

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Laurens County

Honorable R. Scott Sprouse, Circuit Court Judge

FREDERICK CALVIN JONES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001285

APPENDIX

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S.C. SUPREME COURT

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State of South Carolina) In the Court of General Sessions
) Eighth Judicial Circuit
 County of Laurens) 2016-GS-30-0227

State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Frederick Calvin Jones,)
)
 Defendant.)
)
)

October 23, 2018
 Laurens, South Carolina

B E F O R E:

The Honorable Letitia H. Verdin, Judge

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

C. Dale Scott, Deputy Solicitor
 Attorney for Plaintiff

Chelsea B. McNeill, Esquire
 Attorney for Defendant

Maryann S. Nevers, CVR-M-CM
 Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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No exhibits marked during proceeding.

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TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 3:47 p.m.)

THE COURT: All right. Mr. Jones, you're here today to plead to voluntary manslaughter. That carries 2 years, up to 30 years. It is classified as a violent and most-serious offense, violent offense meaning active jail time that you were to receive, you'd serve a greater percentage than if it were a nonviolent offense. And most serious means two of your three strikes with regards to life without possibility of parole. You understand that?

THE DEFENDANT: Yes.

(Whereupon, Ms. McNeill and the defendant conferred.)

THE DEFENDANT: Yes, ma'am.

THE COURT: Have you discussed this charge with your lawyer?

THE DEFENDANT: Yes, ma'am.

THE COURT: Are you happy with what your lawyer has done for you?

THE DEFENDANT: Yes, ma'am.

THE COURT: Are you under the influence of drugs or alcohol here today?

THE DEFENDANT: No, ma'am.

THE COURT: Has anyone forced you to plead guilty?

THE DEFENDANT: No, ma'am.

THE COURT: Has anyone promised you anything to get

1 you to plead guilty?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: When you plead guilty, you give up certain
4 constitutional rights. One is your right to remain silent
5 about these charges. Do you know that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You also give up your right to a jury
8 trial. At that trial your attorney could call witnesses
9 for you, cross-examine witnesses against you, and the state
10 would have to prove your guilt beyond a reasonable doubt.
11 But when you plead guilty, you give up your right to a jury
12 trial. Do you know that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. This sentencing sheet says that you
15 are 36 years old; is that right?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: How far have you gone in school?

18 THE DEFENDANT: (No audible response.)

19 THE COURT: How far have you gone in school?

20 THE DEFENDANT: Eleventh grade.

21 THE COURT: Eleventh grade?

22 MS. MCNEILL: Yes.

23 THE COURT: All right.

24 MS. MCNEILL: Moment of Court's indulgence?

25 THE COURT: Sure.

1 (Whereupon, Ms. McNeill and the defendant conferred.)

2 MS. MCNEILL: Thank you, Judge.

3 THE COURT: Thank you.

4 And how do you plead to this charge, guilty or not
5 guilty?

6 THE DEFENDANT: Plead guilty.

7 THE COURT: You have ten days from today's date to
8 appeal this plea, if you so choose. But you must do so in
9 writing to this Court.

10 Yes, sir.

11 MR. SCOTT: Thank you, Your Honor. For the Court's --
12 and I want to introduce you to some people. This is
13 Shirley Butler. This is the aunt of Calvin Walker. Calvin
14 Walker is the victim in this case. Next to her is Annie
15 Walker. This is Calvin Walker's grandmother. Wanda Walker
16 here is -- is his mother.

17 And Shayla Jenkins is his -- the mother of his child.
18 Incidentally, he had a child born one month after he passed
19 away. The child is doing fine today.

20 So November 17th, 2015, is our incident date. Calvin
21 was 29 years old at the time. Sara Jenkins -- or Shayla
22 Jenkins called 911 to report -- report that Calvin had just
23 been shot. EMS and officers arrived, and Calvin was
24 transported to the hospital, where he was pronounced dead.

25 Shayla -- again, Walker's girlfriend -- described that

1 she and Walker had just walked down to a nearby convenience
2 store and as they were walking back home, she did notice a
3 medium-size sedan, possibly navy in color, but really
4 thought nothing of it. It was just a car she happened to
5 notice in the area.

6 As they got home, Calvin received a phone call. He
7 stayed in the yard to answer it while Shayla walked inside.
8 I -- I've asked her about this a number of times. She
9 describes hanging her jacket up and immediately hearing two
10 gunshots.

11 So she's in the front yard. She had recently seen a
12 blue car, but nobody was out in the yard with Calvin when
13 she walks inside. Immediately when she's in there, two
14 gunshots; runs outside and -- and sees nothing. But she
15 doesn't -- all she sees is Mr. Walker lying on the ground.

16 A cell phone belonging to Mr. Walker was observed, and
17 officers reviewed the last few phone calls and text
18 messages. There was a conversation from a phone number at
19 [REDACTED] between 11 p.m. and 6:46 p.m. And the gist of
20 the conversation was the sender was coming to meet walker
21 to purchase something. And we -- we later have come to
22 suspect it was marijuana. They were coming to purchase
23 some marijuana from Mr. Walker.

24 Officers researched that phone number. It was
25 discovered to be a phone associated with Fred Jones'

1 mother. And incidentally, later on, when Fred Jones was
2 arrested, he had that phone on him.

3 He was arrested on November 20th. And interestingly
4 -- noteworthy, rather, two days before, he had that phone
5 number changed on the phone ---

6 THE COURT: Okay.

7 MR. SCOTT: --- the state would allege to cover up his
8 tracks on that.

9 There were other witnesses in the area that -- that
10 heard the two shots and observed a -- again, a dark-colored
11 sedan leaving the area where the gunshots came from. And
12 they also -- at least one of them said the car was blue.

13 Officers -- he's got a codefendant, Malcolm Jones.
14 And they did go speak with him at one point at the Newberry
15 County probation office. He was observed driving a blue
16 Pontiac G6. Malcolm admitted to knowing Fred Jones, but
17 denied ever being with him or going to Clinton with him.

18 Officers did find surveillance that put them together
19 the night of the incident location at a convenience store.
20 So right then, they kind of knew Malcolm, the codefendant,
21 wasn't being straightforward.

22 He indicated he had no idea who Calvin Walker was.
23 Officers interviewed a man named Alex Lanier they learned
24 was trying to sell a .32-caliber pistol around that time.
25 They spoke with Lanier, and he confirmed Fred Jones had

1 given him the gun to try and sell. And he -- he said that
2 he had seen Fred Jones with Malcolm Jones the day of the
3 murder.

4 They go an interview Fred, who at first denied any
5 knowledge of the murder. Eventually, his story shifted
6 that he was riding to Clinton in a blue car driven by
7 Malcolm Jones. And Carron Grant, another person who
8 ultimately was not charged, accompanied them. He claimed
9 Malcolm and Carron jumped out on Calvin Walker, attempted
10 to rob him, and Malcolm shot him when Walker resisted.

11 Malcolm Jones turned himself in December 4th. He
12 indicated he wanted to talk. He confirmed that he had been
13 at the incident location when Walker was shot, but claimed
14 Fred Jones did it. He indicated that he and Fred were the
15 only two people in the car.

16 So ultimately, what we dealt with was two codefendants
17 who, after -- after a while, after at first saying they had
18 no idea who any of these parties were, admitted to being
19 there. But then, they point the fingers at one another.
20 So what we're left with is: How do we make the strongest
21 case against which one?

22 We know Malcolm Jones was driving the car, based on
23 his own testimony, based on Malcolm. That short time
24 frame, it -- it is difficult to imagine the driver of the
25 car being able to put it in park, jumping out of the car,

1 confront Walker, shooting him, and then running back in the
2 car, putting it in drive, and leaving before Shayla could
3 come outside.

4 So the best theory the state could come up with was
5 that the shooter was the passenger. And we know that
6 Malcolm was driving. So that puts Fred as being the
7 passenger.

8 That -- the -- the man I mentioned earlier, Alexander
9 Lanier, did state that later on that night or the next day,
10 he had seen Mr. Jones burning some clothes in his backyard.
11 And again, it was Fred Jones who had given the gun to
12 Lanier. The other connections was we can connect to Mr.
13 Jones to Calvin Walker, but not Malcolm Jones to Calvin --
14 or -- Calvin Walker.

15 Ultimately, all -- all of this had led to -- and the
16 family understands that, you know, they want murder,
17 obviously. But they understand that, you know, sometimes a
18 -- a bird in hand is better than two in the bush.

19 Malcolm Jones has pled to his role. What we pled him
20 to was 15 years on accessory. And that's what the judge
21 gave him on a recommended sentence. I've spoken with his
22 family at length. The -- you know, they're not happy with
23 this plea, obviously, because they certainly, you know --
24 they never get to -- you hear this all the time -- but
25 they'll never get to talk with Calvin Walker again.

1 They -- they don't think it's fair that he gets to
2 speak with his family and live life on the out -- or -- so
3 I -- I've told them, I'm going to recommend a 25. And I --
4 I would ask you to -- to go along with that, Your Honor.

5 I -- as a part of this plea, he's got -- he's a
6 Newberry guy. And I've got a Newberry docket. I'm going
7 to dismiss four distribution-crack charges over there,
8 three proximity charges, a possession of a sawed-off
9 shotgun, and unlawful possession of a weapon by somebody
10 who committed a crime that prevents him from having a
11 weapon, a grand larceny, and a carjacking.

12 So he's catching a break on that end. He's catching a
13 break on the deviation from murder. And he does have a --
14 he does have a criminal history, Your Honor. And -- and I
15 would read that to you, if -- at the appropriate time. But
16 we would ask for that -- you go along with the 25-year
17 sentence.

18 THE COURT: All right. And, Mr. Jones, you heard the
19 facts as stated by the solicitor. How do you plead, guilty
20 or not guilty?

21 THE DEFENDANT: Plead guilty, ma'am.

22 THE COURT: All right. I'll accept your plea.

23 And you said that he has a prior record?

24 MR. SCOTT: Yes, Your Honor. He has a 1999 burglary-
25 second nonviolent. He's got a CDV from 2004; giving false

1 information, 2004; interference or hindering with officers
2 in 2004; possession marijuana in 2004. He's got a
3 resisting arrest in 2004; unlawful carrying of a weapon in
4 2004. I've got, in 2007, assault with intent to kill; he
5 got 10 years, suspended to 3 years, probation for 2 years
6 on that charge. Fail to stop blue light in 2007; he's got
7 a resisting arrest in 2011; possession crack in 2011;
8 assault and battery second-degree in 2011. And that's the
9 extent of his criminal history, Your Honor.

10 THE COURT: All right. All right. Yes.

11 MS. MCNEILL: Thank you, Your Honor. First, I would
12 -- I -- you know, obviously, these are tough cases. You've
13 seen that I've been pleading some really tough cases this
14 week, along with Mr. Scott. They really are never easy to
15 do.

16 Fred has -- he's 36 years of age. And we have been
17 trying to resolve this case for quite some time. He has
18 1,080 total jail credit.

19 Before I was appointed to represent Mr. Jones, he was
20 also -- he had Tom Adducci as his lawyer before Tom went to
21 the Greenville public defender's office. And the same kind
22 of thing happened where Tom Adducci and I met with Fred
23 Jones at the same time in the Newberry jail, which is where
24 he was housed the majority of this time for that transition
25 period.

1 After I -- after that meeting happened, I went back
2 and spoke to Fred. And I had his discovery with me. And
3 his -- I said to him, "Okay, Fred. I know that you've been
4 over your discovery with Tom, but I want to start fresh."

5 And he said, "There's no need. I know what's in the
6 discovery. Can you please go and tell the solicitor that
7 I'm willing to plead to voluntary manslaughter for 15
8 years? If I can do that, then I can see my daughter
9 graduate high school."

10 And I said, "Okay. Well, you know, I think that
11 that's reasonable from what I had heard through the
12 grapevine about the case and the problems connecting who
13 was the shooter."

14 So I started an e-mail communication with Mr. Scott.
15 I said, "How about we plead him 20, suspended to 15 active
16 and 5 probation?"

17 Initially, Mr. Scott said he felt like that was
18 reasonable but he had to take it to the victim's family.
19 Well, then we kept talking, kept talking. Fred was always
20 willing to cooperate against Malcolm Jones, who is the
21 codefendant who got 15 years.

22 And we talked a lot about some of the defenses in his
23 case. And honestly, he had a lot of defenses. The only
24 problem is -- is that the cell phone was found with him,
25 even though he claimed to have given it to somebody else,

1 which was his sister's boyfriend at the time.

2 But ultimately, what it came down to was Fred was
3 worried that under "hand of one/hand of all" in this state
4 -- and when we looked at it that way -- he would've been
5 convicted, no matter what kind of defenses that we could
6 raise. Then Mr. Scott -- I kept trying to communicate with
7 him. And I've -- I kept apologizing in my e-mails to Mr.
8 Scott about being annoying on how aggressive I was trying
9 to resolve this plea.

10 And then I said -- or Dale Scott said to me on
11 Wednesday, February 14th, 2018: "Well, I think he wants
12 18. I can't do that. I had a very sad meeting with the
13 victim's girlfriend, mother, aunt, and grandmother
14 yesterday. I felt very unhappy after the meeting. And
15 that feeling stayed with me for the rest of the day."

16 Well, that was on Wednesday, February 14th, 2018.
17 Prior to that, on Thursday, November 30th, 2017, Dale Scott
18 sent me an e-mail that says: "Fred Jones can plead to
19 voluntary, but I would be looking for something closer to
20 the 18-to-20-year range. I have a number of Newberry
21 charges I will roll into that plea."

22 And then I discussed this new information that he came
23 up with about the man who saw him burning the clothes. And
24 that is also documented in e-mail. And I said: "Dale, I'm
25 evaluating Fred's case so I can have a serious discussion

1 on how I need to advise him. I have a note in my file that
2 refers to a conversation that you and I had in your
3 Newberry office. You said that you received a written
4 statement from a jail snitch which provided you with new
5 information that you felt strengthened the state's case
6 against Fred being the shooter. You said you were going to
7 get that to me but never did. Will you please provide that
8 to me? And also, can you please send me the audio and
9 video recordings for the interviews, blah, blah, blah."

10 And then he responded: "Chelsea" -- and this was on
11 Monday, April 16th, 2018. "Chelsea, sorry just getting bck
12 to you. The statement I was referring to was a sit-down
13 talk with Alex Lanier. He was shackled and wearing a spit
14 mask at the time, so he did not put pen to paper. But I
15 sat and talked with him. Essentially, he said Fred had
16 talked about wanting to hit a lick the day before and also
17 the day of the shooting. He said he walked down to Fred's
18 house and saw Fred burning his clothes behind his house.
19 Also, he is the guy who Fred gave the gun to so he could
20 try to get rid of it. I have Walter working on burning
21 that disc." And it goes on with that.

22 So as far as, like, this guy that saw the, you know,
23 clothes being burned, you're getting that information from
24 a shackled man at the jail wearing a spit mask, who's
25 obviously having disciplinary issues. Fred has not had any

1 disciplinary issues at all since he's been at the Newberry
2 jail. And then, the Newberry jail had to go under
3 renovation, so all of their inmates are now being housed at
4 the Laurens jail. And that's where Fred is currently.

5 And I only point these things out not to take away --
6 not to -- not to, you know, excuse any of this behavior.
7 No one should be involved in (1) going to buy drugs from
8 somebody; and (2) carrying drugs and -- or carrying guns to
9 any sort of location and getting into such a war over drugs
10 that you're going to shoot someone dead, absolutely
11 unacceptable in our society.

12 And so I'm not trying to justify anything. Because,
13 again, under "hand of one/hand of all" is how I was able to
14 legally advise Fred. But Fred may have a record. As far
15 as all of these charges that Mr. Scott said that he's going
16 to be dismissing as part of this plea deal that are pending
17 in Newberry, I just want Your Honor to know I don't know
18 how strong of cases he has against him. So I -- I'm unable
19 -- I feel a little bit like I can't respond to that. I was
20 never provided the discovery on those cases. And I was
21 never his attorney appointed on this cases.

22 THE COURT: Understood.

23 MS. MCNEILL: So I ---

24 THE COURT: Yeah.

25 MS. MCNEILL: --- have no idea about the strengths or

1 weaknesses of those cases. What I do know is that -- that
2 their family is in dire pain. I hate that for them. They
3 will never be able to see their loved one again. Nothing
4 can bring him back.

5 My client's family is also in pain over this. You
6 know, Fred has always been a very real person for me to
7 talk to. He has been candid with me. We have -- sometimes
8 he says he doesn't want to go over the discovery because
9 he's just so upset about everything. Sometimes he says,
10 "Okay. Let's go over pieces of it."

11 I have been at his mother's house. She lives in --
12 right next to the jail and the projects in Newberry. I've
13 been there in multiple times. I've talked to her ad
14 nauseam, probably a hundred times throughout this case. He
15 has got a very strong support system, who he loves.

16 And I just wanted to pass these pictures up. These
17 are just pictures of his kids. I know that somebody else's
18 kid has been lost.

19 THE COURT: Yes, ma'am.

20 MS. MCNEILL: And I hate that. These two children
21 also are losing their dad. And what I'm asking Your Honor
22 to consider doing is -- and I understand why Mr. Scott's
23 asking for the 25. But before he talked to this family, I
24 do know we -- we were around 18. I'm asking for you to a
25 25-year sentence, suspended to 18, with probation on the

1 back end, load him up on 5.

2 He's going to come home. He's going to be our
3 neighbor one day. And I know that these kids, you know --
4 it would -- it would give him something to really look
5 forward to if he could see one of them graduate high
6 school. And I think that that would be a good thing and --
7 while he does his time.

8 Thank you for hearing me.

9 THE COURT: Thank you so much.

10 MR. SCOTT: Your Honor, it ---

11 THE COURT: Yes.

12 MR. SCOTT: Well, in -- just in a tragic twist of
13 fate, he was up before Judge Miller to plead on those
14 Newberry charges; couldn't quite make it through the plea.
15 Miller said, "I'm not going to take it."

16 He left; walked out of the courthouse. And a mere
17 week or two later, he ended up committing this homicide.

18 THE COURT: Uh-huh.

19 MR. SCOTT: So there -- it was a -- an attempt to
20 resolve those. And -- and he made some attempt to resolve
21 them, but just couldn't quite get through the plea.

22 Your Honor -- and I do. I -- I'll stand by that e-
23 mail she read. That's ---

24 THE COURT: Understood.

25 MR. SCOTT: --- that's a little bit unorthodox. But

1 that -- I said it; I meant it. I met with these people,
2 some of the finest people that you've ever seen or dealt
3 with.

4 I just made the -- I just made the statement to
5 Prather -- he was one of the officers that handled this
6 case. As we walked in, I said, "If all of my victim's
7 families could be like this." I mean, I hug them every
8 time we meet. It's sad that we have to meet under these
9 kind of circumstances.

10 But I think as a prosecutor, that should have
11 something to do with what you make -- or what ---

12 THE COURT: Sure.

13 MR. SCOTT: --- you recommend. And so ---

14 THE COURT: Right.

15 MR. SCOTT: --- I stand by meeting with them and
16 hearing their thoughts and hearing them tell me about
17 Calvin Walker as a person and that grandbaby and that
18 daughter. That does have some bearing on what I find to be
19 appropriate.

20 THE COURT: Certainly.

21 MR. SCOTT: I think his record stands for itself as
22 well. So I do stand by the 25-year recommendation. I
23 think that's appropriate.

24 Shirley Butler -- if Your Honor would be willing to
25 hear, she ---

1 THE COURT: Of course.

2 MR. SCOTT: --- she said that she wanted to resolve --
3 or reserve the right to address the Court if -- if I didn't
4 say what she thought she needed to hear or if something
5 came up. So I think she briefly just does want to address
6 the Court.

7 THE COURT: Yes, ma'am.

8 MS. BUTLER: Yes, ma'am. I'm -- I -- I really feel
9 for his family. He still has the -- he can still see his
10 children. He -- he -- Calvin never got to see his son. He
11 was born one month and two days after he was murdered in
12 his yard like a dog.

13 I feel for that family also. But he want to see his
14 children graduate. What about this baby? His daddy's
15 gone. He'll never see his -- and I -- our family is
16 completely changed.

17 THE COURT: Yes, ma'am.

18 MS. BUTLER: He had first cousins that loved him like
19 a brother. They're having trouble dealing with it. His
20 mother is never going to be the same. That was her only
21 child.

22 I mean, you're supposed to be safe in your house.
23 You're in your yard. And you get killed in your yard in
24 front of your mother and your pregnant girlfriend.

25 THE COURT: Right.

1 MS. BUTLER: And -- and this man has had ample choices
2 and change -- chances. He's not trying to make any
3 changes. He's constantly doing the same things over and
4 over.

5 And he hasn't been held accountable for anything. If
6 he had been held accountable, he wouldn't have been able to
7 do that. He would've been in jail.

8 I feel for that family. But -- but I think he
9 deserves 25 years.

10 THE COURT: Thank you, ma'am.

11 MS. BUTLER: Thank you.

12 THE COURT: I'm so -- and listen, I am so sorry for --
13 for your loss. I mean, I guess -- you know, and the baby
14 being born a month after he died, you know, is -- it just
15 highlights the tragedy of this.

16 But in some -- and I know in many ways, it's a
17 blessing. Because some part of him is -- is still with
18 you. And I know that.

19 Let me just say for the record I understand the
20 negotiations back and forth. If there had been an 18-year
21 recommendation in this case, in all candor, I would not
22 have accepted it. I think 25 years is the appropriate
23 sentence.

24 MS. MCNEILL: Would you mind hearing from his mom real

25 ---

1 THE COURT: I ---

2 MS. MCNEILL: --- quick?

3 THE COURT: --- I will hear from her briefly. Sure.

4 Yes, ma'am.

5 (Whereupon, Ms. McNeill conferred with the defendant's
6 mother.)

7 THE COURT: Yes, ma'am.

8 DEFENDANT'S MOTHER: I am so sorry for their family.

9 THE COURT: Yeah.

10 DEFENDANT'S MOTHER: And I -- I don't know how it is.

11 But I am very sorry ---

12 THE COURT: Yeah.

13 DEFENDANT'S MOTHER: --- that -- what happened to
14 their family. But I ---

15 THE COURT: Yeah.

16 DEFENDANT'S MOTHER: --- also love my son too.

17 THE COURT: I know.

18 DEFENDANT'S MOTHER: And, you know, things happen.

19 But I -- I'm so sorry. I -- I really am.

20 THE COURT: Okay.

21 DEFENDANT'S MOTHER: I'm very sorry ---

22 THE COURT: I understand.

23 DEFENDANT'S MOTHER: --- that this happened to y'all
24 child.

25 THE COURT: Okay. All right. Sentence of the Court

1 is 25 years; credit for 1,080 days. Good luck to you all.

2 Thank you.

3 MS. BUTLER: Thank you.

4 MS. WALKER: Thank you.

5 (Whereupon, the proceeding was concluded at 4:11 p.m.)

6 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR LAURENS COUNTY, SOUTH CAROLINA, ON THE 23RD
DAY OF OCTOBER, 2018.

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



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MAY 10, 2019

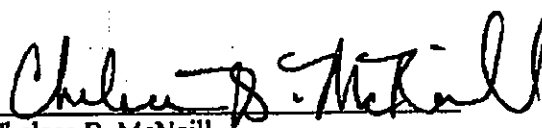
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 DEC 19 2018
 SC Court of Appeals

STATE OF SOUTH CAROLINA	) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LAURENS	) FOR THE EIGHTH JUDICIAL CIRCUIT
THE STATE	) Warrant/Indictment Number(s):
	) 2016GS3000227
v.	)
Frederick Calvin Jones	) Motion to Reconsider Sentence
	)
	)
	)

Defendant respectfully requests that the Court reconsider its sentence of 25 years for Voluntary Manslaughter, imposed on October 23, 2018. Defendant respectfully requests a hearing on this matter to address, among other things, pending charges that were dismissed by the State as part of a plea agreement to Voluntary Manslaughter.

WHEREFORE, Mr. Jones respectfully requests that the Court issue an order to have him brought before it for a hearing on this matter and grant such other relief as may be necessary and appropriate.

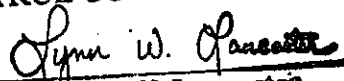
Respectfully submitted,


 Chelsea B. McNeill
 Attorney for Defendant
 Laurens County Public Defender's Office
 P.O. Box 174
 Laurens, South Carolina 29360
 (864) 984-8807
 chelseamcneill@gmail.com

LAURENS COUNTY
 CLERK OF COURT
 2018 NOV -1 PM 2:32
 LYNN W. LANCASTER

November 1, 2018
 Laurens, South Carolina

A TRUE COPY OF ORIGINAL


 Lynn W. Lancaster
 Law Clerk
 CCCP & GS

STATE OF SOUTH CAROLINA
 COUNTY OF LAURENS
 STATE OF SOUTH CAROLINA,

Plaintiff,

v.

FREDERICK CALVIN JONES,

Defendant.

IN THE GENERAL SESSIONS COURT
 FOR THE EIGHTH CIRCUIT

2016-GS-30-00227

2015A 3020 100467

ORDER DENYING
 MOTION FOR RECONSIDERATION

RECEIVED
 DEC 19 2018
 SC Court of Appeals

The Defendant, through his counsel Chelsea McNeill, has moved this Court to reconsider the sentence imposed at his guilty plea that was entered on October 23, 2018 in Laurens County. At the hearing where Defendant entered his guilty plea, this Court found that the plea was entered knowingly and voluntarily and the Court had no concerns with the Defendant's competency and Defendant was aware of the sentencing range associated with the charge against him. Because this Court can find no compelling basis for reducing the sentence, the Defendant's motion is hereby denied.



Letitia Verdin
 Presiding Judge

November 28 2018

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
 Lynn W. Lancaster
 Laurens County CCCP & GS

2018 DEC -6 AM 9:30
 LAURENS COUNTY

FORM 5

STATE OF SOUTH CAROLINA)

County of Laurens)Frederick Calvin Jones)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

Its Departments and agents,)

Alan Wilson, Attorney General)

for South Carolina.)

IN THE COURT OF COMMON PLEAS

2021-CP-30-651

APPLICATION FOR

POST-CONVICTION RELIEF

CLERK OF COURT

2021 JUN 25 PM 4:00

LAURENS COUNTY

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 Broad River Correctional Institution
2. Name and location of Court which imposed sentence Laurens county clerk
of court
3. Name(s) of co-defendant(s) (if any) Malcolm Jones
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 16-GS-30-0227
 - (b) Twenty-five years

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 23, 2018
- (b) Twenty-five years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina commission on Indigent Defense
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 19, 2021
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Anders Brief
- ii. Denied
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) my counsel filed the appeal for me
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel, subject matter
- (b) jurisdiction, Due Process, involuntary plea,
- (c) Plea agreements violation, prior bad act,
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachments 1-47
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? This is my first PCR application
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. None
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. None
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. None
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. None
- ii. _____
- iii. _____
- iv. _____

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

- i. None
- 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?

Yes these grounds have been presented to the South Carolina Appeals court

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

(a) which grounds have been presented:

- i. All the above claims
- ii. _____
- iii. _____

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

- i. only the Appeals court
- 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) All the above claims have been presented
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
None
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. Chelsea B. McNeill, Laurens county Public Defender office
P.O. Box 174 Laurens, South Carolina 29360
- ii. David Alexander, South Carolina Commission on Indigent
Defense Division of Appellate Defense P.O. Box 11589
Columbia, South Carolina 29211-1589
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial: Chelsea B. McNeill,
Appeal: David Alexander,
- ii. _____
- iii. _____

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

reversal and remanded for new trial

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

No

STATE OF SOUTH CAROLINA)

County of Laurens)

VERIFICATION

I, Frederick Calvin Jones, # 321866, 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.

SWORN to and subscribed before me this 16th day of July, 2021.

Lisa Brown-Alston (L.S.)
Notary Public

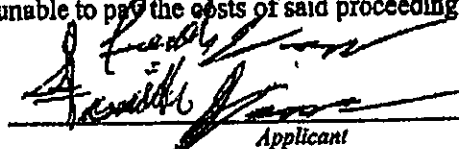
LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

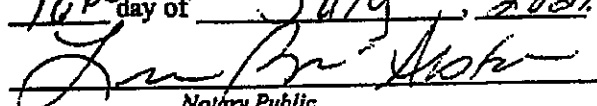
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Frederick Calvin Jones, # 321866, 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

16th day of July, 2021

Notary Public

LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

Applicant have suffered a miscarriage of justice and his conviction only stands due to severe denial of due process and equal protection in the state court in multiple and gross violation of the United States supreme court precedents and the United States constitution, that constitutes an outrage of mockery of justice that the federal courts who sworn to uphold the United States constitution should not tolerate.

The applicant suffered prejudice at the hands of trial counsel and the trial court, and the applicant's plea of guilty under North Carolina v. Alford, was entered Involuntarily, Unknowingly, Unwillingly, and Unintelligently, Hill v. Lockhart, 106 S.Ct. 366 (1985). See also Jordan v. State, 374 S.E. 2d 683 (1988).

Applicant's trial counsel's deficiencies prejudiced the applicant in that applicant would have otherwise proceeded to a jury trial as original insisted upon and under no circumstances would not have plea guilty under Alford otherwise had it not been for trial counsel's advise. Nevertheless, the allegation of the applicant not having pled guilty knowingly, voluntarily and intelligently probably raises questions of fact which may not be conclusively refuted by the record presently before this court.

INEFFECTIVE ASSISTANCE OF COUNSEL AND INVOLUNTARY PLEA

Applicant alleges his plea was rendered involuntary by ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E. 2d 926 (1991); Rule 71, 1 (e), SCRCP.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both; (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel ineffective performance. Strickland v. Washington, 466 U.S.

668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E. 2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E. 2d 733 (1997). With respect to guilty plea counsel, an applicant must show a reasonable probability that but for counsel's alleged errors, he would not have pled guilty and would insist on going to trial Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985); Stalk v. State, 383 S.C. 559, 681 S.E. 2d 592 (2009); Roscoe v. State, 345 S.C. 16, 546 S.E. 2d 417 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L. Ed. 2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E. 2d 391 (1991). In determining guilty plea issues, the PCR court should consider the guilty plea transcript as well as evidence at the PCR hearing, Harris v. Leeke, 282 S.C. 131, 318 S.E. 2d 360 (1984). Applicant alleges that he pled guilty under the belief there would be a recommendation for a Eighteen to Twenty years prison term.

A guilty plea must be an informed and intelligent decision. State v. Lopez, 352 S.C. 373, 574 S.E. 2d 210 (2002). To be valid, a guilty plea must represent an intelligent choice among the alternatives available to a defendant. Id.

In the case sub-judice, the colloquy amounted to nothing more than a pro forma answers to pro forma questions.

State v. Gardner, 570 S.E. 2d 184, 187 (2002). The judge never informed petitioner that the state must obtain a lawful true bill indictment according to the state statutes and state constitution and that they have failed to do so - this depriving the court of subject matter jurisdiction. And that the only way petitioner can be lawfully convicted is if he pleads guilty and gives the court subject matter jurisdiction that it otherwise does not have. Had petitioner been informed of this he would never have plead guilty but would have demanded that the state first obtain subject matter jurisdiction by obtaining a lawful

indictment. Petitioner acted reasonably in believing that the solicitor was trustworthy and had obtained Lawful indictment. Petitioner had no prior reason for doubting the indictment was Lawfully obtained and could not have known about the indictment at the time of the plea because of the solicitors fraud, perjury, and conspiracy designed to keep this bogus indictment hidden from petitioner.

A defendant who pleads guilty on the advise of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have plea and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E. 2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel and defendant will prove that counsel's advice was not within the competence demanded of attorney in criminal cases. Because a guilty plea is more than an admission it is a conviction trial judge must discharge the function of ensuring an accused has a full understanding of what the plea connotes and of its consequence. Boykin v. Alabama, 395 U.S. 242, 242-43 (1969); Pittman v. State, 337 S.C. 597, involuntary); State v. Lambert, 266 S.C. 574, 225 S.E. 2d 340 (1976).

The trial counsel coerced defendant into entering a guilty plea through deceptive tactics when defendant wished to stand trial by jury. When counsel employs an unreasonable trial strategy and make that decision without a full assessment of the facts and evidence at issue; counsel's performance is considered ineffective. Cave v. Singletary, 971 F. 2d 1513 (11th cir. 1992). Based on the aforementioned matter, counsel has provided ineffective assistance. Petitioner's guilty plea failed to comply with the mandates set forth in Boykin v. Alabama. Due process of Law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury and the right to confront one's accusers.

Applicant contends due to his illiteracy to the law he was entitled to rely upon his counsel to make reasonable decision. Pursuant to U.S. v. Dewalt, 92 F. 30 1209 without some authoritative guidance, the defendant cannot know whether he understood any thing correctly at his plea trial.

The applicant suffered prejudice at the hands of trial counsel and the trial court, and the applicant's plead of guilty under North Carolina v. Alford, was entered involuntarily, unknowingly, unwillingly, and unintelligently, Hill v. Lockhart, 106 S.Ct. 366 (1985). See also Jordan v. State, 374 S.E. 2d 683 (1988).

Ineffective assistance of counsel

A criminal defendant is guaranteed the right to effective assistance of counsel under the sixth Amendment to the United States constitution. U.S. court amend. VI, Strickland v. Washington, 466 U.S. 668 (1984). "Where allegations of ineffective assistance of counsel are made, the question becomes, whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. "Butler v. State, 286 S.C. 441, 442, 334 S.E. 2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 686). As such, court evaluate allegations of ineffective assistance of counsel using a two pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E. 2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668).

First, the applicant will demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88.

"Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms. "Cherry, 300 S.C. at 117, 386 S.E. 2d at 625 (quoting Strickland, 466 U.S. at 688).

Second, the applicant will demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome. Id.

The United States supreme court has held that "[g]uilty pleas are no more foolproof than full trials to the court or jury. According, we take great precautions against unsound results. Brady v. United States, 397 U.S. 742, 758 (1970). An "unsound result occurs when a defendant does not knowingly voluntarily, or intelligent plead guilty.

See Boykin v. Alabama, 395 U.S. 238 (1969). Therefore, in the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligent entered. Anderson v. State, 342 S.C. 54, 57, 535 S.E. 2d 649, 651 (2000); See also Hill v. Lockhart, 474 U.S. 52, 56 (1985) ("The long standing test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. (Quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)). The second or prejudice, requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. Hill, 474 U.S. 52 at 59. In other words.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is 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) quoting Rolen v. State, 384 S.C. 409, 413, 683 S.E. 2d 471, 474 (2009)); See also Hill, 474 U.S. at 59 (footnote omitted). "The defendant's undisputed testimony that he would not have pled guilty to the charge but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty.

Smith v. State, 369 S.C. 135, 138, 631 S.E. 2d 260, 261 (2000). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Suber v. State, 371 S.C. 554, 558, 640 S.E. 2d 884, 886 (2007).

In this case petitioner pled guilty to voluntary manslaughter in Laurens county to the lesser-included offense from his original murder charge. R. 11, 11. 5-17. The solicitor represented at the hearing that part of the agreement for the guilty plea was the dismissal of ten charges pending in Newberry county. R. 11, 11. 5-17.

Plea counsel was not appellant's original attorney. R. 12, 11. 19-25. During her recitation of the history of her representation and the plea negotiations with the state, plea counsel advised Judge Verdin that she was not appellant's attorney on the Newberry county cases, had not seen the discovery from those cases, and that she had "no idea about the strengths or weaknesses of those cases. "R. 16, 1. 12. 17, 1. 4. Appellant asked for a sentence of eighteen years. R. 17, 1. 20-18, 1. 7. Judge Verdin sentenced appellant to twenty-five years imprisonment after the solicitor told the court that appellant "couldn't quite make it through a plea to the Newberry charges before Judge Miller. R. 18, 11. 12-21.

The solicitor's statement about the failed plea invited the inference that appellant must have been guilty of the Newberry charges, and therefore their dismissal was of some value in Judge Verdin's consideration of the sentence. Judge Verdin rejected the request from appellant and sentenced him to twenty-five years, which was seven more years than appellant hoped to receive. R. 22, 1. 25-23, 1. 2. Appellant then filed a motion to reconsider asking the judge for a hearing to address, among other things, pending charges that were dismissed by the state... R. 25. Judge Verdin summarily denied the motion in a one paragraph written order. R. 26. Plea counsel's explanation of the basis for an appeal from a guilty plea to this court mirrored her statement at the plea hearing that she had not reviewed the discovery about the dismissed Newberry charges and was not in a position to argue that the dismissal of such charges should not be factored into sentencing. "R. 27.

The plea court erred in denying the motion to reconsider. Plea counsel told the court both at the hearing and in the motion that she could not give the court information about the value (or lack of value) of the dismissal of the charges. Without any information from plea counsel. Judge Verdin only heard from the solicitor that he was dismissing the charges to which appellant almost plea guilty. Even though appellant told Judge Verdin he was happy with plea counsel's representation this was before plea counsel admitted to the court she had no information about the Newberry county charges. R. 4, 11. 14-19.

Judge Verdin did not inquire again of appellant after this information was revealed at the hearing. The sixth Amendment's guarantee of the right of effective assistance of counsel extends to plea bargaining and guilty pleas. Hill v. Lockhart, 474 U.S. 52 (1985). Without fully hearing from plea counsel the court could not fashion a proper sentence.

NEGOTIATED PLEA

The applicant received ineffective assistance of counsel prior to and at the time of entry of his plea of guilt in that trial counsel failed to (1) timely object to the trial court imposed sentence which exceeded the duration of sentence of the plea negotiated sentence of 18 to 20 years to which the applicant had agreed (2) timely seek leave of court to withdraw applicant's guilty plea on the basis that the court imposed sentence exceeded the duration of sentence of a plea bargain to which the applicant had agreed. In support thereof, applicant submits that at the time of entering into a guilty plea he was advised by trial counsel that a plea bargain had been "worked out" whereby applicant would receive a concurrent sentence on the indicted charges not to exceed (twenty years) in duration. Based on this understanding applicant proceeded to plead guilty when the court imposed a sentence of twenty-five years for the lesser-included offense of voluntary manslaughter from his murder charge. Applicant's trial counsel provided ineffective assistance of counsel by failing to timely object to the sentence as not comporting with the requirement of applicant's promised plea bargain and trial counsel further exacerbated his ineffective assistance of counsel when he failed to timely seek leave of court to withdraw applicant's plea of guilt as not being conformity with the substance of applicant's plea bargain.

The U.S. supreme court in Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed. 2d 427 (1971). Hold that where a guilty plea rests on a promise or agreement which can be said to be a part of the indictments or consideration, then the agreement must be fulfilled. United States v. Ringling, 986 F. 2d 504 (4th cir. 1993), the court held that a plea bargain rests on contractual principles and that each party should receive the benefit. Id. The court further stated that a plea agreement analysis must be more stringent than a contract because the rights involved are fundamental and constitutionally based. Id. The court also noted that the government had to be held to a higher degree of responsibility than the defendant for imprecision or ambiguities. Id. Another important holding in Ringling is that where one district attorney states that

the government will not prosecute, it encompers all other districts. Id. At 507. The court also stated; (1) is the government at large not specific United States Attorney or United States Districts that are bound by plea agreements negotiated by agents of the government when a defendant's fundamental right are at stake the right hand should know what the left is doing Id. At 507 criminal Law. 982, 3 (3), 1280, 2 1210 (2) D.C.S.C. 1984. When government has entered into a plea agreement, Federal courts, must enforce the agreement and not allow the government to retract it's promise and when defendant has relied on government representation and has upheld his obligations under an agreement the government will also be required to honor it's promises U.S. v. CFU const. Co. Inc. 583 F. Supp. 197 affirmed 749 F. 2d 33. When accused pleas guilty upon a promise of proscuter agreement must be fulfilled. State-v. Thompson, 292 S.E. 2d 581 278 S.C. ceritorari denied 102 S.Ct. (1996).

The counsel's deficiencies prejudiced the applicant in that applicant would otherwise have proceeded to trial and not have entered into any plea of guilty if he had known the sentence would or could have exceeded the eighteen to twenty years cap that was promised as part of his plea bargain. As a result of the deficiencies of trial counsel as set out in November 30th 2017, Dale Scott, sent me an e-mail that says: "Fred Jones can plead to voluntary, but I would be looing for something closer to the 18- to 20- year range. I have a number of Newberry charges I will roll into that plea. See page 14, lines 17-21.

The indicted charges was involuntary as that plea of guilty was induced by an unfulfilled plea bargain promise that the applicant would not be sentence concurrently to more than 18-20 years imprisonment. Judge Verdin sentence applicant to twenty-five years, which was seven more years than appellant hoped to receive. Appellant then filed a motion to reconsider asking the judge for a hearing to address, among other things pending charges that were dismissed by the state. Judge Verdin summarily denied the motion in a one paragraph written order.

the allegation of the applicant not having plea guilty knowingly, voluntarily, and intelligently probably raises questions of fact which may not be conclusively refuted by the record presently before this court, there really is no material difference between not having counsel and having one appointed who does not present the claims and issues at all, or fails to substantially present them. If appointed counsel does not interview and ascertain grounds for relief from applicant, investigate, review the records research applicable law or refuses to raise grounds at then an applicant has not been provided with counsel. The South Carolina supreme court established Rule 71.1 (d) (former S.C. sub. Ct. Rule 50.5) to effectuate the purpose of the uniform (PCR) Act. Such mandates that appointed counsel ascertain all grounds available for relief and present them not that the applicant do so, to mandate counsel to do so, and then excuse counsel for not doing so makes the rule irration. Especially, when the unskilled applicant is held liable for such and when raising claim of ineffective assistance of counsel an array of constitutional right are denied the applicant, because trial counsel first failed to be effective and ensure the trial was fair.

PRIOR BAD ACT ARGUMENT

A defendant who pleads guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing (1) counsel's representation fell below an objective standard of reasonable and (2) there is a reasonable probability that, but for counsel's errors the defendant would not have plead guilty, but would have gone to trial. Turning first to evidence of prior bad acts, the South Carolina Rules of Evidence and case law preclude the introduction of evidence of a defendant other criminal, wrongs, or acts to prove the defendant's guilt for the crime charged except to establish (1) motive, (2) identity, (3) a common scheme or plan (4) the absence or mistake or accident, or (5) intent, Rule 404 (b), SCRE;

And then I said -- or Dale Scott, said to me on Wednesday, February 14, 2018, "well, I think he wants 18 years. I can't do that, I had a very sad meeting with the victim's girl friend, mother, aunt, and grandmother yesterday. I felt very unhappy after the meeting. And that feeling stayed with me for the rest of the day.

Tr. P. 14, lines 16 - 25. Well, that was on Wednesday, February 14, 2018, prior to that, on Thursday, November 30, 2017, Dale Scott sent me an e-mail that says Fred Jones can plead to voluntary, but I would be looking for something closer to the 18-to 20 years range. I have a number of Newberry charges I will roll into that plea. Applicant alleges that he pled guilty under the belief there would be a recommendation for the twenty years prison term.

The state may withdraw from a plea bargain arrangement at any time prior to, but not after the actual entry of the guilty plea. State v. Thrift, 440 S.E. 2d 341. Each party should receive the benefit of the plea bargain, once a defendant enters a guilty plea and the plea is accepted by the court due process requires the plea bargain be honored U.S.C.A. Amend. 14. State v. Miller, 532 S.E. 2d 444. Guilty plea that is based on plea bargain that is not fulfilled or is unlawful cannot stand. State v. Thrift, 440 S.E. 2d 341, State v. Rhinert, 430 S.E. 2d 530.

A plea bargain agreement is governed by contract principles. All plea agreements must be on the record and must recite scope, offense and individuals involved in the agreements supreme court will limit its review of the plea agreement only to those terms which are fully set forth in the record and neither the state nor the defendant may enforce the plea agreement terms which do not appear on the record before the trial judge who accepts the plea, Rollison v. State, 522 S.E. 2d 290.

Prosecutors are obligated to fulfill the promises they make to defendants when those promises they make to defendants when promises serve as inducement to defendants to plead guilty. Sprouse v. State, 585 S.E. 2d 278.

SUBJECT MATTER JURISDICTION VIOLATION

Did the trial court have subject matter jurisdiction to enter a conviction or impose a sentence upon indictment number (16-GS-30-0227), murder is an element in the indictment which the legislative intent is clearly written into law. Was there a variance between the essential elements alleged in the indictment (16-GS-30-0227), murder and the state's failure to establish those elements at trial by the evidence presented?

Without a proper indictment, the court lacks subject matter jurisdiction to enter conviction or impose sentence for a crime. S.C. Code of Laws Ann. § 17-19-10, S.C. Const. Art. I, § 11. An indictment is proper if it is sufficient in charging the elements of the offense and is returned true bill by the grand jury, or presentment is waived. State v. Beagnum, 342 S.E. 2d 597 (1985). An indictment is sufficient in the charge if it contains the necessary elements of the offense, and gives notice to the defendant of what he must be prepared to meet, State v. Smith, 319 S.E. 2d 795 (1979). Hence, if the indictment fails to allege the necessary elements of the offense charged.

Prior to Munn, the rule was that any objection to the sufficiency of the indictment, i.e. that the indictment was defective, had to be made before the jury was sworn. See State v. Young, 243 S.C. 167, 133 S.E. 2d 210 (1963) n3 (challenge directed to the sufficiency of the indictment rather than to the jurisdiction of the court to try the offense charged needed to be raised by a motion to quash before the jury was sworn. The rule was effectively altered by the Munn decision.

defendant contends that on the face of his indictment there
no noteperson signature, are judge signature. When an offense
has not been presented to the grand jury a written waiver of
indictment is required prior to the entry of the guilty plea.
S.C. Code ss 17-23-130, 17-23-140. The South Carolina supreme
court strictly construes the requirement of a signed, written
waiver of indictment prior to the entry of a guilty plea.
Summerall v. State, 270 S.C. 255 294 S.E. 2d 344 (1982).

The primary question before this court are whether S.C. code Ann. § 14-9-210 is jurisdictional in nature and whether it requires that all criminal indictments must be issued through a grand jury impaneled before the court of General sessions, and whether state's noncompliance with mandatory indictment procedures, and willful acts of perjury have rendered all judicial proceedings invalid and its indictments null.

The statutory provisions at issue are contained in section 14-9-210, and provide in pertinent part that. "The county solicitor shall prepare and through the presiding judge of the court of General sessions submit to the grand jury while in attendance upon the court of General sessions bills of indictments in all cases pending in the county court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the grand jury. The grand jury shall act thereon, and shall report its action to the presiding judge of the court of General Sessions and said judge shall direct the Clerk of the court of General Sessions to report the same to the presiding judge of the county at it's next ensuing term...

The statutory terms above are clear, unambiguous, and require the county solicitor to prepare and submit bills of indictment through the presiding judge of the court of General Sessions to a grand jury impaneled under the authority of the court of General Sessions NO EXCEPTIONS.

It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E. 2d 578, 181 (2000). State v. Martin, 293 S.C. 46, 358 S.E. 2d 697 (1987). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Carolina Powe & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E. 2d 177, 179 (1994). And words must be given their plain and ordinary meaning without resort to subtle or

forced construction to limit or expand the statutes operations. Bayant v. City of Charleston, 295 S.C. 408, 368 S.E. 2d 899 (1998). Moreover, penal statutes must be construed strictly against the state and in favor of defendant. State v. Blackmon, 304 S.C. 270, 403 S.E. 2d 660 (S.C. 1991).

Accordingly, section 14-9-210, requires strict compliance with its provisions, and mandates that the grand jury must be impaneled under the jurisdiction of the court of General Sessions before Lawful return of a true billed indictment can take place.

However, here evidence will establish that state unlawfully impaneled its grand jury outside the jurisdiction of the court of General Sessions, and then willfully printed and published false and misleading information in its indictment in order to keep secret its violations of statutory Law.

Thus a controversy has come before the court

In this case True Bill of indictment prints that it was returned. At a court of General Sessions convened on February 12, 2016, the grand jurors of Laurens county assent upon their oath (see exhibit 1) the indictment is signed by the Solicitor/Assistant Solicitor and no true billed or sealed stamp on the face of indictment further, the title page of state's indictment prints that it was published at a court of General Sessions term as convened on February 12, 2016, however, the evidence presented below will conclusively establish that state printed and published FALSE information in Petitioner's indictment.

The terms of the court of General Sessions for Laurens county are fixed by S.C. code ANN. § 14-5-410 and which does not offer provisions for a court to be open on February 12, 2016, thus state could not have Lawfully returned its indictment" at a court of General Sessions, convened on February 12, 2016, as falsely alleged in state's indictment. See exhibit 1). Also note the same dates on the true bill stamp, because no such court is allowed to be open.

One additional piece of evidence very clearly settles the matter of state's false condition. The information contained in record also establishes that no special term of the court of General Sessions was convened on February 12, 2016, under the provisions of either section 14-5-410, section 14-5-910, or section 14-55-920.

When a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way. Thus, since the court utilized an unlawful mode of procedure not allowed under section 14-9-210, state lacked the requisite jurisdiction to complete return of its true-billed indictment.

As established above, section 14-9-210 is clearly a jurisdictional statute, and sets forth mandatory procedure to be utilized by state for lawful return of a true-billed indictment. A substantial body of South Carolina Law holds that a failure to comply with statutory Law jurisdictional in nature deprives the court of subject matter jurisdiction, State v. Lee, 564 S.E. 2d 372 (S.C. App. 2002); State v. Brown, 570 S.E. 2d 559 (Ct. App. 2002); State v. Felder, 437 S.E. 2d 43 (S.C. 1993); State v. Richburg, 394 S.C. 162, 403 S.E. 2d 315 (1991); State v. Loftin, 275 S.E. 2d 575 (S.C. 1981); Gray v. State, 276 S.C. 634, 281 S.E. 2d 226 (S.C. 1981); State v. Brunson, 274 S.C. 220, 262 S.E. 2d 44, 1980); State v. Castleman, 64 S.E. 2d 250 (1951), and many more.

Consequently, and in keeping with the mandatory provisions of section 14-9-210, state has no jurisdiction to issue return of true-billed indictment except during a time when the court of General Sessions is Lawfully convened to oversee the grand jury process. Any acts of the court taken outside those statutory restrictions would by necessity be null and void in fact our supreme court has already determined that no indictment may be true-billed by a grand jury when the court lacks jurisdictional. The grand jury must be impaneled under the jurisdiction of the court of General Sessions before Lawful return of indictment can take place. See State v. McClure, State v. Funderburk, and State v. Wheeler,.

Therefore, since no court of General Sessions was convened on the date February 12, 2018, indictment was alleged true-billed the grand jury proceedings would therefore by necessity be held invalid, and its illegally issued indictment null and without binding legal effect.

B. Court Rules order or other processes

It should be noted that section 14-9-210 is not a local rule or statute but a general provision applicable to the courts in every county, and as shown, mandates that the grand jury must be impaneled under the jurisdiction of the court of General Sessions before Lawful return of a true-bill indictment can take place. Thus, section 14-9-210 is clearly a jurisdictional statute, and sets forth the only process allowed for Lawful return of indictment.

No local rule of court, Administrative order, policy, or other procedure can take precedent over statutory Law, which is always controlling. See S.C. constitution Article §§ 1. 4, and State v. Cottingham, 77 S.E. 2d 897, 224 S.C. 181 (1953) (statutes override rules of court if in conflict); State v. Duncan, 264 S.E. 2d 421 (S.C. 1980) (circuit court rule promulgated by individual judicial circuit was unconstitutional and void).

However, the issue of whether or not a local rule, order, policy, or procedure was utilized for process and return of petitioner's indictment is irrelevant, because by state Law, it would still have to be in agreement with the provisions of section 14-9-210 for it to be constitutional.

Article V. section 4 of our constitution provides in pertinent part; "The supreme court shall make rules governing the Administration of all courts of this state, subject to the statutory Law the supreme court shall make rules governing the practice and procedures in all such courts.

"[Emphasis added]

And, S.C. code ANN. § 14-5-310, Rules of court; "The circuit courts may make and establish all necessary rules for the orderly conducting of business in said courts provided such rules are not repugnant to the Laws of the state or the rules prescribed by the justices of the supreme court and circuit judges
"[Emphasis added].

Thus, under those requirements, no rules can be made or established for process and return of indictments, unless it comports with section 14-9-210. Otherwise, it would be unconstitutional and null, being without binding legal effect.

Additionally, it should be noted that the court of Common Pleas is vested with no authority to take any action on matters pertaining to return of true-billed criminal indictments. "The court is made up of the court of Common Pleas which hears Civil action and the court of General Sessions which hears criminal cases... "See Dove v. GoldKist Inc., 314 S.C. 235, 442 S.E. 2d 598, 600 (S.C. 1994); See also S.C. constitution Article V. § 1.

Thus, there is no grant of concurrent jurisdiction, and therefore no true-bill criminal indictments can be lawfully issued through grand jury proceedings held before a court of Common Pleas.

Lastly, it should also be noted that a circuit court judge retains no authority on his own standing to conduct and oversee grand jury proceeding; outside the bounds of a Lawfully convened court or General Sessions. "Under our judicial system the presiding judge in the circuit court loses jurisdiction with the adjournment of the term. "See State v. Best, 257 S.C. 361, 186 S.E. 2d 272 (1972) (Citing State v. Thompson, 122 S.C. 40 115 S.E. 326). Also See State v. Rinheart, 430 S.E. 2d 536 (S.C. App. 1993). Therefore if raised by state there would be no merit to the contention that a judge on his own standing retains authority to impanel a grand jury after the close of court, because in this case the record shows that no Lawful term of General Sessions court was in progress on February 12, 2010, see exhibit 1). And as established a judge loses jurisdiction with the adjournment of court thus, no term of court no Lawful Judicial authority.

Accordingly and in this case no court rules, orders or other procedures can be invoked or cited by state to save its unlawful grand jury process, and resulting null indictment. Therefore execute justice and righteousness.

C. Criminal Violations

Also brough before the court judgment area violations of S.C. code ANN. § 16-9-10. Offense Against Public Justice and S.C. code ANN. § 16-17-410.

[Offense Against Public Justice]

S.C. code ANN. § 16-9-10, "perjury and subornation of perjury. States in pertinent part; A (2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document record, or report, or form required by the Law of this state.

B. (2) A person who violates the provisions of subsection A (2) is guilty of a misdemeanor, and upon conviction, must be imprisoned not more than six months, or fined not less than one hundred dollars. or both.

C. A person may be convicted under this section... if he commits perjury by his own acts, consent, or agreement.

First, as previously shown in subsection A, S.C. code ANN. § 14-9-210, mandates that the county Solicitor shall prepare and process bills of indictment through the jurisdiction of the court of General Sessions. Also established in subsection A, was the fact that Petitioner's indictment was sealed with a true-billed stamp, signed by the Solicitor/ Assistant Solicitor, and contained false information incorrectly printing that it had been processed. "At a court of General Sessions, convened on February 12, 2016, compare Exhibit 1."

Clearly showing that no General Sessions court was convened on February 12, 2016,

Second, it should be noted that a criminal indictment is a document required by the Law of this state in Gentry, our supreme court determined that an indictment is a notice document required by state constitution and statutes. See S.C. constitution Article 1, § 11 and Article V. § 22 [footnote omitted], S.C. code ANN. § 17-19-10 (2003) ("no person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury, except in specified instances).

Thus, petitioner true-billed indictment satisfies the provisions of section 16-9-10 A (2), perjury, that specify the false information must be included in a document ... required by the Law of this state.

Third, and importantly, it must be emphasized for purposes of blame that an Solicitor/ assistant Solicitor holds full knowledge an understanding of the Law of this state. It is a requirement of the high office of a prosecutor.

The prosecutor occupies a quasi-judicial position, and must see that justice is done, that no conviction take place except in strict conformity with the Law. See e.g. State v. Quattlebaun, 331 S.C. 441, 327, S.E. 2d 105 (S.C. 2000); State v. Durden,

264 S.C. 86, 212 S.E. 2d 387 (1975); State v. King, 222 S.C. 108, 71 S.E. 2d 793 (1952).

Hence, the Solicitor/Assistant is required to know and obey the legal mandates of section 14-9-210, and Lawfully impanel a grand jury accordingly.

As presented above, instead of discharging his responsibilities in conformity with state Law, the Solicitor/Assistant Solicitor broke his oath of office. The Solicitor/Assistant Solicitor intentionally violated the provisions of section 14-9-210 by unlawfully processing Petitioner indictment (See subsection A above). Outside the jurisdiction of the court of General Sessions, and then by willfully printing false and misleading information in the indictment incorrectly stating that it had been returned true-billed to court of General Sessions (See subsection A above). Thus he committed the offense of perjury and must be punished accordingly.

The Solicitor/Assistant Solicitor is now subject to the governing Authority.

[Conspiracy against Public Policy]

S.C. code ANN. § 16-17-410 provides in pertinent part.

The common-Law crime known as "conspiracy" is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object, or Lawful object by unlawful means.

A person who commits the crime of conspiracy is guilty of a felony and upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years. From the evidence shown above and in subsection A of this memorandum, it was determined that the Solicitor/Assistant Solicitor committed an offense of perjury against Public Justice by willfully printing false information in petitioner's state indictment.

Here the false and evidence will establish that the Solicitor/ Assistant Solicitor also conspired with several other state Judicial personnel in order to impanel a grand jury outside the authority of the court of General Sessions, to complete return of an illegal true-billed and to print and publish false indictment information. Petitioner submits that sufficient evidence is presented here to establish the existence of criminal conspiracy.

A "conspiracy" is a combination of agreement between two or more persons for the purpose of accomplishing a criminal or unlawful object, or achieving by criminal or unlawful means an object that is neither criminal nor unlawful. See State v. Buckman, 347 S.C. 316, 555 S.E. 2d 402 (S.C. 2001) (emphasis added).

The gravamen of conspiracy is the agreement or mutual understanding. See State v. Hammitt, (C.S. App. 2000), 341 S.C. 638, 535 S.E. 2d 459, rehearing denied, certiorari granted. If there is one overall agreement among the various parties to perform different functions in order to carry out the objective of the conspiracy, the agreement among all the parties constitutes a single conspiracy. "State v. Dasher, 298 S.E. 2d 215, 217 (S.C. 1986) (citing 16, Am. Jur. 2d, conspiracy § 11 (1979)).

Conspiracy may be shown by circumstantial evidence including the parties consent. State v. Oliver, 275 S.C. 79, 267 S.E. 2d 529 (1980), and under South Carolina does not require an overt act. See State v. Ferguson, 221 S.C. 300, 70 S.E. 2d cert. denied, 344 U.S. 830, 735 S.Ct. 35, 97 L. Ed. 646 (1952).

Preliminary Statement:

For some time now it has been an open secret in this state's Judicial circuit that none of its true-billed indictment are being processed and returned in compliance with statutory Law, and that some unlawful process is being utilized. In fact, several of one more prominent Newspaper have commented on the impossibility of Lawfully returning true-billed indictment at the excessive rates reported, given the known time constraints.

(See exhibit 1).

The grand jury proceedings were most likely held in a back office conference room with Solicitor/Assistant Solicitor overseeing the process. Also present would have been a court Administrative assistant, the clerk of court, the court reporter and grand jury foreman in this case, the actual type of unlawful process utilized on state to complete return of petitioner's true-billed indictment is not important or determinative of the criminal conspiracy issue presented here. However what is determinative is the fact that the grand jury proceedings were held outside the jurisdiction of the court of General Sessions for illegal return of true bill and that the Solicitor/Assistant Solicitor committed an offense of perjury in order to keep secret the unlawful process. That overt act of perjury along with the cooperation provided by other parties to make complete and secret the illegal process, is determinative of the criminal conspiracy issue.

A criminal conspiracy is very clearly evident here unless that is the Solicitor/Assistant Solicitor submits that he forged petitioner indictment otherwise, and realizing that it would have been impossible for the Solicitor/Assistant Solicitor to fully complete return of true-bill indictments on his own, cooperation from the below listed judicial officials would have been necessary.

Here petitioner has restricted the list of conspirators to individuals essential to the state indictment process full blame can be properly determined once the grand jury records are subpoenaed, and the necessary criminal investigation is complete.

Additionally and importantly, it must be pointed out that all the below listed conspirators are state Judicial officials and as such, they are required by virtue of their high offices to possess full knowledge and understanding of the Law of South Carolina in this case, a claim of ignorance to the Law would be unacceptable.

Conspirators and Blame

-- First, the circuit court Administrative Judge of Laurens county who was seated in office at the times relevant to the indictments -- return date February 12, 2016, would be the state judicial officer directly responsible for the scheduling and ordering a grand jury impaneled outside the bounds of the court of General Sessions. This judge would have been in possession of knowledge concerning the mandatory provisions of section 14-9-210, and still chose to impanel an unlawful grand jury and assist in printing and publishing the false information contained in petitioner's state indictment.

It should be noted that the code of Judicial conduct, cannon 2 (A), states, "A judge shall respect and comply with the Law, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Second, the facts and evidence presented above, and in subsection A of this memorandum establish that the Solicitor/Assistant Solicitor violated his oath of office and committed perjury by willfull printing false information in petitioner's indictment. Thus, the Solicitor/Assistant Solicitor is a central figure in the criminal conspiracy.

-- Also, it should be noted that the Laurens county solicitor as chief prosecuting officer for the County, directs and supervises the activities of the assistants under his authority. Thus, it would be the Solicitor who is ultimately responsible for the criminal acts committed by the Assistant Solicitor in any case. Moreover the possibility exists that others of the Solicitor's assistants are involved in the same type of unlawful and illegal indictment activities. Therefore the activities of the Solicitor's office should be investigated by the appropriate authorities.

Third, the grand jury foreman was the individual responsible for signing the true bill stamp affixed to petitioner's indictment thus completing and grand validity to the unlawful grand jury process by not signing the false and incorrect true bill

stamp the grand jury foreman by his actions, committed an offense of perjury as well as assisted the other conspirators.

Fourth, the clerk of court pursuant to section 14-9-210, reported petitioner's state indictment with its printed false information to the presiding judge at the court's next term. Moreover, the indictment containing the shown false information would have been filed in the courts Public records.

Fifth, the presiding judge at the petitioner's term of General Sessions court allowed petitioner's indictment containing the false information to be reported and published (See exhibit 1) at his court judge allowed the illegal indictment to enter into the official court records uncalledged even he would have known that no county grand juries were being impaneled under the jurisdiction of the court of General Sessions.

Also, it should be noted that the code of judicial conduct cannon 2 (A) requires a judge in this state to comply with the Law and promote public confidence in the integrity of the judiciary.

Again, unless the Solicitor/Assistant Solicitor is willing to admit that acting alone, he knowingly and completely forged petitioner's indictment the existence of a criminal conspiracy is established, because barring the existence of an outright forged indictment. It would have taken the combined effort of the above listed judicial officials all working in concert to establish scheduling to order and impanel the grand jury during a time when no court of General Sessions was scheduling to order and impanel the grand jury during a time when no court of General Sessions was convened, to meet and execute the return of the illegal true bill, to report and publish petitioner's illegal indictment and to then file the illegal indictment into the court records.

It is axiomatic that conspiracy need not be proved by direct evidence of unlawful agreement a conspiracy may be shown by circumstantial evidence including the party's consent. See State v. Oliver, Supra. And the substantive crime on crimes committed in furtherance of the conspiracy constitutes . . . circumstantial evidence of the existence of the conspiracy, its object and scope. See State v. Amerron, 428 S.E. 2d 871 (S.C. supreme court 1993).

In this case, it has been shown that various parties performed different functions in order to carry out, and make complete by an act of perjury, a state indictment process done by unlawful means. Section 16-17-410, provides in pertinent part that conspiracy is defined as a combination between two or more persons for the purpose of accomplishing Lawful object [return of true bill indictment] by unlawful means [illegal grand jury and act of perjury] (insertions added). Accordingly, an offense of criminal conspiracy has come before the court for judgment.

D. Contemporaneous objections and rights violations

Here, petitioner's would show this court that his failure to make timely objections to the illegal grand jury and void indictment were the direct result of state's act of perjury and criminal conspiracy, and that U.S. constitutional Law requires the default to be imputed against the responsible party, the state of South Carolina S.C. code ANN. § 17-1-10, provides that " A criminal action is prosecuted by the state as party, against a person charged with a public offense, for the punishment thereof. Thus, all criminal violations of section 16-9-10, perjury and section 16-17-410. Conspiracy must by necessity be imputed against both the individuals actually responsible and the state of South Carolina.

Consequently, South Carolina is a party to criminal acts.

The record in this case has clearly established that petitioner was indicted by way of a grand jury process that the court of General Sessions had no lawful authority to adopt. And that in order to keep secret the fact of the illegal grand jury the Solicitor/Assistant Solicitor willfully printed false information in petitioner's indictment (See subsection A and C), and then joined into a criminal conspiracy with other state Judicial officials to make effective a null indictment. See subsection A and C.

Consequently the criminal acts of state resulted in violation to petitioner's constitutional rights, and caused his failure to make objections to the illegal grand jury and null indictment.

[Constitutional and statutory rights]

in Gentry, the court held that an indictment is a notice document required by state constitution and statutes. See S.C. constitution Article 1 § 11 and Article V. § 22 [footnote omitted]. S.C. code ANN. § 17-19-10 (2003) ("no person shall be held to answer in any court for an alleged crime or offense unless upon indictment by a grand jury "except in specified instances").

The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer i.e. to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted.

See Evans v. State, 263 S.C. 495, 508-13, 611 S.E. 2d 510, 517-19 (S.C. 2005) (citing Gentry, 363 at 102-03, 610 S.E. 2d at 500).

Furthermore, a sufficient indictment prevents later retrials for the same offense in contravention of the constitutional prohibition against double jeopardy and prevents the prosecutor from usurping the power of the grand jury by ensuring a defendant is tried for the crime which he was indicted. See State v. Tabory, 262 S.C. 136, 139, 202 S.E. 2d 852, 853 (1974), State v. Guthrie, 352, S.C. 103, 108, 572 S.E. 2d 309, 312 (Ct. App. 2002), overruled on other grounds Gentry, 363 S.C. 93, 610 S.E. 2d 404; People v. Grega, 531 N.E. 2d 279, 382 (NY 1988); State v. Lewis, 36 SW 3d 88, 97 (Tenn Crim. App. 2000).

This required notice is a component of the due process that is accorded every criminal defendant. See U.S. constitution Amendment V. S.C. constitution Article 1. § 3.

Additionally a criminal defendant has a constitutional and statutory right to have the indictment issued by a legally constituted grand jury. See e.g. State v. Means, OP. NO. 26105 (S.C. supreme court filed February 6, 2006). See Evans v. State, 363 S.C. 495, 611 S.E. 2d 510 (2005); State v. Williams, 263 S.C. 290, 210 S.E. 2d 298 (1974). Also see S.C. constitution Article 1. § 11 and Article V. § 22, S.C. code ANN. § 14-9-210.

[Contemporaneous objections]

In Gentry, relying on section 17-19-90, ("Every objection to an indictment for any defect apparent on the face thereof, shall be taken by demurrer or on motion to squash such indictment before the jury shall be sworn and not afterwards."), the supreme court held that the sufficiency of an indictment must be challenged before the jury is sworn.

Recognizing Gentry, our supreme court in Evans held that challenges to the legality and sufficiency of the process of a county grand jury also must be made before the jury renders a verdict in order to preserve the error for direct appellate review. See S.C. code ANN. § 14-7-1140 (Supp. 2003), no irregularity in any writ of venire fascias or in drawing summoning returning or impaneling of jurors is sufficient to set aside the verdict, unless the party making the objection was injured by the irregularity or unless the objection is made

before the returning of the verdict. The Evans court overruling several cases, further determined that an indictment which is deemed to be a nullity because it was issued by an illegal grand jury no longer implicate subject matter jurisdiction.

In this case however, petitioner takes the position that a challenge to either the illegal grand jury process or null indictment would be immaterial, because no valid waiver can be entered absolving the state of its criminal conduct, and a null indictment is of no legal effect and therefore nonbinding. Under Law, petitioner's null indictment (See subsection A and C) is by its very nature insufficient to support a conviction or sentence, and protects against double jeopardy. It is an axiomatic rule of Law that an indictment deemed to be a nullity is "something that is legally void" and of no legal effect (citing Black's Law Dictionary, 8 Ed. 2004, nullity and void) See e. g., Hardison v. Glendhill, 72, GA App. 432, 33 S.E. 2d 921, 924 (void, null ineffectual augatory, having no legal force or binding effect, unable in Law to support the purpose for which it was intended).

And most certainly, a conviction and sentence based, on the fruits of criminal acts cannot be allowed to stand under any circumstances. The facts and evidence in this case very clearly show that state committed perjury and criminal conspiracy, (See subsection A and C) in order to secure its conviction against petitioner, surely the Evans ruling does not stand for the proposition that because state was not caught for its criminal acts in a timely manner, it is granted absolution. For the reason state above petitioner asserts that an objection to state's illegal grand jury and null indictment would be pointless. However, for the sake of argument petitioner would show this court that in Murray v. Carrier, 106 S.Ct. 2639, 2645 (1986) the United States supreme court held that the existence of cause for procedural default [for failure to comply with a state's contemporaneous objection Rule], must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with the state

procedural rule. The court stated. Without attempting an exhaustive catalog of such objective impediments to compliance with a procedural rule, we note that a showing that the factual or legal basis for a claim was not reasonably available to counsel. "See Reed v. Ross, 468 U.S. at 16, 104 S.Ct. at 2910, or that some interference by officials Brown v. Allen, 244 U.S. 443, 485, 73 S.Ct. 397, 422 97 L.Ed. 469 (1953) made compliance impracticable, would constitute cause under this standard. Id 106 U.S. at 2645 in this case, the Solicitor/Assistant Solicitor willfully printed false information in petitioner's state indictment (See subsection A). And then joined into a criminal conspiracy to keep secret the illegal grand jury process (See subsection C) surely those acts by state constitute an external factor sufficient to show cause for failure to make timely objection.

Additionally, however, Evans, citing State v. Griffen, 277 S.C. 193, 285 S.E. 2d 634 (1981). State v. Thompson, 305 S.C. 496, 409 S.E. 2d 420 (Ct. App. 1991), hold that the regularity of grand jury proceedings is presumed absent clear evidence to the contrary. And that counsel was therefore, not ineffective for failing to request and review the impaneling documents and supporting materials.

In this case, it seems that state utilized that presumption of correctness to assist in keeping its criminal acts secret and to make effective an unlawful taking of petitioner's rights to make contemporaneous objections. State used to its benefit the fact that no one would be checking into its grand jury process.

Therefore, in light of the United States supreme court's decision in Murray v. Carrier, and taking into consideration state's criminal acts, the responsibility for petitioner's failure to make timely objections to the illegal grand jury and null indictment, must be imputed to state.

This court should also take note of the fact that in State v. Arthur, 296 S.C. 495, 374 S.E. 2d 291 (1988), the court held that a waiver of a constitutional and statutory right requires a showing on the record that a defendant made the waiver knowingly and intelligently, citing Patton v. United States, 281 U.S. 276, 50 S.Ct. 253, 74 L.Ed. 854 (1930) as the landmark case. That same standard should be applied here, because under no circumstances, can state be allowed to use criminal means to effect a forfeiture of petitioner's right to make objections.

Here, petitioner is convicted and sentenced pursuant to a null indictment and illegal grand jury made effective by criminal acts committed by state in order to keep secret its unlawful procedures. A null indictment by its very nature does not protect petitioner against double jeopardy and is insufficient to enable the court to pronounce judgment. See also section 17-25-10. In this case, state violated nearly every component of the due process notice requirement that's owed to petitioner. State, however, seems to have overlooked one very essential fact; God's righteous justice always prevails. Accordingly, and for the reasons shown above this court should remand this case back to the lower court in order to allow petitioner to enter belated objections to state's illegal grand jury and null indictment.

Petitioner would show is this court, that as a result of the criminal violations committed by state in this case, the lower trial court was divested of the requisite authority to impose sentencing.

Section 17-25-10 provides that:

No person shall be punished for an offense unless duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person.

South Carolina Law holds that words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction. See State v. Muldrow, 348, S.C. 264, 559 S.E. 2d 847 (2003), And statutory prescriptions couched in language such as shall and must are mandatory in application

and effect. See e.g., South Carolina Police officers Ret. vs v. City of Spartanburg, 301 S.C. 188, 191, 391 S.E. 2d 239, 241 (1990); Starnes v. South Carolina Dept. of Public Safety, 342 S.C. 216, 221, 535 S.E. 2d 655, 667 (Ct. App. 2000).

A plain reading of section 17-25-10 requires that a criminal defendant cannot be punished [sentenced] for an offense until after the state has duly and legally convicted the individual. That did not happen in this case.

As established above in subsection A, state knowingly) violated the provisions of S.C. code ANN. § 14-9-210 by, (1) unlawfully impaneling its grand jury outside the jurisdiction of the court of General sessions, (2) utilizing an unlawful process for the return of true bill, and (3) causing false information to be printed and published in petitioner's indictment, consequently, the grand jury was illegal and its indictment null.

As established above in subsection C. the Solicitor/Assistant Solicitor knowingly committed an offense of perjury in violation of S.C. code ANN. § 16-9-10, by willfully printing false and misleading information in petitioner's state indictment. Additionally several judicial personnel joined into a criminal conspirator, in violation of S.C. code ANN. § 16-17-410, for purposes of completing return and publications of state's illegal and void indictment.

As established above in subsection 1), State's unlawful indictment process and subsequent criminal acts, resulted in an illegal grand jury a void indictment a denial of petitioner's rights to make objection to the indictment, and violation of every component of the due process notice requirement owed to petitioner by this state.

Accordingly, it would be hard to imagine a situation where the state of South Carolina has violated more of a criminal defendant's rights, than in this case found here. In deed, it would take a novel rule of Law, which would allow the state to maintain a conviction and sentence under the circumstances described above.

To adopt such a Rule of Law here would be tantamount to an unrighteous.

And Perverted Judgment.

Based on the above reasons Petitioner has established that he was not duly and legally convicted, and therefore was sentenced in violation of section 17-25-10. Accordingly, the sentence in this case should be vacated.

Conclusion

The holding in Evans, should not stand for the proposition that a conviction and sentence gained through judicial acts of perjury and criminal conspiracy can be declared lawful, judicial integrity will have been lost if the state is not constrained by its own statutory and criminal Laws. Basis United States constitutional due process Law ditates, with authority, that under no circumstances can a state commit criminal acts against its citizens in the name of judicial economy.

Petitioner would point out that in this case the criminal acts committed by state clearly establish the essential elements of fraud on the court in addressing a case involving fraud on the court, the United States supreme court explained that to be granted relief under the provisions, of Rule 60 (b) (3), Fed R. civil Proc., the issue turns on whether the alleged misconduct "harms" the intergrity of the judicial system.

" Tampering with the Administration of justice in the manner undisputedly shown here involves far more than injury to a single litigant. It is a wrong against the instituion set up to protect and safeguard the public institution in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litiigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. Hazet Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238, 246, 64 S.Ct.

997, 1001. 88 L.Ed. 1250 (1994).

Accordingly, fraud on the court is misconduct by an officer of the court that is directed at the judicial machinery itself. Thus, fraud on the court is very evident here. . .

However, it should be noted that even if appropriate, the filing of a state Rule 60 (b), (3) S.C. Rules of Civil Proc., would not be proper in this case due to the criminal conspiracy issues raised implicating the very circuit court judges who in all likelihood would be instrumental in ruling on the motion. Hence Petitioner has no other adequate remedy at Law except the person action at bar.

In sum, determination of the issues raised in this petition must by necessity be resolved through consideration of one question: can the state of South Carolina commit acts and gross misconduct in order to gain a conviction. Petitioner would pray the answer no.

Therefore, based on the reasons above Petitioner respectfully moves this court to grant a writ of mandamus, and issue an order specifically directing the lower court to allow entry of belated objections, to hold invalid the unlawful grand jury process and to squash state's null indictment.

Additionally, Petitioner moves this court to initiate an official investigation into the herein alleged misconduct and criminal violations of Law or in the alternative, vacate the illegal conviction and sentence.

RESPECTFULLY SUBMITTED,

TAKE NOTICE

I have enclosed a copy of the original indictment to show that the foreman of the grand jury have signed the indictment that are in question and also there is no true bill stamp, on the face of this indictment. The Laurens county research results for the 8th circuit judicial indicating the event title of General Sessions non-jury circuit No: 16-GS-30-0227, was not held on 02/12/2016. time 6:07 p.m. In the county of Laurens, South Carolina.

Indictment No: 16-GS-30-0227, which charged appellant Frederick Calvin Jones, with murder, was signed by the grand jury foreman but was not stamped or otherwise marked as a "true bill" or a "no bill". Appellant arguing that because the indictment was not stamped "true bill," there was no valid indictment.

SEE THE FOLLOWING BELOW

Laurens County Search Results Circuit 8

Event Title:

General Sessions

Judge:

Addy, Frank R.

Start Date:

02-15-2016

End Date:

02-19-2016

Event Title:

General Sessions

Judge:

Addy, Frank R.

Start Date:

02-22-2016

End Date:

End Date:
02-19-2016

Event Title:
General Sessions
Judge:

Addy, Frank R.

Start Date:
02-22-2016

End Date:
County.

Newberry
Start Date:

02-01-2016
End Date:
02-05-2016

Event Title:
Common Pleas Non-Jury
Circuit No:

8
Start Date:
02-08-2016
End Date:
02-12-2016

Event Title:
General Sessions Non-Jury
Circuit No:

8
6:07 PM

EXHIBIT (1)

WITNESSES

Tyrese Goggins
Clinton Police Department

WARRANT NUMBER

2015A3020100467

True Bill

Louise Chiles

Foreman of the Grand Jury

Date: 2/12/16

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2016

Indictment # 16GS30- 0 227

THE STATE

vs.

Fredrick Calvin Jones

INDICTMENT FOR

Murder

§16-03-0010

CDR: 0116

A TRUE COPY OF ORIGINAL
Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

(41)

Tr. p. 12, lines 16-25. through page 14.

Fred he's 36 years of age. And we have been trying to resolve this case for quite some time. He has 1,080 total jail credit. Before I was appointed to represent Mr. Jones he was also -- he had Tom Adducci as his lawyer before Tom went to the Greenville public defender's office. And the same kind of thing happened where Tom Adducci and I met with Fred Jones at the same time in the Newberry jail, which is where he was housed the majority of this time for that transition period. After that meeting happened, I went back and spoke to Fred. And I had his discovery with me. And his -- I said to him, "okay, Fred. I know that you've been over your discovery with Tom, but I want to start fresh. And he said "there's no need. I know what's in the discovery. Can you please go and tell the solicitor that I'm willing to plead to voluntary manslaughter for 15 years? If I can do that, then I can see my daughter graduate high school.

And I said, "okay, well, you know, I think that's reasonable from what I had heard through the grapevine about the case and the problems connecting who was the shooter.

So I stated an e-mail communication with Mr. Scott. I said, "how about we plead him 20, suspended to 15 active and 5 years probation? Initially, Mr. Scott said he felt like that was reasonable but he had to take it to the victim's family. Well, then we kept talking, kept talking. Fred was always willing to cooperate against Malcolm Jones, who is the co-defendant who got 15 years. And we talked a lot about some of the defenses in his case. And honestly, he had a lot of defenses. The only problem is that the cell phone was found with him, even though he claimed to have given it to somebody else, which was his sister's boyfriend at the time. But ultimately, what it came down to was Fred was worried that under "hand of one/hand of all " in this state and when we looked at it that way he would be convicted, no matter what kind of defenses that we could raise. Then Mr. Scott I kept trying to communicate with him.

And I've -- I kept apologizing in my e-mails to Mr. Scott about being annoying on how aggressive I was trying to resolve this plea.

And then I said -- or Dale Scott said to me on Wednesday, February 14th, 2018. "Well, I think he wants 18, I can't do that. I had a very sad meeting with the victim's girlfriend, mother, aunt, and grandmother yesterday. I felt very unhappy after the meeting. And that feeling stayed with me for the rest of day. Well, that was on Wednesday, February 14th 2018. Prior to that, on Thursday November 30th, 2017, Dale Scott sent me an e-mail that says: "Fred Jones can plead to voluntary, but I would be looking for some thing closer to the 18. to 20 years range. I have a number of Newberry charges I will roll into that plea.

A plea agreement rest on contractual principles and each should Clark v. State, 468 S.E. 2d 653, receive the benefit of their bargain. Thrift v. State, 312 S.C. 282, 440 S.E. 2d 341 (1994). When an accused pleads guilty upon a promise of the prosecutor, the agreement must be fulfilled. State v. Torrence, 305 S.C. 45, 406 S.E. 2d 315 (1991). When the state's attorney has given his word in the form of a plea agreement or bargain and that bargain is accepted by the trial court, it behaves the state's attorney to make every reasonable effort to correct any deviation from the bargain when the deviation is called to his attention. Alston v. State, 38 M.D. App. 611, 379 A 2d 754, 757. Once a court accepts a plea agreement, it is bound to honor its promise to perform the agreement, in so far as the terms of the agreement are within the power of the court to order. State v. Rhinehart, 312 S.C. 36, 430 S.E. 2d 536.

A defendant who pleads guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing (1) Counsel's representation fell below an objective standard of reasonable and (2) There is a reasonable probability that, but for counsel's errors that defendant would not have plead guilty, but would have gone to trial. Turning first to evidence of prior bad acts, the South Carolina Rules of evidence and case Law preclude the introduction of evidence of a defendant other crimes, wrongs, or acts to prove the defendant's guilt for the crime charged except to establish (1) motive, (2) identity, (3) a common scheme or plan, (4) the absence of mistake or accident, or (5) intent, Rule 404 (b), SCRE; State-v.-Lyle, 125 S.C. 406, 118 S.E. 803 (1923). In fact "[e]vidence of other crime is never admissible unless necessary to establish a material fact or element of the crime charged.

State-v.-Johnson, 293 S.C. 321, 324, 360 S.E. 2d 317, 319 (1987). As explained by the court in State-v.-Wesley-Smith, 391 S.C. 353, 361, 705 S.E. 2d 491, 495 (2011), in order to introduce evidence of some other act by the defendant under one of the exceptions the prosecutor must lay a proper foundation. At the outset the prosecutor must prove by clear and convincing evidence that defendant committed the other act; if the defendant was not convicted of the act Id. (citing State-v.-Fletcher, 379 S.C. 17, 23, 664 S.E. 2d 480, 483 (2008)). Next, the prosecutor must articulate the logical connection between the other act and one of the five exceptions listed in Rule 404 (b), SCRE. Id. (citing State-v.-Ragan, 369 S.C. 201, 211 631 S.E. 2d 262, 267 (2006)). This requires a showing of how the evidence of the other act will assist the fact-finder in understanding a material issue in the case related to one of the Rule 404 (b), SCRE, exceptions. Id. If the trial judge determines the prosecutor has satisfied both requirements then the judge must determine whether the probative value outweighs the prejudicial effect pursuant to Rule 403, SCRE. Id. (citing State-v.-Stokes, 387 S.C. 390, 404, 673 S.E. 2d 434, 441 (2009)).

Neither the judge nor the prosecutor explained how the evidence of this alleged prior bad act was admissible against appellant under one of the exceptions in Rule 404 (b), SCRE or that the act had been proven by clear and convincing evidence.

Due Process Clause violation

The United States constitution guarantees a criminal defendant the right to present a complete defense through the Due Process Clause of the Fourteenth Amendment and the sixth Amendment. Craze-v.-Kentucky, 476 U.S. 683, 690 (1986); State-v.-Schmidt, 288 S.C. 301, 303, 342, S.E. 2d 401, 402 (1986) (holding the sixth Amendment "constitutionalizes" the right to present a defense in a criminal trial). [T]he constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. Craze, 476 U.S. 683, 690 (quoting California-v.-Trombetta, 467 U.S. 479, 485 (1984)). South Carolina constitution provides similarly. "Any person charged with an offense shall enjoy the right ... to be fully heard in his defense ... "S.C. const. Art. I, § 14; see also S.C. code Ann. § 17-23-60 ("Every person accused shall at his trial, be allowed to produce witnesses and proofs in his favor.

"Few rights are more fundamental than that of an accused to present witnesses in his own defense. Taylor-v.-Illinois, 489 U.S. 400, 408 (1988) (citing Chambers-v.-Mississippi, 410 U.S. 284, 302 (1973)). The need to develop all relevant facts in the adversary system is both fundamental and comprehensive.

The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. Id. at 408-409 (quoting United-States-v.-Nixon, 418 U.S. 683, 709 (1974)). The right to offer the testimony of witnesses is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. at 409 (quoting Washington-v.-Texas, 388 U.S. 14, 19 (1967)). Without question or hesitation, the United States supreme court declared [t]his right is a fundamental element of due process of law.

Id. undermining the "ostensible integrity of the investigation" is one method by which a defendant may present a defense.

See Kyles-v.-Whitley, 514 U.S. 419, 448 (1995).

"Evidence is relevant if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears. Schmidt, 288 S.C. at 303, 342 S.E. 2d at 403 (citing Assoc.-Mgmt.-v.-Ed.-Sauls-Const.-Co., 279 S.C. 219, 305 S.E. 2d 236 (1983)); see also Rule 401, SCRE (defining relevant evidence). Further, [e]vidence which assists a jury at arriving at the truth of an issue is relevant and admissible unless otherwise incompetent. Id. citing Toole-v.-Salter, 249 S.C. 354, 154 S.E. 2d 434 (1967)); See also Rule 402, SCRE ("All relevant evidence is admissible, except as otherwise provided evidence which is not relevant is not admissible.

In State-v.-Page, 406 S.C. 272, 287, 750 S.E. 2d 623, 631 (Ct. App. 2013), this court held the trial judge abused his discretion by finding the proffered testimony offered by the defendant was not relevant. Page sought to introduce a text message and testimony by a witness that the alleged victim had admitted to the witnesses that she had lied to the police. Id. at 288, 750 S.E. 2d at 632.

2021-CP-30-651

Mr. Frederick Calvin Jones, # 321866
 Broad River Correctional Institution
 Marion Unit A-275
 4460 Broad River Rd.
 Columbia, South Carolina 29210

Date: July 12, 2021

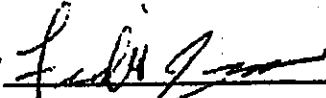
Laurens county clerk of court
 Lynn W. Lancaster, Clerk
 P.O. Box 287
 Laurens, South Carolina 29360

Dear Clerk:

Enclosed please find for filing and processing with the,
 Laurens county clerk of court office. (1) copy Application
 for post-conviction relief. Please return a copy of the same
 to me with file date stamped thereof, to the below address.

Thanking you in advance for your time and consideration in this
 matter.

Respectfully submitted by,

S/ 
 Frederick C. Jones, # 321866
 B.R.C.I. Marion Unit A-275
 4460 Broad River Rd.
 Columbia, South Carolina 29210

2021 JUL 29 PM 4:00

LAURENS COUNTY
 CLERK OF COURT

K. MICHELLE SIMMONS
 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF LAURENS)
 707 OCT 21 10 08 AM)
 Frederick Calvin Jones, #321866,)
 Applicant,) LAURENS COUNTY) Case No.: 2021-CP-30-651
) CLERK OF COURT)
 v.)
 State of South Carolina,) **RETURN AND PARTIAL MOTION TO**
 Respondent.) **DISMISS**
) **(Counsel Appointed)**

In response to the application for post-conviction relief filed by Applicant Frederick Jones on July 28, 2021, Respondent the State of South Carolina makes this return¹:

I. Procedural History

In February 2016, the Laurens County Grand Jury indicted Applicant for Murder (2016-GS-30-0227). Applicant was represented by Chelsea McNeill, Esquire; Deputy Solicitor C. Dale Scott, of the Eighth Circuit Solicitor's Office prosecuted the case.

On October 23, 2018, Applicant appeared before the Honorable Letitia H. Verdin, and plead guilty to the lesser included offense of Voluntary Manslaughter². Judge Verdin, sentenced Applicant to twenty-five years imprisonment.

¹ The State's return was originally due on September 30, 2021. . *See* Rule 12(a), SCRPC ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). However, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court grants the State's request accept its return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

² As a result of Applicant's guilty plea, the State dismissed the following pending charges from Newberry County: four counts of distribution of cocaine base, three counts of distribution of cocaine base within proximity of a school, one count of possession of a sawed-off shotgun, one

On November 1, 2018, Applicant's counsel Chelsea McNeill filed a motion to reconsider Applicant's sentence, and requested a hearing to address Applicant's motion to reconsider. On December 19, 2018, by written order, Judge Verdin denied Applicant's motion for reconsideration of his sentence finding that Applicant's plea was entered knowingly and voluntarily, and the Court could find no compelling basis for reducing Applicant's sentence. Following the denial of his motion for reconsideration, Applicant filed a timely notice of appeal.

On December 17, 2018, Applicant's counsel Chelsea McNeill filed an Explanation of Appeal Pursuant to Rule 203(d)(1)(B)(iv), SCACR. Wherein, Applicant's counsel argued Applicant was not in possession of any discovery relating to the Newberry County charges that were dismissed as part of Applicant's guilty plea. Applicant's counsel argued she was unaware whether such charges were meritorious, and she was not in a position to argue that the dismissal of these charges should not be factored into Applicant's sentencing.

An Appeal was perfected on Applicant's behalf by David Alexander, Esquire of the South Carolina Commission on Indigent Defense. On November 8, David Alexander filed a brief pursuant to *Anders v. California*³ requesting to be relieved as counsel and raising the following issue:

1. The plea court erred in denying Applicant's motion to reconsider his sentence.

On May 21, 2021, the South Carolina Court of Appeals issued an order dismissing Applicant's appeal and granting appellate counsel's motion to be relieved. The Remittitur was issued on June 8, 2021.

count of unlawful possession of a weapon by person convicted of a violent crime, one count of grand larceny, and one count of carjacking.

³ *Anders v. California*, 386 U.S. 738 (1967).

II. Facts

On November 17, 2015, Shayla Jenkins and Calvin Walker were walking home from a nearby convenience store. Shayla Jenkins notices a dark colored medium-sized sedan drive past the couple. As they arrived home Shayla Jenkins entered the house, while Calvin Walker remained in the front yard while answering a phone call. As Ms. Jenkins entered the house and hung up her coat she heard two gunshots and ran outside to see Calvin Walker laying on the ground. Ms. Jenkins called 911 to report that Calvin Walker had been shot. EMS was called to the scene and transported Calvin Walker to the hospital where he was pronounced dead.

A cell phone belonging to Calvin Walker was collected and officers reviewed the last few phone calls and text messages. Calvin Walker was communicating with an individual who was coming to meet Calvin Walker to purchase marijuana. Officers researched the phone number and discovered it belonged to Applicant's mother. Police located and arrested, Applicant and located the cell phone on Applicant's person.

Witnesses in the area informed police they heard two gunshots and observed a dark colored sedan leaving the area where the gunshots came from. Police officers were able to locate Applicant's co-defendant Malcolm Jones who was observed driving a blue Pontiac G6. Mr. Jones denied knowing Calvin Walker, and being with Applicant on the night of Calvin Walker's murder.

Police interviewed an individual named Alex Lanier who was trying to sell a .32 caliber pistol around the time they were investigating the murder of Calvin Walker. Lanier confirmed he saw Applicant burning clothes in his back yard, and Applicant gave him the gun to try and sell. Lanier confirmed he saw Applicant and Malcolm Jones together on the day of Calvin Walker's murder.

Police proceeded to interview Applicant, who admitted to riding to Clinton in a blue car driven by Malcolm Jones and Carron Grant, who was not charged. Applicant claimed Malcolm and Carron jumped out of the car towards Calvin Walker and attempted to rob Calvin Walker, before Malcolm Jones shot Calvin Walker.

Malcolm Jones turned himself into police on December 4th 2015, and confirmed he was at the incident location where Calvin Walker was shot, but claimed Applicant was the one who shot Calvin Walker. GP Tr. p. 6, l. 20- p. 10, l. 14

III. Current Application

Applicant timely commenced this PCR action on July 28, 2021. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. Counsel did not represent Applicant on his pending charges in Newberry County and had not reviewed the discovery for Applicant's pending Newberry County charges.
 - b. Counsel failed to object to the trial court imposed sentence which exceed the negotiated sentence of eighteen to twenty years.
 - c. Counsel failed to seek leave of court to withdraw Applicant's guilty plea on the basis that the Court imposed sentence exceeded the negotiated sentence.
2. Subject Matter Jurisdiction
 - a. "Since no court of General Sessions was convened on the date February 12, 2016, the date the indictment was true-billed, the grand jury proceedings would therefore by necessity be held invalid, and its illegally issues indictment null and without binding legal effect."
3. Involuntary Plea
 - a. Trial Counsel coerced defendant into entering a guilty plea through deceptive tactics when defendant wished to stand trial by jury.
4. Prior Bad Act
 - a. Solicitor Scott's introduction of Applicant's pending charges in Newberry County.
5. Trial Court Error
 - a. The plea court erred in denying Applicant's motion to reconsider

6. Due Process Violation

Applicant requests relief in the form of "Conviction reversed and new trial granted."

Attached herewith and incorporated herein are the Laurens County Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the appellate records, and the records of this PCR action. Respondent reserves the right to amend this Return upon receipt of any relevant materials

IV. Partial Motion to Dismiss

Respondent submits any allegations of trial court error, subject matter jurisdiction, prior bad acts, and due process violation should be summarily dismissed for failure to state a cognizable claim for post-conviction relief pursuant to the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. An applicant may seek PCR based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A). Post-conviction relief "is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence.*" *Al-*

Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000).

Trial Court Error

Applicant's allegations of trial court error are without merit, and should be summarily dismissed for failure to state a cognizable claim for post-conviction relief. Free-standing claims of trial court error are not cognizable claims for post-conviction relief, and this prohibition has long been recognized. See *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("Errors in petitioner's trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings."); see also *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) ("The *Simmons* rule gives effect to the Legislature's clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal."); *Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel). Because an application for post-conviction relief is not a substitute for a direct appeal, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the overwhelming majority of cognizable claims fall under the broad umbrella of "ineffective assistance of counsel," a contention under the Sixth Amendment of the United States Constitution. See *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR).

Applicant's allegation that the trial court erred in denying his motion to reconsider his sentence is a direct appeal issue that is not a cognizable claim for post-conviction relief. See, e.g., *Drayton*, 312 S.C. at 8, 430 S.E.2d at 520 ("[PCR] is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.");

Wolfe v. State, 326 S.C. 158, 162 n.2, 485 S.E.2d 367, 369 n.2 (1997) (noting that “trial court error does not constitute an appropriate basis for a finding of ineffective assistance of counsel”). Applicant raised this allegation during his direct appeal, and this allegation was dismissed by the South Carolina Court of Appeals by written order. Applicant now seeks to reassert this direct appeal issue in his post-conviction relief application.

Accordingly, the State moves to dismiss these allegations pursuant to pursuant to Rule 12(b)(6), SCRCP, for failure to state a cognizable claim upon which relief can be granted under the Act. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief).

Subject Matter Jurisdiction

Applicant is alleging he is entitled to post-conviction relief because there were flaws in the indictment process, as it pertains to the date on the indictment sheet and the court calendar not lining up. Applicant’s claim that the court lacked subject matter jurisdiction are without merit. “Circuit courts obviously have subject matter jurisdiction to try criminal matters.” *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). Further, a circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment.” *State v. Wilkes*, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing *Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001)).

Applicant is alleging he is entitled to PCR relief because there were “flaws in the indictment process.” Challenges to the indictment must be raised before a jury is sworn in. S.C.

Code Ann. § 17-19-90 (2003). If non-jurisdictional defects apparent on the face of the document are not raised before then, they are waived. *Hooks v. State*, 353 S.C. 48, 577 S.E.2d 211, (2003), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *State v. Young*, 243 S.C. 187, 133 S.E.2d 210 (1963). Sufficiency of indictment is found when the offense is stated with enough specificity that the court knows what judgement to announce and the defendant knows what he has to answer to and whether he can plead acquittal or conviction upon it and whether it apprises defendant of offense that is intended to be charged. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) *citing State v. Wilkes*, 353 S.C. 462, 465, 578 S.E.2d 717, 19 (2003).

Here, there is no indication Applicant was asserting indictment flaws prior to resolution of the case through the plea process. If he did not assert these claims prior to the resolution of the case, he waived his right to assert this claim and cannot be granted relief upon assertion of flaws now. Applicant now seeks to raise challenges to his indictment, alleging his indictment was not properly true billed. Applicant was true bill indicted in February 2016, for Murder (2016- GS-30-0227). Applicant subsequently plead guilty to the lesser included offense of voluntary manslaughter.

Accordingly, the State moves to dismiss these allegations pursuant to pursuant to Rule 12(b)(6), SCRPC, for failure to state a cognizable claim upon which relief can be granted under the Act. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief).

Prior Bad Act

Applicant's claims Deputy Solicitor Dale Scott incorrectly informed Judge Verdin of Applicant's pending charges in Newberry County. Respondent contends this allegation is without merit, and should be summarily dismissed. Applicant mistakenly relies on Rule 404(b) of the South Carolina Rules of Evidence to support his allegation that Deputy Solicitor Dale Scott incorrectly informed Judge Verdin of Applicant's pending charges in Newberry County. Rule 404(b) states "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence or mistake or accident, or intent." SCRE Rule 404(b). Respondent contends Applicant's pending charges in Newberry County were not introduced to prove the character of Applicant, but were introduced as part of the terms of Applicant's guilty plea. "[A]ll plea agreements must be on the record and must recite the scope, offenses, and individuals involved in the agreement. We also hold that prospectively for all plea agreements entered after the filing of this opinion, we will limit our review of a plea agreement only to those terms which are fully set forth in the record." *State v. Thrift*, 312 S.C. 282, 295, 440 S.E.2d 341, 348 (1994). "One guiding principle which remained constant in all of these opinions was that the terms, conditions, and reasons for any plea agreement must be disclosed to the trial judge." *Id.* 312 S.C. at 295-96, 440 S.E.2d at 349.

Applicant, in his application for post-conviction relief, refers to the transcript from his guilty plea hearing citing the testimony of his counsel Chelsea McNeill. In this excerpt, Counsel informs the court of plea discussion between herself and Deputy Solicitor Dale Scott where Mr. Scott indicated "I would be looking for something close to the 18 to 20 year range. I have a number of Newberry charges I will roll into that plea." Tr. p. 14, l. 19-21. However, no negotiated plea

agreement was reached in this case. Instead, at Applicant's guilty plea hearing, Deputy Solicitor Dale Scott made a recommendation of a twenty five year sentence as well as the dismissal of Applicant's pending charges in Newberry County. Tr. p. 11, l. 3-17; Tr. p. 19, l. 21-23. Following Deputy Solicitor Dale Scott's recommendation of a twenty five year active sentence, Applicant proceeded to voluntarily plead guilty. Tr. p. 11, l. 18-21. Though Applicant contends he plead guilty under the belief there would be a recommendation of a twenty year sentence, Applicant was informed the State was seeking a twenty five year sentence prior to pleading guilty, and proceeded to voluntarily plead guilty. Additionally, as the dismissal of Applicant's pending charges in Newberry County were part of the terms of Applicant's guilty plea, Deputy Solicitor was required to disclose these terms to Judge Verdin prior to Applicant entering his guilty plea. Therefore, Respondent contends Applicant's allegation that Deputy Solicitor incorrectly introduced the existence of pending charges in Newberry County, and informed the Court of his intention to dismiss these charges as part of Applicant's guilty plea, is without merit.

Accordingly, the State moves to dismiss these allegations pursuant to Rule 12(b)(6), SCRCP, for failure to state a cognizable claim upon which relief can be granted under the Act. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief).

Due Process Violation

Applicant's allegation of a Due Process clause violation is without merit. Applicant specifically alleges he was denied the right to present a complete defense, and was denied the opportunity to present witnesses in his own defense.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; see also *United States v. Smith*, 440 F.2d 521, 528-529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599.

The record reflects Applicant was made aware of his right to a jury trial, and the right to present witnesses in his defense, and cross examine witnesses against him. The Court at Applicant's plea hearing informed Applicant of the charge he was facing, the possible sentence, and the fact that Applicant's charge was categorized as a violent and most serious offense. Tr. p.

4, l. 2-11. Applicant was informed of his right to remain silent, and that by entering a guilty plea he was waiving this right. Tr. p. 5, l. 2-6. Applicant was informed of his right to a jury trial, his right to confront and cross examine witnesses presented by the State, and his right to call witnesses to testify on his behalf, and that by pleading guilty Applicant was giving up these rights. Tr. p. 5, l. 7-13. Applicant indicated he understood all of these rights and voluntarily waived these rights. Tr. p. 4, l. 11- p. 5, l. 13. Therefore, Respondent asserts Applicant has voluntarily waived his right to present a defense to the charge Applicant was facing, and Applicant was not denied any due process rights by pleading guilty to the charge of voluntary manslaughter. Therefore, Respondent contends Applicant's allegation the court lacked subject matter jurisdiction is without merit and Applicant's allegation relating to subject matter jurisdiction should be summarily dismissed.

V. Response to Allegation of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct “was so defective as to require reversal” of the applicant's conviction. 466 U.S.

at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense . . . , it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); *see* Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of “were outside the wide range of competence” demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Id.* Significantly, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that 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 that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not “within the range of competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant's 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*, --- U.S. ---, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

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*, 137 S. Ct. at

1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.* at 1958 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 guilty plea and the evidence presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Applicant alleged Counsel was deficient because Counsel did not represent Applicant on the charges pending in Newberry County and Counsel had not reviewed the discovery on those pending charges. However Applicant has failed to establish how Counsel's performance was deficient, or how Applicant was prejudiced, regarding the dismissal of these charges. Applicant's pending charges were dismissed as part of Applicant's guilty plea. Additionally, Applicant plead to the lesser included offense of voluntary manslaughter, as opposed to murder, for which Applicant was originally indicted. Applicant was sentenced within the statutory range for voluntary manslaughter, and was sentenced in line with Deputy Solicitor Dale Scott's recommendation of twenty five years. At Applicant's guilty plea hearing, Deputy Solicitor Scott stated

I'm going to recommend a 25. And I would ask you to go along with that, Your Honor. I as part of this plea... I've got a Newberry docket. I'm going to dismiss four distribution-crack charges over there, three proximity charges, a possession of a sawed-off shotgun, and unlawful possession of a weapon by somebody who committed a crime that prevents him from having a weapon, a grand larceny, and a carjacking. So he's catching a break on that end. He's catching a break on the deviation from murder. And he does have a criminal history... But we would ask for that - you go along with the 25-year sentence.

Tr. p. 11, l. 3-17. Despite the fact Counsel was not appointed to represent Applicant on his pending charges in Newberry County, the dismissal of these charges were properly included as part of Applicant's guilty plea. "In accepting a guilty plea, judge must be certain that the defendant understands the charge and the consequences of the plea and that the record indicates a factual

basis for the plea.” *State v. Rikard*, 371 S.C. 295, 638 S.E.2d 72 (Ct. App. 2006). Applicant was advised of the charge he was pleading guilty to, the consequences of his guilty plea, and the constitutional rights he was waiving by pleading guilty to voluntary manslaughter. Tr. p. 4, l. 2- p. 5, l. 13. Applicant was additionally made aware of the factual basis for his guilty plea. p. 6, l. 20- p. 11, l. 21. Therefore, Applicant has failed to establish how Counsel’s performance regarding the dismissal of Applicant’s pending Newberry County Charges was deficient, or how Applicant was prejudiced by the dismissal of these pending charges as part of Applicant’s guilty plea.

Applicant further alleges that Counsel was ineffective for failing to object to the Court’s imposition of a twenty five year sentence. However Applicant has failed to establish that there was a negotiated plea agreement for a sentence between eighteen and twenty years. At Applicant’s guilty plea hearing, Deputy Solicitor Dale Scott recommended a sentence of twenty five years. Tr. p. 11, l. 3-17. In response to Deputy Solicitor Scott’s recommendation of twenty five years, Counsel introduced conversations she had with Deputy Solicitor Scott where they discussed a possible sentence recommendation between eighteen and twenty years. Tr. p. 13, l. 5- p. 15, l. 21. Counsel then recommended a sentence of twenty five years, suspended to eighteen years active with five years’ probation. Tr. p. 17, l. 20- p. 18, l. 1. Despite Counsel’s introduction of conversations she had with Deputy Solicitor Scott during the course of plea negotiations, which suggested a possible recommendation of eighteen to twenty years, and Counsel’s recommendation of twenty five years, suspended to eighteen years with five years’ probation, Deputy Solicitor Scott again recommended a twenty five year sentence. Tr. p. 20, l. 21-23. “A trial judge is allowed broad discretion in sentencing within statutory limits.” *Rikard*, 371 S.C. at 303, 638 S.E.2d at 76 (Citing *Brooks v. State*, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997)). The record from Applicant’s guilty plea establishes that Applicant’s Counsel and Deputy Solicitor Scott had not agree to a

negotiated sentencing range of eighteen to twenty years. Therefore Applicant cannot demonstrate how Counsel was ineffective for failing to object to the Court's imposed sentence of twenty five years.

Finally, Applicant alleges counsel was ineffective for failing to seek leave of court to withdraw Applicant's guilty plea. "The withdrawal of a guilty plea is generally within the sound discretion of the trial judge." *Rikard*, 371 S.C. at 301, 638 S.E.2d at 75. "All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea." *Rickard*, 371 S.C. at 301, 628 S.E.2d at 75. Applicant has failed to establish that his guilty plea was improperly accepted by the court. Applicant additionally has failed to demonstrate how Counsel's failure to request leave of court to allow Applicant to withdraw his guilty plea has prejudiced Applicant, as Applicant voluntarily and intelligently plead guilty to the lesser included offense of voluntary manslaughter, and was sentenced within the statutory limits.

Applicant has failed to show how Counsel's conduct was deficient, or how Applicant was prejudiced by Counsel's conduct throughout the course of Applicant's guilty plea. Therefore, Applicant cannot satisfy either requirement of *Strickland*. However, these allegations 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").

VI. Response to Allegations of Involuntary Guilty Plea

Applicant's allegation that his guilty plea was involuntary is without merit. "[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; see also *United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599.

The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and

defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434-35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The voluntariness of a guilty plea, however, "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing," *Harres*, 282 S.C. at 133, 318 S.E.2d at 361. An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 485 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not

understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." *Id.* at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings").

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 guilty plea and the evidence presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Applicant's *post hoc* assertion that Counsel coerced him into entering a guilty plea through deceptive tactics when defendant wished to stand trial by jury is without merit. Applicant was properly advised of the charge to which Applicant was pleading guilty. As well as the maximum sentence for this charge, and the violent and most serious nature of this charge before entering his guilty plea. Tr. p. 4, l. 2-11. Applicant was informed of the constitutional rights he was waiving by pleading guilty, including his right to a jury trial, his right to confront witnesses, and his right to remain silent. Tr. p. 5, l. 3-13. Applicant voluntarily waived these rights prior to entering his guilty plea. Tr. p. 5, l. 3-13. Applicant testified he was not threatened or coerced into pleading guilty, and he had not been promised anything to entice him to plead guilty. Tr. p. 4, l. 23- p. 5, l. 2. Further, Applicant testified he had an opportunity to discuss his charges with Counsel, and he was happy with Counsel's services. Tr. p. 4, l. 14-19. Applicant has failed to demonstrate how Counsel coerced him into pleading guilty through deceptive tactics. Therefore Applicant has failed to demonstrate how his plea was involuntarily entered. However, this allegation of an involuntary guilty plea 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").

VII. Any Future Amendments and Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. See *Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

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

VIII. 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.

IX. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

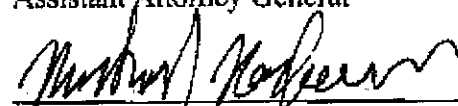
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By:



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October 11, 2021

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

K. MICHELLE SIMMONS

2021 OCT 21 AM 11:01 THE COURT OF COMMON PLEAS

LAURENS COUNTY
CLERK OF COURT 2021-CP-30-651

FREDERICK CALVIN JONES, #321866,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

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

Ashley A. McMahan, Esquire
McMahan & Taylor, Attorneys, LLC.
Post Office Box 50536
Columbia, South Carolina 29250

DATED this the 11th day of October, 2021.

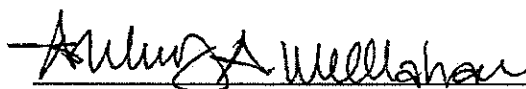

Kaitlyn S. Slice, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 8 th JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	Case No.: 2021-CP-30-00651
Frederick Calvin Jones, #321866	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on July 26, 2021, to add the following:

Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006); see also Love v. State of South Carolina, 428 S.C. 231, 834 S.E.2d 196 (2019); SCRCP Rule 15 (b).

Respectfully submitted,



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ATTORNEY FOR APPLICANT

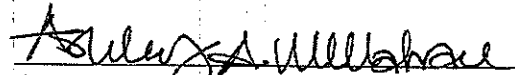
November 18, 2022

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Zachary Jones
Assistant Attorney General
zacharyjones@scag.gov

This 18th Day of November, 2022.


ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) 2021-CP-30-00651
)
COUNTY OF LAURENS)

FREDERICK CALVIN JONES,)
)
Applicant,)

) TRANSCRIPT OF RECORD
vs.)

)
STATE OF SOUTH CAROLINA,)
)
Respondent)

November 28, 2022

Abbeville, South Carolina

B E F O R E:

HONORABLE R. SCOTT SPROUSE, JUDGE

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

Ashley A. McMahan, Esquire
Attorney for the Applicant

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1 MR. MITCHELL: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. MITCHELL: Cruise Mitchell on behalf of the State
4 of South Carolina. This is the post-conviction relief matter
5 of Frederick Calvin Jones v. State, case number 2021-CP-30-0651
6 out of Laurens County. Applicant was indicted at the February
7 2016 term of the Laurens County Grand Jury for murder, case
8 number 2016-GS-30-0227, Applicant was represented by Chelsea
9 McNeal. Deputy Solicitor, C. Dale Scott with the Eighth
10 Circuit Solicitor's Office prosecuted the case. On October
11 23rd, 2018, Applicant pleaded guilty for the lesser included
12 offense of voluntary manslaughter before the Honorable Letitia
13 H. Verdin. Judge Verdin sentenced Applicant to 25 years
14 imprisonment. On November 1st, 2018, Applicant's counsel,
15 Chelsea McNeil, filed a motion to reconsider Applicant's
16 sentence. On December 19th, 2018, by written order, Judge
17 Verdin denied Applicant's motion for reconsideration of his
18 sentence finding that Applicant's plea was entered knowingly
19 and voluntarily. Applicant filed a timely notice of appeal.
20 On December 17th, 2018, Applicant's counsel, Chelsea McNeil,
21 filed an explanation of appeal pursuant to rule 203(d)1(b)4 of
22 the South Carolina Appellate Court Rules. Appellate counsel
23 argued that Applicant was not in possession of any discovery
24 related to the Newberry County charges that were dismissed as
25 part of Applicant's guilty plea. Applicant's counsel argued

1 she was unaware whether such charges were meritorious, and she
2 was not in a position to argue why the dismissal of these
3 charges should not be factored into Applicant's sentencing. An
4 appeal was perfected on Applicant's behalf by David Alexander
5 of the South Carolina Commission on Indigent Defense. David
6 Alexander filed a brief pursuant to Anders v. California
7 requesting to be relieved as counsel and raise the following
8 issue, that Plea Court erred in denying Applicant's motion to
9 reconsider his sentence. On May 21st, 2021, the South Carolina
10 Court of Appeals issued an order dismissing Applicant's appeal
11 and granting Appellate counsel's motion to be relieved, the
12 remittitur was issued on June 8th, 2021. Applicant timely
13 commenced this PCR action on July 28th, 2021. The State made
14 its return and partial motion to dismiss filed October 11th,
15 2021. At this point, I'll turn it to Ashley McMahan.

16 MS. MCMAHAN: Thank you, Mr. Mitchell. At this time,
17 the Applicant calls Mr. Jones to the stand.

18 CLERK: Do you swear or affirm that the testimony
19 you're about to give the Court will be the truth?

20 MR. JONES: Yes, ma'am.

21 CLERK: You may be seated.

22 **DIRECT EXAMINATION**

23 BY MS. MCMAHAN:

24 Q Mr. Jones, did you file this PCR petition?

25 A Yes, ma'am.

1 Q And who was your attorney that you are complaining about?

2 A Chelsea.

3 Q You mean Chelsea McNeil?

4 A Yes, ma'am.

5 Q And we're talking about the Laurens County charges,
6 correct?

7 A Yes, ma'am.

8 Q Okay. So talk us through from the beginning of what
9 happened.

10 A Okay. I can't really pronounce the attorney name that I
11 had before Chelsea.

12 Q Okay.

13 A Okay. He come to see me to tell me he was going to be in
14 Spartanburg for a public defender, okay? He recommended
15 Chelsea to me, okay? Chelsea come to see me a couple times,
16 discussing my case a little, okay? But when I get to Laurens
17 County, she bring a case, bring my case back to me, she said we
18 should go over it together, but if she's my attorney, I feel
19 like she should had did the foot work on my case, dealing with
20 my case.

21 Q Which case?

22 A Like ---

23 Q Just the Laurens stuff?

24 A Yeah. Just the Laurens stuff because ---

25 Q Okay.

1 A --- that's what she was representing me for, for the
2 Laurens stuff.

3 Q So let's back up. So you had a public defender first who
4 left and went to go work for Spartanburg County?

5 A Yes, ma'am.

6 Q And he had a difficult name to pronounce?

7 A Yes, ma'am.

8 Q And how long do you remember that you had him?

9 A I probably had him maybe ---

10 Q A month or so?

11 A Yeah, maybe a month and a half or so, something like that.

12 Q Okay. And then he told you that Ms. McNeil will be taking
13 over your case?

14 A Yes, ma'am.

15 Q And so where were you this whole time?

16 A Okay. I was in Newberry County ---

17 Q Okay.

18 A --- Detention Center because they, they had, was
19 doing an investigation. But they ended up finding some
20 drugs at the house that I was at, so they locked
21 everyone up, so that's how I end up in Newberry
22 County.

23 Q Okay. So to just clear it up, you had some Newberry
24 charges pending at the same time?

25 A Correct.

1 Q Okay. And so you were being housed in the Newberry
2 Detention Center?

3 A Yes, ma'am.

4 Q But you had Laurens charges pending as well?

5 A Yes, ma'am.

6 Q Okay. So when did Ms. McNeil take over for your other
7 attorney? Did she come visit you in Newberry?

8 A Yeah. She came to see me, yes, in Newberry, but I felt
9 like she should have come to see me a little bit more because
10 it was a high profile case, I felt like she should have did a
11 little bit more.

12 Q Okay. Well, let's back up. Explain how your case is high
13 profile?

14 A Because it's a murder case. And I felt like if it's a
15 murder case, I felt, I knew that she's an attorney, she have
16 other cases, but I felt like my case should have been a little
17 bit more on her mind, a little bit more ---

18 Q Prioritized ---

19 A Yeah, yeah, correct.

20 Q So when you say she came and met with you in Newberry, do
21 you remember how many times she came and met with you?

22 A Maybe, maybe four or five times, maybe.

23 Q Do you remember what you guys talked about?

24 A We talked about my case a little, but not as much as I
25 would have preferred to talk about my case.

1 Q What specifically do you remember talking to her about?

2 A When we had discussed plea deals that Mr. Scott said that
3 was okay, that he was going to go with.

4 Q Mr. Scott was the solicitor on all your charges ---

5 A Yes ---

6 Q --- in Newberry and Laurens?

7 A Yes, ma'am.

8 Q So the plea deal discussions, let me back up a second.
9 Did you always want to go to trial on that Laurens case or did,
10 were you always looking for a plea offer?

11 A I just be honest, I was looking for a plea, a plea offer
12 because I have a co-defendant, okay? If I have a co-defendant,
13 no matter if I would have went to trial even though were,
14 because they'll come back and testify even though he
15 painted a good picture that it really wasn't a good picture,
16 you get it? And I felt like they would have found me guilty
17 anyways.

18 Q Okay. You felt that a co-defendant was involved and made
19 a deal and was going to testify ---

20 A Yeah.

21 Q --- that regardless you would have been found guilty at
22 trial?

23 A Correct.

24 Q So you were looking for a plea deal kind of like from the
25 outset?

- 1 A Correct.
- 2 Q Okay. So when she came to talk to you, did you talk about
3 plea deals?
- 4 A Yes.
- 5 Q Did you talk about the fact that you were just kind of
6 always looking for a plea deal and you didn't necessarily want
7 to go to trial?
- 8 A Yes, sort of.
- 9 Q Okay. So, and then you had two Newberry charges, right?
- 10 A Yes.
- 11 Q And who, who was your attorney on your Newberry charges?
- 12 A Okay. To be honest with you, Charles Verner supposed to
13 been, I guess, on my drug charges supposed to been my attorney,
14 but he never talked to me about nothing when I was in Newberry
15 County, he ain't talked to me about nothing.
- 16 Q Okay.
- 17 A But on my gun charge I had Rodney Richey.
- 18 Q Okay. So you had two different attorneys for your
19 Newberry charges?
- 20 A Correct.
- 21 Q So for the drug charges it was Charles?
- 22 A Yes, ma'am.
- 23 Q And then the gun charge was Mr. Richey?
- 24 A Yes, ma'am.
- 25 Q Okay. And you had Ms. McNeil on the Laurens charges?

1 A Yes.

2 Q So did Mr. Richey ever come talk to you at the detention
3 center?

4 A No. Because he already had pushed back, me and him had
5 already discussed things and the way it was looking like they
6 was going to drop the charges, but they never pursued dropping
7 the charges.

8 Q Okay. So was the, was your discussion and issues with Ms.
9 McNeil revolved around getting the Newberry charges dismissed
10 in exchange for the Laurens plea?

11 A No.

12 Q What did y'all talk about?

13 A We talked about the plea, okay, the plea, alright, we had
14 discussed my plea.

15 Q So talk about that.

16 A Okay. We discussed my plea, alright? The number I had
17 gave her, she had went back and talked to Dale Scott, okay?
18 Dale Scott confirmed that he will go along with the plea, but
19 it didn't happen that way. And I was expecting to get exactly
20 what Mr. Dale said I was going to get.

21 Q Okay. Well, tell the Court about that.

22 A Okay. Mr. Scott ---

23 Q So what did you think you were going to get?

24 A I was supposed to had got from Mr. Scott
25 and Ms. Chelsea talked about to been 20 years

1 suspended to 15 with five years active.

2 Q Okay.

3 A Then he agreed that, he had agreed to that, he had said
4 sounded like a good deal, but after I guess he went and talked
5 with the family then he said that that didn't sound like a good
6 deal and then he came back and say, well, how about we do the
7 18, I'll be looking better for 18 to 20.

8 Q So once he went back and talked to the victim's family, I
9 guess, just for the sake of this hearing, we'll assume that
10 that kind of fell apart, and he came back with how about a plea
11 in the range of 15 to 20 years?

12 A Yeah.

13 Q Okay. And what did you and Ms. McNeil talk about
14 regarding that?

15 A That we was going to try to get it because he had did
16 already offer that and I was thinking that's what I was going
17 to get.

18 Q Okay. So you thought you were going to get somewhere
19 between 15 and 20?

20 A Yes. Well, actually it supposed to been 18 to 20.

21 Q Okay. And so did you and Ms. McNeil talk about how she
22 can ask for a lesser amount out of the 18 to 20 and the State
23 would probably argue more, that they wanted more time?

24 A No, not really.

25 Q Did she explain to you the difference between

1 What a recommendation and negotiation is?

2 A No, not really.

3 Q Okay. And so you said you met with Chelsea four to five
4 times, excuse me, Ms. McNeil. Anything else you remember
5 specifically that you guys talked about besides the plea offer?
6 Did she go over the evidence with you?

7 A To be honest with you, no, not really. She didn't really
8 point out things because you know when you in a county
9 facility, they don't have a law library where, where I could
10 have said, hey, Chelsea, let me get my stuff and I'll try to,
11 you know, get a way and try to figure out how I can help my
12 situation. But they don't have a law library, so it's kind of
13 hard to try to even do that, so that's why I felt like that she
14 should have did a little bit more work dealing with my case.

15 Q Okay. So when you went and you had your guilty plea, you,
16 ultimately what happened?

17 A It had crumbled; I didn't get what Dale said I was going
18 to get.

19 Q What did you get?

20 A I had got 25 instead of what Dale had said I was going to
21 get.

22 Q Okay. And did Ms. McNeil argue for a lesser amount for
23 you, or do you recall?

24 A She, she, you know, she didn't argue for a lesser
25 amount.

1 Q So did you talk to her after the guilty plea?

2 A Yes, yes. After everything was said and done, me and her
3 walked in the room to do a, a record of, of, try to do a
4 application to get back and try to give that 25 back, to get to
5 my original plea.

6 Q So you guys had a conversation afterwards about the fact
7 that ---

8 A Yeah.

9 Q --- she was going to make a motion or something ---

10 A Yeah, a motion, yes.

11 Q And did she tell you what kind of motion that was?

12 A A reconsideration of my sentence.

13 Q Did she make that motion?

14 A Yeah, she did.

15 Q Did you have a hearing on it?

16 A No, no hearing.

17 Q So the Judge ruled on it by just a written order?

18 A Yes. But it wasn't a full written order, it was something
19 like almost like a paragraph and, with this right here?

20 Q So in *Pruitt v.* ---

21 A Yeah, *Pruitt versus State* ---

22 MS. MCMAHAN: Okay. Judge, the citation on that is
23 310 S.C. 254, it's *Pruitt versus State*.

24 Q So in that one, you found that case, and what does it say?

25 A It's really containing to, it really containing to ---

1 Q Pertaining?

2 A Yeah, pertaining to what I just explained to you.

3 Q About a reconsideration order to ---

4 A Yep.

5 Q --- stuff like that from the Judge?

6 A Yeah, the Judge have to actually do a full paragraph and

7 explain why even though I pleaded guilty to it, she still

8 supposed to specify exactly why and was all the reason was for

9 denying.

10 Q So she didn't in her written order put forth the reasoning

11 as to why she was one, denying your motion ---

12 A Yeah.

13 Q --- and consider why you ended up with 25 instead of 18 to

14 20?

15 A Correct.

16 Q Okay. Because there was only just a paragraph that says

17 what she reviewed ---

18 A Yes, yes.

19 Q --- and was denied?

20 A Yes.

21 Q Okay. And did you talk about that with Ms. McNeil?

22 A No, we didn't because after that I just started trying to

23 do my, well, see, I done caught my time then, so I was trying

24 to go to the law library in prison and ---

25 Q Okay.

- 1 A --- try to come up with, you know, a better suggestion.
- 2 Q And was your guilty plea appealed?
- 3 A No.
- 4 Q You didn't have an appeal on it?
- 5 A What you mean?
- 6 Q From your guilty plea, you didn't have an appeal?
- 7 A Oh, yeah, yeah, yeah, yes, I did.
- 8 Q Okay. So ultimately your appeal was not successful?
- 9 A Correct.
- 10 Q Okay. So do you feel if Ms. McNeil had been a bit more
- 11 thorough in that issue, the outcome of your sentencing would
- 12 have been different?
- 13 A I think so.
- 14 Q Okay. So let's talk about your PCR petition, you got a
- 15 lot of things attached to it.
- 16 A Yes, ma'am.
- 17 Q Are all these issues kind of go back towards the one you
- 18 just talked about?
- 19 A Yes, ma'am.
- 20 Q Okay. So a lot of these, because you cite Boykin versus
- 21 Alabama ---
- 22 A Yeah.
- 23 Q --- so this is, this is a brief in support of your
- 24 ---
- 25 A Correct, ma'am.

1 Q Okay. Is there anything else you want the Court to know
2 about?

3 A Oh, yes, one more thing. Cory L. Williams versus United
4 States, it also deal with the email in between the prosecutor
5 and the attorney when it's dealing with a plea deal. And a
6 person got more than what they supposed to had got because of
7 the plea deal that the Judge overruled by the plea deal.

8 Q So ultimately that person's case was ---

9 A Yeah.

10 Q --- reversed?

11 A Yeah, yeah, basically.

12 Q Okay. And so it's Cory v.?

13 A No, Cory L. Williams.

14 Q Cory L. Williams versus the U.S., right?

15 A Yeah, United States, yes, ma'am.

16 Q Okay.

17 MS. MCMAHAN: Judge, give me some time, I might be
18 able to dig up that citation for you.

19 THE COURT: Okay.

20 Q Anything else you want Judge Sprouse to know about?

21 A No, ma'am, that's it.

22 MS. MCMAHAN: Answer any questions the attorney
23 general has for you.

24 CROSS EXAMINATION

25 BY MR. MITCHELL:

1 Q Good afternoon, Mr. Jones.

2 A Good afternoon, sir.

3 Q I'd like to confirm on the record that you understand that
4 if you're successful here today, you can be retried on all
5 matters you were originally indicted for?

6 A Yes, sir.

7 Q You understand that if you're convicted of murder, you
8 face up to a life, life without parole?

9 A Yes, sir.

10 Q Did you discuss the charge of voluntary manslaughter with
11 Ms. McNeil?

12 A Yes, we did.

13 Q Did the Plea Court tell you during the hearing
14 that you could face up to 30 years for voluntary
15 manslaughter?

16 A No.

17 Q He didn't?

18 A No, not in my knowledge, I don't recall, it ain't in my
19 transcripts.

20 Q Well, on page 4 of the transcripts ---

21 A I'm looking. Oh, yeah, yeah, yeah.

22 Q Starting at 3 it says ---

23 A Yeah, I see it, sir.

24 Q --- that carries 2 years up to 30 years?

25 A Yes.

1 Q And you said, you understood that and you answered, yes,
2 right?

3 A Yeah, yes, sir.

4 Q Do you recall the plea -- do you recall the Judge asking
5 you if you were satisfied with your counsel?

6 A Yes, I remember that.

7 Q And how did you respond?

8 A I said, yeah.

9 Q Do you remember pleading guilty after you heard the
10 solicitor say he was recommending a sentence of 25
11 years?

12 A That was, that, repeat that again, please.

13 Q After the solicitor recommended a sentence of 25 years,
14 you pleaded guilty, correct?

15 A Yeah, I think so, I can't remember.

16 Q Page 11 of the transcript.

17 A Okay. What numbers? What number?

18 Q Line 15, it said, she ask you go along with the 25
19 year sentence and then Judge Verdin responds, Mr. Jones,
20 you heard the facts stated by the solicitor, how do you
21 plead, guilty or not guilty?

22 A I don't know where you get Mr. Verner from

23 ---

24 Q Judge Verdin, the Court.

25 A Oh, yeah, I see the Court, yeah.

1 Q She asked you how do you plead, guilty, after Solicitor
2 Scott asked the Court that he was asking for a 25 year
3 sentence?

4 A Yes, I see that.

5 Q And you pleaded guilty?

6 A Yes. All because, right, like I stated to my attorney
7 right there, I had a co-defendant, so no matter what y'all had
8 already made a good deal with that man, so if I would have been
9 like no, he's going to come back and paint a pretty picture,
10 that wasn't really a real picture, and I could have got found
11 guilty anyway. But I also was going off what Mr. Dale Scott
12 had said to my attorney, too.

13 Q So you were going to plead guilty, you were going to plead
14 guilty regardless, you were just looking for a good offer?

15 A I had the offer from what Mr. Scott said.

16 Q But you wanted to plead guilty the whole time?

17 A Say that again.

18 Q You wanted to plead guilty the whole time, you never
19 wanted to go to trial?

20 A Yeah, yeah, you right. But like I said, I was going off
21 what Mr. Dale Scott had said.

22 MR. MITCHELL: Nothing further from the State, Your
23 Honor.

24 THE COURT: Any redirect?

25 MS. MCMAHAN: Just briefly.

REDIRECT EXAMINATION

1

2 BY MS. MCMAHAN:

3 Q So you were asked very early on in your hearing if you
4 were satisfied with Ms. McNeil, right?

5 A Yes.

6 Q But that was before you actually got sentenced?

7 A Correct.

8 Q And so afterwards is when you had a conversation with her?

9 A Yeah. Because then I started realizing, like I just told
10 him, when I got to prison, I started realizing things that I
11 didn't know because I didn't know certain things about the law
12 and all that good stuff, I didn't know things. And so now I
13 know a little something that I can help myself a little bit
14 better, you know?

15 Q (Nonverbal response).

16 A Yeah.

17 Q Okay. And then it was later on, but up to that point, you
18 were okay with her?

19 A Yeah.

20 Q Okay.

21 MS. MCMAHAN: I have nothing further, Your Honor.

22 THE COURT: Anything further for this witness?

23 MR. MITCHELL: No, Your Honor.

24 THE COURT: Thank you, Mr. Jones, you can step down.

25 MS. MCMAHAN: The applicant rests.

1 MR. MITCHELL: Your Honor, the State would call
2 Chelsea McNeil.

3 CLERK: Do you swear or affirm that the testimony
4 you're about to give the Court will be the truth?

5 MS. MCNEIL: Yes, ma'am.

6 CLERK: You may be seated.

7 **DIRECT EXAMINATION**

8 BY MR. MITCHELL:

9 Q Good afternoon, Ms. McNeil.

10 A Good afternoon.

11 Q How many times did you meet with the Applicant before the
12 plea hearing?

13 A According to my notes, I have 16 documented visits with
14 him throughout the course of my representation. That would
15 have been to include when he was housed at the Newberry
16 Detention Center and then when I had him transferred to Laurens
17 because my office was in the Laurens Courthouse that made it
18 easier for me to see him in Laurens.

19 Q And throughout any of those meetings, did Mr. Jones ever
20 give you any inclination that he wished to proceed to trial?

21 A No. This was always a mitigation case. I have,
22 actually have my online notes pulled up, it's in our defender
23 data system which is like our online software database that
24 indigent defense uses. And, I'm sorry, could you repeat the
25 question?

1 Q Did Mr. Jones ever give you any inclination that he wished
2 to go to a jury trial?

3 A No, sir. Actually, on my very first meeting with him, I
4 brought in, his trial binder was really thick, it was probably
5 like six, seven inches thick of discovery and I brought it with
6 me. At the first meeting that I met Mr. Jones at was with his
7 former attorney that was at the Laurens Public Defender's
8 Office, his name was Mr. Tom Adducci, that's A-d-d-u-c-c-i.
9 And Mr. Adducci, I know that Mr. Jones said he went to
10 Spartanburg Public Defender's Office, he actually went to
11 Greenville Public Defender's Office, now he's in private
12 practice. But in order to have a smooth transition for
13 representation purposes I went with Mr. Adducci, and we
14 explained he was leaving, I was going to come onboard on his
15 case, and at that time he told me that he wanted me to just
16 focus on working out a deal. And then I have a couple of notes
17 where I went to his mother's house in Newberry to meet with her
18 to start the mitigation investigation.

19 Q Is there anything else in the notes regarding your
20 negotiations with Solicitor Dale Scott?

21 A Yes. I have numerous emails that Mr. Jones referenced as
22 well as numerous notes in my online file. I will state that
23 Mr. Scott, he used to be the Deputy Solicitor for Laurens and
24 Newberry Counties and now he has relocated and is a Deputy or
25 maybe Assistant Solicitor down in Richland County. He was

1 notorious for being extremely difficult to deal with amongst
2 public defenders and the private bar. And so what Mr. Scott
3 had a fault, I would say, of doing, and I said this to his
4 face, is that he will willy nilly make an offer to you and then
5 he'll do that without having done any of the work that he
6 needed to do on the State's side in order to prepare the victim
7 and or their family members for such a plea. So as Mr. Jones
8 did indicate, I did send an email asking, informing Mr. Scott
9 the change of representation, that I was taking over the case,
10 and I suggested, as Mr. Jones did state, I think it was 20
11 suspended to 15 active with 5 probation on the backend. He did
12 initially in his email say that that sounded reasonable, and he
13 would have to take it to the family. I think this was prior to
14 Mr. Jones' co-defendant whose name is Malcolm Jones with no
15 relation to Mr. Fred Jones, prior to him being sentenced as an
16 accessory to murder, and I believe Malcolm Jones got the
17 maximum 15 years on a plea to that charge. After Mr. Scott
18 went and met with the family, he came back and wrote me an
19 email and stated basically that he was uncomfortable with my
20 proposal to resolve the case because he talked about what a
21 great family this was and how listening to their pain really
22 impacted him and he said something like he couldn't get it off
23 his mind for the rest of the day. So then negotiations
24 proceeded back and forth; of course, I kept Mr. Jones, Mr. Fred
25 Jones in the loop along with his mother, Christine, who did

1 have my personal cell phone number so she could access me
2 anytime and quite frequently did. Then we got to a negotiation
3 where Mr. Jones had accepted a 25 year recommendation offer
4 that Mr. Scott had countered my 20 suspended to 15 and I
5 believe I have this email somewhere, I believe that he accepted
6 that offer sometime in June, but let me just make sure.

7 MS. MCNEIL: Beg the Court's indulgence.

8 MR. MITCHELL: Your Honor, may I approach? I
9 actually have a copy.

10 THE COURT: Yes.

11 Q And that's from July 24th, 2018? Is that the email

12 ---

13 A Yes.

14 Q --- accepting the recommendation of 25 years?

15 A Yes. And it says, Tuesday, July 24th, 2018 at 1:52 am,
16 and I wrote, this email is to confirm that Fred Jones currently
17 in the Laurens jail accepts your plea offer of a recommendation
18 of 25 years on voluntary manslaughter, hyphen, all his pending
19 Newberry charges are dismissed. I want to plea him in front of
20 Judge Burch on Tuesday afternoon of next week, July 31st in
21 Laurens. His mom works in Newberry and I'm having our
22 Greenwood investigator go pick her up that afternoon and bring
23 her to Court since she has transportation issues. Can we plea
24 him no earlier than 3:30 pm that day so that she may be
25 present. And this is an email I sent to Dale Scott.

1 MR. MITCHELL: Your Honor, the State would offer this
2 into evidence as State's Exhibit 1.

3 THE COURT: Any objection?

4 MS. MCMAHAN: No objection, Your Honor.

5 THE COURT: Alright. So that's State's Exhibit 1,
6 will be admitted without objection.

7 (Whereupon an email was submitted as State's Exhibit
8 Number 1 for identification and entered into evidence.)

9 A And then in response to that, Mr. Scott did send me a
10 sentencing sheet, and then I have a note in my case file that
11 that plea did not go forward, so it was scheduled to be pled on
12 that day. And then I have a note that says plea did not go
13 forward solely due to the fact that ASOL Dale Scott was in a
14 CSC trial and insisted on handling this plea himself instead of
15 handing it off to another prosecutor to do for him. The plea
16 was scheduled to go forward at 3:30 pm and I waited on him
17 until the day ended. Due to this, Dale suggested we plea Fred
18 the next day which would be today's date in front of Burch, but
19 I informed Dale that Fred's mom was unable to attend due to
20 work and I had Nicole, Nicole is my Greenwood investigator, or
21 was, go pick her up from her house in Newberry and drive her to
22 Laurens for his plea today and then took her back to her home
23 in Newberry. I worked it out with Dale to let Fred plea during
24 an October General Sessions term of Court in front of Judge
25 Verdin out of Greenville, that would be my next choice for a

1 Judge to hear this plea, Dale agreed. I informed his mom,
2 Christine Jones, along with the other two people that showed up
3 for Court, his cousin, James Wise, and then in parentheses I
4 put Callie represents him on a pending charge, Callie's another
5 lawyer, along with Fred's ex-finance, they all understood and
6 said they would all be back for his plea in October. Discussed
7 this issue with Fred extensively and he thanked me for getting
8 the prosecutor to agree to Judge Verdin in October. And so
9 then Mr. Scott re-emailed me a sentencing sheet for voluntary
10 manslaughter as Dale had lost the other one, and then I again
11 on 10-19-2018 went over the 25 year recommendation, let Fred
12 know I'm asking the Judge to consider a split sentence, 18
13 followed by 5 probation. I also set it up so that Nicole
14 Hurley from our Greenwood office is going to pick up Christine
15 Jones, Fred's mom, from her house on Tuesday, October 23rd and
16 bring her to Court, slash, take her back home. Plea goes
17 forward Tuesday, October 23rd at 3pm in front of Judge Verdin.
18 And then on 10-23-18, I wrote a note saying saw client in the
19 holding cell, went over plea, and what you can expect, he has
20 been continuously incarcerated since 11-25-2015 and he was
21 served with this murder charge while in jail at Newberry. And
22 then on 10-23, pled Fred in front of Judge Verdin today, a
23 hundred, I'm sorry, 1,080 days total jail credit. I also
24 mentioned the emails that were sent between me and Dale in
25 negotiations for this plea which kind of set up Dale, upset

1 Dale, but whatever. The victim's family did show up and spoke,
2 Fred's mom, Christine Jones, also showed up and stood with Fred
3 in support of Fred. And then I obviously filed a motion to
4 reconsider client's 25 year sentence and served a certified
5 copy on Assistant Solicitor Jared Simmons, informed Dale Scott
6 of motion when I passed him in the hallway, that was 11-1-2018.

7 Q So there was never a negotiated plea or a formal
8 recommendation for an 18 to 20 years?

9 A There was not, unfortunately. So like I said, Mr. Scott
10 was kind of difficult to deal with, and so that's why I
11 constantly have, I have extremely good notes whenever it comes
12 to dealing with Dale Scott, and I usually, if I have a
13 conversation with him in the hallway or in passing, I will
14 always follow up with an email saying this is to confirm our
15 conversation because he's, he's, quote, unquote, forgetful.
16 But in this situation, Dale sent an email saying that, you
17 know, his offer was going to be 25. I talked to Fred about it
18 in the jail as I just went over in my notes, and Fred was upset
19 about the heavy time, obviously, because initially Dale had
20 said, oh, yeah, 15 sounds reasonable with 5 on the backend, but
21 yet, he hadn't done any of his work to talk to the victim's
22 family and as he did that, his whole attitude changed and then
23 he was like, you know, going for the jugular on, against Fred
24 Jones. And as Fred stated on the witness stand just previously
25 today that, you know, we had discussed pretty thoroughly the

1 fact that he would have likely been found guilty under hand of
2 one, hand of all, because there was a cell phone issue and
3 other, other things that we had to deal with as hurdles in his
4 case. But, no, there was never an offer, an offer until Dale
5 formally made the 25 offer. Leading up to that 25 offer that
6 he emailed me and I responded via email, there was just back
7 and forth of me basically begging and pleading with him to come
8 down, come down, come down, kind of feed Fred out of the same
9 spoon as Malcolm was fed from because it was a very close call
10 and there was a lot of speculation as to who the driver of the
11 car was and who the shooter was. And ultimately, Mr. Scott
12 felt that Fred Jones was the shooter and Malcolm Jones was the
13 driver.

14 Q So Dale Scott never came down from the 25 years after that
15 point?

16 A After that point, no, sir. And you know, and that's why I
17 brought up all those emails in the, during the guilty plea
18 process with Judge Verdin because I wanted her to know that,
19 you know, we were trying to take, Fred was trying to take
20 responsibility this whole time. I mean, he was trying to
21 resolve these charges, and had Dale done his job is, I mean,
22 1,080 days is ridiculous to me to get a plea to go through. So
23 when, by, you know, like the fact that Dale didn't meet with
24 the victim's family earlier on was atrocious to me. And so
25 when he made that, you know, snip-id comment about, oh, yeah,

1 15 sounds reasonable with 5 on the backend for probation and
2 then, you know, I was thinking, okay, I'm going to get
3 somewhere, we're going to resolve this thing and everybody's
4 going to be happy on both sides. And then it drug out because
5 Dale had not in fact talked to his victim's family and once
6 that happened his offer was a firm 25 and he would not come
7 off. But I wanted the Judge to know about our efforts in
8 resolving the case and that Fred was trying to take
9 responsibility and all that, that's the reason that I brought
10 the emails up.

11 Q And ultimately Mr. Jones did plead guilty knowing that
12 there was a recommendation of 25 years?

13 A Yes, sir, he did.

14 Q And you never threatened Mr. Jones in any way to plead
15 guilty?

16 A No. Mr. Jones, let me, for the record, Fred Jones was one
17 of my favorite clients, like, he and I got along very well. I
18 really like him as a person, I think he's a pretty decent
19 person. So no, we never had any issues.

20 MR. MITCHELL: Nothing further, Your
21 Honor.

22 THE COURT: Cross examination?

23 MS. MCMAHAN: Just briefly.

24 CROSS EXAMINATION

25 BY MS. MCMAHAN:

1 Q Do you recall having a conversation with Mr. Jones and
2 letting him know the difference between, like, a recommendation
3 and negotiation and all that kind of stuff?

4 A I don't specifically remember that specific conversation,
5 however, my notes in my file that I just read do indicate when
6 I said, went over discovery and process, what he can expect.
7 Whenever I say things like that, I think it, part of my
8 professional routine is to always at the first or second
9 meeting go over what the difference is between a straight up,
10 slash, open plea, or no offer, or just a reduction in charges
11 with no offer, or what a recommendation means versus what
12 negotiation means versus what a cap means so that they can
13 clearly understand those differences.

14 Q With the Newberry charges getting dismissed, did you ever
15 have any conversation with Mr. Verner or Mr. Richey or anything
16 about this?

17 A No. And I actually have that Joe St. Pierre was his
18 appointed attorney on his 2015 drug charges, and he had two in
19 2015, and then I had a note in my file that said he was
20 unrepresented on a slue of other Newberry charges, I think that
21 they were mostly drugs. And I was appointed on the Laurens
22 charges, so when I met with Fred, Mr. Jones, I did inform
23 him, you know, that he needed to apply for a public defender
24 on the remaining charges that were still pending in
25 Newberry. And I guess, I think that Mr. Charles Verner

1 was eventually appointed on those.

2 Q So there were, kind of, three attorneys, I guess,
3 involved, Joe St. Pierre, Mr. Verner, and Mr. Richey before,
4 and yourself?

5 A Yes, ma'am. I'm assuming, yes, ma'am, that sounds about
6 right.

7 Q But ultimately, all those other charges relating to those
8 three attorneys were all dismissed?

9 A Yes, ma'am.

10 Q When you filed a motion to reconsider, were you expecting
11 there to be a hearing or were you, I mean, did you expect it to
12 come back as just a paper order denying it, or do you often
13 having hearings on motions to reconsider?

14 A I've had a couple of live hearings on motions to
15 reconsider, but I believe at the time, I had never been in
16 front of Judge Verdin before. I can't, I think this, this was
17 a 2016 or '17 case or something, but I had never been in front
18 of her before, so I had no expectations on whether I was going
19 to have a live hearing or just a response which she
20 ultimately ended up doing. But I was prepared for a live
21 hearing.

22 Q Then did you appeal his case on your own or did you do it
23 after talking to him?

24 A After talking, I wouldn't have appealed unless the client
25 had instructed me to do so since I work for them.

1 MS. MCMAHAN: Court's indulgence, Your Honor. I have
2 nothing further, Your Honor.

3 THE COURT: Any redirect?

4 MR. MITCHELL: None, Your Honor.

5 THE COURT: Okay. Thank you, Ms. McNeil.

6 MR. MITCHELL: The State rests at this time.

7 THE COURT: Alright. Summation, statement, or wait,
8 any reply?

9 MS. MCMAHAN: No reply, Your Honor.

10 THE COURT: Okay. Thank you. Alright. State, go
11 ahead.

12 MR. MITCHELL: Your Honor, the State submits that
13 Applicant has failed to meet his burden showing he's entitled
14 to post-conviction relief. The State submits that all the
15 alleged deficiencies in this case are without merit and there
16 was certainly no prejudice in this case. According to Hill v.
17 Lockhart, in a guilty plea PCR under the prejudice prong, the
18 Defendant, the Applicant must show that there's a reasonable
19 probability that he would not have pled guilty. According to
20 Applicant's own admission, he was never going to plead guilty,
21 never wanted to plead guilty. And from the testimony -- yes,
22 did want to plead guilty, did want to plead guilty. And even
23 according to the testimony of his counsel, he wanted to plead
24 guilty the whole time, and as part of her job was try to get
25 the most favorable offer. With regard to his objection for

1 there being a recommended sentence of 18 to 20, the record
2 shows that he knew that there was a recommendation of 25 years
3 from the solicitor, he pleaded guilty after, there's the email
4 that shows that Ms. McNeil is relaying to the solicitor that
5 Fred Jones had accepted the recommendation of 25 years. So he
6 was aware of the consequences of his plea. Ms. McNeil
7 certainly wasn't deficient, she tried everything she could, you
8 can see from her notes how, how she went above and beyond in
9 trying to get the most favorable outcome possible for Mr.
10 Jones. She filed a motion to reconsider, she filed an appeal,
11 so the State would submit that there's no deficiency and no
12 prejudice. And with regard to the Newberry charge, the
13 Newberry County charges, that showed no, no prejudice in those
14 charges being dismissed at the plea hearing. So the State
15 would submit that he has not met his burden.

16 THE COURT: Thank you, Mr. Mitchell. Ms. McMahan?

17 MS. MCMAHAN: Judge, obviously, we would request that
18 you review the record as a whole, including the appellate
19 documents before making a decision. But just to point out a
20 few things, Mr. Jones did testify that he did not know that he
21 was going to be pleading to 25 years, and in addition, Ms.
22 McNeil did testify that after the 25 year offer and the email,
23 she did write to Mr. Scott and ask him to consider 18 suspended
24 on 5 years probation which is consistent with what Mr. Jones
25 thought that he was going to be pleading to that day.

1 THE COURT: Alright. Well, I'm going to read the
2 transcripts. I'll take this under advisement and have my law
3 clerk email you. Thank you, counsel.

4 (Whereupon the hearing ended at 3:07 pm.)
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1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5)6 COUNTY OF LAURENS)
7
8

9 I, the undersigned Lisa G. Amick, Official Court Reporter
10 for the Eighth Judicial Circuit of the State of South Carolina,
11 do hereby certify that the foregoing is a true, accurate, and
12 complete transcript of record of all proceedings had and
13 evidence introduced in the trial of the captioned case,
14 relative to appeal, in the County of Abbeville, South Carolina,
15 on the 28th day of November 2022.

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

18 October 5, 2023
1920 Lisa Amick

21 Lisa G. Amick

22 Court Reporter
2324 My commission expires: June 30th, 2025
25

Shandal Boggs

From: Cruise Mitchell <cruisemitchell@sca.gov>
Sent: Monday, November 28, 2022 1:25 PM
To: Shandal Boggs
Subject: Fwd: Fred Jone

Get [Outlook for iOS](#)

From: Chelsea McNeill <chelseamcneill@gmail.com>
Sent: Monday, November 28, 2022 1:21 PM
To: Cruise Mitchell <cruisemitchell@sca.gov>; Ashley McMahan <ashley@macvance.com>
Subject: Fwd: Fred Jone

You don't often get email from chelseamcneill@gmail.com. [Learn why this is important](#)
 Please see below email.

----- Forwarded message -----

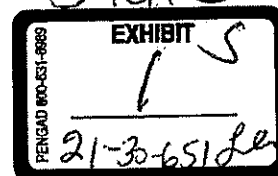
From: Chelsea McNeill <chelseamcneill@gmail.com>
Date: Tue, Jul 24, 2018 at 1:52 PM
Subject: Fred Jone
To: Dale Scott <dscott@greenwoodsc.gov>

This email is to confirm that Fred Jones, currently in the Laurens jail, accepts your plea offer of a recommendation of 25 yrs on voluntary manslaughter- all his pending Newberry charges are dismissed. I want to plea him in front of Judge Burch on Tuesday afternoon of next week, July 31st, in Laurens. His mom works in Newberry and I'm having our Greenwood investigator pick her up that afternoon and bring her to court since she has transportation issues. Can we plea him no earlier than 3:30pm that day so that she may be present?

Chelsea B. McNeill
 Chief Defender for Laurens County
 8th Judicial Circuit Public Defender's Office
 (Laurens, Newberry, Greenwood, Abbeville)

p: 864.984.8807
 f: 864.984.8806

Chelsea B. McNeill
 Circuit Defender, 8th Judicial Circuit



Newberry, Laurens, Greenwood, & Abbeville

Park Plaza, 600 Monument St.
Suite 208, Box P133
Greenwood, South Carolina 29646
(864) 229-9505

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Frederick Calvin Jones, # 321866,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2021-CP-30-00651

ORDER OF DISMISSAL **RECEIVED**

AUG 14 2023

S.C. SUPREME COURT

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Frederick Calvin Jones on July 28, 2021. On November 28, 2022, an evidentiary hearing convened before the Honorable R. Scott Sprouse. Applicant was present and represented by Ashley A. McMahan, Esquire. Assistant Attorney General T. Cruise Mitchell represented Respondent. Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Laurens County Clerk of Court. In February 2016, the Laurens County Grand Jury indicted Applicant for murder (2016-GS-30-0227). Applicant was represented by Eight Circuit Public Defender Chelsea B. McNeill. Deputy Solicitor C. Dale Scott of the Eighth Circuit Solicitor's Office prosecuted the case.

K. MICHELLE SIMMONS
2023 MAR 28 A 9:23
LAURENS COUNTY
CLERK OF COURT

On October 23, 2018, Applicant pleaded guilty to the lesser included offense of voluntary manslaughter¹ before the Honorable Letitia H. Verdin. Judge Verdin sentenced Applicant to twenty-five years' imprisonment for voluntary manslaughter.

On November 1, 2018, Applicant's counsel filed a motion to reconsider Applicant's sentence and requested a hearing to address Applicant's motion to reconsider. On December 19, 2018, by written order, Judge Verdin denied Applicant's motion for reconsideration of his sentence finding that Applicant's plea was entered knowingly and voluntarily, and the Court could find no compelling basis for reducing Applicant's sentence. Following the denial of his motion for reconsideration, Applicant filed a timely notice of appeal.

On December 17, 2018, Applicant's counsel filed an Explanation of Appeal Pursuant to Rule 203(d)(1)(B)(iv), SCACR, arguing Applicant was not in possession of any discovery relating the Newberry County charges that were dismissed as part of Applicant's guilty plea. Applicant's counsel argued she was unaware whether such charges were meritorious, and she was not in a position to argue that the dismissal of these charges should not be factored into Applicant's sentencing.

An appeal was perfected on Applicant's behalf by Assistant Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense. Mr. Alexander filed a brief pursuant to *Anders v. California*² requesting to be relieved as counsel and raising the following issue:

- I. The plea court erred in denying Applicant's motion to reconsider his sentence.

¹ As a result of Applicant's guilty plea, the State dismissed the following pending charges from Newberry County: four counts of distribution of cocaine base, three counts of distribution of cocaine base within proximity of a school, one count of possession of a sawed-off shotgun, one count of unlawful possession of a weapon by person convicted of a violent crime, one count of grand larceny, and one count of carjacking.

² *Anders v. California*, 386 U.S. 738 (1967).

On May 21, 2021, the South Carolina Court of Appeals issued an order dismissing Applicant's appeal and granting appellate counsel's motion to be relieved. The Remittitur was issued on June 8, 2021.

STATEMENT OF FACTS

On November 17, 2015, Shayla Jenkins and Calvin Walker were walking home from a nearby convenience store. Shayla Jenkins noticed a dark colored medium-sized sedan drive past the couple. As they arrived home, Shayla Jenkins entered the house while Calvin Walker remained in the front yard answering a phone call. As Ms. Jenkins entered the house and hung up her coat, she heard two gunshots and ran outside to see Calvin Walker laying on the ground. Ms. Jenkins called 911 to report that Calvin Walker had been shot. EMS was called to the scene and transported Calvin Walker to the hospital where he was pronounced dead.

A cell phone belonging to Calvin Walker was collected and officers reviewed the last few phone calls and text messages. Calvin Walker was communicating with an individual who was coming to meet Calvin Walker to purchase marijuana. Officers researched the phone number and discovered it belonged to Applicant's mother. Police located and arrested Applicant and located the cell phone on Applicant's person.

Witnesses in the area informed police they heard two gunshots and observed a dark colored sedan leaving the area where the gunshots came from. Police officers were able to locate Applicant's co-defendant Malcolm Jones who was observed driving a blue Pontiac G6. Mr. Jones denied knowing Calvin Walker and being with Applicant on the night of Calvin Walker's murder.

Police interviewed an individual named Alex Lanier who was trying to sell a .32 caliber pistol around the time they were investigating the murder of Calvin Walker. Lanier confirmed he saw Applicant burning clothes in his back yard, and Applicant gave him the gun to try and sell.

Lanier confirmed he saw Applicant and Malcolm Jones together on the day of Calvin Walker's murder.

Police proceeded to interview Applicant, who admitted to riding to Clinton in a blue car driven by Malcolm Jones and Carron Grant, who was not charged. Applicant claimed Malcolm and Carron jumped out of the car towards Calvin Walker and attempted to rob Calvin Walker, before Malcolm Jones shot Calvin Walker.

Malcolm Jones turned himself into police on December 4th 2015, and confirmed he was at the incident location where Calvin Walker was shot, but claimed Applicant was the one who shot Calvin Walker. (GP Tr. p. 6, l. 20–p. 10, l. 14).

ISSUES BEFORE THIS COURT

Applicant timely commenced this PCR application on July 28, 2021. In his application, Applicant alleged he was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel:
 - a. Counsel did not represent Applicant on his pending charges in Newberry County and had not reviewed the discovery for Applicant's pending Newberry County charges.
 - b. Counsel failed to object to the trial court imposed sentence which exceeded the negotiated sentence of eighteen to twenty years.
 - c. Counsel failed to seek leave of court to withdraw Applicant's guilty plea on the basis that the Court imposed sentence exceeded the negotiated sentence.
2. Subject Matter Jurisdiction
 - a. "Since no court of General Sessions was convened on the date February 12, 2016, the date the indictment was true-billed, the grand jury proceedings would therefore by necessity be held invalid, and its illegally issues indictment null and without binding legal effect."
3. Involuntary Plea
 - a. Trial Counsel coerced defendant into entering guilty plea through deceptive tactics when defendant wished to stand trial by jury.
4. Prior Bad Act
 - a. Solicitor Scott's introduction of Applicant's pending charges in Newberry County.
5. Trial Court Error
 - a. The plea court erred in denying Applicant's motion to reconsider.
6. Due Process Violation

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At the hearing, Applicant proceeded only on claims 1(b) and 1(c). Before this Court are the records of the Laurens County Clerk of Court regarding the underlying conviction, the plea transcript, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the records of this post-conviction relief action.

STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

SS

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687-88; *accord*, *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty

pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* 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. The applicant must further convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372.

This inquiry “focuses on a defendant’s decision making” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not

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whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified he met with his counsel, Chelsea B. McNeill, approximately four or five times in person. These meetings took place at the Newberry County Detention Center. Applicant testified they discussed his case, but not as much as he would have liked to. Applicant stated they discussed potential plea deals during those meetings. Applicant testified he was looking for a plea deal because his co-defendant made a deal with the Solicitor's Office, and he believed there was no chance to prevail at trial once that deal was made. Applicant testified there was a plea deal for twenty years suspended to 15, 5 years active reached with the Solicitor, however that deal fell apart when the Solicitor discussed the offer with the victim's family. According to Applicant, a new plea deal was reached with a negotiated sentencing range of 18-20 years. Applicant testified Counsel filed a motion to reconsider sentence after he pleaded guilty.

On cross-examination, Applicant testified that he told the plea court he understood he could receive up to thirty years if he pleaded guilty. Applicant testified he pleaded guilty *after* the Solicitor informed the plea court he was recommending a 25 year sentence. Applicant acknowledged that he never intended to proceed to trial, but instead was looking for the best possible plea deal. Applicant testified he did not want to proceed to trial because of the statements his co-defendant made to law enforcement.

Counsel testified that she made *sixteen* documented visits with Applicant. Counsel testified that Applicant never indicated to her that he wished to proceed to a trial. Once Applicant instructed Counsel to focus on a plea deal, Counsel began speaking with Applicant's mother to begin her

mitigation investigation. Counsel testified she began plea negotiations with Deputy Solicitor Scott. Counsel testified she suggested to the solicitor a plea deal for 20 years suspended to 15 active, with 5 years' probation. Counsel testified that the solicitor told her this was possible. Counsel testified that after Applicant's co-defendant made a deal and after speaking to victim's family the solicitor became uncomfortable with that proposal.

Counsel testified she proceeded with plea negotiations while continuing to keep Mr. Jones and his family in the loop. The next plea offer Applicant received was a recommended sentence of twenty-five years for the lesser included offense of voluntary manslaughter. After discussing the plea with Counsel, Applicant accepted this offer. Counsel testified there is an email corroborating the acceptance of the offer, which the State offered into evidence. See State's Exhibit #1. Counsel testified she was able to arrange for Applicant to plead guilty in front of Judge Verdin in October of 2018. Counsel testified she met with Applicant in the holding cell prior to the plea hearing. Counsel testified Applicant then voluntarily pleaded guilty pursuant to the recommended sentence.

Counsel testified she filed a motion to reconsider the sentence on November 1, 2018, which was subsequently denied by Judge Verdin. Counsel testified she agreed with Applicant's decision to plead guilty because he likely would have been convicted of murder at trial under the hand of one, hand of all theory. Counsel testified there was never a plea offer for a negotiated sentencing range of eighteen to twenty years, and Applicant pleaded guilty with the knowledge he would get a twenty-five-year sentence. Counsel testified she filed a notice of appeal following the denial of the motion to reconsider.

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has had the opportunity to review the plea transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the *Strickland* standard set forth above, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Counsel Failed to Object to the Court's Imposition of a Twenty-Five Year Sentence

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). Applicant's allegation that Counsel was ineffective for failing to object to the Court's imposition of a twenty-five-year sentence is without merit. Applicant contends that Counsel erroneously advised him he was pleading guilty pursuant to a negotiated sentencing range of eighteen to twenty years. Counsel's credible testimony, her correspondence via email with the Solicitor, and the record from the plea hearing conclusively refute this allegation. This Court finds Counsel properly advised Applicant he was pleading guilty pursuant to a recommended sentence of twenty-five years. Counsel credibly testified the suggested offer for a negotiated range of eighteen to twenty years was rejected by the Deputy Solicitor Scott. Counsel credibly testified Applicant was fully informed of this rejection. Counsel credibly testified Deputy Solicitor Scott then made a plea offer for a recommended sentence of 25 years for voluntary manslaughter. As evidenced by State's Exhibit #1 and the credible testimony of Counsel, this offer was accepted by Applicant.

Furthermore, at the outset of Applicant's guilty plea hearing, Judge Verdin informed Applicant he was pleading guilty to voluntary manslaughter which carries a maximum sentence of 30 years. (Gp. Tr. p. 4, ll. 3-5). At the same hearing, Deputy Solicitor Dale Scott recommended a sentence of twenty-five years. (Gp. Tr. p. 11, ll. 3-17). After hearing the facts of the case and the recommendation of the Deputy Solicitor, Applicant pleaded guilty. (Gp. Tr. p. 11, ll. 18-21). Following the entry of the guilty plea, Counsel introduced conversations she had with Deputy Solicitor Scott pertaining to the plea negotiations, including the negotiated eighteen-to-twenty-year sentencing range offer which was rejected by the Deputy Solicitor. (Gp. Tr. p. 13, l. 5-p. 15, l. 20). Counsel then recommended a sentence of twenty-five years, suspended to eighteen years active with five years' probation. (Gp. Tr. p. 17, l. 20-p. 18, l. 1). Despite Counsel's best efforts, Deputy Solicitor Dale Scott again recommended a twenty-five-year sentence. (Gp. Tr. p. 20, l. 21-23). Pursuant to the State's recommendation, Judge Verdin sentenced Applicant to twenty-five years' imprisonment.

The record and the credible testimony of Counsel clearly establishes that Counsel and the Deputy Solicitor had not agreed to a negotiated sentencing range of eighteen to twenty years. Therefore, Applicant cannot demonstrate how Counsel was ineffective for failing to object to the Court's imposed sentence of twenty-five years. Thus, this Court finds Counsel was not deficient in failing to object to the sentence imposed.

Even if this Court were to find a deficiency, Applicant's claim would still fail under the prejudice prong of *Hill*. 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." *Hill*, 474 U.S. at 59. Applicant repeatedly testified he never intended on going to trial and was

simply seeking the best plea deal possible. Thus, Applicant could not possibly be prejudiced by any alleged deficiency.

Accordingly, this Court finds Applicant has failed to meet his burden demonstrating how Counsel was ineffective for failing to object to the Court's imposed sentence of twenty-five years. This Court further finds Applicant freely and voluntarily pleaded guilty to the lesser included offense of voluntary manslaughter.

Counsel Failed to Seek Leave of Court to Withdraw Applicant's Guilty Plea

This Court finds Applicant's allegation counsel was ineffective for failing to seek leave of court to withdraw Applicant's guilty plea on the basis the Court-imposed sentence exceeded the negotiated sentence is without merit. "The withdrawal of a guilty plea is generally within the sound discretion of the trial judge." *State v. Rikard*, 371 S.C. at 301, 638 S.E.2d at 75 (Ct. App. 2006). "All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea." *Rickard*, 371 S.C. at 301, 638 S.E.2d at 75. As discussed above, the record and Counsel's credible testimony clearly demonstrate there was never a plea offer for a negotiated sentencing range of eighteen to twenty years. Applicant was informed of the Constitutional rights he was waiving, the maximum sentence he faced, and the State's recommendation of twenty-five years. Therefore, this Court finds Applicant has failed to establish that his guilty plea was improperly accepted by the court. Applicant additionally has failed to demonstrate how Counsel's failure to request leave of court to allow Applicant to withdraw his guilty plea has prejudiced Applicant, as Applicant voluntarily and intelligently pleaded guilty to the lesser included offense of voluntary manslaughter and was sentenced within the statutory limits.

CONCLUSION

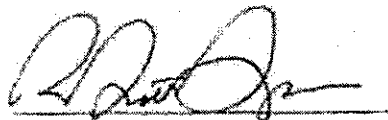
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCP, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 22 day of March, 2023.


 R. SCOTT SPROUSE
 Presiding Judge
 Eighth Judicial Circuit

W. H. Helle

1256, South Carolina

WITNESSES

Tyrone Goggins
Clinton Police Department

WARRANT NUMBER

2015A3020100467

True Bill
Louise Chiles
Foreman of the Grand Jury
Date: 2/12/16

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2016

Indictment #- 16GS30- 0227

THE STATE

vs.

Frederick Calvin Jones

INDICTMENT FOR

Murder

§16-03-0010

CDR: 0116

2-13-16
Jury
56116

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR**Murder**
§16-03-0010

At a Court of General Sessions, convened on the 12th day of February, 2016, the Grand Jurors of Laurens County present upon their oath:

That Frederick Calvin Jones did, on or about November 17, 2015, in Laurens County, willfully, feloniously, and with malice aforethought kill one Calvin Walker by means of shooting and that the said Calvin Walker did die in Laurens County as a proximate result thereof on or about November 17, 2015, in violation of Section 16-3-10 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 cases made and provided.


Deputy Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LAURENS

STATE VS.

FREDERICK CALVIN JONES

AKA:

Race: Black

Sex: M

Age: 36

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*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: Voluntary Manslaughter

In violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

INDICTMENT/CASE#: 16GS30-0227

A/W: 2015A3020100467

Date of Offense: 11/17/2015

S.C. Code §: 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As indicted,☒ Lesser Included Offense,☐ Defendant Waives Presentation to Grand Jury, (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☒ Recommendation by the State.

ATTEST:

C. Dale Scott, Deputy Solicitor 73081 SC Bar #

Defendant

Attorney for Defendant 101087 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 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:☒ 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 HearingTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: P.D. fee \$ 40.00§14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/cn \$ 3% to County (if paid in installments) \$ TOTAL \$ 128.75Clerk of Court/Deputy Clerk: Court Reporter:

SCCA/217 (07/2016)

☐ Ordered PTUP days/hours Public Service ImplementationObtain 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 weeks/months

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge: Judge Code: Sentence Date: 10/23/18

TRUE COPY OF ORIGINAL
Lynn W. Lancaster
Laurens County CCP & GS

RECEIVED
DEC 19 2018
SC Court of Appeals