

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

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S.C. Supreme Court

ORIGINAL

MICHAEL E. MURRAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
Defense
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF GENERAL SESSIONS
JUDICIAL CIRCUIT

CASE NO. 07-GS-08-1242
07-GS-08-1243

STATE OF SOUTH CAROLINA)

versus)

MICHAEL E. MURRAY,)

DEFENDANT)

TRANSCRIPT OF RECORD

DATE:

MARCH 5, 2008

BEFORE:

HONORABLE JAMES C. WILLIAMS, JR., PRESIDING JUDGE

APPEARANCES:

BRYAN ALFARO, ESQUIRE
ASSISTANT SOLICITOR
FOR THE STATE

PATTI KENNEDY, ESQUIRE
PUBLIC DEFENDER
FOR THE DEFENDANT

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

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EXAMINATION BY THE COURT:	
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E X H I B I T S

NONE

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DATE:
MARCH 5, 2008

SOLICITOR ALFARO: MICHAEL MURRAY.

THE COURT: YES, SIR.

SOLICITOR ALFARO: THANK YOU, YOUR HONOR. BEFORE YOU IS MICHAEL MURRAY, REPRESENTED BY PATTI KENNEDY. HE'S BEFORE YOU TO PLEAD GUILTY TO INDICTMENT 2007-GS-08-1242, LEAVING THE SCENE OF AN ACCIDENT RESULTING IN A DEATH, AND INDICTMENT 2007-GS-08-1243, HABITUAL TRAFFIC OFFENDER.

THE COURT: WITHOUT RECOMMENDATION?

SOLICITOR ALFARO: THAT'S CORRECT, YOUR HONOR, IT'S WITHOUT, I MEAN, NO NEGOTIATION OR RECOMMENDATION.

THE COURT: RAISE YOUR RIGHT HAND, MR. MURRAY.

(Whereupon, Michael E. Murray is duly sworn.)

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court. See next ensuing page for sequential continuation of record.)

EXAM - MICHAEL E. MURRAY BY THE COURT

4

1 EXAMINATION OF MICHAEL E. MURRAY

2 BY THE COURT:

3 Q. HOW OLD ARE YOU?

4 A. THIRTY-FOUR.

5 Q. YOU CAN PUT YOUR HAND DOWN. HOW FAR DID YOU GO IN
6 SCHOOL?

7 A. TWO YEARS OF COLLEGE.

8 Q. HAVE YOU EVER BEEN TREATED FOR DRUG ABUSE, ALCOHOL
9 ABUSE, OR MENTAL ILLNESS?

10 A. NO, SIR.

11 Q. HAVE YOU HAD ANY DRUGS, ALCOHOL, MEDICATION OR
12 ANYTHING IN THE LAST TWENTY-FOUR HOURS THAT WOULD
13 KEEP YOU FROM UNDERSTANDING WHAT'S GOING ON IN
14 COURT TODAY?

15 A. NO, SIR.

16 (NOTE: Blank lines on this page do not indicate any
17 part of record has been omitted. Headers on testimony
18 pages and hard page breaks between testimony are now
19 required by the Court. See next ensuing page for
20 sequential continuation of record.)

EXAM - DEFENSE COUNSEL KENNEDY BY THE COURT

5

EXAMINATION OF DEFENSE COUNSEL KENNEDY

BY THE COURT:

1 Q. MS. KENNEDY, HAVE YOU EXPLAINED TO YOUR CLIENT THE
2 CHARGES HE IS FACING, THE EVIDENCE THE STATE HAS
3 AGAINST HIM, THE POSSIBLE PENALTIES, UP TO, FROM
4 ONE YEAR TO TWENTY-FIVE YEARS ON THE HIT AND RUN
5 RESULTING IN DEATH, AND UP TO FIVE YEARS ON
6 HABITUAL TRAFFIC OFFENDER, AND HAVE YOU EXPLAINED
7 TO HIM HIS CONSTITUTIONAL RIGHTS?
8

9 A. YES, YOUR HONOR, I HAVE.

10 Q. AND DO YOU BELIEVE HE UNDERSTANDS THOSE MATTERS?

11 A. I BELIEVE HE DOES, YOUR HONOR.

12 Q. AND HOW HAS HE ADVISED YOU HE WISHES TO PLEAD?

13 A. HE WISHES TO ENTER PLEAS OF GUILTY, YOUR HONOR.

14 Q. DO YOU CONCUR IN HIS DECISION TO PLEAD GUILTY?

15 A. YES, SIR, I DO.

16 (NOTE: Blank lines on this page do not indicate any
17 part of record has been omitted. Headers on testimony
18 pages and hard page breaks between testimony are now
19 required by the Court. See next ensuing page for
20 sequential continuation of record.)
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EXAMINATION OF MICHAEL E. MURRAY

BY THE COURT CONTINUES:

Q. MR. MURRAY, YOUR ATTORNEY TELLS ME SHE'S EXPLAINED TO YOU THE CHARGES YOU ARE FACING, THE EVIDENCE THE STATE HAS AGAINST YOU, THE POSSIBLE PENALTIES, AND YOUR CONSTITUTIONAL RIGHTS. SHE SAYS SHE BELIEVES YOU UNDERSTAND ALL OF THOSE MATTERS AND YOU WANT TO PLEAD GUILTY. IS THAT RIGHT?

A. YES, SIR.

Q. NOW, IN ORDER TO PLEAD GUILTY YOU HAVE TO GIVE UP CERTAIN RIGHTS THAT YOU HAVE. THE FIRST OF THESE IS YOUR RIGHT TO REMAIN SILENT. THAT IS YOUR RIGHT TO SAY NOTHING AT ALL ABOUT THESE CHARGES. YOU CANNOT BE FORCED TO TESTIFY AGAINST YOURSELF, BUT WHEN YOU PLEAD GUILTY YOU GIVE UP THAT RIGHT IN ORDER TO ADMIT THE TRUTH OF THE CHARGES AGAINST YOU.

AND YOU HAVE A RIGHT TO A JURY TRIAL. THAT IS YOUR RIGHT TO HAVE A JURY DETERMINE WHETHER OR NOT YOU ARE, IN FACT, GUILTY OF THESE CHARGES BEYOND A REASONABLE DOUBT. A JURY WOULD EASE ITS DECISION ON THE TESTIMONY AND THE EVIDENCE PUT UP BY THE STATE'S WITNESSES. YOUR ATTORNEY COULD CROSS-EXAMINE THOSE WITNESSES AND CALL WITNESSES ON YOUR OWN BEHALF, AND PUT UP ANY DEFENSE YOU MIGHT HAVE

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TO THE CHARGES. YOU WOULD BE PRESUMED TO BE INNOCENT IF YOU HAD A JURY TRIAL, THE BURDEN WOULD BE ON THE STATE TO CONVINCe ALL TWELVE JURORS OF YOUR GUILT. DO YOU UNDERSTAND BOTH YOUR RIGHT TO REMAIN SILENT AND YOUR RIGHT TO HAVE A JURY TRIAL?

A. YES.

Q. DO YOU UNDERSTAND THAT IN ORDER TO PLEAD GUILTY YOU HAVE TO GIVE UP BOTH OF THOSE RIGHTS?

A. YES, SIR.

Q. AND IS THAT WHAT YOU WANT TO DO?

A. YES, SIR.

Q. YOU DON'T WANT A JURY TRIAL?

A. NO.

Q. INDICTMENT 2007-1242 SAYS THAT HERE, IN BERKELEY COUNTY, ON OR ABOUT THE FIFTEENTH DAY OF APRIL, TWO THOUSAND AND SEVEN, THAT YOU DROVE A MOTOR VEHICLE WHICH WAS INVOLVED IN AN ACCIDENT WHICH CAUSED GREAT BODILY INJURY OR THE DEATH OF DAWN TILLMAN AND THAT YOU FAILED TO IMMEDIATELY STOP YOUR VEHICLE AT THE SCENE OF THE ACCIDENT OR AS CLOSE AS POSSIBLE AND YOU FAILED TO COMPLY WITH THE REQUIREMENTS OF THE LAW FOR YOU TO REMAIN THERE AND FURNISH INFORMATION AND ASSISTANCE. DO YOU UNDERSTAND THAT CHARGE?

A. YES, SIR.

- 1 Q. HOW DO YOU PLEAD TO THAT CHARGE?
- 2 A. GUILTY.
- 3 Q. INDICTMENT 1243 SAYS THAT ON OR ABOUT THE
- 4 FIFTEENTH OF APRIL, TWO THOUSAND AND SEVEN, YOU
- 5 WERE OPERATING A MOTOR VEHICLE WHILE YOUR LICENSE
- 6 WAS SUSPENDED FOR A PERIOD OF FIVE YEARS UNDER THE
- 7 HABITUAL TRAFFIC OFFENDER ACT. DO YOU UNDERSTAND
- 8 THAT CHARGE?
- 9 A. YES.
- 10 Q. HOW DO YOU PLEAD TO THAT CHARGE?
- 11 A. GUILTY.
- 12 Q. NOW, HAS ANYBODY PROMISED YOU ANYTHING OR
- 13 THREATENED YOU TO GET YOU TO PLEAD GUILTY?
- 14 A. NO.
- 15 Q. ARE YOU SATISFIED WITH YOUR ATTORNEY?
- 16 A. YES, SIR.
- 17 Q. HAVE YOU TOLD HER EVERYTHING ABOUT THESE CASES SO
- 18 SHE COULD GIVE YOU CORRECT ADVICE?
- 19 A. YES, SIR.
- 20 Q. HAS SHE FAILED TO DO ANYTHING THAT YOU THINK SHE
- 21 NEEDS TO DO TO HELP YOU IN THIS CASE?
- 22 A. NO.
- 23 Q. HAVE YOU UNDERSTOOD ALL THE QUESTIONS THAT I HAVE
- 24 ASKED YOU?
- 25 A. YES, SIR.

1 Q. HAVE YOU ANSWERED THEM TRUTHFULLY?

2 A. YES, SIR.

3 Q. DO YOU UNDERSTAND IF YOU WANTED TO FILE AN APPEAL
4 IN THIS CASE YOU WOULD HAVE TO DO THAT WITHIN TEN
5 DAYS?

6 A. YES, SIR.

7 THE COURT: I'LL ACCEPT THE PLEA, I
8 FIND A SUBSTANTIAL FACTUAL BASIS FOR HIS PLEA, HIS
9 DECISION TO PLEAD GUILTY IS FREELY AND VOLUNTARILY MADE,
10 HE'S KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHT TO A
11 JURY TRIAL, AND HE'S HAD THE SERVICES OF AN ATTORNEY
12 WITH WHOM HE SAYS HE'S SATISFIED.

13 YES, SIR.

14 SOLICITOR ALFARO: THANK YOU, YOUR
15 HONOR. THIS INCIDENT TOOK PLACE ON SUNDAY, APRIL THE
16 FIFTEENTH, TWO THOUSAND AND SEVEN, AT APPROXIMATELY TEN
17 A.M. GOOSE CREEK POLICE OFFICERS WERE DISPATCHED TO
18 INTERSECTION OF NORTH EXTENSION AND LIBERTY HALL ROAD
19 FOR AN IMPORTANT TRAFFIC ACCIDENT. WHEN THE OFFICERS
20 ARRIVED THE VICTIM IN THIS CASE, DAWN TILLMAN, WHO WAS
21 AN OFF DUTY BERKELEY COUNTY SHERIFF'S DEPUTY, WAS
22 TRAPPED INSIDE OF A BLACK FORD MUSTANG APPROXIMATELY
23 TWENTY-FIVE FEET OFF OF THE ROADWAY. EMS PERSONNEL WERE
24 AT THE SCENE TRYING TO RENDER AID TO MS. TILLMAN. THE
25 MUSTANG HAD EXTENSIVE DAMAGE TO THE FRONT END. THE

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1 OTHER VEHICLE THAT WAS INVOLVED IN THE ACCIDENT WAS A
2 TEAL GREEN CHRYSLER MINI-VAN WHICH IT WAS DETERMINED WAS
3 BEING, HAD BEEN DRIVEN BY THE DEFENDANT. THE MINI-VAN
4 WAS PARKED IN, WAS IN THE MEDIAN AND ALSO HAD EXTENSIVE
5 FRONT END DAMAGE, THE FRONT LEFT WHEEL HAD BEEN BROKEN
6 OFF. OFFICERS SPOKE WITH WITNESSES AT THE SCENE. THE
7 WITNESSES REPORTED THAT THE DRIVER OF THE MINI-VAN,
8 WHICH WAS LATER IDENTIFIED AS THE DEFENDANT, HAD CROSSED
9 OVER THE CENTER LINE AND HAD AT FIRST MADE CONTACT WITH
10 A RED PONTIAC, GRAZING THE SIDE OF THAT CAR, AND THEN
11 CONTINUED ON IN THAT LANE AND COLLIDED HEAD ON WITH MS.
12 TILLMAN'S MUSTANG. ONE WITNESS TOLD THE OFFICERS THAT
13 WHEN HE FIRST ARRIVED ON THE SCENE THE DEFENDANT WAS
14 STILL SITTING IN HIS VEHICLE. HE WALKED OVER TO THE
15 DEFENDANT'S MINI-VAN AND TOLD HIM TO STAY IN THE CAR
16 BECAUSE HE HAD CALLED FOR ASSISTANCE. HE WENT TO ATTEND
17 TO MS. TILLMAN AND WHEN HE TURNED THE DEFENDANT HAD
18 GOTTEN OUT OF HIS CAR AND THE WITNESS WENT BACK TO THE
19 DEFENDANT AND TOLD HIM TO SIT DOWN AND WAIT FOR
20 ASSISTANCE. AT THAT TIME A WHITE PICK UP TRUCK PULLED
21 UP BY THE MINI-VAN. THE DEFENDANT GOT INTO THAT VEHICLE
22 AND LEFT THE SCENE IN THE PASSENGER'S SEAT. THE VICTIM,
23 DAWN TILLMAN, WAS TRANSPORTED FROM THE SCENE TO TRIDENT
24 HOSPITAL FOR EMERGENCY SURGERY IN ATTEMPTS TO RELIEVE
25 CRANIAL PRESSURE. HOWEVER, AS A DIRECT RESULT OF THE

1 INJURIES SHE SUSTAINED IN THIS COLLISION SHE PASSED AWAY
 2 ON APRIL THE SEVENTEENTH, TWO THOUSAND AND SEVEN. THE
 3 DEFENDANT'S WIFE TOLD THE OFFICERS THAT THE DEFENDANT
 4 HAD CALLED HER AROUND THE TIME OF THE ACCIDENT AND
 5 REPORTED TO HER THAT HE HAD BEEN DRIVING AND WAS
 6 INVOLVED IN A COLLISION. OFFICERS EVENTUALLY SPOKE WITH
 7 MR. MURRAY. INITIALLY HE DENIED HIS INVOLVEMENT, DENIED
 8 BEING PRESENT AT THE SCENE OR BEING THE DRIVER.
 9 EVENTUALLY HE DID PROVIDE A WRITTEN CONFESSION TO THE
 10 OFFICERS THAT HE WAS INDEED THE DRIVER OF THE VEHICLE,
 11 THAT HE HAD CROSSED OVER THE CENTER LANE AND HAD BEEN
 12 INVOLVED IN THE ACCIDENT, AND THAT HE DID NOT KNOW IF
 13 THE VICTIM WAS HURT OR INJURED. HE DIDN'T HAVE ANY
 14 CONTACT WITH HER AND HE DID REPORT THEN THAT HE HAD
 15 FALLEN ASLEEP AT THE WHEEL.

16 YOUR HONOR, AT THE TIME OF THIS
 17 INCIDENT HE WAS UNDER ACTUALLY TWO HABITUAL TRAFFIC
 18 OFFENDER SUSPENSIONS, ONE THAT BEGAN ON MAY THE TWENTY-
 19 FIFTH OF TWO THOUSAND AND FIVE, WITH AN END DATE OF MAY
 20 THE TWENTY-FIFTH OF TWO THOUSAND AND TEN, AND AN
 21 ADDITIONAL TRAFFIC OFFENDER SUSPENSION THAT BEGAN,
 22 ACTUALLY, I THINK, YOUR HONOR, THAT WAS MAY THE
 23 SEVENTEENTH, TWO THOUSAND AND SIX, WITH AN END DATE OF
 24 MAY THE SEVENTEENTH, TWO THOUSAND AND ELEVEN.

25 AS TO HIS PRIOR DRIVING RECORD, HE

1 HAS FIVE CONVICTIONS FOR DRIVING UNDER SUSPENSION, HE
 2 HAS AUGUST, TWO THOUSAND AND FOUR, MARCH, TWO THOUSAND
 3 AND FIVE, SEPTEMBER, TWO THOUSAND AND FIVE, FEBRUARY,
 4 TWO THOUSAND AND SIX, AND AGAIN IN MARCH OF TWO THOUSAND
 5 AND SIX. IN ADDITION THERE ARE SEVERAL OTHER
 6 SUSPENSIONS ON HIS DRIVING RECORD FOR VARIOUS FAILURE TO
 7 COMPLY WITH TRAFFIC TICKETS. IN ADDITION, CRIMINALLY HE
 8 HAS A POSSESSION OF COCAINE CONVICTION FROM TWO THOUSAND
 9 AND FIVE.

10 THERE ARE SEVERAL MEMBERS OF THE
 11 VICTIM'S FAMILY THAT ARE PRESENT IN THE COURTROOM, AS
 12 WELL AS ONE OF HER CO-WORKERS, AND FRIENDS. SEVERAL OF
 13 THOSE INDIVIDUALS WOULD LIKE TO ADDRESS THE COURT PRIOR
 14 TO SENTENCING AT WHATEVER TIME YOU DEEM APPROPRIATE.

15 THE COURT: I'LL BE GLAD TO HEAR
 16 FROM THEM AT THIS TIME.

17 SOLICITOR ALFARO: FIRST IS ROY
 18 TILLMAN. JUST SAY YOUR FIRST NAME AND SPELL YOUR LAST
 19 NAME.

20 THE COURT: YES, SIR.

21 ROY TILLMAN: MY NAME IS JOHN ROY
 22 TILLMAN, THE FOURTH, - - -

23 THE COURT: YES, SIR.

24 ROY TILLMAN: T-I-L-L-M-A-N. DAWN
 25 WAS MY SISTER. YOUR HONOR, ON APRIL THE FIFTEENTH, THE

1 DEFENDANT, MICHAEL MURRAY, KILLED MY LAST IMMEDIATE
2 FAMILY MEMBER, MAKING ME AN ORPHAN. I LOST MY MOTHER ON
3 AUGUST EIGHTEENTH OF NINETY-SIX, MY FATHER ON JULY
4 FOURTEENTH OF O-TWO. MY SISTER DIED OF INJURIES
5 SUSTAINED FROM THE CAR ACCIDENT WHICH WAS CAUSED BY MR.
6 MURRAY. I AM HERE TO CONVEY TO THE COURT AND TO MR.
7 MURRAY THE DAMAGES HE CAUSED THAT DAY, TO MAKE SURE AN
8 HABITUAL OFFENDER IS GIVEN AN APPROPRIATE CONSEQUENCE
9 FOR THE CRIME HE COMMITTED AGAINST MY SISTER. I WANT TO
10 SEE THE DEFENDANT OFF THE STREETS AND DRIVING PRIVILEGES
11 REVOKED INDEFINITELY. FINALLY, I WANT TO SEE THAT NO
12 FAMILY THROUGH WHAT I HAVE THE PAST YEAR. AT THE TIME
13 OF THE INCIDENT MY SISTER, DAWN TILLMAN, WAS AT THE
14 PRIME OF HER LIFE. SHE HAD MANY THINGS GOING FOR HER.
15 SHE WAS IN THE PROCESS OF COMPLETING A HOME MY PARENTS
16 HAD STARTED, BUT LEFT UNFINISHED THROUGH THEIR UNTIMELY
17 DEATHS. IT WAS HER BIGGEST GOAL TO SEE THIS HOUSE
18 COMPLETED. I'M SORRY. IT WAS HER BIGGEST GOAL TO SEE
19 THE HOUSE FINISHED, AT THE TIME SHE WOULD HAVE REACHED
20 THAT GOAL IN JUST A FEW SHORT MONTHS. MY SISTER WAS A
21 DEDICATED AND PERSISTENT WOMAN. SHE WOULD LEAVE NO JOB
22 UNFINISHED AND WAS DEDICATED TO HER CAREER. SHE WENT
23 ALMOST THREE YEARS WITHOUT A VACATION. THE DAY OF THE
24 ACCIDENT WOULD HAVE BEEN HER VERY FIRST DAY OF VACATION
25 IN THREE YEARS. THAT MORNING OF THE ACCIDENT MY SISTER,

1 PEOPLE, WHICH WAS THE MAIN REASON SHE WENT INTO LAW
2 ENFORCEMENT. DAWN DREAMED OF MOVING UP IN THE POLICE
3 DEPARTMENT BY VOLUNTEERING HER TIME AND WORKING HER
4 REGULAR BEAT. DAWN WAS WELL ON HER WAY OF MOVING UP IN
5 THE RANKS OF THE DEPARTMENT. HER LOVE FOR HER FAMILY AND
6 FRIENDS WAS UNCONDITIONAL. DAWN WOULD DO ANYTHING FOR
7 THE PEOPLE SHE CARED ABOUT. IF ANYTHING WOULD HAPPEN TO
8 ANYONE SHE CARED FOR DAWN WOULD BE THERE TO BACK THEM
9 UP. NOW I STAND BEFORE YOU AND DEFENDING MY SISTER'S
10 RIGHTS TO JUSTICE. MICHAEL MURRAY'S ACTIONS WILL NOT GO
11 UNNOTICED. MR. MURRAY SHOULD NOT HAVE BEEN ON THE ROAD
12 DAY. HIS PREVIOUS DRIVING HISTORY AND RUN-INS WITH THE
13 LAW SHOULD HAVE BEEN ENOUGH REASON TO KEEP MR. MURRAY
14 OFF THE STREETS. I FIND THE ACTIONS OF THE DEFENDANT TO
15 BE EQUAL THE ACTIONS OF A MURDERER. MR. MURRAY KNEW THE
16 CONSEQUENCES HE WOULD FACE WHEN HE FLED THE SCENE OF THE
17 ACCIDENT. HE KNEW THE MOMENT THAT SOMEONE WAS HURT, HE
18 KNEW AFTER HITTING NOT ONE BUT TWO VEHICLES THAT DAY HE
19 WAS STUCK IN A SITUATION HE NEEDED TO ESCAPE. HE KNEW
20 BY GETTING INTO THE CAR HE WAS BREAKING THE LAW. I HOPE
21 AND PRAY THAT NO ONE HAS TO GO THROUGH THE TRAGEDY I
22 WENT THROUGH. I HOPE AND PRAY THAT NO ONE HAS TO SIT IN
23 A HOSPITAL ROOM DAY AND NIGHT FOR THREE DAYS WONDERING
24 IF THEIR LOVED ONE IS GOING TO MAKE IT. I HOPE AND PRAY
25 THAT NO ONE WILL HAVE TO MAKE THE DECISIONS TO END THE

1 LIFE SUPPORT OF A LOVED ONE. I HOPE AND PRAY THAT NO ONE
2 WILL HAVE TO BURY A LOVED ONE IN SUCH MANNER THAT I DID,
3 AND I HOPE AND PRAY THAT NO ONE WILL EVER BE HURT BY THE
4 HANDS OF MICHAEL MURRAY AGAIN. I HOPE AND PRAY THROUGH
5 YOUR DECISION HERE TODAY THAT YOU WILL SET AN EXAMPLE
6 WITH MR. MURRAY THAT THIS WILL NEVER HAPPEN AGAIN.

7 YOUR HONOR, THANK YOU FOR YOUR TIME.

8 THE COURT: THANK YOU, SIR.

9 SOLICITOR ALFARO: THE VICTIM'S
10 AUNT, EDITH MCLEMORE.

11 THE COURT: ALRIGHT, COME AROUND,
12 PLEASE, MA'AM.

13 EDITH MCLEMORE: I'M EDITH MCLEMORE,
14 M-C-L-E-M-O-R-E. I'M HER AUNT, AND WE WERE A VERY CLOSE
15 FAMILY. THIS HAS MADE A VERY DEFINITE IMPRESSION ON OUR
16 FAMILY, AND A LOSS OF A PERSON IN OUR FAMILY TO BE
17 THERE. DAWN WENT THROUGH SOME HARD TIMES WHEN HER
18 MOTHER DIED AND THEN HER FATHER, AND AFTER A WHILE SHE
19 GOT HER BEARINGS STRAIGHT AND SHE GOT THE JOB THAT SHE
20 LOVED, BEING IN THE BERKELEY SHERIFF'S DEPARTMENT AND I
21 THINK THEY LOVED HER AS MUCH. SHE WAS TRYING TO FINISH
22 THIS HOME AND SHE HAD A LITTLE SIGN ON HER WINDOW, LIFE
23 IS GOOD, AND I KNOW SHE FELT THAT WAY AT THAT TIME.
24 THEN, IN A SPLIT SECOND HER LIFE WAS TAKEN AWAY, AND
25 THIS WAS DONE BY A MAN WHO HAD HIS DRIVERS LICENSE TAKEN

1 AWAY AND WITH NO RESPECT FOR THE LAW RAN INTO DAWN'S CAR
2 AND THEN LEFT THE SCENE. IF HE IS LET OUT OF JAIL THIS
3 WOULD HAPPEN TO ANOTHER INNOCENT PERSON. HE HAS PROVEN
4 THAT HE CANNOT LISTEN TO THE LAW, THE SLAPS ON HIS WRIST
5 DO NOT DO THE JOB. WE HAVE LOST DAWN AND DAWN LOST HER
6 LIFE. WE CAN NEVER REGAIN THIS, AND SHE CAN NEVER
7 REGAIN HER LIFE. DON'T LET THIS HAPPEN TO SOMEBODY
8 ELSE.

9 THE COURT: THANK YOU, MA'AM.

10 SOLICITOR ALFARO: SERGEANT MARK
11 TILLMAN.

12 THE COURT: YES, SIR.

13 MARK TILLMAN: THANK YOU, YOUR
14 HONOR. MY NAME IS SERGEANT MARK TILLMAN, T-I-L-L-M-A-N,
15 AND I'M DAWN'S FIRST COUSIN. GROWING UP WE WERE VERY
16 CLOSE. OUR FAMILY HAS A STRONG LAW ENFORCEMENT HISTORY,
17 AND YOU KNOW, IT WAS HER DREAM, SHE WAS SO DETERMINED TO
18 BECOME A DEPUTY. SHE REACHED THAT GOAL AND SHE WAS
19 WORKING SO HARD. IT WAS JUST AMAZING TO SEE HOW HER LIFE
20 HAD FINALLY COME TOGETHER AFTER THE TRAGEDY OF OUR
21 FAMILY, AND I SAY, OUR FAMILY BECAUSE WE ARE AN EXTENDED
22 FAMILY. ALL HER FRIENDS WERE COUSINS AND BROTHERS TO US
23 ALL AND SISTERS TO US ALL. AND SHE HAD WORKED SO HARD
24 TO GET WHERE SHE WAS. LIKE ROY SAID, THE FAMILY HOME
25 WAS COMING TOGETHER, SHE WAS DOING THE THINGS THAT HER

1 PARENTS HAD DONE AND WANTED TO CONTINUE, AND SHE WAS
 2 WORKING HARD. SHE WAS DEDICATED TO LAW ENFORCEMENT, SHE
 3 LIVED, WOKE UP EVERY DAY READY TO GO TO WORK. AND LIKE
 4 ROY SAID, THAT SUNDAY AFTERNOON CHANGED EVERYBODY'S
 5 LIVES, BECAUSE NOT ONLY DID I LOSE A COUSIN THAT WAS
 6 ALMOST A SISTER TO ME, BUT I ALSO DID LOSE A SISTER IN
 7 THE LAW ENFORCEMENT COMMUNITY. AND THE SHERIFF'S OFFICE
 8 STILL, TO THIS DAY IT IS HARD TO REPLACE AN INDIVIDUAL
 9 THAT IS AS HARD WORKING AND AS DEDICATED AS SHE WAS. IN
 10 JUST HER FEW YEARS THAT SHE WAS HERE SHE WORKED HARD,
 11 SHE WAS ONE OF THOSE PERSONS THAT IF YOU NEEDED
 12 SOMETHING DONE YOU CALLED HER. SHE DIDN'T COMPLAIN, SHE
 13 DIDN'T ARGUE ABOUT IT, SHE SAID, YES, SIR, AND SHE WOULD
 14 GET IT DONE. I WAS ALSO HER SERGEANT, AND I ALSO KNEW
 15 THAT WHEN I CALLED HER TO GET A JOB DONE SHE WOULD DO IT
 16 WITH A PASSION AND WOULD DO IT TO THE BEST OF HER
 17 ABILITY. AND UNFORTUNATELY, I NO LONGER HAVE THAT FORCE
 18 WITH ME, NOT ONLY AS A FAMILY MEMBER BUT AS A CO-WORKER.
 19 AND I JUST HOPE THAT, YOU KNOW, YOU CAN LOOK INTO AND
 20 SEE THE HISTORY, THE TRAGEDY THAT HAS BEEN BESTOWED ON
 21 THIS FAMILY BECAUSE OF THIS INCIDENT AND MAKE SURE THAT
 22 HE STAYS WHERE HE NEEDS TO STAY FOR AS LONG AS POSSIBLE.
 23 AND I APPRECIATE YOUR TIME.

24 THE COURT: THANK YOU, SIR.

25 SOLICITOR ALFARO: DETECTIVE GENE

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CASE# HONN17031A

1 NUNLEY.

2 GENE NUNLEY: GOOD AFTERNOON, YOUR
3 HONOR, DETECTIVE GENE NUNLEY, OF BERKELEY COUNTY
4 SHERIFF'S OFFICE. SINCE DAWN'S DEATH I LEFT THE ROAD
5 AND WENT INTO NARCOTICS. I WAS DAWN'S FINAL FIELD
6 TRAINING OFFICER AND COMPLETED DAWN'S TRAINING. AFTER
7 DAWN'S TRAINING WAS COMPLETED DAWN BECAME MY PARTNER.
8 SHE WENT WITH ME FOR EVER ZONE THAT I EVER SWITCHED TO.
9 DAWN WAS ALWAYS THERE, I BACKED HER UP IN CALLS AND SHE
10 BACKED ME UP IN CALLS. I REMEMBER WATCHING HER IN THE
11 SQUAD MEETING EVERY MORNING AND HER PROFESSIONAL ABILITY
12 THAT SHE DISPLAYED AND THE CARING THAT SHE PUT OUT FOR
13 THE COMMUNITY WAS JUST UNBELIEVABLE. SHE ANSWERED EVERY
14 CALL, SHE FOUGHT, ME AND HER FOUGHT SIDE BY SIDE WITH
15 EACH OTHER NUMEROUS TIMES. SHE NEVER GAVE UP. I SEEN
16 HER GO FROM A ROOKY TO A PROFESSIONAL OFFICER. THE TWO
17 YEARS I SPENT WITH DAWN MEANT A LOT TO ME. IT HAD A LOT
18 TO DO WITH ME LEAVING THE ROAD, SITTING IN THE SQUAD
19 MEETINGS, NOT SEEING DAWN IN HER CHAIR, NOT SEEING HER
20 ON THE ROAD, NOT HEARING HER CALL SIGN, ONE THIRTY-
21 EIGHT; COME OUT, NOT SEEING HER ON THE CALLS AND
22 WATCHING THAT PATROL VEHICLE THAT SHE DROVE ON THE ROAD
23 STILL IN OUR SQUAD. THE LOSS OF DAWN WAS SOMETHING THAT
24 WE CAN'T PUT INTO WORDS, YOUR HONOR, IT'S SOMETHING FELT
25 BY THE FAMILY, BY EVERYBODY THAT SHE'S COME IN CONTACT

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1 WITH, AND BY THE COMMUNITY, AND BY THE SHERIFF'S OFFICE.
 2 THIS OFFICER HAD A LOT OF POTENTIAL AND WOULD HAVE GONE
 3 FAR IN THE SHERIFF'S OFFICE. SHE WOULD HAVE SAVED MANY
 4 LIVES, AND UNFORTUNATELY, HER LIFE GOT TAKEN BY SOMEONE
 5 WHO WOULD NOT ABIDE BY THE LAW, AND HAS NOT STOOD BY THE
 6 LAW, AND DID NOT UNFORTUNATELY SERVE TIME FOR THE DUS'S
 7 THAT HE SHOULD HAVE. YOUR HONOR, THIS IMPACT ON OUR
 8 COMMUNITY, ON OUR LIVES, AND ON THESE PEOPLE IN THIS
 9 COURTROOM AND THE PEOPLE THAT COULD NOT MUSTER TO COME
 10 IN HERE AND FACE THIS IS SOMETHING THAT IS SO DRAMATIC
 11 AND SO EMOTIONAL THAT WORDS CANNOT BE PUT FORTH TO
 12 EXPLAIN THE IMPACT. THE SHERIFF'S OFFICE, THE
 13 COMMUNITY, ALL HER LOVED ONES AND ALL HER FRIENDS WILL
 14 NEVER EVER HAVE HER BACK AND WILL NEVER SEE WHAT SHE
 15 COULD HAVE ACCOMPLISHED IN HER CAREER. I JUST ASK YOU,
 16 YOUR HONOR, TO GIVE THE MAXIMUM SENTENCE TO SOMEONE WHO
 17 TOOK THE MAXIMUM THING AWAY FROM A COMMUNITY, A PERSON
 18 THAT DEVOTED HER LIFE TO PROTECT THE STREETS, TO BECOME
 19 A FRIEND TO ALL, AND TO PROTECT THE COMMUNITY, AND TO
 20 STAND BY THE LAW THAT WE ASK THAT YOU TAKE AND GIVE THE
 21 SENTENCE THAT'S DUE FOR THIS HUMONGOUS CRIME, YOUR
 22 HONOR, AND I THANK YOU.

THE COURT: THANK YOU, SIR.

SOLICITOR ALFARO: YOUR HONOR,
KATHRYN ROUDAUSH.

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THE COURT: ALRIGHT, SIR.

KATHRYN ROUDAUSH: YOUR HONOR, MY
NAME IS KATHRYN ROUDAUSH.

THE COURT: HOW DO YOU SPELL YOUR
LAST NAME?

KATHRYN ROUDAUSH: R-O-U-D-A-U-S-H.

THE COURT: THANK YOU, MA'AM.

KATHRYN ROUDAUSH: YOUR HONOR, MY
AUNT WASN'T BLOOD, BUT BLOOD COULDN'T MAKE US ANY
CLOSER. EVEN THOUGH WE WEREN'T BLOOD SHE WAS MY AUNT
AND I WAS HER NIECE. WHENEVER I HAD A PROBLEM SHE WAS
RIGHT THERE TO COMFORT ME. SHE WAS THE KIND OF PERSON
YOU COULD NEVER FORGET. I WOULD TALK TO HER EVERYDAY.
SHE WAS A PERSON YOU WOULD NEVER THINK SOMETHING LIKE
THIS WOULD HAPPEN TO, BUT THE DEFENDANT, MICHAEL MURRAY,
CHANGED ALL OF THAT. MY AUNT DAWN WAS A LOT OF
DIFFERENT THINGS, TO THOSE WHO KNEW HER, A SISTER, BEST
FRIEND, AND MOST OF ALL A GIVER, NEVER A TAKER. HER
PERSONALITY SUITED HER WELL WITH HER CHOICE OF LAW
ENFORCEMENT. SHE LOVED IT AND SHE WAS LOYAL TO THE
BERKELEY COUNTY SHERIFF'S DEPARTMENT. SHERIFF DOOLITTLE
SAID IT REAL WELL WHEN HE SAID THAT SHE WAS A DETERMINED
INDIVIDUAL, BECAUSE SHE WAS.

THE COURT: THANK YOU, MA'AM.

KATHRYN ROUDAUSH: THANK YOU.

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SOLICITOR ALFARO: YOUR HONOR, MS.

ROUDAUSH ALSO WROTE ANOTHER LETTER, I'VE SHOWN IT TO THE DEFENSE COUNSEL, SHE JUST WANTED ME TO HAND IT UP TO YOU.

THE COURT: ALRIGHT, THANK YOU.

SOLICITOR ALFARO: ANITA DAVIS.

ANITA DAVIS: ANITA DAVIS, D-A-V-I-

S. BEST FRIEND. YOU'LL NEVER KNOW HOW MUCH HE STOLE FROM US, MR. MURRAY. DAWN WAS A MENTOR TO MY DAUGHTER, SOMEONE SHE COULD REALLY LOOK UP TO. THERE'S NOT A LOT OUT THERE RIGHT NOW FOR KIDS TO LOOK UP TO. DAWN WAS SO FULL OF LIFE, IN ONE CARELESS TURN OF YOUR WHEEL, IT WAS ALL GONE. I'M GLAD THAT YOU WILL HAVE NOWHERE TO RUN TO NOW. THAT DAY WAS THE LAST TIME. WE MAY NEVER KNOW THE WHOLE TRUTH OF WHAT HAPPENED THAT DAY AND WHY YOU DID WHAT YOU DID. AND NOTHING CAN BRING HER BACK, AND THAT'S SOMETHING WE ALL HAVE TO ACCEPT, BUT HER MEMORY WILL NEVER BE LOST. I HOPE BY THE TIME YOU GET OUT YOU WILL HAVE A BETTER APPRECIATION FOR HUMAN LIFE, BECAUSE WHAT YOU DID THAT DAY WAS HEARTLESS.

THANK YOU.

THE COURT: THANK YOU, MA'AM.

SOLICITOR ALFARO: YOUR HONOR, JAMIE

HAROLE WAS MS. TILLMAN'S PARTNER AT THE SHERIFF'S OFFICE.

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THE COURT: ALRIGHT.

JAMIE HAROLE: JAMIE HAROLE, H-O-R-L-E. ON APRIL FIFTEENTH, TWO THOUSAND AND SEVEN, DAWN AND I WERE SUPPOSED TO LEAVE THAT MORNING FOR A WEEK'S VACATION IN FLORIDA AT HER BROTHER, ROY'S, HOUSE, BUT SHE HAD AN ERRAND TO RUN FIRST. WE NEVER MADE IT. INSTEAD MY WEEK WAS SPENT AT THE HOSPITAL, HELPING WITH FUNERAL ARRANGEMENTS, AND BURYING MY FRIEND. MICHAEL MURRAY NOT ONLY TOOK AWAY MY PATROL PARTNER, HE TOOK AWAY MY BEST FRIEND WHO WAS LIKE MY SISTER. MICHAEL MURRAY ONLY CARES ABOUT ONE PERSON AND THAT IS HIMSELF. THAT IS WHY HE CONTINUED TO DRIVE ON A SUSPENDED DRIVER'S LICENSE AND RAN AWAY FROM THE SCENE OF THE ACCIDENT, AN ACCIDENT THAT IF HE HAD NOT BEEN DRIVING THAT MORNING DAWN WOULD STILL BE ALIVE. IF HE SPENDS THE NEXT TWENTY-FIVE YEARS IN PRISON THIS TWENTY-FIVE YEARS HE CANNOT KILL OR INJURY ANYONE ELSE BY HIS LACK OF REGARD FOR THE LAWS OF THIS STATE. MICHAEL MURRAY'S FRIENDS AND FAMILY WILL HAVE MORE YEARS TO BE ABLE TO SEE AND TALK WITH HIM. MY LIFE WITH DAWN ENDED ON APRIL SEVENTEENTH WHEN SHE WAS REMOVED FROM WESTPORT. NEVER AGAIN WILL I BE ABLE TO SEE OR TALK WITH DAWN. ALL I HAVE LEFT OF DAWN IS TREASURED MEMORIES. NOT ONLY DID MICHAEL MURRAY TAKE AWAY DAWN'S LIFE, HE TOOK AWAY MY LIFE WITH MY BEST FRIEND.

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1 THE COURT: THANK YOU, MA'AM.

2 SOLICITOR ALFARO: MALLY DAVIS.

3 MALLY DAVIS: MY NAME IS MALLY
4 DAVIS, D-A-V-I-S. I DON'T NEED TO STAND UP HERE AND SAY
5 ANYTHING, BUT I WANT MICHAEL MURRAY TO KNOW WHAT HE
6 TOOK FROM ME AND EVERYONE ELSE AND WHAT WE WENT THROUGH.
7 I WANT MICHAEL MURRAY TO KNOW THAT HE TOOK AWAY MY AUNT,
8 MY HEART, SOMEONE I CARED FOR AND LOVED VERY MUCH, AND
9 I ALSO LOST MY BEST FRIEND. BECAUSE OF MICHAEL MURRAY
10 I GET NIGHTMARES AT NIGHT SEEING WHAT HE DID TO HER.
11 BECAUSE OF MICHAEL MURRAY I CRIED EVERY NIGHT FOR TWO
12 AND A HALF MONTHS. HE TOOK HER AND SHE HAD TO LEAVE
13 EVERYONE BEHIND, AND SHE HELPED EVERYONE, DOING HER JOB.
14 NOT ONLY DID SHE HELP THEM BUT SHE BRIGHTENED UP
15 EVERYONE'S DAY, AND MINE. AND I HAVE TO GO THROUGH HER
16 NOT SAYING, MALLY, HAVE A NICE DAY, THAT SHE SAID TO ME
17 EVERY TIME I CALLED.

18 THE COURT: THANK YOU, MA'AM.

19 SOLICITOR ALFARO: YOUR HONOR, AS I
20 SAID, THERE ARE SEVERAL OTHER PEOPLE IN THE COURTROOM.
21 THE STATE'S POSITION IS THAT YOU'VE HEARD THE
22 SIGNIFICANCE OF MS. TILLMAN'S LIFE. YOU ALSO HAVE THE
23 SIGNIFICANCE OF MR. MURRAY'S DRIVING RECORD AS WELL AS
24 CRIMINAL RECORD. I BELIEVE THOSE FACTS, THOSE
25 CONVICTIONS SHOW, IN ADDITION TO THE FACT THAT HE LEFT

1 THE SCENE OF THE ACCIDENT WITHOUT AN ATTEMPT TO RENDER
2 ANY AID, IT SHOWS THE CALLOUSNESS OF THE ACT, AND THE
3 STATE WOULD ASK FOR A SIGNIFICANT ACTIVE SENTENCE FOR
4 MR. MURRAY.

5 THE COURT: THANK YOU, SIR.

6 MS. KENNEDY.

7 MS. KENNEDY: YES, YOUR HONOR, THANK
8 YOU, MAY IT PLEASE THE COURT.

9 AS MR. MURRAY HAS INDICATED TO YOU,
10 YOUR HONOR, HE IS THIRTY-FOUR YEARS OF AGE, AND I WOULD
11 LIKE TO BEGIN MY COMMENTS BY TELLING THE TILLMAN FAMILY
12 AND ALL THE PEOPLE WHO ARE HERE IN SUPPORT OF OFFICER
13 TILLMAN, WE EXTEND OUR HEARTFELT SYMPATHY. AS YOU KNOW,
14 I'M HEAD OF THE PUBLIC DEFENDER'S OFFICE, AND PART OF MY
15 JOB I THINK IT IS MY RESPONSIBILITY WHEN THINGS HAPPEN
16 THE WAY THINGS HAPPEN TO, OR THE INCIDENT THAT CAUSED
17 OFFICER TILLMAN'S DEATH, I'VE ENDED UP HERE. SO, ALL
18 THE THINGS THAT THESE FOLKS ARE SAYING ARE JUST AN
19 AFFIRMATION OF EVERYTHING THAT WAS SAID THAT DAY ABOUT
20 THE CONTRIBUTIONS SHE MADE TO THE SHERIFF'S OFFICE,
21 ABOUT WHAT A VALUED FAMILY MEMBER SHE WAS, ABOUT WHAT A
22 WONDERFUL PERSON SHE WAS. AND AGAIN, ON BEHALF OF MR.
23 MURRAY I WOULD LIKE TO EXTEND OUR SYMPATHY TO HER.

24 YOUR HONOR, YOU'VE HEARD AN AWFUL
25 LOT OF THE BAD THINGS ABOUT MY CLIENT. WHAT I WOULD

1 LIKE TO SHARE IN MITIGATION TO THE SENTENCE, AMONG OTHER
2 THINGS, IS, MR. MURRAY HAS NINE CHILDREN. HE HAS THREE
3 OF HIS OWN THAT LIVED WITH HIM AT THE TIME THIS INCIDENT
4 OCCURRED. HIS WIFE HAS THREE BY A PRIOR MARRIAGE. THEY
5 HAD JUST, THEY HAD ONE CHILD TOGETHER, AND HE HAS TWO
6 CHILDREN IN NEW YORK FOR WHICH HE PAID COURT ORDERED
7 CHILD SUPPORT. AT THE TIME OF THIS INCIDENT HE HAD BEEN
8 WORKING IN WEEKS LEADING UP TO THIS SIXTY AND SEVENTY
9 HOURS A WEEK IN AN EFFORT TO SUPPORT HIS FAMILY. IT
10 GOES WITHOUT SAYING, HE SHOULDN'T HAVE BEEN DRIVING. IT
11 GOES WITHOUT SAYING, THAT HE SHOULDN'T HAVE LEFT THE
12 SCENE. I THINK UNFORTUNATELY, HUMAN INSTINCT IS WHEN
13 YOU'RE FACING A CHOICE, THE KIND OF CHOICE THAT MR.
14 MURRAY HAD TO MAKE THAT DAY, HE MADE THE WRONG DECISION.
15 I DON'T KNOW THAT IT WOULD HAVE CHANGED ANYTHING IN
16 TERMS OF THE WAY ALL THESE FOLKS FEEL, AND CERTAINLY THE
17 WAY THEY HAVE EVERY RIGHT TO FEEL ABOUT WHAT HAPPENED
18 THAT DAY, BUT HE WAS SCARED, HE PANICKED, HE KNEW HE HAD
19 DONE WRONG. IT WAS AN HORRIFIC ACCIDENT, AND HE LEFT.

20 I WILL HAVE TO CORRECT THE RECORD IN
21 SOME RESPECT, YOUR HONOR, I THINK SOLICITOR ALFARO SAID,
22 EVENTUALLY HE GAVE A STATEMENT AND CONFESSED WHAT HE
23 DID. EVENTUALLY WAS THE VERY NEXT DAY. SO HE STEPPED
24 UP TO THE PLATE AND TOOK RESPONSIBILITY PROBABLY IN JUST
25 OVER TWENTY-FOUR HOURS FROM WHEN THIS INCIDENT OCCURRED.

1 AND HE, WE'VE TALKED ABOUT THIS MANY TIMES, I'VE TALKED
2 TO HIS WIFE ABOUT IT, IT'S ALWAYS AWFUL WHEN SOMEBODY
3 DIES IN A SITUATION LIKE THIS. IT IS THAT MUCH WORSE
4 WHEN YOU'RE TALKING ABOUT A POLICE OFFICER, WHETHER
5 THEY'RE ON DUTY OR OFF DUTY. POLICE OFFICERS MAKE THE
6 DECISION TO SERVE. POLICE OFFICERS MAKE THE DECISION TO
7 HELP THE COMMUNITY. SO, THEIR LOSS IS FELT, I THINK,
8 MORE GREATLY. AND I KNOW, I MEAN, I KNOW THESE PEOPLE,
9 I WORK WITH THEM EVERY DAY, IT'S A FAMILY. IT'S A
10 FAMILY, AND THEY'RE FEELING THE LOSS SEVERELY. AND I
11 UNDERSTAND THAT, I UNDERSTAND THAT PERFECTLY. BUT I
12 ALSO KNOW THAT IT'S NOT EXACTLY, OR I BELIEVE IT'S NOT
13 EXACTLY APPROPRIATE TO CHARACTERIZE MR. MURRAY AS THIS
14 MONSTER. HE WAS TRYING TO SUPPORT HIS FAMILY, HE HAS
15 SIGNIFICANT FAMILY OBLIGATIONS. HIS WIFE GAVE BIRTH TO
16 THEIR CHILD ON APRIL TWENTY-SIXTH, TWO THOUSAND AND SIX,
17 SO FOR A SIGNIFICANT PART OF THE YEAR, BETWEEN APRIL
18 TWENTY-SIXTH, TWO THOUSAND AND SIX, AND WHEN THIS
19 ACCIDENT OCCURRED ON APRIL THE FIFTEENTH, TWO THOUSAND
20 AND SEVEN, HE WAS CARRYING THE LOAD FOR BOTH OF THEM
21 BECAUSE SHE COULDN'T WORK, AND DIDN'T WORK. AND I OFFER
22 THAT NOT AS AN EXPLANATION, YOUR HONOR, BUT SIMPLY IN
23 MITIGATION OF WHAT HAPPENED. AS I SAID, THERE'S NO
24 QUESTION, HE SHOULDN'T HAVE BEEN DRIVING, WE WILL
25 CONCEDE THAT. THERE'S NO QUESTION THAT HE SHOULD HAVE

1 STAYED AT LEAST TO ANSWER QUESTIONS FOR THE POLICE
2 OFFICERS. GIVEN WHAT I UNDERSTAND ABOUT OFFICER
3 TILLMAN'S CONDITION AT THE SCENE OF THE ACCIDENT, HE
4 OBVIOUSLY COULD NOT HAVE RENDERED AID.

5 HE WISHES TO ADDRESS THE COURT, YOUR
6 HONOR, HIS WIFE WISHES TO ADDRESS THE COURT. I'VE
7 EXPLAINED TO HIM WHAT THE PENALTIES ARE, I'VE EXPLAINED
8 TO HIM WHAT THE RANGE IS IN TERMS OF YOUR HONOR'S
9 ABILITY TO IMPOSE SENTENCE ON HIM. HE HAS BEEN IN
10 CUSTODY SINCE APRIL THE SIXTEENTH OF TWO THOUSAND AND
11 SEVEN. I KNOW, I KNOW, AND I KNOW THAT I'M GOING TO
12 UPSET SOME PEOPLE WITH WHAT I AM ABOUT TO SAY, PROBABLY
13 JUST ABOUT EVERYBODY IN THIS ROOM THAT'S HERE IN SUPPORT
14 OF OFFICER TILLMAN, BUT I WOULD ASK THE COURT TO
15 CONSIDER IMPOSING A SIGNIFICANT SENTENCE ON MR. MURRAY
16 AND SUSPENDING THAT SENTENCE. HE HAS ASKED ME TO ASK
17 THE COURT, TO ASK YOU TO CONSIDER A PROBATIONARY
18 SENTENCE FOR HIM. I HAVE EXPLAINED TO HIM, IN MY VIEW
19 AND IN MY JUDGEMENT THAT THAT IS, AT BEST, A LONG SHOT
20 GIVEN THE CIRCUMSTANCES OF THE CASE. HOWEVER, AS HIS
21 LAWYER I AM OBLIGATED TO DO WHAT HE WANTS ME TO DO AND
22 WHAT IS IN HIS BEST INTEREST. AS I SAID, HE WISHES TO
23 ADDRESS THE COURT, HIS WIFE WISHES TO ADDRESS THE COURT.
24 PART OF HIS PENALTY, YOUR HONOR, IS THAT HE IS GOING TO
25 HAVE TO PAY, REGARDLESS OF THE SENTENCE IMPOSED, A

1 MINIMUM TEN THOUSAND DOLLAR FINE, WHICH IS GOING TO
2 REQUIRE HIM TO BE UNDER SOME SORT OF SUPERVISION TO
3 ALLOW HIM TO PAY THAT FINE. I'M JUST ASKING THE COURT
4 TO CONSIDER HAVING THAT TIME AT THE FRONT END RATHER
5 THAN THE BACK END OF THE SENTENCE. AND I DO THAT WITH
6 ALL DUE RESPECT TO EVERYTHING THAT EVERYBODY HAS SAID.
7 I UNDERSTAND WHAT THEY ARE SAYING. IN MY LIFETIME I
8 LOST A FAVORITE AUNT TO A DRUNK DRIVER, SO IN SOME WAYS
9 I CAN APPRECIATE WHAT THEY'RE SAYING. BUT AGAIN, IT'S
10 MY OBLIGATION TO REPRESENT MY CLIENT TO THE BEST OF MY
11 ABILITY, AND THIS IS WHAT HE HAS ASKED ME TO DO, AND I
12 WOULD ASK THE COURT TO RESPECTFULLY CONSIDER OUR
13 REQUEST. AND I THINK MR. MURRAY AND HIS WIFE WOULD LIKE
14 TO ADDRESS YOUR HONOR AND THE TILLMAN FAMILY.

15 THE COURT: I'LL BE GLAD TO HEAR
16 FROM HIM.

17 DEFENDANT TILLMAN: FIRST OF ALL, I
18 WANTED TO SAY TO THE TILLMAN FAMILY THAT I APOLOGIZE FOR
19 WHAT HAPPENED AND WHAT WENT ON THAT DAY. AND I ALSO
20 WANT YOU TO KNOW THAT I'M NOT A CRIMINAL, I'M NOT A
21 MONSTER. I JUST FELL ASLEEP BEHIND THE WHEEL. I WAS
22 WORKING A LOT OF HOURS FOR A LONG TIME TRYING TO TAKE
23 CARE OF MY FAMILY. I HAPPENED TO BE DRIVING UNDER
24 SUSPENSION BECAUSE, YOU KNOW, WITHOUT TRANSPORTATION I
25 WOULDN'T BE ABLE TO GET BACK AND FORTH TO WORK TO TAKE

1 CARE OF MY FAMILY. I HONESTLY DIDN'T KNOW SOMEONE WAS
2 HURT BECAUSE SOMEONE WAS RUNNING TOWARD ME FROM THAT
3 VEHICLE AFTER I WOKE UP. AS I WOKE UP MY CAR WAS
4 SPINNING AND SOMEONE WAS RUNNING TOWARD ME. I THOUGHT
5 THAT THAT PERSON WAS THE DRIVER BUT I LATER FOUND OUT
6 THAT HE HAPPENED TO BE WITH THE PERSON THAT I SIDE
7 SWIPED, WHICH WAS MR. WESTON, AND YOU KNOW, I FOUND OUT
8 THAT I SIDE SWIPED HIM. AT FIRST I DIDN'T EVEN, I DIDN'T
9 KNOW THAT, I DIDN'T FIND OUT UNTIL LATER ON THAT EVENING
10 WHEN I SPOKE TO MY WIFE THAT THERE WAS SOMEONE STILL IN
11 THE CAR. BY THEN, OF COURSE, IT WAS TOO LATE, THERE WAS
12 NOTHING ELSE I COULD DO, YOU KNOW. I'VE BEEN IN HERE
13 FOR A LONG, FOR, WELL, FOR ALMOST A YEAR, AND OF COURSE,
14 I KNOW WHAT EVERYBODY HAS HEARD AND WHAT EVERYBODY HAS
15 SEEN AND WHAT EVERYBODY'S BEEN READING. MY CHILDREN HAD
16 TO READ IT, MY WIFE HAD TO READ IT, AND I'VE SEEN SOME
17 OF THIS. AND YOU KNOW, OF COURSE, I'M NOT HAPPY WITH
18 IT, BUT I HAVE TO DEAL WITH IT, YOU KNOW. I'M NOWHERE
19 NEAR WHAT PEOPLE MAKE ME OUT TO BE AT ALL. AND I HAVE
20 SUCH A DEEP COMPASSION FOR LIFE THAT I WORK SO MANY
21 HOURS TO TAKE CARE OF MY WIFE AND KIDS, AND THAT'S WHAT
22 LED UP TO THIS ACCIDENT THE MORNING RIGHT BEFORE THE
23 ACCIDENT. TO EVERYONE ELSE, TO THE FAMILY, I DO
24 APOLOGIZE AND I WISH I COULD DO ANYTHING TO TAKE IT BACK
25 BUT I CAN'T. THERE'S NOTHING I CAN DO, THERE'S NOTHING

1 MY WIFE CAN DO, THERE'S NOTHING MY CHILDREN CAN DO. ALL
2 I CAN DO IS OFFER MY CONDOLENCES.

3 THANK YOU.

4 THE COURT: THANK YOU, SIR.

5 TIAFARA MURRAY: I'M TIAFARA MURRAY.

6 YOUR HONOR, I JUST WANT TO TAKE THE TIME TO APOLOGIZE TO
7 THE TILLMAN FAMILY. I DON'T KNOW, I CAN'T, I KNOW I
8 DON'T FEEL THEIR PAIN BUT I DO KNOW WHAT THEY'RE GOING
9 THROUGH AND FEEL ALL INSIDE. MY HUSBAND IS A GOOD MAN,
10 HE'S A GOOD PROVIDER, A GREAT FATHER, AND I JUST ASK YOU
11 TO HAVE MERCY ON HIM.

12 THE COURT: THANK YOU, MA'AM.

13 ANYTHING ELSE?

14 MS. KENNEDY: NO, YOUR HONOR, THANK
15 YOU.

16 THE COURT: I OFFER MY CONDOLENCES
17 TO THE TILLMAN FAMILY. I DID NOT KNOW MS. TILLMAN BUT
18 SHE WAS OBVIOUSLY A VERY CAPABLE OFFICER, A VERY
19 DEDICATED YOUNG WOMAN, AND IT'S CERTAINLY A TRAGEDY TO
20 LOSE THAT LIFE UNDER ANY CIRCUMSTANCES AT ALL, AND I
21 SYMPATHIZE WITH THE FAMILY IN THAT REGARD AND HER
22 EXTENDED FAMILY, THE LAW ENFORCEMENT COMMUNITY, BECAUSE
23 I SEE HOW CLOSE THE LAW ENFORCEMENT COMMUNITY IS IN
24 EVERY COMMUNITY.

25 I HAVE TO LOOK AT ALL OF THE

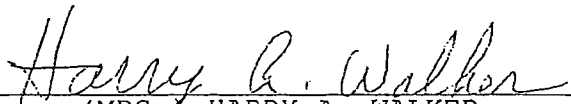
1 CIRCUMSTANCES PRESENT IN A CASE LIKE THIS, AND THERE ARE
2 SOME THINGS THAT ARE NOT PRESENT IN THIS CASE WHICH ARE
3 RATHER SIGNIFICANT. ONE IS, THERE IS NO EVIDENCE OF THE
4 USE OF ALCOHOL. THERE'S NO EVIDENCE OF THE USE OF
5 EXCESSIVE SPEED. WE DON'T HAVE SOMEBODY HERE WITH A
6 LONG CRIMINAL RECORD WHO SHOWS UTTER DISREGARD OF THE
7 LAW WITH THE EXCEPTION OF HIS DRIVING UNDER SUSPENSION
8 CHARGES THAT HE'S FACED. HAD HE STAYED AT THE SCENE THE
9 MAXIMUM THAT HE COULD HAVE BEEN CHARGED WITH, MOST
10 PROBABLY, WOULD BE RECKLESS HOMICIDE, WHICH CARRIES TEN
11 YEARS IN JAIL, ELIGIBLE FOR PAROLE IN TWO AND A HALF
12 YEARS. THE SENTENCE I IMPOSE UNDER THIS CASE IS A NO
13 PAROLE, EIGHTY-FIVE PER CENT SENTENCE. SO, THE QUESTION
14 REALLY BOILS DOWN TO HOW MUCH ADDITIONAL PUNISHMENT
15 SHOULD HE GET FOR LEAVING THE SCENE? AND THE LAW
16 REQUIRES THAT HE REMAIN, THAT HE RENDER ANY AID, FURNISH
17 ANY INFORMATION NEEDED. HE VIOLATED THE LAW, THERE'S NO
18 EXCUSE FOR THAT IN THE EYES OF THE LAW, NO LEGITIMATE
19 EXCUSE. IN THIS PARTICULAR CASE APPARENTLY THERE WAS
20 REALLY NOTHING HE COULD HAVE DONE TO DECREASE THE
21 INJURIES HAD HE STAYED. SO, IT'S NOT A CASE WHERE HAD
22 HE STAYED THE RESULTS OF THE ACCIDENT MIGHT HAVE BEEN
23 DIFFERENT, AND THAT MS. TILLMAN MIGHT HAVE SURVIVED.
24 AND SO, I HAVE TO CONSIDER ALL OF THOSE FACTORS AND I
25 HAVE TO DO WHAT I THINK IS FAIR AND REASONABLE UNDER THE

CERTIFICATE

1
 2 I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF
 3 ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR
 4 THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH
 5 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
 6 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL
 7 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
 8 CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF
 9 GENERAL SESSIONS FOR BERKELEY COUNTY, SOUTH CAROLINA, ON
 10 THE FIFTH DAY OF MARCH, 2008.

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

DATE: APRIL 17, 2009

13
 14
 15
 16 
 17 _____
 18 (MRS. HARRY A. WALKER)

33 CPD, McWilliams

Handwritten signature

ARREST WARRANT NUMBER

H-962936

ACTION OF GRAND JURY

True Bill

John W. Spina
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-08-01242

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2007

THE STATE

vs.

MICHAEL E. MURRAY

Indictment for

LEAVING THE SCENE OF ACCIDENT WITH
PERSONAL INJURY RESULTING IN DEATH

FILED
2007 JUN 20 PM 1:29
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Handwritten mark

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT FOR
LEAVING THE SCENE OF ACCIDENT WITH
PERSONAL INJURY RESULTING IN DEATH

At a Court of General Sessions, convened on June 20, 2007 the Grand Jurors of Berkeley County present upon their oath:

That Michael E. Murray did in Berkeley County on or about the 15th day of April, 2007, drive a motor vehicle which was involved in an accident which caused great bodily injury resulting in the death of Dawn Tillman and did fail to immediately stop his vehicle at the scene of the accident or as close to it as possible and did fail to comply with the requirements of Section 56-5-1230. This action being in violation of Section 56-5-1210, South Carolina Code of Laws (1976), as amended.

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

Blair C. Murray
Deputy Solicitor

STATE OF SOUTH CAROLINA)
 COUNTY OF Berkel)
 STATE VS.)
Michael Murray)
 AKA: _____)
 Race: _____ Sex: _____ Age: 34)
 DOB: _____)
 Address: _____)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS ³⁵

INDICTMENT/CASE#: 2007-GS-08-1242 ¹⁻²⁵
 A/W#: H962936 ^{12K-25}
 Date of Offense: 4/17/2007
 S.C. Code § : 56-05-1210(A)(3)
 CDR Code #: 2463

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Traffic / Hit and run. duties of driver involved in accident involving death

in violation of § 56-05-1210(A)(3) of the S.C. Code of Laws, bearing CDR Code # 2463
 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 initial)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Bryan Alfaro x Michael Murray Defendant Patricia A. Searcy Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 8 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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 \$ _____
 § 35.13 (Public Def/Prob) \$500 \$ _____
 § 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
 § 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
 § 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

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

Linda J. Hill Clerk of Court/ Deputy Clerk
Harry Walker Court Reporter

PRESIDING JUDGE James Wilkerson
 Judge Code: 0114
 Sentence Date: 3-5-08

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2007

THE STATE

vs.

MICHAEL E. MURRAY

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2007 JUN 20 PM 1:29

FILED

GCPD, McWilliams

Handwritten signature

ARREST WARRANT NUMBER

H-962935

ACTION OF GRAND JURY

True Bill

John W. Hines
Foreperson of Grand Jury

VERDICT

Indictment for

HABITUAL TRAFFIC OFFENDER

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT FOR
HABITUAL TRAFFIC OFFENDER

At a Court of General Sessions, convened on: June 20, 2007 the Grand Jurors of Berkeley County present upon their oath:

That Michael E. Murray did in Berkeley County on or about the 15th day of April, 2007, operate a motor vehicle in this State while his driver's license was suspended for a period of five (5) years. This action being in violation of Section 56-1-1100, South Carolina Code of Laws (1976), as amended.

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

Blair C. Jung

Deputy Solicitor

38 STATE OF SOUTH CAROLINA)
 COUNTY OF Berkel)
 STATE VS.)
Michael Murray)
 AKA:)
 Race: Sex: Age: 34)
 DOB:)
 Address:)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2007-GS-08-1243 0-5
 A/W#: H962935
 Date of Offense: 4/17/2007
 S.C. Code § : 56-01-1100
 CDR Code #: 0057

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Traffic / Habitual Traffic Offenders. DUS as per HABITUAL TRAFFIC OFFENDER STATUTE

in violation of § 56-01-1100 of the S.C. Code of Laws, bearing CDR Code # 0057
 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 initial)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Alfaro, Bryan)
[Signature] Defendant)
[Signature] Peter N. Gessard)
 Attorney for Defendant)

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
 Total: \$ _____ plus 20% fee: \$ _____
 Obtain GED _____
 Payment Terms: _____
 Attend Voc. Rehab. or Job Corp. _____
 set by SCDPPPS _____
 May serve W/E beginning _____
 Recipient: _____
 Substance Abuse Counseling _____
 *Fine: \$ _____
 Random Drug/Alcohol testing _____
 § 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 \$ _____
 § 35.13 (Public Def/Prob) \$500 \$ _____
 § 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
 § 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
 § 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
 Other: _____
 Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

Linda J. Hill)
 Clerk of Court/ Deputy Clerk)
Harry Walker)
 Court Reporter)
 PRESIDING JUDGE [Signature])
 Judge Code: 0114)
 Sentence Date: 3-5-08)

FORM 5

2009-CP-08-317

STATE OF SOUTH CAROLINA)
)
 COUNTY OF)
)
 Michael E. Murray Sr. #321518)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
 2009 JAN 27 PM 4:14
 MARY P. BRIDGES
 CLERK OF COURT
 BERKELEY COUNTY, SC

INSTRUCTIONS B 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 Berkeley County Detention Center, (H.F.D.C)
2. Name and location of Court which imposed sentence Court of General Sessions, 300 California Ave, Moncks Corner, S.C. 29461
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-08-1242 / § 56-5-1210(A)(3)
 - (b) 2007-GS-08-1243 / § 56-1-1100
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 3/5/08, 8 years for § 56-5-1210(A)(3).
 - (b) 5 years for § 56-1-1100 / ran ~~con~~ concurrent.

RECEIVED
 JUN 30 2008

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO.

8. If you answered Ayes@ to (7), list:

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

i. N/A

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) Ineffective Assistance of Counsel, Counsel failed to consult about an appeal

(b) _____

(c) _____

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

(a) Ineffective Assistance of Counsel

- (b) Denial of Direct Appeal, Brady violation
 (c) Breach of Plea Agreement

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

- (a) Trial attorney gave ineffective assistance of counsel.
 (b) Trial attorney did not file nor perfect direct appeal ~~was~~ nor consult about direct appeal.
 (c) Prosecution failed to supply the defense with all evidence.
 (c) Trial attorney failed to advise about not being entitled to parole according to statute prior to entering guilty plea.

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

- (a) any petition in a State Court under South Carolina Law? YES
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
 i. Motion 59 (e) amended to 60 (b) Relief from judgment or order, Mistake! Inadvertence, excusable neglect, newly discovered evidence; Fraud, etc.
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Court of General Sessions, 300 California Ave Moncks Corner, S.C.
 ii. 29461
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. Unknown.
 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. N/A
- 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. N/A
- ii. _____
- iii. _____

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

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

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

- (a) ~~N/A~~ N/A
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes

- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

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

- i. Patricia A. Kennedy, Berkeley County Public Defender
P.O. Box 1687 Moncks corner, S.C. 29461
- ii. _____
- iii. _____

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

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

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

Sentence vacated or reversed.

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

NO.

20 09 CP-08-317

STATE OF SOUTH CAROLINA)

County of Berkeley)

VERIFICATION

^{Michael E}
I, ~~Murray~~, 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.

[Handwritten Signature]

SWORN to and subscribed before me this 26th
day of January, 2009.

Katherine M. Myers (L.S.)
Notary Public

My Commission Expires: 9-29-2013

FILED
2009 JAN 27 PM 4:40
MARY P BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 MICHAEL E. MURRAY, 321518)
)
 Applicant)
)
)
)
 STATE OF SOUTH CAROLINA)
)
 Respondent,)
)
 _____)

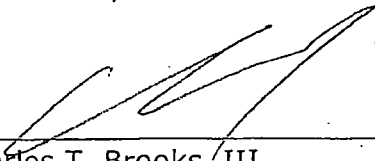
IN THE COMMON PLEAS COURT
 DOCKET NO.: 2009-CP-08-317
 AMENDED APPLICATION FOR POST
 CONVICTION RELIEF

FILED
 2010 APR 20 PM 12:24
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC

The Applicant through undersigned Counsel wishes to amend his Post Conviction Relief Application as follows:

SEE ATTACHED DOCUMENT

RESPECTFULLY SUBMITTED ON BEHALF OF
 APPLICANT, Michael E. Murray



 Charles T. Brooks, III
 Attorney for Applicant
 309 Broad Street
 Post office Box 3512
 Sumter, South Carolina, 29150
 (803) 418-5708

April 19, 2010

Duplicity

Plea counsel was ineffective for failure to notice and advise defendant of the indictment of "hit and run with great bodily injuries resulting in death" bearing indictment number 2007-GS-08-1242 being "duplicious."

The face of the indictment of the aforementioned statute the defendant was charged with should read, §56-5-1210(A)(3), "Hit and run accident when death results."

As it is, it reads, "Hit and run with great bodily injuries resulting in death," which is §56-5-1210(A)(2) and (A)(3).

Section (A)(2) of the aforementioned statute is "great bodily injuries," which is punishable from 0 to 10 years and section (A)(3) of the same statute is "when death results," which is punishable from 1 to 25 years.

Section's (A)(2) and (A)(3) under §56-5-1210, "Hit and run accident, are made to be two(2) separate and

distinct offenses by legislative intent.

These two (2) separate and distinct offenses are ran together as a single offense in the face of the indictment of the offense the defendant was charged with.

In State v. Parker, 543 S.E.2d 255 (S.C. App 2001), the S.C. Court of appeals said, two separate offenses cannot, ordinarily, be charged in a single-count indictment unless one is a lesser included offense of the other.

In the defendant's case, the two separate and distinct offenses, Section's (A)(2) "great bodily injuries" and (A)(3) "when death results," are read together as one offense violating the "due process clause" of the 5th and 14th amendments of the United States Constitution.

Also in Parker, the law state's, a "duplicious" indictment will be invalid and conviction will be void on appeal.

Question Presented

"Whether the defendant's attorney provided Ineffective Assistance of Counsel in failing to advise defendant of "double jeopardy" claim?"

The defendant submits plea counsel was ineffective and prejudiced his case by failing to advise defendant of the viable claim of "double jeopardy" as held in Jivers v. State, 304 S.C. 556, 406 S.E.2d 154 (1991).

Double Jeopardy

The State of South Carolina violated the defendant's right to be free from "double jeopardy."

The defendant was held on bond prosecuted and convicted in general sessions court after previously being tried and convicted in magistrate's court on the same set of facts violating statutural and Constitutional law pursuant to §17-23-20 and Art 1§12 of the South Carolina Constitution and amendments 5 and 14 of the United States Constitution to "double jeopardy", due process, equal protection of the laws and the defendant's 6th amendment right to competent counsel.

Section 17-23-20 states, whenever a municipal court or magistrate's court shall have acquired jurisdiction by reason of a person committing an act which is alleged to be in violation of a municipal ordinance and which is in violation of the criminal law of this state or conviction or an acquittal by the first court acquiring jurisdiction shall be a

complete bar to a trial by another court for the same alleged unlawful act or acts.

On April 26th, 2007, the defendant appeared in the City of Goose Creek's magistrate's court before the honorable Judge Johnson to face charged offenses of driving under suspension (DUS) 6th offense and false information to police officers.

The defendant was sentenced to ninety (90) days for (DUS) and thirty (30) days for false information.

On May 1st, 2007, the defendant was transported from Berkeley County Detention Center (B.C.D.C) to the South Carolina Department of Corrections (S.C.D.C) for the aforementioned offenses.

On June 29th, 2007, the defendant was released from the South Carolina Department of Corrections (S.C.D.C), to the custody of Berkeley County Detention Center (B.C.D.C), to be held for bond while awaiting trial and or plea hearing for the offenses of "hit and run with great bodily injuries resulting in death,"

reckless homicide and habitual traffic offender.

On March 5th, 2008, the defendant pled guilty to the offenses of "hit and run with great bodily injuries resulting in death" and habitual traffic offender, the offense of reckless homicide was dropped.

The defendant was sentenced to eight (8) years for "hit and run with great bodily injuries resulting in death" and five (5) years for habitual traffic offender.

The appellant asserts, the State of South Carolina violated the "collateral estoppel doctrine" of the "double jeopardy clause" when they relied and used the same set of facts to prosecute and convict the defendant on the above said offenses as they had eleven (11) months prior to the plea hearing held on March 5th, 2008, in the conviction of (DUS) 6th offense in magistrate's court arising from the same act or acts.

The U.S. Supreme Court explained that "Collateral estoppel" means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.

Ashe v. Swenson, 397 U.S. 436, 443, 90 S.Ct. 1189, 1194
25 L.Ed. 2d 469, 475 (1970).

In Illinois v. Vitale, 447 U.S. 410, 100 S.Ct. 2260 (1980), the U.S. Supreme Court held that, if in pending manslaughter prosecution, Illinois relies on and proves a failure to slow to avoid an accident as the reckless act necessary to prove manslaughter, Vitale would have a substantial claim of "double jeopardy."

In State v. Girampus, 288 S.C. 395, 343 S.E. 2d 26 (S.C. 1986), the South Carolina Supreme Court previously said, "double jeopardy" will bar conviction where the state attempts to prove felony driving under the influence with proof of a violation of the same law under which the defendant has already been convicted in magistrate's court, see also, State v. Clarke, 302 S.C. 423,

396 S.E.2d 827. (1990).

The defendant reiterates his statutory and Constitutional rights to be free from "double jeopardy" were violated by the State of South Carolina on June 29th, 2007, when the defendant was released from the South Carolina Department of Corrections (S.C.D.C) and held for bond at Berkeley County Detention Center (B.C.D.C) for trial and or plea hearing relying on same set of facts used to prosecute and convict him in previous proceeding.

M.E. Murray Sr.
Michael E. Murray Sr. # 321518

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY)	
)	
)	2009-CP-08-317
)	
Michael E. Murray, #321518,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post-conviction relief filed on January 27, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Berkeley County. The Applicant was indicted at the June 2007 term of the Berkeley County Grand Jury for leaving the scene of accident with personal injury resulting in death (2007-GS-08-1242) and habitual traffic offender (2007-GS-08-1243). Patricia A. Kennedy, Esquire, represented the Applicant. On March 5, 2008, the Applicant pled guilty as indicted. The Honorable James C. Williams, Jr. sentenced the Applicant to confinement for eight (8) years for leaving the scene of an accident and five (5) years for habitual traffic offender. The sentences were to run concurrently. The Applicant did not appeal the sentence or conviction.

Attached herewith and incorporated herein by reference are the records of the Berkeley County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel.
2. Denied direct appeal.
3. Brady violation in that prosecution failed to supply the defense with all the evidence.
4. Breach of plea agreement in that counsel failed to advise about not being entitled to parole according to statute prior to entering plea.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Respondent asserts that the Applicant is not entitled to a belated direct appeal. The United States Supreme Court has rejected a bright-line rule that counsel must always file an appeal in a criminal case. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). The Court went on to hold that a professionally reasonable attorney should, in most cases, consult with the defendant regarding an appeal. Id.

In determining whether an attorney should consult with the criminal defendant concerning an appeal, the totality of the circumstances must be considered. Id. In examining the totality of the circumstances, courts should consider: (1) whether a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) whether this particular defendant reasonably demonstrated to counsel that he was interested in appealing.

Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

Trial counsel is not required to file a notice of appeal without specifically being asked to do so. Roe, 528 U.S. 470. In the present case, there is no indication that Applicant asked counsel to file an appeal on his behalf. However, the allegation of ineffective assistance of counsel for failure to file an appeal raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

The Respondent construes Applicant's third allegation to allege that the State withheld favorable evidence in violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id.

The Respondent submits that this ground for relief is totally without merit. The Applicant does not specify what evidence was withheld. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the

record. The Respondent requests an evidentiary hearing on this ground for relief. Sharper,
279 S.C. 264, 305 S.E.2d 247.

VI.

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

VII.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: *Matthew A. Friedman*
ATTORNEYS FOR RESPONDENT

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

April 30, 2009.

1 STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 2 COUNTY OF BERKELEY) No. 2009 CP 08 317

3

4 MICHAEL E. MURRAY)
)
 5 Applicant)
)
 6 versus) TRANSCRIPT OF RECORD
)
 7)
)
 8 STATE OF SOUTH CAROLINA)

9

10

Moncks Corner, South
 Carolina
 November 15, 2010

11

12 B E F O R E :

13 HONORABLE KRISTI LEA HARRINGTON, Judge

14

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

16

For the State: MATTHEW J. FRIEDMAN, Esq.
 Office of the Attorney General

17

For the Applicant: CHARLES T. BROOKS, III, Esq.

18

19

Reporter: BRENDA COOLEY

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21

22

HARRIET P. BENNETT
 Reporter, S. C. Court Administration
 P. O. Box 86
 Ladson, S. C. 29456

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24

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I N D E X

	DIRECT-REDIRECT	CROSS-RECROSS
1		
2		
3	PATRICIA KENNEDY	
4	By Mr. Friedman 4	
5	By Mr. Brooks	7
6	APPLICANT	
7	By Mr. Brooks 10	
8	By Mr. Friedman	20
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EXHIBITS

For ID: In EV.

NO EXHIBITS WERE MARKED

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1 (The within matter appeared before the Court on
2 November 15, 2010)

3 THE COURT: Mr. Friedman, call your first wit-
4 ness.

5 MR. FRIEDMAN: I'd call Pat Kennedy.

6 THE COURT: Ms. Kennedy, you were previously
7 sworn for a previous hearing. I advise you that you
8 are still under oath.

9 MS. KENNEDY: Thank you, Your Honor.

10 THE COURT: Mr. Friedman.

11 DIRECT EXAMINATION

12 BY MR. FRIEDMAN:

13 Q. Ms. Kennedy, were you appointed in this case?

14 A. Yes, I was.

15 Q. Do you recall about how many times you met with
16 the Applicant?

17 A. No, I don't. I do recall that there was a con-
18 siderable amount of time expended. He was in Finklea
19 and then he was transported to the Department of Cor-
20 rections. He was confined there for, I believe, a
21 driving under suspension for a good while before he
22 was brought back.

23 Q. He was transferred to SCDC?

24 A. Yes, on a separate charge.

25 Q. During your meetings, do you recall if you

MS. KENNEDY ON DIRECT

1 discussed the elements of the charges and what the
2 State has the burden to prove?

3 A. I did, a number of times.

4 Q. And did you discuss potential defenses?

5 A. We did in a -- we did discuss that. In all
6 candor, Mr. Murray gave a confession, so that reduced
7 the significance of that.

8 Q. Did you review with him the State's evidence in
9 the case?

10 A. Mr. Murray was charged with habitual traffic of-
11 fender, and leaving the scene of an accident with a
12 death, and with reckless homicide.

13 The incident involved a Berkeley County Sher-
14 iff's Deputy. It was alleged that he had a collis-
15 ion which was head-on; he left the scene of the ac-
16 cident, and then turned himself in the next day.

17 And initially he was charged with -- it started
18 out being assault and battery with intent to kill,
19 and it was changed to reckless homicide and leaving
20 the scene of an accident with death because the of-
21 ficer died.

22 Q. Were there any plea offers in the case?

23 A. No, sir, other than a dismissal of the reckless
24 homicide.

25 Q. I see that one of his allegations is failure

MS. KENNEDY ON DIRECT

1 or breach of plea agreement. Since there were no
2 plea offers, do you understand what he's talking
3 about when he says breach of plea agreement?

4 A. No, I really don't. I mean, I had discussed
5 the plea with him and he asked me, as it says in the
6 transcript, to request that he be given a probation-
7 ary sentence, which he technically was eligible for,
8 but it is also reflected in the transcript that I
9 had advised him that I didn't -- in my judgment, I
10 didn't think it would be given, but that I would re-
11 quest it in any case.

12 Q. Did you ever point out the consequences of his
13 pleading guilty?

14 A. Yes.

15 Q. And whose decision was it to plead guilty?

16 A. It was his decision.

17 Q. There also is an allegation of double jeopardy.

18 He indicates he was previously convicted in magistrate's
19 or municipal court based on the same facts.

20 Do you have any recollection of that? Do you
21 know if that was to a different charge?

22 A. He -- as I said, he was placed in the Department
23 of Corrections as a result of convictions in magis-
24 trate's court. My recollection is that that was for
25 a driving under suspension charge that required

MS. KENNEDY ON DIRECT

1 mandatory incarceration.

2 Q. So to your knowledge, he was never charged with
3 these same offenses in Magistrate's Court?

4 A. Not to my knowledge. I mean, his driving record
5 was bad in the sense that he had a number of tickets,
6 and it started out being a suspension because there
7 were a number of tickets that he didn't pay.

8 It was a driving under suspension, sixth offense,
9 that he was booked into the jail for, along with the
10 habitual offender charge relating to the death.

11 Q. Did he ever asked you to file an appeal in his
12 behalf?

13 A. No, he didn't, and I didn't do one.

14 MR. FRIEDMAN: I have nothing further, Your
15 Honor.

16 THE COURT: Mr. Brooks.

17 CROSS EXAMINATION

18 BY MR. BROOKS:

19 Q. Ms. Kennedy, you were appointed as Public De-
20 fender, is that correct?

21 A. Yes.

22 Q. And do you recall discussing with him the parole
23 eligibility consequences?

24 A. It is my usual habit to discuss that, and I
25 don't have any memory of that or any notes that say

MS. KENNEDY ON CROSS:

1 that we had that conversation, but I typically dis-
2 cuss that.

3 Q. Do you recall how long you had been on his case
4 prior to the disposition?

5 A. Let's see. He was -- it appears he was -- I had
6 my first meeting with him on June 6, 2007. He -- I
7 don't recall if he went into the Department of Cor-
8 rections before or after that interview, but he en-
9 tered his guilty plea on March 5, 2008.

10 So almost a year.

11 Q. Did you go over the case with him and over his
12 confession, and whether or not it was a confession
13 that would come in?

14 A. I went through all of that with him initially,
15 the predicament he was in, because he had left the
16 scene of the accident and the officer later died.

17 We discussed that. We also discussed that had
18 he simply stayed there he would be looking at a les-
19 ser charge which obviously would have carried a les-
20 ser penalty.

21 He advised the Court at the plea that he did
22 not realize he had hurt someone.

23 One of the issues I neglected to mention about
24 the evidence against him was that someone was on
25 the scene who advised him to wait and he chose to

MS. KENNEDY ON CROSS

1 leave.

2 His explanation was that he thought that was a
3 person he had hit. He had no idea that the person
4 he had hit was still in the car.

5 MR. BROOKS: Beg the Court's indulgence, Your
6 Honor.

7 THE COURT: Okay.

8 (Brief pause in the proceeding)

9 BY MR. BROOKS:

10 Q. Did you push for any type of Brady violations
11 on behalf of the State, such as photographs showing
12 the scene?

13 Did you get photographs of the scene?

14 A. I don't recall. I think what I got -- I'm
15 sorry. We did get digital photographs of the scene
16 which I did not or was unable to share with Mr.
17 Murray.

18 Q. You had those photographs but you didn't share
19 it with him, is that correct?

20 A. What I got them -- to the best of my recollec-
21 tion when I got them he was in the Department of
22 Corrections, and then at that point in time we did
23 not have the ability to duplicate them. We are a
24 Public Defender's Office, although we do now.

25 Q. All right.

MS. KENNEDY ON CROSS

1 A. And I know that he had the absolute right to
2 view that, but I had an opportunity to review them
3 when they came from the Prosecutor's Office.

4 Q. No further questions, Ms. Kennedy.

5 MR. FRIEDMAN: No other questions, Your Honor.

6 THE COURT: You may step down.

7 (Witness excused from stand)

8 THE COURT: Call your next witness, Mr.

9 Friedman.

10 MR. FRIEDMAN: Nothing further from the State,

11 Your Honor.

12 THE COURT: Mr. Brooks.

13 MR. BROOKS: We would call Mr. Murray to the
14 stand.

15 THE COURT: Will the attorneys please step for-
16 ward.

17 (Conference at the bench between counsel and the
18 Court off the record)

19 MICHAEL E. MURRAY, being
20 duly sworn, testified as follows:

21 CLERK: Have a seat on the witness stand and
22 state your full name for the record.

23 WITNESS: Michael E. Murray, Senior, M U double
24 R A Y. M U R R A Y.

25 DIRECT EXAMINATION

MR. MURRAY ON DIRECT

1 BY MR. BROOKS:

2 Q. Mr. Murray, before we begin, I want to take you
3 through some little housekeeping matters about where
4 we are and show the Court where we are and where
5 this post conviction relief application is going.

6 Right now you are serving an eight year sentence,
7 is that correct?

8 A. Yes, sir.

9 Q. And that was five on the habitual traffic of-
10 fender to run concurrent the eight years on leaving
11 the scene of an accident when a death occurred.

12 Is that correct?

13 A. Yes, sir.

14 Q. And currently the Department of Corrections has
15 you maxing out in roughly three years, somewhere
16 around 2014.

17 Is that correct?

18 A. Yes, sir.

19 Q. Now, you understand that if I convince the Judge
20 here on your behalf to give you this post conviction
21 relief application that you would go back and face
22 the prospect of twenty-five years, non-parole. Do
23 you understand that?

24 A. Yes, sir.

25 Q. And knowing that, it is still your desire to

11

MR. MURRAY ON DIRECT

1 give up the potential three years given for the pos-
2 sible -- not saying you would get convicted -- but
3 the possible sentence of twenty-five years?

4 A. Yes, sir.

5 Q. And knowing that, you still desire to go for-
6 ward?

7 A. Yes, sir.

8 Q. Now, you had Ms. Kennedy as your lawyer, is that
9 correct?

10 A. Yes.

11 Q. And you have certain allegations in regard to
12 your post conviction relief application?

13 A. Yes, sir.

14 Q. And one of them was double jeopardy?

15 A. Yes, sir.

16 Q. Can you explain what you mean by the double jeo-
17 pardy issue? Tell the Court what you mean.

18 A. Well, I was convicted on April 26, 2007, for
19 the offense of driving under suspension, sixth
20 offense, in the Municipal Court of Goose Creek.

21 On March 5, 2008, I was convicted for -- I plead
22 guilty to habitual traffic offender and hit and run
23 with great bodily injury resulting in death.

24 Well, the affidavits in the warrants from all
25 three were all typed up at the same time, and they

MR. MURRAY ON DIRECT

1 all read the exact same, the same evidence support-
2 ing the facts.

3 Which if the State -- okay, if the Municipal
4 Court uses that probation the first time, then the
5 higher court would be deprived of using that same
6 information the second time.

7 Q. So it is your position that since you had al-
8 ready had your DUS disposed of in Goose Creek, in the
9 Magistrate Court or Municipal Court, that they were
10 -- the State was unable to try you on the same facts
11 and circumstances for leaving the scene of an acci-
12 dent, habitual traffic offender?

13 A. Yes.

14 Q. So therefore your position is double jeopardy,
15 is that correct?

16 A. Yes, sir.

17 Q. Okay. In regards to -- one of the other alle-
18 gations you made is in regards to whether or not Ms.
19 Kennedy had -- oh, go ahead.

20 A. If we could enter into evidence the exhibits,
21 the warrants, what have you.

22 Q. Oh, yes.

23 A. The information on the warrants.

24 THE COURT: We will take that up when we fin-
25 ish. You may proceed.

MR. MURRAY ON DIRECT

1 MR. BROOKS: Thank you, Judge.

2 BY MR. BROOKS:

3 Q. One of the other allegations you made was in
4 regards to Ms. Kennedy -- whether Ms. Kennedy had
5 told you or not the parole implications of these of-
6 fenses.

7 Is that correct?

8 A. Yes.

9 Q. Can you tell the Court more about that?

10 A. Well, when I went to Court it was about ten min-
11 utes after I met her that they try the case. I met
12 her and went to Court in about ten minutes after that,
13 and she advise me that with these offenses were both
14 non-violent and they were both paroleable, and I
15 would be up -- I would be able to help my wife to pro-
16 vide for my family, which was an important obligation
17 for me.

18 And that even if I paid my debt to society I
19 would still be able to contribute to my family.

20 Q. I want to harp back on something. Do you un-
21 derstand -- Mr. Friedman will tell you, I might win
22 this PCR, and do you understand you could be going
23 back and how that would have an impact?

24 I just want to make sure you understand.

25 A. Yes, sir.

MR. MURRAY ON DIRECT

1 Q. Okay. Now, you feel that Ms. Kennedy did not
2 explain to you the parole implications?

3 A. Yes, sir.

4 Q. You thought if you got eight years, you would
5 be out in two?

6 A. Well, there was no time said, but I thought if
7 I plead to the charges that I could -- there was a
8 possibility I would get paroled the next year and/or
9 I would be able to still go to some program where I
10 would be able to help provide for my family.

11 Q. And you found out in the Department of Correc-
12 tions that that was not the case?

13 A. That's right.

14 Q. You are basically serving an eighty-five per-
15 cent sentence?

16 A. Yes, sir.

17 Q. And that is one of your allegations against Ms.
18 Kennedy?

19 A. That's correct.

20 Q. And another allegation that you have is as to
21 indictment and the grand jury process.

22 Is that correct?

23 A. Yes, sir.

24 Q. Go ahead and tell the Court about that -- what
25 your argument is about that.

MR. MURRAY ON DIRECT

1 A. I receive letters on three different occasions
2 from my first PCR attorney, Ms. Lisa Reynolds, and
3 she advised that she had got in touch with the Clerk
4 -- one dated August 24, 2009, stating she had got in
5 touch with the Clerk of Court's Office to provide a
6 grand jury transcript of my case.

7 The second one was dated September 10, 2009,
8 and she said she had got in touch with the Clerk of
9 Court's Office and they advised her they did not
10 exist.

11 I was advised on September 2nd, 2009, that she
12 had filed a motion on my behalf to allow discovery
13 and grand jury minutes, and that that had been granted
14 by Judge Jefferson.

15 And to this day, I still haven't received that
16 other half of that discovery.

17 Q. You have gotten all the discovery but you have
18 not gotten the grand jury minutes.

19 Is that correct?

20 A. I still haven't gotten all the discovery either.

21 Q. What discovery have you not gotten?

22 A. As Ms. Kennedy stated, the photographs of the
23 accident site.

24 Q. Okay. As to the grand jury matter, I have ex-
25 plained to you that unfortunately in South Carolina

MR. MURRAY ON DIRECT

1 as a criminal defense lawyer, the grand jury delibera-
2 tions are secret.

3 A. I know, up until a true bill of indictment.

4 Q. But once it's true billed, there isn't any-
5 thing for them to do any more. Their process is to
6 determine if it is true billed.

7 The meeting of the grand jury is secret, even to . . .

8 A. It is secret until there is a true bill.

9 Q. Okay.

10 A. And that is not secret any more.

11 Q. All right.

12 THE COURT: You believe that once you are in-
13 dicted by the grand jury at that point it is revealed
14 to you?

15 WITNESS: Well, by State law it can be revealed,
16 and if it is requested it is supposed to be provided.

17 THE COURT: What happens in the grand jury is
18 secret and it always remains secret. The only thing
19 that is revealed is whether it is true billed or not
20 true billed.

21 Do you understand?

22 WITNESS: Yes, maam.

23 BY MR. BROOKS:

24 Q. Now, is there any other allegation that we have
25 not discussed here?

MR. MURRAY ON DIRECT

1 I believe we've discussed all the allegations
2 in your application for PCR.

3 A. Well, actually, my defective indictment.

4 Q. How was it defective?

5 A. Well, from the first it was defective in dupli-
6 city on the face of it because it reads -- it reads,
7 great bodily injury resulting in death, when it
8 should read, hit and run resulting in death.

9 Causing great bodily injury is punishable by
10 zero to ten years, Section 82. Section 83 is result-
11 ing in death which is punishable from one to twenty-
12 five years. Two separate, distinct offenses.

13 Q. Okay, is there anything else?

14 A. Also, the insufficiency of the evidence. The
15 indictment is deficient, which I did not know. I
16 didn't record the actual hearing so there was nothing
17 I could have done, but that was the key, and without
18 that --I didn't know if there was something I could
19 have done . . .

20 Q. That you didn't know -- explain that to the
21 Court again.

22 A. Okay. Because there was nothing I could have
23 done to render assistance, the charge of hit and run
24 with great bodily injury resulting in death should
25 have been dropped to a lesser included offense, which

MR. MURRAY ON DIRECT

1 is either reckless homicide or involuntary man-
2 slaughter.

3 Q. Had you stayed?

4 A. No.

5 Q. Are you saying -- hold on a second.

6 Are you saying that had you stayed that would
7 be totally irrelevant to that particular . .

8 A. No, I'm not saying it would be totally irrele-
9 vant, but is not the element. The element is if
10 there was anything I could have done. That's the
11 element of the offense.

12 So at this point, even if I had left and there
13 was something I could have done, of course, my situa-
14 tion would be worse.

15 There was nothing I could have done and my situa-
16 tion is what it is.

17 Q. Okay. Anything else, Mr. Murray?

18 A. . .

19 Q. You've put everything out there with regards to
20 Ms. Kennedy's representation?

21 A. Well, actually, yes.

22 Q. There is more?

23 A. No, that's it.

24 Q. Okay, answer any questions Mr. Friedman have
25 for you.

MR. MURRAY ON CROSS

1 THE COURT: Mr. Friedman?

2 CROSS EXAMINATION

3 BY MR. FRIEDMAN:

4 Q. Good morning, Mr. Murray.

5 A. Good morning.

6 Q. In your plea you told the Court that you under-
7 stood the nature of the charges and the possible pun-
8 ishments?

9 A. Yes.

10 Q. You also told the Court that you understood
11 your constitutional right to a jury trial?

12 A. Yes, sir. Under the guidance of my counsel.

13 Q. You also told the Court that no one had threat-
14 ened you or promised you anything to get you to plead
15 guilty?

16 A. Yes, sir.

17 Q. You also told the Court that you were satisfied
18 with your attorney?

19 A. Yes, sir.

20 Q. And at the end of the plea you addressed the
21 Court and apologized to the victim's family?

22 A. Yes, sir.

23 Q. For the car accident?

24 A. Yes.

25 Q. And I believe Mr. Brooks addressed you on this,

MR. MURRAY ON CROSS

1 but do you understand that your relief is a new trial?

2 A. Yes, sir.

3 Q. Where you would be facing all of the original
4 charges?

5 A. Yes, sir.

6 Q. So you could potentially get more time than you
7 have now?

8 A. Yes, sir.

9 Q. I have nothing further.

10 THE COURT: Mr. Brooks?

11 MR. BROOKS: No other questions.

12 THE COURT: Mr. Murray, you can step down.

13 (Witness excused from stand)

14 THE COURT: Mr. Brooks, do you have any addi-
15 tional witnesses?

16 MR. BROOKS: No, maam. That's the Applicant's
17 case.

18 THE COURT: All right, thank you.

19 Mr. Friedman, I'll be happy to hear from you
20 regarding argument.

21 MR. FRIEDMAN: Thank you. Very briefly, the
22 State would submit that the Applicant has failed to
23 meet his burden. We don't believe Ms. Kennedy's
24 representation would fail to meet the standard of
25 reasonableness.

1 On the double jeopardy issue, we would submit
2 that those were different charges that he was facing
3 in Magistrate's Court, so double jeopardy would not
4 attach, even if they were basically the same facts.
5 They are different charges.

6 On the parole implications, Ms. Kennedy testi-
7 fied she had no specific recollection of it but that
8 it is her general practice to go over parole impli-
9 cations.

10 We would submit he has failed to meet his burden,
11 and we ask that you deny his application.

12 Thank you.

13 THE COURT: Mr. Brooks?

14 MR. BROOKS: May it please the Court? Judge,
15 our position is that Mr. Murray should have his post-
16 conviction relief granted and be given a new trial.

17 We take the position he was not informed of
18 parole consequences. You heard Ms. Kennedy's testi-
19 mony, but he testified he was not informed.

20 In addition, we also talked about certain Brady
21 violations. Though Ms. Kennedy said she got them,
22 she failed to go over them with her client and he was
23 not aware of them.

24 In addition to that, there should have been some
25 indictment issues that should have been raised as a

1 part of going to trial or potentially going to trial,
2 and also the double jeopardy issues. Those were
3 things that Ms. Kennedy should have raised in behalf
4 of Mr. Murray.

5 With all of those . . .

6 THE COURT: Based upon your review of the case,
7 is it your belief that double jeopardy applies?

8 MR. BROOKS: You are asking me my opinion,
9 Judge?

10 THE COURT: Well, let me inquire. You advised
11 your client that it is not necessarily the facts that
12 are the same, but it is a test we all learn in law
13 school, Mr. Brooks, of whether or not it applies to
14 the charges.

15 The same facts can apply -- you can use the same
16 facts on multiple charges. Correct?

17 MR. BROOKS: That's correct, Judge, but I was
18 just advocating my client's position.

19 THE COURT: All right. Well, Mr. Brooks, I'm
20 going to take this short opportunity, since we have a
21 few moments, with Mr. Murray, because I want him to
22 understand because what happens is that everybody
23 learns a little bit from what goes on in Court.

24 I want Mr. Murray when he goes back, as I'm going
25 to take this matter under advisement -- I want him to

1 understand when he goes back that he is informed of
2 what double jeopardy actually means.

3 MR. BROOKS: Yes, sir.

4 THE COURT: And so I want to make sure -- I feel
5 it is incumbent upon the Court to educate when I have
6 the opportunity as to the law.

7 MR. BROOKS: Yes, maam.

8 THE COURT: Mr. Brooks, you would agree that not
9 specific to this particular case but that the same
10 facts can be used on multiple charges?

11 MR. BROOKS: Yes, maam.

12 THE COURT: It would not trigger double jeopardy,
13 is that correct?

14 MR. BROOKS: That's what I know, Judge.

15 THE COURT: Thank you. You may continue, Mr.
16 Brooks.

17 MR. BROOKS: Beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 (Brief pause in the proceeding)

20 MR. BROOKS: That also applies to the same evi-
21 dence, is that correct?

22 THE COURT: I'm sorry. I didn't understand.

23 MR. BROOKS: That would also apply to the same --
24 you talked about the same facts, and that would also
25 apply to the same facts and evidence, correct?

1 THE COURT: Yes, sir.

2 MR. BROOKS: That's my client's position, and we
3 would respectfully ask the Court to grant him a new
4 trial.

5 THE COURT: Just so I'm clear, there was a re-
6 quest for discovery from the grand jury. Do you be-
7 lieve that all the discovery he has asked for, your
8 client would be entitled to it, and has it been pro-
9 vided?

10 MR. BROOKS: As Your Honor may know, I've done
11 literally umpteen-number of post conviction relief
12 applications, and I have everything that is needed.
13 I have dealt with grand jury issues. Those things
14 are secret.

15 I mean, that's just the way it is, unfortunately,
16 in South Carolina.

17 As far as discovery issues, the things that were
18 filed away and stuff they had gotten, I have gotten
19 that as a part of getting the case.

20 THE COURT: I just want to make sure you've had
21 the opportunity to see and review any discovery.

22 MR. BROOKS: Yes, maam, definitely. Based on my
23 years of experience, and having done post-conviction
24 relief applications, I have. That's correct.

25 THE COURT: Mr. Friedman?

1 MR. FRIEDMAN: Nothing further, Your Honor.

2 THE COURT: All right, I will take the opportu-
3 nity to review materials that have been provided. I
4 will review, Mr. Murray, the allegations contained in
5 your application in writing.

6 Counsel, I'm going to request proposed Orders.
7 Please exchange them with each other, and no later
8 than December 24th by five P.M.

9 Mr. Murray, good luck to you

10 Thank you.

11 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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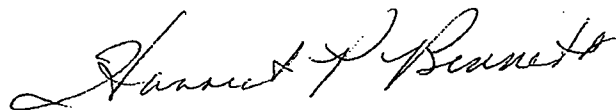
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CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter ..
for South Carolina Court Administration, do hereby cer-
tify that the foregoing Transcript was prepared from the
records of Brenda Cooley to the best of my ability, hav-
ing been heard in the Court of Common Pleas, Berkeley
County, South Carolina, November 15, 2010.

FURTHER, I certify that I am neither of kin nor
counsel to any party to this action, nor do I have any
interest in the matter.

Dated: August 3, 2011



STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Michael E. Murray, #321518,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2009-CP-08-317

ORDER OF DISMISSAL

FILED
 2010 DEC 20 PM 1:57
 CLERK OF COURT
 BERKELEY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 27, 2009. The Respondent made its Return on April 30, 2009. An evidentiary hearing into the matter was convened on November 15, 2010 at the Berkeley County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant and Applicant's plea counsel, Patricia A. Kennedy, Esquire, testified at the PCR hearing. This Court had before it the records of the Berkeley County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, the PCR application, and the Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Berkeley County. The Applicant was indicted at the June 2007 term of the Berkeley County Grand Jury for leaving the scene of accident with personal injury resulting in death (2007-GS-08-1242) and habitual traffic offender (2007-GS-08-1243). Patricia A. Kennedy, Esquire, represented the Applicant. On March 5,

2008, the Applicant pled guilty as indicted. The Honorable James C. Williams, Jr. sentenced the Applicant to confinement for eight (8) years for leaving the scene of an accident and five (5) years for habitual traffic offender. The sentences were to run concurrently. The Applicant did not appeal the sentence or conviction.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel did not explain the implications of parole eligibility.
2. Denied direct appeal.
3. Double jeopardy in that Applicant was previously convicted in magistrate's court based on the same facts.
4. Brady violation in that prosecution failed to supply the defense with all the evidence.
5. Defective indictments.
6. Did not receive Grand Jury transcripts.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Applicant testified that double jeopardy was triggered because he was previously convicted in magistrate's court and the same facts and circumstances were on the warrants. He asserted that his indictments were defective because they listed multiple crimes as one offense. Applicant testified that counsel did not explain parole implications to him. He also asserted that he never saw the Grand Jury transcripts.

Plea counsel testified that she had no specific recollection about discussing parole implications with Applicant, but she asserted that it is her general practice to explain parole implications with clients. She testified that Applicant was in SCDC custody on unrelated charges so it was difficult to meet with him in person. Counsel testified that she did not recall any Brady issues. She testified that she viewed the photographs with the prosecutor, but she was unable to share them with Applicant because he was in SCDC custody and she did not have the ability to duplicate the photographs. Counsel testified that she went over Applicant's confession with him, but Applicant had difficulty understanding his situation. She asserted that the only plea negotiation was that the State would dismiss a reckless homicide charge in exchange for the plea. Counsel testified that Applicant wanted a probationary sentence and she requested such a sentence on his behalf, but he was ultimately sentenced to eight (8) years. Counsel testified that there was no double jeopardy because Applicant's magistrate court convictions were for different charges. Counsel also testified that Applicant did not ask her to file an appeal.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that counsel's testimony was credible while also finding that Applicant's testimony was not credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on

numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that the Applicant understood the nature of the charges against him, the possible punishments, and his constitutional rights. He told the court he was satisfied with his attorney and that no one threatened him or promised him anything to get him to plead guilty. This Court finds that it was Applicant's decision to plead guilty, and he entered the plea freely, voluntarily, knowingly, and intelligently.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that it is counsel's general practice to explain parole implications to clients. However, even if counsel failed to do so in this case, this Court finds that she was not ineffective. This Court finds that parole eligibility is a collateral consequence – rather than a direct consequence – of a guilty plea. “The distinction between ‘direct’ and ‘collateral’ consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the

defendant's punishment." Cuthrell v. Director, Patuxent Institution, 475 F.2d 1364, 1366 (4th Cir.), cert. denied, 414 U.S. 1005 (1973). "The imposition of a sentence may have a number of collateral consequences, however, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is *not* informed of the collateral consequences." Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) (emphasis in original). "Parole eligibility is a collateral consequence of sentencing and is a matter that falls within the province of the Board of Probation, Parole, and Pardon Services." Id. Parole eligibility has no direct bearing on the range of the defendant's punishment.

This Court finds that Applicant is not entitled to a belated direct appeal. The United States Supreme Court has rejected a bright-line rule that counsel must always file an appeal in a criminal case. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). The Court went on to hold that a professionally reasonable attorney should, in most cases, consult with the defendant regarding an appeal. Id.

In determining whether an attorney should consult with the criminal defendant concerning an appeal, the totality of the circumstances must be considered. Id. In examining the totality of the circumstances, courts should consider: (1) whether a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) whether this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

Trial counsel is not required to file a notice of appeal without specifically being asked to

do so. Roe, 528 U.S. 470. In the present case, there is no indication that Applicant specifically asked counsel to file a notice of appeal. In fact, counsel testified that Applicant did not ask her to file an appeal.

This Court finds that Applicant's allegation of double jeopardy has no merit. Applicant's previous convictions in magistrate court were from different charges. This Court finds that these convictions did not trigger double jeopardy. See Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1992).

This Court also finds that Applicant's remaining allegations have no merit. Applicant was not entitled to copies of the Grand Jury transcripts because the Grand Jury proceedings are secret and confidential. Applicant has failed to establish a Brady violation because counsel testified that she was able to view all of the State's evidence. Likewise, Applicant has failed to show that his indictments were defective. This Court finds that Applicant fully understood the nature of the charges against him. "[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (S.C. Ct. App. 2007) (citations omitted). Here, the indictments outline the nature of the offenses in plain language. Applicant was on notice of the charges against him. Counsel and Applicant sufficiently discussed the elements of each charge, and counsel believed that Applicant understood the nature of the offenses.

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

Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

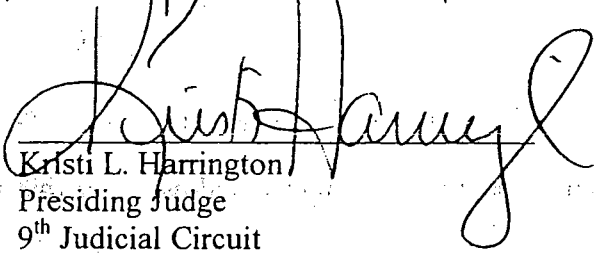
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 15th day of December 2010


Kristi L. Harrington
Presiding Judge
9th Judicial Circuit

Moncho Green South Carolina.