

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

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S.C. Supreme Court

WALTER LAMONT MORGAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213698

APPENDIX

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

2010-GS-42-06707

_____)
 THE STATE of SOUTH CAROLINA)
)
 -vs-)
)
 WALTER LAMONT MORGAN,)
)
 Defendant.)
 _____)

TRANSCRIPT OF RECORD

COPY

November 10, 2010
Spartanburg, South Carolina

Ordered: March 8, 2011
Delivered: May 10, 2011

B E F O R E:

THE HONORABLE J. MARK HAYES, II, Presiding Judge.

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

MR. ZACHARY ELLIS, Esquire
Assistant Solicitor for the State

MR. JOHN RECKENBEIL, Esquire
Attorney for the Defendant

Pamela Faucette
Circuit Court Reporter

I N D E X

(No witnesses were called by the State or the Defense.)

State's Exhibits:	Marked:	Received:
(None)		

Defendant's Exhibits:	Marked:	Received:
1 - (Witness' Statement/ Defendant's Certificate)	23	23

Court's Exhibits:	Marked:	Received:
1 - (Four Color Photographs)	14	14

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Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

1 November 11, 2010

9:43 a.m.

2 (Off-the-Record Comments)

3 Q U A L I F I C A T I O N

4 THE COURT: All right. I need the following
5 individuals, who are in the audience, to come up here and
6 sit in the jury box. We -- we have James Deloache
7 (phonetic), Elizabeth Edwards -- are you Ms. Edwards?

8 THE DEFENDANT: Uh-huh (affirmative).

9 THE COURT: All right. Matthew Champion
10 (phonetic), Victor Miller, Eric Williams, Denise Lilly
11 (phonetic), Martha Henderson.

12 (All Defendants complied with the Court's request
13 and stepped forward and took a seat in the jury box.)

14 (Brief Pause)

15 THE COURT: All right. All right, ladies and
16 gentlemen, I have been advised and told that each one of
17 you has one or more matters that's presently pending in
18 the Court of General Sessions.

19 I have also been told that each one of you has
20 expressed a desire or an intent to want to enter a plea
21 to those matters.

22 I need to let you know that, every plea that's
23 presented in this Court, we make a recording. This lady
24 that is sitting over here to my right (indicating), she
25 is a court reporter. She is taking down everything

1 that's said.

2 I tell you that because, if ever during this process
3 now or later today, if you need to speak, you need to
4 speak up loud enough, so, that both she and I can hear
5 you. If we cannot hear you, we cannot take your plea.

6 Likewise, if ever during this process now or later
7 today, if you can't hear me, immediately let me know and
8 I will speak up as well.

9 Now, in just a moment, I am going to ask you a
10 series of questions. And I'm going to ask you these
11 questions as a group.

12 I do not want you to think, nor do I wish for you to
13 conclude that simply because I'm asking you these
14 questions as a group that for some reason, these
15 questions are not important. These questions are very
16 important.

17 The questions that I ask you and the answers that
18 you give me to these questions help me decide whether or
19 not I can, in fact, accept your plea. So, I need you to
20 listen to the questions.

21 If you need to respond to the questions, I'm going
22 to ask that you stand up; don't just speak out, but stand
23 up and -- and, then, let me call on you. If ever during
24 this process now or later today, you want to talk to your
25 lawyer, you just let me know, and I'll allow you to talk

1 to your lawyer in private.

2 I'm now going to call the names of everybody that
3 I've been given. And this time, when I call your name, I
4 need for you to stand up and remain standing.

5 After everybody's name has been called, and the
6 court reporter has your name, this lady over to my right
7 (indicating), the clerk of court, she's going to swear
8 you in. So, I need for you to listen to her and respond
9 out loud when she asks you to do so.

10 All right. We have Laura Bates (phonetic), Lamar
11 Candy (phonetic).

12 THE DEFENDANT: It's Cannady.

13 THE COURT: Cannady?

14 THE DEFENDANT: (Nods affirmatively.)

15 THE COURT: Peter Colburn (phonetic), Stanley
16 Henderson, Maurice Moore, Walter Morgan, David Worley,
17 Martha Henderson, Denise Lilly, Eric Williams, Victor
18 Miller, Matthew Champion, Elizabeth Edwards, and James
19 Deloache.

20 (All Defendants complied with the Court's request.)

21 THE COURT: All right. If you would, please, raise
22 your right hand and listen to the clerk.

23 (All Defendants complied with the Court's request.)

24 (Whereupon, all Defendants, including

25 WALTER LAMONT MORGAN

1 were duly sworn and testified as follows:)

2 THE COURT: Thank you, you may be seated.

3 (All Defendants complied with the Court's request.)

4 THE COURT: All right. Here are the questions I
5 need for you to listen to respond when I ask you to do
6 so.

7 During the last twenty-four hours, have you consumed
8 or taken any substance that is adversely or negatively
9 affecting your ability to understand what we're doing
10 today? If you have, I need for you to, please, stand at
11 this time.

12 (No Response)

13 THE COURT: If you have ever received any type of
14 substance abuse treatment, for alcohol or drugs, I need
15 for you to, please, stand at this time.

16 (Defendants stood in response to the Court's
17 inquiry.)

18 THE COURT: All right. And your name, sir?

19 THE DEFENDANT: James Deloache.

20 (The Court inquires of Mr. Deloache about his
21 treatment.)

22 THE COURT: Thank you, sir, you may be seated.

23 (The Defendant complied with the Court's request.)

24 THE COURT: Yes, sir? your name?

25 THE DEFENDANT: Stanley Henderson.

1 (The Court inquires of Mr. Henderson about his
2 treatment.)

3 THE COURT: Yes, ma'am, your name?

4 THE COURT: Martha Henderson.

5 (The Court inquires of Ms. Henderson about her
6 treatment.)

7 THE COURT: Thank you, ma'am, you may be seated.

8 (The Defendant complied with the Court's request.)

9 THE COURT: If you are satisfied with the work that
10 your lawyer has done for you, I need for you to, please,
11 stand at this time, if you're satisfied with the work
12 that your lawyer has done.

13 (All Defendants stood in response to the Court's
14 inquiry.)

15 THE COURT: All right. Let the record reflect that
16 everyone stood. Thank you very much. You may be seated.

17 (All Defendants complied with the Court's request.)

18 THE COURT: If anybody has come to you and
19 threatened you in any way or if they have made you any
20 promises in order to get you to make the decision to
21 enter the plea, then, I need for you to, please, stand at
22 this time if you have been threatened or promised
23 anything.

24 (No Response)

25 THE COURT: If the decision to enter the plea is a

1 free and voluntary decision on your part, I need for you
2 to, please, stand at this time.

3 (All Defendants stood in response to the Court's
4 inquiry.)

5 THE COURT: Let the record reflect that everyone
6 stood. Thank you very much. You may be seated.

7 (All Defendants complied with the Court's request.)

8 THE COURT: I need for you to understand that,
9 under the law, you are presumed innocent of every charge
10 that's presently against you. And you have a right to
11 have a jury trial on any or all of the charges that are
12 presently against you.

13 At any jury trial that would take place, it would be
14 the State that has the burden of proof. And the State
15 would have to convince all twelve (12) members of a jury
16 that you are, in fact, guilty beyond a reasonable doubt.

17 Now, in order to enter a plea, however, you have to
18 give up your right to that jury trial. But, if you wish
19 to have a jury trial on any of the charges against you,
20 that is fine; we will simply just schedule a jury trial
21 for you.

22 If any of you wish to have a jury trial, on any of
23 the charges that are against you, I need for you to,
24 please, stand at this time.

25 (No Response)

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THE COURT: In addition to giving up your constitutional right to a jury trial, there are other very important constitutional rights that you are entitled to, but that you have to give up in order to enter a plea.

You have to give up your right to confront and cross examine the State's witnesses. You also have to give up your right to present evidence which you or your lawyer may feel would establish some type of defense to the charge or charges that are against you. And you have to give up your right of subpoena and you have to give up your right to remain silent.

Now, if you understand all of your constitutional rights and wish to give up your constitutional rights and proceed with entering the plea, then, I need for you to, please, stand at this time.

(All Defendants stood in response to the Court's inquiry.)

THE COURT: Let the record reflect that everyone stood. Thank you very much. You may be seated.

(All Defendants complied with the Court's request.)

THE COURT: Again, if ever during this process at any time today you need to speak to your lawyer, you just let me know and I'll allow you to talk to a lawyer in private.

1 Now, those of you who joined us from the audience,
2 you can return back to the gallery. Thank you very much.

3 (Defendants complied with the Court's request.)

4 (Whereupon, qualification concluded at 9:42 a.m.)

5 (Other pleas were taken before Mr. Morgan's.)

6 P R O C E E D I N G

7 (The Defendant stepped forward with his attorney for
8 the plea.)

9 MR. ELLIS: May it please the Court, Your Honor.

10 The State calls Walter Lamont Morgan, indictment 2010-GS-
11 42-6067, a true billed indictment for attempted murder.

12 The Defendant is pleading guilty without negotiations or
13 recommendations.

14 Mr. John Reckenbeil represents the Defendant. Also,
15 I'll pass up a restitution order.

16 (Documents handed up to the Court.)

17 THE COURT: You are Mr. Morgan?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And, Mr. Morgan, you do intend to plead
20 to attempted murder?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I need to remind you that you remain
23 under oath. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: How old are you, sir?

1 THE DEFENDANT: Twenty-six (26).
2 THE COURT: How far did you go in school?
3 THE DEFENDANT: To the tenth (10th) grade.
4 THE COURT: Did you ever obtain a GED?
5 THE DEFENDANT: No, I was working on it.
6 (Brief Pause)
7 THE COURT: Married, single, divorced, widowed?
8 THE DEFENDANT: I'm married.
9 THE COURT: Do you have children?
10 THE DEFENDANT: Yes, sir.
11 THE COURT: How many?
12 THE DEFENDANT: Four (4).
13 THE COURT: How old are they?
14 THE DEFENDANT: Nine (9), eight (8), three (3), and
15 two (2).
16 THE COURT: And, prior to your arrest on this
17 charge, did you have a job outside the home?
18 THE DEFENDANT: No, sir.
19 THE COURT: How were you supporting yourself
20 financially?
21 THE DEFENDANT: I was working, but...
22 THE COURT: What were you doing?
23 THE DEFENDANT: Working as a meat cutter at
24 Spartanburg Meat.
25 THE COURT: What?

1 THE DEFENDANT: Spartanburg Meat.

2 THE COURT: Ever served in the military?

3 THE DEFENDANT: No, sir.

4 THE COURT: How long have you been in jail on this
5 charge?

6 THE DEFENDANT: Six (6) months.

7 MR. RECKENBEIL: Your Honor, I think it is July the
8 4th, two thousand and ten (2010).

9 THE COURT: Sir, if you would, the gentleman that's
10 standing over here to your right is a solicitor. He is
11 going to tell us the facts behind this case. Please,
12 listen to him, sir.

13 MR. ELLIS: Thank you, Your Honor. This occurred
14 July 4th, two thousand and ten (2010), as Mr. Reckenbeil
15 just stated.

16 This occurred at a residence on Zepher (phonetic)
17 Street in Spartanburg, Your Honor. It's also the City
18 and the County of Spartanburg.

19 The Defendant and the victim, whose name is Jonathan
20 Rainey (phonetic), were both at a -- at this residence,
21 Your Honor; basically at a Fourth of July party.

22 It appears, at some point, an argument broke out
23 between the Defendant and Mr. Rainey that escalated into
24 a fist fight, Your Honor.

25 After the fight appeared to have ended, Mr. Rainey,

1 the victim, began to walk away, leaving the fight, Your
2 Honor. According to his statement, Your Honor, he heard
3 someone call his name, he turned around and basically the
4 Defendant was right on top of him and the Defendant
5 stabbed him in the heart with a knife.

6 The Defendant later gave a statement to the police
7 admitting there was a fight and also admitting that,
8 after the victim was -- was basically leaving, Your
9 Honor, that he did produce his own pocket knife
10 (phonetic) and stabbed the -- the victim with it in the
11 chest, Your Honor.

12 Obviously, Mr. Rainey was -- was rushed to the
13 hospital. The knife actually did puncture a -- a part of
14 his heart, Your Honor. He denies that he stabbed him in
15 the middle of the heart (phonetic), but it did -- it did
16 stab him in the heart.

17 And he was rushed to Spartanburg Regional Medical
18 Center in -- in critical condition. Once the surgery was
19 performed by them, his life was ultimately saved, Your
20 Honor.

21 I do have some photographs I would like to pass up
22 to the Court. I've shown these to Mr. Reckenbeil. I'd
23 like to make these Court's Exhibits, Your Honor.

24 (Documents handed up to the Court.)

25 MR. ELLIS: Basically, these are photographs of Mr.

1 Rainey's injuries to him, Your Honor, taken not long
2 after the surgery was completed.

3 (Whereupon, Court's Exhibit Number 1 was marked for
4 identification and admitted into evidence.)

5 THE COURT: Mr. Morgan, were you able to hear the
6 solicitor when he told me the facts behind the case?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you believe that, as he stated the
9 facts, that he is substantially correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And, sir, you do understand that, on
12 this charge, that I could sentence you up to thirty (30)
13 years today?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And, sir, do you also understand that
16 this charge is classified as both a violent offense and
17 also as a most offense under the law?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you've been -- have you been able
20 to talk to your lawyer as to the consequences and
21 ramifications of those classifications of violent and
22 most serious?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Understanding the possible sentence I
25 could impose, as well as the two classifications of

1 violent and most serious and the consequences of both
2 classifications, do you still wish to enter this plea?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Sir, are you, in fact, guilty of
5 attempted murder?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you been able to hear all of my
8 questions?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have all of your answers been truthful
11 and honest?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Discovery has been shared with the
14 Defense?

15 MR. ELLIS: Yes, sir.

16 THE COURT: Prior record?

17 MR. ELLIS: Yes, sir, Your Honor. In two
18 thousand, one (2001), possession of marijuana, purchasing
19 alcohol by a minor, trespassing; two thousand, two
20 (2002), trespassing; two thousand, four (2004), criminal
21 domestic violence, possession of marijuana, possession of
22 drug paraphernalia.

23 THE COURT: All right. We have restitution. It
24 looks as if it's to various medical providers, the
25 largest one being sixty-nine thousand (\$61,000) to

1 Spartanburg Regional all the way down to fifty-five
2 dollars (\$55) to Jonathan Rainey. Is there anything else
3 from the victim?

4 MR. ELLIS: Yes, sir, Your Honor, just for the
5 record, the restitution does total seventy-five thousand,
6 fifty-seven dollars and sixty-two cents (\$75,057.62).
7 And, as Your Honor stated previously, that's -- that's to
8 be paid to medical providers, Your Honor.

9 The victim is not present here today, Your Honor.
10 Basically he does feel the Defendant does need to serve
11 some prison time for this, Your Honor.

12 He also wants this restitution paid. He did ask or
13 state that -- that they were friends, Your Honor, and he
14 was not looking for the maximum sentence himself.

15 However, Your Honor, this is the -- the victim's
16 mother here, Ms. Rainey. She would like to address the
17 Court. I believe she has a -- a different view on it
18 given the severity of this -- this crime, Your Honor, the
19 seriousness of it.

20 Also, Sergeant Sutton (phonetic) is here from the
21 City who would also like to address the Court.

22 THE COURT: Ma'am, I'd be more than happy to hear
23 from you. If you would, just speak up loud enough, so,
24 that both the court reporter and I can hear you. And
25 start, if you would, by giving us your full name.

1 MS. RAINEY: My name is Priscilla Ann Rainey
2 (phonetic).

3 THE COURT: Yes, ma'am, Ms. Rainey?

4 MS. RAINEY: And I am the victim's mother. And I
5 feel that Walter Morgan is a danger to society. And I
6 feel that he needs to get the maximum sentence.

7 I mean I, with my whole family, was affected by
8 this. I've lost an enormous amount of weight. Every
9 time I lay my head down, I keep hearing my son is
10 stabbed. I don't know, I just feel that, you know, ---

11 THE COURT: Thank you, ma'am.

12 MS. RAINEY: --- the whole family has been
13 affected.

14 THE COURT: Thank you.

15 MR. ELLIS: Your Honor, this is Sergeant Sutton
16 here from the City.

17 THE COURT: Yes, sir?

18 SERGEANT SUTTON: Sergeant James A. Sutton
19 (phonetic). I'd just like you to consider the violent
20 nature of the offense and the weapon that was used during
21 the offense.

22 THE COURT: Anything else from the State?

23 MR. ELLIS: Your Honor, as part of any sentence,
24 we'd also ask for no contact with Jonathan Rainey and
25 with his family, Your Honor, including his mother and

1 other members of his family, Your Honor.

2 THE COURT: All right.

3 (Brief Pause)

4 THE COURT: Thank you, sir. Yes, sir?

5 MR. RECKENBEIL: Thank you, Your Honor. May it
6 please the Court? Your Honor, in the courtroom is a
7 significant amount of family to include Walter's wife and
8 his mother. Who is all here for Mr. Morgan? If you
9 would, please, stand?

10 (The people who were there in support of the
11 Defendant complied with the request.)

12 MR. RECKENBEIL: Thank you.

13 (Those standing took their seats.)

14 MR. RECKENBEIL: There has been a tremendous amount
15 of support by this family to Mr. Morgan in -- in this
16 matter.

17 Your Honor, what I'm about to say doesn't diminish
18 the severity of this situation, as well as a mother's
19 love for her child. I don't have any children; I can't
20 really empathize with her in her shoes as to -- as to her
21 child laying in a hospital bed with a stab wound to the
22 heart.

23 However, Your Honor, there are two sides to every
24 story. And, while Walter Morgan cannot meet the
25 definition under South Carolina law of self defense, I do

1 think that it is imperative that this Court hears the
2 facts and evidence as it was given in statements in what
3 transpired that day as to why Walter Morgan felt it was
4 imperative for him to defend himself that day.

5 Walter Morgan immediately gave a statement to police
6 saying that this was a Fourth of July party. It happened
7 on July 4th, two thousand and ten (2010). There was
8 drinking going on by everybody.

9 As you heard from Mr. Morgan's past, he definitely
10 likes to smoke marijuana to include a couple of times
11 where he's been convicted of that.

12 This was an altercation that started between Mr.
13 Rainey and Mr. Morgan because of the fact that they were
14 fighting over marijuana. Mr. Morgan accused Mr. Rainey
15 of taking some of his marijuana and smoking it, after
16 that dispute escalated to a physical altercation, where
17 they started fighting each other.

18 It wasn't the fact that Walter Morgan let the thing
19 die down and, then, all of a sudden decided to run up
20 behind him and stab him because, if he would have done
21 that, he would have gotten him in the back and not right
22 smack dab in the chest, when it would be pretty
23 consistent with the fact that two people fighting and,
24 then, all of a sudden, one makes a move with a -- a
25 weapon right to the middle of the torso.

1 Walter Morgan says in his voluntary statement that,
2 "Jonathan Rainey told me that he was going to get his
3 pistol and kill me. So, therefore, I pulled my knife and
4 I stabbed him."

5 A witness, who is not in this courtroom today, Mr.
6 Joshua Meadows, says in his statement that, "Mr. Rainey
7 blurted out and said, 'I got a stab. Call my brother, I
8 need my pistol.'" (Phonetic)

9 So, there is a independent witness, who was at the
10 scene, that is verifying that there is a statement being
11 made by this victim that he wants his gun; he's going to
12 use it.

13 South Carolina requires that there be an imminent
14 threat of serious bodily harm and that the person has the
15 reasonable justification to use self defense to include
16 deadly force.

17 Your Honor, I don't think that we meet those levels
18 of what South Carolina requires for us to even get a jury
19 charge in this case because there was no weapon recovered
20 by Mr. Rainey.

21 Hindsight, with the fact that you have alcohol at a
22 Fourth of July party, you have marijuana, which is being
23 used which is going to diminish the senses of everybody,
24 and you have an altercation which is heightened the
25 adrenaline and endorphins in a person's body, they don't

1 act with a sound mind as they would if we were going to
2 try to replay it in our mind and try to do things
3 differently.

4 While I think it's imperative that this society
5 knows in Spartanburg County that one of their citizens is
6 saying here that Walter Morgan is a danger to society;

7 Well, Judge, if a person's history is any indication
8 as to their propensity to commit crimes in the future, as
9 we've tried to do with a number one -- a number of our
10 laws; a sexually violent predator where we try to say,
11 "Well, if a person has committed something in the past,
12 so, they have a propensity to commit it in the future,
13 so, we're going to use their past to predict the future."

14 Two thousand, one (2001), simple possession of pot.
15 Two thousand and one (2001), possession of beer; two
16 thousand and one (2001), trespassing; two thousand and
17 one (2001), a property offense; two thousand and four
18 (2004), possession of marijuana, and then, a criminal
19 domestic violence first where he paid a money fine in two
20 thousand and four (2004).

21 So, for six (6) years, there has been no criminal
22 convictions. For this man's entire life, there has not
23 been any sort of violence with weapons to indicate that
24 there is a propensity for this man to be a danger to
25 society.

1 If there were convictions in his past of a violent
2 nature, of a man running and roaming, in neighborhoods of
3 Spartanburg County, using weapons at his own leisure,
4 then, I could see, in fact, where a person could come in
5 this courtroom and say that he's a danger to society; he
6 needs to go to jail for thirty (30) years.

7 But that's not the indications that we have from the
8 history that this man has laid for the last ten (10)
9 years of his adult life.

10 He's married with four (4) kids. Should he be at a
11 Fourth of July party drinking and using marijuana when
12 he's got four (4) young kids? No.

13 But I'm not a counselor to say what a father should
14 be or what a father shouldn't be. But this man is no
15 murderer. He didn't intend to kill this man. It was a
16 heightened situation that was escalated by both
17 individuals.

18 If there was a weapon anywhere in the vicinity of
19 Jonathan Rainey, we would not be standing here because we
20 would be seeking a jury charge and a non-guilty verdict
21 for self defense.

22 This man has spent jail time since July 4th, two
23 thousand and ten (2010). He is standing up here, on the
24 advice that I have given him on the fact that, if we go
25 to a jury trial and we lose, he's looking at significant

1 jail time.

2 He has completed an anger management and -- excuse
3 me, I say he's completed; he has got into a program where
4 he is -- with Mr. and Mrs. White (phonetic). And I would
5 like to pass it forward if I could. And I haven't shown
6 Mr. Ellis this.

7 (Brief pause while document shown to Mr. Ellis and
8 handed up to the Court.)

9 MR. RECKENBEIL: And, Your Honor, I would also like
10 to make part of the record the victim's -- excuse me --
11 the witness, Mr. Meadows, his statement, if that's okay.

12 (Whereupon, Defendant's Exhibit Number 1 was marked
13 for identification and admitted into evidence.)

14 THE COURT: Mr. Morgan, were you able to hear the
15 statements that were just made by your attorney?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you agree with what he stated?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Sir, is there anything that you would
20 like to say or would like for me to know or consider?

21 THE DEFENDANT: Yes.

22 THE COURT: I'd be more than happy to hear from
23 you.

24 THE DEFENDANT: I just want let Ms. Rainey know
25 that I'm sorry that we had to end up in a situation like

1 this, that I ain't -- I wish that it had never happened.

2 And I just hope that she will forgive me for that as
3 I forgave her son. And I'm -- I'm sorry that it ever
4 happened.

5 THE COURT: Thank you, sir.

6 MR. RECKENBEIL: The last thing, Your Honor. I'd
7 -- I'd just like to say that Mr. Morgan has agreed that
8 he will, in fact, make every attempt to pay those medical
9 bills.

10 I don't know Mr. Rainey's employment, but obviously,
11 with the fact that Spartanburg Regional Healthcare System
12 is a government entity, Mr. Rainey's taxes, from the
13 State of South Carolina, will be garnished from his
14 returns, if in fact, these medical bills are not paid
15 and, then, levied against those.

16 Your Honor, we are asking you take into
17 consideration everything that has been presented to you
18 and the fact that Mr. Morgan is going to make a good dent
19 in these medical bills. In the Department of
20 Corrections, he won't have the ability to do that.

21 Any sentence of probation with no contact, even with
22 a home detention, GPS monitoring, is a situation which
23 would allow him to make payments to these medical bills,
24 along with help of his family, that there would be an
25 assurance that he's not having any contact with the

1 victim or out when he's not supposed to be.

2 THE COURT: All right. Thank you.

3 (Brief Pause)

4 THE COURT: Will the lawyers approach a moment?

5 (Whereupon, a bench conference was had with both
6 attorneys present.)

7 (Brief pause while the Court fills out paperwork.)

8 THE COURT: I'll find that there is a substantial
9 factual basis for the plea. I'll find that the
10 Defendant's decision to enter the plea has been made
11 freely, voluntarily, knowingly, and intellectually by
12 him.

13 I'll find that he's received the services from a
14 very competent and able legal counsel, services he has
15 indicated to the Court he is satisfied with and has
16 relied on in reaching the decisions that he's made.
17 Therefore, I will accept the plea.

18 I had a bench conference with the attorneys, and,
19 so, I -- I -- if the sentence is not a statutorily
20 appropriate, we'll have to get back together.

21 The sentence of the Court is that the Defendant will
22 be confined to the State Department of Corrections for a
23 period of fifteen (15) years. That will be suspended
24 upon the service of ten (10) years and the service of
25 five (5) years of probation. He gets credit since July

1 4th, two thousand, ten (2010).

2 Special terms and conditions, I've indicated I do
3 want him to receive the Addiction Treatment Unit while
4 he's in the Department of Corrections; also to
5 successfully complete the anger management program if
6 he's not done so.

7 And there is not to be any contact with the victim
8 or the victim's family; that is direct or indirect.

9 Restitution has been ordered as indicated by the
10 executed restitution order. Good luck to you, sir.

11 MR. ELLIS: Thank you, Your Honor.

12 (Whereupon, the proceeding concluded at 10:11 a.m.)

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CERTIFICATION

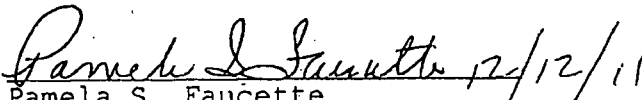
Page 27

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 26, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

May 6, 2011


Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

FORM 5

STATE OF SOUTH CAROLINA)
)
County of SPARTANBURG)
)
WALTER LAMONT MORGAN 34362)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2011-CP-42

4638

v.)

APPLICATION FOR

State of South Carolina)
)
)
)
)

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.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
M. HOPE BLACKLEY
2011 OCT 27 AM 9:52

1. Place of detention KIRKLAND CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence SPARTANBURG GENERAL SESSIONS COURT, SPARTANBURG, SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-42-06707
 - (b) _____

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11-10-10 _ 15 yrs, suspended upon service
10 and 5 yrs probation
 - (b) _____
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty yes
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 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 each results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) did now of any grounds to appeal
 - (b) _____

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 SPARTANBURG COUNTY
 2011 OCT 27 AM 9:52
 M. HOPE BLASKLEY

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

(a) ineffective representation during guilty plea and pre-trial preparation

(b) _____

(c) _____

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

(a) failure of attorney to do pre-trial investigation

(b) failure of attorney to present effective mitigation evidence and aggravating evidence he introduced during

(c) plea - failure to call victim as witness during guilty plea

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

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

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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SPARTANBURG COUNTY
2011 OCT 27 AM 9:52
M. HOPE BLACKLEY

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

no

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

(a) which grounds have been presented:

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

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

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

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 SPARTANBURG COUNTY
 2011 OCT 27 AM 9:52
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16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (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? _____
- (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. John Reckenbeil, Spartanburg, SC
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. guilty plea
 - ii. _____
 - iii. _____

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 SPARTANBURG COUNTY
 2011 OCT 27 AM 9:52
 M. HOPE BLACKLEY

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?

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Richard H. Winder attorney for Walter L. Mager, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Richard H. Winder

SWORN to and subscribed before me this 24th day of October, 2011.

[Signature] (L.S.)
Notary Public

My Commission Expires: 10-31-13

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 OCT 27 AM 9:52
M. HOPE BLACKLEY

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

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

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

Applicant

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

Notary Public

My Commission Expires: _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 OCT 27 AM 9:52
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE SEVENTH CIRCUIT
COUNTY OF SPARTANBURG)	
)	2011-CP-42-4638
Walter Lamont Morgan #343621,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

In response to the post-conviction relief application filed on October 27, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the October 2010 term of General Sessions for attempted murder (10-GS-42-6067). The Applicant was represented by John G. Reckenbeil, Esquire. On November 10, 2010, the Applicant pled guilty as indicted. The Honorable J. Mark Hayes II sentenced the Applicant to confinement for a period of fifteen (15) years suspended upon the service of (10) years and five (5) years of probation. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the Spartanburg Clerk of Court records, the South Carolina Department of Corrections' records, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post conviction relief the Applicant alleges that he is being held in
 Page 1 of 4

custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
 - a. Counsel failed to do pre-trial investigation,
 - b. Counsel failed to present "effective mitigation evidence and aggravating evidence he introduced during plea,"
 - c. Counsel failed to call victim as witness during guilty plea.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Further, Respondent submits that "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U.S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's plea counsel was ineffective.


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE WHITE
Assistant Attorney General

By: 
Attorneys for the Respondents

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

July 17, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
)
)
 WALTER LAMONT MORGAN, #343621)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

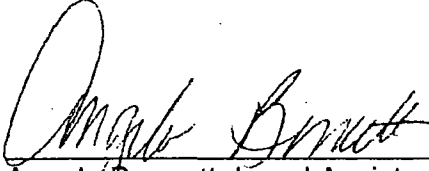
2011-CP-42-4638

AFFIDAVIT OF SERVICE BY MAIL

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

Richard H. Warder, Esquire
P.O. Box 26133
Greenville, South Carolina 29616

DATED this 17th day of July, 2012



 Angela Bennett, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

WALTER LAMONT MORGAN,) TRANSCRIPT
APPLICANT,) OF
VS.) RECORD
STATE OF SOUTH CAROLINA,) 2011-CP-42-4638
RESPONDENT.)

September 5th, 2012
Spartanburg, South Carolina

B E F O R E:
THE HONORABLE J. DERHAM COLE, Judge.

A P P E A R A N C E S:
RICHARD W. WARDER
ESQ.
Attorney for the Applicant

SUZANNE H. WHITE
ASSISTANT ATTORNEY GENERAL
Attorney for the State

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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THE COURT: Yes, ma'am.

MS. WHITE: All right. Up next, Your Honor, is the case of Walter Morgan versus The State. It's Case Number 2011-CP-42-4638. Represented today by Richard Warder.

Mr. Morgan was indicted in October of 2010 for an attempted murder charge and pled guilty, received a sentence of 15 years suspended to ten years and five years probation. He has filed this alleging counsel failed to do pretrial investigation, failed to present effective mitigation investigation at plea, and failed to call the victim as a witness during the plea.

So, I turn it over to Mr. Warder at this time.

THE COURT: All right. Mr. Warder.

MR. WARDER: Your Honor, if it pleases the Court, we'd call Walter Morgan to come up as a witness.

THE COURT: All right. Let me be sure we have the grounds correct.

Ineffective assistance of counsel based upon failure to call the victim as a witness as, at the plea?

MR. WARDER: Yes, sir, and failed to interview mitigation witnesses.

THE COURT: Failed to interview mitigation witnesses?

MR. WARDER: Yes, sir.

1 THE COURT: And what else?

2 MR. WARDER: And his advice that, failure that
3 self-defense would not be a defense, Your Honor.

4 THE COURT: And advice concerning self-defense.
5 All right. Anything else?

6 MR. WARDER: Yes, sir, we -- closing argument. We have
7 three, apparently four grounds, closing argument. He
8 categorized it as a drug deal fight, and there was no need
9 to do that. I mean probably the facts are correct, but that
10 certainly didn't help his mitigation.

11 THE COURT: All right. You have four, four grounds?

12 MR. WARDER: Yes, sir.

13 THE COURT: Okay. All right. You want to call Mr.
14 Morgan first?

15 MR. WARDER: Yes, sir.

16 Come on around.

17 THE COURT: Was it a guilty plea or a trial?

18 MR. WARDER: Huh?

19 THE COURT: This was a guilty plea---

20 MR. WARDER: Yes, sir.

21 THE COURT: ---or a trial?

22 MR. WARDER: Yes, sir.

23 THE COURT: Yeah, I thought you said closing argument.

24 MR. WARDER: Mitigation argument, Your Honor. I
25 probably did so.

Walter Morgan - Direct examination
by Mr. Warder

1 THE COURT: All right.

2 WALTER MORGAN, having been first
3 duly sworn, testified as follows:

4 THE COURT: Okay. You're Walter Lamont Morgan?

5 DEFENDANT: Yes, sir.

6 THE COURT: All right. Mr. Warder.

7 DIRECT EXAMINATION

8 BY MR. MORGAN:

9 Q Mr. Morgan, who was your trial counsel?

10 A John Reckenbeil.

11 Q Okay. And Mr. Reckenbeil represented you for how long?

12 A For four months.

13 Q Okay. And during that time did you talk to him?

14 A Twice.

15 Q Okay. And that was -- one was the initial hiring?

16 A Uh-huh. (Affirmative).

17 Q And then---

18 THE COURT: Is that -- excuse me.

19 Is that a yes or a no?

20 WITNESS: Yes.

21 Q And when was the second time?

22 A When he came over to tell me about we were going to
23 court for my hearing, plea.

24 Q Okay. Now, you told me the facts of your case.

25 A Uh-huh. (Affirmative).

Walter Morgan - Direct examination
by Mr. Warder

1 Right.

2 Q Okay. And what did -- did you tell him anything
3 specific about self-defense?

4 A Yes, sir, I did.

5 Q Okay. Did you tell him you were, thought that was what
6 it was, was a self-defense case?

7 A Yes, sir.

8 Q Okay. As a -- when -- the first time you talked to
9 him, what did he say about that?

10 A He said that I didn't meet the criteria for getting
11 self-defense.

12 Q And that was the very first time he talked to you?

13 A Uh-huh. (Affirmative).

14 Yes, sir.

15 Q Okay. Did you tell him about people who were in the
16 car with you and how it happened?

17 A Yes.

18 Q Okay. And did you, did you get the discovery and go
19 over it?

20 A The what now, sir?

21 Q The, the written stuff from the solicitor's office, the
22 papers, and the incident report, and the police reports.

23 A Did I give them to him?

24 Q Did you get that?

25 A Oh, no, sir, I didn't get it.

Walter Morgan - Direct examination
by Mr. Warder

1 Q Is there a time you and him read it together and went
2 over it?

3 A No, sir.

4 Q And when, when you went to Court, why did you go plead
5 guilty?

6 A Why did I plead guilty?

7 Q Yes, sir.

8 A He say because if I didn't take that open plea that I
9 would go to trial, and they'll find me guilty if we went to
10 trial.

11 Q Okay. Did you know that the, that there was written
12 discovery in your case, that there was, there was written
13 reports and all of that?

14 A No, sir.

15 Q Now, you, you told us about telling him you thought it
16 was a self-defense case.

17 Tell us a little bit about that.

18 Who was the victim?

19 How did you know him?

20 A I know Jonathan Rainey. He was a friend of mine, and
21 we been knowing each other about ten years.

22 Q Okay. Were you guys good friends?

23 A Yes, sir.

24 Q Okay. Who else was there that day?

25 A Joshua, Fredrick Carter, and --.

Walter Morgan - Direct examination
by Mr. Warder

- 1 Q Joshua Meadows?
- 2 A Yes, sir.
- 3 Q Okay. Are you a friend of his?
- 4 A Yes, sir.
- 5 Q You're a good friend of his?
- 6 A Best friends.
- 7 Q Okay. Who else was there?
- 8 A They not in here, but Harold Dean Field and Kenneth
9 Goode.
- 10 Q Okay. Was Fredrick Meadows there?
- 11 A No, Fredrick Meadows wasn't there.
- 12 Q Okay. And how about Fredrick Porter?
- 13 A Yes, he was there.
- 14 Q Okay. Did you tell all of them to your, to your
15 attorney?
- 16 A Did I tell him that?
- 17 Q Tell him they were all there.
- 18 A Well, he didn't never ask me about no witnesses.
- 19 Q Well, did you tell him who you were with?
- 20 A Yeah, I told him who I was with.
- 21 Q Okay. When you say he didn't ask you about the
22 witnesses, what do you mean?
- 23 He didn't ask you to bring them to Court?
- 24 A No, sir, he didn't.
- 25 Q This -- tell us how that happened.

Walter Morgan - Direct examination
by Mr. Warder

1 Tell us how the, the, the cutting, the stabbing, how it
2 happened.

3 A We was over there and I had -- you know, me and him had
4 got into it and he jumped out the car and he started choking
5 me out, and then it's like as soon as he let go I had
6 stabbed him.

7 Q Okay. It was just one time?

8 A One time.

9 Q And the knife was where, in your back pocket?

10 A Front pocket.

11 Q Okay. And you just pulled it out and opened it one
12 handed?

13 A Uh-huh. (Affirmative).

14 Q And stabbed him?

15 A Right.

16 Q Okay. And that's cause he was choking you?

17 A Right.

18 Q Did you go over the plea with your lawyer as to who you
19 needed to have there or what would be said and what,
20 anything like that?

21 A No, sir.

22 Q What were the questions the judge would ask?

23 A No, sir.

24 Q Okay. And you never got out of jail, did you?

25 A No, sir, I didn't.

Walter Morgan - Direct examination
by Mr. Warder

1 Q You were brought to the courthouse and held in the
2 holding cell the day of your plea?

3 A Yes, sir.

4 Q Brought out into the courtroom?

5 A Yes, sir.

6 Q And you pled guilty?

7 A Yes, sir.

8 Q Did you want your lawyer to say all the things for you
9 that you could that the, would make the sentence go easier?

10 A Yes, sir.

11 Q And -- thank you. Answer any questions the State might
12 have.

13 CROSS-EXAMINATION

14 BY MS. WHITE:

15 Q Mr. Morgan, you gave a statement to police initially
16 once you were arrested, didn't you?

17 A Yes, I did.

18 Q Okay. And at that time you told the police that you
19 were fighting over some weed and that the victim threatened
20 to get a gun and kill you?

21 A Right.

22 Q Okay. But today you said he was choking you?

23 A Yes, and I, I told them that when they asked.

24 Q You told the police that he was choking out, is that---

25 A Uh-huh. (Affirmative).

Walter Morgan - Cross-examination
by Ms. White

1 Yes, I did.

2 Q Okay.

3 A I told them I feared for my life.

4 Q Okay. And that was more from being choked, fearing for
5 your life?

6 A And being threatened by that gun, threatened by the
7 gun.

8 Q So, you're saying, in addition to the being choked, he
9 did threaten you with a gun?

10 A Yes, he did.

11 Q Okay. But you never saw the gun?

12 He said he was gonna go get it?

13 A He just said I'll kill you.

14 Q Okay.

15 A I'll shoot you.

16 Q Okay. And your attorney knew that, right?

17 Did you talk with him about the fact that you were
18 scared and that was why you said you did it?

19 A Yeah, I told him that.

20 Q And did he ever talk with you -- when you said he
21 talked with you about the fact that you didn't meet the
22 criteria for self-defense, did he explain to you why?

23 A No, he didn't.

24 Q Okay. So, he just told you that that wasn't a defense?

25 A Right.

Walter Morgan - Cross-examination
by Ms. White

1 Q Okay. And you testified you never got the discovery or
2 reviewed any of that with your attorney?

3 A Right.

4 Q So, you never saw any other witness statements or, or
5 the incident report from the police?

6 A Right.

7 Q You said that you pled guilty because you were afraid
8 if you went to trial you'd be found guilty?

9 A That's what he told me.

10 Q Okay. And at the time you were facing, if you had gone
11 to trial, up to 30 years, is that right?

12 A Right.

13 Q And, in addition to -- what, what did you want these
14 other witnesses to say in addition to what you had already
15 told the police?

16 A That he, that he had, he put his hands on me first and
17 he was choking me out---

18 Q Okay.

19 A ---and that he threatened my life.

20 Q And the fight had gone on for a little bit before the
21 stabbing, correct?

22 A No.

23 Q So, it's just an immediate thing?

24 A It was -- right.

25 Q Okay. Cause didn't, didn't the, the statement say that

Walter Morgan - Cross-examination
by Ms. White

1 y'all had gotten involved in a fist fight over some
2 marijuana and that y'all had escalated into a physical
3 altercation?

4 A It wasn't like that. It was just---

5 Q Okay.

6 A ---he jumped out the car and put me in a choke hold.

7 Q All right. Now, do you recall your guilty plea, the
8 day that you pled guilty?

9 A Do what now?

10 Q Do you recall the guilty plea on the day you pled
11 guilty, the solicitor reading some facts about the fight,
12 and the judge asked you if the facts of the case that the
13 solicitor read were, were accurate and you said yes, sir?

14 A I said that because he told me to answer those
15 questions like that.

16 Q And who -- when you say he told you --

17 A John.

18 Q Mr. Reckenbeil told you to answer everything yes, sir?

19 A Uh-huh. (Affirmative).

20 Yes, ma'am.

21 Q Okay. And, so, when you told the judge that you were
22 guilty, that you had gone over everything with him, and you
23 had been able to talk to your attorney adequately, you were
24 satisfied with his representation, you weren't being honest?

25 You were just saying what the judge told you to say, I

Walter Morgan - Cross-examination
by Ms. White

1 mean, excuse me, what your attorney told you to say?

2 A Basically.

3 MS. WHITE: Okay. All right. Your Honor, that's all
4 the questions I have of this witness.

5 MR. WARDER: I have no further questions.

6 THE COURT: Step down.

7 MR. WARDER: All right. I do have one additional
8 ground I want to include in the original grounds I read,
9 Your Honor, that I found. But I wanted to include in there
10 that we think he was ineffective because the victim's mother
11 testified, not the victim, and we don't think they should of
12 allowed her to testify.

13 THE COURT: The mother should not have been allowed to
14 testify?

15 MR. WARDER: Yes, sir, the victim's mother. I think
16 that it wasn't a minor victim and the statute required that
17 the mother not---

18 THE COURT: Okay.

19 MR. WARDER: We would call Fredrick Porter.

20 Mr. Porter, go right up to the stand and let the Court
21 swear you in.

22 FREDRICK PORTER, having been first
23 duly sworn, testified as follows:

24 THE COURT: Okay.

25 DIRECT EXAMINATION

Fredrick Porter - Direct examination
by Mr. Warder

1 BY MR. WARDER:

2 Q All right. Mr. Porter, will you speak up loud so
3 everyone can hear you in the courtroom?

4 A Yes, sir.

5 Q Mr. Porter, were you there the, the day that Jonathan
6 Rainey got stabbed?

7 A Yes, I was there.

8 Q Okay. Where were you at at the time that took place?

9 A I was standing right behind the door.

10 Q Pardon?

11 A Standing right behind the door.

12 Q Okay. Could you see what was happening?

13 A Well, they got into it over some weed.

14 Q Okay. What happened?

15 A The victim -- I mean Jonathan stole some weed, and he
16 got mad. They got into an altercation, and, like I said, he
17 jumped out the car and choked him out.

18 Q Okay. Now, was Jonathan choking him at the time this
19 happened?

20 A Yeah, as soon as he jumped out the car.

21 Q Okay. Was the choking having any effect on my client?

22 A Yeah, he choked him so bad he had to fall to his knees.

23 Q Okay. When he fell to his knees, what happened?

24 A I guess he got a little wind and reached in his pocket
25 and got a pocketknife.

Fredrick Porter - Direct examination
by Mr. Warder

1 Q Okay. At that point did he stab him?

2 A Yeah.

3 Q One time?

4 A One time.

5 Q Did -- what was -- Attorney John Reckenbeil, did he
6 come out and talk to you about that?

7 A No, he didn't talk to nobody.

8 Q Nobody came and talked to you?

9 A No.

10 Q Would you have come to Court and testified to that?

11 A Yeah.

12 Q Thank you. If you please answer any questions that the
13 State might have.

14 MS. WHITE: I don't have any questions for this
15 witness, Your Honor.

16 THE COURT: Step down.

17 MR. WARDER: Please the Court.

18 We would call Jonathan Rainey.

19 JONATHAN RAINEY, having been first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WARDER:

23 Q Mr. Rainey, sir, you're the victim in this case?

24 A Yes.

25 Q It was you who got stabbed?

Jonathan Rainey - Direct examination
by Mr. Warder

1 A Yes, sir.

2 Q How long had, had you known Walter?

3 A Ten and a half, nine years.

4 Q Okay. Were you and he friends?

5 A Yes, sir.

6 Q Still friends?

7 A Yeah, we still friends.

8 Q Did you ever have occasion to talk to his prior
9 attorney, Mr. Reckenbeil?

10 A Did I talk to him?

11 Q Yes.

12 A I tried to get in touch with him, have contact with
13 him.

14 Q When you tried to get in touch with him, what happened?
15 How did you try?

16 Did you call his office?

17 What did you do?

18 A I even stopped by the office.

19 Q Huh?

20 A I even stopped by his office.

21 Q Okay. Did you talk to anybody about what you wanted to
22 do?

23 A Yeah, we talked to a lady at the front desk, but it
24 didn't go nowhere from there.

25 Q Okay. Did you want Walter to go to jail?

Jonathan Rainey - Direct examination
by Mr. Warder

1 A No.

2 Q You want to---

3 A I did something wrong, you know, we had an altercation,
4 but it shouldn't had led to what it did. But, no, I don't
5 want him to go to jail, no, cause we still friends.

6 Q Okay. The solicitor said in the plea that you told him
7 that you wanted him to go to jail.

8 Did you ever tell the solicitor you wanted him to go to
9 jail?

10 A No.

11 Q Now, there's been some discussion about an altercation.
12 Did you two have a fight?

13 A Yes.

14 Q Did you choke him?

15 A Yes.

16 Q Did he stab you?

17 A Yes.

18 Q Thank you. That'd be all the questions I have of this
19 witness.

20 CROSS-EXAMINATION

21 BY MS. WHITE:

22 Q Mr. Rainey, your testimony is you never spoke with John
23 Reckenbeil even over the phone?

24 A I talked to -- he talked to me over the phone, but it
25 wasn't about what I wanted to talk about.

Jonathan Rainey - Cross-examination
by Ms. White

1 Q Okay. But Mr. Reckenbeil did contact you about the
2 case?

3 A My mother.

4 Q Okay. Did he speak to you over the phone about the
5 case?

6 A He called my mom's house. My mom picked up the phone.
7 She gave it to me.

8 Q Okay. And did you, on this occasion, threaten to shoot
9 or kill Mr. Morgan?

10 A Yes.

11 Q I'm sorry?

12 A While we was fighting, yes.

13 Q While you were fighting you did.

14 Okay. Did you have a gun there that night---

15 A No.

16 Q ---or that day?

17 A No.

18 MS. WHITE: Okay. All right. Your Honor, that's all I
19 have of this witness.

20 THE COURT: You may step down.

21 MR. WARDER: I call Fredrick Meadows.

22 FREDRICK MEADOWS, having been first
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. WARDER:

Fredrick Meadows - Direct examination
by Mr. Warder

1 Q Okay. Fredrick, you were there that day?

2 A No, sir, I was in the house.

3 Q Okay. You didn't see any of it?

4 A No, sir.

5 Q Were you driving the car that day?

6 A No, sir.

7 THE COURT: He said he was in the house.

8 Q Thank you very much.

9 MS. WHITE: No, no questions, Your Honor.

10 THE COURT: All right. You can step down too.

11 MR. WARDER: We'd call Josh Meadows.

12 JOSH MEADOWS, having been first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. WARDER:

16 Q Josh, were you there the day that the incident
17 happened?

18 A Yes, sir.

19 Q Did -- had you been with them earlier that day?

20 A Yes, sir.

21 Q Did you guys go somewhere in the car?

22 A Yeah, we all went to Wal-Mart.

23 Q Okay. And was your brother the passenger on the car
24 then?

25 A No, my cousin.

Josh Meadows - Direct examination.
by Mr. Warder

1 Q Cousin, Fredrick?

2 A Fredrick Porter.

3 Q Okay. Anyway, when, when -- were you -- I asked if you
4 were there when it happened.

5 Tell us what you saw.

6 A What I saw when I was there, Jonathan and him was --
7 well, J.R. was on the ground and he was choking him, and
8 next thing I know I hear him say he stabbed me. He let --
9 J.R. could hardly breathe. I call him J.R. Walter, he
10 couldn't breathe, and he had -- he was on the ground and he
11 stabbed him, and Jonathan ran, he took off running, and he
12 ran back down and he say he stabbed me, Josh stabbed me. We
13 looked at the shirt. I picked him up, put him in the car
14 cause he got real weak, and I took him to the hospital.

15 Q So, you were the fellow that actually took Jonathan to
16 the hospital?

17 A Yeah, I'm the fellow that took Jonathan to the
18 hospital.

19 Q Okay. And there was a fight going on when this
20 happened?

21 A Yeah, when it happened.

22 Q Did you ever have occasion to talk to his prior
23 attorney, Mr. Reckenbeil?

24 A No, sir, we tried, but he never got in touch with me.

25 Q And all this time Walter was in jail, right?

Josh Meadows - Direct examination
by Mr. Warder

1 A Yes, sir.

2 Q Thank you. That's all the questions I'd have.

3 MS. WHITE: I have no questions for this witness, Your
4 Honor.

5 THE COURT: You may step down.

6 MR. WARDER: That would be all the evidence that the
7 petitioner or applicant would have.

8 THE COURT: Ms. White.

9 MS. WHITE: Thank you, Your Honor.

10 We would call John Reckenbeil to the stand.

11 JOHN RECKENBEIL, having been first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. WHITE:

15 Q Can you state your name for the record?

16 A John Reckenbeil.

17 Q And, Mr. Reckenbeil, the applicant in this case stated
18 that you were his attorney for about four months.

19 Does that sound accurate?

20 A I'll take that as being true.

21 Q Okay. He said that y'all spoke approximately two
22 times.

23 Do you recall meeting with him or how many times you
24 met with him?

25 A I can't tell you specifically how many times I met with

John Reckenbeil - Direct examination
by Ms. White

1 him or talked to him, but I know I've talked to him more
2 than once. I can say probably two or three times.

3 Q Okay. And in those conversations, did you ever have a
4 chance to hear the applicant's side of the story of the
5 events that happened that night?

6 A I did.

7 Q And what was your discussion with him about possible
8 defenses?

9 A Well, the real problem that I saw in this case is that,
10 to assert self-defense, you have to have specifically four
11 elements, and the first thing is you have to prove is that
12 the defendant is without fault in bringing on the
13 difficulty. And, so, the first thing would be is the fact
14 that there was talk of people stealing somebody's marijuana,
15 and going by the witness statement that Jonathan filled out
16 for the police, it was an argument between Jonathan and
17 Walter over a bag of weed that Jonathan took from Walter.

18 So, first, first and foremost is that there's an
19 altercation about somebody stealing. Who threw the first
20 punch, who threw the first aggravating factor, that's really
21 unclear. But I don't think there's any doubt that the State
22 would be able to show that the defendant is with some fault
23 in bringing on the difficulty.

24 The next issue then goes to is there an immanent threat
25 of serious bodily harm or death. Well, talking about the

John Reckenbeil - Direct examination
by Ms. White

1 choking issue, that was definitely something that we talked
2 about, but it's not in his statement, and I think that was
3 key because Walter gave a statement, was given Miranda
4 rights, and he gave pretty much a full confession, but never
5 did he say in his statement that Jonathan was choking me.

6 But put that to the side for a second, and just see if
7 that was actually plausible, well, looking at all the
8 objective evidence that we had from the doctors that
9 performed life saving surgery upon Jonathan, you looked at
10 the stabbing, and if you take the last witness' statement as
11 being true, that he had him on the ground and he was choking
12 him, and he just reached into his pocket and stabbed him,
13 just thinking possibility, with the stab wound that we saw
14 there, and it wasn't believable.

15 So, take that into consideration, the fact that the
16 objective evidence of a stab wound from the doctor's
17 pictures of him laying on the O.R. to him not saying that he
18 was choking me in his statement, then you have the one thing
19 that says he's going to get a pistol and kill me. So, I
20 pulled out a knife and I struck him once in the chest.

21 He said he's going to do something, and if you're
22 saying that the victim is going to go grab a gun, come back
23 and shoot him, there's no immanent threat of death or bodily
24 harm. It had to be in a grab area. It had to be in an
25 area, and you heard Jonathan say that he didn't have a gun

John Reckenbeil - Direct examination
by Ms. White

1 on him, and so nowhere was the gun found in this area.

2 And, so, the subjective mind set that Walter Morgan was
3 in an immanent threat of serious bodily harm or death was
4 not there, and then even if you go to the fact that he has
5 to, if it's, if it's not right there present, he's got to
6 have a reasonable belief subjectively that it can happen.
7 And I don't think a reasonable jury would believe that, and
8 I don't even think a judge would of charged self-defense.

9 And, so, therefore, all of your conversations, that's
10 what finally led up to him of saying I don't think we get
11 self-defense and we can lose.

12 Q And did you feel like, in your discussions with him,
13 that he kind of understood that, what the requirements were
14 for self-defense and the fact that y'all would have trouble
15 meeting that?

16 A I believe so.

17 Q In regards to reviewing discovery or anything with him,
18 he said he'd never reviewed discovery or saw any of that.

19 Do you recall if y'all had a opportunity to go over
20 witness statements, pictures?

21 A We did.

22 Q And in regards to calling the victim as a witness, did
23 you ever think of that as a possibility at the plea?

24 A You know, it was interesting cause the, the mom showed
25 up, and Zach Ellis did the plea for the prosecution, and the

John Reckenbeil - Direct examination
by Ms. White

1 mother's major ordeal was the fact that there was almost
2 \$75,000 in medical bills, and I know that was one thing that
3 her and I discussed.

4 But when Jonathan and I talked about it over the phone,
5 it's the same thing. There was some issues with medical
6 bills, and I, I knew that that was, that was an issue.

7 But realistically, did I think it was gonna make any
8 difference?

9 I thought it would be -- I didn't want him to -- if, if
10 I thought about the fact of having the victim there and
11 something got said that he didn't like, and he stood up and
12 then he changed his mind, well, there you go. I think
13 that's a huge risk that you take as a defense lawyer in the
14 sense that you're going to then alienate the victim and
15 ultimately he turns on you and then a victim's statement in
16 front of the Court is a lot more powerful than maybe a
17 statement read. So, I thought about it, but I don't, I
18 don't think that that's a good rule of thumb.

19 Q Okay. Now, in regards to any of the folks here who've
20 testified, the applicant said he never told you about any
21 witnesses to call, but he did tell you who he was with that
22 night.

23 A Sure.

24 Q Did you consider talking to any of these folks or did
25 you talk to any of them about, to see if there was any

John Reckenbeil - Direct examination
by Ms. White

1 different story?

2 A No, because, again, when we're looking at self-defense,
3 we're looking at -- if there wasn't a voluntary statement,
4 and I thought that Walter Morgan was maybe coerced or there
5 was some sort of misinformation to the police, then I think
6 you go to outside sources. But the self-defense laws in
7 South Carolina, I use the word subjective, and that is when
8 a person has a reasonable personal belief about something.
9 South Carolina requires that there's subjective belief that
10 you're in immanent threat of death or bodily harm.

11 So, nobody outside of Walter Morgan can testify to
12 what's going on inside the brain of Walter Morgan if he's
13 coherent enough to testify. He did. If he wasn't around or
14 if he was incapacitated, then I think you go to outside
15 sources.

16 But in this situation, when Walter Morgan gave a
17 statement, the prosecutor would've ripped him apart because
18 of the fact there was nothing in there that gave him a
19 subjective belief of immanent death or bodily harm. So,
20 therefore, all these other witnesses, in my opinion, would
21 be irrelevant.

22 Q In regards to reviewing with him what would actually
23 happen at the guilty plea, did you have an opportunity to
24 kind of prep him for that, and, in that, did you tell him he
25 had to answer everything yes, sir?

John Reckenbeil - Direct examination
by Ms. White

1 A Well, I -- obviously, with a guilty plea, I go over the
2 basic bounds of the constitutional requirements in order to
3 enter a guilty plea and what is gonna be asked of him, and
4 that if he wants to give up his right to a jury trial, he's
5 going to have to waive those rights and thus tender a plea
6 of guilty. I'm not gonna tell somebody you got to do this
7 or else. That's entirely up to them to do it.

8 So, yes, I went over with him the questions, but the
9 answers are obviously Mr. Morgan's.

10 Q And, at the time, did you feel that he was giving this
11 plea freely and voluntarily with all the information and
12 options he was presented with?

13 A Yeah, I do.

14 Q Okay. Thank you.

15 That's all I have for this witness, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. WARDER:

18 Q Did you consider objecting to the mother's, the
19 victim's mother's testimony about sentencing and that she
20 wasn't a victim?

21 A No, sir.

22 Q Did you review the statute to see whether or not she
23 was normally included in that statute?

24 A No, sir.

25 Q In your argument, you argued to the judge that this was

John Reckenbeil - Cross-examination
by Mr. Warder

1 a drug deal, and a, and a fight over dope.

2 Don't you think you would of been more effected if you
3 argued the, the fight aspect than the, that your client had
4 told you that he was in fear to make his conduct seem more
5 reasonable than to just leave him kind of hanging out there
6 with the argument that people got in a fight over drugs and
7 whatnot?

8 A Well, it was a fact. It wasn't anything of me just
9 pulling out of thin air. In his own statement it was a
10 fight over the bag of weed. So, I'm not -- so, I'm really
11 not really following that in the sense that it's a fact that
12 the Court was not aware of.

13 Q Well, in mitigation we usually don't just bring up
14 every fact about the case. We try to bring up the favorable
15 facts.

16 Is that right?

17 A Yes and no and I'll explain that because I think the,
18 the brutal honesty about the whole situation was, is that it
19 was a difficult situation.

20 Do I think walter Morgan should be in jail for ten
21 years?

22 Absolutely not.

23 But I don't get to make that decision. But I do think
24 the fact that the Court needed to be aware that the victim
25 wasn't innocent, and the fact that Mr. Rainey was just as

John Reckenbeil - Cross-examination
by Mr. Warder

1 much at fault in this situation as Jonathan, or, excuse me,
2 as Walter. Excuse me.

3 And, so, with that fact, I think the Court does
4 consider that this is not just some random act of violence
5 between some person and just going and walking in a park.
6 These are two individuals that are conducting themselves in
7 somewhat of illegal activity and it's a fact. So, I think
8 that takes into consideration that the victim is not
9 blameless, and that's my point of what I think I made that
10 mention to Judge Hayes during my presentation of mitigation.

11 Q You think you mentioned that the victim argued with --
12 the victim was at fault and that should be considered?

13 A I don't think the victim was innocent. Yeah, I do.

14 Q Do you think you argued that?

15 A I argued the fact that, if I'm not mistaken, that
16 there's a, there's a possibility that I would be standing
17 next to Jonathan Rainey as opposed to Walter Morgan in the
18 sense of just the, how close in proximity of the fault and
19 which way facts turned in this matter of who was the
20 defendant and who was the victim.

21 Q And after Walter Morgan told you that he thought he had
22 a self-defense claim, you explained to him that day that he
23 didn't have one.

24 Is that right?

25 A I went over the elements of self-defense, yes, and I

John Reckenbeil - Cross-examination
by Mr. Warder

1 felt that a judge wouldn't charge self-defense in this
2 matter.

3 Q Okay. And in comparing his case, you didn't ever feel
4 it necessary to talk to the four witnesses to the incident?

5 A Like I said, hearing their presentation doesn't give me
6 any more -- it actually gives me more support in my advice
7 to my client that they really didn't add anything to it and
8 really---

9 Q Okay.

10 A ---in my opinion, again, it's a subjective belief.
11 Walter Morgan has to prove that he had an immanent threat of
12 bodily harm or death, and with his statement of the fact
13 that he was gonna get a pistol, kill me, and nothing in
14 there about the fact that he was being choked, I don't think
15 you get just---

16 Q But he told you the first time he was being choked. I
17 mean you---

18 A Yeah, but it wasn't believable. It just wasn't
19 believable because the fact that a jury's gonna see a
20 picture where a person's stabbed right in the heart, and
21 you're gonna say that that's coming from a guy on his knees
22 over my shoulder. In an attempt to do that, myself and Zach
23 Ellis, the prosecutor, went through this exercise in his
24 office and we, we both concluded that that is a situation
25 where it's just not plausible, just not believable.

John Reckenbeil - Cross-examination
by Mr. Warder

1 Q So, you took the defense up and you discussed it with
2 Zach and you kind of acted it out or something when you saw
3 it wasn't---

4 A In the sense of where I was trying to argue vehemently
5 to get a negotiated sentence even lower, and in the sense
6 that there was some -- I was trying to argue the
7 plausibility of it even though I didn't really feel that
8 there was.

9 Q Well, wouldn't you have thought that witness statements
10 would help you and get more accurately the positions that
11 you should put yourself in when you reenacted it?

12 A I would of if, if the prosecution didn't have a
13 voluntary statement from the defendant.

14 MR. WARDER: Thank you, Your Honor.

15 MR. WHITE: Your Honor, the State has no other
16 witnesses.

17 THE COURT: You may step down.

18 Anything else?

19 MR. WARDER: Nothing further from the applicant, Your
20 Honor.

21 THE COURT: All right. I'll review the record in the
22 case and issue an order.

23 MS. WHITE: Thank you, Your Honor.

24 THE COURT: Okay.

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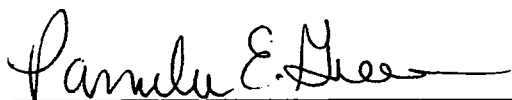
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 5th day of September, 2012.

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

January 30th, 2013



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Walter Lamont Morgan #343621,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2011-CP-42-4638

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 27, 2011. The Respondent made its Return on or about July 17, 2012. An evidentiary hearing into the matter was convened on September 5, 2012, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Richard H. Warder, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Frederick Porter Jonathan Rainey, Frederick Meadows, and Joshua Meadows also testified on the Applicant's behalf. Also testifying was John G. Reckenbeil, Esquire. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the October 2010 term of General Sessions for attempted murder (10-GS-42-6067). The Applicant was represented by John G. Reckenbeil,

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Esquire. On November 10, 2010, the Applicant pled guilty as indicted. The Honorable J. Mark Hayes II sentenced the Applicant to confinement for a period of fifteen (15) years suspended upon the service of (10) years and five (5) years of probation. The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel;
 - a. Counsel failed to do pre-trial investigation,
 - b. Counsel failed to present "effective mitigation evidence and aggravating evidence he introduced during plea,"
 - c. Counsel failed to call victim as witness during guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v.

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Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have 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 of trial." Johnson v. State, 325 S.C. 82, 86, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

In regards to the Applicant's allegation that Counsel failed to effectively investigate the case prior to proceeding to the plea or trial, this Court finds that the Applicant failed to meet his burden of proof. Applicant testified that he was represented by Counsel for four months prior to the plea and only met with Counsel twice. Applicant testified that he told Counsel that he used his knife in self-defense, but Counsel told him that it did not meet the criteria of self-defense.

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Applicant testified that he and the victim got into a fight and the victim began choking him, so Applicant claimed he reached into his front pocket and got his knife. Applicant also testified that his statement to police was that the victim threatened to either "shoot" or "kill" the Applicant, although Applicant testified that he never saw a gun. The Applicant also testified that Counsel never reviewed the discovery materials with him or reviewed with him the questions that the judge might ask during the plea.

Counsel testified that he met with the Applicant approximately two or three times and discussed the possibility of self-defense as a defense. However, Counsel testified that there were problems with the facts because although the Applicant and victim were fighting, it was unclear who threw the first punch and the reason for the fight was stolen weed. Additionally, there was no indication that the Applicant felt there was an imminent threat. In fact, Counsel testified that the fact that the victim was choking the Applicant was not anywhere in the Applicant's statement to police and was never mentioned to Counsel. Counsel also testified that no gun was found on or around the victim. Counsel testified that the story was not believable based upon the objective facts. Counsel also testified that he reviewed all discovery materials with the Applicant, discussed the elements of self-defense with the Applicant during their meetings, and reviewed all of Applicant's constitutional rights and what he would be asked at the plea.

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This Court finds Counsel's testimony to be more credible than the Applicant's as to this allegation. This Court finds that Counsel reviewed discovery materials with the Applicant, as well as what he could expect at the guilty plea. Further, it is clear that Counsel investigated the case, as well as any potential defenses, and discussed those options with the Applicant. The Applicant failed to prove that were it not for the alleged deficiencies of Counsel he would not have pled guilty and would have insisted on going to trial. Id. Therefore, this claim is denied and

dismissed.

The Applicant also alleged that Counsel failed to call the victim or other witness as mitigation witnesses for the guilty plea. Applicant testified that the victim was a friend and they had known each other for over ten years. The Applicant testified that there were several people at the incident that Counsel could have called to support Applicant's version of the facts, including Joshua Meadows, Kenneth Good, and Frederick Porter. Applicant acknowledged that he never told Counsel to call those people as witnesses, but Applicant did share with Counsel who he was with that night.

Frederick Porter testified that he was at the house that evening and saw the Applicant and victim fighting over weed. Porter testified that the victim was choking the Applicant until the Applicant fell to his knees, but they continued to fight. Porter testified that no one spoke to him on Applicant's behalf before the plea, but he would have come to court on Applicant's behalf.

Jonathan Rainey testified that he was the victim in this case and that he and the Applicant are still friends. Rainey testified that he spoke with Counsel over the phone, but tried to get in touch with him later and never met with him. Rainey testified that he did not want the Applicant to go to jail. Rainey testified that he had threatened to kill and shoot the Applicant, although he had no gun, and also testified that he was stabbed by Applicant after Rainey choked Applicant.

Frederick Meadows testified that he was in the house on that night and did not see anything and was not driving around with the Applicant or other witnesses that day.

Joshua Meadows testified that he was there on the day of the stabbing, but had left earlier to go to Wal-Mart with his cousin, Frederick Porter. Joshua testified that when he got back to the house, the Applicant and victim were fighting, the Applicant was being choked, and then the Applicant stabbed the victim. Joshua testified that he drove the victim to the hospital. Joshua

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also testified that he never spoke with Counsel about the case.

Counsel testified that he did want to have the victim present in the courtroom to speak on Applicant's behalf because he was concerned that it was a risk in case the victim decided to turn or change his mind as to helping the Applicant. Counsel testified that he had spoken with the victim and the victim's main concerns in that conversation were how his medical bills would be paid. Counsel testified that he did not speak with any witnesses because the Applicant's voluntary statement did not indicate that Applicant felt he was in imminent danger from the victim, so other witnesses would not have helped. Additionally, Counsel testified that he attempted to provide mitigating details in regards to the fight being over stolen weed and show to the court that this was not a random act of violence.

This Court finds that the Applicant has failed to meet his burden of proof as to the claims that Counsel failed to present effective mitigation and witnesses, including the victim, at the guilty plea. Although the Applicant presented several witnesses to support his story that he was being choked before he stabbed the victim, including the victim himself, this Court does not find their testimony to be credible. As Counsel testified, the Applicant failed to mention that version of the facts in his voluntary statement or to Counsel in their meetings. This Court finds Counsel's testimony on this issue to be credible. This Court finds that Counsel prepared for and attempted to demonstrate mitigating evidence at the plea based upon the evidence and facts he was presented with by the Applicant. The Applicant has failed to show that any of the alleged deficiencies of Counsel relating to calling witnesses at the plea would have affected his decision to proceed to trial instead of pleading guilty. Therefore, this claim is denied and dismissed.

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Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony was not credible, while also finding counsel's testimony was credible. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

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

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the

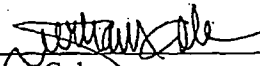
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denial of PCR. Rule 71-1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

- 1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
- 2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7 day of December, 2012.



 J. Derham Cole
 Presiding Judge

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DOCKET NO.

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The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

vs.

WALTER LAMONT MORGAN

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-0029

CDR Code: 3410

Class FEL-A

WITNESSES

Spartanburg Public Safety Department

[Signature]

2. REPORT FILED

3. CARD FILED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

ARREST WARRANT NUMBER

7. ASSESSMENT CARD

8. TRAFFIC VIOLATION COPY

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ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 10-2-10

VERDICT

Foreperson of Petit Jury

Date:

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M. HOPE BLACKLEY

