty years to life and that he could get life if he went to trial, so he kept his mouth shut. Applicant testified that he and Plea Counsel really didn't go over anything. Applicant testified that he knew what he did and deserved to go to prison for it. Applicant testified that Plea Counsel did not give him discovery and did not review the videos with him. Applicant testified that he and Plea Counsel met five to six times.

Applicant testified that he did not ask for discovery and that Plea Counsel told him to sit and relax. Applicant testified that he did not go for bond because Plea Counsel told him it was unlikely he would get one. Applicant testified that he was willing to take responsibility and replied, "Let's just do whatever with it." Applicant testified that there was no investigation or investigator. Applicant testified that his attorney informed him about PCR, but Applicant did not know what that was. Applicant was asked whether or not he wanted to appeal, and Applicant replied he did not know what he wanted. Then Applicant testified that he asked Plea Counsel to appeal, and Plea Counsel told Applicant to file a PCR. Applicant testified that he did not feel like he was coerced because he knew what he did was wrong and wanted to do what was right. Applicant testified that he felt awful about what he did. However, Applicant testified he did not feel like he got to tell his side.



Applicant testified that Plea Counsel explained his right to a jury trial, but he was so scared of getting life. Applicant testified that he basically got a life sentence with the sentence the judge gave him.

On cross-examination, Applicant testified that he understood PCR relief and he understood that he could be retried on all charges and face life. Applicant testified that he and Plea Counsel met about five times. Applicant testified that he believes that Plea Counsel discussed the elements of his charges. Applicant testified that he did not think there was a defense; they were more interested in getting his codefendant since he had already provided a statement on himself. Applicant was asked whether he provided any leads, and Applicant replied, "I confessed, and I left it in his hands."

Applicant testified that he did not recall telling the judge he understood that it was a non-parolable violent, and serious offense. Applicant testified that he did not remember telling the judge that he was satisfied with Plea Counsel's representation nor that he had met with Plea Counsel enough for proper representation and that he did not have any questions for Plea Counsel. Applicant testified that he did recall discussing the two-strike law and that he gave up his right to a jury trial. Then contrary to Applicant's prior testimony Applicant testified that he remembered telling the judge that he did not need more time with Plea Counsel. Applicant then testified that he really did not remember much from that day.

Applicant testified that he recalled telling the judge that no one forced him to plead guilty, that that he was freely and voluntarily pleading guilty, that there was no threat or coercion, and he was pleading guilty because he was guilty. Applicant testified that he understood he was pleading guilty and that he was just sitting there thinking "thirty years, thirty years, thirty years." Applicant testified that he did not recall telling the judge he understood his right to appeal. Applicant testified



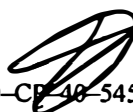
that he did not tell Plea Counsel that he wanted to go to trial because he was too scared. Applicant testified that it was most definitely his decision to plead guilty. Applicant testified that he did not ask for an appeal contrary to his prior testimony on direct examination and that maybe he remembered Plea Counsel told him to file for PCR.

PLEA COUNSEL J. RHODES BAILEY'S TESTIMONY

On direct examination, Plea Counsel testified that he met with Applicant ten to twelve times. Plea Counsel testified that he discussed the elements of the charges with Applicant. Plea Counsel testified that the evidence was a video confession and a signed confession. Plea Counsel testified that it was a cold case. Plea Counsel testified that Applicant was arrested for armed robbery and law enforcement questioned him about the murder. Plea Counsel testified that law enforcement also spoke with Applicant's girlfriend and Applicant's girlfriend told law enforcement that Applicant confessed to her. When law enforcement informed Applicant of what his girlfriend said, Applicant then confessed to law enforcement.

Plea Counsel testified that he reviewed the discovery with Applicant but did not review every audio clip. Plea Counsel told Applicant that he could get up to life. Plea Counsel testified that Applicant never requested a jury trial. Plea Counsel testified that Applicant usually seemed to understand. Plea Counsel testified that there was extensive mitigation research and that he hired an expert. Plea Counsel testified that he tried really hard in plea negotiations and tried to get manslaughter, but it was unlikely because the prosecution said murder. Plea Counsel testified that Applicant was forthcoming and remorseful.

Plea Counsel testified that the State believed that his codefendant was the principal, and if he testified against his codefendant, it would help. However, Plea Counsel testified that Richland County prosecutors don't promise sentences. Plea Counsel testified State which just interested in



his cooperation. Plea Counsel testified that he informed Applicant of the details and consequences regarding a plea. Plea Counsel testified that there was no reason he would tell Applicant he could get parole. Plea Counsel testified that Applicant was disappointed in his sentence. Plea Counsel testified that he was competent. Plea Counsel would not say that Applicant would serve 85%, but that he may have told Applicant that he could get 85% on manslaughter, and that might have hung in his head.

Plea Counsel testified that Applicant was not interested in a trial. Plea Counsel testified that he stands by his representation and advice. Plea Counsel testified that he did get a psychiatric evaluation and that Applicant was damaged as a child. Plea Counsel testified that he did not highlight specific parts of the report due to sensitive information regarding the victim. Plea Counsel stated in hindsight, he would have put more in the record. Plea Counsel testified that Applicant did not ask for an appeal; however, he filed a motion to reconsider the sentence, and it was denied without a hearing. Plea Counsel testified that he always advises his clients of their PCR rights. Plea Counsel testified that he recalls giving the sentencing report before sentencing.

On cross-examination, Plea Counsel testified that he was sure he would have said murder is day for day, especially regarding the parts of the conversation where he explained murder v. manslaughter. Plea Counsel testified that he has a checklist that he goes through with his clients because he wants to make sure that they understand the concept regarding a plea before the client pleads. Plea Counsel testified that he sent Applicant a letter informing him of the denial of the reconsideration of his sentence, and he also thinks that he wrote on the letter that he can still file a PCR.

Plea Counsel was asked if he explained the tolling of appeal, and he responded that he thought he would have and that he always tells clients. I think I would have; that is what I always



tell clients. Plea Counsel testified that he told Applicant that his hope was close to thirty but not over forty years. Plea Counsel testified that they met possibly more than 10 to 12 times at the detention center. Plea Counsel testified that he did not think there was a competency issue. Plea Counsel testified that he got a psychological report on Applicant for mitigation purposes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the plea transcript in its entirety and heard the testimony at the PCR hearing. This Court had the opportunity to observe the witnesses and evaluate their credibility, and this Court has weighed their testimony accordingly. This Court finds the plea transcript, and the testimony and evidence presented at the evidentiary hearing establish Applicant received effective assistance of Plea Counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Applicant alleges that he received ineffective assistance from his Plea Counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that an evidentiary hearing can only determine. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations



by a preponderance of the evidence—a mere allegation of ineffective assistance is insufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

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



Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential[, as] [i]t is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed [at] the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The



reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

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

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 693 (emphasis added).

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

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

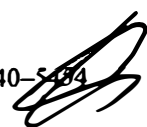
The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant



must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a showing of prejudice from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The performance and prejudice standards, however, "do not establish mechanical rules[; . . .] [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the



prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of Plea Counsel. The specific claims are addressed below:

Allegation 1(a): Failure to Explain a Guilty Plea

Applicant alleges Plea Counsel was constitutionally ineffective for failing to explain the details of his guilty plea. This Court finds this allegation is without merit.

On direct-examination, Applicant testified that he recalled the conversation with Plea Counsel about the guilty plea. Applicant testified that he thought Plea Counsel did a sufficient job in some ways. Applicant testified that some things he understood and some things he did not.

On cross-examination, Applicant testified that he and Plea Counsel met about five times. Applicant testified that he believes that Plea Counsel discussed the elements of his charges. Applicant testified that he did not remember telling the judge that he was satisfied with Plea Counsel's representation nor that he had met with Plea Counsel enough for proper representation and that he did not have any questions for Plea Counsel. Then contrary to Applicant's prior testimony Applicant testified that he remembered telling the judge that he did not need more time with Plea Counsel. Applicant then testified that he really did not remember much from that day.

On direct-examination, Plea Counsel testified that he informed Applicant of the details and consequences regarding a plea. Plea Counsel testified that he has a checklist that he goes through with his clients because he wants to make sure that they understand the concept regarding a plea before the client pleads.

This Court finds Plea Counsel credibly testified that he reviewed the details of the plea by

completing a checklist with Applicant. This Court also finds that any alleged deficiency was cured by the plea court's thorough colloquy. Therefore, whether any further explanation of a guilty plea would have changed the Applicant's decision to plead and instead go to trial is mere speculation. However, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

Allegation 1(b): Failure to Explain Non-Parolable Offense

Applicant alleges Plea Counsel was constitutionally ineffective for failing to explain that he was pleading guilty to a non-parolable offense. This Court finds this allegation is without merit.

On direct-examination, Applicant was asked whether or not Plea Counsel explained parole was a day for day, Applicant responded that many things were explained to him. Applicant testified that he agreed that he knew it was 85% and that it was explained to him afterward that it was day for day.

On cross-examination, Applicant testified that he did not recall telling the judge he understood that it was a non-parolable violent, and serious offense.

On direct-examination, Plea Counsel testified that he would not say that Applicant would serve 85%, but that he may have told Applicant that he could get 85% on manslaughter, and that might have hung in Applicant's head. Plea Counsel testified that Applicant was not interested in a trial.

On cross-examination, Plea Counsel testified that he was sure he would have said murder is day for day, especially regarding the parts of the conversation where he explained murder versus



manslaughter. Plea Counsel testified that he has a checklist that he goes through with his clients because he wants to make sure that they understand the concept regarding a plea before the client pleads.

Based on the foregoing, the record contradicts Applicant's assertion that he was under a misunderstanding due to Plea Counsel's failure to explain that his offense was non-parolable. See Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994) (holding that the record of the plea proceeding, including applicant's answers to the trial judge's questions, clearly established that applicant understood the possible sentences and the terms of the plea agreement and therefore could not have had misconceptions regarding sentencing).

For the foregoing reasons, the Court finds Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Accordingly, Applicant's request for relief by way of this allegation is denied and dismissed with prejudice.

Allegation 1(c): Failure to File an Appeal

Applicant alleges Plea Counsel was constitutionally ineffective for failing to file an appeal following his guilty plea. This Court finds this allegation is without merit.

Counsel has a constitutionally imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that she was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145, L. Ed. 2d 985 (2000). When counsel has consulted with the defendant regarding the right to appeal, "Counsel performs in a professionally unreasonable manner *only* by failing to follow the defendant's express instructions with respect to an appeal." Id. at 478 (emphasis added). In order to establish he was prejudiced by counsel's failure to file an appeal, Applicant must show he would have appealed absent counsel's



deficient performance. Id. at 484. "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282, S.E.2d 597, 598 (1981).

In determining whether counsel has a duty to consult, "[one] highly relevant factor [. . .] will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Flores-Ortega, 528 U.S. at 480. As such, though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Flores-Ortega, 528 U.S. at 480 (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so): But see Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 596, 677, S.E.2d 20, 23-24 (2009) (citation omitted).

On direct-examination, Applicant was asked whether or not he wanted to appeal, and Applicant replied that he didn't know what he wanted. Then Applicant testified that he asked Plea Counsel to appeal, and Plea Counsel told Applicant to file a PCR.



On cross-examination, Applicant testified that he did not recall telling the judge he understood his right to appeal. Applicant testified that he did *not* ask for an appeal contrary to his prior testimony on direct examination and that maybe he remembered Plea Counsel told him to file for PCR.

On direct-examination, Plea Counsel testified that Applicant did not ask for an appeal; however, he filed a motion to reconsider the sentence, and it was denied without a hearing.

On cross-examination, Plea Counsel was asked if he explained the tolling of an appeal, and he responded I think I would have; that is what I always tell clients.

This Court finds Applicant's testimony regarding his request for Plea Counsel to file a direct appeal on his behalf was not credible. Even if Plea Counsel did not inform Applicant of the right to appeal, Applicant has failed to show that there was an appealable basis in this case or that extraordinary circumstances warranting an appeal existed.

For the foregoing reasons, the Court finds Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Accordingly, Applicant's request for relief by way of this allegation is denied and dismissed with prejudice.

**Allegation 1(d): Failure to Provide the Court with Sentencing Report
Prior to Sentencing**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to provide the court with the sentencing report prior to sentencing, and the court did not have time to review it. This Court finds this allegation is without merit.

Initially, this Court finds Applicant has failed to meet his burden proving Plea Counsel's alleged deficiency prejudiced him. Applicant presented no evidence or testimony as to how providing the sentencing court with the sentencing report prior to sentencing prejudiced him or how Plea Counsel was deficient. Therefore, whether the sentencing court having the sentencing

report well in advance of the hearing would have changed the sentencing outcome is mere speculation. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

For the foregoing reasons, the Court finds Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Accordingly, Applicant's request for relief by way of this allegation is denied and dismissed with prejudice.

**Allegation 1(e): Improperly Advising Applicant He Would Receive
Thirty Year Negotiated Sentence**

Applicant alleges Plea Counsel was constitutionally ineffective for advising Applicant he would receive a thirty-year negotiated sentence. This Court finds this allegation is without merit.

On direct-examination, Applicant testified that he thought he was pleading guilty to thirty years.

On cross-examination, Applicant testified that he understood he was pleading guilty and that he was just sitting there thinking "thirty years, thirty years, thirty years."

On direct-examination, Plea Counsel testified that he told Applicant that he could get up to life in prison.

On cross-examination, Plea Counsel testified that he told Applicant that his hope was close to thirty but not over forty years imprisonment.

Based on the foregoing, the record contradicts Applicant's assertion that he was under the impression that he was pleading to a thirty-year negotiated sentence. See Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994) (holding that the record of the plea proceeding, including applicant's answers to the trial judge's questions, clearly established that applicant understood the possible sentences and the terms of the plea agreement and therefore could not have had misconceptions regarding sentencing).



For the foregoing reasons, the Court finds Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Accordingly, Applicant's request for relief by way of this allegation is denied and dismissed with prejudice.

Allegation 1(f): Failure to Meet with Applicant a Sufficient Number of Times to Properly Review the Evidence and Discuss the Case

Applicant alleges Plea Counsel was constitutionally ineffective for failing to meet with Applicant a sufficient number of times to properly review the evidence and discuss the case. This Court finds this allegation is without merit.

On direct-examination, Applicant testified that he and Plea Counsel met 5 to 6 times.

On direct-examination, Plea Counsel testified that he met with Applicant 10 to 12 times. Plea Counsel testified that he discussed the elements of the charges with Applicant. Plea Counsel testified that the evidence was a video confession and a signed confession. Plea Counsel testified that he reviewed the discovery with Applicant but did not review every audio clip.

The Court finds Applicant failed to identify precisely what Counsel did not explain or disclose to him from materials provided in discovery, or what, if anything, could have been achieved had Counsel spent more time with him in consultation regarding the contents of the evidence. See Smith v. State, 404 S.C. 493, 500–501, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome); see also Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) (citing United States v. Olson, 846 F.2d 1103 (7th Cir. 1988)) ("[T]here is no established 'minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.'").

The Court further points to Applicant's representation to the plea judge that he was



completely satisfied with Plea Counsel and that Plea Counsel had answered all his questions. (Plea Tr. pp. 8 – 9); see Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.").

For the foregoing reasons, the Court finds Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Accordingly, Applicant's request for relief by way of this allegation is denied and dismissed with prejudice.

Allegation 1(g): Failure to Adequately Investigate

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate his case. This Court finds this allegation is without merit.

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, this duty is limited to a reasonable investigation. Id. at 331, 642 S.E.2d at 597. Further, to prevail on a claim of ineffective assistance based on failure to investigate, a PCR applicant must ordinarily present some probative evidence.

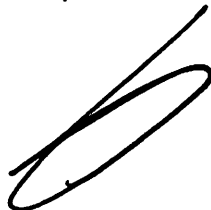
On cross-examination, Applicant was asked whether he provided any leads, and Applicant replied, "I confessed, and I left it in his hands."

On direct-examination, Plea Counsel testified that the evidence was a video confession and a signed confession. Plea Counsel testified that it was a cold case. Plea Counsel testified that Applicant was arrested for armed robbery and law enforcement questioned him about the murder. Plea Counsel testified that law enforcement also spoke with Applicant's girlfriend and Applicant's girlfriend told law enforcement that Applicant confessed to her. When law enforcement informed Applicant of what his girlfriend said, Applicant then confessed to law enforcement.

This Court finds Applicant has failed to show Plea Counsel was ineffective for not further investigating his case. Further—and importantly—Applicant has produced no evidence of what Plea Counsel would have discovered by further investigating his case. See Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court's grant of relief where the applicant failed to "present any evidence of what counsel could have discovered or what other defenses [he] would have requested counsel pursue had counsel more fully prepared for the trial").

For the foregoing reasons, the Court finds Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Accordingly, Applicant's request for relief by way of this allegation is denied and dismissed with prejudice.

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CONCLUSION

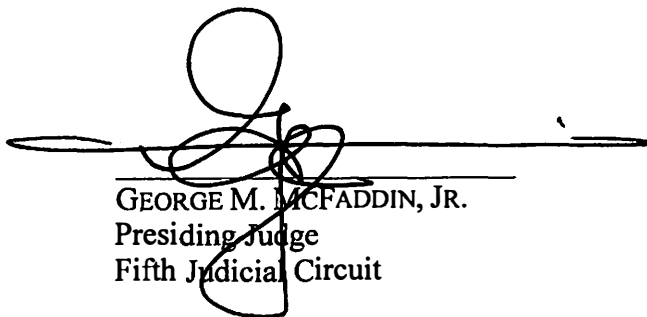
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. This Court finds Plea Counsel provided effective representation. Therefore, this application for post-conviction relief **must be DENIED and DISMISSED WITH PREJUDICE.**

Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Pursuant to Rule 71.1(g), SCRPC, if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 3rd day of October, 2022.


GEORGE M. MCFADDIN, JR.
Presiding Judge
Fifth Judicial Circuit

WITNESSES

(S) Kevin E Reese
- Columbia Police Department

DOCKET NO. 2017GS4007153

The State of South Carolina

County of

Richland

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

COURT OF GENERAL SESSIONS

DECEMBER TERM 2017

105

ARREST WARRANT NUMBER

2017A4021601400

Defendant

THE STATE
vs.

Witness:

C.C.C. PLS. AND G.S.

Floyd Gregory Owen

ACTION OF GRAND JURY
TRUE BILL

Keith Reese
Foreperson of Grand Jury DEC. 07 2017
Date:

VERDICT

Indictment for
MURDER / MURDER

SC Code: 16-03-0010
CDR Code: 0116

Foreperson of Petit Jury
Date:

**CERTIFIED TRUE COPY
OF ORIGINAL FILED
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

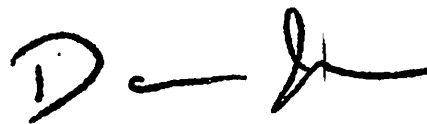
At a Court of General Sessions, convened on December 6, 2017,
 the Grand Jurors of Richland County present upon their oath:

MURDER

That Floyd Gregory OWEN did in Richland County, on or about September 6, 2015, kill the victim, Charles Kusko, with malice aforethought, either express or implied, by means of two gunshots to the head, and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
Jeanette W. McBride
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA



 DAN JOHNSON, SOLICITOR

FILED IN 11-11-17

WITNESSES

(S) Kevin E Reese

- Columbia Police Department

CERTIFIED TRUE COPY
OF ORIGINAL FILE
C.C.C.P. PAGE 1
RICHLAND COUNTY
SOUTH CAROLINA

ARREST WARRANT NUMBER

2017A4021601401

ACTION OF GRAND JURY

TRUE BILL

Keith B.

Foreperson of Grand Jury

Date:

DEC 07 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017GS4007155

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2017

105

THE STATE

vs.

Floyd Gregory Owen

Indictment for

**BURGLARY / BURGLARY (AFTER JUNE
20, 1985) - FIRST DEGREE**

SC Code: 16-11-0311

CDR Code: 0079

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 6, 2017,
the Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That Floyd Gregory Owen did in Richland County on or about September 6, 2015, enter the dwelling of Charles Kusko located at [REDACTED] [REDACTED] without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the entering or remaining occurred during the nighttime, and/ or the defendant was armed with a deadly weapon, and/ or he caused physical injury to a non-participant, and/ or he used a dangerous instrument, and/ or he displayed a firearm, in violation of Section 16-11-0311(A), 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.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,

Jeanette Williams
C.C.C.R.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

D - J
DAN JOHNSON, SOLICITOR

WITNESSES

(S) Kevin E Reese
- Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601402

ACTION OF GRAND JURY
TRUE BILL

Keith H
Foreperson of Grand Jury
Date: **DEC 07 2017**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS4007157

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2017

105

THE STATE
vs.

Floyd Gregory Owen

Indictment for
CONSPIRACY / CRIMINAL CONSPIRACY,
COMMON LAW CONSPIRACY DEFINED

SC Code: 16-17-0410
CDR Code: 0049

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

Floyd G. Owen
hereby appear in my own proper person and plead
guilty to the within indictment or to

[Signature]
Defendant

Witness:
[Signature]
C.C.C. PLS. AND G.S.

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 6, 2017,
the Grand Jurors of Richland County present upon their oath:

CRIMINAL CONSPIRACY

That Floyd Gregory Owen did in Richland County on or about September 6, 2015,
combine with Charles Barham, and/or with other persons, for the purpose of
accomplishing a criminal or unlawful object or an object that is neither criminal
nor unlawful through criminal or unlawful means, to wit: murder, and/ or burglary
in the first degree, and/ or possession of a weapon during a crime of violence in
violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Kevin E Reese
- Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601403

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

DEC 07 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS4007156

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2017
105

THE STATE
vs.

Floyd Gregory Owen

Indictment for
WEAPONS / POSS. WEAPON DURING
VIOLENT CRIME, IF NOT ALSO
SENTENCED TO LIFE WITHOUT PAROLE
OR DEATH

SC Code: 16-23-0490
CDR Code: 0549

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I Floyd Owen
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 6, 2017,
the Grand Jurors of Richland County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

That Floyd Gregory Owen did in Richland County, on or about September 6, 2015, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE VS.

Floyd Gregory OWEN

AKA:

Race: WHITE Sex: M Age: 35

DOB: SS#:

Address: No Permanent

City, State, Zip: Columbia, SC

DL#: SID#:

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

In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST:

Solicitor

79921
SC Bar#

Defendant

Attorney for Defendant

76145
SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,

for a determinate term of days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDoc.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$

TOTAL

Clerk of Court/ Deputy Clerk:

Court Reporter:

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

117

INDICTMENT/CASE#: 2017GS4007153

A/W#: 2017A4021601400

Date of Offense: 9/5/2015

S.C. Code § : 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

CERTIFIED TRUE COPY

OF ORIGINAL FILED,

CLERK OF COURT

RICHLAND COUNTY

SOUTH CAROLINA

 days/hours Public Service Employment & G.S.

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2161

Sentence Date:

Defer sentencing - life OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Floyd Gregory Owen

AKA: _____
Race: WHITE Sex: M Age: 35
DOB: _____ SS#: _____

Address: No Permanent
City, State, Zip: Columbia, SC

DL#: _____ SID#: _____

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

In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4007155
A/W#: 2017A4021601401
Date of Offense: 9/6/2015
S.C. Code § : 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST:

1/1
Solicitor

79921
SC Bar#

[Signature]
Defendant

[Signature]
Attorney for Defendant

76146
SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,

for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$

TOTAL

Clerk of Court/ Deputy [Signature]

Court Reporter: [Signature]

SCCA/217 (04/2018)

_____ days/hours Public Service Employment S.
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ☐
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge [Signature]

Judge Code: 216

Sentence Date: 8-20-19

CERTIFIED TRUE COPY
OF ORIGINAL FILED
[Signature]
J. D. D. R. S.
RICHLAND COUNTY
SOUTH CAROLINA

DeRemed
STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.
Floyd Gregory Owen

AKA: _____
Race: WHITE Sex: M Age: 35

DOB: [REDACTED] SS#: _____

Address: No Permanent

City, State, Zip: Columbia, SC

DL#: _____ SID#: _____

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

In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST:

[Signature]
Solicitor

79921
SC Bar#

[Signature]
Defendant

[Signature]
Attorney for Defendant

76145
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

INDICTMENT/CASE#: 2017GS4007157

A/W#: 2017A4021601402

Date of Offense: 9/6/2015

S.C. Code § : 16-17-0410

CDR Code #: 0049

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2161

Sentence Date: 11-18-19

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Floyd Gregory Owen

AKA:

Race: WHITE Sex: M Age: 35DOB: [REDACTED] SS#: [REDACTED]Address: No PermanentCity, State, Zip: Columbia, SCDL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor79921
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant76148
SC Bar#

WHEREFORE, the Defendant is committed to the

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPSRecipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4007156A/W#: 2017A4021601403Date of Offense: 9/6/2015S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2161Sentence Date: 11-18-19

SCANNED