

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Feb 12 2024

S.C. SUPREME COURT

Certiorari to Dorchester County

Honorable Heath P. Taylor, Circuit Court Judge

JUSTEN L. WILKES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000509

APPENDIX

JESSICA M. SAXON
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DANIELLE E. DIXON
Assistant Attorney General
PO Box 11549
Rembert C. Dennis Building
Columbia, SC 29211
(803)734-3970

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
PLEA HEARING TRANSCRIPT DATED MARCH 19, 2018.....	1
COURT’S EXHIBIT #1 (MENTAL HEALTH EVALUATION)	44
INDICTMENTS AND SENTENCE SHEETS (DORCHESTER CO.)	45
INDICTMENT AND SENTENCE SHEET (CHARLESTON CO.)	51
APPLICATION FOR POST-CONVICTION RELIEF (DORCHESTER CO.)	54
RETURN AND MOTION FOR A MORE DEFINITE STATEMENT AND MERGER (DORCHESTER CO.)	64
RESPONSE TO RETURN AND MOTION FOR A MORE DEFINITE STATEMENT AND AMENDED/SUPPLEMENTAL PCR ALLEGATIONS (DORCHESTER CO.).....	76
APPLICATION FOR POST-CONVICTION RELIEF (CHARLESTON CO.)	80
RETURN (CHARLESTON CO.).....	90
AMENDED RETURN AND MOTION FOR MERGER (CHARLESTON CO.).....	96
ORDER OF MERGER	107
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 25, 2023	112
ORDER OF DISMISSAL.....	164

State of South Carolina.,) In the Court of General
) Sessions for Dorchester
)
 County of Dorchester.) Case No.: 2018-GS-10-01816
 2016-GS-18-01961

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Justen Lee Wilkes.,)
)
 Defendant.)
)
 _____)

March 19, 2018
 Dorchester, South Carolina

B E F O R E:

The Honorable Thomas W. Cooper, Jr., Judge.

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

Mr. Donald Neils Sorenson
 First Circuit Solicitor's Office
 140 N. Main Street, Ste. 102
 Summerville, South Carolina 29483
 dsorenson@scsolicitor1.org
 (843) 871-2640
 Attorney for the Plaintiff

Mr. Timothy Clay Kulp
 Kulp Law Firm
 116 Church Street., 3Rd Floor
 Charleston, South Carolina 29401
 tim@kulplaw.com
 (843) 853-3310
 (843) 853-3390
 Attorney for the Defendant

Wanda S. Nelson, CVR-M
 Circuit Court Reporter
 Sixteenth Judicial Circuit
 Union and York Counties
 To the Honorable Daniel D. Hall

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I-N-D-E-X

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Ct.1	Geoffrey R. McKee, PhD		
	Mental Eval. (1-12-18)		P.5

1 (COURT IN SESSION IN THE MATTER OF STATE VERSUS JUSTEN
2 LEE WILKES AT 02:30 P.M.)

3 THE COURT: Thank you, ladies and gentlemen, please be
4 seated. Good afternoon.

5 SOLICITOR SORENSON: Good afternoon, your Honor.

6 The State calls Justen Wilkes.

7 May it please the Court, your Honor?

8 THE COURT: Yes, sir.

9 SOLICITOR SORENSON: Before you is Justen Lee Wilkes
10 here with his lawyer Timothy Kulp. Mr. Wilkes, your Honor,
11 is entering guilty pleas on three indictments. It's two
12 Dorchester County charges 2016-GS-18-1-9-6-2 which is one
13 count of burglary in the first degree.

14 2016-GS-18-1-9-6-1 which is one count of felony
15 driving under the influence resulting in death.

16 And then a Charleston County Indictment, and he's got
17 to waive presentment on the Charleston County charge, 2018-
18 GS-10-1-8-1-6 which is for another count of burglary in the
19 first degree.

20 May I approach?

21 THE COURT: Yes, sir.

22 MADAM CLERK: If you'll please raise your right hand.

23 State your name for the record.

24 A. Justen Wilkes.

25 (WHEREUPON, JUSTEN WILKES,

1 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 THE COURT: Gentlemen, I understand that Mr. Wilkes
3 has been evaluated for his competency to stand trial, and
4 his criminal responsibility as well, and we are to make
5 those orders Court's Exhibit or a Court Exhibit.

6 Do we have one of those ready to present to the Court?

7 SOLICITOR SORENSON: I do, your Honor. I offer to the
8 Court as Court, with your permission, your Honor, as
9 Court's Exhibit No. 1.

10 THE COURT: All right. If you'll hand that forward
11 please, ma'am, Madam Clerk.

12 (DOCUMENTS RECEIVED UP BY THE COURT.)

13 THE COURT: Thank you. Madam Court Reporter, if you
14 will mark this as Court's Exhibit 1.

15 (WHEREUPON, COURT'S EXHIBIT NO. 1, IDENTIFIED AND
16 MARKED, RECEIVED INTO EVIDENCE.)

17 THE COURT: Thank you. Gentlemen, of course both of
18 you have had a chance to look at Court's Exhibit No. 1.
19 Does either the State or the Defense wish to offer any
20 additional evidence or testimony on the matter of Mr.
21 Wilkes criminal responsibility or competency to stand
22 trial?

23 SOLICITOR SORENSON: No, your Honor.

24 MR. KULP: No, sir, your Honor.

25 THE COURT: Both sides are in agreement with the

1 findings of Doctor McKee in this report. The date of the
2 evaluation was January the 12th of this year, the report is
3 dated January the 13th. Are you both in accord with the
4 findings?

5 SOLICITOR SORENSON: Yes, Your Honor.

6 MR. KULP: Yes, sir, your Honor.

7 THE COURT: And the Court adopts as the order in the
8 findings of this court Doctor McKee's report of January the
9 13th finding that Mr. Wilkes is competent to stand trial
10 and that he does understand the difference between right
11 and wrong. Having complied with the mandates of *State*
12 *versus Blair* then, Mr. Sorenson, we can proceed to the plea
13 itself.

14 SOLICITOR SORENSON: Yes, your Honor.

15 THE COURT: Mr. Kulp, you've advised Mr. Wilkes no
16 doubt of the nature of these charges, of the significance
17 of a plea to a most serious offense, and eighty-five
18 percent offense, and in the eyes of the law; his
19 Constitutional rights including that of a jury trial. Does
20 he understand all of those things as far as you know?

21 MR. KULP: Yes, sir, your Honor.

22 THE COURT: And indicates that he wishes to plead
23 guilty to the charges?

24 MR. KULP: Yes, sir, Judge.

25 THE COURT: In your representation of Mr. Wilkes have

1 you independent of Doctor McKee's findings discovered
2 anything that would lead you to believe that he does not
3 understand the significance of what he's doing and the
4 consequences of his action?

5 MR. KULP: No, sir, your Honor.

6 THE COURT: Thank you. Mr. Wilkes, when you plead
7 guilty to burglary in the first degree you can get up to
8 life imprisonment and you must get a sentence of at least
9 fifteen years. Do you understand that?

10 MR. WILKES: Yes, sir.

11 THE COURT: And you're looking at two counts of
12 burglary in the first degree. Do you understand that?

13 MR. WILKES: Yes, sir.

14 THE COURT: When you plead guilty to felony DUI
15 causing death you can get up to twenty-five years in jail.
16 You must receive a sentence of at least one year in jail.

17 Do you understand that?

18 MR. WILKES: Yes, sir.

19 THE COURT: All three of these sentences are no
20 parole, are eighty-five percent sentences. That is to say
21 any sentence that you do get you have to serve at least
22 eighty-five percent of it before you will be allowed to or
23 even be considered to be released into the community.

24 Do you understand that?

25 MR. WILKES: Yes, sir.

1 THE COURT: All of these sentences are most serious
2 offenses in the eyes of the law; that is, they're
3 classified as most serious offenses. Since you're
4 pleading guilty to all of them at one time, today you use
5 up the only free strike that you get in a most serious
6 offense. Under our law if a person commits a second most
7 serious offense, then upon the conviction or the guilty
8 plea to that second most serious offense that person goes
9 to jail for the rest of his life. He dies in jail, they
10 don't get out of jail. Do you understand that?

11 MR. WILKES: Yes, sir.

12 THE COURT: Today you use up one of those two strikes.
13 Do you understand that?

14 MR. WILKES: Yes, sir.

15 THE COURT: When you enter these pleas you have to
16 give up certain important Constitutional rights. Under our
17 law nobody can make you testify against yourself; nobody
18 can force you to admit that you're guilty. But if you
19 plead guilty you have to tell me you're guilty so you give
20 up your right to remain silent. Do you understand that?

21 MR. WILKES: Yes, sir.

22 THE COURT: You have a right to a jury trial on any or
23 all of these three charges. You don't have to try to
24 convince a jury that you're not guilty. The State has to
25 convince a jury that you are guilty. All twelve members of

1 the jury have to be convinced beyond a reasonable doubt
2 that you're guilty before you can be found guilty. But if
3 you plead guilty you don't get a jury trial, you give up
4 that right. Do you understand that?

5 MR. WILKES: Yes, sir.

6 THE COURT: If you had a trial Mr. Kulp would have the
7 right to question the State's witnesses' who would testify
8 against you. You would have the right to call your own
9 witnesses' to testify for you and tell your side of the
10 story, but if you plead guilty you don't get to question or
11 call witnesses. You give up that right. Do you understand
12 that?

13 MR. WILKES: Yes, sir.

14 THE COURT: One of these burglaries was committed in
15 Charleston County. You have the absolute right to have
16 that guilty plea disposed of in Charleston County. I don't
17 have the right to take your guilty plea here in Dorchester
18 County on that particular charge unless you're willing to
19 give up the right to have that Charleston County case
20 disposed of here in Dorchester County. Do you understand
21 that?

22 MR. WILKES: Yes, sir.

23 THE COURT: And you're willing to do that?

24 MR. WILKES: Yes, sir.

25 THE COURT: Do you understand that by pleading guilty

1 you in effect admit the truthfulness of the facts contained
2 in the indictment? Do you understand that?

3 MR. WILKED: Yes, sir.

4 THE COURT: Have you understood these rights that I've
5 just explained to you, Mr. Wilkes?

6 MR. WILKES: Yes, sir.

7 THE COURT: You want me to go over any of them with
8 you again?

9 MR. WILKES: No, sir, I understand.

10 THE COURT: Okay. We'll begin with the Charleston
11 County indictment first. That Indictment 2018-GS-10-
12 0-1-8-1-6 charges you with burglary in the first degree.
13 That indictment says that you did in Charleston County on
14 or about October the 19th, 2016 to October the 20th of 2016
15 enter the dwelling of Danywell Criswell without the consent
16 of the owner and with the intent to commit a crime there,
17 and that the entry either occurred or remained during the
18 nighttime making this a burglary in the first degree. Do
19 you understand that charge?

20 MR. WILKES: Yes, sir.

21 THE COURT: How do you plead to the charge?

22 MR. WILKES: Guilty.

23 SOLICITOR SORENSON: And, your Honor, that one has not
24 been to the Grand Jury.

25 THE COURT: Okay. Thank you. You have the right to

-11-

1 have that indictment presented to the Grand Jury of
2 Charleston County for its action. The Grand Jury's task is
3 to talk with the investigating officers, with the victim's
4 of these crimes, to make sure that there's some evidence to
5 support these charges. Apparently you think there's some
6 evidence to support the charges because you're willing to
7 plead guilty to them, but the Grand Jury doesn't know about
8 those charges. But I cannot take your plea until or unless
9 you give up your right to have the Grand Jury act on that
10 charge. Do you understand what that's all about?

11 MR. WILKES: Yes, sir.

12 THE COURT: And you're willing to give up that right
13 so that I can take your plea?

14 MR. WILKES: Yes, sir.

15 THE COURT: The Dorchester County Indictments 2016-GS-
16 18-1962 first of all charges you with burglary in the first
17 degree. That indictment says that in Dorchester County on
18 or about October the 20th of 2016 you did willfully and
19 unlawfully enter the dwelling of Edward Taylor without his
20 consent and with the intent to steal something or commit a
21 crime there, and you went there, or you remained there, in
22 the nighttime making this a burglary in the first degree.

23 Do you understand that charge?

24 MR. WILKES: Yes, sir.

25 THE COURT: How do you plead to it?

1 MR. WILKES: Guilty.

2 THE COURT: Indictment 2016-GS-18-1961 charges you
3 with felony driving under the influence resulting in death.
4 That indictment says that you did in Dorchester County on
5 or about October the 20th, 2016 while driving a vehicle
6 under the influence of alcohol or drugs or some combination
7 of those, did an act forbidden by law, or neglected a duty
8 imposed by law, which act or neglect proximately caused the
9 death of William Sigman in violation of the law, you are
10 therefore charged with felony driving under the influence
11 resulting in death.

12 Do you understand that charge?

13 MR. WILKES: Yes, sir.

14 THE COURT: How do you plead to it?

15 MR. WILKES: Guilty.

16 THE COURT: Has anybody promised you anything or held
17 out any hope of reward to get you to plead guilty to these
18 charges?

19 MR. WILKES: No, sir.

20 THE COURT: Have you entered these pleas freely and
21 voluntarily?

22 MR. WILKES: Yes, sir.

23 THE COURT: Of your own will and accord?

24 MR. WILKES: Yes, sir.

25 THE COURT: Are you satisfied with everything that

1 Mr. Kulp has done for you as your lawyer?

2 MR. WILKES: Yes, sir.

3 THE COURT: Has he done everything that you've ask him
4 to do?

5 MR. WILKES: Yes, sir.

6 THE COURT: Have you had enough time to talk with him
7 about these cases?

8 MR. WILKES: Yes, sir.

9 THE COURT: Have you understood those talks?

10 MR. WILKES: Yes, sir.

11 THE COURT: Do you need any more time right now to
12 talk with him any more?

13 MR. WILKES: No, sir.

14 THE COURT: You have ten days from today to appeal
15 these pleas to a higher court and you have to file a paper
16 with this court within ten days if you wish to appeal.

17 Do you understand that?

18 MR. WILKES: Yes, sir.

19 THE COURT: All right, Mr. Sorenson, tell me about it.

20 SOLICITOR SORENSON: Thank you. May it please the
21 Court, your Honor?

22 THE COURT: Yes, sir.

23 SOLICITOR SORENSON: We'll kind of go through the
24 charges kind of chronologically. They involve a crime
25 spree, your Honor, that the State's alleged occurred over

1 about a five to six-hour period starting right around
2 midnight or so on October 20th of 2016. The first charge,
3 your Honor, would be the Charleston County burglary in the
4 first degree. That offense occurred at [REDACTED] Dorchester
5 Road which is an apartment complex, specifically Apartment
6 [REDACTED]. That is located in North Charleston within
7 Charleston County's jurisdiction.

8 Those are the residents of the - The Indictment I know
9 indicates a Danywell Criswell. Ms. Criswell and a friend
10 of hers named Dave Wise that actually resided in that
11 apartment, they ultimately -- and it's not kind of reported
12 until later in the morning -- but ultimately report that
13 their apartment had been broken into sometime between
14 midnight or so and 5:00 a.m. They discovered that a second
15 story rear balcony, sliding-glass-door appeared to be the
16 point of entry into the apartment. There was approximately
17 a hundred and fifty dollars in cash and the keys to a 2010
18 black Ford Fusion which belonged to -- Mr. Wise's mother is
19 actually the registered owner of that vehicle, and
20 ultimately determined that vehicle had been stolen from the
21 parking lot.

22 North Charleston responds out there and in the course
23 of doing their incident report and looking around,
24 ultimately discovered a gray back pack on the ground
25 basically below the balcony to Mr. Wise and Ms. Criswell's

-15-

1 apartment. The search of that back pack ultimately --
2 within it they locate a uniform traffic ticket belonging to
3 the Defendant in this case Mr. Wilkes. And that traffic
4 ticket was for a driving under the influence that he had
5 received nine days earlier on October 11th of 2016.

6 Kind of fast forward several hours later, they said
7 basically they know that their apartment was broken into
8 sometime between midnight and five o'clock or so in the
9 morning. We narrowed that down a little more based on a
10 call that the Summerville Police Department was called out
11 in reference to an over-turned vehicle within the town
12 limits of Summerville in Dorchester County at 3:41 in the
13 morning. They respond out to the intersection of Garbon
14 and Gahagen Roads and discover what ultimately turns out to
15 be that stolen 2010 Ford Fusion. There's nobody, it's a
16 abandoned vehicle at that point in time.

17 A search of that vehicle ultimately they recovered the
18 Defendant's wallet with his driver's license and about
19 eighty-six dollars located in the wreckage. Several days
20 later they kind of tie it all together. They also find in
21 the backyard a block or so away several cards, credit cards
22 and things of that nature belonging to Mr. Wise, the
23 apartment, one of the victim's from the apartment complex.
24 So as I said, they were called out 3:41 in the morning.

25 The next incident would be the Dorchester County

1 burglary. That occurred at [REDACTED] Black Oak Boulevard which
2 is located in the Towne of Summerville limits. Black Oak
3 Boulevard is about two blocks away that residence from
4 where the car was over turned. The road that it's on is
5 kind of a main road. Black Oak Boulevard is a neighborhood
6 that is off of Gahagen Road. And that residence is where
7 the cards are found a couple of days later is basically the
8 road in between the accident scene and the burglary, the
9 Dorchester County burglary.

10 That is the residence of Edward Taylor. That night we
11 know that entry was made into his home at approximately
12 4:15 or so in the morning. Mr. Taylor along with his wife,
13 they have two twins, a set of twins that I believe were
14 five-years-old at the time. And I believe there was
15 another family friend were all asleep upstairs in their
16 residence at the time of that burglary. The Taylor's have
17 security cameras inside their home.

18 May I approach, your Honor?

19 THE COURT: Yes, sir.

20 SOLICITOR SORENSON: I've shown to Mr. Kulp.

21 MR. KULP: I've seen them, your Honor.

22 (SURVEILLANCE VIDEO STILLs RECEIVED UP BY THE COURT.)

23 SOLICITOR SORENSON: Those are several surveillance
24 stills off of the video that was provided by Mr. Taylor to
25 law enforcement, basically shows that about 4:19 in the

1 morning you see an individual who we're alleging is the
2 Defendant attempting to enter through a sliding-glass door.
3 I believe entry was ultimately made through a kitchen
4 window I believe from looking at the report. As I said
5 that's at 4:19. At 4:40 or so in that range you see him on
6 the video going through Mr. Taylor's wallet in his kitchen.
7 He's basically during that time period just kind of
8 wondering around in their kitchen.

9 Ultimately the last shot that I've handed up is at
10 5:12 because he ultimately ends up taking the keys to Mr.
11 Taylor's truck. Mr. Taylor also indicates that a watch
12 ends up -- was taken also. I don't believe that watch has
13 ever been recovered. So it's at 5:12 in the morning that
14 you see on his surveillance camera's his truck backing out
15 of the driveway, and that's a 2010 Ford F-250 pickup truck.

16 So the Defendant, your Honor, is in Mr. Taylor's home
17 for probably about forty-five to fifty minutes or so that
18 morning with all of them sleeping inside their residence.
19 There is a point in time where I believe Mr. Taylor's wife
20 may have actually gotten up and was starting to get ready
21 upstairs kind of at the tail end to go to work at the tail
22 end of this burglary. Thankfully they never realized that
23 there was somebody down home - downstairs.

24 They ultimately kind of learn about the truck missing
25 and I'll get to kind of moving on to the felony DUI when

1 law enforcement shows up at their home, but kind of fast
2 forward.

3 The next incident, as I said we've got him leaving the
4 home and backing out at 5:12 in the morning. At 5:31 a.m.,
5 some nineteen minutes later, Deputy Mooney with the
6 Dorchester County Sheriff's Office was out conducting just
7 routine traffic enforcement on Dorchester Road. I mean
8 that's probably about a five to ten mile drive from the
9 Taylor residence where he ends up seeing a truck coming at
10 a high rate of speed towards him on Dorchester Road. He
11 ultimately clocks that truck as doing a 66 in a 45 mile an
12 hour zone. Deputy Mooney ultimately initiates his lights
13 and siren, turns around, I mean at that point in time
14 attempts to catch the truck and basically it accelerates at
15 a higher rate of speed away from him.

16 Within a few seconds of getting turned around Deputy
17 Mooney ends up abandoning chasing the vehicle but
18 ultimately continues in that same direction and it's a
19 short while later that he comes upon the accident that
20 leads to the felony DUI. And if I could, your Honor, I do
21 have a short, about a couple of minutes video from Deputy
22 Mooney's patrol car that I would like to play as part of
23 the plea and it should pop up. Mr. Templeton's got it
24 lined up here so it should pop up on your screen.

25 THE COURT: I see it.

1 SOLICITOR SORENSON: This would be Deputy Mooney's
2 patrol car, and you're gonna see in a moment here on his
3 left Mr. Taylor's truck passing, and you will see at that
4 point in time when he initiates his blue lights and siren
5 and turns around.

6 (VIDEO PUBLISHED TO THE COURT.)

7 SOLICITOR SORENSON: The truck in the right hand lane,
8 you will see him in a moment accelerate.

9 (VIDEO CONTINUES TO BE PUBLISHED TO THE COURT.)

10 SOLICITOR SORENSON: Your Honor, as said I think it
11 was on the time that Deputy Mooney basically stops pursuing
12 that vehicle, he turns off his lights, it's less than 20
13 seconds later that he's coming upon this accident scene.
14 And that's located at the intersection of Dorchester Road
15 on approaching Highway 17 A. As he comes upon that scene,
16 your Honor, if I can hand up a handful -- I'm gonna kind of
17 reference these in a moment -- a handful of photographs
18 from that scene.

19 MR. KULP: We've seen them, Judge.

20 (PHOTOS RECEIVED UP BY THE COURT.)

21 THE COURT: Thank you.

22 SOLICITOR SORENSON: Your Honor, basically there are
23 a total of four vehicles that are involved in this accident
24 at that point in time. You see as the deputy is
25 approaching there is a vehicle that is stopped kind of in

1 front of the wreckage in the left-hand lane facing towards
2 Deputy Mooney. That, your Honor, is a GMC pickup truck
3 that's driven by Mrs. Taryn Sigman. The Defendant ends up
4 crossing over the median and clips Mrs. Sigman's vehicle.
5 He then ends up coming into contact with a Volvo SUV which
6 is driven by a Mr. Alton Langley. Mr. Langley was the
7 individual as Deputy Mooney pulled up that you saw
8 basically out, I think he had jeans and a blue shirt on,
9 but he is out, has gotten out of his vehicle and walking
10 over to the defendant's vehicle Mr. Taylor's pickup truck.

11 And the other vehicle which is a Porsche SUV which is
12 being driven by a William Sigman. Taren and William are
13 husband and wife that were both working at Boeing at the
14 time and were driving to work separately that morning, so
15 the lady that you hear screaming at the very end of that,
16 that's Taryn who has gotten out and obviously realized what
17 has happened with her husband's vehicle.

18 Of note, your Honor, as quick as Deputy Mooney was on
19 the scene, the Defendant's gone. He has bailed from that
20 Ford F-250 pickup truck and he is out of sight by the time
21 Deputy Mooney responds and arrives on scene.

22 Ultimately William, your Honor, was pronounced dead on
23 the scene there. It took a pretty significant amount of
24 time as you can see from those pictures just to be able to
25 extract him from that vehicle. There quite frankly in

-21-

1 looking at a lot of the pictures it's hard to even tell if
2 there's a person inside that vehicle at the scene.

3 The Defendant, your Honor, you know ultimately they
4 respond as a result of, you know, they've got the vehicle
5 now that's abandoned there; they respond as a result of
6 that to the Taylor residence as a result of that vehicle
7 being registered to Edward Taylor, and ultimately kind of
8 learn within a fairly short amount of a period of time they
9 have an opportunity to look at the surveillance video in
10 Mr. Taylor's home. They've also kind of put two and two
11 together with the vehicle that's found and Mr. Wilkes'
12 driver's license and realize at that point in time it
13 appears to be the same person from looking at the video
14 comparing it to Mr. Wilkes' license that was found in the
15 over turned confusion.

16 And they basically are scowering that area, the law
17 enforcement, and it's about two hours later maybe a couple
18 of miles away, it's over on Central Avenue; it's kind of
19 down Highway 17 A a little ways, they ultimately find him.
20 It's somewhere around 7:30. He is taken into custody at
21 that point in time and brought back to the scene. He
22 ultimately and then talking with him admits to stealing the
23 truck, driving the truck at the time of the collision and
24 fleeing that scene. They attempt to do some field sobriety
25 test on him out there at the scene. He fails the HGN test

1 and in an attempt to get him to do any kind of walk and
2 turn or anything of that nature basically he is unable to
3 keep his balance. So at that point in time he is taken off
4 to the breathalyser.

5 He had I believe his initial kind of talking to law
6 enforcement and indicated that he had taken two Xanax bars
7 is what he indicates. His blood alcohol ends up coming
8 back negative. He is then taken in the highway patrol car
9 for a blood and urine draw. He is, you know, in looking at
10 the video from inside that patrol car is obviously impaired
11 almost to the point of being out of it during that drive,
12 slumping way down in his seat.

13 They ultimately do take blood and urine. The blood is
14 sent off to SLED where the toxicology report came back
15 positive for methamphetamine, metabolites of
16 methamphetamine and Xanax. And in talking to the
17 toxicologist out there his opinion would be that the levels
18 that he had would definitely had been impairing in that the
19 Xanax apparently is used basically to try to lessen the
20 crash from the use of methamphetamines.

21 He is ultimately, Mr. Wilkes is ultimately interviewed
22 subsequent times by law enforcement; obviously there are
23 multiple agencies that are now involved in this, and admits
24 to stealing the car from Charleston County. He admits that
25 in furthering questioning to having smoked meth and taking

-23-

1 Xanax basically throughout that prior day. They also find
2 as far as this other evidence against him, I mean he's got
3 bruising consistent with him being in a motor vehicle
4 accident with a seat belt on across his chest. And they do
5 find, I think he's got a t-shirt on over it but under it
6 that t-shirt, that's swag, it says on the burglary video a
7 t-shirt consistent with what is on the video.

8 That intersection is where this occurred is within
9 Dorchester County, probably the one thing I didn't put on
10 the record. But I think basically that would be the
11 factual basis for the three guilty pleas.

12 THE COURT: Okay. Tell me about his record.

13 SOLICITOR SORENSON: Your Honor, his only record is
14 he's got a 2014 breach of peace. And then that DUI that he
15 had received nine days prior to this he has since -- that
16 is since a guilty. I'm not sure if he pled to it but its
17 now guilty. And I would note that nine days prior also
18 involved meth and Xanax and also involved a single car
19 accident.

20 THE COURT: All right. I'll be glad now to hear from
21 any of the victims or the families of the victims if they
22 wish to be heard.

23 SOLICITOR SORENSON: Yes, sir, your Honor.

24 Here we've got several people that I believe wish to
25 address the Court. A Mrs. Taryn Sigman and also Tracy

1 Langley who would be the wife of Alton Langley, the other
2 driver that was involved. Additionally the Highway Patrol
3 is here with Sergeant Peterson of the Highway Patrol who
4 came out. And then I do have -- In fact before I let Mrs.
5 Sigman go, let kind of address the other victims that
6 aren't present. We've notified the Charleston County
7 victims. They didn't indicate they were not going to be
8 present. Mr. Taylor we had talked to multiple times and I
9 actually thought he was going to be here.

10 We spoke to him a little while ago; his wife
11 apparently had just had back surgery recently and he's kind
12 of in charge of dealing with the children and was not gonna
13 be able to make it, but did want me to pass along to your
14 Honor the fact that this -- I mean he's not only kind of
15 shook up, him and his wife, but has really had an effect on
16 his two small children, but said I believe they were five
17 year old twins at the time, and that they are very much
18 affected by what happened. They are afraid to be up or
19 down stairs without adult present and are still regularly
20 having bad dreams and that he would respectfully ask a
21 maximum sentence on his case.

22 THE COURT: That's Mr. Taylor?

23 SOLICITOR SORENSON: That would be Mr. Taylor, yes,
24 your Honor. Now this is Ms. Taryn Sigman, your Honor.

25 THE COURT: Ms. Sigman.

1 MS. SIGMAN: Hello. On October 20th, 2016 my best
2 friend, my husband, was stolen from me. My husband Alex
3 Sigman was killed by Justen Wilkes on his way to work.
4 Justen in the process of stealing a car hit me and then hit
5 and killed my husband. His choice to break multiple laws
6 that night ended in the destruction of my family. Since
7 that day Justen has shown zero remorse for the pain he
8 caused and from what I've heard has not shown any
9 understanding of the seriousness of his actions.

10 He and his family continued to down play the
11 seriousness of the crimes committed which bring doubt to
12 any thoughts of rehabilitation on my part. They don't
13 understand that his decisions, decisions made while under
14 the influence and out on bond on DUI changed my life, my
15 daughter's life, and the lives of many people that Alex
16 touched every day.

17 The only comfort I can find is in knowing that Justen
18 can never harm another family like he did mine. Knowing
19 that he will be behind bars for -- I'm asking for a
20 consecutive sentences with a minimum of fifty years knowing
21 that he'll never walk the streets. That's what will bring
22 me peace.

23 THE COURT: How old is your daughter?

24 MS. SIGMAN: My daughter is nineteen. She turned
25 eighteen seven days after he was killed.

1 THE COURT: Thank you, ma'am.

2 SOLICITOR SORENSON: This is Tracy Langley, your
3 Honor.

4 THE COURT: Ms. Langley.

5 MS. LANGLEY: Yes.

6 THE COURT: Ms. Langley.

7 MS. LANGLEY: Your Honor, thank you. My husband was
8 the other vehicle, driving the other vehicle that was
9 involved in the accident. And like Mrs. Sigman our lives
10 too have forever been changed. Alton continues to deal
11 with ongoing medical issues as a result of the traumatic
12 brain injury that was sustained during the accident and
13 PTSD. Mr. Sigman, Alton went over to try to help with him
14 multiple times so, we too are in agreement that we feel
15 like that Mr. Wilkes is a threat to society and just ask
16 that the maximum amount of sentence be imposed on him
17 consecutively.

18 THE COURT: All right. Ms. Langley, has your husband
19 ever been able to return to work?

20 MR S. LANGLEY: He has returned to work. He's in a
21 management role so he's able to take time off as needed
22 which he's doing now.

23 THE COURT: Did I understand you to say he's still
24 undergoing therapy for post traumatic stress?

25 MS. LANGLEY: Yes, sir.

1 THE COURT: How old is your husband?

2 MR S. LANGLEY: He is forty-eight.

3 THE COURT: Thank you, ma'am.

4 MRS. LANGLEY: Yes, sir.

5 SOLICITOR SORENSON: And, your Honor, the last thing I
6 want is to kind of touch on a little bit of what Mrs.
7 Sigman indicated to you. You know this is a defendant your
8 Honor, that I submit to you your Honor he's been in jail
9 now for almost a year and half and I submit to you has
10 shown absolutely no remorse. Had the opportunity of
11 listening to multiple jail calls that he's made where, you
12 know, basically blaming everybody but himself. You know it
13 started out it was the sheriff's office fault for chasing
14 him, you know, everything but taking responsibility for
15 himself. Yet again, just no, no at any point in time
16 anything that would suggest he has any remorse from the
17 fact that he took a life that night.

18 And probably the most telling is a call that I have
19 that I want to play just a snippet of for you that occurred
20 back on September 13th of 2017. It's almost eleven months
21 later, so obviously well after he's, you know, had multiple
22 talks with his lawyer. I mean we had started actually
23 having some talk about trying to resolve this case for
24 several months. It is the call I believe it's his
25 grandmother that he's talking to and so if I could play

1 that your Honor, so it will be about ten minutes into the
2 call where he starts talking about where he hopes to have
3 happen then as a result of this.

4 THE COURT: All right.

5 (PHONE CALL PUBLISHED TO THE COURT AT 03:31 P.M.)

6 SOLICITOR SORENSON: And he's smiling and joking. And
7 this is his grandmother he's talking about, you know,
8 talking about he can't wait to get a tear drop tattoo.
9 Your Honor, is aware of what that means. May I switch you,
10 that's just consistent with the degree of remorse that he
11 has shown for sixteen months now.

12 You know ultimately, your Honor, he's pled guilty to
13 three separate incidents. I submit to you that anyone in
14 and of itself deserves a very substantial prison sentence.
15 And we would respectfully ask your Honor to either to give
16 him a sentence consistent with a consecutive sentence. I
17 mean obviously on the burglary you have a wide range of
18 latitude on that charge, but we would just respectfully ask
19 your Honor to sentence him appropriately for his actions in
20 these three separate incidents. The fact that he's out on
21 bond at the time for a DUI, and the other just lack of
22 remorse that I submit to you shown since that point in
23 time. Thank you.

24 THE COURT: All right. Anything further, Mr.
25 Sorenson, from the State?

1 SOLICITOR SORENSON: That would be all from the State,
2 your Honor.

3 THE COURT: All right. Mr. Kulp, I'll be glad to hear
4 from you or from anyone on behalf of Mr. Wilkes.

5 MR. KULP: Thank you, your Honor. May it please the
6 Court?

7 THE COURT: Yes, sir.

8 MR. KULP: My job as the advocate for Mr. Wilkes is to
9 offer information to the court about him, various aspects
10 of this incident. And of course I know that both the Court
11 and the Solicitor are well aware of the fact that in doing
12 so I don't diminish the tragedy of this event and the
13 losses that everyone who has spoken have suffered. It's
14 just my job to present Mr. Wilkes to you.

15 Your Honor, Justen is twenty-two years old and he was
16 born in the Spartanburg area. And when he was
17 approximately four or five years old as a little boy his
18 father was killed in a traffic accident where he was hit by
19 a semi-mack truck and killed. Thereafter he was raised for
20 the most part by his grandparents until about the age of
21 thirteen and his mother then took custody of him.

22 He tells me that he found himself being moved or
23 relocated his residence between Charleston, Laurens,
24 Spartanburg, Summerville and trying to be conservative
25 about it he told me and specified today at least twenty

1 times age thirteen on. Of course that involved relocation
2 from school to school and I think we mentioned in our
3 sentencing brief just a few of the schools that he attended
4 at least beginning about the ninth grade. He never
5 graduated from high school and he finished -- I believe he
6 finished the tenth grade -- but early in his educational
7 life he was identified as having some issues.

8 The issues that they identified was a substantial
9 learning disability in the area of English and language
10 arts and so forth although he did show some math skills. He
11 for the most part was deemed to be sufficient to be placed
12 in learning disabled classes. When in the seventh grade we
13 obtained all his school records and supported that he was
14 reading at a third to fourth grade level, and he had wiggled
15 decoding skills, word recognition was about the second
16 grade level.

17 That diagnosis of a specific learning disability
18 continued on through the tenth grade. He's only spending
19 about forty to seventy-nine percent of his time in an
20 educational environment and still eligible for special ED
21 services. I think there is doc - there is documentation in
22 the educational records that I acquired that when this was
23 broached about that time period his mother had a strong
24 disagreement with that diagnosis and pulled him out of
25 school and both of them left in the middle of a meeting and

-31-

1 she indicated to the teachers and counselors that they were
2 crazy.

3 He has never really worked any occupation. But
4 experimentation with drugs being on the street because
5 while his - he lived with his mother here in the
6 Summerville area, he was put out of the house at one point
7 and he pretty much lived on the street. He became -- He
8 certainly experimented with drugs and determined that his
9 drug of choice was crystal meth. In an effort realizing
10 the perils of that use of that drug and abuse of that drug
11 he made his own efforts to try to get off the drug by
12 taking Xanax which was absolutely the wrong decision to
13 make.

14 Along the way of living on the street he met Sarah who
15 he married and she got pregnant and while he was -- I
16 believe while he was incarcerated as he has been for five
17 hundred and fifteen days since the day of his arrest, she
18 had a little baby and that baby is now a year and a half
19 old. They were homeless and when I first met Sarah with
20 his parents in my office she was pregnant at that time and
21 I ask her what kind of prenatal care she's getting and she
22 said, well, none. We don't have any health insurance we
23 live on the street. I think that Justen's parents and her
24 parents had taken her in once she became with child and
25 tried to take care of her as best they could after that.

1 On the day of this incident, your Honor, both Sarah
2 reported to police when she was interviewed, and Justen
3 himself, provided that he had smoked 2 grams of crystal
4 meth that day and taken three to four 2 milligram Xanax
5 tablets. Now I don't offer that, your Honor, as an excuse
6 at all for what happened nor does Justen assert that. But,
7 your Honor, and we're well aware of the fact that voluntary
8 intoxication, or ingestion of drugs, does not create a
9 defense to a crime unless it results in some permanent
10 cognitive or mental defect.

11 And we had him examined as we indicated -- as the
12 court reviewed in the Blair portion of this and determined
13 that in fact the doctor, Doctor McKee, was not in a
14 position to say that there was any permanent damage from
15 that. But rest assured, your Honor, and I have to
16 characterize this tragic period of time as best as I can
17 for my client, but I don't think there's, for what it's
18 worth, your Honor, by way of contrast there's certainly no
19 evidence that he was lying in wait; that he calculated,
20 watched people coming and going, was driven by an intent to
21 rob the place. And again, I'm not trying to belittle the
22 seriousness and tragedy of this, but I think evidence of
23 his severe degree of impairment by these drugs is, he left
24 his backpack in the first place, his wallet in the car he
25 stole, and all of his actions comport with someone who as

1 the Solicitor said presented on the video when he came out
2 the woods as being someone who was out of his mind and on
3 drugs.

4 Now that doesn't -- I don't offer that to mitigate
5 anything at all. It's just to draw a distinction that I
6 think is reasonable and that is that it doesn't excuse what
7 he did but it certainly explains the state of mind that he
8 was in. He accepted responsibility immediately when he
9 came out when the police were there. He confessed to
10 everything that he did without having to make them go
11 through all the investigation that would normally run with
12 a serious case. He confessed on the video tape; he readily
13 provided a breath sample; he provided urine and blood, and
14 as we say he fell on the sword and gave them the case.

15 He of course, and I see this from time to time over
16 the many years of practicing, he is not in a position -- no
17 lawyer would advise him to write a letter during the
18 pendency of the case and apologize to the victims because
19 to do so would be malpractice considering that his -- the
20 charges were pending and that would constitute even a
21 further admission of guilt on top of with the assent of his
22 counsel to the confessions that he had already entered.

23 Judge, as well I'm advised, and I didn't know this
24 until today, that his brother Jonathan when he was
25 approximately eighteen was involved in a wreck himself and

1 spent a great deal of time in the hospital in a coma and
2 has come out with cognitive defects.

3 THE COURT: Is he older or younger than Mr. Wilkes?

4 MR. KULP: Older. And so, we have a situation just
5 trying to get an idea of this young man where from an early
6 age he lost his father and then after that he was raised by
7 his grandparents. And then he was taken out of schools and
8 moved around, found himself misbehaving not fitting in and
9 he tells me today, and I didn't specifically ask him this
10 in the many visits at the jail about being bullied, but it
11 appears that he when he was first classified as being
12 special ED other students launched in on him and do what
13 young people do.

14 I think, your Honor, that he is extremely immature.
15 But I do think, and I've had counsel with him and talked to
16 him in jail, despite what the Solicitor's display portrayed
17 in that conversation with his grandmother, I think to me
18 that its clear evidence of his immaturity. While he
19 understands that he was involved in taking another mans
20 life and invading other people's castles in the course of
21 that that evening, he said I accept what I did, I'm
22 responsible for it but I was absolutely out of my mind. I
23 mean I was there but the lights -- You know I was just
24 doing these things that led to the tragic situations that
25 occurred.

1 He's a young man, your Honor, of course as you
2 mentioned to him and I've told him about many times, his
3 conviction for these offenses pursuant to his plea puts him
4 in that no-parole category, and so, he's in a category of
5 circumstance of what many people say doesn't apply often
6 enough and that's truth in sentencing because he will serve
7 pretty much what you give him.

8 For six, seven-hour period of time I can't, I don't
9 know, I can't think of anything else that could have been
10 worse than the events that transpired. I think he's
11 reflected on this. He has told me before that he was, as
12 he told his grandmother in that immature way of talking
13 about tattoos, that he wanted to go ahead and get the rope
14 in a sense if he knew what he did, he knew what he did was
15 wrong, he's not blaming it on the drugs he took; he took
16 those voluntarily, but they had him as many drugs do and
17 many people appear before you, your Honor, in a state where
18 they would probably not be otherwise had they not consumed
19 drugs or that much -- that many and different types of
20 drugs.

21 I think, your Honor, that, and he certainly doesn't
22 expect ten years and I don't know where that came from,
23 I've always told him what the minimum mandatories were as
24 to the offenses that were charged, and I know that he's
25 expecting a significant sentence. But I ask you, your

1 Honor, to consider the fact that he would be protected
2 during the period of his service, and while we don't look
3 at incarceration too much any more as being a bastion of
4 rehabilitation, if he's in for a substantial period of time
5 he is more than likely gonna have to grow up. You know
6 he's gonna have that period of time to reflect each and
7 every day that he's incarcerated and locked up why he's
8 there and what brought him there. And he's gonna have to
9 think about the harm and the woe that he caused to people
10 during this period of time.

11 Your Honor, he wants to speak to you but his step-
12 father Robert Turner and his mother Crystal Turner are here
13 in court today and I'd ask them if they'd like to make a
14 brief remark or two to the Court in support of their son.

15 THE COURT: I'll be glad to hear from either or both
16 of them.

17 A. Yes, sir. My name is Robert Turner. I'm Justen's
18 step-father. And I wouldn't be in here and support him if
19 I thought he did any of this intentionally. You know I'm
20 just not that type of person. He got on drugs and he done
21 a very very bad thing. We can't take that away from them.
22 And I want to apologize to all the victims in the case, you
23 know. He wasn't raised like that and he was taught better.
24 But had he not been on the drugs I don't think a lot of
25 this would a happened. And I just ask you to -- He's gonna

1 do a lot of time we know that. I just ask you to not take
2 his whole life from him because I think he can be a better
3 person.

4 MR. KULP: Thank you.

5 THE COURT: Thank you, Mr. Turner.

6 MR. KULP: Thank you, Robert. And Mr. Wilkes would
7 like to address the court if the Court please, your Honor.

8 THE COURT: Mr. Wilkes, I'll be glad to hear from you.

9 MR. WILKES: Yes, sir. None of it was meant to
10 happen. I didn't break in the house to steal nothing. I
11 went in there to hide. I'd been up for a long time and I
12 did not mean for no one to die. I'm sorry. I apologize, I
13 did not mean for no one to get hurt. I wasn't even -- I
14 wasn't even thinking. I was hearing voices, I was seeing
15 stuff run by that I wasn't actually seeing. I was hearing
16 like whispering and chanting. And I seen something zoom
17 but I didn't see it. I saw it, you know what I'm saying?

18 Excuse me. I didn't physically see it. I'm just
19 apologizing cause I didn't mean to do none of this.

20 THE COURT: Anything else? I'm not trying to cut you
21 off.

22 MR. WILKES: No, sir.

23 MR. KULP: Thank you, your Honor.

24 THE COURT: Thank you. Folks, give me about ten
25 minutes to reflect on all the things that you all have told

1 me. And it's about 12 minutes until 4:00, let's come back
2 at Four o'clock.

3 MR. KULP: Yes, sir, your Honor.

4 THE COURT: We'll be in recess until Four o'clock.

5 SOLICITOR SORENSON: Yes, sir.

6 (COURT IN RECESS AT 03:48 P.M.)

7 (COURT BACK IN SESSION AT 04:07 P.M.)

8 THE COURT: Thank you, folks, you all can be seated.

9 Folks, thank you for your patience. Sentencing is the
10 most difficult thing that judges have to do, and in cases
11 like this, of course for obvious reasons, even more
12 difficult. I'm trying to address tragic losses like this
13 and terrible actions on the part of one person against
14 others, trying to measure those seven or eight hours in Mr.
15 Wilkes life against the rest of his lifetime, and try to
16 decide what addresses both sides of that for that time
17 period; what addresses his youth, his troubled upbringing
18 and his drug usage in comparison to the tragic harm that
19 he's caused.

20 Ironically the crime in this particular case that
21 caused the greatest loss is the crime that carries the
22 least penalty. Felony DUI causing death carries one to
23 twenty-five years in jail; up to twenty-five years in jail.
24 Our General Assembly has decided in its wisdom that the
25 maximum sentence that a court can impose on a drunk driver

1 who kills somebody is twenty-five years.

2 Now of course that in no way is meant to try to place
3 a value on the life of a human being. And nobody should
4 discern from a sentence that a court passes, or from the
5 statute that imposes that sentence, that that sentence is
6 intended to address the value of a human life. Every life
7 is priceless, it cannot be -- for our purposes here in
8 court cannot be measured in years as important.

9 The burglary charges carry up to fifteen years to
10 life. You can get fifteen years for burglary in the first
11 degree. And so, once again the burglary charges, although
12 they are significant, certainly to the Criswell and to the
13 Taylor families and they caused anguish to those families,
14 they don't approach the severity of the loss which Ms.
15 Sigman has described here today. And frankly except for
16 Mr. Wilkes actions following the burglaries he wouldn't be
17 looking at significant time here today. I say its not as
18 significant as it does on all these charges.

19 But you can't ignore those actions that occurred
20 before and after the burglaries or before or after the
21 felony DUI. They are part of the tragic scenario that
22 brings us here today. No sentence can replace the loss of
23 Mr. Sigman's life, or the loss of innocence of the Taylor
24 twins, or the families whose homes were broken into. But
25 at the same time no sentence should ignore the factors

1 confronting Mr. Wilkes. Twenty-two years of age, a
2 troubled childhood, his drug abuse, none of those things
3 forgive or excuse what he has done. They are not defenses
4 to the action. He's pled guilty to those actions
5 notwithstanding those things.

6 But certainly those things can be considered in some
7 way in deciding his punishment. And so that's the
8 difficulty as I've said earlier that confronts a court.
9 How do we address, how do we address the loss on this side
10 of the courtroom and the life on this side of the
11 courtroom? It is not a science at all. It is what we do
12 in confronting and trying to balance those things on either
13 side and come up with a sentence that is the best that we
14 can do as judges in trying to address those opposing
15 factions.

16 I don't expect either side to agree with the sentence
17 that's imposed. Some will feel it's too harsh, some feel
18 not harsh enough, and I understand that. And if I were
19 sitting where you all are sitting on either side of this
20 courtroom I would feel exactly the same way that you feel.
21 I would feel that no sentence is enough to address the loss
22 that I had suffered.

23 Or I would feel that any sentence of any substance at
24 all ignores the other side of my son or grandson or
25 relative who has committed a crime. I understand that. I

-41-

1 simply offer these remarks so that you will understand that
2 it is not an arbitrary matter. It's not as throwing a dart
3 at a board to try to come up with a number. It is simply
4 trying somehow to address all those things that I've told
5 you I need to address in passing a sentence.

6 Mr. Wilkes, if you'll stand please and face the Court.

7 (DEFENDANT STANDS WITH HIS ATTORNEY.)

8 THE COURT: On Indictment No. 1961 charging you with
9 felony driving under the influence resulting in death, you
10 are to be committed to the State Department of Corrections
11 for a period of twenty-five years and pay of fine of
12 Twenty-five Thousand Dollars. This is the base sentence,
13 the sentence against which the remaining sentences will be
14 measured.

15 Sentence No. 1962 charging you with burglary in the
16 first degree of the Taylor house, you are to be committed
17 to the State Department or Corrections for a period of
18 fifteen years. This sentence is concurrent to the
19 sentence, excuse me, its consecutive to the sentence I just
20 imposed and will be concurrent to the sentence that I'm
21 going to impose momentarily. In other words, this sentence
22 is consecutive to the sentence for felony driving under the
23 influence.

24 Indictment 1816 charging burglary in the first degree
25 of the Crystal house the sentence is fifteen years. That

1 sentence is concurrent to all the other sentences imposed
2 this day. You will get credit for the time that you've
3 served. Thank you, folks.

4 MR. KULP: Thank you, your Honor.

5 SOLICITOR SORENSON: Thank you, your Honor.

6 THE COURT: Folks, we'll stand in recess then until
7 9:30 tomorrow morning.

8 (COURT IN EVENING RECESS AT 04:13 P.M.)

9 -- END OF TRANSCRIPT OF RECORD. --

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina

County of York

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Dorchester County, South Carolina, on the 19th day of March, 2018.

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

Wanda S. Nelson
Wanda S. Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/31/2021

DATE: 2/22/2019

Geoffrey R. McKee, PhD, ABPP
Forensic Psychological Services
1728 Main Street, Suite 110
Columbia, SC 29201
(803) 251-3499

Justin Wilkes Summary: 13 January 2018
Timothy Kulp, Esq.

Evaluation: 1/12/18 at Dorchester County Detention Center; 2+ hours, tests as below. Documents review.

Mental Status/History: Alert, oriented, cooperative, coherent; smiles appropriately. No evidence of psychotic symptoms (delusions, hallucinations) though history of suspicion, distrust likely due to unstable childhood and long history of drug dependence. IQ in Average range; Memory intact. Current judgment and reasoning are intact and realistic. Denies current/past suicidal ideation. **History:** Significant instability in early childhood—raised by maternal grandparents until 13; he stated both parents had significant drug dependence: father with cocaine (died before Justin was 5); mother smoked opiates then married man with drug problems. Describes family life in childhood years as “unstable and very violent—mom would scream at me; mom & stepfather had swollen faces from fights.” 10th grade; ADHD & Learning Disabled. Long history of meth & pills. Often homeless with drug-using wife; their child lives with her mother.

Current psychological testing reflecting past and/or recent functioning/patterns

- Information & Orientation Scale:** Near-perfect score: intact long-term memory, orientation.
- Jessness Inventory-Revised (JI-R).** Young adults with similar results display unpredictable, often aggressive behavior & distrust from extensive drug use; recurrent anger/distrust toward parents—felt unloved by family—frequent open conflicts. Aware of own rage, but blames others for problems.
- Personality Assessment Screener (PAS):** Young adults with similar results have long histories of personal/family conflict & angry impulsivity. Distrustful of others; limited understanding of own self.
- Substance Abuse Subtle Screening Inventory—3rd Edition (SASSI-3):** In 6 months preceding offenses, results indicate high likelihood of drug dependence but not alcohol dependence.
- Competency to Stand Trial Assessment Instrument (CAI):** Has a rational and factual understanding of the charges against him; is capable of assisting his attorney. Understands plea bargaining & pre-trial negotiations. “I know I’m going to prison but I hope I’m not too old when I get out.”
- Evaluation of Competency to Stand Trial—Revised Atypical Presentation scale (ECST-R-ATP):** *Not* malingering psychotic or non-psychotic symptoms (anxiety) to delay, avoid appearances in court.
- MSO: Rogers Criminal Responsibility Assessment Scales (R-CRAS):** Did not suffer from severe mental illness/defect (psychosis, bipolar disorder) at time of alleged offenses; impairments due to voluntary meth and Xanax use: he had the capacity to know right from wrong at the time of the alleged offenses (**not** NGR) & to conform his conduct to the requirements of the law (**not** Guilty But Mentally Ill).

DIAGNOSES: 1) Stimulant Use Disorder, Severe; In a controlled environment (jail); 2) History of Attention Deficit Hyperactivity Disorder (ADHD).

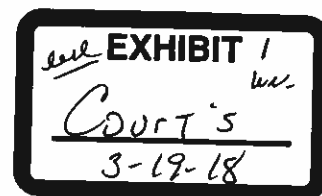
Estimates of parole success (each contingent on maintaining drug abstinence after release):

- Salient Factor Score (SFS; used by US Probation Office):** (Score = 7; 11 best score): Fair to Good.
- SCDPPPS Parole Risk Assessment (PRA):** (Score = 10; 20-41 max: High failure rate) 77% completion success; less than 5% recidivate with new violent offense.

Geoffrey R. McKee PhD

Let me know if you'd like formal report.

Geoffrey R. McKee, PhD, ABPP
 Board-certified in Forensic Psychology
 Clinical Professor, University of South Carolina School of Medicine &
 Clinical Professor, Medical University of South Carolina



WITNESSES

M. D. Bevins

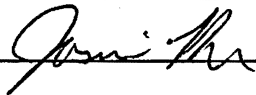
S C Highway Patrol

ARREST WARRANT NUMBER

2016A1810301042

Arrested: October 21, 2016

ACTION OF GRAND JURY



Foreperson of Grand Jury
Date: May 4, 2017

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS18-1961

**The State of South Carolina
County of DORCHESTER**

COURT OF GENERAL SESSIONS

May 8, 2017 TERM

**THE STATE
vs.**

Justen Lee Wilkes

Indictment for

Felony Driving Under the influence,
Death Results

SC Code: 56-5-2945(A)

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

Defendant

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

Defendant

Witness:

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

FILED - RECORDED
2017 MAY -4 PM 2:47
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

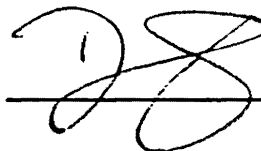
INDICTMENT
2016GS18-1961

As a Court of General Sessions, convened on May 4, 2017 the Grand Jurors of DORCHESTER County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE, DEATH RESULTS

That in Dorchester County, South Carolina, on or about October 20, 2016, the Defendant, Justen Lee Wilkes, while driving a vehicle under the influence of alcohol, drugs, or a combination thereof, did perform an act forbidden by law or did neglect a duty imposed by law while driving, which act or neglect proximately caused the death of William Sigman. This offense being a violation of Section 56-5-2945, of the South Carolina Code of Laws, as amended.

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

A handwritten signature in black ink, appearing to be 'DS', written over a horizontal line.

Donald N. Sorenson, Solicitor

COUNTY OF Dorchester
STATE VS.
Justen Lee Wilkes

AKA:

Race: WHITE Sex: M Age: 22DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Summerville, SC 29483DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Felony Driving Under the influence, Death ResultsINDICTMENT/CASE#: 2016GS18-1961A/W#: 2016A1810301042Date of Offense: 10/20/2016S.C. Code § : 56-5-2945(A)CDR Code #: 0395

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 56-5-2945(A)(a) of the S.C. Code of Laws, bearing CDR Code # 0395☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sorenson, Donald N.9512
SC Bar#Justen Lee Wilkes
DefendantImmon, Clay Kuyf
Attorney for Defendant3578
SC Bar#WHEREFORE, (the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 75 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$ 25,000.00; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 3/19/18 (This is Release Sentence)☒ 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. #1962 is consecutive to this sentence, #1816 is 600 consecutive☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$25,000.00§ 14-1-211(A)(1) (Conv. Surcharge) \$26,875.00§ 14-1-211(A)(2) (DUI Surcharge) \$100.00§ 56-5-2995 (DUI Assessment) \$12§ 56-1-286 (DUI Breath Test) \$25Proviso 61.6 (Public Def/Probation) \$500§ 14-1-212 (Law Enforce. Funding) \$25§ 14-1-213 (Drug Court Surcharge) \$150§ 50-21-114(BUI Breath Test Fee) \$50§ 56-5-2942(J) (Vehicle Assessment) \$40/ea3% to County (if paid in installments) \$1561.11TOTAL \$53,598.11Clerk of Court/ Deputy Clerk: Cheryl GrahamCourt Reporter: Wanda Nelson

SCCA/217 (07/2016)

Presiding Judge Theresa L. [Signature]Judge Code: 254Sentence Date: 3/19/18

WITNESSES

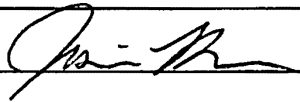
Christopher Hirsch

Summerville Police Department
16-095245

ARREST WARRANT NUMBER
2016A1820500930

Arrested: October 21, 2016

ACTION OF GRAND JURY



Foreperson of Grand Jury
Date: May 4, 2017

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS18-1962

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

May 8, 2017 TERM

THE STATE
vs.

Justen Lee Wilkes

Indictment for
Burglary - First Degree

SC Code: 16-11-311

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

Defendant

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

Defendant

Witness:

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

FILED - RECORDED
2017 MAY -4 PM 2:56
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INDICTMENT

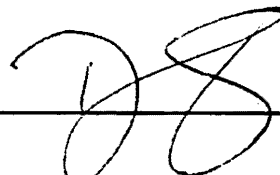
2016GS18-1962

As a Court of General Sessions, convened on May 4, 2017 the Grand Jurors of DORCHESTER County present upon their oath:

BURGLARY - FIRST DEGREE

That in Dorchester County, South Carolina, on or about October 20, 2016, the Defendant, Justen Lee Wilkes, did willfully and unlawfully enter the dwelling of Edward Taylor, without consent and with the intent to commit a crime therein and the entering or remaining occurs in the nighttime. This offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

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

A handwritten signature in black ink, appearing to be 'DS', is written over a horizontal line.

Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

13 yr - 1 m

COUNTY OF
STATE

Dorchester

VS.

Justen Lee Wilkes

AKA:

Race: WHITE Sex: M Age: 22

DOB: SS#

Address:

City, State, Zip: Summerville, SC 29483

DL#: SID#:

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

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

TO: Burglary - First Degree

INDICTMENT/CASE#: 2016GS18-1962

A/W#: 2016A1820500930

Date of Offense: 10/20/2016

S.C. Code § : 16-11-311

CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: 9512 SC Bar# Defendant Attorney for Defendant SC Bar#
Sorenson, Donald N. *James Clay Kupp* 3578WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 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: ~~§ 16-11-311~~ * Concurrent to § 16-11-311☒ 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.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

3/19/18

TRW/0334625
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2016-031727

ARREST WARRANT NUMBER

2016A1021000928

DATE OF ARREST

09/15/2017

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-10-01816

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

MARCH TERM 2018

THE STATE

VS.

JUSTEN LEE WILKES

W/M DOB: [REDACTED]

Indictment for

BURGLARY FIRST DEGREE

SC Code: § 16-11-0311

CDR Code: 0079

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

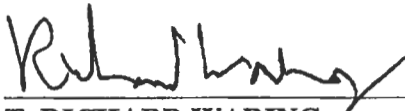
INDICTMENT

At a Court of General Sessions, convened March 2018, the Grand Jurors of Charleston County present upon their oath:

BURGLARY FIRST DEGREE

That in Charleston County, South Carolina on or about October 19, 2016 to October 20, 2016, the Defendant Justen Lee Wilkes, did enter the dwelling of Danyell Criswell without consent and with the intent to commit a crime therein. That, in addition, said entry or remaining occurred in the nighttime; in violation of § 16-11-311 of the 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.


T. RICHARD WARING
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

JUSTEN LEE WILKES

AKA: Justen L. Wilkes

Race: White Non-Latino/Caucasian

Sex: M

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Sumner Avenue Apt A

City, State, Zip: North Charleston, SC 29406-3866

DL# [REDACTED] SID# SC02076553

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

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

☐ CONVICTED OF or

☒ PLEADS

TO: Burglary First Degree

In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS

☐ Mandatory GPS

(CSC w/minor 1st or Lewd Act)

☐ §17-25-45

The charge is: ☐ As indicted, ☐ Lesser Included Offense,

☒ Defendant Waives Presentment to Grand Jury.

(J.W.) (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence,

☒ Recommendation by the State.

ATTEST:

T. Richard Waring 100465
T. Richard Waring, Assistant Solicitor SC Bar #

[Signature]
Defendant

Jonathan Clay Kops 3578
Attorney for Defendant SC Bar #

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

for a determinate term of 15 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 3/19/18 (41961 + # 1962)

☒ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION:

☐ Deferred

☐ Def. Waives Hearing

☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

 days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

Recipient:

*Fine: \$

§14-1-206 (Assessments 107.5%) \$

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$

§56-5-2995 (DUI Assessment) \$12 \$

§56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Prob) \$500 \$

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$

§50-21-114 (BUI Breath Test Fee) \$50 \$

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: Cheryl Anderson

Court Reporter: Wanda Nelson

Presiding Judge: [Signature]

Judge Code: 054

Sentence Date: 3/19/18

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

JUSTEN LEE WILKES, #00375739

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2019-CP-18-

64

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention: Lieber Correctional Institution
2. Name and location of Court which imposed sentence: Dorchester County Court of General Session, 5200 East Jim Bilton Blvd, St. George, SC 29477
3. Name(s) of co-defendant(s) (if any): N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) burglary 1st degree, 2016GS1801962
 - (b) felony DUI - death results, 2016GS1801961

CERTIFIED COPY

2019 JAN 11 PM 3:41

CLERK OF COURT
DORCHESTER COUNTY

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 03/19/2018; 15 years
- (b) 03/19/2018; 25 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty: Yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? No.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered no to (7), state your reasons for not so appealing:
- (a) Applicant was not advised on his right to direct appeal or on commencing the appeal process for an appeal from a guilty plea
- (b) _____

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) The grounds alleged herein are cognizable only for post-conviction relief
 - (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? N/A
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered yes to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Timothy C. Kulp; 116 Church Street, 3rd Floor Charleston, SC 29401
 - (b) the proceedings at which each such attorney represented you:
 - i. pretrial, plea, and sentencing

19. State clearly the relief you seek in filing this application: new trial or resentencing
20. Are you now under sentence from any other court that you have not challenged?
21. burglary 1st degree; Charleston County; 2018GS1001816

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

Charles E. Wilkes
CLERK OF COURT
DORCHESTER COUNTY

2019 JAN 11 PM 3:11

CERTIFIED COPY

Laurie C. Hobbs

I, Justen Lee Wilkes, 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.

Laurie C. Hobbs

as counsel for Applicant

William G. Yarborough III, Attorney at Law
#103190

SWORN to and subscribed before me this 8th
day of January, 2019.

[Signature] (L.S.)
Notary Public

My Commission Expires: 06-08-2022



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

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

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

Applicant

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

Notary Public

My Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Justen Lee Wilkes, #00375739
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2019-CP-18-64

**ATTACHMENT TO APPLICATION
FOR POST-CONVICTION RELIEF**

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

- (a) Ineffective assistance of counsel pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984).

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

- (a) Counsel failed to adequately review discovery with Applicant and advise him accordingly; failed to explain the nature of the charges and implications of any potential sentence to Applicant; failed to adequately explain the plea agreement's terms and its advantages and disadvantages to Applicant; and failed to explain the implications and consequences of his guilty plea. Each error not only impacted Applicant's decision as to whether to plead guilty or proceed to trial, but also rendered his guilty plea not knowingly, intelligently, or voluntarily entered.
- (b) Counsel failed to investigate evidence, witnesses, potential defenses, potential dispositive pre-trial motions. But for these errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.

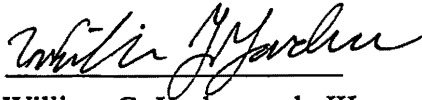
CLERK OF COURT
DORCHESTER COUNTY

2019 JAN 11 PM 3:14

CERTIFIED COPY

- (c) Counsel failed to adequately investigate mitigating circumstances relevant to sentencing, and consequently failed to adequately present these mitigating circumstances to the court during sentencing.

Respectfully submitted,



William G. Yarborough, III
Attorney for the Applicant
522 N. Church St. Greenville, SC 29601
(864) 331-1612
SC Bar No.: 10271

Greenville, SC
January 8, 2019

Greenville, SC
January 8, 2019

2019-CP-18- 64**CERTIFICATE OF SERVICE**

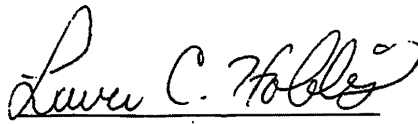
The undersigned hereby certifies that one (1) original post-conviction relief application and attachment were filed with the Dorchester Court of Common Pleas, this day, the 8th of January, 2019, through the United States mail with sufficient postage attached addressed to:

The Honorable Julie J. Cheryl Graham Clerk of Court
Dorchester County Clerk of Court's Office
5200 E. Jim Bilton Blvd.
St. George, South Carolina 29477

The undersigned further certifies that one (1) true copy of the post-conviction relief application and attachment were served upon the Respondent this day, the 8th of January, 2019, through the United States mail with sufficient postage attached addressed to:

Senior Assistant Deputy Attorney General Megan Harrigan Jameson
South Carolina Attorney General's Office
PCR Division
Post Office Box 11549
Columbia, South Carolina 29211

This 8th day of January, 2019



Lauren C. Hobbis, SC Bar #103190
William G. Yarborough III, Attorney at Law, LLC

Julie J. Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

2019 JAN 11 PM 3:44

CERTIFIED COPY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Justen Lee Wilkes, SCDC #375739,)

Case No.: 2019-CP-18-0064

Applicant,)

v.)

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

State of South Carolina,)

Respondent.)

FILED-RECORDED

12-04-2020
Cheryl Graham
Clerk of Court
Dorchester County

Respondent, making its Return to the application for post-conviction relief filed by Justen Lee Wilkes (Applicant) on January 11, 2019, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court and the Dorchester County Clerk of Court. During its May 2017 term, the Dorchester County Grand Jury indicted Applicant for one count felony driving under the influence (DUI), resulting in death (2016-GS-18-1961), and one count of first-degree burglary (2016-GS-18-1962). Applicant waived presentment to the Charleston County Grand Jury for one count of first-degree burglary under indictment 2018-GS-10-1816.¹ Timothy C. Kulp, Esquire, represented Applicant. Assistant Solicitor Donald Sorenson prosecuted the case. On March 19, 2018, Applicant appeared before the Honorable Thomas W.

¹ Applicant simultaneously filed a PCR action in Charleston County (2019-CP-10-00156) that is identical to this application. As discussed below, Respondent moves to merge these two applications into one single action for post-conviction relief.

Cooper and pleaded guilty as indicted to felony DUI resulting in death and two counts of first-degree burglary.²

Judge Cooper sentenced Applicant to a term of imprisonment of twenty-five years for felony DUI resulting in death and fifteen years for each count of first-degree burglary. Judge Cooper ordered the burglary sentences to be served concurrently to each other, but consecutively to the sentence for felony DUI, resulting in an aggregate sentence of forty years. Applicant did not appeal his plea or sentence.

Attached to this Return and incorporated herein are the records of the Charleston and Dorchester County Clerks of Court regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. FACTUAL HISTORY

The three charges resulted from a crime spree that occurred during a five-to-six hour period across Charleston and Dorchester Counties. Tr. pp. 13-14. Danywell Criswell and her roommate, Dave Wise, discovered their apartment had been broken into sometime between midnight and 5:00 a.m. on October 20, 2016. Tr. p. 14. Criswell reported approximately \$150 in cash and a black Ford Fusion belonging to Wise's mother had been stolen from their residence. Tr. p. 14.

Responding officers located a gray backpack on the ground below the apartment balcony and found a uniform traffic ticket issued to Applicant six days earlier for driving under the influence. Tr. pp. 14-15. During the course of the investigation, officers learned the Summerville

² At the plea proceeding, Applicant waived venue on indictment 2018-GS-10-1816 in order to resolve all three pending charges at the same time before Judge Cooper in Dorchester County. Applicant also waived presentment of the Charleston County charge to the grand jury. Tr. pp. 9-11.

Police Department had responded to a call about an overturned vehicle in Summerville at approximately 3:41 a.m. Tr. p. 15. The vehicle, which was abandoned by the time officers arrived, turned out to be the stolen black Ford Fusion. Tr. p. 15. Officers searched the vehicle and discovered Applicant's wallet with his driver's license and \$86 in cash. Tr. p. 16. In a yard nearby, officers also discovered credit cards belonging to Wise. Tr. p. 16.

Applicant burglarized the resident where the cards were found, making entry through a kitchen window around 4:20 a.m., while the homeowner, Edward Taylor; Taylor's wife and his young children; and a family friend were all asleep inside. Tr. pp. 16-17. Applicant was caught on security cameras in the home going through Taylor's wallet and ultimately leaving with a truck key and Taylor's Ford F250 pickup truck around 5:12 a.m. Tr. p. 17.

At 5:31 a.m., Deputy Mooney with the Dorchester County Sheriff's was conducting routine traffic surveillance and clocked Applicant in the pickup truck doing 66 mph in a 45 mph zone. Tr. p. 18. Mooney attempted to pull the truck over, but Applicant fled, accelerating even faster. Tr. p. 18. Mooney gave up the chase but continued driving in the direction the truck had gone and came upon a four-car accident shortly thereafter at the intersection of Dorchester Road and US 17. Tr. pp. 18-19. Applicant bailed out of the truck and fled before Mooney arrived. Tr. pp. 20. William Sigman was killed as a result of the accident. Tr. pp. 20.

Officers responded to both the crash scene and the Taylor home. While at the Taylor home, they found the discarded credit cards from Wise's wallet and matched Applicant's driver's license from the wrecked Ford Fusion to the person seen on the Taylor's home surveillance footage. Tr. pp. 21. Applicant was ultimately apprehended on Central Avenue in Summerville around two hours later. Tr. p. 21. Applicant admitted being under the influence of Xanax, and his toxicology reported also indicated metabolites of methamphetamine in Applicant's system. Tr. p. 22.

III. CURRENT ALLEGATIONS

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

1. Ineffective assistance of counsel

- a. Counsel failed to adequately review discovery with Applicant and advise him accordingly; failed to explain the nature of the charges and implications of any potential sentence to Applicant; failed to adequately explain the plea agreement's terms and its advantages and disadvantages to Applicant; and failed to explain the implications and consequences of his guilty plea. Each error not only impacted Applicant's decision as to whether to plead guilty or proceed to trial, but also rendered his guilty plea not knowingly, intelligently, or voluntarily entered.
- b. Counsel failed to investigate evidence, witnesses, potential defenses, potential dispositive pre-trial motions. But for these error, Applicant would not have pleaded guilty and instead would have proceeded to trial.
- c. Counsel failed to investigate mitigating circumstances relevant to sentencing, and consequently failed to adequately present these mitigating circumstances to the court during sentencing.

As to why Applicant did not file a direct appeal, he states "he was not advised on his right to direct appeal or on commencing the appeal process for an appeal from a guilty plea."

IV. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his 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, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just

result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced 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 117-18, 386 S.E.2d at 625.

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, 466 U.S. at 691. Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, a decision by counsel not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[C]ounsel’s conversations with the

defendant may be critical to a proper assessment of counsel's investigation decisions....” Strickland, 466 U.S. at 691. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. 474 U.S. 52 (1985); cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372.

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

Respondent submits Applicant can satisfy neither 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, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. MOTION FOR MORE DEFINITE STATEMENT

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth sufficient facts to "support each ground" or to explain with any specificity the facts upon which his claims are based, particularly with respect to counsel's alleged failure to investigate.

The Uniform Post-Conviction Procedure Act requires Applicant to “*specifically* set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (emphasis added). Respondent seeks for a more definite statement as the alleged witnesses, potential defenses and potential dispositive pre-trial motions; and the mitigating circumstances counsel allegedly failed to present to the court at sentencing.

Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI. MOTION TO MERGE APPLICANT’S CHARLESTON COUNTY PCR ACTION (2019-CP-10-00156) INTO THIS ACTION (2019-CP-18-0064)

Respondent moves to merge this application with the identical application Applicant has filed in Charleston County challenging these same convictions and sentences (2019-CP-10-00156). Both applications were filed the same day by the same counsel of record, William G. Yarborough, III, Esquire, challenge the same convictions, and make identical allegations.

Since an applicant is not generally permitted to have multiple post-conviction relief proceedings in regards to the same convictions, Respondent hereby moves to have the two proceedings merged, with the Charleston application (2019-CP-10-00156) being merged into this application (2019-CP-18-064). See Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90. Respondent has conferred with counsel for Applicant, who consented to this motion in the interest of judicial economy.

VII. FUTURE AMENDMENTS AND DISCOVERY

Additionally, Applicant must specify all claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11(a), SCRCP. *Pro se* filings will not be considered at the PCR hearing. State v. Devore, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel); Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative continue the matter to permit adequate time to investigate and address the claims. See Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases... we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); see also Rules 15(a)-(b), SCRCP (explaining how to amend a pleading).

Pursuant to section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials

unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent, pursuant to Love as discussed above.

VIII. DENIAL OF ALL OTHER ALLEGATIONS

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

IX. REQUEST FOR AN EVIDENTIARY HEARING

WHEREFORE, having made its Return, Respondent requests Applicant's Charleston County application (2019-CP-10-00156) be merged into this application and an evidentiary hearing be held on the allegations of ineffective assistance of counsel. Respondent further requests that Applicant, through his counsel, amend the application to provide the required specificity for the aforementioned ineffective assistance of counsel claims that were not sufficiently identified.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Deputy Attorney General

By: s/ Lindsey A. McCallister
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
Telephone: (803) 7334-3737

December 1, 2020

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Justen L. Wilkes, #375739

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2019-CP-18-0064

Affidavit of Service by Mail

FILED-RECORDED

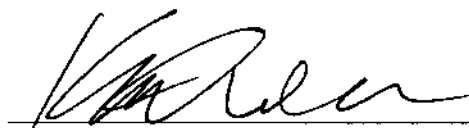
12-04-2020

Cheryl Graham
Clerk of Court
Dorchester County

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

William G. Yarborough, III, Esquire
William G. Yarborough III, Attorney at Law, LLC
522 North Church Street
Greenville, SC 29601

DATED this 2nd day of December, 2020.



Katie Wade, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

Case No. 2019-CP-18064

Justen Wilkes # 375739,

Applicant.

v.

State of South Carolina,

Respondent.

FILED-RECORDED

1-11-2021

Cheryl Graham
Clerk of Court
Dorchester County

**RESPONSE TO RESPONDENT'S RETURN
AND MOTION FOR MORE DEFINITE
STATEMENT WITH INCORPORATED
AMENDED/ SUPPLEMENTAL PCR
ALLEGATIONS AND MOTION TO INVOKE
DISCOVERY**

NOW COMES the Applicant, Justen Wilkes, by and through counsel of record, and hereby respectfully submits this Response to the Respondent's Return and Motion for More Definite Statement. In response to the State's Motion, Applicant raises PCR allegations to supplement his previously filed allegations. Applicant also moves for leave to engage in discovery pursuant to S.C. Code Ann. § 17-27-150 (A) and submits his consent to the Respondent's Motion for Merger.

I. APPLICANT'S AMENDED/SUPPLEMENTAL GROUNDS FOR POST-CONVICTION RELIEF.

On January 11, 2019, Applicant filed a PCR application in both Dorchester and Charleston County raising the following grounds for relief:

10. Ineffective assistance of counsel pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984)
 - (a) Counsel failed to adequately review discovery with Applicant and advise him accordingly; failed to explain the nature of the charges and implications of any potential sentence to Applicant; failed to adequately explain of any plea agreement's terms and advantages and disadvantages to Applicant; and failed to explain the implications and consequences of his guilty plea. Each error not only impacted Applicant's decision as to whether to plead guilty or proceed to trial, but also rendered his guilty plea not knowingly, intelligently, or voluntarily entered.

- (b) Counsel failed to investigate evidence, witnesses, potential defenses, and potential dispositive pre-trial motions. But for these errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.

In Respondent's Return and Motion for a More Definite Statement, Respondent urges this Court to order Applicant to plead, in particular, the failure to investigate allegation with more specificity or decline to consider the allegation upon evidentiary review.

Applicant now seeks leave from this Court to amend and supplement the PCR allegations previously raised and submits the following additional allegations:

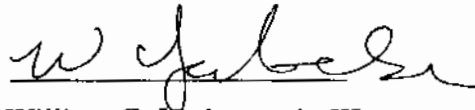
- I. Counsel was ineffective for failing to investigate possible defenses and legal theories available to the Applicant in regard to the felony DUI resulting in a death charge and advise him accordingly. Consequently, Counsel was also ineffective for advising Applicant to plead guilty rather than proceed to trial. But for Counsel's errors, Applicant would not have pleaded guilty and instead proceeded to trial. Specifically, the felony DUI charge was founded on the basis of urine and blood tests taken after Applicant was apprehended by law enforcement the following morning, hours after the collision. There is an absence of any evidence accounting for Applicant's activities or whereabouts in the interim. The State's evidence fails to exclude Applicant from becoming intoxicated after the collision occurred. Yet the State also maintained that Applicant had ingested the relevant intoxicants the day prior to the accident, which also lends itself to a defense and theory that the State was unable to prove intoxication at the time of the collision.
- II. Counsel was ineffective for advising Applicant prior to pleading guilty that he would receive 10 years - 15 years. Counsel was also ineffective for insufficiently advising Applicant prior to his guilty plea regarding the sentencing judge's discretion to impose a higher relative sentence, as well as the discretion to order the sentences to run consecutively.
- III. Counsel was ineffective for failing to object / correct misstatements of law at Applicant's plea and sentencing hearing.
- IV. Counsel was ineffective for presenting aggravating circumstances at sentencing that cut against mitigation and even bolstered the State's position.

II. INCORPORATED MOTION TO INVOKE DISCOVERY

The Applicant seeks leave to engage in the formal discovery processes available under the South Carolina Rules of Civil Procedure pursuant to S.C. Code Ann. § 17-27-150 (A). Specifically, Applicant seeks to obtain copies of, or the opportunity to review, the State's discovery stemming from all charges that was disclosed to Counsel in the course of his representation of Applicant.

The requested documents are material to Applicant's PCR allegations. Therefore, there is good cause to grant leave to obtain discovery in this case.

Respectfully submitted,



William G. Yarborough, III
Attorney for the Applicant
308 W. Stone Ave.,
Greenville, SC 29609
(864) 331-1612
SC Bar No.: 10271

January 7, 2021
Greenville, SC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Applicant's Response to Respondent's Return and Motion for Definite Statement and Incorporated Motions filed on behalf of Justen Wilkes in *Justen Wilkes v. State of South Carolina* (2019-CP-18064) respectively, was served upon the Respondent this 7 day of January 2021 by depositing it in the U.S. postal mail with sufficient postage attached, addressed to:

Assistant Deputy Attorney General Lindsey A. McCallister
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Chief Administrative Judge Maite' Murphy
5200 E. Jim Bilton Blvd.
PO Box 802
St. George, SC 29477

This 7 day of January 2021.

FILED-RECORDED

1-11-2021 pgs
Cheryl Graham
Clerk of Court
Dorchester County


William G. Yarborough III, Attorney at Law, LLC

FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

2019-CP-10-156

JUSTEN LEE WILKES, #00375739

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2019 JAN 11 PM 3:17
 CLERK OF COURT
 JUDGE J. J. LEE

INSTRUCTIONS – READ CAREFULLY

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

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

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

1. Place of detention: Lieber Correctional Institution
2. Name and location of Court which imposed sentence: Charleston County Court of General Sessions, 100 Broad St, Charleston, SC 29401
3. Name(s) of co-defendant(s) (if any): N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Burglary, 1st degree 2018GS1001816

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 03/19/2018; 15 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty: Yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? No
8. If you answered yes to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered no to (7), state your reasons for not so appealing:
- (a) Applicant was not advised on his right to direct appeal or on commencing the appeal process for an appeal from a guilty plea
- (b) _____

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) The grounds alleged are cognizable only for post-conviction relief
 - (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? N/A
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered yes to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Timothy C. Kulp; 116 Church Street, 3rd Floor Charleston, SC 29401
 - (b) the proceedings at which each such attorney represented you: i. pretrial, plea, and sentencing

19. State clearly the relief you seek in filing this application: vacate conviction and sentence and new trial or in the alternative, resentencing
20. Are you now under sentence from any other court that you have not challenged?
 - i. burglary 1st degree; Dorchester County; 2016GS1801962
 - ii. felony DUI death results; Dorchester County; 2016GS1801961

STATE OF SOUTH CAROLINA

County of Charleston

VERIFICATION

Laurie C. Hobbs
 I, ~~Justin Lee Wilkes~~, 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.

Laurie C. Hobbs

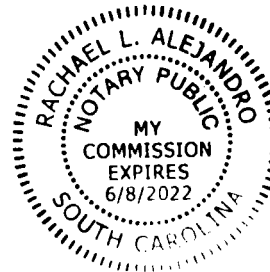
as counsel for Applicant

William G. Farberay III, Attorney at Law
 #103110

SWORN to and subscribed before me this 8th
 day of January, 2019.

[Signature] (L.S.)
 Notary Public

My Commission Expires: 06-08-2022



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

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

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

Applicant

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

Notary Public

My Commission Expires: _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2019-CP-D-156

Justen Lee Wilkes, # 00375739)
Applicant,)

v.)

**ATTACHMENT TO APPLICATION
FOR POST-CONVICTION RELIEF**

State of South Carolina,)
Respondent.)

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

- (a) Ineffective assistance of counsel pursuant to *Strickland v. Washington*, 466 US 668 (1984).

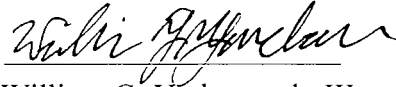
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel failed to adequately review discovery with Applicant and advise him accordingly; failed to explain the nature of the charges and implications of any potential sentence to Applicant; failed to adequately explain the plea agreement's terms and its advantages and disadvantages to Applicant; and failed to explain the implications and consequences of his guilty plea. Each error not only impacted Applicant's decision as to whether to plead guilty or proceed to trial, but also rendered his guilty plea not knowingly, intelligently, or voluntarily entered.
- (b) Counsel failed to investigate evidence, witnesses, potential defenses, potential dispositive pre-trial motions. But for these errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.

2019 JAN 11 PM 3:17
CLERK OF COURT

- (c) Counsel failed to adequately investigate mitigating circumstances relevant to sentencing, and consequently failed to adequately present these mitigating circumstances to the court during sentencing.

Respectfully submitted,



William G. Yarborough, III
Attorney for the Applicant
522 N. Church St. Greenville, SC 29601
(864) 331-1612
SC Bar No.: 10271

Greenville, SC
January 8, 2019

Greenville, SC
January 8, 2019

CERTIFICATE OF SERVICE

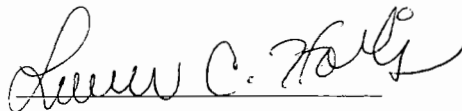
The undersigned hereby certifies that one (1) original post-conviction relief application and attachment were filed with the Charleston Court of Common Pleas, this day, the 8th of January, 2019, through the United States mail with sufficient postage attached addressed to:

The Honorable Julie J. Armstrong, Clerk of Court
Charleston County Clerk of Court's Office
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

The undersigned further certifies that one (1) true copy of the post-conviction relief application and attachment was served upon the Respondent this day, the 8th of January, 2019, through the United States mail with sufficient postage attached addressed to:

Senior Assistant Deputy Attorney General Megan Harrigan Jameson
South Carolina Attorney General's Office
PCR Division
Post Office Box 11549
Columbia, South Carolina 29211

This 8th day of January, 2019



Lauren C. Hobbis, SC Bar #103190
William G. Yarborough III, Attorney at Law, LLC

FILED
2019 JAN 11 PM 3:17
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Justin Lee Wilkes, #375739

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: ~~2018~~-CP-10-156

2019

RETURN

FILED
2019 MAR 14 PM 1:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY CS

The State (Respondent), making its Return to the application for Post-Conviction Relief ("PCR") filed on January 11, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant waived presentment to the Charleston Grand Jury for first degree burglary (2018-GS-10-1816) in March 2018. Timothy Kulp, Esquire represented the Applicant. Assistant Solicitor T. Richard Waring, Esquire prosecuted the case. On March 19, 2018, Applicant pleaded guilty as indicted before the Honorable Charles Cooper. Pursuant to a recommended sentence, Judge Cooper sentenced Applicant to imprisonment for 15 years. Applicant did not appeal his conviction or sentence.

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Current Application

In his application for post-conviction relief, Applicant alleges that he is being held in

custody unlawfully for the following reasons:

1. “Ineffective assistance of counsel pursuant to *Strickland v. Washington*, 466 US 668 (1984). “
2. “Counsel failed to adequately review discovery with Applicant and advise him accordingly; failed to explain the nature of the charges and implications of any potential sentence to Applicant; failed to adequately explain the plea agreement's terms and its advantages and disadvantages to Applicant; and failed to explain the implications and consequences of his guilty plea. Each error not only impacted Applicant's decision as to whether to plead guilty or proceed to trial, but also rendered his guilty plea not knowingly, intelligently, or voluntarily entered.”
3. “Counsel failed to investigate evidence, witnesses, potential defenses, potential dispositive pre-trial motions. But for these errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.”

III. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his 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, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance

and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither 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, 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. Failure to Investigate

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent **634 investigation of the facts and circumstances of the case.” Ard v. Catoe, 372

S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). “[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions....” Strickland, 466 U.S. at 691, 104 S.Ct. 2052. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.” Id. at 690, 104 S.Ct. 2052. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014). Respondent submits that Applicant cannot meet his burden in regards to any claims that counsel was ineffective for failure to investigate.

V. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VI. Response to Any and All Other Allegations

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

VII. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

By: Benjamin Limbaugh
ATTORNEYS FOR RESPONDENT

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

March 12, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

JUSTEN L. WILKES, #375739)

Case No.: 2019-CP-10-156

Applicant,)

v.)

Affidavit of Service)

State of South Carolina)

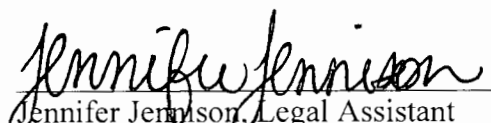
Respondent,)
_____)

FILED
2019 MAR 14 PM 1:32
JULIE J. ARMSTRONG
CLERK OF COURT
SB

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

William G. Yarborough, III, Esquire
William G. Yarborough III, Attorney at Law, LLC
522 North Church Street
Greenville, SC 29601

DATED this 12th day of March, 2019.


Jennifer Jernison, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Justin Lee Wilkes, #375739,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2019

Case No.: ~~2018~~ CP-10-00156

**AMENDED RETURN AND
MOTION FOR MERGER**

2020 DEC -4 PM 12:18
CLERK OF COURT

FILED

The State (Respondent), making its Amended Return to the application for post-conviction relief (PCR) filed on January 11, 2019, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court and the Dorchester County Clerk of Court. During its May 2017 term, the Dorchester County Grand Jury indicted Applicant for one count felony driving under the influence (DUI), resulting in death (2016-GS-18-1961), and one count of first-degree burglary (2016-GS-18-1962). Applicant waived presentment to the Charleston County Grand Jury for one count of first-degree burglary under indictment 2018-GS-10-1816.¹ Timothy C. Kulp, Esquire, represented Applicant. Assistant Solicitor Donald Sorenson prosecuted the case. On March 19, 2018, Applicant appeared before the Honorable Thomas W.

¹ Applicant simultaneously filed a PCR action in Dorchester County (2019-CP-10-0064) that is identical to this application. As discussed below, Respondent moves to merge these two applications into one single action for post-conviction relief.

Cooper and pleaded guilty as indicted to felony DUI resulting in death and two counts of first-degree burglary.²

Judge Cooper sentenced Applicant to a term of imprisonment of twenty-five years for felony DUI resulting in death and fifteen years for each count of first-degree burglary. Judge Cooper ordered the burglary sentences to be served concurrently to each other, but consecutively to the sentence for felony DUI, resulting in an aggregate sentence of forty years. Applicant did not appeal his plea or sentence.

Attached to this Return and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. FACTUAL HISTORY

The three charges resulted from a crime spree that occurred during a five-to-six hour period across Charleston and Dorchester Counties. Tr. pp. 13-14. Danywell Criswell and her roommate, Dave Wise, discovered their apartment had been broken into sometime between midnight and 5:00 a.m. on October 20, 2016. Tr. p. 14. Criswell reported approximately \$150 in cash and a black Ford Fusion belonging to Wise's mother had been stolen from their residence. Tr. p. 14.

Responding officers located a gray backpack on the ground below the apartment balcony and found a uniform traffic ticket issued to Applicant six days earlier for driving under the influence. Tr. pp. 14-15. During the course of the investigation, officers learned the Summerville Police Department had responded to a call about an overturned vehicle in Summerville at

² At the plea proceeding, Applicant waived venue on indictment 2018-GS-10-1816 in order to resolve all three pending charges at the same time before Judge Cooper in Dorchester County. Applicant also waived presentment of the Charleston County charge to the grand jury. Tr. pp. 9-11.

approximately 3:41 a.m. Tr. p. 15. The vehicle, which was abandoned by the time officers arrived, turned out to be the stolen black Ford Fusion. Tr. p. 15. Officers searched the vehicle and discovered Applicant's wallet with his driver's license and \$86 in cash. Tr. p. 16. In a yard nearby, officers also discovered credit cards belonging to Wise. Tr. p. 16.

Applicant burglarized the resident where the cards were found, making entry through a kitchen window around 4:20 a.m., while the homeowner, Edward Taylor; Taylor's wife and his young children; and a family friend were all asleep inside. Tr. pp. 16-17. Applicant was caught on security cameras in the home going through Taylor's wallet and ultimately leaving with a truck key and Taylor's Ford F250 pickup truck around 5:12 a.m. Tr. p. 17.

At 5:31 a.m., Deputy Mooney with the Dorchester County Sheriff's was conducting routine traffic surveillance and clocked Applicant in the pickup truck doing 66 mph in a 45 mph zone. Tr. p. 18. Mooney attempted to pull the truck over, but Applicant fled, accelerating even faster. Tr. p. 18. Mooney gave up the chase but continued driving in the direction the truck had gone and came upon a four-car accident shortly thereafter at the intersection of Dorchester Road and US 17. Tr. pp. 18-19. Applicant bailed out of the truck and fled before Mooney arrived. Tr. pp. 20. William Sigman was killed as a result of the accident. Tr. pp. 20.

Officers responded to both the crash scene and the Taylor home. While at the Taylor home, they found the discarded credit cards from Wise's wallet and matched Applicant's driver's license from the wrecked Ford Fusion to the person seen on the Taylor's home surveillance footage. Tr. pp. 21. Applicant was ultimately apprehended on Central Avenue in Summerville around two hours later. Tr. p. 21. Applicant admitted being under the influence of Xanax, and his toxicology reported also indicated metabolites of methamphetamine in Applicant's system. Tr. p. 22.

III. CURRENT ALLEGATIONS

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

1. Ineffective assistance of counsel

- a. Counsel failed to adequately review discovery with Applicant and advise him accordingly; failed to explain the nature of the charges and implications of any potential sentence to Applicant; failed to adequately explain the plea agreement's terms and its advantages and disadvantages to Applicant; and failed to explain the implications and consequences of his guilty plea. Each error not only impacted Applicant's decision as to whether to plead guilty or proceed to trial, but also rendered his guilty plea not knowingly, intelligently, or voluntarily entered.
- b. Counsel failed to investigate evidence, witnesses, potential defenses, potential dispositive pre-trial motions. But for these error, Applicant would not have pleaded guilty and instead would have proceeded to trial.
- c. Counsel failed to investigate mitigating circumstances relevant to sentencing, and consequently failed to adequately present these mitigating circumstances to the court during sentencing.

As to why Applicant did not file a direct appeal, he states "he was not advised on his right to direct appeal or on commencing the appeal process for an appeal from a guilty plea."

IV. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his 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, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove counsel's performance

was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced 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 117-18, 386 S.E.2d at 625.

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, 466 U.S. at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, a decision by counsel not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions...." Strickland, 466 U.S. at 691. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. 474 U.S. 52 (1985); cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372.

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s

deficiencies.” Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

Respondent submits Applicant can satisfy neither 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, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

V. MOTION FOR MORE DEFINITE STATEMENT

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth sufficient facts to “support each ground” or to explain with any specificity the facts upon which his claims are based, particularly with respect to counsel’s alleged failure to investigate. The Uniform Post-Conviction Procedure Act requires Applicant to “*specifically* set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (emphasis added). Respondent seeks for a more definite statement as the alleged witnesses, potential defenses and potential dispositive pre-trial motions; and the mitigating circumstances counsel allegedly failed to present to the court at sentencing.

Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be

required to amend his application to set forth specifically the grounds on which his claims are based.

VI. MOTION TO MERGE THIS PCR ACTION (2019-CP-10-00156) INTO APPLICANT'S DORCHESTER COUNTY ACTION (2019-CP-18-0064)

Respondent moves to merge this application with the identical application Applicant has filed in Dorchester County challenging these same convictions and sentences (2019-CP-18-0064). Both applications were filed the same day by the same counsel of record, William G. Yarborough, III, Esquire, challenge the same convictions, and make identical allegations.

Since an applicant is not generally permitted to have multiple post-conviction relief proceedings in regards to the same convictions, Respondent hereby moves to have the two proceedings merged, with the Charleston application (2019-CP-10-00156) being merged into the Dorchester County application (2019-CP-18-064). See Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90. Respondent has conferred with counsel for Applicant, who consented to this motion in the interest of judicial economy.

VII. FUTURE AMENDMENTS AND DISCOVERY

Additionally, Applicant must specify all claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11(a), SCRPC. *Pro se* filings will not be considered at the PCR hearing. State v. Devore, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel); Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially

by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative continue the matter to permit adequate time to investigate and address the claims. See Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases... we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); see also Rules 15(a)-(b), SCRCF (explaining how to amend a pleading).

Pursuant to section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent, pursuant to Love as discussed above.

VIII. DENIAL OF ALL OTHER ALLEGATIONS

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

IX. REQUEST FOR AN EVIDENTIARY HEARING

WHEREFORE, having made its Return, Respondent requests this application (2019-CP-10-00156) be merged into the Dorchester County application (2019-CP-18-0064) and an evidentiary hearing be held on the allegations of ineffective assistance of counsel. Respondent further requests that Applicant, through his counsel, amend the application to provide the required specificity for the aforementioned ineffective assistance of counsel claims that were not sufficiently identified.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Deputy Attorney General

By: s/ Lindsey A. McCallister
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
Telephone: (803) 7334-3737

December 1, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JUSTEN L. WILKES, #375739

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-10-00156

Affidavit of Service by Mail

FILED
CLERK OF COURT

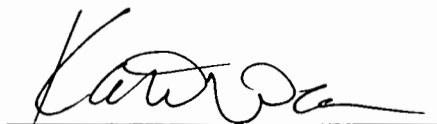
2020 DEC -4 PM 12:18

FILED

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

William G. Yarborough, III, Esquire
William G. Yarborough III, Attorney at Law, LLC
522 North Church Street
Greenville, SC 29601

DATED this 2nd day of December, 2020.



Katie Wade, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTIES OF DORCHESTER
AND CHARLESTON

IN THE COURT OF COMMON PLEAS

Justen Lee Wilkes, #375739,

Applicant,

v.

State of South Carolina,

Respondent.

Case No. 2019-CP-18-0064 & 2019-CP-10-00156

ORDER OF MERGER

FILED
2021 JAN 19 AM 11:00
JULIE J. AMIS
CLERK OF COURT

The matter comes before the Court by way of two applications for post-conviction relief, both filed on January 11, 2019, in Dorchester and Charleston County, respectively (2019-CP-18-0064 & 2019-CP-10-00156). Respondent made its Return to the Charleston application (2019-CP-10-00156) on March 12, 2019. Respondent made its Return to the Dorchester application (2019-CP-18-0064) on December 1, 2020, along with a motion to merge the two applications.

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court and the Dorchester County Clerk of Court. During its May 2017 term, the Dorchester County Grand Jury indicted Applicant for one count felony driving under the influence (DUI), resulting in death (2016-GS-18-1961), and one count of first-degree burglary (2016-GS-18-1962). Applicant waived presentment to the Charleston County Grand Jury for one count of first-degree burglary under indictment 2018-GS-10-1816. Timothy C. Kulp, Esquire, represented Applicant. Assistant Solicitor Donald Sorenson prosecuted the case. On March 19, 2018, Applicant appeared before the Honorable Thomas W.

Cooper and pleaded guilty as indicted to felony DUI resulting in death and two counts of first-degree burglary.¹

Judge Cooper sentenced Applicant to a term of imprisonment of twenty-five years for felony DUI resulting in death and fifteen years for each count of first-degree burglary. Judge Cooper ordered the burglary sentences to be served concurrently to each other, but consecutively to the sentence for felony DUI, resulting in an aggregate sentence of forty years. Applicant did not appeal his plea or sentence.

II. CURRENT ALLEGATIONS

In his two identical applications for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel

- a. Counsel failed to adequately review discovery with Applicant and advise him accordingly; failed to explain the nature of the charges and implications of any potential sentence to Applicant; failed to adequately explain the plea agreement's terms and its advantages and disadvantages to Applicant; and failed to explain the implications and consequences of his guilty plea. Each error not only impacted Applicant's decision as to whether to plead guilty or proceed to trial, but also rendered his guilty plea not knowingly, intelligently, or voluntarily entered.
- b. Counsel failed to investigate evidence, witnesses, potential defenses, potential dispositive pre-trial motions. But for these error, Applicant would not have pleaded guilty and instead would have proceeded to trial.
- c. Counsel failed to investigate mitigating circumstances relevant to sentencing, and consequently failed to adequately present these mitigating circumstances to the court during sentencing.

As to why Applicant did not file a direct appeal, he states "he was not advised on his right to direct appeal or on commencing the appeal process for an appeal from a guilty plea."

¹ At the plea hearing, Applicant waived venue on indictment 2018-GS-10-1816 in order to resolve all three pending charges at the same time before Judge Cooper in Dorchester County. Applicant also waived presentment of the Charleston County charge to the grand jury. Tr. pp. 9-11.

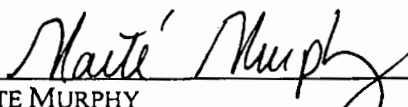
Both applications were filed the same day by the same counsel of record, William G. Yarborough, III, Esquire, challenge the same convictions, and make identical allegations. Respondent has indicated to this Court that it conferred with counsel for Applicant, who consented to this motion in the interest of judicial economy.

III. ORDER FOR MERGER

Since an applicant is not generally permitted to have multiple post-conviction relief proceedings in regards to the same convictions, this Court finds it is appropriate to have the two proceedings merged, with the Charleston application (2019-CP-10-00156) being merged into the Dorchester application (2019-CP-18-064). See Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90. This Court hereby orders the two proceedings be merged. The surviving case number shall be the Dorchester County case (2019-CP-18-0064), and the Charleston County action (2019-CP-10-00156) shall be dismissed.

IT IS THEREFORE ORDERED that the two cases shall be merged into the Dorchester County action (2019-CP-18-0064), and the Charleston County Clerk of Court shall close case number 2019-CP-10-00156.

AND IT IS SO ORDERED this 10 day of Dec., 2020.


 MAITE MURPHY
 Chief Judge for Administrative Purposes
 First Judicial Circuit

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP1800064

Justen Lee Wilkes

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: Order of Merger

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Maite' Murphy

2166

12/22/2020

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **12/22/2020**, and a copy mailed first class or placed in the appropriate attorney's box on **12/22/2020**, to attorneys of record or to parties (when appearing pro se) as follows:

Justen Lee Wilkes - LCI #00375739
P.O. Box 205
Ridgeville, SC 29472

Benjamin Hunter Limbaugh
 1000 Assembly Street
 Columbia, SC 29201

William G. Yarborough III
 308 W. Stone Ave.
 Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	COMMON PLEAS COURT
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
JUSTEN L. WILKES	)	NO. 2019-CP-18-00064
	)	
VS.	)	<u>TRANSCRIPT OF RECORD</u>
THE STATE OF SOUTH CAROLINA	)	Post-Conviction Relief Hearing

B E F O R E:

The Honorable Heath P. Taylor, Judge

DATE: Wednesday, January 25, 2023

1:30 p.m.

Orangeburg, South Carolina

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

William G. Yarborough III, Esquire

William G. Yarborough III, Attorney at Law, LLC
 308 West Stone Avenue
 Greenville, South Carolina 29609
 bill@wgylaw.com

Attorney for the Applicant

Caroline Whitney O'Kelly, Esquire

Post Office Box 11549
 Columbia, South Carolina 29211
 whitneyokelly@scag.gov

Attorney for the State

Reported by: Cathy J. Provost, RMR, Official Court Reporter

INDEXESPAGE:

Certificate of Reporter 52

INDEX TO WITNESSESDIRECT: CROSS: REDIRECT: RECROSS:WITNESSES:**TIMOTHY C. KULP**

By Attorney Yarborough	5	--	--	--
By Attorney O'Kelly	--	24	--	--

JUSTEN L. WILKES

By Attorney Yarborough	31	--	--	--
By Attorney O'Kelly	--	37	--	--

ROBERT TURNER

By Attorney Yaarborough	44	--	--	--
By Attorney O'Kelly	--	--	--	--

INDEX TO EXHIBITS

(No exhibits marked.)

COURT REPORTER LEGEND:

dash -- intentional/purposeful interruption; change in thought
 ellipses ... trailing off
 [ph] phonetically written
 [sic] written as said
 [indiscernible] unable to be understood due to low volume or
 quality of audio

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

2 THE COURT: All right. Ms. O'Kelly, are you ready to
3 proceed?

4 ATTORNEY O'KELLY: Yes, sir. May it please the Court. My
5 name is Whitney O'Kelly on behalf of the State of South Carolina.
6 The present case before this Court is that of Justen Wilkes,
7 2019-CP-18-0064. Applicant is presently incarcerated in the
8 South Carolina Department of Corrections.

9 In May 2017 applicant was indicted by a Dorchester Grand
10 Jury for one count of felony DUI with death, and first-degree
11 burglary. The felony DUI with death was 2016-GS-18-1961, and the
12 first-degree burglary was 2016-GS-18-1962. Applicant waived
13 presentment to the Dorchester County Grand Jury indictment for
14 one count, first-degree burglary under indictment
15 2018-GS-10-1816. Applicant was represented by Attorney Timothy
16 Kulp. Assistant Solicitor Donaldson Sorenson prosecuted the
17 case.

18 On March 19th, 2018, applicant appeared before The Honorable
19 Thomas Cooper and pled guilty as indicted to felony DUI with
20 death, and two counts of first-degree burglary. Judge Cooper
21 sentenced applicant to 25 years imprisonment for felony DUI with
22 death, and 15 years for each count of first-degree burglary.
23 Judge Cooper ordered the burglary sentences to be served
24 concurrently to each other but consecutively to the sentence for
25 the felony DUI with death, resulting in an aggregate sentence of

1 40 years. Applicant did not appeal his plea or sentence.

2 This application for PCR was filed on January 11th, 2019,
3 and the State made its return, filed December 4th, 2020.

4 And with that, I will hand it over to Mr. Yarborough.

5 THE COURT: Okay.

6 ATTORNEY YARBOROUGH: May it please Your Honor.

7 THE COURT: Yes. Mr. Yarborough, before we get started,
8 have you advised Mr. Wilkes of his post-conviction relief rights?

9 ATTORNEY YARBOROUGH: I have, Your Honor. And I'll be
10 honest with you, I'm not sure 100 percent that he understands
11 exactly everything I've told him. I've tried to explain to him
12 that if this case was to be won, that he would go back and
13 re-face -- and I think he does understand that at this time.

14 MR. WILKES: I think I understand it.

15 THE COURT: Okay. And I'm sure Mr. Yarborough tried to
16 explain it to you, but there are two things that can happen. If
17 I find you are not entitled to post-conviction relief, you serve
18 the remainder of your sentence. If I vacate your conviction and
19 send the case back, it starts from the beginning. That means any
20 charges that were reduced or dropped, you'd be facing those
21 original charges all over again. So in this case you would be
22 looking at felony DUI again, with 25 years, and two counts of
23 burglary, first, facing up to life on each of those. Do you
24 understand that?

25 MR. WILKES: Yes, sir.

1 THE COURT: Okay. And you wish to proceed and move forward
2 today?

3 MR. WILKES: Yes, sir.

4 THE COURT: Okay.

5 ATTORNEY YARBOROUGH: Your Honor, I'd call Mr. Kulp. And
6 I'd rest on -- I think we submitted an original application, and
7 then a second one just to --

8 THE COURT: Make sure I have the amended. I'm not sure I
9 have --

10 ATTORNEY YARBOROUGH: May I approach, Your Honor?

11 THE COURT: Yes. Let's make sure I have the right ...

12 ATTORNEY YARBOROUGH: There was the original one.

13 THE COURT: That's it. I got it. This one right here,
14 filed January 11th of '21?

15 ATTORNEY YARBOROUGH: Yes, sir.

16 THE COURT: Okay. All right.

17 TIMOTHY C. KULP,

18 having first been duly sworn, was examined and testified as
19 follows:

20 **DIRECT EXAMINATION**

21 BY ATTORNEY YARBOROUGH:

22 Q Good afternoon, Mr. Kulp. How are you doing?

23 A Good afternoon. Doing well, thank you very much. Hope you
24 are, too.

25 Q You practice mostly criminal defense?

1 A Yes.

2 Q And in what counties?

3 A Whew. Primarily Charleston, Dorchester, and Berkeley, but I
4 practiced all the way from Corpus Christi, to Charleston, West
5 Virginia, Atlanta. All over South Carolina.

6 Q And you represented Mr. Wilkes?

7 A I did.

8 Q Can you tell the Court a little bit about that case and
9 about your representation?

10 A Sure. I'd be happy to. Can you be more specific?

11 Q Yeah. It was a felony DUI and a burglary, first, two
12 counts --

13 A Correct.

14 Q -- is that correct?

15 A Yes.

16 Q And there was approximately six hours from the time of the
17 first burglary to the second one; is that about right?

18 A I'd have to look, but I couldn't disagree with that
19 approximation of the time.

20 Q And at some point there's a wreck; is that correct?

21 A Yes.

22 Q And at that wreck -- sometime after that, Mr. Wilkes was
23 apprehended in the woods or somewhere down the road or something;
24 is that about right?

25 A Yes.

1 Q And did you begin representing him immediately?

2 A I'd have to look, but my first meeting with him at the jail
3 was on October the 8th, 2016.

4 Q Did you say October the 8th? I have the offense as October
5 the 20th. So you were right on there, right? If I'm mistaken,
6 I'm mistaken, but does that sound about correct? You were his
7 original lawyer?

8 A Yes. And I may have the year wrong, but I was just quickly
9 pulling those from my notes.

10 Q Sure. And approximately how many times did you meet with
11 him?

12 A Seven to eight times at the jail.

13 Q And so you were able to gauge the fact that he had some
14 significant mental health issues; is that correct?

15 A That's correct.

16 Q Could you determine what his cognitive level was? Were you
17 able to do that?

18 A Well, I don't have the skills to do that but, as a
19 layperson, he seemed -- he exhibited enough in that regard to
20 cause worry on my part and a reason to think that he would
21 benefit by an assessment, which we had done.

22 Q You had an assessment done. And that assessment showed that
23 he had some significant challenges; is that correct?

24 A That's correct.

25 Q And were you able to discuss with him the allegation of the

1 felony DUI? Were you able to talk to him about what that means?

2 A Yes.

3 Q Could he comprehend an intoxication level, or anything like
4 that, did you think?

5 A Could he comprehend an intoxication level? I don't know how
6 to answer that question, but I can tell you that he seemed to, in
7 my sessions of explaining both the law to him and the discovery
8 and the elements of proof of the charges that were pending
9 against him, he seemed to be able to follow me.

10 Q Okay. Were you able to research anything about how they
11 could prove that he was actually intoxicated that night?

12 A I was.

13 Q What was it?

14 A Probably the most damning evidence would be the videotapes
15 that were made available to me in discovery of his immediate
16 apprehension and his confessions there to the highway patrol and
17 other present officers from Dorchester County, I think
18 Summerville city, who were remarkably diligent about reading --
19 not remarkably, but they were very careful about Mirandizing him
20 prior to making inquiries of him, interrogating him there right
21 on the spot which produced incriminating responses from him.

22 Q From the time that they originally saw him and the time he
23 was apprehended, it was over two hours, is that right?

24 A It was about two hours. That's right.

25 Q And that's the crash. Then after that there was another

1 couple hours, correct? Is that right?

2 A I think, if I recall correctly, he was apprehended a couple
3 hours after the crash.

4 Q My question's this: How was the solicitor's office going to
5 be able to prove that he was intoxicated at the time that the
6 wreck took place?

7 A What I apprised was that based on his admissions about his
8 consumption of Xanax, and also his behavior, affect, and demeanor
9 that was depicted on that video when they were talking to him and
10 attempting to give him field sobriety tests.

11 Q But that was some significant time after the wreck, right,
12 at least two hours?

13 A Right.

14 Q And did he not have a defense that the drugs were ingested
15 sometime after the wreck?

16 A No because to present that defense he would have to do so
17 testifying, and to do that at trial --

18 Q And --

19 A -- and he was adamant about not wanting a trial from the
20 git-go.

21 Q He was adamant or you were adamant?

22 A I'm happy to try a case.

23 Q No. I'm just wondering how all that came down, because he
24 got maxed out on the felony DUI, right?

25 A Correct.

1 Q And so there had to have been some ability to mitigate the
2 sentence, right?

3 A Yes. And that's what we pursued, particularly when he said
4 he did not want a trial at every instance. Never -- he was never
5 into having a trial.

6 We started out on a path of mitigation, and we procured all
7 of his educational records, all of his medical records. We
8 provided those to Dr. McKee in his assessment evaluation of the
9 young man, and did everything we could to attempt to, from those
10 documents, his family history, his life history and stuff, to
11 paint, to create a picture of mitigation not only to the
12 prosecutor, which wasn't very effective, and also to the judge at
13 the time of his sentencing.

14 Q And your office was nice enough to turn those over to me.

15 A Sure.

16 Q And I think you did get a bunch of records and stuff. My
17 question is, he obviously had some challenges. What was your
18 plan around those challenges mentally, his understanding, in the
19 fact that -- there was some question about intoxication at the
20 time of the wreck, right?

21 A I don't think there was any question about intoxication --
22 not intoxication, because it wasn't -- his impairment was due to
23 pharmaceuticals. He tested zero-zero on the breath --

24 Q The record said that he tested zero-zero. Then what was the
25 State's evidence to prove that he was intoxicated or was under

1 the influence at the time of the wreck?

2 A What I believe they would present at trial would be his
3 admissions and also his appearance there at the initial
4 apprehension site.

5 Q But he clearly has mental issues, right, so his appearance
6 would be suspect anyway, right?

7 A I don't think that the mental issues that he had is what I
8 mean about how he presented on the video.

9 Q I mean, his --

10 A I may be hard-pressed to argue in challenging how he
11 appeared on the video, that that was due to his mental aspects or
12 considerations, or any other factor other than what he admitted
13 he ingested.

14 Q Okay. Let's go there, what he admitted he was ingested. He
15 certainly had some educational issues at the time. And how would
16 they have proved that he understood that he wasn't supposed to
17 speak to the police?

18 A Well, you know, I don't -- I don't think that, in a review
19 of that video as evidence to be presented to a jury, would
20 suggest that he did not understand the Miranda rights they gave
21 him or that he was incapable of understanding them.

22 Q But did you try to flesh that out with a suppression motion?

23 A No.

24 Q Did you try to challenge the blood draw or anything that
25 maybe would have helped the case of the State as far as him

1 having Xanax or methamphetamines in his system?

2 A No. My primary concern, particularly when he was expressing
3 his desire not to go to trial, was to save him from being
4 sentenced to life without parole.

5 Q Okay. Well, we'll get there in a minute, okay.

6 A Sure.

7 Q I'm still trying to get how did they get -- how could they
8 possibly prove felony DUI in this case?

9 A They could prove impairment by virtue of his admissions and
10 his affect and appearance. I've argued a lot of cases, but I'd
11 be hard-pressed, based on what I saw on the video, to argue
12 against his impairment.

13 Often -- I was a prosecutor in past life, as well, and
14 oftentimes I found that -- and in defense work, too -- that what
15 could be more damning on the issue of impairment as opposed to
16 some numbers from a test are the affect, appearance, mannerisms,
17 and behavior of the person that's depicted, usually/often by the
18 description by the arresting officers of what they observed, but
19 more damningly by the videotape that's made of him to support
20 their descriptions of those aspects of impairment.

21 Q But all that was two hours after the collision?

22 A Yes.

23 Q So I'm getting back to that same point. At the time of the
24 collision what would be the State's proof that he was -- well,
25 first of all, what would be the State's proof that he was even

1 driving the car?

2 A He admitted driving the car.

3 Q Okay. Let's go back to -- so everything -- you're basing
4 all that on his admissions, correct?

5 A Additionally the truck that he was driving, he stole from a
6 home that he burglarized, and that was the truck that was
7 involved, I mean, in the accident that caused the death.

8 Q But will you give me this: We've both been prosecutors.

9 A Uh-huh.

10 Q And can you agree with me that at least the fact that he had
11 not -- they didn't have any proof of when those drugs were
12 ingested between the time of the wreck and he's apprehended, that
13 that would have been something that you could have argued if you
14 were trying a felony DUI?

15 A If I had to go to trial on the case that would be something
16 I would be compelled to argue.

17 Q Correct.

18 A Not that I would be particularly successful but, you know,
19 when you go to trial you try anything that you can to represent a
20 client and anything that's legal and ethical that you can getaway
21 with in the courtroom setting.

22 Q You and I agree that's not going to be a legal or ethical
23 issue. That's certainly something you would argue if you were
24 trying the case, right?

25 A I didn't mean it -- I meant you do everything you can at

1 trial to attack every part of the State's case, any way you can,
2 hopefully, and using means and methods that are successful
3 towards your goal.

4 Q But you didn't use them in that case. You pled him guilty
5 without looking for any mitigation for that period of time, that
6 two hours; is that correct?

7 A I'm committed to, as a defense lawyer, to trials, an
8 approach. One, is with the prosecutor -- it's like a single
9 juror -- and the other is a jury -- you're always preparing for a
10 jury trial -- all of these issues, I've argued with Don Sorenson,
11 the deputy solicitor, on several occasions when I met with him
12 about the case.

13 Q And did you challenge the fact that any statement he would
14 have made might have been questionable because of his mental
15 incapacity?

16 A Well, yeah. Not mental incapacity, because Dr. McKee
17 couldn't conclude, really, anything that would be useful --

18 Q Did you not --

19 A -- in that regard.

20 Q In interviewing him, did you not tell that his statements
21 were impulsive?

22 A Statements impulsive. I couldn't agree with that, because
23 what's -- when he was first contacted and confronted about the
24 case -- I mean, I would call impulsive if somebody said, I don't
25 have anything to say, and then 50 minutes later saying, I did it.

1 That's an impulse. But I don't think his responses necessarily
2 were on impulse.

3 Q So you didn't challenge the statements, right? You didn't
4 file a suppression motion?

5 A I did not.

6 Q And you didn't challenge the intoxication factor in the
7 wreck, right?

8 A I challenged it and developed an argument for it with the
9 solicitor.

10 Q What was that argument?

11 A Well, the argument was that, you know, stemming from the
12 fact that it was clear that both his admission that he hadn't had
13 anything to drink, and the breath test showed that he didn't have
14 anything to drink, that the impairment issue came solely from his
15 admission as to what he had taken --

16 Q Okay.

17 A -- and how he appeared.

18 Q And you didn't feel like that you had a chance to chair --
19 to file a suppression motion on any of those statements?

20 A No, for the reasons I stated. For the reasons I stated.
21 The focus was to save him from getting life without parole.

22 Q Okay. That's where you want to go, so we'll go there.
23 Besides the fact that it was nighttime, there were no other
24 aggravating factors in any of those two burglaries that happened
25 while this thing was going on, right?

1 A Well, but what do you mean by aggravating factors?

2 Q Well, I mean, nobody got hurt.

3 A That's not a statutory law.

4 Q We've been doing this a long time, and usually burglary,
5 firsts, are usually when somebody gets hurt or there's just a
6 bunch of burglaries at one time. I mean, it's not -- burglary of
7 the first degree is not usually a right-off-the-bat plea,
8 correct?

9 A Plea or charge?

10 Q Charge, there's always a charge, but would you say that
11 99 percent of our burglary, first, pleas are pled down to
12 burglary, seconds? Would you agree with that?

13 A No. This case is, in fact, independent, and this burglary
14 was established by breaking into a residence at nighttime.
15 That's what he did, and that's what the home video that the
16 homeowner captured and was presented as evidence that he was
17 there. He was found to be wearing a T-shirt as depicted on the
18 surveillance video from the burglarized house.

19 Q Did you ever analyze it as, like, one set, like it was --
20 the whole thing was one act, the burglary -- the two burglaries
21 and the felony DUI?

22 A Well, I reviewed the facts as they occurred in chronological
23 proximity to each other.

24 Q Sure. Did you find that the 40-year sentence was extreme?

25 A I did, because we got an agreement. We finally got a

1 concession from the prosecution to agree a negotiated sentence,
2 that life -- that life would not be recommended, and met with
3 Judge Cooper about that. And Judge Cooper would not -- I
4 explained everything to the client, about all aspects of the
5 plea, all aspects of what a trial might entail, and a possible
6 outcome, and we talked about that often. He said if I could get
7 it down --- he would be very happy if he could get 10 to 15 years.

8 Q Did you think that's what he thought he was going to get
9 when he pled?

10 A No, because I've got my notes from the meeting on the day of
11 the plea, and I carefully explained to him that there was
12 agreement as to no imposition of a life sentence without parole
13 but there was no agreement as to what sentence the judge would
14 impose, either by way of a recommendation or a negotiation. It
15 was up.

16 And Judge Cooper would not, in chambers, within the ability
17 for a judge to take part in a plea negotiations, he would not
18 commit there to any sentences being concurrent. And my intent
19 was, both in submitting a sentencing memorandum to the Court and
20 making a mitigation presentation to the Court, was that hopefully
21 the worst-case scenario would be 25, and 15 concurrent. That
22 didn't happen.

23 In fact, in all my years of practicing I experienced one of
24 the most bizarre things I've ever seen during that sentencing
25 hearing, and that was the, one of the, victims who spoke using

1 the word in terms of, What we recommend, Judge, consecutive. And
2 I've never heard that from someone who came to court as a victim.

3 I don't think that's necessarily what steered Judge Cooper
4 towards consecutive but, you know, the widow of the deceased, a
5 fellow, was represented by civil counsel who appeared on her
6 behalf, and surprisingly, you know, while, yes, nobody was hurt
7 during the burglaries, that word consecutive came from the mouth
8 of one of the people who was a victim of the burglary.

9 Further, I think that, in our battle for a worst-case
10 scenario, concurrent sentencing, my opinion is one of the things
11 that hurt the most is when the solicitor played a portion of a
12 jail call to the Court. I admonished the defendant/my client on
13 many occasions not to talk about the case on the jail phone, that
14 all calls were monitored. He did not follow that advice.

15 Q Sure.

16 A And what the solicitor played was his advice -- his comment
17 to his grandmother, I think, that, you know, when he got to
18 prison -- and he knew was going -- he was going to get a tattoo
19 of a tear under his eye but he wouldn't get it blacked in because
20 he didn't intend to kill the guy. Well, when the solicitor
21 played that audio before the sentencing court, I think that went
22 a long way that, you know, if the judge was poised to -- and he
23 heard us out --

24 Q Sure.

25 A -- poised to consider concurrent sentencing, that, and input

1 from victims and other things may have been what led him to
2 surprisingly, to me, render the sentences consecutively.

3 Q Were you really? I mean, have you gone back and looked at
4 Judge Cooper's history on felony DUIs?

5 A Well, no. I can't think that any -- we -- how do I say
6 this? We're all aware of trial lawyers and judges and how they
7 sentence. We did everything we could to avoid an appearance or a
8 plea before a member of the bench who we would expect to hammer
9 him.

10 Q Right.

11 A Judge Cooper wasn't known to be that. And, no, I didn't do
12 a statistical survey of his sentences in felony DUI cases, but I
13 called a number of colleagues and asked them about that --

14 Q Right.

15 A -- and they say he's fair, he doesn't have an ax to grind.
16 That charge is not one, particularly, he has a penchant for.

17 I had every reason to think that, based upon all that we
18 presented to the judge, the age of the client, and the survey and
19 presentation of his very sad and difficult life path to that
20 point, would lead the judge, in my opinion, and hopefully to a
21 worst-case scenario, 25 to 15, concurrent. That didn't happen.

22 Q Right. I understand what you're saying but do you think he
23 could understand all that, Mr. Wilkes?

24 A All of what?

25 Q All of everything you just said, do you think Mr. Wilkes

1 could comprehend that at the time or today?

2 A Yes. I mean, I think he could understand the impact of that
3 audio segment played, because he said it to his grandmother on
4 the phone when I had warned him that everything was -- all calls
5 were recorded. I mean, I don't think he had any -- he didn't
6 have any misunderstanding about anything.

7 I sat and I drew it out on paper for him, all the different
8 approaches and aspects. His father was stressing to me that,
9 what you mentioned, is that nobody got hurt in the house. That's
10 not an element. That's not going to keep a jury from convicting
11 him.

12 Q We're not talking about a jury right now; we're talking
13 about a plea. I mean, don't you think those are mitigating
14 factors that could have been used?

15 A What are mitigating factors?

16 Q That nobody got hurt in the houses.

17 A No. I think that would be offensive to a sentencing court
18 because it doesn't matter. You know. I don't agree that
19 95 percent of the burglaries, whether they're first degree or
20 whatever, involve violence in the home. Usually people burglar
21 [sic] houses to steal things. But I had no reason to believe
22 that the client, your client/my client, didn't understand the
23 nature of the proceedings that were going on. Judge Cooper is
24 very experienced. He's very careful about determining the
25 voluntariness of the plea, and during the pre-plea process and,

1 you know -- in fact, we were scheduled on one occasion to go to
2 court -- and I think it was November the 6th, according to my
3 notes -- and the plea didn't go because Mr. Wilkes didn't want to
4 plea, and he was -- there were a number considerations about that
5 which led us to get in touch with Dr. McKee and come down to the
6 jail and do a, maybe, day-long testing and psychological survey
7 of him. So when he --

8 Q He was impulsive, he was hearing voices. There was -- the
9 jail notes were -- he was having a bad time at the jail, wasn't
10 he?

11 A Forty-four years, I've never knew a client in jail who was
12 having a good time. I mean, he was having a difficult time in
13 jail like everybody else does, but, you know, I --

14 Q Give me this. We've done this for a long time. Did you not
15 think he was one of the more mentally challenged people you've
16 represented in a case like this?

17 A Oh, no. He wasn't eating chalk. He wasn't incapable of
18 following me. He wasn't acting out in any psychotic behaviors.
19 The questions that he asked me were meaningful and relevant to
20 his defense. I didn't see any behavioral aspects of self-harm or
21 whatever. And then, you know, that's what -- Dr. McKee came back
22 said, you know, here's what I found. And, you know, I don't
23 think -- and I also was trying to explore the possibility, that,
24 and based upon the criteria for that under the law, I deployed
25 Dr. McKee to determine if, at the time of these offenses, that

1 his ingestion of drugs was to a degree that it rendered him
2 incapable of knowing what he was doing and so forth, and
3 Dr. McKee couldn't conclude that.

4 Q Did you give him a general idea of what kind of sentence you
5 thought he could get?

6 A No. I didn't know what he was going to get. I told him --

7 Q Did you give him a general idea of what you thought he was
8 going to get?

9 A No. I said, You're not going to get life. That's by
10 agreement through negotiation of the prosecutor. You can get up
11 to 25 years and up to 15 years, and they can be consecutive or
12 concurrent. That's what I told him. I had no idea what the
13 judge was going to do.

14 Q Did you talk to his parents about what you thought his
15 sentence might be?

16 A Well, they were very involved in his case. I talked to them
17 quite often. And I told them exactly that, because that's all
18 that I could come up with. I don't have a crystal ball. I don't
19 have the ability to forecast what a judge is going to do. I just
20 talked to them and told them what the parameters were, and that
21 I'd be able to finally achieve with the solicitor a negotiated
22 agreement to abandon life in prison.

23 Q And so you thought that abandoning life in prison was the
24 catchall on this plea negotiation, correct?

25 A I thought it was a very significant factor since the

1 prosecutor was hellbent from the git-go in trying the case not
2 offering anything to consider, and that that was -- if he went to
3 trial, that was a likely possibility.

4 Q Sometimes when you're dealing with aggressive prosecutors
5 don't you think it makes sense to file motions and try to have
6 hearings and try to --

7 ATTORNEY O'KELLY: Objection.

8 Q -- show them their inadequacies?

9 THE COURT: Overruled. I'll let it.

10 A I've never done that. I don't think -- I think the Court's
11 response would be that the prosecutorial discretion lies with the
12 State, and I can't imagine asking a judge to invade that or that
13 a judge would.

14 Q So you didn't feel like a suppression motion or a competency
15 motion would do any good?

16 A No, not towards changing the -- I didn't think they -- I
17 didn't have a feeling that those two approaches would be
18 successful, having a chance of being successful enough to, if
19 successful, changing the prosecutor's plea-negotiation approach
20 down to 10 years.

21 ATTORNEY YARBOROUGH: Just a second, Your Honor.

22 THE COURT: Yes, sir, Mr. Yarborough.

23 Q Did you ever discuss with him a youthful offender sentence?

24 A Did I discuss with him, being the client?

25 Q Yeah.

1 A No.

2 ATTORNEY YARBOROUGH: I don't have any further questions of
3 this witness at this time. Thank you, Your Honor.

4 THE COURT: All right. Ms. O'Kelly.

5 ATTORNEY O'KELLY: Thank you, Your Honor. May it please the
6 Court.

7 THE COURT: Yes, ma'am.

8 **CROSS-EXAMINATION**

9 BY ATTORNEY O'KELLY:

10 Q Let's see here. So what's your typical procedure when
11 you're preparing for a case like this in general?

12 A I don't think I can answer that. I mean --

13 Q Do you typically visit the scene? Do you typically -- what
14 type of -- what type of activities do you do as kind of your
15 standard?

16 A To analyze all the discovery, analyze all the behaviors of
17 the officers, analyze every aspect of the case to determine what
18 defenses can be identified, cultivated, and of potential use,
19 interviewing the client as necessary. A whole host of things, I
20 mean ...

21 Q And your personal background, would you like to tell the
22 Court anything about that?

23 A I've been a lawyer 45 years in November. Out of law school
24 I was a special agent with the FBI, and then I was assistant
25 solicitor and city prosecutor for about five years. And after

1 that slowly became -- criminal defense became my primary
2 practice. And I am a lead-chair, certified death penalty by the
3 Supreme Court, and I have handled five death-penalty murder
4 cases, and over 100 cases in federal court, and in South Carolina
5 district and three other foreign districts.

6 Q And some concerns about the applicant's mental capacity has
7 come up today, and you said that you had noticed that at the time
8 of your representation of applicant, correct?

9 A Can you restate the question?

10 Q You had concerns about his mental capacities to the extent
11 that you even got him evaluated, correct?

12 A I had concern -- I had concerns that lead to me concluding
13 that he needed to be evaluated, and not knowing what that
14 evaluation result would be, that if a professional in that area
15 told me that he was in a position to be able to testify as to any
16 useful information that would provide a defense or some aspect or
17 approach to sanity, capacity, then certainly I ought to use that,
18 and, you know.

19 Q And Dr. McKee say that he was found to be competent to stand
20 trial and to go forward?

21 A Yes.

22 Q And he did, in fact, help you and participate in his own
23 defense and preparation for a plea or a trial?

24 A Yes. I felt that he was candid, truthful with me -- some
25 clients aren't as to what happened that evening -- what occurred,

1 what he did, why he did it, and that aided me a great deal.

2 Q And you said that you had discussions with the solicitor's
3 office, as well as Judge Cooper. Would you like to tell the
4 Court about those negotiations? What, perhaps, were your
5 limitations, or what the office and judge were willing to work
6 with you on?

7 A Well, you know, I said it from the git-go, in the course of
8 speaking with the solicitor, I'm not pleading to life in prison.
9 You're going to have to try the case. It's not going to happen
10 no matter what defense we're able to put up. I mean, A plea with
11 a sentence of life in prison, why not go to trial? How worse can
12 it be?

13 Once I achieved that, I constantly advised him of relevant
14 portions of what I had collected about the case, from a lawyer's
15 point of view, and also what Dr. McKee provided me. I mean, the
16 young man had a horrible life coming up, and this part of his
17 growth was when he became involved with the police and became, as
18 he told me -- I didn't tell the solicitor this part, but he was
19 taking the Xanax because he was using that as a means and method
20 of stopping his use of crystal meth to try to bridge that and
21 getaway from that.

22 And with the Court, you know, we pitched all of that to the
23 Court about his life, about his educational experiences, medical
24 history, his youth, and the circumstances under which he broke in
25 the houses. And, of course, I've never met anybody who intended

1 to cause someone's death when they were impaired, but that was,
2 you know, unintentional on his part.

3 Anything that I could say, I used every tactic and every
4 approach with the prosecution and the court that I could to try
5 to obtain the best result for him.

6 Q Right. And you did mention the age and upbringing and all
7 those factors that you were just saying in mitigation during the
8 plea hearing, correct?

9 A Right. I filed a sentencing brief with the Court that set
10 that forth, and then orally reviewed all of that during the plea
11 and sentencing hearing.

12 Q So you did file a memo with the Court?

13 A Yep.

14 Q Did you file anything else with the Court during this time
15 period?

16 A Well, I filed extensive discovery motions formally, and then
17 the sentencing memo.

18 Q Perfect. I appreciate your cooperation with my questioning.
19 And also you said that you drew pictures and you orally explained
20 information and circumstances relevant to applicant's case during
21 your discussions?

22 A I did. I think that's important for a lawyer to do, and to
23 do so in a means and method that's simple and basic and
24 understandable about the complexities of the legal system, and
25 how they apply to that particular client's case under those

1 particular facts.

2 Q Would you have filed a suppression motion if he had wanted
3 to go to trial?

4 A Oh, yeah. If he wanted -- the client makes the decision,
5 not me. If he would have said, Mr. Kulp, I want to go to trial,
6 I don't care if I get life in prison, we would have taken an
7 entirely different approach. We would have filed every plausible
8 motion that wouldn't get laughed out of the courtroom.

9 Q Including challenging blood evidence if he had wanted to go
10 to trial?

11 A Sure. Challenging his statements, both in terms of
12 voluntariness issues, challenging everything the police did in
13 any way that were plausibly beneficial, and trying to suppress
14 every bit of evidence that the State had.

15 Q And do you remember that applicant had a DUI from nine days
16 prior to this event that also involved meth and Xanax in a
17 single-car accident?

18 A I was aware of that. Yes.

19 Q And in regards to the evidence towards him being the driver
20 of the vehicle in the felony DUI case that was mentioned earlier,
21 do you remember that there was -- that he had bruising consistent
22 with the recent car accident?

23 A I don't recall that off the top of my head. I do recall
24 that about the time when the fellow who owned the truck
25 discovered, got up and discovered, was asleep and in the house at

1 the time of the burglary of the house where the surveillance
2 video captured the break-in, this guy's truck had been stolen,
3 and approximate to his call to the police both to report the
4 break-in and the taking of his truck it was determined by law
5 enforcement that, well, gee, that's the truck that's involved in
6 a felony DUI death.

7 And then again, of course, when, you know, he -- when
8 Mr. Wilkes was captured and initially interviewed, he
9 acknowledged driving into the other person and was concerned that
10 someone died.

11 Q Right. And so what you just said about identifying him,
12 from the transcript -- I don't know if you have it in front of
13 you, but -- it says on page 16 and 17 that he was caught on the
14 security cameras inside that home of the Taylors at 4:15 a.m.,
15 and then it was very shortly after, 20 miles from that location,
16 that the DUI death had happened. Does that sound familiar to
17 you? Was that not also the evidence, that he was the one driving
18 the car?

19 A Right. Yes.

20 Q Okay. One moment, please. And it was clear to you from
21 your discussions that the applicant was waiving his defenses and
22 he was clearly pleading guilty to the crimes against him?

23 A Yes. And the judge asked me that, and I affirmed, I
24 answered in the affirmative. And there was no incident -- I
25 guess at some point in your career, as a defense lawyer, you have

1 an instance during a plea when a client speaks and up says, I
2 don't want to do this, tugs at your coat, asks to speak with you
3 in private, that didn't occur during this proceeding.

4 Q Okay.

5 ATTORNEY O'KELLY: That's all, Your Honor.

6 THE COURT: Anything on redirect?

7 ATTORNEY YARBOROUGH: No, sir.

8 THE COURT: Just for my clarification --

9 THE WITNESS: Yes, sir.

10 THE COURT: -- is that Judge Cooper from Manning or Judge
11 Cooper from Camden?

12 THE WITNESS: Silver haired. I know there are two, but it
13 was ...

14 ATTORNEY YARBOROUGH: It was Tom.

15 THE COURT: Tall and slender?

16 THE WITNESS: Tall and slender.

17 THE COURT: Okay, Manning. Okay.

18 THE WITNESS: Right.

19 THE COURT: All right. Thank you. That's all I have.

20 ATTORNEY YARBOROUGH: Call Mr. Wilkes.

21 THE WITNESS: May I be excused, Your Honor?

22 THE COURT: Yes, sir.

23 THE WITNESS: All right. Thank you.

24 THE COURT: It's hard for us to hear with this glass. They
25 haven't taken it down yet.

1 JUSTEN L. WILKES,
2 having first been duly sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY ATTORNEY YARBOROUGH:

6 Q Justen, how old are you?

7 A Twenty-seven.

8 Q How old were you when all this stuff happened?

9 A Twenty-one, I believe I was. Yeah, 21.

10 Q Who was your lawyer?

11 A Wherever he went. Timothy Kulp, I think.

12 Q Did you meet with him a lot before you went to court?

13 A Not too many times. I had to ask every time I met with him.

14 Q Did you ever have a chance to go over your discovery with
15 him?

16 A No. He didn't even -- he didn't even mail me a motion for
17 discovery, a copy. I never signed off on one or nothing.

18 Q Have you ever seen it?

19 A No.

20 Q And when y'all went to court did you know what you were
21 going to court for?

22 A The only reason I knew what I was going for is because they
23 gave me charges -- when they walked through the door and I woke
24 up, they gave me charges, so I knew it was for the burglary and
25 DUI because of that --

1 Q Okay.

2 A -- but I can't read good, so.

3 Q And did you know what kind of sentence you thought you were
4 going to get?

5 A At first he said it was going to be a YOA, but once we paid
6 him off then he changed and said, Oh, we're shooting for 10 or
7 under; and then he changed again and said, Oh, it will be 15; and
8 then when we went to court he said, Oh, don't worry about what
9 the paper says, just sign, and you're not going to get life.
10 That's all he said, right.

11 Q Right.

12 A And then when he went in front of the judge, you know, it
13 just seemed like ...

14 Q You wish he would have done some different stuff for you?

15 A (Nods head.)

16 Q What would you like him to have done for you?

17 A I would like him first not to have lied to me from the YOA
18 that he said he was going to get me, and then change up and then
19 said, Oh, for 10 and under; and then change it again and say,
20 Okay, 15; and then, Oh, oh, just take our money and just sign
21 off, so let me -- let me not get mad, let me just stay calm.

22 Q Let me ask you this: If you would have known you were going
23 to get 40 years, would you have gone to trial?

24 A I would have went to trial.

25 Q And you would have put up all those defenses we were talking

1 about in here a little while ago?

2 A Yeah, I would have put all those up because he --

3 Q Do you even understand what we were talking about?

4 A Not fully.

5 Q You don't know what a suppression statement is?

6 A Uhm ...

7 Q Do you know what Miranda is?

8 A I've heard it talks about being silent, but at the time I
9 don't even remember what I said when they arrested me. I don't
10 even remember talking to the police. I don't even remember going
11 to the hospital. I don't know if they drug-test me or not.

12 And y'all was talking about that I had a trial defense. He
13 never told me that. He never said I had a trial defense. He
14 never told me any of that. He said basically they got nothing
15 but evidence, that I didn't have no trial defense. He said, oh,
16 I had a trial defense because I didn't have no urine test.

17 Q Slow down. Slow down. Are you very smart?

18 A I wouldn't say I'm stupid, but I'm not -- I was in special
19 ed.

20 Q How far did you go in school?

21 A Ninth grade, but I was in special ed my whole life.

22 Q You were in special ed your whole life?

23 A (Nods head.)

24 Q You had challenges?

25 A (Nods head.) Uh-huh.

1 Q And at some point somebody put you on drugs that didn't help
2 you, right?

3 A Yep.

4 Q And were you having trouble on those drugs?

5 A Pretty much.

6 Q Were you impulsive?

7 A (Nods head.)

8 Q Do you wish your lawyer would have spent more time
9 explaining things to you?

10 A I would liked him to have explain better and not just took
11 our money and then try to rush me in the courtroom and just say,
12 Oh, you're not going to get life, and lie about one thing and
13 then lie again, and then lie again. He didn't have to lie to me
14 about all that. So, yeah, I would like to have known that I had
15 trial defenses, but he never told me none of that.

16 And he never said, Oh, no, the insanity plea, I don't think
17 that's going to be -- I don't even think that's going to work.
18 How are you going to tell me that's going to work when everybody
19 I meet says all they've got to do is talk to you and they're
20 going to know you're not right. Everybody tells me that all the
21 time.

22 Q Okay. Bet let me ask you this. What's not right about you?

23 A That's what I'm trying to figure out. I hear voices, you
24 know.

25 Q Are you hearing --

1 A I'm telling the truth.

2 Q And were the voices a lot worse when you got arrested than
3 they are now?

4 A They've gotten better, actually. They've gotten better.
5 But then they was worse. They was a lot worse when I was on the
6 street.

7 Q That's because's you're on medicine and stuff. Well, you
8 tell me what you're on. What are you on?

9 A I'm on Geodon.

10 Q Geodon. And they put you on a regimented program, so you're
11 okay down there?

12 A I'm in a drug-free program. They drug test me and
13 everything.

14 Q And do you think that has helped you?

15 A Yeah, but the last few years I have spent getting clean,
16 they just put me in this program. I didn't fill out for it, but
17 I think it's going to help, too.

18 Q With mental problems?

19 A Yeah. I've been in mental health a lot. I've been --

20 Q Were you in mental health all your life?

21 A I think so, basically. I heard one side of my brain works
22 slower than the other. That's what my mama said, but I don't
23 know. A certain doctors she knows.

24 Q Did you try to tell your lawyer all of that?

25 A I tried to tell him all that but he still said, Oh, I don't

1 think the insanity plea. That's what he kept saying. And I kept
2 saying that's what everybody else is saying.

3 Q Do you know what an insanity plea is?

4 A Something to do with mental health.

5 Q Is there anything you want to tell this judge?

6 A He just basically lied to us and took our money. You see
7 how he was up here like he was about to sweat? Because he knows
8 he's wrong. And when he said he didn't promise a YOA, he did
9 promise a YOA, and then he changed it.

10 Q You knew when Judge Cooper sentenced you you weren't getting
11 a YOA, right?

12 A Once he sentenced me.

13 Q What did you think you were going to get that day?

14 A That day I thought I was going to get 15. I thought I was
15 going to get 15.

16 Q Why did you think that?

17 A Because that's what he told me.

18 Q Who told you?

19 A My lawyer.

20 Q So it wasn't the YOA problem; it was the fact that you
21 thought you were going to get 15?

22 A Yeah, but I was already mad about the YOA thing since he
23 already done lied once, and then I said he probably ain't gonna
24 be no good because he's already lied to us once. Then he lied to
25 us again with the 10 years and under. And then he lied to us

1 again on the 15. And that's why he looked up here about to bust
2 a sweat.

3 Because you know you're wrong and you know you lied to us.

4 ATTORNEY YARBOROUGH: I don't have any further questions.
5 Thank you.

6 THE COURT: Mr. O'Kelly.

7 CROSS-EXAMINATION

8 BY ATTORNEY O'KELLY:

9 Q Good afternoon. How are you?

10 A I'm all right. How about you?

11 Q I'm well, thank you. So you said that your attorney never
12 gave you discovery?

13 A He never even mailed me one. Didn't go over it. Didn't
14 give me one. He never told me I had a trial defense or anything.

15 Q So did you know that there was video surveillance of you at
16 the Taylors' home?

17 A I knew that because my parents told me that part.

18 Q Okay. And did you know that law enforcement found your
19 backpack and driver's license and wallet, you know, and this
20 stuff all around?

21 A My mama told me that, my mama or it was my grandma. I
22 believe my mama told me that, too. I think it was my mama told
23 me that, too.

24 Q Was your mother speaking to Mr. Kulp, your attorney?

25 A Yeah, they talked.

1 Q They talked. So do you remember when the judge said that
2 you could get life in prison for the burglaries, or 25 years?

3 A I remember when he told me that when I was up there. The
4 lawyer -- the lawyers didn't ever -- he said, Just don't worry,
5 you're not going to get life, just go ahead and sign it. It's
6 not like I could have read most of what I was signing anyway.

7 Q I gotcha. And so with knowing that you had multiple life
8 sentences if you were convicted, would you still have wanted to
9 go to trial?

10 A I would have wanted to go to trial knowing I had a defense.
11 I didn't know had a defense because my defense didn't tell me I
12 had a defense. He didn't do nothing but take our money. That's
13 basically it. He didn't want to go to trial. He wanted me to
14 just sign on that dotted line and it would be over with. He
15 didn't care.

16 Q Do you remember admitting that you were guilty of these
17 charges?

18 A I remember when I went in front of the judge I admitted I
19 was guilty because he said that I wasn't -- that he said -- he
20 said don't worry about what this paper says. Like I said, I
21 couldn't read most of it. He said that I'm not going to get
22 life, only 15. He said, but don't let the judge know that he
23 said that. He said don't let the judge know that he said that
24 because he's not supposed to tell me stuff like that. That's
25 what he said.

1 Q Do you remember telling law enforcement, like the police,
2 that you had done --

3 A I don't remember any of that. I don't even remember going
4 to the hospital. They said they x-rayed me and everything. I
5 don't remember none of that. I remember waking up in the
6 hospital and passing back out as soon as I woke up.

7 Q Gotcha.

8 A That's all I remember.

9 Q Do you remember Dr. McKee, the doctor that evaluated you to
10 see your mental health and your competency?

11 A I remember him a little bit. Not much.

12 Q Gotcha. So do you remember that he found you competent to
13 stand trial and said you can keep going forward and talk to the
14 judge?

15 A I don't remember that much. I just remember that he
16 requested the mental health that we saw. I remember that, too.
17 And I remember that we paid out of our pocket for that, also,
18 which I heard we weren't supposed to do with a paid lawyer or
19 something with the state, so I don't know. Anyway, we paid out
20 of our pocket for that, too. And it was -- oh, he felt that I
21 should have that. It was my mama that brought it up and said I
22 had issues to him before went to court.

23 And that's why, because I was listening when he was up here
24 speaking. Now, I can understand English; I just can't understand
25 big words, I can't understand big words.

1 Q I gotcha.

2 A I seen that part, I was like, No, no, no, no; my mama
3 questioned that, not you. But I couldn't speak then. But I can
4 speak now.

5 Q I understand. So when you were in front of the judge --
6 when you were in front of the judge do you remember him talking
7 to you about your constitutional rights?

8 A I don't remember those. I know the judge probably gave them
9 to me but, you know, I was nervous and, you know, he basically
10 said that there's certain things they're going to ask me and
11 there's certain things that you're going to have to do, and just
12 sign the paper, the paper, I couldn't half understand anyways,
13 and everything's going to be all right.

14 Q But when the judge was speaking to you did you understand
15 what he was saying to you?

16 A Yeah. He told me the judge -- the judge was basically going
17 to say that this right here carries this. He said, but don't
18 worry about that because you're not going to get that, you're
19 going to get 15. That's what he said.

20 Q But when he asked you if you knew that you were waiving your
21 right to a jury trial because you were pleading guilty that day?

22 A I don't remember that. I don't remember it. You know, the
23 judge probably did ask me that, but I don't remember because I
24 was really nervous at the time, and I was just going by what my
25 lawyer told me because he was supposed to be my defense, and he

1 didn't even tell me I had any defense in trials or nothing. He
2 didn't tell me none of that.

3 And he already lied to me two times. Now this will be the
4 third time. I should have just got rid of him from the git-go
5 and just got a new lawyer. That's what I should have did,
6 honestly.

7 Q I understand.

8 ATTORNEY O'KELLY: May I approach?

9 THE COURT: Yes, ma'am.

10 Q All right.

11 A You know, people, public defenders even get a copy of their
12 motion and discovery. That shows right there that he didn't do
13 his job.

14 Q Could you take a look right here where he's saying that
15 nobody can make you testify against yourself, here on page 8.

16 A Where at?

17 Q Nobody can force you to admit you're guilty.

18 A I don't -- when they caught me, I don't remember admitting
19 it at all.

20 Q But when it says right here, Mr. Wilkes said, yes, sir; yes,
21 sir, that was you?

22 A Yeah, I probably did say, yes, sir. I was saying yes, sir,
23 to just about everything.

24 Q Gotcha. But you did understand what he was asking you?

25 A To an extent I understood what he was asking. I don't -- I

1 didn't fully understand everything, though, because when you use
2 big words I don't understand some of them big words. I don't.

3 Q But you understand nobody can force you to admit you're
4 guilty?

5 A I understand that, but I already -- they said I already
6 admitted it when they caught me or something. But I don't even
7 remember getting caught. I just remember -- I remember when they
8 picked me up and said somebody was dead, I cried, and I passed
9 out in the cop car.

10 Q Gotcha.

11 A So that right there --

12 Q This is just about the day of your pleading. We're going to
13 just talk about when you were talking to the judge that day.

14 A Okay.

15 Q And when he asked you, you know, do you know what a jury
16 trial is, and you said you know, yes, you know what a jury trial
17 is?

18 A I just said yes. I don't fully know what it is. I just
19 know it's where they find you guilty or innocent. That's about
20 all I can understand of that.

21 Q Gotcha. And do you remember when the -- but you did say
22 that, yes, you were happy with everything your attorney had done,
23 and that he had done everything you had asked him to do?

24 A Yes, before I got sentenced, because he lied and said he was
25 going to get me 15 at the end, and that that the jury was going

1 to say what the judge said about, oh, yeah, your charge carries
2 this right then and there, but don't worry about that because I
3 wasn't going to get that. That's what he said. He said you're
4 going to get the 10.

5 Q I gotcha. And then at very end when the judge said, So do
6 you want to plead guilty to felony DUI with death, and do you
7 want to plead guilty to burglary, first, two counts, and, you
8 said -- you remember saying yes?

9 A I remember pleading guilty to it because he told me that if
10 I pled guilty to it that I would get less time. That's what my
11 lawyer had said.

12 Q Gotcha.

13 A I think he lied, obviously.

14 Q All right. That's all for the State. Thank you so much,
15 Mr. Wilkes.

16 THE COURT: Any further anything on redirect?

17 ATTORNEY YARBOROUGH: No further questions from him, Your
18 Honor.

19 THE COURT: You can step down, Mr. Wilkes.

20 ATTORNEY YARBOROUGH: Call Mr. Turner.

21 ROBERT TURNER,

22 having first been duly sworn, was examined and testified as
23 follows:

24 THE COURT: Please tell me your name, sir.

25 THE WITNESS: Robert Turner.

DIRECT EXAMINATION

BY ATTORNEY YARBOROUGH:

Q Mr. Turner, how are you related to Mr. Wilkes?

A I'm his stepfather.

Q And how long have you been his stepdad?

A Since '98.

Q Ninety-eight. And so were you with him all through grade school and, I guess --

A Well, he come to live with us when he was 13. He lived with his grandmother and grandfather beforehand.

Q And did he have mental health problems when --

A Yes, sir, he did.

Q Did he stay in school?

A No. Couldn't get him to go.

Q What?

A Couldn't get him to go. He was always in trouble. They put him on Adderall and all that, and it didn't agree with him, so they put him on Ritalin, and that didn't agree with him.

Q And they would put him on those drugs to try to --

A Calm him down. Yeah.

Q Did y'all look for doctors to try to help him?

A For at least 10 years.

Q And with no luck?

A Couldn't get anybody to help us. Even when he turned 18 we tried to get him help. Nobody would help us.

1 Q Did y'all hire --

2 A I hired Mr. Kulp.

3 Q You did?

4 A Yes, sir.

5 Q And you paid him?

6 A Yes.

7 Q And did you discuss the case with him?

8 A Yeah, I discussed what I knew about it. And I discussed
9 that Justen had mental issues from the start and asked him to get
10 an evaluation, and he kept putting it off, putting it off. It
11 was two years later before he got an evaluation, and we had to
12 pay for it.

13 Q After he had been in jail for two years, he was a lot
14 different than he was when he first went in?

15 A Yeah. That's what I was referring to him, when we get it
16 done, why, --

17 Q Did you ever try to get the court to intervene to try to
18 help Mr. Wilkes?

19 A My wife did, but the law said there wasn't nothing they
20 could do, he was 18.

21 Q Do you think, did he understand stuff? Could you tell?

22 A I could tell he didn't understand fully about all things,
23 you know. He just ...

24 Q I mean, you're talking about everything?

25 A Anything, yeah.

1 Q And I guess at that point was he hearing voices?

2 A Yeah, he'd hear voices. Said he'd sing the Grim Reaper.
3 And it was bad.

4 Q And y'all took him to doctor to his try to help him?

5 A Yeah.

6 Q Did you feel like all that should have been presented to the
7 Court?

8 A I think it should have been. I think it should have been.

9 Q Why wasn't it?

10 A I don't know. We tried to get him evaluated through
11 Mr. Kulp from day one, and it --

12 Q Did you ask the State to step in?

13 A We never went to court for the first couple years.

14 Q I gotcha. And when he went to court to do his guilty plea,
15 what were you told his sentence was going to be?

16 A We was told they he was going to get 15 years, everything
17 running concurrent. That's what Mr. Kulp told us for a year.

18 Q Is that what you told him?

19 A Yeah. That's what we told him. Yeah.

20 Q And basically at that time he listened to y'all about making
21 decisions? Even though he was 18, y'all helped him make
22 decisions at that point?

23 A Yes, sir.

24 Q Would you agree that you all were acting as his guardian?

25 A Yes, sir.

1 Q Always?

2 A Always, yeah.

3 Q I mean, still today?

4 A Today, yes.

5 Q Why didn't y'all explain all this to Judge Cooper?

6 A I got to say a few words but I didn't realize that -- Tim
7 had talked to us, and our understanding was that everything had
8 been explained to Justen and the judge, and all of they talked
9 about this and everything, so we didn't feel a need to.

10 Q Were you surprised when he got 40 years?

11 A Very surprised.

12 Q I know your wife's here. She'd just get too upset to
13 testify, wouldn't she?

14 A Yeah, she would. Yeah.

15 Q Do you know of anything we can do to help him, Justen?

16 A He don't need 40 years. He don't need 40 years. He
17 deserved time, yes, he did. He deserved every bit of some time
18 he did because he killed a man, he took a man's life, and he
19 needs to pay for that. But he didn't deserve 40 years.
20 Everybody he knows says he's gonna be dead when he gets out.

21 Q Since you helped him make decisions, if you would have
22 thought he would have gotten, could have gotten, 40 years, would
23 you have told him to go to trial?

24 A I would have told him to go to jury trial.

25 Q The two people he listens to are you and your wife?

1 A My wife.

2 Q Did you meet with Mr. Kulp right before sentencing?

3 A Yeah, we did.

4 Q He said you were the one who came and saw him.

5 A Well, he didn't -- I don't remember him seeing Justen but a
6 couple times at Dorchester Jail, but I don't remember seeing him
7 that much.

8 Q Did y'all ever talk about any kind of trial defenses he
9 might have?

10 A I told him he needed to file a motion to suppress, to be
11 here where he admitted it and all he needed to do --

12 Q You told him --

13 A I told him to file motions, and he didn't do anything.

14 Q You told Mr. Kulp that Justen will just say things, right?

15 A Right, and just blurt stuff out, stuff he don't really --

16 Q Always has been?

17 A Always, his whole life.

18 Q Even on medication?

19 A On medication. Yes.

20 ATTORNEY YARBOROUGH: I don't have anything further. Thank
21 you.

22 THE COURT: Ms. O'Kelly?

23 ATTORNEY O'KELLY: Nothing from the State.

24 ATTORNEY YARBOROUGH: Your Honor, that's all I've got.

25 THE COURT: All right. You can step down, sir. All right.

1 So you don't have further witnesses?

2 ATTORNEY YARBOROUGH: I don't.

3 THE COURT: Ms. O'Kelly, do you have any?

4 ATTORNEY O'KELLY: No, sir.

5 THE COURT: All right. I'll hear from you all.

6 ATTORNEY YARBOROUGH: Your Honor, briefly. I mean, this is
7 a case, clearly, that Mr. Wilkes had challenges, and I just don't
8 see where, on the record, any of that was ever fleshed out. And
9 I think we have a duty in this system to try to help those that
10 have issues. I don't think anybody ever thought that he should
11 walk away from this, but it just seems like that what was
12 presented to the Court was not clearly anything as to what is
13 really going on with Mr. Wilkes.

14 If you listen to him or listen to his parents, I do think
15 that there should have been some more affirmative things done in
16 his defense. There was clearly a suppression issue about any
17 admissions. And, you know, the records are kind of shaky on what
18 kind of information was taken from him at the hospital, and it
19 seems like there should have been a suppression motion there.
20 I'm not sure from the testimony here that anybody could have
21 possibly thought that he would have thought he would have gotten
22 that many years from just listening to him. And I'd urge the
23 Court to look at it.

24 And I think at some point there's an obligation from this
25 court and from those that work in it that more should be done,

1 and I think there were some challenges here that weren't fleshed
2 on. I think, you know -- I mean, Judge Cooper could have flushed
3 these out. I mean, I have appeared in front of him millions of
4 times, and I think if he had known this he would have fleshed out
5 more. Thank you.

6 THE COURT: Okay. Well, along those lines, I don't know
7 anything about the facts, but if Judge Cooper sentenced him to 40
8 years, they must not be good.

9 ATTORNEY YARBOROUGH: Your Honor, when I saw that, I agree.

10 THE COURT: I say that from my experience when I was
11 standing where you are, not up here.

12 ATTORNEY YARBOROUGH: And I started thinking that myself, I
13 don't -- I don't even want to say this. I think there was some
14 -- I don't know that at the time in -- and I've practiced for a
15 long time, and I practiced for a long time in front of Judge
16 Cooper. I'm not sure at that time that Judge Cooper would have
17 been the best judge to plead this case in front of with a lot of
18 things that were going on, I don't know that, and I'm not going
19 to speak to that, I'm not going to try to challenge that. But it
20 does seem like a significant sentence.

21 THE COURT: Yes, it does. Forty years is a long time. Yes,
22 ma'am.

23 ATTORNEY O'KELLY: Just briefly. I would like to say that
24 the standard is, for counsel is, reasonableness and prevailing
25 professional norms, and I think that Mr. Kulp performed to those

1 standards; that his duty to conduct a reasonable investigation
2 was also met by having the Blair hearing and evaluation.

3 THE COURT: Well, he didn't actually have a Blair hearing,
4 did he?

5 ATTORNEY YARBOROUGH: No, sir.

6 THE COURT: But he did engage Dr. McKee. I just want to
7 make sure I got it right. That's the way it always works. The
8 client pays for a private doctor.

9 ATTORNEY O'KELLY: Gotcha. Did I misspeak?

10 THE COURT: No. I just wanted to make sure I didn't miss
11 something, but I did hear about a Blair hearing, but I did hear
12 about an evaluation which he should have done. I don't have the
13 evaluation in front of me, so I don't know what it says. I just
14 want to make sure I have my notes right that there wasn't a
15 hearing as well.

16 ATTORNEY O'KELLY: No, no. I said that the Court examined,
17 as the court reviewed the Blair portion of this, not a hearing of
18 this.

19 THE COURT: All right. Gotcha. I'm sorry. Go ahead.

20 ATTORNEY O'KELLY: And then -- yes. And that there be heavy
21 deference to counsel's judgment, and that I would submit to the
22 Court on behalf of the State that this was a voluntarily,
23 knowingly made plea, as the transcript will reflect. And that
24 that's it.

25 THE COURT: And I obviously have not -- I didn't get this

1 until today and I have not had the opportunity to go through it.
2 Is any of Dr. McKee's findings or report or anything in the
3 record?

4 ATTORNEY YARBOROUGH: No, sir, Your Honor.

5 THE COURT: Okay. All right. I'll let you all know
6 something shortly.

7 ATTORNEY YARBOROUGH: Okay. Thank you, Your Honor.

8 ATTORNEY O'KELLY: Thank you, Your Honor.

9 (End of Transcript of Record.)
10

11 CERTIFICATE OF REPORTER

12 I, Cathy J. Provost, Official Court Reporter for the
13 Fourteenth Judicial Circuit of the State of South Carolina, do
14 hereby certify that the foregoing is a true, accurate and
15 complete Transcript of Record of the proceedings had and evidence
16 introduced in the trial/proceedings of the captioned case in the
17 Court of Common Pleas for Dorchester County, South Carolina, on
18 the 25th day of January, 2023.

19 I do further certify that I am neither of kin, counsel, nor
20 interest to any party hereto.
21

22 Date: September 11, 2023
23

24 \s\ Cathy J. Provost
25 Cathy J. Provost, RMR
Official Circuit Reporter

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Justen Lee Wilkes, #375739

Applicant,

v.

State of South Carolina,

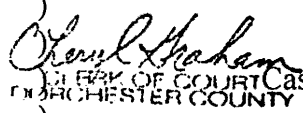
Respondent.

CERTIFIED COPY

IN THE COURT OF COMMON PLEAS

2023 MAR 27 PM 1:54

FOR THE FIRST JUDICIAL CIRCUIT


 Cheryl A. Graham
 CLERK OF COURT
 DORCHESTER COUNTY

Case No.: 2019-CP-18-064

ORDER OF DISMISSAL

This matter comes before this Court by way of post-conviction relief (PCR) application filed by Justen Wilkes (Applicant) on January 11, 2019. Respondent made its return on December 2, 2020, requesting an evidentiary hearing. An evidentiary hearing was held on January 25, 2023, at the Orangeburg County Courthouse. William G. Yarborough III, Esquire, represented Applicant. Assistant Attorney General C. Whitney O'Kelly represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's stepfather, Robert Turner, and Plea Counsel, Timothy Kulp, Esquire, also testified. Before this Court is the transcript from the plea hearing, the PCR application, the State's return, the South Carolina Department of Corrections records, and the Clerk of Court's records from the underlying convictions. After reviewing all records and evidence before this Court, this Court finds Applicant did not meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant is completing a forty year term. During its May 2017 term, the Dorchester County Grand Jury indicted Applicant for one count felony driving under the influence (DUI), resulting in death (2016-GS-18-1961), and one count burglary in the first degree (2016-GS-18-1962). Applicant subsequently waived presentment to the Charleston County Grand Jury for an additional count of burglary in the first degree (2018-GS-10-1816). All three charges were alleged to have occurred during a five-to-six-hour period across Charleston and Dorchester counties.

On March 19, 2018, Applicant appeared before the Honorable Thomas W. Cooper and plead guilty as indicted.¹ Timothy Kulp, Esquire represented Applicant. Assistant Solicitor Donald Sorenson represented the State. Judge Cooper sentenced Applicant to consecutive terms of twenty-five years for felony DUI with death and fifteen years on the burglary charges to run concurrently. Applicant did not appeal his plea or sentence.

SUMMARY OF RELEVANT FACTS

Danywell Criswell and David Wise reported their residence was broken into sometime between midnight and 5:00AM on or about October 20, 2016. The rear balcony sliding door was identified as the point of entry into the apartment. Victims told law enforcement that \$150 in cash, and keys to a 2010 black Ford Fusion registered to Victim's mother, were missing from the residence. Law enforcement officers responding to the scene located a grey backpack below

¹ At the plea hearing, Applicant waived his right to have indictment 2018-GS-10-1816 disposed of in Charleston County, and proceeded to have all three pleas before Judge Cooper.

Victim's balcony that contained an October 11, 2016, uniform traffic ticket for DUI belonging to Applicant.

At 3:41 A.M. that morning, officers from the Summerville Police Department responded to a call-in reference to an abandoned over-turned vehicle. The vehicle was identified as the 2010 Ford Fusion, and a search of the vehicle resulted in the discovery of a wallet that contained Applicant's driver's license and \$86.00.

At or around 4:15 A.M., a security camera located two blocks away from the over-turned Fusion recorded Applicant attempting to break-in to the residence through a sliding glass door. Applicant ultimately entered the residence through a kitchen window, where he proceeded to steal a watch and the keys to Victim's 2010 Ford F-250 pickup truck. The security camera recorded Applicant backing the stolen vehicle out of the driveway at 5:12 A.M.

At or around 5:31 A.M., a deputy with the Dorchester County Sheriff's Department began pursuit of the 2010 Ford F-250 after he clocked it going 66 m.ph. in a 45 m.ph. zone. The driver accelerated away from the deputy, at which time the deputy abandoned pursuit but continued in the same direction as the fleeing pickup truck. Within a minute, the deputy discovered a multi-vehicle accident. The Ford F-250 veered across the center median, clipping a GMC pickup truck and a Volvo SUV, before striking a Porsche SUV, killing the driver.²

Applicant escaped on foot from the wreckage by the time deputies arrived on scene. Around 7:30 A.M., deputies located and arrested Applicant a few miles away from the scene of the accident. Applicant then admitted to stealing the Ford F-250 and driving it at the time of the collision. Deputies administered field sobriety tests, which Applicant failed. Applicant's blood

² The driver of the GMC pickup truck was Taryn Sigman, her husband was driving separately in the Porsche SUV and was the sole fatality from the accident. When the deputy arrived on scene, Mrs. Sigman had gotten out of her vehicle and found her husband deceased.

alcohol came back negative. However, Applicant indicated to law enforcement that he had taken two Xanax bars. His toxicology report returned positive for methamphetamines and Xanax. Applicant later admitted that he smoked methamphetamines and took Xanax throughout the day prior to the burglaries and the felony DUI.

CURRENT ACTION BEFORE THE COURT

In his application for PCR, Applicant alleges he is being held in custody unlawfully (as to indictments 2016-GS-18-1961; -1962) for the following reasons:

1. Ineffective assistance of counsel
 - a. Failure to advise
 - b. Failure to investigate
 - c. Failure to investigate and present mitigating circumstances

At the evidentiary hearing Applicant proceeded on the allegations set forth in his application.

SUMMARY OF EVIDENTIARY HEARING TESTIMONY

APPLICANT'S TESTIMONY

Applicant testified he is currently twenty-seven years old but was twenty-one at the time of the incident. Applicant asserted he never saw discovery. Applicant stated he was given his "charges when he woke up the day of court." Applicant claimed he thought he may be sentenced under the Youth Offender Act (YOA). Applicant also stated that Counsel told him his sentence would be "ten years or under fifteen years." Applicant told the Court that Counsel instructed him to "just sign" the sentencing sheet and not to pay attention to what it stated.

Applicant asserted Counsel "lied to him" and only "just took our money." Applicant stated Counsel never told him that he had a trial defense. Applicant attested to not being "stupid" but to having had a ninth-grade education in "special classes," and challenges, such as a drug problem that did not help his impulsiveness.

Applicant also stated that he wished he had more time with Counsel, and not to have been “rushed into the court room once [Counsel] took his money.” Applicant stated he thought he should have had an “insanity plea” because he heard voices. Applicant stated that the voices were worse when he was arrested but that they have “gotten better” since medication and treatment for substance abuse.

ROBERT TURNER TESTIMONY

Robert Turner testified that he is Applicant’s stepfather. He testified that he has been his stepfather since 1998. Turner stated that Applicant has lived with him and Applicant’s mother since the age of thirteen. Turner testified that Applicant had mental issues and had taken Adderall and Ritalin in the past, while growing up, but neither medication granted positive results. Turner stated he tried to get mental help for Applicant but “couldn’t get anyone to help.” Turner stated that he hired Counsel and paid him. Turner stated that Counsel discussed the case with him. Turner said two years after the initial meeting with Counsel, he was asked to pay for a mental evaluation.

Turner testified Applicant was “a lot different than he was when he got in jail.” Turner stated he was able to tell that Applicant didn’t understand anything at his plea hearing. Turner asserted that at the time he thought everything had been discussed with Counsel but does not feel the same way now. Turner said he was surprised that Applicant received forty years. Turner stated “he deserves time, but he didn’t deserve forty years.” Turner said now that he knows Applicant’s sentence, he would have told Applicant that he should go to a jury trial rather than plead guilty. Turner testified that he did meet with Counsel before sentencing. Turner asserted that he told Counsel to file a motion to suppress Applicant’s confession because Applicant “will just say things.”

PLEA COUNSEL'S TESTIMONY

Counsel testified he has been an attorney for forty-five years and has practiced mostly criminal defense. Counsel recalled he became Applicant's lawyer in October of 2016. Counsel testified he first met with Applicant on October 8, 2016. Counsel stated he met with Applicant about seven or eight times. Counsel stated he discussed all the State's evidence with Applicant. Counsel recalled some of the most damaging evidence was the video tapes of Applicant committing the burglary, speeding past the deputy's dash cam, and the recorded footage of Applicant's confession immediately after apprehension.

Counsel testified he had Applicant evaluated for psychological and mental health issues by Dr. McKee. Counsel stated that Applicant was found to be competent. Counsel told the Court that the professional said that Applicant was in a position to testify to useful information. Counsel asserted that Applicant participated in preparation of his case. Counsel remembered Applicant being candid and truthful with him. Counsel stated that during sessions of explaining discovery, elements of charges, and proof against Applicant, Applicant seemed to be able to follow. Counsel recalled drawing pictures to help explain some concepts to ensure Applicant's understanding. Counsel testified that it would be hard to argue Applicant's presentation on the video evidence was due to mental health or anything other than the substances he admitted he ingested.

Counsel stated he doesn't think the video indicated that Applicant did not understand *Miranda*³ rights or was incapable of understanding *Miranda* rights. Counsel didn't believe Applicant was more mentally challenged than "most clients." Counsel stated the questions Applicant asked were meaningful and relevant to the defense. Counsel stated he employed Dr.

³ *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (2966).

McKee to see if Applicant's ingestion of drugs was to the degree that rendered him incapable of knowing what he was doing.

Counsel said that if Applicant had elected to go to trial, then he would have filed a motion to suppress evidence and would have challenged the blood evidence that the State had obtained. Counsel stated he would have been compelled to argue that the State could not prove intoxication but that it would not have been successful due to the overwhelming amount of evidence to the contrary. Counsel stated he challenged the intoxication factor and developed argument for it with the Solicitor, but the issue of impairment came from Applicant's admission to drugs ingested and how he appeared. Counsel stated that when he tries a case, he argues any issue that is legally and ethically permissible and does everything to attack the State's case in any way.

Counsel stated that Applicant's focus was to prevent life in prison without the possibility of parole. Counsel testified that Applicant said he would be happy with receiving a ten-to-fifteen-year sentence. Counsel stated he carefully explained that there was no agreement as to what the judge would impose other than no life without parole sentence, and judge would not commit to any sentences being concurrent. Counsel stated Applicant understood this. Counsel stated he submitted a sentencing memo and mitigation presentation in hopes of obtaining a twenty-five- and fifteen-year concurrent sentence but that didn't happen. Counsel stated that he had never heard a victim use the word "consecutive" in a victim impact statement.

Counsel also noted that the widow of the deceased had civil counsel. Counsel believed that the most damaging information for sentencing was the telephone call Applicant made from jail, despite having been told by Counsel on many occasions not to discuss the case in jail calls. Counsel stated that during this call Applicant told his grandmother that he was looking forward to getting a "tattoo of a tear under his eye but not blacked in because he didn't intend to kill the guy." Counsel

stated that he believed Applicant could understand the impact of the audio segment that was played because he said it to his grandmother.

Counsel testified he didn't believe that the Applicant's lack of a violent history would be mitigating to a sentencing judge. Counsel asserted that Applicant's stepfather kept stressing that no one was hurt in the burglary, but that is not an element to the charge of burglary. Counsel did not believe that ninety-nine percent of first-degree burglaries are pled down, explaining each case is always fact specific. Counsel admitted that he was aware of how judges sentence and that he did everything he could to avoid to plea before a judge that "would be known to throw the hammer at him," but Judge Cooper wasn't known to do that. Counsel stated he spoke with other bar members about Judge Cooper, and they said he was fair. Counsel asserted that he mentioned Applicant's youth and that the death was unintentional, and he used every tactic and approach to receive the best result.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

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

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, an applicant bears the burden of proving allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove that "Counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement. *Butler*, 286 S.C. 441, 334 S.E.2d 813. An applicant must overcome this presumption for relief to be granted. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts apply the two-pronged test outlined in *Strickland* when evaluating ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms". *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-118, 385 S.E.2d at 625. With respect to a guilty plea, the applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have plead guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985).

A defendant who enters a guilty plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below the objective

standard of reasonableness and that there was a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011), (citing *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)). After careful review based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Therefore, this Court must deny and dismiss this application with prejudice.

Counsel's Failure to Advise

Applicant alleges that Counsel failed to sufficiently advise him about his discovery, the nature of his charges, implications of any potential sentence, and the consequences of his plea deal. The credible testimony before this Court is that Counsel not only reviewed all discovery with Applicant but also reviewed it with his stepfather. Applicant's stepfather testified that Counsel discussed the case with them and at the time of the plea hearing he believed they had discussed everything with Counsel. Counsel's credible testimony reveals, and the record reflects, Counsel advised Applicant on his discovery and the elements of his crimes and drew pictures to ensure Applicant's understanding. Counsel testified that Applicant was candid and truthful with him during the seven or eight meetings they had to explain discovery, the elements of the charge and discuss the proof against Applicant. This Court finds Counsel's testimony was credible and his performance was reasonable in light of the circumstances of this case and finds that he performed competently in accordance with professional standards.

Furthermore, this Court finds that Applicant has failed to meet his burden of establishing any resulting prejudice from any alleged deficiency. Applicant was informed before pleading of his potential sentence and the consequences of his plea. Applicant testified that he was aware of the right to trial, what the Youthful Offender Act (YOA) is, and that he was hoping for a 10-to-15-

year sentence, but ultimately decided to plea. Counsel credibly testified that he informed Applicant of the implications of his sentence when discussing the elements of the crimes, as well as the consequences of the decision to plead guilty, well in advance of Applicant's hearing. Applicant has failed to satisfy his burden of establishing that his actions would have been any different from any of the actions taken by Counsel over the course of his defense. Therefore, this allegation must be dismissed with prejudice.

Counsel's Failure to Investigate

Applicant's allegation that Counsel was ineffective for failure to investigate evidence, witnesses, potential defenses and potential dispositive pretrial motions is without merit. Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Strickland v. Washington*, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions...." *Strickland*, 466 U.S. at 691, 104 S.Ct. 2052. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts

of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690, 104 S.Ct. 2052. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014). Further, the Court in *Glover* found because other alleged witnesses that Applicant claimed may have provided an alibi defense "did not testify at the PCR hearing, respondent could not establish prejudice from counsel's failure to contact these witnesses". *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995).

At the evidentiary hearing, Counsel presented many investigatory measures that were taken in order to provide a defense for Applicant. Counsel testified he met with Applicant's family members and reviewed discovery with Applicant, his mother and stepfather after investigating all the evidence. Counsel credibly testified that the reason he did not challenge the intoxication of Applicant at the time was due to Applicant's own confession to law enforcement as well as the body cam and dash cam footage that clearly displayed his intoxicated demeanor. This Court finds Counsel's foregoing testimony regarding his investigation to be credible. Further, the evidence does not show that Counsel's investigation falls beneath the standard of reasonableness for legal professionals. Finally, Applicant did not prove prejudice because there was no evidence presented showing that further investigation would have revealed anything other than the outcome that was rendered. *See Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) (quoting *Underwood v. State*, 309S.C. 560, 425 S.E.2d 20 (1992) pure conjecture as to what a witness's testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different). Therefore, in light of this testimony evidence, and the evidentiary hearing record as a whole, this Court finds this allegation to be without merit and must be denied as the remaining ground for relief.

Counsel's Failure to Mitigate

Applicant claims Counsel was ineffective for failing to mitigate the sentence. Counsel may

be found deficient for failing to sufficiently investigate and present mitigating evidence. *See Council v. State*, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008) (finding it unreasonable for counsel not to further investigate the defendant's background and present even minimal mitigating evidence obtained); *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (finding it unreasonable when Counsel failed to investigate mitigating evidence beyond a couple retained records, including the presentence investigation report and social service records); *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (finding that Counsel was unreasonable for failing to evaluate the totality of available mitigation evidence). An applicant is prejudiced by this deficiency if there is a reasonable probability that a different sentence would have been imposed but for Counsel's failure to investigate and present mitigating evidence. *Council v. State*, 380 S.C. 159, 171, 670 S.E.2d 356, 362 (2008).

The record before this Court reflects that Counsel mitigated at sentencing before Judge Cooper. Counsel credibly testified, and the plea transcript supports, that Counsel reviewed Applicant's age, lack of an extensive prior record, and absence of a violent history at the time of his plea hearing. Counsel also testified that he submitted a sentencing memo and mitigation presentation in hopes of obtaining a shorter sentence for Applicant. Counsel testified that he made arrangements with a psychiatric professional, Dr. McKee, in order to obtain a mental evaluation for Applicant, for the purposes of mitigation. Finally, this Court finds the foregoing testimony by Counsel to be credible. Further, this Court finds Applicant did not show Counsel's conduct fell below prevailing professional norms and thus did not prove deficiency. Applicant provided no evidence of any mitigating factors that were not considered or included at the plea hearing by Counsel and thus failed to prove prejudice. *See Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995). As Applicant has failed to prove deficiency and prejudice, this Court finds that this

allegation must be denied and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

Applicant also alleges that his plea was invalid. For a guilty plea to be valid, the record must establish the defendant had a full understanding of the consequences of their plea and the charges against them. *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969)). Further, an applicant can attack the voluntary, knowing and intelligent character of a guilty plea entered on advice of counsel by showing counsel's advice in taking the plea fell below an objective standard of reasonableness. *Porter v. State*, 368 S.C. 378, 629 S.E.2d 353 (2006). "That a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." *McMann v. Richardson*, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." *Id.* at 771.

Applicant's testimony at the evidentiary hearing supports the Plea Court's finding that he knowingly entered his plea. Applicant testified that he had spoken to Counsel about his option to plea, the likelihood of success at trial being very low, and the possible sentences. Counsel further testified to the voluntariness of this plea in that Applicant's focus in his decision to enter a guilty plea was to prevent life in prison without the possibility of parole. Counsel stated that he carefully explained that there was no agreement as to what sentence the judge would impose other than no life without parole sentence, and the judge would not commit to any sentences being concurrent. Counsel stated that Applicant understood this.

The plea record also reflects Applicant's meaningful understanding of voluntarily, knowingly and intelligently entering his plea. Judge Thomas W. Cooper thoroughly discussed his charges and the implications of each, including the respective sentences of each and the State's strikes law. (Tr. 7,8,10,12). Applicant also testified at his plea hearing that he understood he was waiving constitutional rights, such as his right to remain silent, right to a jury trial, and the burdens of the State to prove his guilt beyond a reasonable doubt. (Tr. 8, 11). Based on the testimony from the evidentiary hearing as well as the plea hearing record, this Court finds that Applicant did enter his plea of guilty voluntarily, knowingly and intelligently and therefore has no constitutional right to relief.

CONCLUSION

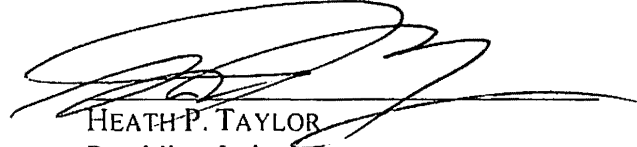
Based on all of the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this Court must deny and dismiss this post-conviction relief application with prejudice.

This Court notes that if Applicant wishes to secure appellate review, he must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 20th day of March, 2023.


HEATH P. TAYLOR
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina
✓