

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2023-000384

Derrick Burnside #382831,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

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

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5) 2018-GS-42-04777
6 Derrick Burnside,)
7 Defendant.) November 20, 2019
8) Spartanburg, South Carolina

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE

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

15 BARRY JOE BARNETTE, ESQUIRE
16 Attorney for the State

17 RYAN L. BEASLEY, ESQUIRE
18 ANNEMARIE HAYNSWORTH ODOM, ESQUIRE
19 Attorneys for the Defendant

22 Linda D. Moffitt
23 Circuit Court Reporter

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1 MR. BARNETTE: May it please the Court, Your Honor.
2 This is the case of the State vs. Derrick Burnside.
3 Your Honor, he's pleading guilty to two counts on
4 Indictment 18-GS-42-4777.

5 Your Honor, the first count is murder. The second
6 count is possession of a weapon during a violent crime.

7 Your Honor, these are straight-up pleas on this, Your
8 Honor. Both have been true billed by the grand jury.

9 He is represented by Ryan Beasley and Annemarie Odom
10 on these cases.

11 Your Honor, I do have five exhibits that I'll be
12 moving into evidence as part of the facts of the case at
13 the appropriate time.

14 Your Honor, I do have the victim's family members that
15 would like to speak also at the appropriate time.

16 May I approach the bench, Your Honor?

17 THE COURT: Sure.

18 You are Derrick Burnside.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Beasley is your lawyer.

21 THE DEFENDANT: Yes.

22 THE COURT: I have before me Indictment 2018-04777.
23 That indictment charges you with the crimes of -- count one
24 charges you with murder; count two charges you with
25 possession of a firearm during the commission of that

1 violent crime.

2 The state alleges that on or about July the 22nd of
3 2018 you did with malice aforethought kill Latonya Richards
4 by shooting her with a firearm and that she died as a
5 proximate result of that gunshot wound.

6 In count two they allege that you did visibly display
7 a firearm during the commission of that violent crime, the
8 violent crime being murder.

9 If you are convicted or if I accept a plea of guilty
10 to the crime of murder you could receive a life sentence.
11 You must receive not less than a 30-year sentence.

12 For count two, possession of a firearm, you could
13 receive a 5-year sentence.

14 Do you understand what you are charged with?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand the potential sentences
17 that I can impose if you are convicted?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: How long have Mr. Beasley and Ms. Odom
20 been representing you in this case?

21 THE DEFENDANT: About a year.

22 THE COURT: And have you been in custody that entire
23 time?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: During that time have you had plenty of

1 opportunity to talk to them about your case and about your
2 decision as to how you wish to proceed?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did they share with you all of the
5 evidence that the state has in their possession that they
6 would offer to introduce if your case went to trial?

7 THE DEFENDANT: No.

8 THE COURT: You haven't talked to your lawyers about
9 the evidence in the case?

10 THE DEFENDANT: Oh, yes, yes.

11 THE COURT: All right. So they have shared with you
12 the evidence that the state has provided them that the
13 state would offer to introduce at the trial of your case?

14 THE DEFENDANT: Yes.

15 THE COURT: And did you tell them everything you know
16 about these allegations made against you?

17 THE DEFENDANT: Yes.

18 THE COURT: And did y'all discuss it all?

19 THE DEFENDANT: Yes.

20 THE COURT: And after discussing it did you determine
21 whether or not you had a defense to the charge of murder
22 and possession of a firearm?

23 THE DEFENDANT: No. I mean yes, yes.

24 THE COURT: Y'all determined whether or not you had
25 one?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you have one?

3 THE DEFENDANT: No.

4 THE COURT: And do you wish to enter a plea of
5 guilty --

6 THE DEFENDANT: Yes.

7 THE COURT: -- to the charges?

8 THE DEFENDANT: Yes.

9 THE COURT: Before I can accept your plea of guilty I
10 have some questions to ask you.

11 The purpose of the questions is for me to determine
12 whether or not your decision to plead guilty is freely and
13 voluntarily made and that you understand the consequences
14 of that decision and that no one has forced you or
15 pressured you into that decision.

16 So in order for me to ask those questions and get
17 those answers you've got to give up your right to remain
18 silent.

19 Did Mr. Beasley and Ms. Odom explain to you about your
20 right to remain silent?

21 THE DEFENDANT: Yes.

22 THE COURT: And do you understand that if you give
23 that right up I'm going to be asking you questions that are
24 likely going to cause you to incriminate yourself, that is
25 to give me information that might tend to prove you guilty

1 or that would establish your guilt?

2 Do you understand your right to remain silent?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand you don't have to say
5 anything?

6 You have a right to require the state to come into
7 court with sufficient evidence to establish your guilt to
8 the satisfaction of a jury beyond a reasonable doubt, and
9 you don't have to testify or make any statement or answer
10 any questions that might tend to prove your own guilt.

11 But if you want to plead guilty, as I say, you've got
12 to give up your right to remain silent. But it's your
13 decision; it's your choice.

14 What do you wish to do?

15 THE DEFENDANT: Plead guilty.

16 THE COURT: So you want to give up your right to
17 remain silent?

18 THE DEFENDANT: Yes.

19 THE COURT: Did your lawyers also explain to you that
20 you have a right to confront and to examine any and every
21 witness in court that would provide evidence against you?

22 THE DEFENDANT: Yes.

23 THE COURT: And you've got a right to make the state
24 bring those witnesses into court, have them take the
25 witness stand, have them testify under oath in your

1 presence so that you can see who they are, you can hear
2 what they have to say and your lawyers can examine them on
3 their testimony in order to test the credibility of the
4 witness and the reliability of the information they're
5 providing.

6 when you plead guilty that process does not occur.

7 Did you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand your right to confront
10 and to examine the witnesses if you wish to?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you wish to give that right up in order
13 to plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: You do not wish to give that right up?

16 THE DEFENDANT: Oh, yes, sir.

17 THE COURT: Which is it?

18 THE DEFENDANT: I'm not really sure about the
19 questions.

20 THE COURT: Okay. Well, that's all right. Just ask
21 me if you don't understand something.

22 What I'm asking you is do you understand that you have
23 a right to confront and to examine the witnesses.

24 In other words, ordinarily when someone is charged
25 with a crime if they ask for a trial, then a jury decides

1 the case. And in order for the jury to decide the case the
2 state has to present witnesses. They have to testify
3 during the trial.

4 when that happens you of course are present, and so
5 you get to see who those people are. You get to hear what
6 they have to say, and your lawyers get to examine those
7 witnesses in order to test their credibility and the
8 reliability of the information they're providing.

9 But if you plead guilty that process doesn't occur.
10 No witnesses are going to take the witness stand and
11 testify, and your lawyers aren't going to get to examine or
12 question anyone who provides information to the Court.

13 Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you wish to give up your right to
16 confront and to examine those witnesses?

17 THE DEFENDANT: No.

18 THE COURT: Okay. Then you want to have a jury trial?

19 THE DEFENDANT: No.

20 THE COURT: well, that's the way it works. In other
21 words, no witnesses are going to be called to testify if
22 you plead guilty. Only if you have a trial will that
23 occur.

24 MR. BEASLEY: Your Honor, if I could have a second.

25 (Pause to confer with counsel.)

1 MR. BEASLEY: I think he is confused because we have
2 witnesses that are going to speak on his behalf today, and
3 I think he was confused that -- about not being able to
4 call anybody up here.

5 THE COURT: Okay. Yeah. Well, okay. That's
6 understandable.

7 The point is this. The people that the state would
8 call to come to court to serve as witnesses aren't going to
9 come to court and take the witness stand.

10 There may be somebody who would be a witness that will
11 come in and make a statement, but if they do, you don't get
12 to question their statement. You don't get to examine them
13 through your lawyers.

14 They're not going to take the witness stand; they're
15 not going to be placed under oath.

16 The state might have some people that they want to
17 stand up here next to the prosecutor and give me
18 information and you might have some people that your
19 lawyers want to call to come up here to also provide me
20 with information, but those witnesses are called to or
21 those people are called to provide me with information that
22 might influence my decision as to a sentence. But it's not
23 going to influence any decision as to guilt if you plead
24 guilty.

25 The witnesses testify during a trial, and the jury

1 listens to those witnesses in order to decide whether or
2 not you're guilty of anything. But if you plead guilty
3 then the trial doesn't take place and so the witnesses
4 don't take the witness stand and testify.

5 Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Do you wish to give that right up
8 in order to plead guilty?

9 THE DEFENDANT: Yes.

10 THE COURT: And did your lawyers also explain to you
11 that you have a right to have a jury trial and to have 12
12 jurors selected to sit in that jury box over there to your
13 right, to listen to testimony, to consider evidence in the
14 case, to decide the facts as they relate to these
15 allegations?

16 In other words, they determine what, if anything,
17 occurred on July the 22nd that relates to this charge of
18 murder against you.

19 The jury decides the facts of the matter; I provide
20 them with the law to apply. And so when they decide the
21 facts, they apply the law, and they decide whether or not
22 you're guilty.

23 Now, during the trial the state has the burden of
24 proving that you're guilty. During the trial you can
25 testify if you want to, but you don't have to, and nobody

1 can make you because you still have a right to remain
2 silent.

3 Even if you don't testify you could still call other
4 witnesses to testify in the trial. But the burden wouldn't
5 be you to prove anything. The burden would be on the state
6 to prove that you're guilty.

7 If you were to have a trial with a jury making that
8 determination, before the jury can find you guilty all 12
9 jurors have to be convinced of your guilt beyond a
10 reasonable doubt, and, as I say, the burden is on the state
11 to convince them of that fact.

12 Do you understand your right to have a jury trial?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you wish to give that right up in order
15 to plead guilty?

16 THE DEFENDANT: Yes.

17 THE COURT: Has anybody promised you anything or
18 offered you anything in return for you pleading guilty to
19 these charges?

20 THE DEFENDANT: No, sir.

21 THE COURT: Has anybody forced you in any fashion to
22 plead guilty to these charges?

23 THE DEFENDANT: No, sir.

24 THE COURT: Has anybody coerced you or pressured you
25 in any way that resulted in your decision to plead guilty

1 to these charges?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you pleading guilty freely and
4 voluntarily?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And are you guilty of killing Latonya
7 Richards with malice aforethought?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And did you possess a gun during the
10 commission of that crime?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You are 46 years old?

13 THE DEFENDANT: Yes, sir.

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

15 THE DEFENDANT: High school.

16 THE COURT: Have you ever been married?

17 THE DEFENDANT: No.

18 THE COURT: Have you ever had a child?

19 THE DEFENDANT: Yes.

20 THE COURT: How many?

21 THE DEFENDANT: Four.

22 THE COURT: What ages?

23 THE DEFENDANT: Sixteen, eleven, eight and four.

24 THE COURT: Have you ever had a job?

25 THE DEFENDANT: Yes.

1 THE COURT: Doing what?

2 THE DEFENDANT: I worked at B.M.W.

3 THE COURT: Doing what?

4 THE DEFENDANT: Logistics.

5 THE COURT: what does that mean?

6 THE DEFENDANT: That's loading and unloading a truck.

7 THE COURT: And have you ever been treated for any
8 type of mental illness or emotional disturbance?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you suffer from any such a condition
11 today?

12 THE DEFENDANT: I do now.

13 THE COURT: And what condition do you suffer from?

14 THE DEFENDANT: It's --

15 MR. BEASLEY: Your Honor, I mean, we can -- he had
16 never been diagnosed or evaluated prior to this, and he's
17 had two evaluations done. And Dr. Donna Maddox is here
18 today. We can get her to --

19 THE COURT: well, she's going to answer that question
20 shortly?

21 MR. BEASLEY: Yes, sir.

22 THE COURT: Okay. Have you ever been treated for any
23 type of substance abuse or addiction?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you suffer from any such a condition

1 like that now?

2 THE DEFENDANT: No.

3 THE COURT: Now, I understand that there's going to be
4 professional testimony to provide the information about
5 your mental and/or psychological condition, but whatever
6 condition that you might suffer from, does that in any way
7 impair your ability to understand fully what you're doing
8 here today?

9 THE DEFENDANT: No, sir.

10 THE COURT: You understood all of the decisions that
11 you made up to this point so far as your decision to go
12 forward with a guilty plea?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Listen to what the solicitor
15 tells me about the facts that relate to the case.

16 These are what -- these are the facts that the
17 solicitor would offer to establish in court if your case
18 went to trial before a jury. So listen to what he tells
19 me, because when he's through giving me his version of it
20 I'm going to ask you if you agree or disagree with his
21 recitation.

22 MR. BARNETTE: One thing, Your Honor, before I go into
23 the facts of the case or whatever.

24 I told his attorneys and everything that if he pleads
25 straight up to murder or whatever we would not seek the

1 death penalty in this case. So I just wanted to make sure
2 that was clear on the record, and, obviously, he's
3 pleading.

4 THE COURT: All right. And you perceive this to be a
5 case that could qualify for a death penalty based upon
6 what?

7 MR. BARNETTE: Based off the kidnapping, Your Honor,
8 of the victim in this case.

9 THE COURT: Okay.

10 MR. BARNETTE: Your Honor, going through the facts of
11 the case, before I get started on that too, I have five
12 exhibits I'd like to enter as part of the evidence and
13 facts that I'll be presenting, Your Honor.

14 State's Exhibit 1 is a video, Your Honor. I believe
15 we by agreement provided that to you before this hand and
16 let you have a chance to review that video.

17 State's Exhibit 2, Your Honor, is the case file from
18 the Wellford Police Department, a copy of it. I'll be
19 submitting that as part of the record.

20 State's Exhibit 3, Your Honor, is several SLED reports
21 concerning the analysis, as well as the chain of custody on
22 those items from SLED.

23 Your Honor, State's Exhibit 4 is the autopsy report
24 that was submitted by Dr. Wren, as well as the coroner's
25 report that's attached to it.

1 And State's Exhibit No. 5, Your Honor, is the rap
2 sheet of the defendant in this case, plus several of his
3 certified convictions that's attached to that also.

4 I'd like to move that in as part of the facts and
5 evidence in this case with the presentation of this plea.

6 I don't think there's any objection from the defense,
7 and they've been provided these items.

8 MR. BEASLEY: No objection, Your Honor.

9 (Surveillance video marked State's Exhibit No. 1; case
10 file from the Wellford Police Department marked State's
11 Exhibit No. 2; SLED reports and chain of custody marked
12 State's Exhibit No. 3; autopsy report of Dr. John David Wren
13 and coroner's report marked State's Exhibit No. 4; rap sheet
14 and certified convictions marked State's Exhibit No. 5.)

15 MR. BARNETTE: Your Honor, going back to the facts of
16 the case briefly.

17 This happened on July 22nd of 2018, Your Honor, at
18 approximately 5:00 p.m. It happened at 10537 Spartanburg
19 Highway here in Wellford, South Carolina, Spartanburg
20 County, Your Honor, at Phresh Threads, Your Honor, the
21 store of the defendant in this case.

22 Latonya Richards was the victim in this case, Your
23 Honor. They have a three-year-old son in common. The
24 defendant was having the three-year-old at the store.

25 And looking at State's Exhibit No. 1, I believe you've

1 had a chance to review it. She came to pick her son up.
2 As she came in he went to the door, the defendant did,
3 locked the door in behind her, turned the sign to show it
4 was closed.

5 She went. Her son greeted her. She had a backpack.

6 He confronted her and started arguing with her. As
7 they went arguing he actually swung at her and then hit and
8 then swung at her again and hit her and just started a
9 fight with her, knocked her down.

10 He actually pulled one weapon out, put the weapon to
11 her head at times, was dragging her through the store. She
12 was trying to get out through the front door.

13 He actually dragged her one time by her hair and
14 brought her back in towards the front of the store when she
15 started heading towards the door.

16 It was a fight throughout the whole thing. The
17 three-year-old did witness this.

18 Eventually she got to the door, somehow got up and
19 still fighting with him. And, like I said, he has pulled
20 another weapon by now, which would have been a 40 caliber.
21 He kept pointing it at her, kept doing that.

22 She finally got outside of the door. He shots her
23 once through the left side, through and through, basically
24 from there. It came in her left side and came out near her
25 right back-buttocks area. It came out. She was laying in

1 the ground outside the door there.

2 He went back in, was talking to the three-year-old.
3 He actually put the gun towards his head at the time. Saw
4 the three-year-old, picked him up.

5 She in the meantime went and got in her car. She had
6 actually pulled herself into the car.

7 He goes back out with their three-year-old son in his
8 arms and goes -- no. Before that went back out and shot
9 her without his son. His son was still in the store. He
10 went back and shot her when she got in the car. Shot her
11 in the head and killed her at that time.

12 He went back and got his three-year-old son and went
13 back out to the car. You can see the three-year-old
14 actually react when he sees his mother. Then he leaves.

15 He took the three-year-old to his mother's house.

16 Later on he wrecked, Your Honor. This is
17 approximately 6:41 p.m., Irby Road and Bates Court, about
18 2 miles south of Duncan. Your Honor, he was arrested for
19 D.U.I. based off that.

20 Your Honor, during that time they rolled up, was
21 looking for him because he was a suspect in the case. And
22 he had the weapon that he had used in the murder, Your
23 Honor. And that wound up being a Ruger Model 40 caliber
24 semiautomatic pistol, Your Honor, in that case.

25 That weapon was tested. In State's Exhibit 3, I have

1 that. It matched up to that, the bullets in the casing
2 that was used in that case, Your Honor.

3 He was charged with murder and possession of a weapon
4 during a violent crime, Your Honor, in this case based off
5 that.

6 And also in the SLED report, Your Honor, I do have her
7 toxicology. She had nothing in her system at the time --
8 no drugs or alcohol either one in her system. She just
9 merely went to pick up her child and this is what occurred.

10 They were going through a breakup at that time. I
11 think she had said possibly if I don't come back in time
12 you might want to come and check on me, told somebody in
13 her family.

14 So, and the family would like to speak to the Court at
15 the appropriate time.

16 THE COURT: All right. And what about his history?

17 MR. BARNETTE: His history, Your Honor, is in State's
18 Exhibit No. 5.

19 Your Honor, he has a domestic violence in 1993; a
20 burglary second nonviolent in 1998; grand larceny in 1998;
21 driving under suspension, 1998; false information, 1998; no
22 driver's license, 1999; harassment in 2001, Your Honor;
23 trespassing, 2012; criminal domestic violence in the second
24 degree, Your Honor, in 2013; and open container, 2014.

25 And I can pass that up to Your Honor if you'd like to

1 see that.

2 THE COURT: Mr. Burnside, did you understand what the
3 solicitor just told me about the facts that relate to the
4 matter?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did he recite those correctly and
7 accurately?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you disagree with anything that he told
10 me about it?

11 THE DEFENDANT: No.

12 THE COURT: And did he state your criminal history
13 accurately?

14 THE DEFENDANT: Yes.

15 THE COURT: Would you still like for me to accept your
16 pleas of guilty?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. I'll accept them and hear from
19 your lawyers.

20 MR. BEASLEY: Thank you, Your Honor.

21 Your Honor, over the last year I've gotten to know
22 Derrick and his mom Sandra and his sister Michelle. And if
23 you talked to them over the last year as much as I've
24 talked to them, you just can't figure out how we ended up
25 here, because he comes from a great family, great mom.

1 You know, he grew up in the Bronx up in New York,
2 inner city tough area. Single mom, you know, raising him
3 and his sister and brother.

4 He was exposed to a lot of things in the area he grew
5 up in. I mean, he witnessed a murder. He's seen people do
6 lots of bad things with drugs.

7 He is, unfortunately, experienced and then abused in
8 ways that, you know, it's not even comfortable for me to
9 talk about in the courtroom, but I think it's important to
10 know because I think you can -- based on as well as I've
11 gotten to know his family, and you can't imagine he's here,
12 but then you -- once he's actually been diagnosed and
13 evaluated you can see and explain, maybe rationalize or
14 wrap your mind around how some things may have snapped on
15 him, because all of my conversations with him, he loves
16 Latonya. He always has, always pictured, you know, him
17 being with her the rest of his life. And it just doesn't
18 make any sense why he would react and do the things that he
19 did.

20 His mom, the way she raised him and what he was
21 exposed to up there -- and there's also some good. She
22 worked at the Plaza Hotel in New York City and put herself
23 through school.

24 He actually got to spend the night at the Plaza a lot
25 as a kid and he got to see a lot of nice things. And I say

1 that because I think he has always desired nice things, and
2 so that has made him have an unbelievable work ethic.

3 He moved down here with his mom in his late teens,
4 made straight As at Byrnes High School, graduated Byrnes.

5 He's always worked. He was a forklift operator at a
6 warehouse. He owned a clothing store, owned a vehicle
7 restoration business, worked as a dock coordinator at
8 B.M.W. and he also worked at Greenville-Spartanburg Airport
9 as a booth attendant for several years. He's always worked
10 and always taken care of his kids.

11 Some of the things he's been diagnosed with from his
12 past as a kid is posttraumatic stress disorder and some
13 other issues that I'll let Dr. Maddox elaborate on later.

14 Since he's been incarcerated he has been getting
15 mental health treatment. He has been taking meds, and it
16 has helped him immensely. He has also completed a
17 cognitive behavioral group therapy class that he's been to
18 and got a certification from that.

19 Your Honor, you know, watching that video, it was --
20 it's a bad situation and it cannot be explained except
21 that, you know, something Derrick's mind -- and because he
22 and I have talked about it in great detail, you know,
23 trying to figure out what transpired.

24 He -- and, you know, he tries -- he's, like, well, he
25 said I was just thinking that she was leaving and taking

1 K.B. and, you know, I related that back to when I was a
2 kid and I thought about this other man being involved. He
3 said I don't know, I just lost my mind, and, like he said,
4 I can't explain it. He said it just devastates him every
5 day.

6 I know he doesn't sleep. I know he has nightmares and
7 I know he's dealing with a lot, but I'm not -- but one of
8 the things he also always says is he's so sorry for what
9 this has caused her family, his family and everybody else
10 around him.

11 He's never been diagnosed previously, never been on
12 meds, and I think he is -- this has been a, obviously a,
13 life-changing experience, but he is a much better person
14 now mentally than he was prior to this.

15 Something I found interesting in the two evaluations
16 that were done is Derrick tried to go get evaluated, tried
17 to go get himself committed.

18 He went to Charter Rivers and Spartanburg Regional
19 prior to this incident and they turned him away and told
20 him he was okay. And, you know, it's a shame that he
21 wasn't treated prior to this, and maybe it could have
22 prevented it. I don't know.

23 Your Honor, he's always admitted his guilt. He's
24 always said he doesn't want his child, his children, his
25 family, Latonya's family to go through what he went through

1 as a kid and doesn't want them to experience any of --
2 anything that has to do with a trial. He doesn't want to
3 put them through that.

4 He could have asked for a bond, you know, months and
5 months ago. He doesn't want to put the family through
6 that, or his family.

7 Your Honor, you know, he's asking for mercy. He's
8 asking you accept his guilt.

9 I know he wrote a statement that he'd like to read to
10 the Court, and that addresses all sides in one letter.
11 It's not very long.

12 I know he has some family members that would also like
13 to say a few words, and we can speak at whichever time you
14 want us to go, because I know their family wants to talk as
15 well.

16 THE COURT: They'll do that at the end.

17 MR. BEASLEY: Okay. Do you want Derrick --

18 THE COURT: I'll take it however you'd like to present
19 it.

20 THE DEFENDANT: To [REDACTED] K.B. [REDACTED] D.C. and my other
21 children, Mrs. Richards, both of our families and the
22 Court, I would like to apologize for my actions.

23 Not a day goes by that I do not think about the pain
24 that I have caused my family and Tonya's family.

25 I understand that there's nothing I can do or say to

1 bring her back, but if I could, I would.

2 I had so much confusion in my head that day and felt
3 paranoia and nervousness and forgot where I was. And if it
4 were not in my son being present at the time I would have
5 taken my life.

6 Me and Tonya had a plan, and I thought we all had had
7 it all. What I did was selfish that day, and there's no
8 excuse for my actions.

9 Honestly, I loved Tonya dearly and did not want to
10 lose her for anything in the world.

11 Me and Tonya were the perfect match, both of us
12 motivated and a hard worker. We had a plan for our future
13 and started a business, a successful business.

14 We planned to get married in September.

15 I would like to apologize -- I would like to
16 apologize --

17 (Pause.)

18 MR. BEASLEY: "I would like to apologize to me and
19 Tonya's son K.B. as well as D.C. because they were
20 like my children too. To K.B. please, forgive your
21 date for taking your mom away from you. D.C., I'm so
22 sorry. What I did was wrong, and I hope one day you all --
23 you can all forgive me. Mrs. Richards and the rest of
24 Tonya's family, I hope you can all forgive me too. I took
25 your mother, your daughter, your granddaughter, your

1 sister, your cousin and your aunt from you. I would like
2 to apologize to my other children, mother and family for
3 pain I caused you as well. My selfish mistake has removed
4 me and Tonya from your lives. While I've been incarcerated
5 I have prayed to God to heal you of all the pain that you
6 have in your heart. I've also prayed for myself and gotten
7 closer to the Lord. There isn't a day that goes by that I
8 don't regret my actions. Sometimes I can't even look at
9 myself in the mirror. That person that took Tonya's life
10 that day is a stranger to me, and for that reason I have
11 sought mental health treatment. This is not an excuse or
12 justification for my actions, just a realization that I
13 need help. I wish I would have gotten help sooner and
14 avoided this whole tragedy."

15 JOSEPHINE WASHINGTON: Hello, Your Honor. My name is
16 Josephine Washington.

17 THE COURT: You're going to have to speak up louder
18 because the court reporter can't hear what you're saying.

19 JOSEPHINE WASHINGTON: I'm sorry.

20 My name is Josephine Washington. I would like to read
21 a letter to you, please.

22 THE COURT: Okay.

23 JOSEPHINE WASHINGTON: I'm writing this letter in
24 hopes -- hope the Court to see what kind of person
25 Mr. Derrick Burnside is despite the --

1 THE COURT REPORTER: I cannot understand what she's
2 saying.

3 THE WITNESS: I'll read it on her behalf, Your Honor.
4 Is that okay?

5 THE COURT: Okay.

6 COLLEEN ARVELLO JEFFERSON: Her name is Josephine
7 Washington and she's writing this letter in hopes that it
8 would help the Court to see what kind of person that
9 Derrick Burnside is despite the transgressions that led us
10 all to this point.

11 "I have known Derrick since his -- since he was a baby
12 living in the Bronx, New York. Though Derrick is my cousin
13 and with a couple of years between us, our relationship was
14 more like siblings. Derrick is younger than I, but his
15 compassion about family made him more like a big brother
16 who you can depend on. We always cracked jokes on each
17 other as we always seemed to know about the latest styles
18 in clothing and music. When my children -- three -- were
19 younger they couldn't wait to hang with their favorite
20 cousin or their fun cousin Derrick. The moment we walk --
21 he walked into the home the kids couldn't help themselves.
22 They tried to steal all of his time all at once. The smile
23 on his face expressed much that he loved all of the
24 attention. Years later my children are adults now and the
25 excitement is still there, that they were kids -- like they

1 were kids again. This is just one of many great memories
2 Derrick left in our hearts. Derrick is a family man who
3 only wanted the best for his family to make sure they
4 didn't have to struggle or suffer in life. I spoke with
5 Derrick yesterday for the first time, and I can hear the
6 serious --

7 JOSEPHINE WASHINGTON: The sorrow.

8 COLLEEN ARVELLO JEFFERSON: -- and sorrow and the pain
9 in his voice as he tried to take breaks in between the
10 words. I can tell you with all of my heart and without a
11 doubt that Mr. Derrick Burnside is incredibly remorseful
12 for what he has done. Thank you."

13 THE COURT: Okay. Thank you, ma'am.

14 Ma'am, tell me what your name was who was actually
15 reading the letter.

16 COLLEEN ARVELLO JEFFERSON: Oh, yes. Colleen Arvello
17 Jefferson.

18 THE COURT: Thank you.

19 MARTHA SANDERS: Hi, Your Honor.

20 My name is Martha Sanders, and I've been knowing
21 Derrick ever since he was like 16 or 17 years of age. And
22 all of the statements that has been made by his family is
23 true about Derrick.

24 Derrick is a loving person. Derrick -- from what I
25 know, and he come to my apartment. Him and my son was in

1 business together. And I recognize and have heard things
2 over the phone that went down in that place, what arguments
3 and cussing and people, you know, coming in, and, you know,
4 up in his face and all of that. And I had to tell my son
5 to get out of there.

6 But Derrick -- I hate this has happened, but he is a
7 loving person, and he loves family. And all of us -- I
8 don't care who it is in this world -- have faults. All of
9 us does, you know, things we shouldn't say, things we
10 should not do.

11 Murder is not good; lying is not good. Nothing is
12 good to that man up above if it's wrong. I don't care what
13 it is. What he's dealt like we should like.

14 But this is hard. This is really hard because I know
15 he is a sweet person, because he has called me since he's
16 been incarcerated and we have talked. And I asked him why.
17 But, like I said, I have been on the phone. And my son and
18 him was in business and I know what went on in that place.
19 I do. So, I mean, it's up to you what you decide, but I
20 know Derrick went through a lot himself too.

21 THE COURT: What did you mean? You know what went on
22 in that place that day?

23 MARTHA SANDERS: May not have been that day, but I
24 have been on the phone with my son. I have a son that's 20
25 years old. And my oldest son was in business with David, I

1 mean, with Derrick. And I have heard arguments and all
2 that stuff. And I have asked my youngest son just get out
3 of there. And, I mean, you know, people come -- you know,
4 she come there cussing at him, all up in his face and all
5 that. Yes. I have told my younger son to get out of there
6 before something else happened.

7 But Derrick, like I say, he's a sweet person, and she
8 was too. But all of this that has went on, it's not good
9 for no one, not neither sides -- **K.B.** her family, nor
10 Derrick's family.

11 And that's all I have to say, Your Honor. Like I say,
12 God sees everything. He really does.

13 LINDA ARIVERA: My name is Linda Arivera. I'm the
14 cousin of Derrick, a cousin of Derrick. This is pretty
15 much our family.

16 And I'm also reading this for my mother, Debbie
17 Mantea.

18 "I'm so very sorry we are here in this place today. I
19 can only imagine the pain and the loss the friends and
20 family of Tonya are going through now. There is no
21 explanation we can extend that can make sense of what took
22 place on that tragic day. The lives of so many people are
23 forever changed, and the Lord knows what I know for sure
24 that if it were possible to go back the outcome could be
25 different. What I hope one day, forgiveness is possible,

1 but that comes to each and every one of y'all for some
2 time. Now, we feel we have no right to ask and we mean no
3 disrespect by asking. Your loss is beyond what we can
4 measure. We know your love for Tonya is great because our
5 love is great for our loved one. And we believe that he
6 will forever be weighted with regret and great sorrow for his
7 action. We are simply asking for leniency on his behalf.
8 The man we know is kind, caring and forgiving. He is known
9 by many people to be responsible and a positive contributor
10 to his family and community. Thank you for allowing us the
11 opportunity to request mercy and extend sorrow for your
12 loss and prayers for strength and healing of the heart in
13 the days ahead. Thank you."

14 ROSALYN JORDELLA: Hi, Judge. My name is Rosalyn
15 Jordella. I know this -- I'm his cousin. I'm going to
16 read this on behalf of his sister Michelle Miller.

17 "I am the sister of Derrick Burnside. I would like to
18 sincerely apologize on everyone -- to everyone on behalf of
19 my family for my brother placing himself in such a terrible
20 situation. We never would have imagined him to do -- to
21 ever do such. Derrick is very loving. He showed love
22 differently. I have watched Derrick give to people in
23 need. He provided for us as kids and he was very active in
24 his children's lives. We lived up North, very fast paced.
25 Mom at the time was a single mother of three. Mom worked

1 very hard for us to live decently. Needless to say, mom
2 was never home. Derrick and I are five years apart. With
3 me being younger than he is, he practically raised us.
4 Derrick took us to school, picked us up from school, fed us
5 supper, made sure my brother and I were bathed, taught us
6 how to survive in the City of New York, which was not an
7 easy place for us to live. While mom worked to provide for
8 us, growing up with him I always knew that he struggled
9 emotionally with a lot of things. We just assumed it was
10 because he had a lot on his plate with all the
11 responsibility he had at such a young age. Unfortunately,
12 it takes this situation to make sense of it all. Derrick
13 was sexually abused as a boyscout by the camp leader and
14 was also sexually abused a second time during summer
15 vacation by an older woman while away at camp. To my
16 understanding mom never knew. As mom hears her 47-year-old
17 confess to all of these tragic stories, the pain is
18 unbearable, especially after working so hard to make us
19 productive members of society. I ask that you please have
20 mercy on Derrick. He was a good brother, son, father and
21 friend. Sincerely, Michelle."

22 THE COURT: Thank you, ma'am.

23 MR. BEASLEY: Just one more, Your Honor.

24 GILBERT HUMANUS: Your Honor, I thank you for the
25 opportunity to speak before you and the courts.

1 The first thing I asked God for this morning was for
2 wisdom from him and not from the wisdom of this world,
3 because I believe that the wisdom on earth lacks the
4 healing power of words that are needed in a moment like
5 this.

6 The first thing I would like to say to the family and
7 friends of Tonya is not only am I sorry but I know my whole
8 family is sorry that you all have to suffer through this.

9 Whenever a tragedy like this happens no one ever wins.
10 Both sides lose. You lost a beautiful daughter, a sister,
11 a mother and a friend. And we lost -- excuse me -- and we
12 lost a day-to-day interaction with a beloved family member.
13 The one who lost the most are the children who lost both a
14 mother and a father.

15 I thought about the fact that prison is a tough place
16 to be. It's hard and a cold place to live between the
17 bars. Every day it's an everyday struggle.

18 The mental strain and the reality of what you've done
19 is always before you. However, prison is not just a
20 physical place that people go who break the law. There is
21 also a prison in the hearts of people who are bound by
22 unforgiveness, and the only way to be set free from this
23 prison is to forgive.

24 Now, I understand that the emotions are running high
25 and it will take time for many -- many people to do this.

1 I pray that the grace of God will leave all of you who
2 haven't forgiveness into a place of freedom, which is truly
3 a power that only God -- that only comes from God.

4 That being said I would like to say a few things about
5 my cousin Derrick.

6 For a short season of my life I lived with my Aunt
7 Sandra while my mother was sick in the hospital. I
8 remember laughing and playing hambone in a park across the
9 street from my aunt's apartment with my cousin Derrick.

10 He was always one of my favorite cousins. He had his
11 dreams. He's funny. He was driven to succeed because he
12 cared about life and he cared about his children.

13 He's not a perfect man. And like many of us, he got
14 caught up in the day-to-day grind of working at his job, as
15 well as starting a new business for Tonya.

16 Derrick is passionate and focused, and I know that --
17 and I know that many things happened during the period that
18 this happened, some good things and some bad things.

19 Now, it's interesting to me that the word passion is
20 rooted in the word suffer, to suffer. An example of this
21 is the movie, "The passion of the Christ" by Mel Gibson.
22 You could rewrite the title as the suffering of the Christ.

23 I bring up this example of suffering because I believe
24 that that passion or suffering was the cause of this
25 tragedy.

1 I do not believe that this was -- I'm going to skip
2 that.

3 We know that there were many issues that caused Tonya
4 and Derrick's split. We also know that when a human heart
5 is filled with passion many good things could happen, but,
6 unfortunately, bad things can happen as well.

7 My thoughts tell me that this situation was a matter
8 of suffering in a man's heart that was so overwhelmed by
9 his passion that he couldn't stop himself from going beyond
10 the point of no return.

11 We all know what it means to have passion and we all
12 know what it means to suffer.

13 Today there are many people who are -- today in this
14 room there are many people who are suffering until they see
15 justice, and today there are people here who are passionate
16 about seeing mercy.

17 I realize today justice must be served, and I stand
18 with justice, but I also stand with mercy. And it is my
19 hope and my prayer that the courts will demonstrate both
20 justice and mercy. Thank you.

21 THE COURT: Sir, tell us what your name is for the
22 record.

23 GILBERT HUMANUS: Oh, I'm sorry. Gilbert Humanus.

24 THE COURT: Gilbert?

25 GILBERT HUMANUS: Humanus, yes, sir.

1 THE COURT: Thank you.

2 MR. BEASLEY: Your Honor, I just like to bring up
3 Dr. Maddox.

4 THE COURT: Okay.

5 DR. DONNA MADDOX: Hi, Your Honor. Good to see you.

6 THE COURT: Good afternoon.

7 DR. DONNA MADDOX: I evaluated Mr. Burnside in June of
8 2019 at the Spartanburg County Detention Center.

9 Actually, Your Honor, he does have a prior history of
10 inpatient psychiatric treatment. We tried to get the
11 records. It's been closed. He was at Charter of Greer.
12 He made me aware about that during the presentation. So he
13 did have a prior history of treatment. My guess is
14 probably for depression.

15 When I evaluated him, he clearly meets the criteria
16 for depression even to the point that Spartanburg County
17 Detention Center had medicated him, and he remains on those
18 antidepressants today. And, in fact, they recently
19 increased his dose.

20 Also he has -- some of the family alluded to. He's
21 got a very extensive trauma history as many of our people
22 before you do.

23 He not only was a victim of abuse. He also witnessed
24 a lot of abuse. He -- living in the Bronx, as the cousin
25 said, there was not a lot of supervision while the mother

1 was at work, and they were exposed to some things. So he
2 had some preexisting trauma, which explains his drinking.

3 So you have someone with a history of depression and
4 history of some trauma exposure. Drinking is
5 self-medicating, and he definitely had an alcohol problem.

6 Your Honor, he was so drunk when they found him after
7 this that he was trying to open the car door by turning the
8 radio on when the police were trying to apprehend him and
9 fell out of his car. This was in his -- telling me it was
10 a suicide attempt. He was trying to kill himself without
11 poisoning after he murder his girlfriend.

12 I can say he certainly knew what he was doing. Even
13 though he has these illnesses, he can control his behavior.
14 He -- you know, these -- this crime did not occur because
15 of these illnesses, but they contributed, and he's a broken
16 person.

17 Also, from the drinking history he's got a little bit
18 of cognitive impairment. It's just the perfect storm,
19 perfect recipe -- a broken relationship, someone who has
20 already got some damages, brain impairment and alcohol, and
21 it leads to a disaster, as you can imagine.

22 I don't say this very often, and I think you know me
23 well enough. He is remorseful. He's one of the few people
24 I have seen that is generally remorseful.

25 He's gone to treatment. He went to A.A. He's been

1 doing everything he can to take advantage to better
2 himself, but, you know, he struggles with his morality.
3 And I told him today he's getting punished and that he
4 needs to take your punishment and then move on and try to
5 continue healing himself, which he is trying to do.

6 THE COURT: Okay. Thank you, Dr. Maddox.

7 MR. BEASLEY: That's all I have, Your Honor.

8 THE COURT: Mr. Barnette.

9 MR. BARNETTE: Your Honor, there is one other. I
10 don't want -- is State's Exhibit 6. This is actually an
11 evaluation that was done by the state department of mental
12 health concerning this. And he was found competent in this
13 case and so forth. So I can make that an exhibit, Your
14 Honor.

15 I believe there's no objection to that report, Your
16 Honor.

17 MR. BEASLEY: No objection, Your Honor.

18 (Report from the South Carolina Department of Mental
19 Health marked State's Exhibit No. 6.)

20 MR. BARNETTE: If you would, Your Honor, I'd like
21 everybody here to stand on behalf of the victim Tonya in
22 this case.

23 If you would, please, stand up.

24 (Whereupon, unidentified people stood.)

25 MR. BARNETTE: Thank you all. Please be seated.

1 Thank you.

2 Your Honor, the first person that would like to speak
3 on behalf of Tonya is Sheila Richards, her mother.

4 SHEILA RICHARDS: Sheila Richards.

5 THE COURT: Yes, ma'am.

6 SHEILA RICHARDS: I'm Latonya's mother and I'm asking
7 for life in prison with no chance of parole.

8 I don't want him to be able to terrorize this family
9 again. I want these children to be able to go on and have
10 a life, a productive life, and not worry about him showing
11 up again and I -- I just want -- these children won't be
12 able to see their mother again. His children can come and
13 visit him.

14 But nothing my daughter did in her life constitute her
15 being killed like she did.

16 D.C. spent time wondering why, why he do that. And
17 K.B. has to go to therapy every-other week. He's seen
18 things no three-year-old child should see.

19 And when he killed her, something in me died too.
20 There's a hole in my heart, and it won't heal. I just want
21 to know why, why. Thank you.

22 MR. BARNETTE: Thank you, ma'am.

23 THE COURT: Ms. Richards, let me ask you one question.
24 where is K.B. living today?

25 SHEILA RICHARDS: He's living with me. I have custody

1 of the kids.

2 THE COURT: Thank you.

3 MR. BARNETTE: Your Honor, Dean Rogers is her
4 stepfather. He'd like to address the Court, Your Honor.

5 DEAN ROGERS: Your Honor, my name is Dean Rogers and I
6 am the legal guardian of [REDACTED] K.B. and [REDACTED] D.C.

7 [REDACTED]

8 You know, the last time that I talked to Derrick I
9 said, "Derrick," I said, "leave her alone, just let her be,
10 I said, "because people break up to make up." I say, "Some
11 people do and some people don't." I said, "And before you
12 do anything that'll land yourself in jail for the rest of
13 your life, if you don't think about anything else, think
14 about your son." That was my last words to him.

15 This little boy experienced something that no
16 three-year-old should have. Nobody grabs a boy with a gun
17 in their hand and take him out there and show him what was
18 done to his mother.

19 [REDACTED] K.B. is with me 90 percent of the time, and some
20 of the things that this boy tells me, I've never been so
21 heartbroken in my life. He tells me that same road where
22 his mother was killed at, I ask you why. I say why you
23 crying. He said that's where my mama was shot at. I
24 pulled on the side of the road and talked to this little
25 boy.

1 I take him to his therapist. I take him everywhere
2 that he need to go to get the help he needs and take him to
3 school also.

4 Now, just the other day he was fighting in his sleep
5 like he was fighting for his life. I'm waking him up in
6 the middle of the night, and he said this right here just a
7 month ago. "Papa, I dreamed about my daddy got out of jail
8 and he came back and beat me and he had a gun in his hand."
9 That was just a month ago.

10 Just a little, about three weeks ago, he said, "Papa,
11 you promise not to let my daddy hurt me and my mama any
12 more." That took something out of me because I deal with
13 this little boy on a daily basis, and me, I seen the video.
14 That was the most horrible, cruel, evil thing that someone
15 could do to a woman.

16 We all in life have choices. No matter what our
17 mental stage is in life, we all have choices. We either do
18 it or we don't.

19 Now, prior to that Tonya Richards had got beaten in
20 the face with a gun two weeks before this happened. She
21 had moved away, got a home for her and her children to get
22 away.

23 So in other words, if people are arguing let's look at
24 this picture saying who's making the right choice by
25 getting away from that person. She did. She built a home

1 and made her first house payment before this happened.

2 And it is not a day that goes by that I don't think
3 about that video. At least Tonya did fall, but she didn't
4 need no weapons.

5 That little boy was back in the back crying his eyes
6 off shaking like he do in his sleep today, and you goes
7 back there and grab him. And it's just like you opened the
8 door and showed -- showed him this is what I did to your
9 mother.

10 Now, mental stage ain't got nothing to do with that
11 because you know what you're doing. No child should have
12 to go through anything like that right there.

13 I pray for his family that nobody in their family ever
14 have to experience that on their side of the family.

15 This family here has suffered. This family have been
16 painin every day, especially the mother and the sister and
17 everybody else. This has brought a lot of burden on us.

18 And I feel for these children. K.B. -- he always
19 tell me every day -- and his grandmother can vouch for this
20 -- "Papa, you not going to let nobody hurt me." Every day
21 this boy say that.

22 So my main thing is about the sister and this
23 four-year-old boy now.

24 I have brought so many positive things in his life. I
25 say, "Son, your mama's up there with Dr. Jesus. She's --

1 the hardest things for me was to explain to this boy why
2 his mother was not coming back. That's what people don't
3 understand, is what position that I'm in to try to show him
4 that his mother's not coming back. I say, "Dr. Jesus is
5 taking care of your mama. She's fine up there." I say,
6 "One of these days we all will be there."

7 But explaining to him to why his mama was not -- he
8 will say where is my mama, my mama coming back. The
9 hardest thing I have to do in my life.

10 But the reason why this boy is growing every day,
11 because I bring this strength in to him every day. I
12 sacrifice a lot and I gave up a lot to give to him. If I
13 had to do it all over again, I'd do the same thing. Thank
14 you very much.

15 THE COURT: Thank you.

16 MR. BARNETTE: Your Honor, Sheronda Watson would like
17 to speak, will be our last speaker.

18 SHERONDA WATSON: Sheronda Watson.

19 Latonya was a wonderful person with a beautiful soul.
20 I wouldn't be the person that I am today without her, and a
21 lot of us that's sitting over there, we wouldn't be either.

22 She tried to see the good in everyone. We've had
23 several conversations on the phone. And during her last
24 year of life and her relationship over the years she had a
25 repeated cycle of abuse, whether it was emotional,

1 psychological or whatever it was with him.

2 I talked to her, and we started the process of her
3 moving into getting her own home. She hid it from him
4 because she was scared of what reaction she may have
5 gotten.

6 She told me around May he ended up finding her
7 paperwork to where she was moving into a new home, and at
8 that point it become violent for her in the relationship
9 with him. She was leaving and he found out that she was
10 going.

11 She finally moved into her home. She called me one
12 day and she said, you know, what am I supposed to do, he's
13 been walking outside my house with a shotgun. Before she
14 hung her curtains up in her home he was walking around her
15 house with a gun. He did that maybe three times.

16 And, you know, she said she tried to get some help
17 from the police. She went to the station, and she said
18 that they -- she didn't have any proof of that, so, you
19 know, when she had some proof come back with proof.

20 She said there was nothing she could do and not
21 even -- she went to the beach with her kids. She came back
22 from the beach.

23 The incident happened with her face where she was beat
24 in the face with a gun. The whole side of her face was
25 swollen.

1 And we had conversation on the phone. She said to
2 me -- I said, "Tonya, you need to do something. Are you
3 going to go to the police so he won't kill you?" And she
4 said, "Rhonda, do you really think he'll kill me?" I said,
5 "Yeah, I do." I said, "Based on the stuff he's been doing,
6 I think he will kill you." And she said, "I don't think he
7 has it in him. I don't think he'll kill me." But we're
8 here today and she's not here any more. She's gone.

9 And the gun. We sold her that gun. My husband and I
10 have a gun business. We sold her that gun for protection.
11 She said she needed it to come out of business.

12 And he turned around and killed her with her own gun.
13 That's the part that makes me -- I think about it all the
14 time, what if I hadn't sold it to her. But I just feel he
15 would have found a different way. So thank you.

16 THE COURT: Thank you, ma'am.

17 MR. BARNETTE: Your Honor, just one other thing. They
18 did a collost [sic] of pictures they'd just like me to show
19 to the Court.

20 THE COURT: Okay. Thank you.

21 (Pause.)

22 MR. BARNETTE: Thank you, Your Honor.

23 That'd be our presentation, Your Honor.

24 THE COURT: I did, as you know, review the video.

25 Were there two handguns involved in the altercation?

1 MR. BARNETTE: There was one he pulled out, Your
2 Honor, he never used, and of course he used the .40, was
3 the one he used.

4 THE COURT: And the one that he had initially was his?

5 MR. BARNETTE: That I don't know, Your Honor, from
6 that standpoint.

7 THE COURT: The one that was used as the murder weapon
8 was hers?

9 MR. BARNETTE: Apparently so.

10 THE COURT: And do you know where that was located or
11 how he obtained possession of it?

12 MR. BEASLEY: Your Honor, it was in the store.

13 He had a pellet gun, is what he had on him and he --
14 but her gun was at the store, and that was the one that I
15 believe that you can see where it was brought out from
16 under some clothes or something. But that was -- that was
17 her gun.

18 THE COURT: Yeah.

19 All right. Anything else?

20 MR. BARNETTE: Nothing from the state, Your Honor.

21 MR. BEASLEY: No, Your Honor.

22 THE COURT: On Indictment 2018-04777, count one,
23 murder, Sentence of the Court is you, Derrick Burnside, be
24 confined to the South Carolina Department of Corrections
25 for the balance of your natural life.

1 As to count two, no sentence is imposed due to the
2 life sentence being imposed in count one.

3 MR. BARNETTE: Thank you, Your Honor.

4 MR. BEASLEY: Thank you, Your Honor.

5 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, 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 all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 20th day of November 2019.

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

September 1, 2020

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Derham J. Cole, Circuit Court Judge

Case No.: 2018-GS-42-04777

RECEIVED
DEC 02 2019
SC Court of Appeals

State of South Carolina,

Respondent,

v.

Derrick Burnside,

Appellant.

NOTICE OF APPEAL

Derrick Brunside appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Derham J. Cole on November 20, 2019.

s/Ryan L. Beasley
Ryan L. Beasley, SC Bar No. 68307
416 East North Street
Greenville, South Carolina 29601
(864) 679-7777 (phone)
(864) 362-8341 (fax)
rlb@ryanbeasleylaw.com
Attorney for Appellant

November 26, 2019
Greenville, South Carolina

Other Counsel of Record:
Barry Joe Barnette, Solicitor
Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, SC 29306
(864) 596-2575
Attorney for Respondent

FILED
2019 NOV 26 PM 3:08
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Derham J. Cole, Circuit Court Judge

Case No.: 2018-GS-42-04777

RECEIVED

DEC 02 2019

SC Court of Appeals

State of South Carolina,

Respondent,

v.

Derrick Burnside,

Appellant.

PROOF OF SERVICE

I hereby certify that I have served the Notice of Appeal on the Spartanburg Solicitor's Office, by depositing a copy of it in the United States Mail, postage prepaid, on November 27, 2019, addressed to: Barry Barnette, Solicitor, 180 Magnolia Street, 3rd Floor, Spartanburg, South Carolina 29306.

s/Ryan L. Beasley
Ryan L. Beasley, SC Bar No. 68307
416 East North Street
Greenville, South Carolina 29601
(864) 679-7777 (phone)
(864) 362-8341 (fax)
rlb@ryanbeasleylaw.com
Attorney for Appellant

November 27, 2019
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Derham J. Cole, Circuit Court Judge

Case No.: 2018-GS-42-04777

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DEC 02 2019

SC Court of Appeals

State of South Carolina,

Respondent,

v.

Derrick Burnside,

Appellant.

PROOF OF SERVICE

I hereby certify that I have served the Notice of Appeal on the State of South Carolina, South Carolina Attorney General's Office, by depositing a copy of it in the United States Mail, postage prepaid, on November 27, 2019, addressed to: The Honorable Alan M. Wilson, South Carolina Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.

s/Ryan L. Beasley

Ryan L. Beasley, SC Bar No. 68307

416 East North Street

Greenville, South Carolina 29601

(864) 679-7777 (phone)

(864) 362-8341 (fax)

rlb@ryanbeasleylaw.com

Attorney for Appellant

November 27, 2019
Greenville, South Carolina

RYAN L. BEASLEY, P.A.

ATTORNEY AT LAW

416 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601TELEPHONE (864) 679-7777
FACSIMILE (864) 362-8341
EMAIL: rlb@ryanbeasleylaw.com

November 27, 2019

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211**RE: State of South Carolina (Respondent) v. Derrick Burnside (Appellant)**
Case No.: 2018-GS-42-04777

Dear Ms. Kitchings:

Enclosed for filing with the court, please find the following regarding the above reference matter:

1. Notice of Appeal;
2. Proof of Service of the Notice of Appeal on the Respondent(s); and
3. A copy of the Sentencing Sheet(s) which is (are) to be challenged on appeal.

Sincerely,

s/Ryan L. Beasley
Ryan L. Beasley, SC Bar No. 68307
416 East North Street
Greenville, South Carolina 29601
(864) 679-7777 (phone)
(864) 362-8341 (fax)
rlb@ryanbeasleylaw.com
Attorney for AppellantRLB/etr
Enclosures as stated

RYAN L. BEASLEY, P.A.
ATTORNEY AT LAW
416 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

GREENVILLE
SC 296
27 NOV 2019
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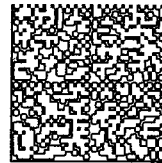
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DEC 02 2019

SC Court of Appeals

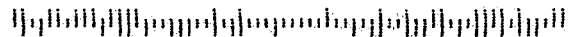
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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29211-11629



55

THE STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
 THE STATE)
)
 v.)
)
 DERRICK BURNSIDE,)
)
 DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
 SEVENTH JUDICIAL CIRCUIT
 Warrant Nos.: 2018GS2304777
 2018GS42304777A

Rule 203(d)(1)(b)(iv) Certification

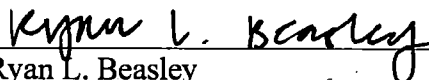
Pursuant to SC Rule 203(D)(1)(b)(iv), Defendant would show that the sentence imposed is unreasonable. Defendant was sentenced to Life Imprisonment in the South Carolina Department of Corrections (SCDC). Defendant communicated to his Attorney that he desires an appeal.

Defendant's Attorney is filing this appeal pursuant to his ethical duty to his client, and Defendant's constitutional right to appeal. See Frazer v. South Carolina, 430 F.3d 696, 706 (4th Cir. 2005) (“A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as ‘an active advocate in behalf of his client.’”) (quoting Anders v. California, 386 U.S. 738, 744 (1967)).

Defendant did not inform his attorney of any specific issues to appeal. When Defense counsel asked for clarification, Defendant simply stated that he wanted an appeal. Defense counsel can provide no material issues to appeal.

Respectfully submitted,

Ryan L. Beasley


 Ryan L. Beasley
 Ryan L. Beasley, P.A.
 Attorney for Appellant
 416 E. North Street
 Greenville, SC 29601
 (864) 679-7777

Greenville, SC
 Date: December 17, 2019

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DEC 20 2019

SC Court of Appeals

RYAN L. BEASLEY, P.A.

ATTORNEY AT LAW

416 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601TELEPHONE (864) 679-7777
FACSIMILE (864) 362-8341
EMAIL RLB@RYANBEASLEYLAW.COM

December 18, 2019

The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201**Re: Derrick Burnside**

Warrant No.'s: 2018GS2304777 & 2018GS42304777A

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DEC 20 2019
SC Court of Appeals

To whom it may concern,

Enclosed please find a Rule 203(d)(1)(b)(iv) Certification for the above referenced matter. If you have any questions, please do not hesitate to call.

Very truly yours,



Emily Brown

Administrative Assistant to Ryan L. Beasley

RYAN L. BEASLEY, P.A.
ATTORNEY AT LAW
416 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

GREENVILLE
SC 29601
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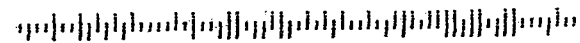


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SC Court of Appeals

The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

29211-162929





The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 09, 2020

Mr. Ryan Lewis Beasley, Esquire
416 East North Street
Greenville SC 29601-2931

Re: The State v. Derrick Burnside
Appellate Case No. 2019-001978

Dear Counsel:

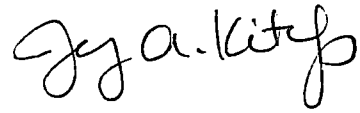
This Court has received your explanation for appealing.

Please forward your explanation to your client, along with a statement that your client has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide your client with the Court's address:

South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Please send your letter to your client within ten (10) days, with a copy to this Court or this appeal will be dismissed.

Very truly yours,

A handwritten signature in cursive script that reads "Jey A. Kityf". The signature is written in black ink and is positioned above the typed name "CLERK".

CLERK

cc: Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire
Barry Joe Barnette, Esquire
Robert Michael Dudek, Esquire

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FEB 12 2020
SC Court of Appeals

Dear Sir / Madam,

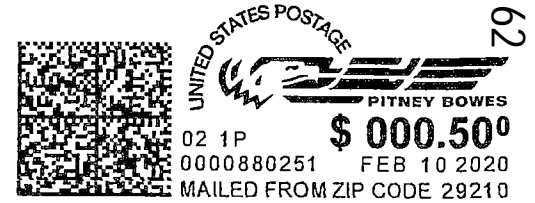
I wasn't coherent at the time due to the medication that I am taking and if I would of known at the time, I would have not signed the Plea and have took the case to trial. I feel that I was giving insufficient counsel and coerced in to signing the plea.

Thank you Respectfully,
Derrick Burnside

Inmate number: 00382831-A1-28 B

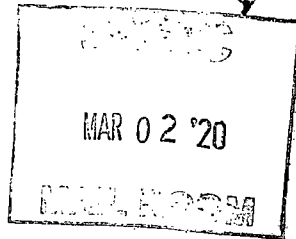
Case number: 2019-001978

Derrick Burnside SCDC# 382831
Kirkland R & E Center, A1-28
4344 Broad River Rd.
Columbia, S.C. 29210

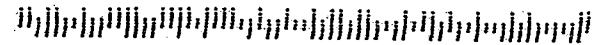


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FEB 12 2020
SC Court of Appeals

South Carolina Court of Appeals
1220 Senate Street
Columbia, S.C. 29201



2920193769 0076



The South Carolina Court of Appeals

The State, Respondent,

v.

Derrick Burnside, Appellant.

Appellate Case No. 2019-001978

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
 William M. Blicht, Jr., Esquire
 Barry Joe Barnette, Esquire
 Robert Michael Dudek, Esquire
 Ryan Lewis Beasley, Esquire

FILED

March 10, 2020



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 06, 2020

The Honorable Amy W. Cox
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Derrick Burnside
Lower Court Case No. 2018GS4204777
Appellate Case No. 2019-001978

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen

CLERK

Enclosure

cc: Derrick Burnside, 00382831
Alan McCrory Wilson, Esquire
William M. Blicht, Jr., Esquire
Barry Joe Barnette, Esquire
Robert Michael Dudek, Esquire
Ryan Lewis Beasley, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Derrick Burnside, #382831,
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2020CP4202623

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010
2. Name and location of Court which imposed sentence Spartanburg County Court of General Sessions, 180 Magnolia Street, Spartanburg, SC 29306
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) 2018-GS-42-04777; Murder
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence _____

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 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W COX
 Revised 3/2003

- (a) November 20, 2019; Life
 - (b) _____
 - (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Order of Dismissal
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. March 20, 2020
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

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

10. State concisely the grounds on which you base your allegation that you are being held in

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 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

custody unlawfully:

(a) Ineffective assistance of counsel, which rendered the guilty plea involuntary, due to counsel's failure to properly advise Applicant regarding the service of a sentence on a murder conviction.

(b) Ineffective assistance of counsel for failure to make contemporaneous objections and/or motions regarding the court's statements during the guilty plea proceeding.

(c) _____

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

(a) Counsel failed to advise Applicant prior to the entry of his guilty plea that a sentence on a murder conviction is served day for day.

(b) Counsel failed to make legal objections and/or motions following the court's statements regarding the victim impact portion of the plea proceeding.

(c) _____

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

(a) any petition in a State Court under South Carolina Law? 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. _____

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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

- iii. _____
- iv. _____

(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. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or

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 CLERK OF COURT
 SPARTANBURG COUNTY
 ALTY W. ODX

Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) PCR is the proper forum for each ground.
- (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? Yes.
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
- (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. Ryan L. Beasley, 416 East North Street, Greenville, SC 29601
- ii. AnneMarie Haynsworth Odom, 416 East North Street, Greenville, SC 29601
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Plea, sentencing and direct appeal.
- ii. Plea, sentencing and direct appeal.
- iii. _____
19. State clearly the relief you seek in filing this application:
A new trial or whatever relief the court deems proper.
20. Are you now under sentence from any other court that you have not challenged?
No.

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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA)
)
County of Lee)

VERIFICATION

I, Derrick Burnside, 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.

Derrick Burnside



Subscribed before me this 29th day of August, 2020
[Signature] (L.S.)
Notary Public

My Commission Expires: 09/04/2029

FILED

2020 AUG -3 PM 12: 50


CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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

I, Derrick Burnside, 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.

Derrick Burnside
Applicant

SWORN or affirmed to and subscribed before me this
 29th day of July, 2020.
 [Signature]
 Notary Public
 My Commission Expires: 09/04/2021

FILED
 2020 AUG -3 PM 12: 50
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Derrick Burnside, #382831,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-42-02623

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

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter “PCR”) application filed on August 3, 2020, by Derrick Burnside (hereafter “Applicant”). Respondent offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its August 2018 term, the Spartanburg County Grand Jury indicted Applicant for murder (count one) and possession of a firearm during commission of a violent crime (count two) (2018-GS-42-4777). Applicant was represented by Ryan L. Beasley and Annemarie Haynsworth Odom, Esquires. Solicitor Barry J. Barnette, Esquire, of the Seventh Circuit Solicitor’s Office prosecuted the case. On November 20, 2019, Applicant appeared before the Honorable J. Derham Cole, circuit court judge, and pled guilty as indicted to all offenses without any negotiations or recommendations, beyond the State stating they would not seek the death penalty if they pled. Judge Cole sentenced Applicant to life imprisonment for murder and no sentence on the weapons possession charge.

Applicant filed a notice of appeal on December 2, 2019. The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion for failure to provide a sufficient

explanation as required by Rule 203, SCACR. The remittitur was issued on May 6, 2020.

II. Statement of Facts

On July 22, 2018, the victim, Latonya Richards, went to pick up hers and Applicant's three year old son up at Applicant's store, Phresh Threads. (Tr. 18). When she arrived she and Applicant began arguing and Applicant began hitting her, knocked her to the ground, dragged her through the store by her hair, pulled his weapon out, pointed it at her, and began shooting at her; all within view of their three year old. (Tr. 18-19). Richards dragged herself to her car and Applicant shot her in the head and killed her. (Tr. 19).

Applicant then wrecked his car and was arrested for driving under the influence. (Tr. 20). The murder weapon was found in the car, was tested, and matched the bullets used in the murder. (Tr. 20-21). Richards had nothing in her system at the time. (Tr. 21). Applicant and Richards were going through a break up at the time and told someone in her family to check on her if she did not come back home in time. (Tr. 21).

III. Current Action before the Court

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

1. "Ineffective assistance of counsel, which rendered the guilty plea involuntary, due to counsel's failure to properly advise Applicant regarding the service of a sentence on a murder conviction."
 - a. "Counsel failed to advise Applicant prior to the entry of his guilty plea that a sentence on a murder conviction is served day for day."
2. "Ineffective assistance of counsel for failure to make contemporaneous objections and/or motions regarding the court's statements during the guilty plea proceeding."
 - a. "Counsel failed to make legal objections and/or motions following the court's statements regarding the victim impact portion of the plea proceeding."

Attached to and incorporated herein are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and

the current PCR application. Respondent reserves the right to amend this return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

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

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

Invalid Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent

solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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

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

Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Based upon a review of the plea hearing transcript, the plea was entered freely, knowingly, intelligently, and voluntarily. At the hearing, he stated he understood what he was charged with and the potential sentences that could be imposed. (Tr. 4-5). Applicant stated he was represented by Counsel for about a year, had plenty of time to talk to Counsel about the case, talked with Counsel about the evidence in the case, told Counsel everything he knew about the allegations against him, and talked about whether a defense existed in the case and determined none existed. (Tr. 5-7). Applicant stated he knew he was waiving his right to remain silent, the right to proceed to a jury trial where the burden would be on the State to show he was guilty beyond a reasonable doubt, and the right to call and confront witnesses. (Tr. 7-13). Applicant stated he was not promised or offered anything if he pled, he was not coerced or forced into pleading, and that he was pleading freely and voluntarily. (Tr. 13-14). Applicant stated he was guilty of killing Richards with malice aforethought and that he possessed a gun during the commission of the crime. (Tr. 14). Applicant stated he did not suffer from any mental or psychological condition affecting his ability to understand what he was doing at the plea hearing and that he had never been treated for substance abuse problems and did not suffer from a substance abuse problem when pleading. (Tr. 15-16). Thus, based upon this the plea hearing transcript, Applicant seemingly pled freely, knowingly, intelligently, and voluntarily, and, thus, should not be able to depart from his plea now.

Additionally, Applicant claims his plea is invalid because he did not know a murder conviction required him to serve his sentence day for day. However, at the plea hearing, Applicant stated he understood that he would receive a sentence between thirty years' and life imprisonment. (Tr. 4-5). Applicant was never told at the plea hearing that part of the sentence

could be suspended. Additionally, Applicant himself stated he was not promised or offered anything to plead. (Tr. 13-14). Thus, Respondent contends that this is not a sufficient reason for allowing Applicant to withdraw his plea now.

Applicant also claims he is entitled to relief because Counsel failed to object to the victims' testimonies at the plea hearing. Applicant explicitly waived his right to call and confront witnesses. (Tr. 8-12). Additionally, the plea judge told Applicant that he could not examine the witnesses the State called to speak at the plea hearing through Counsel, nor could he question their statements. (Tr. 11). Applicant stated he understood this. (Tr. 11-12). Thus, not only was Counsel not ineffective for failing to object to the victims' statements, but Applicant was made aware that this was not even an option. Thus, Applicant's claim is without merit and Respondent contends Applicant should be denied relief on this ground.

Still, the ineffective assistance of counsel allegations probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant's allegations. Applicant alleges that plea counsel was constitutionally ineffective and the plea is invalid because Counsel failed to object to victims' statements and for failure to tell him he would have to serve the sentence day for day. However, he does not explain exactly what Counsel did that constituted ineffective assistance of counsel or what exactly renders the plea invalid. Applicant

fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must “specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

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

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

VI. Other Allegations Denied

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

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant’s court-appointed attorney is the only individual

authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCPP and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

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

reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Conclusion

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: /s Chelsey F. Marto
ATTORNEYS FOR RESPONDENT

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

November 10, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL
	)	CIRCUIT
Derrick Burnside, #382831)	
	)	Case No.: 2020-CP-42-02623
Applicant,)	
)	
v.	)	Certificate of Service
)	
State of South Carolina)	
)	
Respondent,)	
_____)	

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

Rodney W. Richey, Esquire
richeyandrichey@yahoo.com

DATED this 10th Day of November, 2020.

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
ChelseyMarto@scag.gov

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Derrick Burnside,)

Plaintiff(s))

vs.)

State of South Carolina,)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2020-CP-42-02623

AMENDED APPLICATION FOR POST-CONVICTION RELIEF

Submitted By: Dayne C. Phillips, Esq.
Address: 1614 Taylor Street, Ste. D.,
Columbia, SC 29201

SC Bar #: 77712
Telephone #: (803) 807-0234
Fax #: (803) 380-8035
Other: 803-272-4503
E-mail: dayne@pricebenowitz.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), General (130), Breach of Contract (140), Fraud/Bad Faith (150), Failure to Deliver/Warranty (160), Employment Discrim (170), Employment (180), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20-NI-, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Assault/Battery (370), Slander/Label (380), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Sexual Predator (510), Permanent Restraining Order (680), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Pre-Suit Discovery (670)

Submitting Party Signature:

Dayne Phillips (handwritten signature)

Date: June 3, 2022

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Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
)	
Derrick Burnside,	)	Case No. 2020-CP-42-02623
)	
Applicant,)	
	)	AMENDED APPLICATION FOR
v.	)	POST-CONVICTION RELIEF
)	
State of South Carolina,)	
)	
Defendant.)	

As required by Rule 71.1(b), SCRCF, this application is in conformity with Form 5 of the SCRCF Appendix of Forms.

1. **Place of Detention:** Applicant is detained in the South Carolina Department of Corrections at Lee Correctional Institute, 990 Wisacky Hwy, Bishopville, SC 29010
2. **Name and location of Court which imposed sentence:** Spartanburg County Court of General Sessions, 180 Magnolia St, Spartanburg, SC 29306.
3. **Name(s) of co-defendant(s) (if any):** None.
4. **The indictment number(s) upon which and the offenses for which sentence was imposed:**
 - (a) 2018-GS-42-4777 (Murder).
5. **The date upon which the sentence was imposed and the terms of the sentence:**
 - (a) November 20, 2019
 - (b) Life Imprisonment.
6. **A finding of guilty was made after:**
 - (a) A guilty plea before the Honorable J. Derham Cole.
 - (b) Judge Cole sentenced Applicant to Life Without Parole.
7. **Did you appeal from the judgment of conviction and the imposition of the sentence?**
 - (a) Yes.

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 SPARTANBURG COUNTY

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8. If you answered “yes” to number (7), list:

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

i. South Carolina Court of Appeals.

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

i. Order of Dismissal. Appellate Case No. 2019-001978.

(c) The date of each result:

i. March 20, 2020 – Dismissed.

ii. May 6, 2020 – Remittitur.

(d) If known, citations of any written opinions or ordered entered pursuant to such result:

9. If you answered “no” to number (7), state your reasons for not appealing:

(a) Not applicable. Applicant filed a Direct Appeal of his convictions and sentences.

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

(a) Plea Counsel denied Applicant’s right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Plea Counsel’s unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Counsel’s errors, Applicant would not have pled guilty and went to trial or would have received a reduced sentence. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel) (quoting *Strickland*, 466 U.S. at 692).

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

- (a) Plea Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:
- (b) All allegations raised by Applicant in the prior pleadings filed in this action are incorporated by reference as if fully set forth verbatim below.
- (c) Applicant did not knowingly, intelligently, or voluntarily plead guilty. See *Boykin v. Alabama*, 395 U.S. 238 (1969); see generally *Brady v. United States*, 397 U.S. 742, 758 (1970) (noting “[g]uilty pleas are no more foolproof than full trials to the court or jury. Accordingly, we take great precautions against unsound results.”); *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009) (finding the difference “between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea.”); *Holden v. State*, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011) (noting “the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.”).
- (d) Applicant detrimentally relied on Plea Counsel's erroneous advice to plead guilty without reviewing all the discovery or sentencing consequences with Applicant. See generally *Alexander v. State*, 303 S.C. 539, 542-43, 402 S.E.2d 484, 485-86 (1991) (finding constitutionally defective performance is generally found when defense counsel offers erroneous advice concerning an issue that is central to the defendant's decision to plead guilty, and the petitioner's own testimony that he would have proceeded to trial but for counsel's erroneous advice as to sentencing was “the only

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SOUTH CAROLINA

evidence in the record on this point” and was sufficient to satisfy the prejudice prong of the Strickland test); Jackson v. State, 342 S.C. 95, 97—98, 535 S.E.2d 926, 927 (2000) (citing Alexander with approval and finding the petitioner satisfied the prejudice prong by simply providing testimony that he would not have pled guilty but for trial counsel's erroneous advice); Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) (“The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty.”); Ray v. State, 303 S.C. 374, 376, 401 S.E.2d 151, 153 (1991); Hinson v. State, 297 S.C. 456, 457, 377 S.E.2d 338, 339 (1989).

- (e) Plea Counsel’s failure to adequately advise the Applicant regarding the service of a sentence for a murder conviction. Specifically, Counsel did not inform Applicant that the mandatory minimum sentence on a murder conviction must be served day-for-day.
- (f) Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant’s defense. Specifically, Applicant was in a head-on collision motor vehicle accident and suffered a head injury. Applicant believes that he may have suffered a traumatic brain injury (TBI). See Wiggins v. Smith, 539 U.S. 510 (2003); Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008); McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004).
- (g) Plea Counsel’s failure to provide additional, critical mitigation during the plea hearing. Specifically, Counsel failed to provide evidence of Applicant’s traumatic experience of being molested when he approximately ten (10) years old as a Boy

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Scout, claims that the victim's decision to have an abortion combined with his son feeling uncomfortable around a male the victim was dating triggered a mental breakdown, his prior depression and anxiety since childhood, the prescribed medications he was taking at the time of the incident, and his self-medicating via alcohol addiction/abuse.

- (h) Plea Counsel's failure to present evidence and argue during the plea hearing that Applicant was guilty but mentally ill. See S.C. Code § 17-24-20(A) ("A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.).
- (i) Plea Counsel's failure to move for the presiding judge to make a finding on whether Counsel could prove by a preponderance of the evidence that Applicant was guilty but mentally ill during the commission of the crime. See S.C. Code § 17-24-20(D) ("A court may not accept a plea of guilty but mentally ill unless, after a hearing, the court makes a finding upon the record that the defendant proved by a preponderance of the evidence that when he committed the crime he was mentally ill as provided in Section 17-24-20(A).").
- (j) Plea Counsel's failure to file for a reconsideration of the sentence, arguing the previously listed issues and disparate sentencing based on similar cases in Spartanburg County and South Carolina.

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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 Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court.
 - (c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (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 number (12), list with respect to each petition, motion, or application:
- (a) The specific nature thereof: Not applicable.
 - (b) The name and location of the Court in which each was filed: Not applicable.
 - (c) The disposition thereof: Not applicable.
 - (d) The date of each such disposition: Not applicable.
14. Has any ground set forth in number (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 number (14), identify:
- (a) The grounds which have been presented: Not applicable.
 - (b) The proceedings in which each ground was raised: Not applicable.
16. If any ground set forth in number (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) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, issues not preserved for appellate review, and/or

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were not appropriate to raise or were not properly raised on Direct Appeal.

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

(a) **Your plea hearing?** Yes.

(b) **Your trial?** Not Applicable.

(c) **Your sentencing?** Yes.

(d) **Your appeal, if any, from the judgment of conviction and/or imposition of the sentence?** Yes.

(e) **Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed?** Yes.

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

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

(i) Ryan L. Beasley, 416 East North Street, Greenville, SC 29601

(ii) AnneMarie Haynsworth Odom, 416 East North Street, Greenville, SC 29601

(iii) Dayne C. Phillips, 1614 Taylor Street, Suite D., Columbia, SC 29201.

(b) **The proceedings at which each attorney represented you:**

(i) Ryan L. Beasley represented Applicant on the plea, sentencing and direct appeal.

(ii) AnneMarie Haynsworth Odom represented Applicant on the plea, sentencing and direct appeal.

(iii) Dayne C. Phillips is currently representing Applicant on this application for Post-Conviction Relief.

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

Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial (or resentencing) based on ineffective assistance of counsel.

FILED

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

No. Applicant is not under sentence from any other court.

June 3, 2022

[Verification Page to Follow]

AMY W. COX
CLERK OF COURT
SPARTANBURG COUNTY
2022 JUN -7 AM 9:48


FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
Derrick Burnside,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT
 Case No. 2020-CP-42-02623

VERIFICATION

I, **Dayne C. Phillips, Esq.**, on behalf of my client, **Derrick Burnside**, 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 attached in this application; and that the matters and allegations therein set forth are true.



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June 3, 2022

SWORN to and subscribed before me this 3rd
 day of June, 2022^{CP}

Courtney Powers (L.S.)
 Notary Public

My Commission Expires: May 2, 2027

AMY W. COX
 SPARTANBURG COUNTY
 CLERK OF COURT
 2022 JUN -7 AM 9:48

FILED

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Amended Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

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June 3, 2022

STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)	2020-CP-42-2623
)	
)	
)	
)	
DERRICK BURNSIDE,)	
)	
vs.	)	TRANSCRIPT OF RECORD
)	
THE STATE OF SOUTH CAROLINA,)	
DEFENDANT.)	
)	

October 20, 2022
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE BRIAN M. GIBBONS, JUDGE.

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

CHELSEY MARTO, ESQ.
Assistant Attorney General

DAYNE C. PHILLIPS, ESQ.
Attorney for the Applicant

AMBER PAYNE, CVR
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
(AW) - Denotes Applicant's Witness

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There were no exhibits entered during this hearing.

PROCEEDINGS

(Whereupon, the hearing began at
1:33 p.m.)

THE COURT: All right. Madam A.G., if you'll
introduce the case.

MS. MARTO: Yes, Your Honor. Good afternoon. May
it please the Court. We are here today in the case
of "Derrick Burnside vs. The State of South
Carolina." It's 2020-CP-42-2623. He's presently
confined in the South Carolina Department of
Correction and was indicted for murder and
possession of a firearm in August 2018. He was
represented by Ryan Beasley and AnneMarie Odom and
prosecuted by Barry Barnette.

On November 20th, 2019, he appeared before
Judge Cole, pled guilty as indicted on all offenses
without negotiation or recommendation. And there
were no negotiations beyond the State explicitly
stating they would not be seeking the death penalty
if he pled.

He was sentenced to life imprisonment, and then
a notice of appeal was filed on December 2nd, 2019.
This was dismissed for failure to provide a
sufficient explanation as required by Rule 203, and
the remittitur issued May 6th, 2020. The

1 application was filed August 3rd, 2020, and the
2 State's return made November 10th, 2020. And with
3 that, I'll turn it over to Mr. Phillips.

4 THE COURT: All right. Mr. Phillips.

5 MR. PHILLIPS: Good afternoon, Your Honor.

6 THE COURT: Hello.

7 MR. PHILLIPS: I have discussed the issue with Mr.
8 Burnside as far as potential remedies with post-
9 conviction relief. In the plea hearing transcript,
10 Solicitor Barnette does confirm that pursuant to the
11 plea offer, that the agreement was that the State
12 would not seek the death penalty.

13 In terms of the discussions of post-conviction
14 relief remedy, if the Court was to grant PCR on a
15 substantive matter, not related to sentencing or
16 mitigation, that ultimately the relief would be a
17 remand for a new trial and that the State would have
18 that opportunity to potentially seek the death
19 penalty; it's potentially within their discretion if
20 they believed they could meet the aggravating
21 factor. I believe what they argued before -- at
22 least Solicitor Barnett had argued that kidnapping
23 would have been their aggravating factor that they
24 would have argued.

25 I've discussed that with Mr. Burnside. He

1 understands that that is a potential issue that can
2 come up or something that could happen if -- as far
3 as the remedy, if granted, with the -- obviously the
4 sentencing matter, which will be most of our focus
5 for today, Your Honor.

6 But I just wanted to put that on the record
7 since that's such a -- you know, obviously, as they
8 say, death is different, and that's a very unique
9 issue. I wanted to make sure that was on the
10 record.

11 THE COURT: Okay.

12 MR. PHILLIPS: Specifically, if Your Honor wishes, I
13 could review the allegations first.

14 THE COURT: Sure.

15 MR. PHILLIPS: Thank you, Your Honor. Specifically,
16 it's plea counsel denied Applicant's right to
17 effective assistance of counsel as guaranteed by the
18 Sixth and 14th Amendments by the United States
19 Constitution and Article 1, Sections 3 and 14 of the
20 South Carolina Constitution. Also, citing South
21 Carolina Code Sections 17 and 27, Subsections A-1
22 and 4 and 6 related to our post-conviction relief
23 act statute.

24 Specifically, that plea counsels' unreasonably
25 deficient performance prejudiced Applicant, because

1 there's a reasonable probability that but for
2 counsel's errors, Applicant would not have pled
3 guilty and would have went to trial, citing the
4 "Hill vs. Lockhart" standard. Specifically, that he
5 did not knowingly, intelligently, or voluntarily
6 plead guilty based on plea counsels' ineffective
7 assistance of counsel. Applicant detrimentally
8 relied on plea counsels' advice regarding the
9 decision to plead guilty based on their failure to
10 review all the discovery and sentencing consequences
11 with the Applicant.

12 Also, that plea counsels' failure to adequately
13 advise Applicant regarding essentially the service -
14 - or potential sentencing and service of a murder
15 conviction, as far as that is concerned is that
16 counsel did not inform Applicant regarding not only
17 the mandatory minimum sentence but the total
18 sentence. In due candor, the Court -- in the plea
19 colloquy, Judge Cole does -- prior to the -- during
20 the normal colloquy, does review the sentencing
21 range with the Applicant.

22 Plea -- also, that plea counsel failed to
23 conduct a reasonable investigation to develop all
24 available, relevant, and admissible or mitigating
25 evidence in preparation of the Applicant's defense.

1 Specifically, that Applicant was in a head-on
2 collision -- motor vehicle accident and had suffered
3 a pretty significant head injury. He believes that
4 he potentially may have traumatic brain injury, and
5 that that was something that should have been
6 presented as far as mitigation evidence, as well,
7 during sentencing.

8 That additional critical mitigation during the
9 plea hearing that was not presented to the
10 sentencing judge was that plea counsel failed to
11 present and argue that, one, he -- essentially a
12 combination of issues, he was molested at a young
13 age, and in combination with allegations and
14 testimony that he'll present related to the victim
15 in the case, ultimately triggered -- and I'll --
16 I'll wait till he testifies before I provide each
17 specific factual issue, Your Honor, since I have --
18 THE COURT: Okay.

19 MR. PHILLIPS: -- just in the -- it's -- but,
20 basically, it's that there's additional credible
21 mitigation evidence during the plea hearing, and
22 I'll flesh that out during the conclusion and the
23 arguments.

24 And then, that plea counsel failed to present -
25 - or at least to request that the sentencing judge

1 move -- or the presiding judge to make a finding on
2 whether counsel could prove by a preponderance of
3 the evidence that Applicant was guilty but mentally
4 ill during the commission of the -- of the crime.

5 And, finally, Your Honor, that plea counsel
6 failed to file for reconsideration of the sentence
7 arguing that additional mitigation -- the previous
8 listed issues, as well as the desperate sentencing
9 based on similar cases in Spartanburg County.

10 And those are the allegations, Your Honor.

11 THE COURT: All right. You ready to call your
12 witness?

13 MR. PHILLIPS: Yes, Your Honor.

14 THE COURT: All right.

15 MR. PHILLIPS: Derrick Burnside.

16 THE COURT: (To the Applicant) Sir, come on up
17 here, please. Just have a seat right there.

18 (WHEREUPON, the Applicant was sworn.)

19 THE COURT: Just make sure you talk loud in that
20 microphone, okay?

21 THE APPLICANT: Okay.

22 THE COURT: Thank you.

23 MR. PHILLIPS: Thank you, Your Honor.

24 **DIRECT EXAMINATION OF DERRICK BURNSIDE**

25 BY MR. PHILLIPS:

1 Q Mr. Burnside --

2 A Yes, sir.

3 Q -- could you describe how your relationship -- how the
4 representation began with Ryan Beasley and AnneMarie
5 Odom?

6 A He didn't seem too interested in my case, like, he was --
7 basically, like, you know, he had Ms.
8 Odom -- he used to come by, and he would, you know,
9 barely give me any information on -- about my case or
10 investigate it thoroughly.

11 Q Well, how many times did he meet with you?

12 A I'd say about four times.

13 Q And during those meetings, what did you discuss?

14 A I discussed if -- did he talk to Mr. Barnette or -- or
15 anything -- anything new coming up in my -- my case that
16 could mitigate my case or -- in other words, investigate
17 the motions and things like that -- in that order.

18 Q Now, specifically, during those meetings -- out of the
19 four meetings, did you ever review kind of basic -- go
20 over constitutional trial rights? What all did you
21 discuss? Be specific.

22 A We really didn't discuss too much of anything. Like I
23 said, you know, he wasn't too much interested in my case.
24 He just kept telling me that it was a slam-dunk case, and
25 we -- we didn't have a fair -- if I took it to trial, I

1 would lose and . . .

2 Q Well, going in that same vein, during those four
3 meetings, at any point, did Mr. Beasley or AnneMarie Odom
4 sit down with you and review all the evidence?

5 A No.

6 Q And when you say "no," did they review partial portions
7 of it or any of it? Be -- be specific.

8 A They didn't discuss any of that with me.

9 Q And when you said, "They didn't discuss it," did they
10 physically, basically have a copy of the evidence and
11 give it to you?

12 A Yeah. They just gave me the motions, and we -- we never
13 went over my motions, at all.

14 Q And, again, not to be repetitive, but when you say,
15 "didn't go over it," y'all didn't discuss it?

16 A We didn't discuss it.

17 Q Now, as far as the video in question in the case, the
18 surveillance video, was it your decision not
19 to --

20 A Yeah. I was going through -- it was traumatic for me
21 because, like I said, I've been through different
22 situations, and it was just too much for me to handle.

23 Q So you do agree with that part?

24 A Yes.

25 Q That it was your decision not to review the actual

1 surveillance video?

2 A Yes.

3 Q Okay. But as far as any other evidence in the case, they
4 handed you essentially a case file and there was no
5 discussion on it?

6 A Right.

7 Q Okay.

8 A Correct.

9 Q Now, as far as the sentence itself -- as far as -- or at
10 least the charge of murder, what discussions did you have
11 with them regarding the charge itself?

12 A I had -- I had got a law book, because I was illiterate
13 to law, and I actually had talked to him about, you know,
14 the GBMI, and he just basically patted the book, gave it
15 back to me, and told me that we could not pursue that.

16 Q Was there any explanation for why you couldn't pursue it?

17 A No.

18 Q Now, with the charge of murder, what specific discussions
19 did you have regarding sentencing? In other words, what
20 the range was? Did you go into any of that?

21 A I had asked him. And the only thing he just told me,
22 like he said was, "It was a slam-dunk case," and they
23 wasn't trying to offer any plea of any sort or anything.

24 Q Was there any discussion -- again, being more -- I'll be
25 more specific -- as to what the charge carried? a minimum

1 sentence? a maximum sentence?

2 A He did not -- he did not explain or did he not tell me
3 what it carries and how long -- if it was day-for-day or
4 . . .

5 Q Now, again, in those four meetings, how long were they
6 with you during those four meetings, approximately?

7 Obviously, you can't remember exact, but approximately.

8 A Five minutes. I mean, five minutes, if that. Probably,
9 five, four to five minutes.

10 Q Now, when you said there was essentially a meeting, there
11 was no discussion of a plea offer, there was eventually,
12 essentially, somewhat of a -- an offer presented for life
13 imprisonment?

14 A Yes.

15 Q They did discuss that with you?

16 A They -- well, they didn't say -- they didn't exactly say
17 that it was gonna be life. He just said, "Well, we went
18 to court. We'll see what happens there, and, you know,
19 Cole is probably a forgiving person." That's it.

20 Q Okay. So -- and not to confuse you -- I was saying
21 before that, because ultimately --

22 A Before --

23 Q -- you proceeded to court, and it was a straight-up plea
24 without any negotiations or recommendations.

25 A Well, he --

1 Q Was there any -- so were you aware --

2 A No.

3 Q -- of any other plea negotiations --

4 A No.

5 Q -- prior to that?

6 A I -- I wasn't aware of any.

7 Q Now, if you could -- kind of taking a step back and not
8 to kind of jump around, walk me through kind of the
9 issues that you felt should have been presented during
10 the sentencing hearing, as far as your background.
11 Things that occurred in your life that Judge Cole would
12 have needed to know in passing judgment.

13 A Well, he left out during the -- in the case, you know, I
14 was in the Boy Scouts. I was molested, you know. I
15 think Ryan should have went and -- and investigated the
16 car accident I had with my parents and my brother, my
17 sister, a while back. He should have went to Spartanburg
18 Regional and -- and got that information that happened, I
19 believe, in 1990, and, basically, I broke the windshield
20 with my forehead, and I still have the mark on my head,
21 and that should have been presented.

22 Also, he should have presented -- I just -- he
23 should have presented, basically, when --

24 Q And I know it's --

25 A -- stuff that happened to me when I was a child, and it

1 should have been -- should have been presented.

2 Q And I know it's tough, but we've got to be specific
3 today. We've got -- can't be general. So in addition to
4 when you were -- obviously, I believe you said in the Boy
5 Scouts you were molested as a child. What -- what else
6 happened in your childhood that you thought needed to be
7 presented?

8 A Well, growing up in New York, a couple of things, seeing
9 people -- you know, people die in front of me, people
10 shot and killed in front of me. I've just been through a
11 whole lot of, you know, traumatic experiences that --
12 that happened in the past.

13 Q Now, as far as, basically, other things that would kind
14 of -- ultimately a culmination of -- of multiple things
15 that you felt should have been presented, not just you,
16 but the victim in this case, there was things related to
17 your son?

18 A Well, my -- yeah. My son, you know, I felt bad, because
19 he said, "There was a man jumping on the bed." I tried
20 to reach out to the victim's -- mother's boyfriend, and
21 he said, "I don't think that that was a issue pertaining
22 to that before that -- when me and the victim was
23 together. She had an abortion, and it really just kind
24 of like -- it -- it kind of messed with my brain. You
25 know, I didn't know what to think; I was confused.

1 Q All right. Let's break that down. So you said that your
2 son told you about a man jumping on his bed?

3 A Yes, sir.

4 Q Explain that.

5 A She was involved with another guy, and that same day when
6 was together, we went to Atlanta, and I went to go buy
7 some goods for -- for the store. And when I came back,
8 he kept telling me, "Dad, there's this man keep jumping
9 on my bed."

10 And I says, "K.B. (minor child), who is this man?"

11 And he said, "Mama's friend."

12 And Mama's friend was -- was supposedly, you know --
13 and he just didn't feel comfortable around the man.

14 Q So your son was telling you he didn't feel comfortable
15 around, essentially --

16 A Yes.

17 Q -- his mother's boyfriend?

18 A He was afraid of going back to the house and being with
19 this man.

20 Q Now, the second thing that you said was about an
21 abortion?

22 A Yes.

23 Q Explain that.

24 A A couple of months before that, she found out she was
25 pregnant, and I guess this was -- I want to say probably

1 around May and they said -- they told me and Tonya, "Your
2 kid would be born the same date as my son, K.B.," which
3 would be [REDACTED]

4 And she was -- she went on about it and asked me to
5 give her a hundred dollars, and I said, "I don't -- I
6 don't believe in that." And then I -- I just don't want
7 to do any of that, you know, kind of business. I don't -
8 - you know, I love my kids and I love children. I just
9 don't want any part of that, you know. She just went
10 about her business to go get an abortion.

11 Q And what your testimony was a minute ago, when you were
12 kind of outlying that, is you were saying that all of
13 this kind of -- between -- you said your son saying he
14 was afraid of this man and the abortion, you said that
15 did something? Explain.

16 A Yeah. It -- it -- like I -- I couldn't -- I couldn't
17 think. I was real confused, and -- and I guess, my
18 upbringing, growing up as -- as a child, I kind of
19 visualized that happening to him all over again. And it
20 kind of, like, just made me lose control.

21 Q So you're saying that it started as a combination of
22 things, ultimately?

23 A Yes, sir.

24 Q Did you discuss those things with your lawyers?

25 A I did.

1 Q And what did they say?

2 A He told me that, "We can't talk about, you know,
3 abortions." And -- as far as, you know, with (as spoken)
4 -- with my son is concerned, I don't think he just really
5 paid it any mind.

6 Q Now, you ultimately was (as spoken) evaluated multiple
7 times, once by the State and once by Dr. Maddox for --
8 essentially a private evaluation that your lawyers had
9 hired --

10 A Yeah.

11 Q -- Dr. Donna Maddox?

12 A Yes.

13 Q Could you explain -- kind of go through that?

14 A Okay. So I had spoken to Dr. Maddox before that, and she
15 asked me about these things, about the traumatic
16 experience I've been through. And I told her about --
17 about me being molested and stuff like that, and she told
18 me, "Well, you have PTSD, depression, bipolar disorder."

19 And -- and I figured that maybe, you know, Ryan
20 would take heed to that and -- and investigate more into
21 it. And I was taking medication on -- on the street for
22 depression, anxiety, and stuff like that.

23 Q And kind of specifically, you said, "It was before." I
24 didn't follow up. You said about you being in a car
25 accident.

1 A Yes, sir.

2 Q How did that affect you?

3 A Well, when I had the accident, it felt like things
4 changed during my -- during those -- those couple of
5 years. It seemed like I got, like, real antsy and, you
6 know, like, real depressed sometimes. Like I said, I hit
7 -- I hit the windshield head-on, and I had a pretty deep
8 gash. And before that -- way before that, my mom said
9 she dropped me out of -- out of the baby carriage, and I
10 still have the same scar there.

11 Q When you said, "things changed after the head-on
12 collision," what do you mean, like impulsive behavior?

13 A Impulsive behavior, yes. And I got to drinking, drinking
14 and self-medication.

15 Q Now, again, going back to the discussions, you're saying
16 that you definitely discussed the molestation incident
17 with your lawyers?

18 A Yes. I even gave them a letter; it was basically five
19 pages. I don't know if he still had it on file, but I
20 wrote down everything, told him as far as like my coming
21 up -- my upbringing, and I gave it to him in his hand; so
22 I don't know if he discussed that with you.

23 Q Did you also -- I just want to be clear -- did you also
24 discuss what you testified to a moment ago, about kind of
25 that triggering event of a combination between your son

1 saying he's afraid of this man and --

2 A Yes.

3 Q -- and how it brought up feelings?

4 A Yes. I did.

5 Q I guess, also, in the same thing, did you bring up the
6 abortion issue?

7 A Yes.

8 Q And what discussions did you have with your lawyers?

9 Like, what -- what was the -- what was discussed?

10 A He -- basically, he was short. He just told me that we,
11 you know, couldn't talk about that.

12 Q And that's the same for the car accident?

13 A As far as --

14 Q As far as what you discussed with your lawyers?

15 A Yes.

16 Q Now, you said you brought up to your lawyer about
17 potentially seeking, as far as whether there was any
18 avenues -- because you said you found a -- a law book --

19 A Right. I found -- like -- like I said, I found a law --
20 got a law book mailed from -- to the County by my sister,
21 and I was reading about different case laws and asked him
22 if this right here would help me out. And, like I said,
23 he took the book, he patted it, and gave it right back to
24 me in front of Mrs. Odom. And I told him about the GBM -
25 - GBMI case that's in the book. And he said, "No. We

1 can't do that." He just --

2 Q Well, in referencing the guilty but mentally ill statute
3 -- or case that you --

4 A Yes.

5 Q -- you just cited -- or referenced to, you -- he
6 basically said that wasn't an avenue that y'all would
7 pursue?

8 A Right.

9 Q Now, after the sentence was imposed -- Judge Cole imposes
10 the life sentence, did you ask your lawyers to file a
11 motion for reconsideration of the sentence?

12 A I -- I did. I said I wanted to get an appeal on it, and
13 I had contacted my sister and told her to call the
14 Beasley's (as spoken) office and tell him that I would
15 need to file an appeal.

16 Q Now, when you asked them -- because they ultimately filed
17 a -- a direct appeal -- were you asking them to -- and,
18 again, maybe this was something that you didn't
19 understand, at the time, the difference between -- did
20 you understand the difference between a motion for
21 reconsideration and a direct appeal?

22 A No. I did not know the difference.

23 Q Okay. Was there any discussion that if you file a notice
24 of appeal -- a direct appeal, that you've got to have
25 legal arguments -- a legal basis, or it'll be summarily

1 dismissed?

2 A I did not -- did not -- I don't understand, really.

3 Q Was there any -- so there was no discussions --

4 A No.

5 Q -- with your lawyer about it?

6 A No. No discussion, at all.

7 Q And your intent in asking to file the appeal was that to
8 challenge the -- basically, the sentence?

9 A Yes.

10 Q In other words, like a reconsideration of the sentence?

11 A Yes, sir.

12 Q And had you known the difference between the two, you
13 would have asked them to do what?

14 A I would have -- if I would have known the difference
15 between the two, I would have asked them to reconsider my
16 -- my plea.

17 Q And you would have wanted them to reconsider the plea
18 based on what -- what was the basis for that?

19 A The -- the basis was I was guilty but mentally ill.

20 Q And the other mitigation -- all the other issues that you
21 raised, it wasn't discussed with Judge Cole?

22 A Yes, sir.

23 MR. PHILLIPS: A moment, Your Honor.

24 THE COURT: Yes, sir.

25 Q Is there anything else during the course of their

1 representation of you that you haven't discussed or
2 testified to today that you think is relevant to this
3 post-conviction relief application?

4 A Okay. And another thing was he was supposed to talk to
5 my mom. My mom was supposed to tell him about the
6 accident I had as a child -- as a baby -- as -- as a -- I
7 guess, I was a toddler at the time. I fell out of the
8 carriage and fell directly on my head.

9 Q Any other -- any other issues that you remember during --
10 again, things that you asked them to do that they either
11 didn't do or things that they did that you thought they
12 shouldn't?

13 A Oh. Well, I asked them for a bond, and -- because really
14 when I didn't find out that I -- you know, I couldn't --
15 I wasn't getting anywhere, I wanted to hire another
16 lawyer, but I didn't know law, and I didn't know that I
17 can actually fire him.

18 Actually, I did tell him that I wanted to -- that he
19 made a suggestion, like, he smirked at me with his
20 private investigator and says, "You want to fire me?"
21 Like, "You -- you want to fire me," like, cocky towards
22 me, and I felt like I was, you know, being discouraged,
23 or -- or I just had to go with what he told me to do.
24 And I trusted him to help me with my case, but, you know,
25 he kind of like belittled me into -- you know, I guess,

1 like coerced me into taking this plea.

2 MR. PHILLIPS: No further questions, Your Honor.

3 THE COURT: All right. Ms. Marto?

4 **CROSS-EXAMINATION OF DERRICK BURNSIDE**

5 BY MS. MARTO:

6 Q Good afternoon, sir.

7 A How you doing? How you doing?

8 Q Good. How are you doing?

9 A Okay.

10 Q So why did you decide to plead in this case?

11 A Excuse me?

12 Q Why did you decide to plead in this case?

13 A Well, he -- he made it seem like I had no other options
14 but to plea, and I figured that would be the right thing
15 to do, just to plead guilty.

16 Q Were you afraid of being sentenced to death if you went
17 to trial?

18 A Yes.

19 Q Okay. So did you know -- you knew the charges you were
20 pleading to, correct?

21 A I did not know the charges.

22 Q You did not know you were pleading to murder?

23 A No.

24 Q Did Counsel ever tell you were charged with murder?

25 A Yes.

1 Q Okay. When did he tell you were charged with murder?

2 A During the -- when we was going through the court
3 session.

4 Q So you didn't know you were charged with murder until you
5 were in the middle of the plea hearing?

6 A Well, we discussed that before we went to court that they
7 -- you know, they want to seek -- you know, the murder --
8 the murder charge only.

9 Q And the Court told you at the plea hearing you were
10 pleading to murder, correct?

11 A Yes.

12 Q And the Court also announced that you were pleading to a
13 sentence to -- or charged with possession of a weapon; is
14 that correct?

15 A Yes.

16 Q And did the Court tell you that you would be sentenced
17 between 30 years and life?

18 A They did not tell me that.

19 Q Sir, I'm looking at Page 5 of the plea transcript,
20 starting with Line 9. It says, "If you are convicted, or
21 if I accept a plea of guilty to the crime of murder, you
22 could receive a life sentence. You must not receive less
23 than a 30-year sentence." Do you remember that?

24 A Vaguely.

25 Q Okay. And you were present at your plea hearing,

1 correct?

2 A Yes.

3 Q Okay. Do you recall the Court asking if you understood
4 that?

5 A Yes.

6 Q And what was your answer to that?

7 THE COURT REPORTER: (To the Applicant) I'm sorry.
8 I'm sorry. Can you repeat that answer? I can't
9 hear him.

10 THE COURT: (To the court reporter) He
11 said -- he said, "Yes."

12 THE COURT REPORTER: He said yes?

13 THE COURT: (To the Applicant) Make sure you speak
14 up.

15 THE APPLICANT: Oh, yes.

16 THE COURT REPORTER: Okay.

17 Q What was your answer to that, sir?

18 A Could you repeat that again?

19 Q What was your answer to the -- after the Court read the
20 sentencing ranges and asked if you understood? Did you
21 say yes or no?

22 A I believe I answered "yes."

23 Q Why would you answer yes if you didn't know the charges -
24 - or the sentencing range?

25 A Like I said, I was confused.

1 Q Confused about what, sir?

2 A You know, I didn't know what murder carries. You said --
3 you said 30 -- you said 30 to life, correct?

4 Q Yes, sir.

5 A Yeah. I was -- I was confused.

6 Q Why didn't you tell the Court you were confused?

7 A I just -- I was -- I was emotional that day, you know. I
8 had been through, you know, so much trauma, and I just
9 had -- I -- I just couldn't think clearly -- couldn't
10 think clearly.

11 Q So did you testify today that you didn't see any of the
12 discovery in your case?

13 A Yes.

14 Q Do you recall the Court asking if you talked about the
15 evidence in the case with your attorneys?

16 A We didn't discuss anything. You said as far as, like, my
17 case is concerned, we did not discuss anything.

18 Q Well, then why did you tell the Court that you had been
19 shown the evidence in the case?

20 A Well, when you say -- when you say "evidence" . . .

21 Q Sir, the Court asked you if you -- your attorneys shared
22 with you the evidence the State had there -- in their
23 possession, so that would have been the discovery in this
24 case.

25 A Right. But we did not go over the discovery.

1 Q Okay. So then my question is: Why did you tell the
2 Court that you had reviewed the discovery?

3 A I was confused.

4 Q And, again, you didn't want to tell the Court you were
5 confused?

6 A I didn't -- I didn't know if I had a -- you know, a right
7 to say I was confused, or -- like I said, I don't -- I
8 don't know law.

9 Q Do you recall discussing mitigation with your attorney
10 prior to the plea hearing?

11 A He just said that we was gonna get Mrs. Maddox
12 to -- to mitigate the -- mitigate the case.

13 Q And your attorney, at the plea hearing, said that you had
14 two evaluations done?

15 A Yes, ma'am.

16 Q Both of which -- you have had two evaluations done, and
17 Donna Maddox actually spoke at your plea hearing,
18 correct?

19 A Correct.

20 Q Do you recall what she said?

21 A She said that I was -- that I -- I believe she said that
22 I knew right from wrong, but I was mentally ill.

23 Q Okay. Do you recall her saying that she can say you
24 certainly knew what you were doing at the time?

25 A Yes.

1 Q And do you recall her saying that you can control your
2 behavior?

3 A I can't remember.

4 Q Looking at Page 39 of the plea transcript, starting with
5 Line 12, it says, "I can say he certainly knew what he
6 was doing, even though he has these illnesses, he can
7 control his behavior." Do you recall that at all?

8 A No. I don't.

9 Q Okay. But are you disputing what the plea transcript
10 says?

11 A Yes.

12 Q You're disputing --

13 A Yes.

14 Q But, again, you stated that you recall that she said you
15 certainly knew what you were doing, correct?

16 A Right. I just went over that with my lawyer yesterday.

17 Q Mr. Phillips?

18 A Yes.

19 Q Now, you stated that you wanted your counsel to bring up
20 the fact that you had, I guess, seen a lot of things in
21 your life; is that correct?

22 A Yes, ma'am.

23 Q Do you recall what he said in mitigation about you?

24 A I don't recall.

25 Q Do you recall him saying that you grew up in the Bronx?

1 A Okay. Yeah. I remember that now, yes.

2 Q Do you recall him saying that you were exposed to a lot
3 of things in the area you grew up in?

4 A Yes, ma'am.

5 Q Do you recall him saying that you witnessed a murder?

6 A Yes, ma'am.

7 Q Do you recall him saying that you've seen a lot people do
8 a lot of bad things with drugs?

9 A Yes, ma'am.

10 Q Okay. And, again, Ms. Maddox -- or stated that you
11 suffered with depression, correct?

12 A Yes, ma'am.

13 Q And that you're a victim of abuse?

14 A Yes, ma'am.

15 Q Now, can you tell me what happened that day?

16 A The day that --

17 Q The day of the incident --

18 A -- it happened?

19 Q -- the murder?

20 A Yes. We got into a argument and we was talking about --
21 first of all, he found -- my son had found a gun laying
22 on the counter. I took the gun from him and says, "No.
23 K.B., this is not yours." We had a argument about the
24 gun being present, and K.B. could have did something to
25 himself with the firearm.

1 We also discussed about -- that, you know, my son is
2 not comfortable around this man. And, you know, I -- you
3 know, I don't -- I don't think he should be around in the
4 same place -- in the household with this man.

5 And one thing led to another. She told me I had no,
6 you know, right to go around her or tell my son anything,
7 and I -- I told him about the man jumping on his bed, and
8 he said, "You supposed
9 to -- you supposed to correct him."

10 So there was a lot of words and curse words, you
11 know, going back and forth, and that's how we got into a
12 altercation.

13 Q Okay. And what -- how exactly did the altercation shake
14 out? What happened?

15 A We was, you know, struggling. I -- I -- you know, I was
16 intoxicated. Well, what happened was we was tussling
17 over a firearm on the outside of the store, and that's
18 what --

19 Q And then what happened?

20 A And, you know, I let off a shot, and I got paranoid. She
21 told me the guy was coming to get me -- her boyfriend was
22 coming to get me, and I just lost control.

23 Q What do you mean you "lost control"?

24 A I guess, like I -- you know, I had a breakdown. I had an
25 emotional breakdown.

1 Q How did the breakdown shake out?

2 A It turned -- it turned awful. It turned awful. It just
3 . . .

4 Q So is it fair to say that you dragged her by her hair at
5 one point?

6 A We was fighting inside the store, so I don't remember
7 that, but I -- I'm -- I'm pretty sure that did happen,
8 because we was both fighting.

9 Q Do you -- when she went in the store, did you lock the
10 door?

11 A Oh, I always lock the door when we're coming in and out
12 of the store, so . . .

13 Q In the middle of the fight?

14 A Excuse me?

15 Q When they -- when they walked in, did you lock the door?

16 A Yes. Yes.

17 Q Did you turn the open sign to closed?

18 A Yeah. I always -- yeah. Because I was just coming in
19 from -- from Atlanta and -- yeah. I had the open and --
20 store -- yeah. The open and closed store -- yeah. The
21 sign, yes.

22 Q Did you have guns hidden in the clothes?

23 A Guns hid in the -- in the --

24 Q Yes, sir.

25 A I had a BB gun, and the gun I had found, which was hers.

1 Q Did all of this happen within the view of your three-
2 year-old child?

3 A Excuse me?

4 Q Did your three-year-old child witness this incident?

5 A No.

6 Q Okay. When you shot a second time, was your son in your
7 arms?

8 A No. He was not in my arms. I had carried him out after
9 -- after the fact.

10 Q So where was your son?

11 A He was in -- inside the store. I believe so, yeah. He
12 was inside the store.

13 Q Okay. What happened after you killed your son's mom?

14 A I went into -- I went into a paranoia state, and, like I
15 said, you know, I told K.B., "It's -- it's okay."

16 And he asked me, "Daddy, are you tired?"

17 I drove off and I had dropped him off at my mom's
18 house and I started -- I -- I was proceeding to commit
19 suicide.

20 Q Do you recall wrecking your car?

21 A No.

22 Q No. Do you recall being arrested for a DUI that night?

23 A No. I don't.

24 Q Do you remember having the murder weapon in the car at
25 that time?

1 A I don't remember that, either.

2 Q Do you recall if the bullets in the case matched the --
3 do you recall if the gun in your car matched the bullets
4 used in the murder?

5 A No, ma'am.

6 Q Do you remember how many times you shot her?

7 MR. PHILLIPS: Your Honor, I've -- I've let it go
8 for a while, but a lot of the questions, if not
9 almost all the --

10 THE COURT: Sustained. I agree. It's your case,
11 Madam A.G.

12 Q Now, you stated you wanted Counsels to be fired in this
13 case; is that correct?

14 A Correct.

15 Q Did you bring this up to the Court at all?

16 A No, ma'am. Because like I said, I did not understand
17 law, and I didn't know that I had the constitutional
18 right to fire my -- my attorney.

19 Q Given the evidence in the case, did -- do you recall if
20 you were ever told that this was a strong case? Do you
21 remember thinking that this was a strong case, in your
22 opinion?

23 A Yes.

24 Q For the State; is that correct?

25 A Yes.

1 Q Okay. And is that why you decided to plead?

2 A Well, like I said, I was confused, but I just didn't -- I
3 didn't understand. I -- I didn't understand the law.

4 Q You wanted Counsel to move to reconsider the sentence; is
5 that correct?

6 A Excuse me?

7 Q Did you state that you wanted Counsel to move to
8 reconsider the sentence?

9 A Yes.

10 Q And on what basis would you want Counsel to move to
11 reconsider on?

12 A Guilty but mentally ill.

13 Q Even though Dr. Maddox talked and said that you knew what
14 you were doing?

15 A She did, but how -- how would I know what I was doing
16 when I was mentally ill, at the time, when it happened.

17 Q Sir, on direct examination did you say you wanted Counsel
18 to move to reconsider the sentence because you wanted a
19 different sentence?

20 A Yes.

21 Q Okay. But you entered a plea even when the Court said
22 that you could be sentenced between 30 years and life; is
23 that correct?

24 A Correct.

25 Q And you received a life sentence, correct?

1 A Correct.

2 Q And after the State stated the facts on the record, did
3 you agree with those facts?

4 A No.

5 Q Sir, I'm looking at Page 22, starting with Line 2, it
6 says the Court says, "Mr. Burnside, did you understand
7 what the Solicitor just told me about the facts that are
8 related to this matter?"

9 And it says you said, "Yes, sir."

10 And then the Court asks, "Did he recite those
11 correctly and accurately?"

12 And, again, you say, "Yes."

13 Do you recall that?

14 A I don't recall, but if I said that, then I guess that's
15 what it was.

16 Q You stated that in mitigation you wanted the fact that
17 you had a drinking problem, and that that impaired your
18 judgment to be brought out; is that correct?

19 A Yes.

20 Q It says -- sir, on Page 39, starting with Line 1, it
21 says, "So he has some preexisting trauma which explains
22 his drinking. So you have somebody with a history of
23 depression and a history of some trauma exposure.
24 Drinking is self-medicating, and he definitely has an
25 alcohol problem." Do you recall that?

1 A Yes.

2 Q So that was brought out at your plea hearing, correct?

3 A Correct.

4 Q And then dropping to Line 17, "From the drinking history,
5 he's got a little bit of cognitive impairment." Do you
6 recall that?

7 A I don't, but yes.

8 Q Okay.

9 MS. MARTO: (To the Court) No further questions.

10 THE COURT: (To Mr. Phillips) Redirect?

11 MR. PHILLIPS: Yes, Your Honor.

12 **REDIRECT EXAMINATION OF DERRICK BURNSIDE**

13 BY MR. PHILLIPS:

14 Q And I know it's -- it's been a while since the plea
15 hearing and your memory is kind of vague from there, but
16 on Page 9 of the plea hearing transcript, and I can hand
17 it up to you if needed. There was a colloquy back and
18 forth with the judge where he's asking you -- basically
19 going through waiver of trial rights/constitutional
20 rights. At one point, you kind of give inconsistent
21 answers, and your answer is -- it's on Page 9, Line --
22 Lines 18 and 19, "I'm not really sure about the
23 questions." Is that basically what you're saying is that
24 -- as far as your confusion?

25 A Yes, sir.

1 Q And explain that.

2 A Like -- it was like -- it was overwhelming to try to
3 answer these questions. It seemed like everything was --
4 like, I don't know. In my brain, it just felt like it
5 was just closing in, the questions -- you know. I just
6 didn't really understand.

7 Q Now, you were asked on cross-examination about specifics
8 -- or excuse me -- about mitigation that was presented by
9 your counsel as well as Dr. Maddox. Your counsel and Dr.
10 Maddox referenced the word "abused" -- that you were
11 abused or that you experienced bad things in your life.
12 Your argument here today is the specifics? Providing the
13 details?

14 A Yes, sir.

15 Q All right. And, again, those are the -- the specifics
16 that you were referring to, again, are basically that --
17 going into that you were molested and kind of the context
18 of those in relation to your son?

19 A Correct.

20 Q All right. Just making sure that -- that that's clear,
21 as well as the issue regarding the abortion and the
22 boyfriend -- the mother's boyfriend?

23 A Yes, sir.

24 Q And what your son had told you?

25 A Yes, sir.

1 Q You said based on all that together in the moment, you
2 felt that that --

3 A Like --

4 Q -- you felt like you were out of control?

5 A Yes, sir.

6 Q Okay. And that's what was discussed with your lawyer?

7 A Yes.

8 Q But those details of -- of that -- those incidence --
9 incidences were never discussed with the judge during the
10 plea colloquy?

11 A Correct.

12 Q This overview of that you -- you had some horrible
13 experiences in your childhood, you were abused?

14 A Yes.

15 Q Now, when you didn't agree with the facts in the record,
16 was there any discussion, at that point, in your mind --
17 I have to ask because -- why wasn't that brought up to
18 the judge?

19 A Right.

20 Q I'm asking why -- what prevented you -- why didn't you
21 bring that up to the judge when you didn't agree with
22 certain facts that was said -- or questions during the
23 plea hearing?

24 A Oh, I didn't know if I can sit around and -- and -- and
25 explain that to the judge.

1 MR. PHILLIPS: No further questions, Your Honor.

2 THE COURT: (To the Applicant) Thank you, sir. You
3 can step down.

4 (WHEREUPON, the Applicant was excused.)

5 THE COURT: (To Mr. Phillips) Call your next
6 witness.

7 MR. PHILLIPS: No additional witnesses from the
8 Applicant, Your Honor.

9 THE COURT: All right. Applicant rests. Ms. Marto?

10 MS. MARTO: Yes, Your Honor. We would call Ryan
11 Beasley to the stand.

12 THE COURT: Mr. Beasley. (To the witness) Just
13 have a seat there, sir.

14 (WHEREUPON, the witness was sworn.)

15 THE COURT: Please speak loud. Thank you.

16 **DIRECT EXAMINATION OF RYAN BEASLEY, ESQ.**

17 BY MS. MARTO:

18 Q Good afternoon, sir.

19 A Good afternoon.

20 Q You represented Mr. Burnside in his underlying criminal
21 matter, correct?

22 A I did.

23 Q When did you start representing him?

24 A I -- I don't remember the exact date, but it's been four
25 years ago/five years ago. I don't remember the dates.

1 Q Did you take on the case early on?

2 A Yeah. I -- I believe, as I recall, his family came and
3 saw me and were telling me about the facts of the case as
4 they knew them, which at that time, they made it sound
5 like it was a self-defense issue. And I -- and I think
6 before I -- and I saw the case was in the media. But
7 before I think I took the case, I think I went and
8 visited Derrick first, and I talked to him some. And he
9 didn't really have a whole lot of recollection. He
10 just -- I mean, he made, I think, some comments that they
11 were fighting over a gun, which is what I think he told
12 his family.

13 But, you know, I just told him I didn't know, you
14 know, until we see the -- the facts of the case and what
15 -- you know, what's alleged, it's hard for me to tell you
16 what's -- what we're gonna do and how we're gonna do it.
17 But that's when we discovered, as the case went on, that
18 here's a full-blown video of everything. And I don't
19 mean to keep going but go ahead. I -- sorry.

20 Q What did the video --

21 A So the video, basically, is -- it's one of the -- it's
22 probably one of the worst things I've ever seen. And
23 this -- it -- it's -- and there's a reason why -- Derrick
24 didn't want to see it, and there's a reason why we came
25 up with the strategy of not -- of letting the judge see

1 it prior to court, because I know Solicitor Barnette very
2 well. He was gonna play that during the plea, and it
3 would have been absolutely just -- it would have been one
4 of the worst things you'd ever seen in court. And I -- I
5 thought that would have been even a -- a worst situation
6 for Derrick to be in.

7 But I thought giving the judge -- giving him the --
8 some of the evidence prior, which included Dr. Maddox's
9 report, and I -- I may have even given him some more
10 information on Derrick, but I thought that would better
11 prepare the judge and not make it such a circus during
12 the plea, because it would have been -- it would have
13 been a -- it was already bad just for the facts of the
14 case being read, but if they had to watch it, it would
15 have been one of the worst things you had ever -- and you
16 didn't want to put a victim's family or Derrick's family
17 or anybody through that.

18 Q So based upon that video in particular, what did you
19 think that y'all's chances of trial would have been?

20 A It was not good. I mean, you could -- all you have to do
21 is play that video and it's -- it's over. I mean, it's
22 as -- it's as bad as it gets. I mean, it's -- you know,
23 he -- he shot her once. They fought. He was kind of
24 dragging her around the -- the store for a good ten
25 minutes. He kept pointing a gun to her head, and she was

1 trying to get away.

2 And they got into the doorway, and they walked
3 outside and he's still holding onto her and he puts her
4 on the ground and -- and shoots her in the rear buttocks.
5 And then he comes back in and takes his son, puts him in
6 the back of the room and shuts the door, because his son
7 was screaming and running around. And then he comes back
8 out and during that time she made her way to the truck
9 and had gotten in the passenger side of the truck and was
10 sitting there and he came and put a gun to her head and
11 shot again. And this was all broad daylight, all on
12 camera.

13 Q Was there any question as to who committed the shooting?

14 A No.

15 Q So were y'all talking about bringing this case to trial,
16 or was this pretty much it was going to be a plea?

17 A I mean, we talked about it, and we talked about, you
18 know, what that would look like, you know, and -- and --
19 and one of the things -- and -- and Derrick's -- in -- in
20 spite of what happened in that situation, I mean, he's a
21 very nice person and -- and a good person as far as --
22 you know, he did love his family and kids, and he really
23 did not want to put -- not only his son, but -- but her --
24 -- you know, her family through that, nor his family. I
25 mean, and -- and that's -- I mean, because he knew the

1 facts of the case. I mean, we went -- and we did go
2 through all the discovery. He -- and -- and I was like,
3 "We can watch the video if you want."

4 And he goes, "I don't want to watch it."

5 And I was like, "Okay." But he did not want to put
6 anybody through that, which was -- you know, it was good
7 on his part for doing that.

8 Q Beyond the video, did you review the discovery in the
9 case with Mr. Burnside?

10 A Yeah. Absolutely.

11 Q And what was your mitigation strategy at the plea
12 hearing?

13 A Well -- you know, well, obviously, we got Donna Maddox,
14 who's one of the best in the business, and I -- I trust
15 her opinion. And one thing I love about Donna is she's
16 so experienced, not only with these cases, but also
17 coming to court and testifying. And so, you know, the
18 evaluation, you know, said he was competent, and he could
19 stand trial, but -- but it also detailed some of the
20 issues and -- and trauma he's endured over his life. And
21 I thought that, you know, between myself and Donna
22 presenting all that to the judge -- I mean, you know, we
23 still had a shot of getting something less, and -- and
24 that's what I -- and that's -- that's what, you know, I
25 wanted. And that's what I told Derrick. I was like, "We

1 got a shot, you know, of getting 30 or more, but, you
2 know, let's just -- you know, we'll do everything we
3 can."

4 And Donna is fantastic at helping with that, and I
5 was hoping, you know, between her and I, we'd be able to
6 get in something closer to 30. I -- I mean, I -- but it
7 was -- the facts were not good.

8 Q So was the only offer extended pleading straight up to
9 murder, or were there additional offers?

10 A Well, the initial offer was, you know, "We're gonna seek
11 the death penalty unless you want to plead to life."
12 That was the initial offer. And -- and, you know,
13 through months and months and months of negotiation and
14 meeting with the solicitor and -- and talking through,
15 you know, different scenarios and facts and everything
16 else and the arguments, you know, they finally agreed to
17 let me -- let us plead straight up, and they wouldn't
18 make a recommendation, which was a fair plea offer under
19 the circumstances.

20 Q Did you think a plea to guilty but mentally ill would
21 have been appropriate in this case?

22 A Not -- not at the time, not based on my -- you know, what
23 Donna Maddox had written in her report and -- you know,
24 and my discussions with her, no.

25 Q Now, did you discuss Mr. Burnside's past, I guess, head

1 injuries and collisions?

2 A I don't think I discussed it during the plea,
3 but -- but, I mean, I know that I gave the report and
4 discussed the report, you know, with the Court. I mean,
5 we gave him the report, but I don't know if I went
6 specific into the car wreck, because there was also --
7 that was -- it was proceeded by a -- a -- being dropped
8 on his head as a baby, apparently, so, no. I didn't -- I
9 don't -- I didn't discuss any -- I didn't see anything
10 that warranted me going any further. I didn't -- I --
11 no.

12 Q Did you discuss it with Mr. Burnside before the plea?

13 A I don't think so. I don't recall that being a major
14 factor at the time.

15 Q Do you recall discussing with Mr. Burnside how he was
16 molested at a young age?

17 A Yes. And -- and another reason why I gave the judge
18 ahead of time the report to review was because Derrick
19 didn't want all that to be brought out in court and --
20 which I understood. So that -- you know, I -- I -- I'm --
21 -- and I'm sure in my -- during the plea I would -- I
22 would approach some of those issues, but not go into
23 detail, because I knew the Court had already seen the
24 report.

25 Q Did you discuss the charges in this case with Mr.

1 Burnside?

2 A Yes.

3 Q Did you discuss the sentencing ranges with Mr. Burnside?

4 A Yes.

5 Q Did he, to you, seem like he understood what he was doing
6 by pleading?

7 A Yes.

8 Q Did he seem to understand the charges in your
9 discussions?

10 A Yes.

11 Q Now, did you talk to Mr. Burnside about a potential
12 appeal or motion for reconsideration?

13 A Don't think we discussed a motion for reconsideration,
14 but we did do the appeal, yeah.

15 Q Do you think a motion for reconsideration would have been
16 successful?

17 A It wasn't warranted. There was nothing to justify it.

18 Q Did you file a notice of appeal in this case?

19 A Yes.

20 Q Did you inform Mr. Burnside of his rights he was waiving
21 by pleading?

22 A Yes.

23 MS. MARTO: Nothing further, Your Honor.

24 THE COURT: Mr. Phillips?

25 MR. PHILLIPS: Thank you, Your Honor.

CROSS-EXAMINATION OF RYAN BEASLEY, ESQ.

1

2 BY MR. PHILLIPS:

3 Q So -- and -- specifically, you say four times was the
4 amount of visits with Mr. Burnside in preparation?

5 A I don't think that's probably accurate, no. I don't
6 recall, but I don't know.

7 Q You met with him over ten times?

8 A I don't know. I don't remember. I'd have to look at the
9 log at the jail. It was a bunch.

10 Q Okay. So more than four would be your testimony?

11 A Yeah.

12 Q All right. And so, in keeping notes with your case,
13 would you have a, you know, "I visited him on such and
14 such date"? Would you have that? A log of your visits?

15 A I don't -- I don't know if I would have a log, no. You
16 know, because a lot of times what we would do is I would
17 -- I would get -- so my investigator, who lives in
18 Spartanburg, I would get him to drop some information off
19 to Derrick, and then I would come, either later in the
20 day or later in the week and go over it with him, or I
21 would visit, you know, with my investigator to go over
22 it, or AnneMarie Odom, another attorney in my office,
23 would go by and see him on separate occasions. But we
24 were -- I mean, if you put everybody together, we -- I
25 don't -- there's -- I have no idea how many times we

1 visited him, but it was a bunch.

2 Q All right. But there's no record of that, right?

3 A Not -- not that I'm aware of, no. Besides the -- I mean,
4 the jail log, they would have it.

5 Q Okay. Now, as far as your representation and meeting
6 with him, how long do you think you met with him during
7 those times?

8 A I don't -- I don't recall. It was always varied. I
9 mean, there's too many -- I -- I have no idea.

10 Q All right. And so as far as -- did you give him the
11 discovery in one session, or you said "piecemeal
12 portion," I mean --

13 A We -- I mean, I don't know. It was so many times that we
14 would meet and go over all this stuff, because it was a
15 bunch of stuff to go over, just in the discovery. And
16 then to talk about, you know, what we were gonna do, and
17 what his thoughts were on a -- on a plea; what a trial
18 would look like. I mean, we just went over so many
19 things. I mean, I couldn't tell you how much time that
20 took.

21 Q And so, again, because you don't have the notes on it as
22 far as your meetings with him and what you reviewed
23 during those meetings, I guess, at what point -- so I'm
24 just trying to figure out -- you know, at what point do
25 you review the discovery versus review constitutional

1 rights versus talking about the death penalty issue?

2 A What point do I do that?

3 Q Well, not like -- because we don't have notes, I'm trying
4 to kind of make a chronological timeline --

5 A Okay.

6 Q -- of your representation of him.

7 A It would be hard to do, because, I mean, what -- I don't
8 know what -- it'd be -- well, it would be easy. You just
9 could have subpoenaed the jail records. You could see
10 what dates I came in there, then I could go through every
11 date --

12 Q Okay.

13 A -- and try to rehash it with you.

14 Q All right. Again, as -- you're not sure of the --

15 A I -- I don't know. That's --

16 Q -- you're just not sure?

17 A -- been, you know, years -- three/four years ago, so,
18 yeah. I don't have -- and I don't have any notes to look
19 at, so, no.

20 Q I guess it's -- and then the specifics as far as the
21 death penalty, what discussions did you have with him
22 regarding that?

23 A I don't recall exactly. I mean, it's pretty obviously
24 what a death penalty would be, but I -- I don't remember
25 exactly.

1 Q And in -- again --

2 A I was hoping not to have to discuss the death penalty
3 case with him.

4 Q Understood, but that -- I mean, that's obviously a big
5 context in terms --

6 A Yeah.

7 Q -- of the case?

8 A Correct. I -- I don't recall. I mean, obviously, I --
9 the only thing I could say that -- I can't remember that
10 far back. But they would seek the death penalty and,
11 obviously, if they were successful, he'd be put to death.
12 I mean,
13 that's -- that's one obvious . . .

14 Q Right. And there's no notes about those discussions?

15 A Not -- not -- well, we sent -- no. There's a letter; I
16 know we sent it where we outlined everything we discussed
17 and -- and his options, which I think you probably have.

18 Q Okay. So you're saying as far as the letter, that's kind
19 of how your office --

20 A Well, I articulated everything we had discussed and
21 making (verbatim) sure he understood it.

22 Q Understood. Okay.

23 A Yeah.

24 Q Now, I guess -- well, your opinion on the death penalty
25 was that -- now that you're referencing that letter --

1 was actually that you don't believe the State would be
2 successful in proving the aggravating factor?

3 A That's -- that's what I -- I told him from my viewpoint
4 and what I saw with the kidnapping, I thought we would
5 have a shot at, you know, not getting the death penalty.

6 Q And challenging, essentially, the kidnapping --

7 A Yes.

8 Q -- issue?

9 A From my -- from my view of the evidence that's what I
10 thought.

11 Q Now, as far as the car wreck and the head injury --

12 A Uh-huh.

13 Q -- you did discuss that. He -- you were aware that that
14 -- that occurred?

15 A I think I saw it -- I mean, I think it was -- the first
16 time I saw -- maybe it was in Donna Maddox's report. I
17 mean, it wasn't a big issue at the time that he had made
18 it a big issue or anything.

19 Q Well, in -- in terms of discussing, again, for potential
20 mitigation with the plea --

21 A Uh-huh.

22 Q -- as far as the head injury, impulsive behavior, that's
23 not something that stuck out to you prior to the plea
24 hearing?

25 A No. I don't think so.

1 Q Now, as far as the -- again, I understand you passed up
2 Dr. Maddox's report -- or provided the Court with Dr.
3 Maddox's report prior to the plea hearing. It -- are you
4 -- specifically as -- going into the specifics of the
5 details related to the molestation, I think from your
6 testimony -- I mean, you tell me, I don't want to put
7 words in your mouth, but you're saying, essentially, that
8 you didn't feel it was what Derrick wanted to be fully
9 presented during the hearing?

10 A Yeah. He did not want to go into all the details in
11 front of the judge and the people in the courtroom at the
12 time. So I talked to him about giving the judge all that
13 information ahead of time so it wouldn't have to be
14 brought out in excruciating detail because it was
15 embarrassing to him. He didn't want his family to know
16 all that at the time.

17 Q And Dr. Maddox's report doesn't go too deep into --

18 A No.

19 Q -- those portions, correct?

20 A No.

21 Q It mentions, essentially, that --

22 A Yeah.

23 Q -- molestation, but it doesn't go into the actual
24 specific details?

25 A Correct.

1 Q Now, as far as the testimony you heard from Derrick
2 regarding the abortion and the boyfriend -- I'm not
3 trying to conflate much issues, but just kind of put them
4 together for you.

5 A Yeah.

6 Q And the boyfriend hit the fear, kind of triggering that
7 emotion. What discussions did y'all have related to
8 that?

9 A I've never heard anything about any abortion. I mean, I
10 -- I -- and I think I -- I mean, I heard she may have
11 been seeing somebody, but it wasn't -- it wasn't
12 something that was a big issue at the time.

13 Q So your -- your testimony is that you're unaware of that
14 being a factor?

15 A I don't think so, no. I mean, from my recollection, he
16 was at the store, and he had a gun hidden under some
17 clothes, and when she got there, he went and got the gun
18 from underneath the clothes and put it to her head and
19 started pistol-whipping her and beating her all over the
20 place.

21 Q Now, as far as the issue with the boyfriend and the son
22 feeling unsafe, do you have any memory regarding those
23 discussions?

24 A No.

25 Q Now, in regards to the mitigation, I understand you did

1 present Dr. Maddox's -- you had expert testimony that she
2 wasn't -- I don't believe -- she wasn't qualified, but
3 she's been qualified many times, and I know --

4 A Correct.

5 Q -- I'm sure the Court's well aware of that. So, with
6 that being said, you had the family members testify.
7 Your specific mitigation strategy, as far as trying to
8 request less than life imprisonment with that being the
9 maximum sentence, was essentially, again, in terms of
10 mitigation, to hold back some of those major details that
11 were provided in the report in hopes that the -- the
12 Court had reviewed those and without, again, having some
13 of the other contact -- context to them?

14 A Uh-huh.

15 Q Is that -- I mean, that's essentially your strategy; is
16 that fair to say?

17 A Yeah. Well, I didn't hold it back. The judge had that
18 information the week -- I think, even the week before.

19 Q But the judge -- again, I mean -- well, I guess your
20 testimony today is that some of this stuff was never
21 discussed with you and that's from your testimony?

22 A Which stuff you talking about now? The --

23 Q So the --

24 A The abortion --

25 Q -- the abortion and the boyfriend.

1 A Yeah. I don't -- I don't know.

2 Q That's not something you would have known to discuss, is
3 what your testimony is?

4 A Correct.

5 Q Okay. Just making sure it's clear. Now, as far as the
6 guilty but mentally ill issue, specifically, do you
7 remember you and Derrick having a conversation about that
8 issue?

9 A Honestly, I -- I don't recall; it's been so long ago. I
10 don't recall. I mean, I'm assuming I went over Dr.
11 Maddox's report with him, but, you know, I -- I -- it's
12 been so long; I can't recall off the top of my head.

13 MR. PHILLIPS: A moment, Your Honor.

14 THE COURT: Yep.

15 Q For -- in this case you filed a notice of appeal. That
16 was at Mr. Burnside's request?

17 A I think so.

18 Q And, again, his basis for asking for the appeal -- again,
19 did -- did you ask him why he wanted the appeal?

20 A I don't recall.

21 Q Did you explain to him the difference between a motion
22 for reconsideration and an appeal?

23 A I did not.

24 Q Did you discuss with him that requirement under Rule 203,
25 that you've got to have legal issues? In other words, if

1 there -- there would have needed to been some kind of
2 argument or motion or --

3 A Yes.

4 Q -- objections?

5 A Yes.

6 Q Was any of that discussed with him?

7 A Yes. Because I -- I went -- I -- because there -- there
8 was -- I told him I did not see any issues with the plea.

9 Q Oh. As far as the appeal's concerned?

10 A Yes.

11 Q And -- but there was no discussion regarding a
12 reconsideration?

13 A No.

14 Q But as far as his basis of --

15 A I mean, now -- now, there may have been discussions. His
16 family may have asked me about it, but I don't recall
17 Derrick asking me about a motion to reconsider.

18 Q Okay. And, as far as that, you said you discussed that
19 with him as far as filing the appeal, and you didn't
20 believe there was any --

21 A Right.

22 Q -- legal issues. His basis, as far as kind of
23 challenging the sentence, there was no discussion about
24 well, we had the ten days to file for a reconsideration.

25 A There was -- there was no discussion?

1 Q I'm -- I'm asking.

2 A I don't -- I don't recall. I'm assuming there was a
3 discussion, but I don't know.

4 Q And there wouldn't be any notes of that conversation?

5 A No. Not that I'm aware of.

6 MR. PHILLIPS: No further questions, Your Honor.

7 THE COURT: (To the State) Any redirect?

8 MS. MARTO: No, Your Honor.

9 THE COURT: (To the witness) Thank you, sir. You
10 can step down.

11 THE WITNESS: Thank you.

12 (WHEREUPON, the witness was excused.)

13 THE COURT: (To the State) You can call your next
14 witness.

15 MS. MARTO: Yes, Your Honor. The State would call
16 Ms. AnneMarie Odom to the stand.

17 THE COURT: All right. Ms. Odom. Just have a seat
18 there, ma'am.

19 (WHEREUPON, the witness was sworn.)

20 **DIRECT EXAMINATION OF ANNEMARIE ODOM, ESQ.**

21 BY MS. MARTO:

22 Q Good afternoon.

23 A Good afternoon.

24 Q So you represented Mr. Burnside in his underlying
25 criminal matter, correct?

1 A That's correct.

2 Q Okay. And did you become involved at the same time as
3 Mr. Beasley?

4 A I did. At that point in time, I was working as an
5 associate for Ryan Beasley Law, so we were brought in at
6 the same time.

7 Q Do you recall roughly how many times you met with Mr.
8 Burnside?

9 A Ms. Marto, if you were to ask a specific, I couldn't give
10 it to you, but I'm very comfortable testifying upwards of
11 ten to 15 times over the course of our representation.
12 As Ryan testified earlier, oftentimes, either our
13 investigator, myself, or Mr. Beasley -- particularly if
14 either Mr. Beasley or I had court in Spartanburg -- we
15 may, you know, unplanned, swing by the jail to see Mr.
16 Burnside. We had a few other clients there -- housed
17 there at that point in time, but certainly upwards of ten
18 times, if not more than 15.

19 Q Did you discuss the discovery in the case with Mr.
20 Burnside?

21 A We did.

22 Q And did you discuss the charges with Mr. Burnside?

23 A We did.

24 Q Did you discuss the sentencing ranges?

25 A We did.

1 Q And do you recall what the discussions were leading up to
2 the plea about the plea?

3 A In what way?

4 Q In terms of the decision-making process, as well as the
5 offers.

6 A Yeah. Absolutely. So as Ryan testified earlier, you
7 know, initially the conversation focused on the State's
8 intention to potentially seek the death penalty. At a
9 point in time through plea negotiations and after the
10 discovery and the review of the discovery, at that point
11 in time, I believe the State's position was that they
12 would allow him to plead if he would enter a plea and
13 agree to a life sentence. Through some subsequent
14 negotiations, it got to a point where pleading to murder
15 straight up was put on the table.

16 After, obviously, reviewing all of the evidence and
17 after extensive conversations with Mr. Burnside,
18 collectively, we talked about it, like I said, in great
19 detail. Obviously, it's a tremendous decision. I mean,
20 that is a -- it's not an exaggeration to say, like, that
21 is a decision that was going to impact him which way you
22 go, no matter what, for the rest of his life, but made
23 the decision, Mr. Burnside did, that entering a plea was
24 the route that he wanted to go.

25 He -- to follow up on what Mr. Beasley testified to

1 earlier, his son, K.B., was always extremely important to
2 him. And so, when we discussed what a trial would look
3 like, what evidence would be presented, that was
4 something that Derrick felt very strongly about was
5 protecting his son. You know, he felt like his son had
6 suffered already through this process, and his -- his
7 family -- as had his family and Tonya's family. And so,
8 for a number of reasons, felt like a plea was the right
9 decision, and we would put our focus on mitigation and a
10 plea.

11 Q What do you think the outcome at trial would have been?

12 A I think he would have been convicted.

13 Q Now, do you recall any discussions about a potential head
14 injury with Mr. Burnside?

15 A So I recall from Dr. Maddox's report. I cannot say that
16 independently I recall conversations with Derrick about
17 the head injury. I do -- I recognize it in the report
18 when I was reading back through it, but, no, I don't
19 specifically recall any conversations with Mr. Burnside.

20 Q Do you recall discussions about how he was molested at a
21 young age?

22 A I do. That I recall, very specifically. I do recall the
23 -- the allegations about -- I believe it was a Boy Scout
24 camp, but up in the Northeast where he was from. Yes,
25 ma'am, I do.

1 Q What was the mitigation strategy at the plea hearing?

2 A So the mitigation strategy, I mean, was to go in --
3 obviously, we felt like Dr. Maddox -- as Mr. Beasley
4 testified to, both of us know her well. The Court knows
5 her well. I think, you know, Mr. Barnette knows her
6 well. We all have a tremendous amount of respect for Dr.
7 Maddox. So we had both the evaluation that she completed
8 to use as mitigation. There was also an evaluation done
9 by the State by the Department of Mental Health that we
10 had. And then Ryan and I spent a tremendous amount of
11 time, just the two of us, going through, you know,
12 anything both from Derrick's background, from our
13 conversations with him.

14 I would add the fact that he was entering a plea, he
15 didn't put the State to the burden or the expense of a
16 trial. He didn't put his family, the victim's family,
17 his son -- we felt like, you know, hopefully on top of
18 the fact that he did have some prior trauma in his life
19 and some things that, you know, he had some prior medical
20 issues; nothing that I felt or I believe Mr. Beasley felt
21 rose to the level of a guilty but mentally ill. I did
22 not think that that was an appropriate route.

23 But did think that he had some mitigation. He also
24 had tremendous family support. Some of his family is
25 here today. He has a wonderful, wonderful family support

1 system. We knew that they wanted to be present.

2 We knew that Derrick wanted to address the Court and
3 felt like cumulatively between the, you know, prior
4 medical issues, the prior trauma that he suffered, having
5 Dr. Maddox here in person to testify, having Ryan
6 advocate on his behalf, and having both his family and
7 himself speak with -- speak to the Court, that, you know,
8 that was the strategy we were going to take. We couldn't
9 change what the facts were. They were horrible,
10 horrible, horrible facts. I mean, everybody agreed on
11 that, but we could try to present him in the best light
12 possible, and that's what we tried to do.

13 Q Do you remember any discussions after the plea about a
14 motion to reconsider the sentence or a notice of appeal?

15 A I do not specifically remember any discussions about a
16 motion to reconsider. I do recall Mr. Burnside, you
17 know, letting us know that he wanted to file an appeal,
18 but not about a motion to reconsider, no, ma'am.

19 Q Do you think a motion to reconsider the sentence would
20 have been successful?

21 A I do not.

22 Q And what was the basis of the notice of appeal. Do you
23 recall?

24 A I do not recall. I'm sorry.

25 Q And, again, you reviewed all the discovery with the

1 exception of the video with Mr. Burnside, correct?

2 A We did at length. The discovery, obviously. All of the,
3 you know, paper discovery. The discovery had a number of
4 incident reports of supplemental reports, of crime scene
5 photographs, autopsy photos, coroner's report. They were
6 -- I remember specifically that we did, because they were
7 very difficult to go through.

8 MS. MARTO: Nothing further, Your Honor.

9 THE COURT: Mr. Phillips?

10 MR. PHILLIPS: Thank you, Your Honor.

11 **CROSS-EXAMINATION OF ANNEMARIE ODOM, ESQ.**

12 BY MR. PHILLIPS:

13 Q Ms. Odom, you said when you met with him between, say,
14 approximately ten to 15 times, did you keep any notes of
15 those meetings?

16 A Mr. Phillips, I don't believe I would have any notes of
17 those meetings.

18 Q Is it standard practice not to have notes of a client
19 meeting?

20 A I think it depends on the lawyer, and it depends on the
21 situation. Oftentimes we would -- as Mr. Beasley
22 alluded to, there are some letters sent to Derrick, who
23 was obviously incarcerated at that point in time,
24 summarizing some of the meetings. But as far as
25 contemporaneous notes, you know, got back to the office,

1 no, sir. I don't believe I have any independent notes.

2 Q And I guess as far as -- I don't know if your memory is
3 any better as far as recounting the timeline of when
4 discovery was given to him and when and how it was
5 discussed, I understand ten to 15 times is a lot.

6 A I think over the course of -- and you may know better
7 than I do -- of how long from the time he was charged
8 until -- until the sentencing.

9 Q So was the normal practice that once the discovery was
10 provided, that it was sometime within a, say, short
11 period of time?

12 A I would say yeah. Yes, sir. Yes. A reasonable time
13 frame, but, also, like I said, if I was -- you know, if I
14 was handling a plea over here or if Ryan had a bond
15 hearing in Spartanburg, I mean, it may not be that there
16 was specifically any update other than just, hey. We
17 want to check in. How are you doing? Here's what's
18 going on on our end. Here have been our most recent
19 discussions with the prosecutor. Or we're in a holding
20 pattern at the moment; there's really nothing new to
21 report, but here's kind of what's in the works, what's
22 going on.

23 Q And as far as the death penalty, were you there when
24 those -- that -- that issue was discussed with Mr.
25 Burnside?

1 A Was I present with Mr. Beasley?

2 Q Yes.

3 A I don't specifically recall if I -- if I was. I think I
4 was present for at least one of the occasions that that
5 conversation was had, but, again, without the -- the
6 dates in front of me, as to when we checked in the jail,
7 I couldn't tell specifically, you know, what date.

8 Q Now, as far as the car accident -- the head-on collision,
9 do you have any recollection of that -- discussions
10 regarding that?

11 A As I testified a moment ago when Ms. Marto asked the
12 question, I don't specifically recall having a
13 conversation with Derrick about it. I do recall, you
14 know, knowing that he had been -- seeing that in Dr.
15 Maddox's report. I recall him being dropped as an
16 infant, but I don't recall a specific conversation with
17 Derrick about it, no, sir.

18 Q Now, as far as -- you've heard the testimony. It's not --
19 - it wasn't sequestered, so as far as the issue or
20 factual issue regarding, essentially, the mother having
21 an abortion. Do you have any memory regarding those
22 discussions during your meetings?

23 A I do not, no, sir.

24 Q Now, going to the -- kind of the -- the next one that was
25 part of the testimony was: Specifically, do you have any

1 memory regarding conversations about Mother having a
2 boyfriend, the son having fears/concerns of being afraid,
3 and kind of -- all that kind of culminating/combining
4 that to kind of a trigger of him losing control?

5 A I don't have any recollection of Mother's boyfriend maybe
6 causing some fear with K.B. I -- I recall that Mom may
7 have had a boyfriend, or there may have been another man
8 in the picture, but nothing as it related to Mr.
9 Burnside's son or a fear that he felt and how that
10 impacted Mr. Burnside.

11 Q Now, as far as kind of the -- the specifics with the
12 report being provided to the Court, do you remember how -
13 - how soon that was provided as far as in relation to the
14 sentencing hearing itself?

15 A So I don't recall how soon prior to. I -- I believe the
16 sentencing was in an afternoon on whatever, you know,
17 date that was. At a minimum, I think it would have been
18 at least the day -- the day prior, but whether -- I don't
19 off the top of my head remember if that was a Monday, and
20 maybe it was the Friday before, or if it was a Tuesday
21 and it was, you know, the day before. I know that our
22 goal, and I believe Solicitor Barnette's goal, as well,
23 was to give the judge as much information as possible and
24 give him -- whether that was, you know, 24 hours or 72 or
25 seven days. I do not specifically recall, but I know

1 that we wanted Judge Cole to come into the plea and,
2 obviously, the sentencing with as much information as
3 possible, so that he wasn't seeing and hearing it for the
4 first time.

5 Q Was there any in-chambers discussions with him regarding
6 this case?

7 A I do not recall, Mr. Phillips, and I don't know if would
8 have been present for them if there were.

9 Q Now, as far as guilty but mentally ill, were you present
10 for any conversations regarding that issue?

11 A I don't recall specifically that being -- that being
12 brought up with Mr. Burnside. Obviously, I heard his
13 testimony earlier that did -- that is not something I
14 think -- if that occurred, that I was privy to. It
15 doesn't ring a bell at all with me.

16 Q Now, as far as filing the appeal, you said you were
17 present -- or at least were aware and discussed that?

18 A Yeah.

19 Q In terms of -- the reason he wanted the appeal was to
20 challenge his sentence?

21 A I'm not sure. I don't recall specifically. That would -
22 - you know, I don't want to assume. That would be my
23 assumption, but as far as what the basis was or what -- I
24 remember that he wanted an appeal initiated on his
25 behalf, but I don't recall the specifics of the

1 conversation, you know, as to what the basis was or kind
2 of what his angle was, what he hoped to -- to gain from
3 that appeal.

4 Q Well, what we know is that there wasn't any discussion
5 about a motion for reconsideration.

6 A I would agree, correct. I have no -- no recollection of
7 that conversation being had.

8 Q And no explanation about, essentially, that a motion for
9 reconsideration would be asking the judge for a lighter
10 sentence versus an appeal or challenging legal issues?

11 A Yeah. I have -- I have no recollection whatsoever of a
12 conversation in any capacity about a motion to
13 reconsider.

14 MR. PHILLIPS: A moment, Your Honor.

15 THE COURT: Yes, sir.

16 Q Did you have any discussions with Mr. Burnside's sister
17 regarding the request for a reconsideration of the
18 sentence?

19 A Not that I recall, Mr. Phillips. Not that I specifically
20 recall. I -- I couldn't tell you absolutely yes or
21 absolutely no, but not that I recall.

22 MR. PHILLIPS: No further questions, Your Honor.

23 THE COURT: (To the State) Any redirect?

24 MS. MARTO: No redirect, Your Honor.

25 THE COURT: (To the witness) Thank you, ma'am. You

1 can step down.

2 (WHEREUPON, the witness was excused.)

3 THE COURT: (To the State) You can call your next
4 witness.

5 MS. MARTO: Yes, Your Honor. We would call Barry
6 Barnette to the stand, please.

7 THE COURT: All right. Solicitor.

8 (WHEREUPON, the witness was sworn.)

9 **DIRECT EXAMINATION OF SOLICITOR BARRY BARNETTE, ESQ.**

10 BY MS. MARTO:

11 Q Good afternoon, sir.

12 A Good afternoon.

13 Q You prosecuted this case, correct?

14 A Yes, ma'am. I did.

15 Q And this case was initially a death penalty case,
16 correct?

17 A We had talked about definitely making it a death penalty
18 case from that standpoint. I talked to the family, and
19 one of the things we talked about, if he would plead to
20 murder, then let's send -- basically, they wanted to ask
21 for a life sentence, which they did at the plea. We
22 talked about it several times. Initially, I was going to
23 make him plead to life as a negotiated plea, but then Mr.
24 Beasley talked to me several times, and said, "You know,
25 I don't want to try this case as a death penalty."

1 Because I told him, I said, "If you're not pleading,
2 we're gonna be trying this for a death penalty." So I
3 gave him the option to plead straight up.

4 Q Do you recall discussions about mental health and mental
5 evaluations in this case?

6 A There was two evaluations done. Obviously, the first one
7 was ordered and done by mental health. From that
8 standpoint -- which I know the Court is very thorough, so
9 I won't go through it, but, basically, they go through
10 all the charges. They go through all the court
11 situations with him, and everything from there.

12 And of course, Donna Maddox also did a second
13 report. And, in my opinion, there was no guilty but
14 mentally ill available in those reports from that
15 standpoint. And I think definitely they would explore
16 that, you know, from that if that came up. To me, that
17 didn't show that. It showed he had mental illness
18 issues, but that's not the reason he did this if you
19 watch the video.

20 MS. MARTO: Nothing further, Your Honor.

21 THE COURT: Mr. Phillips?

22 MR. PHILLIPS: No further questions, Your Honor.

23 THE COURT: (To the witness) Thank you, sir. You
24 can step down.

25 THE WITNESS: Thank you, Your Honor.

1 (WHEREUPON, the witness was excused.)

2 THE COURT: The State can call its next witness.

3 MS. MARTO: No witnesses, Your Honor.

4 THE COURT: The State rests.

5 (To Mr. Phillips) Anything in reply?

6 MR. PHILLIPS: Unless, Your Honor -- no reply

7 witnesses. Well, actually, hold on, Your Honor --

8 THE COURT: Okay.

9 MR. PHILLIPS: -- there was one thing.

10 THE COURT: Okay. Talk to your client.

11 MR. PHILLIPS: Brief -- brief moment.

12 THE COURT: Sure.

13 MR. PHILLIPS: We -- we do have a reply witness,

14 Your Honor.

15 THE COURT: Okay.

16 MR. PHILLIPS: It would be Michelle Miller Anene.

17 That's Mr. Burnside's sister.

18 THE COURT: How do you spell the last name?

19 MR. PHILLIPS: M-i-l-l-e-r, and then I'm not sure if

20 it's a hyphen. It's A-n-e-n-e.

21 THE COURT: Thank you.

22 MR. PHILLIPS: I'll -- I'll have her correct me,

23 because I --

24 THE COURT: Okay.

25 MR. PHILLIPS: -- I could be incorrect.

1 THE COURT: (To the witness) All right. Ma'am, come
2 on up here. You can just have a seat behind the
3 microphone, please.

4 (WHEREUPON, the witness was sworn.)

5 THE COURT: How do you spell your last name?

6 THE WITNESS: A-n-e-n-e.

7 THE COURT: Thank you. All right.

8 (To Mr. Phillips) Your witness.

9 **DIRECT EXAMINATION OF MICHELLE MILLER ANENE**

10 BY MR. PHILLIPS:

11 Q Ms. Miller, could you explain your relationship with Mr.
12 Burnside?

13 A Yes. I'm his sister.

14 Q All right. And as far as this case, after he was
15 sentenced, what did you do?

16 A I emailed -- after he was sentenced, I emailed AnneMarie
17 Odom requesting -- and like Mr. -- my brother, Derrick,
18 said, we didn't know the difference between an appeal and
19 a -- a motion for a life sentence, but she was very well
20 aware of us requesting something for a lighter sentence.

21 Q Okay.

22 A Uh-huh.

23 Q And when you say, "requesting a lighter sentence," in
24 other words, some type of motion asking for a lighter
25 sentence?

1 A That is correct, yes, sir.

2 Q And at what point did you send that to her? The timing
3 of that email or that communication?

4 A I think -- was it right after -- I think right after
5 sentencing. Uh-huh.

6 MR. PHILLIPS: No further questions, Your Honor.

7 THE COURT: All right.

8 MS. MARTO: Just one, Your Honor.

9 **CROSS-EXAMINATION OF MICHELLE MILLER ANENE**

10 BY MS. MARTO:

11 Q Do you recall if you specified whether you wanted an
12 appeal or a motion?

13 A I don't remember exactly what it was called, but she --
14 she knew we wanted -- definitely -- we thought the life
15 was extreme.

16 MS. MARTO: Nothing further, Your Honor.

17 THE COURT: (To the witness) Thank you, ma'am. You
18 can step down.

19 THE WITNESS: Uh-huh.

20 (WHEREUPON, the witness was excused.)

21 THE COURT: All right. Brief argument. Mr.
22 Phillips?

23 **CLOSING ARGUMENTS**

24 MR. PHILLIPS: Thank you, Your Honor. Again,
25 specifically our argument is that there was

1 unreasonable, deficient performance that prejudiced
2 him that ultimately had there not been ineffective
3 assistance of counsel, the outcome would have been
4 different.

5 And with that being said, in this case we have,
6 obviously, a credibility determination that Your
7 Honor has to make as happens in PCR cases where you
8 have conflicting testimony from the Applicant versus
9 Counsel. But in this case, what's been presented --
10 essentially, and there's -- some of it has not been
11 fully conflicting testimony. But not having the
12 recollection of certain conversations, specifically
13 as to specific mitigation presented to the
14 sentencing judge regarding a potential abortion
15 issue, as well as this boyfriend and kind of
16 triggering the molestation that he had as a kid and
17 having this specific mitigation brought to the
18 judge's attention that with the head-on collision
19 and potential brain issues, this impulsive behavior
20 that's, again, even referenced in the report. And
21 then providing the specific mitigation would be one
22 that's compelling mitigation that ultimately would
23 have influenced Judge Cole in providing a sentence
24 of less than the maximum.

25 Specifically, again, conflicting issues that

1 Your Honor is aware of that we've already presented
2 as far as the review of discovery, the ultimate
3 charges, the constitutional rights, the basic
4 representation in criminal defense cases.
5 Obviously, we have a conflicting testimony regarding
6 those specific issues. But as far as providing any
7 relevant or admissible mitigating evidence, our
8 argument would be that there is additional evidence
9 that was compelling that specifically needed to be
10 addressed in that hearing to the judge that
11 ultimately would have influenced his decision,
12 compelling mitigation.

13 As far as the guilty but mentally ill, we do
14 have the issue of where Dr. Maddox testifies that in
15 her -- she has listed in her report that he is
16 mentally ill but can conform with the law. And then
17 there is testimony in the transcript, Your Honor,
18 specifically -- and I know Your Honor has a copy of
19 the transcript, where Page 39, I believe, Your Honor
20 -- I will pull it up. Basically, Lines 14 to 16,
21 "That the crime did not occur because of these
22 illnesses." That's essentially the State's argument
23 as far as I would assume not guilty but mentally ill
24 was not available. However, she does say, "But they
25 contributed, he's a broken person." I think with

1 that contributed part and looking at the guilty but
2 mentally ill statute, Your Honor, the 17-24-20, you
3 have a preponderance of the evidence standard and
4 asking specifically for that. I think if Counsel
5 would have presented a guilty but mentally ill
6 request that that's also another way for the
7 sentencing judge to look at this case in a different
8 lens.

9 Less than -- as far as imposing less than the
10 maximum sentence. Not that whether -- specifically,
11 if Counsel was able to meet that burden of
12 preponderance of the evidence and a guilty but
13 mentally ill sentence was imposed, I think there was
14 a -- there is a likelihood that Judge Cole would
15 have imposed a lesser sentence than the maximum
16 sentence.

17 And, again, with this closing argument, we're
18 not waiving any of the arguments that are before the
19 Court. I think in -- kind of one of the major
20 cornerstone issues that we have in this case is the
21 reconsideration versus appeal issue. Counsel filed
22 the notice of appeal. As Your Honor is aware, we
23 have that South Carolina Appellate Court rule that
24 under 203 that you've got to list specifically what
25 legal issues are there and there's a significant

1 difference between a motion for reconsideration and
2 filing an appeal, and they're different and have the
3 same time period. One brings up to the judge
4 requesting a review of the sentence for -- again, a
5 -- as you heard testimony from his sister that they
6 asked, essentially, Counsel for reconsideration,
7 that they wanted to challenge a lighter sentence.

8 There wasn't any objections or motions or legal
9 issues raised during the plea hearing that would
10 make Counsel believe that an appeal was proper.
11 Counsel testified they didn't believe an appeal was
12 proper under that basic Rule of 203 and that it
13 would be summarily dismissed. So that only leaves,
14 based on the request, not only from the Applicant,
15 but from his sister, for a motion for
16 reconsideration.

17 In providing this additional mitigation, we're
18 arguing that having that ability and maybe having
19 some more time to review the case or at least think
20 about some of the issues presented, if all these
21 other issues were there, if that mitigation was
22 there, if guilty but mentally ill was pursued, that
23 ultimately through that, Judge Cole would have
24 imposed a lighter sentence.

25 So we are both in challenging ineffective

1 assistance of counsel in this case, and, again, not
2 only specifically in terms of the voluntariness of
3 the plea itself, but specifically in the sentencing
4 -- the -- what mitigation was presented, and
5 essentially a failure to conduct or present
6 reasonable mitigation or compelling mitigation that
7 was reasonable and necessary and known to Counsel to
8 present -- or some of it was not recollected.

9 THE COURT: Sure. I got it. All right. And, Mr.
10 Phillips, on -- on your last argument, have you ever
11 filed a motion to reconsider a sentence in front of
12 Judge Cole?

13 MR. PHILLIPS: Well, I can tell you when I worked in
14 appellant defense, I've seen Judge Cole impose a lot
15 of life sentences, so I'm not saying that it's not
16 unknown that he imposes life sentences. I have
17 filed a motion for reconsideration, but I've never
18 had an instance where I think I need to file one in
19 front of -- I don't practice in front of Judge Cole
20 very often. And I'll probably keep my mouth shut,
21 because where I was going to go with that is I
22 wouldn't be in -- I try not to be pleading guilty on
23 a murder case in front of Judge Cole.

24 THE COURT: I --

25 MR. PHILLIPS: And maybe that's its own separate

1 issue, Your Honor, but I know that's not a -- a
2 legal basis to argue before the Court. But if Your
3 Honor brings it up --

4 THE COURT: Well, it just goes to the Strickland
5 factors. I mean, you know --

6 MR. PHILLIPS: Right.

7 THE COURT: -- you have local counsel here who's
8 very familiar with -- with Judge Cole, and -- and he
9 understands the -- you know, why file a motion to
10 reconsider if that's not gonna -- why do that? Why
11 not just go straight to the appeal?

12 MR. PHILLIPS: Right. Well, I mean, in the same
13 vein, I guess, if we're gonna kind of walk through
14 that, would be if I felt like the sentencing judge
15 we go in front of would not give us a fair
16 opportunity on -- for reconsideration, I'd try not
17 to plead the case the case in front of them. Just
18 being candid.

19 THE COURT: But is judge shopping or non-judge
20 shopping grounds for PCR?

21 MR. PHILLIPS: It absolutely is not. That's why
22 it's not raised.

23 THE COURT: Thank you. All right.

24 (To the State) Yes, ma'am.

25 **CLOSING ARGUMENTS**

1 MS. MARTO: Thank you, Your Honor. Just briefly.
2 It's the State's position that both counsels
3 credibly testified that they reviewed the discovery
4 with him with the exception of the video that
5 Applicant elected not to see.

6 Concerning mitigation, Your Honor, mitigation
7 was both thorough and reasonable in this case. They
8 hired Dr. Maddox; she did an independent evaluation
9 and she spoke at great length about it with Mr.
10 Burnside. Mr. Beasley also talked about him and
11 talked about his past experience, about his mental
12 health issues, about his drinking. And there's no
13 indication that if he presented today, it would have
14 resulted in a different sentence.

15 Additionally, Counsels both credibly testified
16 that he -- the motion for reconsideration likely
17 wouldn't have been grounded and likely wouldn't have
18 been granted. And so that, again, as Your Honor
19 pointed out, goes to the prejudice prong.

20 I believe that Mr. Barnette, as well as both
21 counsels credibly testified there was no evidence in
22 this case supporting a guilty but mentally ill plea,
23 and just because he does struggle with depression,
24 doesn't rise to the level of guilty but mentally
25 ill. And I think that Dr. Maddox's statement that

1 he can control his behavior is fatal to that
2 argument.

3 And so, because of these reasons, we would
4 request you deny relief in this case.

5 THE COURT: All right. I'm gonna take the matter
6 under advisement; reread the transcript.

7 (To the Applicant) Sir, what that means is I'm
8 gonna think about it, okay? I've got to deliberate.
9 I'm not going to make an off-the-cuff, gut decision
10 at this point in time. I want to think about
11 everything I heard today, along with the arguments
12 your lawyer's made. I know both sides want a -- a
13 decision and -- and sooner rather than later, but
14 I've got to sleep on it, okay?

15 So let me think about it. Your lawyer or my
16 law clerk will email your lawyer at the same time he
17 emails the State's lawyer and let -- let them know
18 what the decision is. He will get in touch with
19 you, okay?

20 Thank you, sir. You have a good day. That
21 concludes this hearing.

22 (Whereupon, the within hearing was
23 concluded at 3:11 p.m.)

24 (*This transcript may contain quoted material.

25 Such material is reproduced as read or quoted by the

1

speaker.)

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
)
 Burnside, Derrick, #382831,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-42-02623

ORDER OF DISMISSAL

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 SPARTANBURG COUNTY
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This matter comes before this Court by way of Applicant’s post-conviction relief application filed August 3, 2020. Respondent made its return on November 10, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on October 20, 2022, at Spartanburg County Courthouse. Dayne C. Phillips, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsels Ryan L. Beasley and Annemarie Haynsworth Odom, Esquires, Solicitor Barry J. Barnette, Esquire, and Applicant’s sister Michelle Arene also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In August 2018, the Spartanburg County Grand Jury indicted Applicant for Murder and possession of a weapon during a violent crime (18-GS-42-4777). Ryan L. Beasley, Esquire and Annemarie Haynsworth Odom, Esquire represented Applicant. Barry Joe Barnette, Esquire, prosecuted the case. On



November 20, 2019, Applicant proceeded to plead guilty before the Honorable J. Derham Cole. Judge Cole sentenced Applicant to a life sentence confined to the South Carolina Department of Corrections.

Applicant filed a notice of appeal on December 2, 2019. The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion for failure to provide a sufficient explanation as required by Rule 203, SCACR. The remittitur was issued on May 6, 2020.

Summary of Relevant Facts

On July 22, 2018, the victim, Latonya Richards, went to pick up hers and Applicant's three-year-old son up at Applicant's store, Phresh Threads. (Tr. 18). When she arrived, she and Applicant began arguing and Applicant began hitting her, knocked her to the ground, dragged her through the store by her hair, pulled his weapon out, pointed it at her, and began shooting at her; all within view of their three-year-old. (Tr. 18-19). Richards dragged herself to her car and Applicant shot her in the head and killed her. (Tr. 19).

Applicant then wrecked his car and was arrested for driving under the influence. (Tr. 20). The murder weapon was found in the car, was tested, and matched the bullets used in the murder. (Tr. 20-21). Richards had nothing in her system at the time. (Tr. 21). Applicant and Richards were going through a break-up at the time and told someone in her family to check on her, she did not come back home in time. (Tr. 21).

Current Action Before this Court

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

1. "Ineffective assistance of counsel, which rendered the guilty plea involuntary, due to counsel's failure to properly advise Applicant regarding the service of a sentence on a murder conviction."
 - a. "Counsel failed to advise Applicant prior to the entry of his guilty plea that a sentence on a murder conviction is served day for day."

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2. "Ineffective assistance of counsel for failure to make contemporaneous objections and/or motions regarding the court's statements during the guilty plea proceeding."
 - a. "Counsel failed to make legal objections and/or motions following the court's statements regarding the victim impact portion of the plea proceeding."

Applicant submitted an amended application on June 3, 2022, alleging:

1. Applicant did not knowingly, intelligently, or voluntarily plead guilty.
2. Applicant detrimentally relied on Plea Counsel's erroneous advice to plead guilty without reviewing all the discovery or sentencing consequences with Applicant.
3. Plea Counsel's failure to adequately advise the Applicant regarding the service of a sentence for a murder conviction. Specifically, Counsel did not inform that the mandatory minimum sentence on a murder conviction must be served day-for-day.
4. Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. Specifically, Applicant was in a head-on collision motor vehicle accident and suffered a head injury. Applicant believes that he may have suffered a traumatic brain injury.
5. Plea Counsel's failure to provide additional, critical mitigation during the plea hearing. Specifically, Counsel failed to provide evidence of Applicant's traumatic experience of being molested when he approximately ten (10) years old as a Boy Scout, claims that the victim's decision to have an abortion combined with his son feeling uncomfortable around a male the victim was dating triggered a mental breakdown, his prior depression and anxiety since childhood, the prescribed medications he was taking at the time of the incident, and his self-medicating via alcohol addiction/abuse.
6. Plea Counsel's failure to present evidence and argue during the plea hearing that Applicant was guilty but mentally ill.
7. Plea Counsel's failure to move for the presiding judge to make a finding on whether Counsel could prove by a preponderance of the evidence that Applicant was guilty but mentally ill during the commission of the crime.
8. Plea Counsel's failure to file a motion to reconsider the sentence, arguing the previously listed issues and disparate sentencing based on similar cases in Spartanburg County and South Carolina.

At the PCR hearing, Applicant proceeded forward on the allegations raised in the amended application. All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant testified that Counsels were not interested in the case. He stated he met with Counsel Beasley about four times, and the meetings lasted about five minutes each. He stated

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they discussed little about the case. He stated Counsels told him that the case was a slam dunk. He stated he was afraid he would lose at trial. He stated he did not review any discovery with Counsels. He stated he never discussed discovery motions. He stated he decided not to view the video. He stated that Counsels told him that a guilty but mentally ill plea was not pursuable but was not given an explanation as to why. He stated that he never received any plea deals beyond the initial negotiated life imprisonment offer and the subsequent plea straight up to murder. Applicant stated that Counsels failed to bring up a lot in mitigation, including past traumas consisting of molestation, a head injury, and the victim's abortion. He stated that the victim was with another guy whom he thought was messing with his son. He stated he was mentally evaluated several times and Dr. Maddon found he had depression and PTSD, which he was medicated for. He stated he was injured in a car accident, which led to drinking and impulsivity. He stated he informed Counsels of the molestation. He stated he wanted Counsels to move to reconsider the sentence after the plea. He stated he was overwhelmed at the time. He stated he acted because he felt out of control with everything in his childhood and going on at the time of the incident.

Counsel Beasley Testimony

Counsel Beasley testified that he met with Applicant more than four times. He stated that the video was awful, and Applicant elected not to see it. He stated that he showed the Court the video beforehand, so he had time to process what happened before deciding on a sentence. He stated that the shooting was in broad daylight. He stated that he shared all discovery with Applicant, except for the video. He stated he informed Applicant of his rights, the charges, and sentencing ranges. He stated that he discussed Applicant's childhood molestation but did not discuss the head injury. He stated that he thought Applicant would lose at trial. He stated that he

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did not think a guilty but mentally ill plea was appropriate and did not remember telling Applicant about the option. He stated that Applicant was always planning on pleading. He stated that the first plea offer was a negotiated life sentence, which was followed by an offer to plead straight up to murder. He stated that Applicant's prior car accident was not a big issue and Applicant did not want to discuss the details with Counsels. He stated he did not hear about an abortion but heard the victim was seeing someone else. He stated he did not think this was a factor. He stated he did not recall a pistol-whipping incident with the boyfriend and his son. He stated he filed a notice of appeal at Applicant's request. He testified that he told Applicant he did not see any appealable issues in the plea. He stated he assumed he discussed a motion to reconsider the sentence.

Counsel Odom Testimony

Counsel Odom testified that Applicant met with her or Counsel Beasley between ten or fifteen times. She stated that they reviewed the discovery with Applicant, in portions. She stated they discussed and filed the notice of appeal. She stated that she did not think the guilty but mentally ill plea was appropriate and did not discuss the option with Applicant as a result. She stated that they knew about the molestation and Applicant's head injury but did not think they were important in mitigation. She stated that she did not recall discussion of the abortion or any fear he had for safety of the child.

Solicitor Testimony

Solicitor testified that there was nothing in either mental health report indicating that a guilty but mentally ill plea was appropriate. Solicitor testified that Applicant pled straight up to murder in exchange for the death penalty being taken off the table.

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Michelle Arene Testimony

Arene testified that she emailed Counsel Odom requesting a lesser sentence after the original sentence was imposed.

Findings of Fact and Conclusions of Law

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

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d

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

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2010) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S.

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at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Invalid Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be

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

Based upon a review of the plea hearing transcript, the plea was entered freely, knowingly, intelligently, and voluntarily. At the hearing, he stated he understood what he was charged with and the potential sentences that could be imposed. (Tr. 4-5). Applicant stated he was represented by Counsel for about a year, had plenty of time to talk to Counsel about the case, talked with Counsel about the evidence in the case, told Counsel everything he knew about the allegations against him, and talked about whether a defense existed in the case and determined none existed. (Tr. 5-7). Applicant stated he knew he was waiving his right to remain silent, the right to proceed to a jury trial where the burden would be on the State to show he was guilty beyond a reasonable doubt, and the right to call and confront witnesses. (Tr. 9-13). Applicant stated he was not promised or offered anything if he pled, he was not coerced or forced into pleading, and that he was pleading freely and voluntarily. (Tr. 13-14). Applicant stated he was guilty of killing Richards with malice aforethought and that he possessed a gun during the commission of the crime. (Tr. 14). Applicant stated he did not suffer from any mental



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or psychological condition affecting his ability to understand what he was doing at the plea hearing and that he had never been treated for substance abuse problems and did not suffer from a substance abuse problem when pleading. (Tr. 15-16). Thus, Applicant pled freely, knowingly, intelligently, and voluntarily, and, thus, cannot withdraw it now.

Failure to Review Discovery

Applicant testified that Counsels did not review the discovery with him. However, both Counsels credibly testified that they reviewed the discovery with Applicant with exception of the video, which Applicant elected not to view. Applicant also testified that he elected not to view the video and that that was his personal decision. Accordingly, relief is denied on this ground.

Failure to Discuss Day-for-Day

Applicant claims his plea is invalid because he did not know a murder conviction required him to serve his sentence day for day. "It is well settled that parole eligibility is a collateral consequence of sentencing, and that trial counsel need not advise a client of his parole eligibility or ineligibility in order to render effective assistance." *Jackson v. State*, 349 S.C. 62, 64, 562 S.E.2d 475, 476-77 (2002) (citations omitted). "When considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether information conveyed by the plea judge cured any possible error made by counsel." *Burnett v. State*, 352 S.C. 589, 592, 576 S.E.2d 144, 145 (2003) (citing *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998)).

At the plea hearing, Applicant stated he understood that he would receive a sentence between thirty years' and life imprisonment. (Tr. 4-5). Applicant was never told at the plea hearing that part of the sentence could be suspended. Additionally, Applicant himself stated he was not promised or offered anything to plead. (Tr. 13-14). Thus, this Court finds that even if

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Counsels did not advise him definitively on whether he had to serve a day-for-day sentence, there is no indication of misadvice, nor any indication that this knowledge would have caused Applicant to proceed to trial instead. Accordingly, relief is denied on this ground.

Failure to Mitigate Sentence

Applicant claims Counsel was ineffective for failing to mitigate the sentence. Counsel may be found deficient for failing to sufficiently investigate and present mitigating evidence. See *Council v. State*, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008) (finding it unreasonable for counsel not to further investigate the defendant's background and present even minimal mitigating evidence obtained); *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (finding it unreasonable when Counsel failed to investigate mitigating evidence beyond a couple retained records, including the presentence investigation report and social service records); *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (finding that Counsel was unreasonable for failing to evaluate the totality of available mitigation evidence). An applicant is prejudiced by this deficiency if there is a reasonable probability that a different sentence would have been imposed but for Counsel's failure to investigate and present mitigating evidence. *Council v. State*, 380 S.C. 159, 171, 670 S.E.2d 356, 362 (2008).

Counsels' mitigation strategy was reasonable. Counsel Beasley told the plea judge that Applicant comes from a great family, that he grew up in the Bronx and had a tough childhood. (Tr. 22-23). Specifically, he testified that he experienced abuse as a child and witnessed a murder, amongst other crimes. (Tr. 23). He stated that Applicant loved the victim, and that the crime was senseless. (Tr. 23). He stated that Applicant has an excellent work ethic. (Tr. 24). He stated that Applicant struggled with PTSD and has been receiving mental health treatment while incarcerated. (Tr. 24). He stated that Applicant lost control during the killing and has been



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devastated since. (Tr. 25). He stated Applicant admitted guilt and did not ask for bond because he did not want to put the victim's family through that. (Tr. 25-26).

Applicant also gave a very compassionate apology letter, which he could not finish reading himself because he became overwhelmed with emotion. (Tr. 26-28). Four of Applicant's cousins spoke on his behalf. (Tr. 28-30, 32-37). Applicant had his business partner's mother speak on his behalf. (Tr. 30-31).

Dr. Maddox also spoke. She stated that Applicant had a prior history of being an inpatient. (Tr. 38). She stated she evaluated him, and he suffers from depression, was a victim of abuse, and used drinking as self-medication. (Tr. 38-39). She stated he tried to kill himself after killing the victim. (Tr. 39). She stated he suffered slight cognitive impairment from drinking. (Tr. 39). She stated he has previously been treated before, but still struggles mentally and with his morality. (Tr. 39-40). She stated he was truly remorseful over what happened. (Tr. 39).

This Court finds this strategy was reasonable and there has been no showing that highlighting the incidences raised in the application would have had an impact on the sentence. In fact, many of the incidences now raised were touched on at the plea hearing, including Applicant's history of abuse, cognitive impairment, mental health issues, and tough childhood. Applicant has failed to meet his burden of proof regarding either prong of the *Strickland* analysis and denies relief accordingly.

Failure to Pursue Guilty but Mentally Ill Plea

Applicant claims Counselors were ineffective for failure to pursue a guilty but mentally ill plea. Applicant was evaluated by Dr. Maddox, who informed the Court at the plea hearing that she could say Applicant knew what he was doing and could conform his behavior during the incident but failed to do so. (Tr. 39). Additionally, both Counselors and Solicitor all testified that

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there was no basis for a guilty but mentally ill plea. Thus, this allegation is without merit and relief denied accordingly.

Motion to Reconsider the Sentence

Applicant claims Counsel was ineffective for failure to move to reconsider the sentence. Both Counsels credibly testified that they filed a notice of appeal upon Applicant's request but did not recall discussing a motion to reconsider the sentence. Both Counsels indicated that they did not think the motion would have been successful, if filed. Thus, Applicant has failed to meet his burden of proof regarding either prong of the *Strickland* analysis and denies relief accordingly.

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[conclusion and signature line on following page]



Conclusion

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

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

IT IS THEREFORE ORDERED:

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

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

[Handwritten Signature] 1/17/23

BRIAN M. GIBBONS
 Presiding Judge
 Seventh Judicial Circuit

_____, South Carolina.

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THE STATE OF SOUTH CAROLINA)
)
 COUNTY OF **SPARTANBURG**)
)
Derrick Burnside,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF **COMMON PLEAS**
SEVENTH JUDICIAL CIRCUIT
 Case No.: **2020-CP-42-02623**

**MOTION TO ALTER OR AMEND
 PURSUANT TO RULE 59(E), SCRPC**

The Applicant, by and through the undersigned Counsel, moves this Court to alter or amend the Order of Dismissal filed in the above-captioned case on January 26, 2023, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Rule 59(e), SCRE; U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14. In support of this motion, Applicant submits the following arguments and does not abandon or waive any previous arguments or issues raised in the prior pleadings, proposed orders, and evidentiary hearing in this PCR action:

- (1) Applicant incorporates by reference the issues and arguments raised in the pleadings and at the evidentiary hearing as if fully set forth verbatim into this motion.
- (2) Respectfully, the procedure followed by this Court denied Applicant an opportunity to have his PCR claims adjudicated by an independent judicial officer in violation of the separation of powers doctrine. See S.C. Art. I, § 8. Specifically, the Court did not provide the State with any basis for denying Applicant's claims other than delegating the responsibility of drafting a proposed order of dismissal. The Court adopted the State's adversarial proposed Order of Dismissal despite that this

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 SOUTH CAROLINA

independent judicial function cannot be delegated to an executive agency without providing specific instructions and rationale for omitting findings of fact and denying each claim. See generally *Marlar v. State*, 375 S.C. 407, 408, 653 S.E.2d 266 (2007) (holding, "Pursuant to S.C. Code Ann. § 17-27-80 . . . , the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented.").

- (3) The Order of Dismissal failed to properly address that Plea Counsel was ineffective in failing to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense for the following reasons:
- (a) Plea Counsel Beasley and Odom had no notes of the jail visits with Client in their files.
 - (b) Plea counsel failed to properly present mitigation evidence in its totality that triggered Applicant's mental breakdown. Specifically, his traumatic experience of witnessing people being murdered when he was a child, being molested when he was approximately ten (10) years old as a boy scout, the victim's decision to have an alleged abortion, and his fear that his son was being allegedly abused by the victim's boyfriend.
 - (c) Plea counsel failed to properly present mitigation evidence that Applicant was in a car accident and received a head injury. Specifically, Applicant's behavior became impulsive after that head injury.
 - (d) Plea Counsel had no recollection of Applicant receiving a head injury during a car accident despite his testimony that he made Counsel aware of the head

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injury.

- (4) The Order of Dismissal failed to properly address that Applicant did not knowingly, intelligently, or voluntarily plead guilty.
- (a) The Order of Dismissal failed to properly address Applicant's testimony that Plea Counsel never discussed potential pre-trial motions that could be filed and argued on his behalf.
- (b) The Order of Dismissal failed to properly address that Plea Counsel failed to move before the presiding judge to make a finding on whether Counsel could prove by a preponderance of the evidence that Applicant was guilty but mentally ill during the commission of the crime.
- (5) The Order of Dismissal failed to properly address that Plea Counsel failed to file a Motion for Reconsideration of the sentence. Specifically, Michelle Arene testified that she contacted Counsel Odom about requesting a lesser sentence (i.e., motion for reconsideration), but instead, Counsel Beasley filed a Notice of Appeal of the guilty plea. Applicant argues that it was not reasonable for Counsel to file a Notice of Appeal when the proper mechanism to challenge the sentence would have been a Motion for Reconsideration. This is supported by Counsel Beasley's letter filed at the Court of Appeals on December 20, 2019, noting: "Defendant would show that the sentence imposed is unreasonable", "Defendant communicated to his Attorney that he desires an appeal", and "Defense counsel can provide no material issues to appeal."

Based on the testimony and evidence presented at the evidentiary hearing, Applicant has established constitutional violations and deprivations that would require

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post-conviction relief. Specifically, Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Counsel's errors, Applicant would not have pled guilty and went to trial or would have received a reduced sentence. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel) (quoting *Strickland*, 466 U.S. at 692). Therefore, this Court should reconsider its Order of Dismissal, withdraw that order, enter an Order Granting Applicant Post-Conviction Relief.

CONCLUSION

Based on the foregoing reasons, the undersigned Counsel respectfully requests this Court reconsider the Order of Dismissal, withdraw that order, enter an Order Granting Applicant Post-Conviction Relief allowing him to receive a new trial.

IT IS SO MOVED.

Respectfully submitted,

s/ Dayne Phillips

Dayne C. Phillips, Esq.

Price Benowitz LLP
 1614 Taylor Street, Suite D.
 Columbia, SC 29201
 O: 803-272-4503
 C: 803-807-0234
 F: 803-380-8035
 dayne@pricebenowitz.com

ATTORNEY FOR THE APPLICANT

February 6, 2023

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STATE OF SOUTH CAROLINA)	IN THE COURT OF
)	COMMON PLEAS
COUNTY OF SPARTANBURG)	OF THE SEVENTH
	)	JUDICIAL CIRCUIT
)	
DERRICK BURNSIDE,)	
Applicant,	)	TRANSCRIPT OF RECORD
	)	2020-CP-42-02623
vs.)	
)	
THE STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
)	

February 14, 2023
Spartanburg, South Carolina

B E F O R E:

HONORABLE BRIAN M. GIBBONS, Judge.

A P P E A R A N C E S

DAYNE C. PHILLIPS,
For Applicant

CHELSEY F. MARTO, ASSISTANT ATTORNEY GENERAL
For Respondent

Julie A. Cendroski,
Circuit Court Reporter III
Seventh Judicial Circuit

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EXHIBITS

MARKED ENTERED

NO EXHIBITS PROFFERED

1 DERRICK BURNSIDE VS. THE STATE OF SOUTH CAROLINA

2 THE COURT: All right, Madam Attorney General, if
3 you'll introduce the case.

4 MS. MARTO: Yes, Your Honor. May it please the
5 Court? We are here today in the case of Derrick
6 Burnside versus The State of South Carolina.
7 2020-CP-42-2623. He's presently residing in the
8 Department of Corrections. He was indicted August 2018
9 for murder and possession of a firearm. Represented by
10 Ryan Beasley and AnnMarie Odom. And Barry Barnette
11 prosecuted the case.

12 November 20th, 2019, he appeared before Judge
13 Cole, pled guilty as indicted, and was sentenced to life
14 imprisonment. He filed a Notice of Appeal and this was
15 dismissed for failure to provide sufficient explanation.
16 The remittitur was issued May 6th, 2020. Application
17 filed August 3rd, 2020. The return filed November 10th,
18 2020.

19 An evidentiary hearing was held before Your
20 Honor. That order was August 20th, 2022. The order of
21 dismissal was filed January 26th, 2023, and the 59(e)
22 was filed February 6th, 2023. And with that I'll turn
23 it over to Mr. Phillips.

24 THE COURT: All right, Mr. Phillips.

25 MR. PHILLIPS: Thank you, Your Honor.

1 Specifically, the Applicant would move this Court to
2 alter or amend the Order of Dismissal filed in this case
3 on January 26th, 2023, pursuant to Rule 59(e) of the
4 South Carolina Rules of Civil Procedure.

5 Specifically, Your Honor, in support of this
6 motion, we submit the following arguments and we don't
7 abandon or waive any of the previous arguments or issues
8 that were raised in our prior pleadings and evidentiary
9 hearing in this matter.

10 Q. Specifically, Your Honor -- well, respectfully,
11 procedure followed by the Court denied Applicant an
12 opportunity to have his PCR claims adjudicated by an
13 independent judicial officer in violation of the
14 separation of powers document, specifically citing
15 Article 1, Section 8 of the South Carolina constitution.
16 Specifically, the Court didn't provide the State with
17 any specific basis for denying Applicant's claims, other
18 than delaying -- or allocating the responsibility of
19 drafting a proposed Order of Dismissal.

20 The Court adopted the State's adversarial
21 proposed Order of Dismissal, despite having this
22 independent judicial function which can't be delegated
23 to an executive agency without providing those specific
24 instructions and rationale or admitting a finding of
25 facts, but denying each claim. Citing, generally,

1 Marlar versus State, 375 S.C. 407, a 2007 case from our
2 South Carolina Supreme Court.

3 Further, Your Honor, that the Order of Dismissal
4 failed to properly address that plea counsel was
5 ineffective for failing to conduct a reasonable
6 investigation and to develop all available, relevant,
7 and admissible or mitigating evidence in preparation of
8 Applicant's defense for the following reasons:

9 Specifically, that plea counsel, Beasley and
10 Odom, had no notes of their jail visits with the client
11 in their files, and that was through their testimony.

12 That plea counsel failed to properly present
13 mitigation in its totality that triggered Applicant's
14 mental breakdown. Specifically, his traumatic
15 experience of witnessing people be murdered when he was
16 a child. Being molested when he was approximately 10
17 years old as a Boy Scout. The victim's decision to have
18 an alleged abortion. And his fear that his son was
19 being allegedly abused by the victim's boyfriend.

20 Further, plea counsel failed to properly present
21 mitigating evidence that Applicant was in a car accident
22 and received a head injury. The Applicant's behavior
23 became impulsive after that head injury. As far as that
24 specific mitigation evidence, plea counsel had no
25 recollection of having perceived a head injury during a

1 car accident, despite his testimony that he made counsel
2 aware of that head injury.

3 Further, Your Honor, the Order of Dismissal
4 failed to properly address that Applicant did not
5 knowingly, intelligently, or voluntarily plead guilty.
6 The Order of Dismissal failed to properly address
7 Applicant's testimony that plea counsel never discussed
8 potential pretrial motions that could have been filed
9 and argued on his behalf.

10 The Order of Dismissal failed to properly address
11 that plea counsel failed to move before the presiding
12 judge to make a finding on whether counsel would prove
13 by a preponderance of evidence that Applicant was guilty
14 but mentally ill during the commission of the crime.
15 The Order of Dismissal also failed to properly address
16 that plea counsel failed to file a Motion for
17 Reconsideration of sentence.

18 Specifically, Michelle Morenic (phonetic), the
19 Applicant's sister, testified that she contacted counsel
20 Odom about requesting a lesser sentence. Specifically,
21 as we're saying it, in other words, a Motion for
22 Reconsideration instead.

23 Counsel Beasley filed a Notice of Appeal of the
24 guilty plea and still the Motion for Reconsideration.
25 Applicant argues that it was not reasonable for counsel

1 to file a Notice of Appeal, when the proper mechanism to
2 challenge the sentence would have been a Motion for
3 Reconsideration and deny the appeal.

4 This is supported by counsel, Beasley's, letter,
5 filed at the Court of Appeals on December 20th, 2019,
6 noting, quote: The defendant would show that the
7 sentence imposed is unreasonable, end quote.

8 Also, quote: Defendant communicated to his
9 attorney his desires of appeal, end quote. And, quote:
10 Defense counsel provided no material issues to appeal.

11 Again, through the testimony, Michelle Morenic,
12 that she specifically contacted counsel Odom about
13 requesting a lesser sentence.

14 Based on the testimony and evidence presented at
15 the evidentiary hearing, Applicant has established
16 constitutional violations and deprivations that would
17 require postconviction relief. Specifically that plea
18 counsels unreasonably deficient performance prejudiced
19 the Applicant because there's a reasonable probability
20 that but for counsels errors, Applicant would not have
21 pled guilty, would have withdrawn, he would have
22 received -- or, excuse me, Your Honor, or would have
23 received a reduced sentence at the sentencing hearing.

24 Citing generally Hill versus Lockhart, 474 U.S.
25 52, applying to Strickland versus Washington standard

1 and guilty plea challenges for ineffective assistance of
2 counsel.

3 In conclusion, Your Honor, this Court should
4 reconsider its Order of Dismissal, withdraw that order,
5 and enter an order granting postconviction relief.
6 Thank you.

7 THE COURT: All right. Than you, Mr. Phillips.
8 What's the State's response?

9 MS. MARTO: Yes, Your Honor. It's the State's
10 position that all issues were already properly ruled
11 upon in the last action. Mr. Phillips' motion is
12 argumentative in nature. It is more properly addressed
13 on appeal. And so, for these reasons and, also, giving
14 to the separation of powers issue Mr. Phillips raised
15 earlier, this Court gave its instructions to the State.
16 The State prepared the order in accordance with those
17 instructions, provided the order to Mr. Phillips before
18 providing it to Your Honor.

19 Your Honor adopted it; thereby, recognizing and
20 reissuing those findings of fact, including the law as
21 outlined in the order. So, we would hold that that
22 argument isn't worth granting the motion. And so, for
23 those reasons we would just request you deny the motion.
24 Thank you.

25 THE COURT: All right. Give me a moment.

1 All right. Any reply argument, Mr. Phillips?

2 MR. PHILLIPS: Just specifically as to the
3 Separation of Powers doctrine, Your Honor. Under the
4 Marlboro v. State, essentially, Our Supreme Court held
5 that pursuant to South Carolina code section 17-27-80,
6 the PCR judge must make specific findings of fact,
7 stating expressly the conclusions of law relating to
8 each issue presented. I understand that's in the Order
9 of Dismissal. Our argument is the delegation of that to
10 the State.

11 THE COURT: Okay. But you agree with me that,
12 that's not -- it doesn't become my order until I sign
13 it, when it's filed?

14 MR. PHILLIPS: Understood, as far as procedure,
15 Yes, Your Honor.

16 THE COURT: Okay. I respectfully deny your
17 motion. I'm gonna deny the Motion to Alter or Amend
18 under Rule 59(e) and I'm gonna keep my Order of
19 Dismissal intact. I believe it's correct, both on the
20 facts and on the law. All right?

21 MR. PHILLIPS: Yes, sir, Your Honor.

22 THE COURT: Thank you very much. Ms. Marto, do
23 you want to prepare an order for that or do you want my
24 law clerk to?

25 MS. MARTO: I can prepare it.

1 THE COURT: Prepare an order that way and make
2 sure it gets sent to me and Mr. Phillips to protect his
3 client's appellate rights.

4 (Court concluded at 10:16 a.m.)

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6 --- THIS ENDS REQUESTED TRANSCRIPT ---

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1 COURT REPORTER CERTIFICATE

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I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 14th day of February, 2023.

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

s/Julie A. Cendroski

Julie A. Cendroski
Circuit Court Reporter III
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	IN THE SEVENTH JUDICIAL CIRCUIT
)	
)	
Derrick Burnside, #382831,)	Case No.: 2020-CP-42-02623
Applicant,)	
)	
v.)	ORDER DENYING APPLICANT'S
)	MOTION FOR RECONSIDERATION
)	
State of South Carolina,)	
Respondent.)	
_____)	

The matter before this Court by way of an application for post-conviction relief (hereafter “PCR”) filed August 3, 2020. An evidentiary hearing was held on October 20, 2022, at Spartanburg County Courthouse. Dayne C. Phillips, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent. The Court denied relief by written order dated January 26, 2023. On February 6, 2023, Applicant, through Counsel, filed a Motion for Reconsideration.

After careful consideration of the arguments of Counsel and review of the record, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded, and further finds no error of law or fact not appropriately considered. The order of dismissal issued by this Court contains the appropriate findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code of Laws and Rule 52(a) of the South Carolina Rules of Civil procedure. Accordingly, Applicant’s motion for reconsideration is **DENIED.**



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Mar 08 2023

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Brian M. Gibbons, Circuit Court Judge

Case No. 2020-CP-42-02623

Derrick Burnside #382831,

Petitioner,

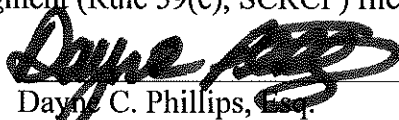
v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner Derrick Burnside appeals the Honorable Brian M. Gibbons' Order Denying his Application for Post-Conviction Relief filed on **January 26, 2023**, and the Court's Order Denying Applicant's Motion to Alter or Amend Judgment (Rule 59(e), SCRCP) filed on **March 2, 2023**.



Dayne C. Phillips, Esq.
1614 Taylor Street, Suite D.
Columbia, SC 29201

ATTORNEY FOR PETITIONER

March 8, 2023

Other Counsel of Record:

Chelsey Marto, Assistant Attorney General
South Carolina Attorney General's Office
1000 Assembly Street, Room 519
Columbia, SC 29201

cc:

Amy W. Cox, Spartanburg County Clerk of Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Mar 08 2023

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Brian M. Gibbons, Circuit Court Judge

Case No. 2020-CP-42-02623

Derrick Burnside #382831,

Petitioner,

v.

State of South Carolina,

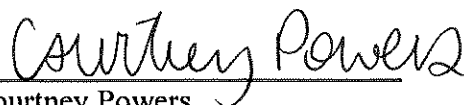
Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Assistant Attorney General Chelsey Marto, and the Honorable Amy W. Cox, by depositing a copy in the United States Mail, postage prepaid, on **March 7, 2023**, addressed to the following parties:

Chelsey Marto, Esquire, South Carolina Attorney General's Office
1000 Assembly Street, Room 519, Columbia, SC 29201

The Honorable Amy W. Cox, Spartanburg County Clerk of Court
PO Box 3483, Spartanburg, SC 29304-3483


Courtney Powers
Paralegal for Dayne Phillips, Esq.
1614 Taylor Street, Suite D.
Columbia, SC 29201

March 8, 2023

ARREST WARRANT

Computer

2018A4210202869

7-31-18

STATE OF SOUTH CAROLINA

County/ Municipality of

Spartanburg

THE STATE against

Derrick Burnside

Address:

Spartanburg, SC 29301-6263

Phone: SSN

Sex: M Race: W Height: 5 10 Weight: 215

DL State: SC DL #:

DOB: Agency ORI #: SC0420130

Prosecuting Agency: Wellford Police Department

Prosecuting Officer: Shaun R Snow - S00819

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Derrick Burnside on July 22, 2018

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions 180 Magnolia Street P O Box 3483 Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

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STATE OF SOUTH CAROLINA

County/ Municipality of

Spartanburg

Personally appeared before me the affiant Shaun R Snow

being duly sworn deposes and says that defendant Derrick Burnside did within this county and state on or about 7/22/2018

State of South Carolina (or ordinance of County/ Municipality of Spartanburg) in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on July 22, 2018 in the county of Spartanburg, one Derrick Burnside did, with malice aforethought, cause the death of Latonya M. Richards by shooting her. Affiant's belief is based upon police investigation. bg

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Spartanburg

Affiant's Address 127 Syphrit Rd Wellford, SC 29385-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/22/2018 defendant Derrick Burnside

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of arrest or soon thereafter as is practicable

Sworn to and subscribed before me on 7/22/2018

Signature of Issuing Judge Jimmy Barron Henson (Magistrate) Judge Code: 5869

Judge's Address Post Office Box 416 Pacolet Mills, SC 29373- Judge's Telephone (864)474-0344

Issuing Court: Magistrate Municipal

CERTIFIED COPY M. Hope Blackley CLERK OF COURT SPARTANBURG COUNTY BY K. M. Kippes, D.C. DATED 8-1-18

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518



COURT SPARTANBURG COUNTY

2018 JUL 27 AM 9:58

M. HOPE BLACKLEY

RECEIVED AUG 31 2018 BY: [Signature]

[Signature]

[Signature]

212

ARREST WARRANT

Computer

2018A4210202870

7-31-18

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Spartanburg

THE STATE against

Derrick Burnside

Address:

Spartanburg, SC 29301-6263

Phone: SSN:

Sex: M Race: W Height: 5 10 Weight: 215

DL State: SC DL #:

DOB: Agency ORI #: SC0420130

Prosecuting Agency: Wellford Police Department

Prosecuting Officer: Shaun R Snow - S00819

Offense: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the [] County/ [] Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant Derrick Burnside on 7-22-18

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions 180 Magnolia Street P O Box 3483 Spartanburg, SC 29304

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ORIGINAL

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Spartanburg

Personally appeared before me the affiant Shaun R Snow

being duly sworn deposes and says that defendant Derrick Burnside did within this county and state on or about 7/22/2018 State of South Carolina (or ordinance of [X] County/ [] Municipality of Spartanburg) in the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on July 22, 2018 in the city/county of Spartanburg, one Derrick Burnside did knowingly and willfully possess and display what appeared to be a firearm during the commission of a violent crime, being murder. Defendant is charged with a violent crime. Affiant's belief is based upon police investigation.

Signature of Affiant

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Spartanburg

Affiant's Address 127 Syphrit Rd Wellford, SC 29385-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/22/2018 defendant Derrick Burnside did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [] Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the earliest opportunity soon thereafter as is practicable

Sworn to and subscribed before me on 7/22/2018

Signature of Issuing Judge Jimmy Barton Henson (Magistrate) Judge Code: 5869

Judge's Address Post Office Box 416 Pacolet Mills, SC 29373- Judge's Telephone (864)474-0344 Issuing Court: [X] Magistrate [] Municipal

A CERTIFIED COPY M. Hope Blackley CLERK OF COURT SPARTANBURG COUNTY BY KG McKinney D.C. DATED 8-1-18

ORIGINAL

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518



CLERK OF COURT SPARTANBURG COUNTY 2018 JUL 27 AM 9:58

M. HOPE BLACKLEY

RECEIVED AUG 31 2018 BY: [Signature]

[Signature]

[Signature] 90: 315 (L.S.)

ARREST WARRANT

Computer

2018A4210202871 7-31-18

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Spartanburg

THE STATE

against

Derrick Burnside

Address:

Spartanburg, SC 29301-6263

Phone: _____ SSN: _____

Sex: M Race: W Height: 5 10 Weight: 215

DL State: SC DL #: _____

DOB: _____ Agency ORI #: SC0420130

Prosecuting Agency: Wellford Police Department

Prosecuting Officer: Shaun R Snow - S00819

Offense: Weapons / Possession of Firearm or Ammunition by person convicted of violent felony

Offense Code: 3434

Code/Ordinance Sec: 16-23-0500(A)

This warrant is CERTIFIED FOR SERVICE in the

[] County/ [] Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Derrick Burnside on 7-27-18

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

214

ORIGINAL

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ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Spartanburg

Personally appeared before me the affiant Shaun R Snow

being duly sworn deposes and says that defendant Derrick Burnside

did within this county and state on or about 7/22/2018

State of South Carolina (or ordinance of [X] County/ [] Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Possession of Firearm or Ammunition by person convicted of violent felony

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on July 22, 2018, in the city/county of Spartanburg, one Derrick Burnside did commit the crime of Weapons / Possession of Firearm or Ammunition by person convicted of violent felony in that he did possess a handgun, during a commission of a murder. Affiant's belief is based upon police investigation.bg

Signature of Affiant

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Spartanburg

Affiant's Address 127 Syphrit Rd

Wellford, SC 29385-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/22/2018 defendant Derrick Burnside

did violate the criminal laws of the State of South Carolina (or ordinance of

[X] County/ [] Municipality of Spartanburg

) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Possession of Firearm or Ammunition by person convicted of violent felony

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 7/22/2018

Signature of Issuing Judge (L.S.)

Jimmy Barron Henson (Magistrate)

Judge Code: 5869

Judge's Address Post Office Box 416

Pacolet Mills, SC 29373-

Judge's Telephone (864)474-0344

Issuing Court: [X] Magistrate [] Municipal [] Circuit

CLERK OF COURT
SPARTANBURG COUNTY
BY M. Hope Blackley D.C.
DATED 8-7-18

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518



AFFIDAVIT

CLERK OF COURT
SPARTANBURG COUNTY
2018 JUL 27 AM 9:58
M. HOPE BLACKLEY

WITNESSES

Wellford Police Department

Lain Cochran

ARREST WARRANT NUMBER

2018A4210202869

2018A4210202870

ACTION OF GRAND JURY

True Bill

[Signature]

AUG 24 2018

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **18-GS-42-4777**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 27 2018

TERM

THE STATE

v.

DERRICK BURNSIDE

Indictment for

MURDER (Count 1)

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

**POSSESSION OF FIREARM
DURING COMMISSION OF A VIOLENT
CRIME (Count 2)**

SC Code: 16-23-490

CDR Code: 549

Class FEL/F

CLERK OF COURT
SPARTANBURG COUNTY
2018 AUG 29 PM 3:38
M. HOPE BLACKLEY



STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

AUG 24 2018

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

COUNT ONE - MURDER

That the Defendant, Derrick Burnside, did in Spartanburg County on or about July 22, 2018, feloniously, willfully, and with malice aforethought, kill one Latonya M. Richards, by shooting her with a firearm, and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

COUNT TWO - POSSESSION OF FIREARM DURING COMMISSION OF A VIOLENT CRIME

That the Defendant, Derrick Burnside, did in Spartanburg County on or about July 22, 2018, visibly display a firearm during the commission or attempted commission of a violent crime, to-wit: Murder, in violation of Code §16-23-490, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended

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



SOLICITOR

COUNTY OF SPARTANBURG
STATE VS.
Derrick Burnside

INDICTMENT/CASE#: 2018GS4204777
A/W#: 2018A4210202869
Date of Offense: 7/22/2018
S.C. Code § 16-03-0010; 16-03-0020
CDR Code #: 0116

AKA:
Race: WHITE Sex: M Age: 46
DOB: [REDACTED] SS: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder- Count (1) One

CONVICTED OF or PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

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

ATTEST: BARNETTE, BARRY SCB13039 Defendant Beasley, Ryan Lewis SCB68307 Attorney for Defendant

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

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-133.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3.75
TOTAL		\$128.75

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

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

Clerk of Court/ Deputy Clerk C. Pool
Court Reporter: L. Moffitt

Presiding Judge _____
Judge Code: 2053
Sentence Date: 11-20-19

COUNTY OF SPARTANBURG
STATE VS.
Derrick Burnside

INDICTMENT/CASE#: 2018GS4204777A
A/W#: 2018A4210202870
Date of Offense: 7/22/2018
S.C. Code § : 16-23-0490
CDR Code #: 0549

AKA:
Race: WHITE Sex: M Age: 46
DOB: SS#
Address:
City, State, Zip:
DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death- Court (2) Two

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory OPS(CSC w/minor 1st or Lowd Act) §17-25-45

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

[Signature] SCB13039 *[Signature]* SCB68307
BARNETTE, BARRY SC Bar# Defendant Beasley, Ryan Lewis SC Bar#
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of _____ days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. * *no sentence imposed due to life sentence in court 1.*
 CONCURRENT or CONSECUTIVE to sentence on:

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
_____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: _____ \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____
*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso (Public Def/Probation) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$25.00
§14-1-213 (Drug Court Surcharge) \$150 \$ _____
§50-21-114(BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$3.75

Other: _____

TOTAL \$128.75

Clerk of Court/ Deputy Clerk *[Signature]*
Court Reporter: *[Signature]*
Presiding Judge *[Signature]*
Judge Code: 2053
Sentence Date: 11-20-19