

RECEIVED

Mar 23 2023

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable G.D. Morgan, Jr., Circuit Court Judge

JOHN A. VILLARREAL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2022-001681

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

TAYLOR Z. SMITH
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Suite 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED AUGUST 10, 2017	1
APPLICATION FOR POST-CONVICTION RELIEF	31
RETURN.....	40
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 22, 2022.....	50
ORDER OF DISMISSAL	90
INDICTMENTS	124

1 State of South Carolina
2 County of Anderson In the Court of General Sessions

3
4 State of South Carolina,)
5) 2015-GS-04-00691-93
6 -vs-) August 10, 2017
7 John Asher Farrell Villarreal,)
8 Defendant.) Transcript of Record
9 _____)

10
11 B E F O R E:
12 The Honorable R. Scott Sprouse, Judge
13

14 A P P E A R A N C E S:
15 Lauren Davis Price, Esquire
16 Assistant Solicitor
17 Tenth Circuit Solicitor's Office
18 Attorney for the State
19 David Rhys Wagner, Jr., Esquire
20 Solicitor for the Tenth Circuit
21 Gregory Lee Cole, Jr., Jr., Esquire
22 Attorney for Defendant
23

24 Diane L. Marcengill, RPR, CRR, CRC
25 Circuit Court Reporter

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 10:07 a.m.)

4 MS. PRICE: Thank you, Your Honor. May it please
5 the court. We're here before you on the State versus
6 John Asher Farrell Villarreal. He's pleading guilty
7 today under indictment number 2015-693, 2015-692, and
8 2015-691. Those charges are murder, attempted murder,
9 carjacking, and possession of a weapon during the
10 commission of a violent crime.

11 Your Honor, he's pleading guilty without a
12 recommendation today. However, the State and the
13 defense have consented to the release of the victim's
14 vehicle in this case and an order for the court is
15 attached to the sentencing sheets.

16 (WHEREUPON, the defendant was affirmed.)

17 THE COURT: Mr. Villarreal, you're John Asher
18 Farrell Villarreal; is that correct?

19 THE DEFENDANT: Yes.

20 THE COURT: You have a charge of murder, which
21 carries a minimum sentence of 30 years and a maximum
22 sentence of life in prison.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: You have a possession of a weapon

1 during the commission of a violent crime, which carries
2 up to five years incarceration.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: You have a charge of attempted murder,
6 which carries up to 30 years.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: And you have a carjacking charge,
10 which also carries up to 30 years.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Now, Mr. Villarreal, the court can
14 impose consecutive sentences, meaning that if that were
15 to happen, you would have to serve each sentence
16 separately.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Now, you have heard from the solicitor
20 that this is a plea without recommendation, meaning
21 that the State may ask for the maximum sentence just as
22 your attorney may ask for something in the alternative.
23 And like any sentence, ultimately it's up to the court
24 to determine what the appropriate sentence should be.

25 Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: And with that knowledge and with the
3 knowledge of the potential penalties to these charges,
4 how do you plead to the offense of murder?

5 THE DEFENDANT: Guilty.

6 THE COURT: How do you plead to possession of a
7 weapon during the commission of a violent crime?

8 THE DEFENDANT: Guilty.

9 THE COURT: How do you plead to attempted murder?

10 THE DEFENDANT: Guilty.

11 THE COURT: And how do you plead to carjacking?

12 THE DEFENDANT: Guilty.

13 THE COURT: Mr. Villarreal, are you pleading
14 guilty of your own free will?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you under the influence of any
17 alcohol, drugs, or anything that might affect your
18 judgment today?

19 THE DEFENDANT: No.

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

21 THE DEFENDANT: High school diploma.

22 THE COURT: Are you able to read and write and
23 understand the proceedings today?

24 THE DEFENDANT: Yes.

25 THE COURT: Have you ever been treated for mental

1 illness?

2 THE DEFENDANT: Yes.

3 THE COURT: Are you currently being treated for
4 mental illness?

5 THE DEFENDANT: No.

6 THE COURT: Let me ask your attorney.

7 Mr. Cole, do you have any questions about your
8 client's competency today?

9 MR. COLE: No, Your Honor. He does have a history
10 of mental illness. The State and I would like to
11 introduce at the appropriate time a joint exhibit
12 showing the examinations that have been done for him,
13 that he is competent to stand trial, and that he was
14 competent at the time of the allegations.

15 THE COURT: Well, I'm going to give you the
16 opportunity in just a moment to put that in the record.

17 Mr. Villarreal, when you plead guilty, there are a
18 number of rights that you give up, and the first of
19 those is your right to a trial by jury on this charge.
20 You would have the opportunity, through your attorney,
21 to participate in the selection of a jury. You would
22 have a jury of 12 hear the evidence in the cases. In
23 order for the State to obtain a conviction on the
24 charges, that jury would have to be unanimous in
25 finding you guilty.

1 Do you understand that fundamental right?

2 THE DEFENDANT: Yes.

3 THE COURT: You would have the right to call and
4 subpoena witnesses on your behalf.

5 Do you have -- do you understand that right?

6 THE DEFENDANT: Yes.

7 THE COURT: You would have the right to confront
8 and cross-examine the witnesses who are adverse to you
9 or against you at the trial.

10 Do you understand that right?

11 THE DEFENDANT: Yes.

12 THE COURT: You would have the right to remain
13 silent throughout the proceedings, and that could not
14 be held against you during the trial.

15 Do you understand that right?

16 THE DEFENDANT: Yes.

17 THE COURT: You also would have the opportunity,
18 if you went to trial, to present any defenses that you
19 might have to the charges.

20 Do you understand that right?

21 THE DEFENDANT: Yes.

22 THE COURT: You are presumed innocent, and the
23 State would have the burden of proving you guilty
24 beyond a reasonable doubt.

25 Do you understand that right?

1 THE DEFENDANT: Yes.

2 THE COURT: Now, you have been represented by
3 Mr. Cole in these cases. Have you had enough time to
4 talk to him?

5 THE DEFENDANT: Yes.

6 THE COURT: Has he answered your questions?

7 THE DEFENDANT: He has.

8 THE COURT: Do you have any questions for him now?

9 THE DEFENDANT: I don't.

10 THE COURT: Has he done everything you've asked
11 him to do?

12 THE DEFENDANT: He has.

13 THE COURT: Are you completely satisfied with his
14 services?

15 THE DEFENDANT: I am.

16 THE COURT: All right.

17 Madam Solicitor, let me hear the facts.

18 MS. PRICE: Thank you, Your Honor. May it please
19 the court. On December 23rd of 2014, the defendant
20 received a Facebook message from a girl living in
21 Fitzgerald, Georgia, who he was in an online romantic
22 relationship with at the time. The girl was 17 years
23 old. She told the defendant that her stepfather was
24 abusing her.

25 The defendant did not own a vehicle, so he asked

1 her if he could manage to steal a car to come pick her
2 up, if she would go with him. She said that she would.

3 On December 24, 2014, Christmas Eve, the defendant
4 tried to hot-wire a car but was unsuccessful. He was
5 standing in the road in the area of Fletcher Street in
6 Greenville wearing a rain suit when the victims, James
7 Dobson and Mary Fowler, stopped their car to speak with
8 him. He asked them for a ride to I-85, and they agreed
9 on a price of \$5 for that ride.

10 Once they got to the Interstate, the victims
11 agreed to take the defendant to the Georgia state line
12 for an additional \$25 fee. During this ride, the
13 defendant asked the driver, James Dobson, to pull over
14 so he could urinate. As soon as Mr. Dobson pulled over
15 and put the car in park, the defendant shot Mary
16 Fowler, the front seat passenger, in the back of her
17 head once, then shot James Dobson multiple times. The
18 defendant then dumped their bodies on the side of I-85
19 and left them there to die.

20 He then drove their vehicle, a Hyundai Elantra, to
21 the first exit south to get rid of their belongings,
22 which he dumped by the side of the road. He pulled up
23 the street and swapped the tag of the Hyundai with a
24 tag from a white SUV. He then proceeded to Love's
25 truck stop where he cleaned out the car and cut the

1 seatbelts out the car because of the blood stains.

2 Then he continued on to Georgia.

3 Once there, at noon on the 24th, the defendant got
4 in an altercation with the mother of the girl and
5 police were called. He was soon released, however, and
6 he headed back to South Carolina. On his return, he
7 was once stopped by a Georgia state trooper and was
8 issued a speeding ticket but was released back in South
9 Carolina. The defendant headed to what he calls his,
10 quote, safe house, which is a property on Fletcher
11 Street within Greenville County. He then rode his bike
12 to his home in Travelers Rest.

13 At 6:17 a.m. on the 24th simultaneously with what
14 I just described, a call came into 911 to report a male
15 laying on the right shoulder of I-85 at mile marker 16
16 within Anderson County. Deputies responded and found
17 the victims, who were both still alive at that point.
18 They were transported to the ER and treated.

19 Mary Fowler died the evening of the 24th from her
20 wound, and Mr. Dobson was in critical care for a
21 lengthy period of time. Several days passed until the
22 29th of December when the defendant attempted to
23 retrieve the girl from Georgia once again.

24 Again, he was unsuccessful. He drove back to
25 South Carolina. But instead of returning to his safe

1 house, he stopped at the home of a friend in Anderson
2 County. He also went to the Anderson County library
3 that day to send a Facebook message to the girl in
4 Georgia.

5 Upon getting to the friend's home in Anderson, the
6 defendant parked the vehicle in front of their
7 property. Deputy Coward with the Anderson County
8 Sheriff's Office, who's present with us today, was
9 driving by that residence at 10:28 in the morning when
10 he observed the Hyundai which matched the description
11 of the vehicle law enforcement had been searching for
12 during this investigation. He saw that it was occupied
13 by a white male. He approached the vehicle, and it is
14 at this time that the defendant was apprehended.

15 The defendant gave two statements to law
16 enforcement after his arrest, first providing a false
17 narrative and blaming his possession of the vehicle on
18 a friend who he said let him borrow it. The defendant
19 then gave a second statement to law enforcement
20 confessing to all of these events and providing
21 explicit details about his plans, including how he
22 intended to return to Georgia for a third time to do
23 what he called a, quote, wet extraction of his online
24 girlfriend where he planned to kill her stepfather,
25 mother, and older brother. He explained to law

1 enforcement that he called it a wet extraction because
2 it would be so bloody.

3 Four firearms were recovered from the defendant's
4 vehicle along with the rain suit which he told
5 investigators he planned to wear in Georgia during the
6 extraction because it was black and because blood would
7 wash off of it easily.

8 The gun used to shoot the victims, a Walther model
9 P22 semiautomatic pistol, was in the vehicle and was
10 later matched by a firearms expert. It was outfitted
11 with a laser site. A Ruger rifle and pistol were also
12 in the car as well as a Bersa 380. A .30-06 rifle was
13 found in his home.

14 In the defendant's home, investigators also found
15 materials from Mr. Dobson's wallet that the defendant
16 had kept alongside articles from local newspapers
17 detailing the killing and the investigation as well as
18 the two shell casings from bullets used to shoot
19 Mr. Dobson and Ms. Fowler. They also found materials
20 used to construct silencers, which the defendant
21 admitted making and using during this incident and at
22 other times as well.

23 During his interview, the defendant described how
24 he constructed the suppressors in explicit detail.
25 During his interview, the defendant also admitted to

1 setting up training areas in Greenville County and
2 practicing tactical shooting.

3 James Dobson survived this attack but suffered two
4 gunshot wounds to his head. Bullets entered behind his
5 right ear and came out of his left eye. He still has
6 six bullet fragments in his brain. His left eye is
7 completely gone, and he has very limited vision in his
8 right eye. He is paralyzed on his entire left side.
9 He can no longer walk, take care of his own personal
10 needs, has slurred and slowed speech, and is in
11 constant pain.

12 Your Honor, the State has folks here from both
13 victims' families as well as Mr. Dobson, who is present
14 with us today. There are also members of law
15 enforcement who would like to address the court, and
16 the State would like to be heard on sentencing at the
17 appropriate time.

18 THE COURT: Thank you, Ms. Price.

19 Mr. Villarreal, did you hear the solicitor's
20 statement of the facts?

21 THE DEFENDANT: Yes, I did.

22 THE COURT: Do you agree that those are the facts
23 of the cases?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay.

1 Mr. Cole, have you had ample opportunity to go
2 over all the facts and the applicable law with your
3 client?

4 MR. COLE: Yes, Your Honor.

5 THE COURT: And based on your conversations with
6 him, are you satisfied that he understands his rights?

7 MR. COLE: Yes, Your Honor, I am.

8 THE COURT: All right. Now, let me hear about his
9 evaluation and this exhibit that you and Ms. Price wish
10 to put in.

11 MS. PRICE: Your Honor, I'll pass up the exhibit
12 while Mr. Cole addresses Mr. Villarreal's status with
13 the court.

14 MR. COLE: Yes, Your Honor. There were two
15 evaluations done by the Department of Mental Health
16 that are in the exhibit that was just passed up to the
17 court. The first was an evaluation on the issue of
18 competency to stand trial, and the evaluator, the
19 physician, did find that he was competent to stand
20 trial.

21 The other evaluation was one based on whether he
22 was able to conform his conduct and knew what he was
23 doing at the time of these crimes, and the evaluator,
24 the physician, found that he did.

25 I have thoroughly reviewed his mental health

1 records from the time that he was a teenager. I have
2 spoken with him. And from my review of those and from
3 my conversation with my client, I believe he's
4 competent. I haven't seen anything that makes me
5 believe that these evaluators missed anything or that
6 they were wrong in any way. He seems competent and
7 knows what he's doing today.

8 THE COURT: Let me take a moment and review this
9 report.

10 (Pause in proceedings.)

11 THE COURT: All right. I have reviewed the
12 Department of Mental Health report, Dr. Frierson's
13 report, in which the defendant was diagnosed as having
14 posttraumatic stress disorder, also autism spectrum
15 disorder; however, he was found to be competent and
16 able to understand the proceedings and competent to
17 stand trial.

18 So that's made an exhibit to the record.

19 (WHEREUPON, Joint Exhibit Number 1 was marked for
20 identification.)

21 THE COURT: And, Mr. Cole, after you have had the
22 opportunity to investigate all of these cases and
23 reviewed discovery and do what you would also do as an
24 attorney representing an individual in this these type
25 cases, do you concur in his decision to plead guilty to

1 these charges?

2 MR. COLE: Yes, Your Honor, I do.

3 THE COURT: Okay. I will accept the plea. I find
4 there is a factual basis for the plea. I find the
5 defendant pleads guilty freely, voluntarily, and
6 intelligently with the advice of competent counsel with
7 whom he is satisfied. And I would further note for the
8 record that the court finds the defendant competent to
9 enter the plea as evidenced by the report from the
10 evaluation of Dr. Frierson with the South Carolina
11 Department of Mental Health.

12 So we're going to do this. I'm going to have the
13 State present anything they would like to present, and
14 then I'm going to turn it over to you, Mr. Cole, and
15 the defense can then present anything they would like
16 to present.

17 So we'll start with the State.

18 MS. PRICE: Thank you, Your Honor. I want to tell
19 the court who is present. In addition to Mr. Dobson,
20 Junior, Mr. Dobson, Senior, Barbara Jordan and Alexis'
21 Dobson are present. They're members of the victims'
22 family. Speaking on behalf of the deceased first will
23 be James Crowder. He's Mary Crowder's brother.

24 THE COURT: Yes, sir.

25 MR. CROWDER: My name is James Crowder. And I

1 don't know this -- let's put him to justice, is all I
2 can say. I -- I don't have much to say.

3 THE COURT: Thank you, sir.

4 MS. PRICE: Your Honor, James Dobson, the victim,
5 would like to speak. He does have some difficulty
6 speaking so we appreciate the court's patience.

7 THE COURT: Do we have a microphone that he can
8 use, if that would make it easier for him?

9 MR. COLE: If you want us to step this way.

10 MS. PRICE: I think they are getting a microphone.

11 Your Honor, would it be permissible to allow
12 Mr. Cole and his client to step a few paces to the
13 right?

14 THE COURT: That's fine. If you can get him over
15 here, I want to make sure the court reporter is able to
16 hear him.

17 MR. DOBSON: Yes, sir, Your Honor. I would like
18 to see the death penalty, if possible. I think he
19 deserves the death penalty.

20 THE COURT: Anything else you would like to tell
21 me, Mr. Dobson?

22 MR. DOBSON: (To defendant) I would like to
23 understand why, why did you do what you done? Why?

24 THE COURT: Thank you, Mr. Dobson.

25 MS. PRICE: Your Honor, the lead detective in this

1 case was Detective Nathan Mitchell with the Anderson
2 County Sheriff's Office, and he would like to address
3 the court now.

4 THE COURT: Okay.

5 DET. MITCHELL: I've worked in law enforcement for
6 approximately 16 years. During this time, I've been
7 involved in a variety of cases and incidents. When I
8 was tasked to investigate the murder of Mary Crowder
9 and the potential murder of James Dobson, my first
10 impression in this case was that someone who lacks
11 emotions regarding human life committed these actions.

12 Both victims in this case were shot in the back of
13 the head and left for dead on the side of the
14 Interstate in the rain on Christmas Eve morning. When
15 the defendant was identified and interviewed, he
16 admitted to killing the female passenger, and he tried
17 to kill the male driver. He gave eerie details about
18 this and gave a grim story as to why he did that.

19 He had a plan to travel to South Georgia and
20 remove a teenage girl that he met online from her
21 house. He told me of his plans and that it depended --
22 he told me of his plans, and it depended on if the
23 family was home or not as to which would be carried
24 out.

25 He described his wet extraction plan as being the

1 one where he had to kill the family to remove the girl.
2 Mr. Villarreal said that his plan was labeled as "wet"
3 since it was going to be bloody. The dry extraction
4 plan is the one where he did not have to kill anyone.
5 Part of his plan included obtaining a vehicle from
6 somewhere. This is where Ms. Crowder and Mr. Dobson
7 came unknowingly into his plans.

8 The two victims gave him a ride down the
9 Interstate on his way to Georgia. When Villarreal got
10 near the 16 mile marker on I-85 South, he chose to take
11 the life of both victims. The plan was well thought
12 out and included him making silencers for his handguns
13 in a makeshift garage.

14 When he spoke of his plans, it seemed as he
15 boasted on how it would be executed and how he trained
16 for it. He told me of a wooded area where he would run
17 drills with his various weapons to maintain a higher
18 level of proficiency.

19 The plan to extract this girl from her home in
20 Georgia included killing whomever he could to get a
21 vehicle. It's my belief that the plan was carried
22 out -- it's my belief that the plan was carried out as
23 he planned without emotion. The only variable he did
24 not plan on at the time was for Mr. Dobson to survive.

25 After shooting the two victims, Villarreal

1 traveled to Georgia as planned. When he got there, he
2 was encountered by law enforcement, who was called by
3 the teenage girl's parents, the same ones that he was
4 going to kill if he had to.

5 He encountered law enforcement on two other
6 occasions up to his arrest. He gave details as to his
7 plan he created about how he was going to kill all
8 three law enforcement officers. He said the reason he
9 did not kill the first officer in Georgia is that he
10 saw the red light on the patrol car indicating he was
11 being recorded. The two other officers he said were
12 being nice to him and he decided not to take their
13 life. One of these officers is an Anderson County
14 deputy sheriff.

15 Villarreal told me his escape plan if he had to
16 kill this particular officer. He said he would leave
17 the scene, find a propane tank from someone's backyard,
18 and set the car on fire. While everyone was dealing
19 with the explosion and fire, he would make a clean
20 getaway.

21 It's my belief that Villarreal is a danger to
22 society and the community. He spoke of these plans in
23 a way that lacked emotion and regard for human life.
24 It's my belief he should serve a life sentence so that
25 he will not be able to act on any other plans or cause

1 any further harm to the community.

2 THE COURT: Thank you, Officer.

3 MS. PRICE: Your Honor, Lieutenant Robert Gebing
4 with the sheriff's office would like to address the
5 court as well.

6 LT. GEBING: Thank you, Your Honor.

7 I've been in law enforcement in Anderson County
8 about 16 years myself, and I've seen many, many
9 murders. What's compelling about this one is just the
10 premeditation, the calculation, the absolute callous
11 indifference for life.

12 I, genuinely, after looking at the facts of the
13 case, think that this was something that was coming.
14 The only thing he didn't know the night of was who.
15 And Mr. Dobson and Ms. Crowder, unfortunately, they
16 were minding their own business, wrong place, wrong
17 time. But that could have been anybody. It could have
18 been you, somebody in your family who stopped to give a
19 guy a ride in the rain. He shot them in the head,
20 dumped them at the side of the road, and continued his
21 plans.

22 This is a sinister man -- cold and calculating,
23 deliberate. Again, I've been doing this a while. I've
24 never seen anything like this. At least not firsthand.
25 It makes for interesting T.V., but this is the first

1 one I've ever had in my face.

2 I concur with Detective Mitchell. I honestly
3 think a life sentence would be appropriate. His plans,
4 the things that he's thought of, this is a wicked man,
5 and I would ask that you consider all these facts and
6 render a proper judgment.

7 THE COURT: Thank you, Officer.

8 LT. GEBING: Thank you, Your Honor.

9 MS. PRICE: Your Honor, Solicitor Wagner and I, on
10 behalf of the solicitor's office, would like to speak.

11 First, I'd like to tell you two things that the
12 defendant said during his interview. He said, "I don't
13 have to live with guilt because I told the truth." To
14 me, that shows a lack of remorse near immediately.

15 And, secondly, he said in response to some
16 questioning, quote, "You start seeing a gun as a tool
17 for power, especially when you add a suppressor. Fear
18 of death convinces most people to cooperate. Fear of
19 death without a witness convinces almost everyone. And
20 then, of course, the problem comes in when you have
21 your face unmasked. If you don't have a ski mask or
22 something like that on, how can you leave a witness?
23 It's a slippery slope. You don't ever go down it. You
24 don't ever let yourself go an inch toward it." And
25 then Detective Mitchell asked him, "Is that why you had

1 the hood thing in your car?" and he said, "Yeah."

2 Your Honor, the State, the solicitor's office,
3 also would like to see a life sentence imposed by the
4 court in this case. The sheer brutality of him pulling
5 Mr. Dobson and Ms. Crowder out and leaving them in the
6 rain on Christmas Eve on I-85 by the side of the road
7 to die calls for an extreme sentence.

8 And, Your Honor, quite frankly, the things that he
9 said and indicated in his interview make us, as law
10 enforcement and as the solicitor's office, extremely
11 apprehensive about him ever seeing the light of day.
12 He's an extreme danger to our community.

13 I'm going to pass up -- and Mr. Cole has already
14 seen these. They have been provided to him in
15 discovery -- some photographs of the arsenal that was
16 found in Mr. Villarreal's vehicle and the things that
17 we have mentioned including the guns with suppressors
18 and the rifle with scope that he had as well as his
19 rain suit which was mentioned.

20 (Judge reviewing photographs.)

21 MS. PRICE: Your Honor, Solicitor Wagner.

22 MR. WAGNER: Your Honor, we would just, as the
23 whole solicitor's office, ask for a life sentence. The
24 cold-blooded nature, the malicious -- I mean, he
25 basically, it's like he put out a hit on these folks.

1 I think of it, basically, as, even though it
2 was -- we have one death here and it's one charge of
3 murder, it was basically a double murder because the
4 quality of life that he took from this gentleman here,
5 he's basically taken his life, too, for all intents and
6 purposes, put him in a wheelchair with disabilities for
7 the rest of his life. The lady lost her life.

8 Like I say, I agree with the detectives just to
9 the callous, malicious, the cold-blooded nature of this
10 crime I think deserves a life sentence.

11 THE COURT: Thank you.

12 MS. PRICE: Nothing further from the State, Your
13 Honor.

14 THE COURT: Okay.

15 All right, Mr. Cole.

16 MR. COLE: Thank you, Your Honor. May it please
17 the court. Your Honor, I understand and my client
18 understands that he has committed a horrific act. It's
19 horrific acts, really. And that from the -- it appears
20 that he is an evil person, a cold-hearted person. But
21 I'd like to tell the court some things that I've
22 learned about my client, Your Honor, that I think
23 mitigate that to some extent as far as sentencing is
24 concerned.

25 Your Honor, as we saw before, he does have a

1 history of mental illness. And he has experienced
2 extreme trauma in his life. At a young age, he
3 witnessed his father beat and almost kill his mother.
4 And that left him with posttraumatic stress disorder
5 that -- of an effect -- the effect, I can't imagine
6 what that would be like as a young child to see that.
7 It was a horrific beating, really, and his father ended
8 up going to prison.

9 He, as a teenager, started to suffer the
10 consequences of this posttraumatic stress, and he was
11 hospitalized in a mental hospital for around a year and
12 a half, until he was 18. He was treated and he is --
13 he was trying to get by in society, Your Honor, as he's
14 also been diagnosed with autism spectrum disorder. As
15 the court knows, that keeps a person from having the
16 type or from showing the type of empathy and social
17 cues that a normal person would. So I think some of
18 the cold-heartedness that the State has described is
19 actually just the way that he is due to this disorder
20 that he has.

21 Now, as I said before, Your Honor, I have no doubt
22 that he's competent and knows what he's doing; however,
23 the history that he has, the history of these
24 illnesses, I think, contributed to what happened. And
25 the history of the trauma that he suffered contributed

1 to what happened.

2 He does have a strong support system, though
3 they're not here today. His mother, I have spoken to
4 her several times. She wanted to be here today.
5 However, due to -- she had some concerns about being
6 here and decided that it was best for her not to appear
7 today. However, she wanted the court to know that she
8 stands behind her son a hundred percent and that she is
9 just asking the court to consider mercy in this matter.

10 He -- Your Honor, a couple other things about my
11 client. He -- when he was doing this, as well, he had
12 an extreme alcohol problem. And he was -- basically,
13 after he went to jail, he detoxed off of that, as
14 alcohol can be as extreme as any other drug when it's
15 abused. And as that went on and as he has sat in jail
16 for this time, he has had what I believe is an actual
17 conversion experience.

18 Now, we hear about jailhouse religion all the
19 time, and I know this court does. However, he seems to
20 be sincere, to me. He is -- he's expressed his faith;
21 he's found faith. He is owning up to his actions.
22 That's why he's here pleading guilty today. He decided
23 that he wanted to do the right thing, tell the truth,
24 plead guilty and suffer the consequences of his
25 actions.

1 He understands that what he did was wrong and what
2 he did was criminally in the wrong, and he sees it as
3 religiously a sin and morally wrong. And to use
4 religious terms, Your Honor, he thinks that and he
5 hopes that by today, by taking this guilt and admitting
6 what he did, that he can start the process of repenting
7 from these sins, start the process of trying to make
8 right as much as he can.

9 He knows that he can't bring back the life that he
10 took, and he knows that he can't bring back the quality
11 of life of the other victim. And for that he is deeply
12 remorseful and deeply sorry, and he wanted me to tell
13 the court and tell victim on his behalf how sorry and
14 remorseful he was, and that he wishes he could go back
15 and change things and not do it. And he has, I think,
16 sincere remorse, and he sincerely feels for this
17 family, and he knows that there's nothing that he can
18 do, nothing that he can say to take back what he did.

19 So I'd ask the court to consider all these things,
20 Your Honor, and consider his age -- he's only 25 years
21 old -- and consider the trauma that he's suffered,
22 consider his background, and consider sentencing him to
23 the minimum of 30 years, which is still a very long
24 time, still no guarantee that he would ever get out of
25 prison. However, to have the chance to continue his

1 process of trying to repent, of trying to rehabilitate
2 himself -- that's the purpose of our prisons and
3 corrections is to rehabilitate, to have the chance to
4 one day get out and be a member of society.

5 And one other thing that I'll add. He does plan
6 on -- he knows he's going to prison. He plans on
7 there, as much as he can, he feels it's a calling now
8 for him to reach out and try to help other inmates, for
9 him to lead Bible studies. He's been doing that some
10 as much as he can in the county, and he feels that's a
11 calling. He wants to try to help other people learn
12 from what he's done and not make the same choices he's
13 made. So when he goes to prison, that's what he wants
14 to do and what he plans to do.

15 I think my client, he may want to say just a very
16 brief few words to the court

17 THE DEFENDANT: I would.

18 THE COURT: Yes, sir. I'd be happy to hear from
19 you.

20 THE DEFENDANT: I was a prideful, stupid coward.
21 I was confused, and I was wrong. What I did is not
22 excusable, but God is merciful. In myself, I have no
23 ability to change. By the grace of God, I can do all
24 things. In myself, there's no good thing. But the
25 Lord is good. In myself, I would be worthy of hell

1 fire. But by the grace of God, I know I can overcome.

2 THE COURT: Thank you, sir.

3 THE DEFENDANT: And I am deeply sorry for what I
4 did. That was wrong. I was a screwed up son of a gun,
5 and I shouldn't have done it. And I want to say to
6 every single one of these family members, every single
7 one of these cops, every single one, everyone here that
8 I was absolutely wrong, that I was a wicked, wretched
9 sinner. And I know only two things: I'm a terrible
10 sinner, and Christ is a wonderful savior.

11 That will be all, sir.

12 THE COURT: Thank you, sir.

13 Anything further, Mr. Cole?

14 MR. COLE: No, Your Honor. Thank you.

15 MS. PRICE: Your Honor, he served 955 days in jail
16 as of today's date.

17 THE COURT: All right. I've heard from all the
18 parties, the facts of the case. This is an extremely
19 disturbing case. Tragic, tragic case. To see one
20 young life snuffed out, another young life permanently
21 disabled, see another young life that's permanently
22 affected. Terrible, terrible case.

23 This will be the sentence of the court: On
24 2015-GS-04-693, defendant will be confined to the
25 Department of Corrections for life.

1 On indictment 693, he would be confined to the
2 Department of Corrections for five years, concurrent.

3 Then on 691, 30 years concurrent.

4 And then 692, 30 years concurrent. He would have
5 no contact with the victim.

6 Good luck to you, sir.

7 Good luck to you, Mr. Dobson, and all the parties.

8 MR. WAGNER: Thank you.

9 (WHEREUPON, proceedings concluded at 10:50 a.m.)

10 ***END OF REQUESTED TRANSCRIPT OF RECORD***

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

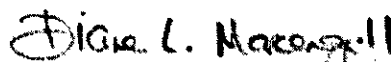
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 10th day of August 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

September 10, 2018



Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Anderson)John A. Farrell Villareal #373533)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018CP0401051

APPLICATION FOR
POST-CONVICTION RELIEFCOMMON PLEAS AND
GENERAL SESSIONS

2018 MAY 30 AM 11:15

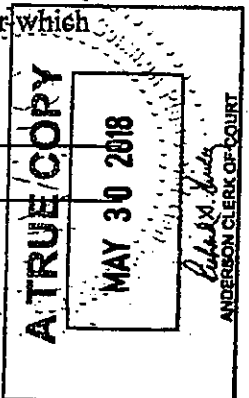
FILED-CLERK'S OFFICE
ANDERSON SCINSTRUCTIONS - READ CAREFULLY

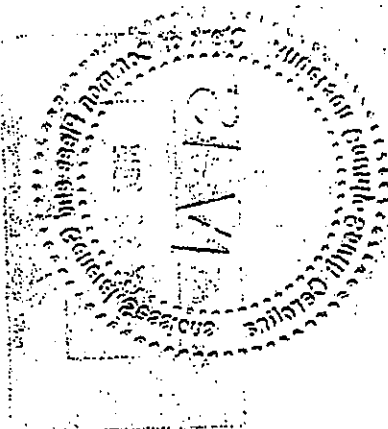
In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer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

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

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

1. Place of detention Lee Correctional Institution, 990
Wisacky Hwy, Bishopville, SC 29010
2. Name and location of Court which imposed sentence Anderson County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-04-00691 Carjacking
 - (b) 2015-GS-04-00692 Attempted Murder





- (c) 2015-GS-04-00693 Murder/Possession of a
Weapon During the Commission of a Violent Crime
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 10, 2017 - 30 years
- (b) August 10, 2017 - 30 years
- (c) August 10, 2017 - Life, 5 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Not applicable
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Not applicable
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Not applicable
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Not applicable
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Not for appellate review
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) Prosecutorial misconduct
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel failed to file notice of appeal
- (b) Prosecution presented misleading/inflammatory statements
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Not applicable
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Not applicable
- ii. _____
- iii. _____
- iv. _____

Attachment

11. (a) Counsel failed to present an insanity defense; Counsel failed to advise applicant of all available defenses; Counsel failed to adequately investigate and prepare for trial; Counsel failed to challenge statements presented by prosecution.

(c) the disposition thereof:

- i. Not applicable
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Not applicable
- ii. _____
- iii. _____
- iv. _____

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

- i. Not applicable
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. Not applicable
- ii. _____
- iii. _____

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

- i. Not applicable
- 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) (10)(a) First collateral attack
 (b) (10)(b) First collateral attack
 (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? Not applicable
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Not applicable
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Not applicable

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. Hervey B.O. Young, 501 Camson Road, Anderson,
SC 29624
 ii. G. Lee Cole, Jr., 32 East Main Street, Williamston,
SC 29697
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. _____
 ii. Plea and sentencing
 iii. _____

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

Based on the above, sentences vacated, convictions
reversed and remanded for a new trial.

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

No

STATE OF SOUTH CAROLINA)

County of Anderson)

2018CP0401051
 VERIFICATION

I, John Asher Farrell Villareal, 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.

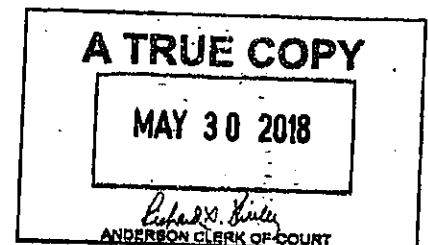
J. Farrell

SWORN to and subscribed before me this 16
 day of May, 2018.

Uniqua Greene (L.S.)
 Notary Public

My Commission Expires: 9-29-2027

FILED-CLERK'S OFFICE
 ANDERSON SC
 2018 MAY 30 AM 11:15
 COMMON PLEAS AND
 GENERAL SESSIONS



Revised 3/2003

2018CP0401051

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

I, John Asher Farrell Villareal, 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.

J. Farrell

Applicant

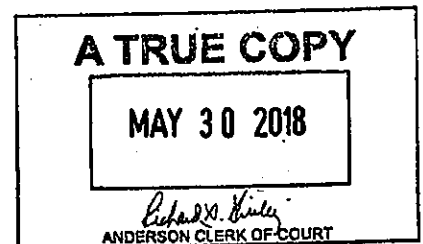
SWORN or affirmed to and subscribed before me this

16 day of May, 2018.

Liriqua Greene
Notary Public

My Commission Expires: 9-29-2027

FILED CLERK'S OFFICE
ANDERSON SC
2018 MAY 30 AM 11:15
COMMON PLEAS AND
GENERAL SESSIONS



Revised 3/2003

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

John A. Farrell Villarreal, #373533,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-04-01051

RETURN

Respondent, making its Return to the application for post-conviction relief filed on May 30, 2018, would respectfully show this Court:

I.

John A. Farrell Villarreal (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. During its April 2015 term, the Anderson County Grand Jury indicted Applicant murder (2015-GS-04-00693), possession of a weapon during the commission of a violent crime (2015-GS-04-00693), attempted murder (2015-GS-04-00692), and carjacking (2015-GS-04-00691). Gregory Lee Cole, Jr., Esquire, represented Applicant on these charges. Tenth Circuit Solicitor David R. Wagner, Jr. and Assistant Solicitor Lauren Davis Price prosecuted the case. On August 10, 2017, Applicant appeared before the Honorable R. Scott Sprouse and pled guilty as indicted to all charges. Judge Sprouse sentenced Applicant to a term of imprisonment of life for murder, five years for the weapons charge, thirty years for attempted murder, and thirty years for carjacking. The sentences were to be served concurrently. Applicant did not appeal his pleas or sentences.

II.

On December 23, 2014, Applicant received a Facebook message from a seventeen-year-old girl living in Fitzgerald, Georgia, telling Applicant her stepfather was abusing her. Tr. 7. At the time, the two were in an online romantic relationship. Tr. 7. Applicant did not own a vehicle, so he asked the girl if he could manage to steal a car to come pick her up, if she would go with him. Tr. 7-8. The girl said she would. Tr. 8.

The next day, on December 24, 2014, Applicant attempted to hot-wire a car, but he was unsuccessful. Tr. 8. Applicant was standing in the road in the area of Fletcher Street in Greenville, South Carolina, when James Dobson and Mary Fowler stopped their car to speak with him. Tr. 8. Applicant asked them for a ride to I-85, and they agreed they would give him a ride in exchange for five dollars. Tr. 8.

When they got to I-85, Mr. Dobson and Ms. Fowler agreed to take Applicant to the Georgia state line for an additional twenty-five dollars. Tr. 8. During the ride to the Georgia state line, Applicant asked Mr. Dobson to pull over so that he could urinate. Tr. 8. As soon as Mr. Dobson pulled over and put the car in park, Applicant shot Ms. Fowler in the back of her head once. Tr. 8. He then shot Mr. Dobson multiple times. Tr. 8. Applicant dumped their bodies on the side of I-85. Tr. 8. At 6:17 in the morning, a call came into 911, reporting a male lying on the right shoulder of I-85 at mile marker 16 within Anderson County. Tr. 9. Deputies responded and found Mr. Dobson and Ms. Fowler, both of whom were still alive at that point. Tr. 9.

Meanwhile, Applicant drove the vehicle to the first exit south from that location in order to dispose of Mr. Dobson and Ms. Fowler's belongings. Tr. 8. He also dumped those things on the

side of the road. Tr. 8. He then pulled up the street and swapped the tag of Mr. Dobson and Ms. Fowler's vehicle with a tag from a white SUV. Tr. 8. Applicant then proceeded to Love's truck stop, where he cleaned out the car and cut the seatbelts out of the car.¹ Tr. 8-9. Applicant continued to Georgia. Tr. 9.

Applicant arrived in Georgia around noon, and got in an altercation with the mother of the girl. Tr. 9. The police were called, but Applicant was released shortly thereafter. Tr. 9. After being released, Applicant proceeded back to South Carolina. Tr. 9. During his return, Applicant was stopped once by a Georgia state trooper for speeding, but was released. Tr. 9. Applicant returned to Greenville, then proceeded to his home in Travelers Rest via bicycle. Tr. 9.

That evening, Ms. Fowler died from the gunshot wound to her head. Tr. 9. Mr. Dobson was in critical care for a lengthy period of time. Tr. 9. Mr. Dobson suffered two gunshot wounds to his head, which entered behind his right ear and exited out of his left eye. Tr. 12. As a result, Mr. Dobson lost his left eye and was also paralyzed on his entire left side. Tr. 12.

On December 29, 2014, Applicant again attempted to retrieve the girl from Georgia. Tr. 9. He was again unsuccessful. Tr. 9. Upon his return to South Carolina, Applicant went to a friend's home in Anderson County and also went to the Anderson County library so that he could send a Facebook message to the girl. Tr. 9-10.

At his friend's home, Applicant parked the vehicle in front of the property. Tr. 10. Deputy Coward, of the Anderson County Sheriff's Office, drove by the residence and notice the vehicle matched the description of Mr. Dobson's and Ms. Fowler's car, for which law enforcement had

¹ The seatbelts had blood on them. Tr. 9.

been looking. Tr. 10. Deputy Coward also noticed the vehicle was occupied by a white male. Tr. 10. He approached the vehicle and apprehended Applicant. Tr. 10.

Applicant gave two statements to law enforcement. Tr. 10. In the first statement, he provided a false narrative and blamed his possession of the vehicle on a friend, who he claimed let him borrow the car. Tr. 10. In the second statement, however, Applicant confessed to all of these crimes, providing explicit details about his plans. Tr. 10. Applicant also admitted to having plans to again return to Georgia to do a "wet extraction" of the girl, where he would kill the girl's stepfather, mother, and older brother. Tr. 10.

Four firearms were also recovered from Applicant's vehicle. Tr. 11. Included with these guns was the gun used to shoot Mr. Dobson and Ms. Fowler. Tr. 11. The gun was a Walther model P22 semiautomatic pistol, which was matched by a firearms expert. Tr. 11. It was also outfitted with a laser site. Tr. 11.

In Applicant's home, law enforcement found materials from Mr. Dobson's wallet. Tr. 11. They also found articles from local newspapers, which detailed the killing and the investigation. Tr. 11. Two shell casings from bullets used to shoot Mr. Dobson and Ms. Fowler were also found. Tr. 11.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. Ineffective Assistance of Counsel; [and]
 - a. Counsel failed to file notice of appeal.
2. Prosecutorial misconduct.
 - a. Prosecution presented misleading/inflammatory statements.

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

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRCPP. 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, SCRCPP. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCPP.

IV.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant claims he was denied effective assistance of counsel because his plea counsel did not appeal his conviction. The decision of the South Carolina Supreme Court, in *White v. State*, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), holds that even though the post-conviction relief court finds the applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. *Id.* at 119, 108 S.E.2d at 39-40.

While trial counsel is required to make certain the defendant is made fully aware of the right

to appeal, the standard for a guilty plea differs. *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Id.* at 225, 670 S.E.2d at 374 (citing *Roe v. Flores-Ortega*, 528 U.S. 470 (2000); *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995)). “Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” *Bonnette v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981).

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant also alleges prosecutorial misconduct, in that the “prosecution presented misleading/inflammatory statements.” It is Applicant’s burden to prove actual prosecutorial misconduct. *Alabama v. Smith*, 490 U.S. 794, 109 S. Ct. 2201 (1989). Respondent submits Applicant cannot meet his burden, particularly in light of his complete failure to identify the alleged misleading or inflammatory statements. Moreover, this allegation is conclusively refuted by the record, as no misleading or inflammatory statements were presented at Applicant’s plea. Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

Respondent also hereby moves for a more definite statement with respect to this allegation. Applicant has failed to set forth any facts to “support each ground” or to explain with any specificity whatsoever the facts upon which this claim is based. The Uniform Post-Conviction Procedure Act requires the applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

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

VII.

WHEREFORE, Respondent requests an evidentiary hearing be held.

[signature block to follow]

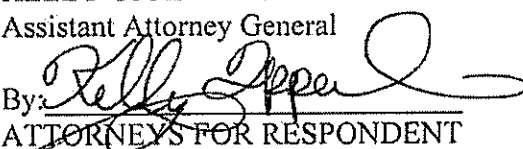
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

October 12, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	
	)	2018-CP-04-1051
	)	
JOHN A. F. VILLARREAL, #373533,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Rodney Wade Richey, Esquire
Richey & Richey, PA
Post Office Box 10916
Greenville, South Carolina 29603-0916

DATED this the 12th day of October, 2018.


 Carson Kirk, Legal Assistant

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ANDERSON) COURT OF COMMON PLEAS NONJURY

3
4 JOHN A.F. VILLARREAL,)
5 APPLICANT,) TRANSCRIPT
6 VS.) OF
7 STATE OF SOUTH CAROLINA,) RECORD
8 RESPONDENT.) 2018-CP-04-1051

9
10 August 22nd, 2022
11

12 B E F O R E:

13 THE HONORABLE G.D. MORGAN, JR., Judge.
14

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

16 RODNEY W. RICHEY
17 ESQ.
Attorney for the Applicant

18 LILLIAN L. MEADOWS
19 ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent
20

21
22 PAMELA E. GREEN
23 Circuit Court Reporter
24
25

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

I N D E X O F W I T N E S S E S

<u>WITNESSES</u>	<u>PAGE</u>
Motion	4
GREGORY L. COLE, JR.	
Direct examination by Mr. Richey	10
Cross-examination by Ms. Meadows	15
MARIE VILLARREAL	
Direct examination by Mr. Richey	18
Cross-examination by Ms. Meadows	25
JOHN VILLARREAL	
Direct examination by Mr. Richey	28
Cross-examination by Ms. Meadows	35
GREGORY L. COLE, JR.	
Direct examination by Ms. Meadows	36
Certificate	49

P R O C E E D I N G S

THE COURT: All right. Good afternoon. I hope everybody's doing well.

MS. MEADOWS: Thank you, judge.

THE COURT: Good to see you.

MS. MEADOWS: May it, may it please the Court?

THE COURT: Yes, ma'am.

MS. MEADOWS: This first matter is John Villarreal versus the State of South Carolina. Docket Number 2018-CP-04-01051.

In April of 2015 the Anderson County Grand Jury indicted applicant for murder, attempted murder, car jacking, and possession of a weapon during the commission of violent crime. On August 10th, 2017, he appeared before Judge Sprouse and pled guilty as indicted without formal negotiations or recommendations by the State as to sentencing. Lee Cole represented applicant and Assistant Solicitor Lauren Price prosecuted the case, and Judge Sprouse sentenced him to concurrent terms of life imprisonment for murder, five years for the weapons charge, 30 years for attempted murder, and 30 years for carjacking and he did not appeal.

On May 30th, 2018, applicant filed a timely PCR Application. He is present today and represented by Mr.

1 Richey and it is the State's understanding Mr. Villarreal's
2 going forward on the following claims:

3 Ineffective assistance of counsel for promising he
4 would receive a 30 year sentence, failure to file an appeal,
5 and failure to pursue an in, an insanity defense and
6 sufficient mitigation based on his mental health.

7 And, judge, as to that last allegation, we are moving
8 to dismiss the claim regarding the insanity defense as it's
9 refuted by the record. As Mr. Cole indicated during the
10 plea hearing, Mr. Villarreal was evaluated by DMH and he was
11 found competent to stand trial and criminally, criminally
12 responsible at the time of the crimes. He was also
13 evaluated by Doctor Maddox and Doctor Brawley.

14 In fact, if I may approach, I can bring you those
15 records?

16 THE COURT: Uh-huh.

17 MS. MEADOWS: And based on these reports, Judge Sprouse
18 made a finding that he was competent to stand trial and
19 competent at the time of crime.

20 On Page 23 through 27 of the transcript, Mr. Cole did
21 an extensive mitigation on Mr. Villarreal's mental health
22 based on the information obtained in these reports, and
23 since he was ultimately found competent and criminally
24 responsible by experts, it's the State's position that Mr.
25 Cole reasonably relied on the opinions of these experts and

1 there's nothing further he could of done and really nothing
2 further to be developed on the allegation.

3 THE COURT: All right. Mr. Richey.

4 MR. RICHEY: Thank you, Your Honor.

5 Please the Court.

6 Your Honor, that's, that's the -- we believe there's
7 other information that could of contributed to this defense
8 and this is ineffective assistance of counsel and I think
9 we've got -- we're gonna present testimony to say that the,
10 the information in these evaluations was incomplete. So,
11 the doctors didn't have all the information because we're
12 gonna present his mom and there's gonna be testimony -- and
13 she was not involved with this process.

14 And, Your Honor, it's our position is if you're gonna
15 evaluate someone in a mental health situation, and the
16 mother's been -- personally did all the treatment, took him
17 to all the doctors, did all this stuff, if she's not even
18 involved in the preparation of these documents, it is our
19 position that, that, that, from a motion to dismiss, that's
20 not proper cause we're gonna submit that testimony.

21 THE COURT: Let me ask you this way though.

22 I mean if, if you did have some issues with the
23 evaluation, does that have anything to do necessarily with
24 ineffective assistance of counsel?

25 MR. RICHEY: Yes, sir. Yes, sir, because we're -- it's

1 our position that counsel has to be effective in terms of
2 the mitigation in a mental health case. He has to be
3 effective in pursuing that issue.

4 I mean you can't -- there's more to it than did an
5 evaluation. You have to supply information to these folks.
6 The mother's gonna have to be involved and I think the
7 testimony of the mother in this case is critical because she
8 is not involved in the process, and she has all the records,
9 all the information, all of it. And, and without that
10 person in the case, you -- the, the evaluation is not
11 proper.

12 The person that took you to all these examinations your
13 entire life has been involved with it, knows it intimately,
14 for them not to be involved in the process, that---

15 THE COURT: You're making the argument that his mother
16 not being involved in the process is the fault of Mr. Cole?

17 MR. RICHEY: We're saying that that's ineffective
18 assistance of counsel not to contact the mother and have her
19 be involved in the process because the mother's part of the
20 mitigation and the mental health of the client.

21 THE COURT: And the process that you are talking about
22 is the process of the evaluation itself?

23 MR. RICHEY: I'm talking about the evaluation, the
24 mitigation in the courthouse -- I mean in the courtroom and
25 having her as a resource to help you migrate this mental

1 health issue because, as the Court can see, there's three
2 different mental evaluations here. So, this is not just
3 some issue. This is a significant issue in this case, this
4 gentleman's mental health.

5 And for the State to, to say no, you can't talk about
6 that, then, then no, this case is about his mental health
7 one hundred percent and, and, and how that's developed in
8 this case is critical. How it's developed -- that's why you
9 got three evaluations, how those evaluations are developed,
10 how that's presented is critical in the case. Absolutely
11 critical.

12 THE COURT: But the evaluations, didn't they -- they
13 were provided to Mr. Cole.

14 He reviewed the evaluations and the evaluations, and I
15 read them, both found that, that he was competent, correct?

16 MR. RICHEY: Yeah. But, but, Your Honor, but that's
17 not -- but see that's part of it, judge. In, in evaluating
18 and bringing a mental health case, it's our position that
19 you have to present the evaluator with the information. The
20 evaluation is only as good as the information they're given.
21 And if it does not get the proper information, then the
22 evaluation is not good because you can't say, when a doctor
23 comes and sees him, and you don't present the doctor with
24 the critical information he needs, then he can't do a proper
25 evaluation. So he comes back competent, that doesn't mean

1 anything if the doctor doesn't have all the information.

2 And so it's hard -- that's like, that's like going to a
3 doctor and not giving him your previous medical history. I
4 mean that's a -- you go to the doctor and he says what's
5 your -- and he doesn't have the previous medical history,
6 you fall over dead, he's like hey, look, they never told me
7 that he had a stroke. They never told me that he had
8 diabetes. They never told me he had a heart condition
9 cause, if they did, I would prescribe different medications
10 and that's what this is.

11 You've, you've got to give the evaluators the
12 information so they can make a decision in a case. You just
13 can't go to the conclusion and say oh, yeah, that's the
14 conclusion. well, that's it.

15 No, you've got to have the information to the doctor.
16 Without that, then there's no treatment. That's, that's
17 what you go to the doctor for and the doctor has to have a
18 adequate position of your prior history, especially the
19 mental health case. That doctor has to know you were in a
20 facility in Connecticut. He has to know that, that -- your
21 educational level. He has to know the problems the mama's
22 went through all these years.

23 That's the only way he can evaluate you properly. You
24 just can't send somebody to the evaluation and say you
25 figure it out. There's no way and that's what our position

1 is. without, without that, without that, you can't produce
2 a proper defense in this case because there's no way,
3 without this gentleman's mother being intimately involved
4 with it, no way cause she's got all the -- she's got all the
5 history. She's got all the background.

6 Okay. And so, without that, you can't have a, you
7 can't have an adequate evaluation. You can have one. You
8 can have an evaluation but is it gonna be adequate and it's
9 our position is no.

10 THE COURT: Anything, counsel?

11 MS. MEADOWS: Just briefly, Your Honor.

12 It's our position that the three doctors that did the
13 evaluation would not have made an evaluation if they did not
14 have sufficient information to base that on. And also, as
15 far as ineffective assistance of counsel, our case law says
16 that counsel can reasonably rely on the opinions of experts
17 in investigation or developing a defense.

18 THE COURT: All right. I tell you what I'm gonna do.
19 I'll, I'll hear some testimony and reserve my ruling on, on
20 the motion to dismiss.

21 So, at this -- I'll, I'll, I'll hear some testimony on
22 it, give you that opportunity, and I'll just reserve my, my
23 ruling on the motion to dismiss.

24 All right. Anything else?

25 MR. RICHEY: No, Your Honor.

1 THE COURT: All right.

2 MR. RICHEY: We call -- oh, I'm sorry. Excuse me,
3 judge. I'm sorry.

4 THE COURT: You ready to proceed?

5 MR. RICHEY: Yes, sir.

6 THE COURT: All right.

7 MR. RICHEY: Okay. We'll call Mr. Cole.

8 Judge, can we approach for one moment please?

9 THE COURT: Yeah.

10 (WHEREUPON, a bench conference was held at this time.)

11 THE CLERK: I need to swear you in.

12 THE COURT: Yeah.

13 GREGORY L. COLE, JR., being first
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. RICHEY:

17 Q. Sir, will you state your name please?

18 A. It's Gregory Lee Cole, Junior.

19 Q. And, Mr. Cole, are you an attorney in Anderson?

20 A. Yeah, in Anderson County.

21 Q. Uh-huh.

22 And do you recall representing Mr. Villarreal?

23 A. I do.

24 Q. Okay. And was -- were they on the charges that the
25 sol -- that the attorney general listed out?

Gregory Cole - Direct examination
by Mr. Richey

1 A. Yes.

2 Q. Okay. And did you have an opportunity to discuss those
3 cases with him?

4 A. Yes.

5 Q. Okay. And this is a case where two people got shot.
6 Is that correct?

7 A. To the best of my memory, yes.

8 Q. Okay. And also, in this case, there was an issue about
9 this defendant's mental health, is that correct, that you're
10 aware of?

11 A. Yes.

12 Q. And, and there was these evaluations done but you were
13 not the person who ordered those.

14 Is that correct?

15 A. That's correct.

16 Q. Okay. Did you have an opportunity to review those
17 evaluations?

18 A. Yes, I did.

19 Q. And when you reviewed them, did you have an opportunity
20 to discuss these evaluations with his mom at all?

21 A. I remember having conversations with his mother or at
22 least a conversation with his mother.

23 Q. All right.

24 A. But I can not remember whether we discussed the
25 evaluations or not.

Gregory Cole - Direct examination
by Mr. Richey

1 Q. Did she discuss with you anything to do with his mental
2 health?

3 A. At this point I can not recall, and from the review of
4 my notes, I'm, I'm not sure.

5 Q. Okay. But, at this particular case, there -- that was
6 a focal point of it, isn't, isn't -- is that correct?

7 well, let me rephrase that.

8 In this case, his mental health was an issue as to this
9 crime.

10 Is that correct?

11 A. From my evaluation, I believed it was an issue as to
12 mitigation --

13 Q. Okay.

14 A. -- in a, in a -- if he was going to plead.

15 Q. All right. So, so, there are items in this and, and I
16 believe in the transcript you talk about some of the issues
17 with his mental health.

18 Is that correct?

19 A. Yes.

20 Q. Okay. And was there anything else that you recall
21 that, that was done to develop this issue about his mental
22 health?

23 Was there anything that you done that -- to develop it?

24 A. To the best of my memory --

25 Q. Uh-huh.

Gregory Cole - Direct examination
by Mr. Richey

1 A. -- I reviewed the -- thoroughly reviewed the
2 evaluations and then I spoke to Mr. Villarreal regarding his
3 history, mental health history, and things that he had been
4 through.

5 Q. Did you, did you -- when he pled, did you discuss with
6 him anything to do with his sentencing --

7 A. Yes.

8 Q. -- relative to a 30 year sentence?

9 A. I discussed with him that the -- if he took -- if he
10 pled straight up to this charge, that the minimum he could
11 receive would be 30 years but by no means was that a
12 guarantee.

13 Q. And, and we know what straight up is.

14 Can you define what straight up means?

15 A. It was that he agreed to plea without any
16 recommendation or negotiation from the State.

17 Q. Okay. And, and you discussed -- I mean you discussed
18 with him the minimum sentence was 30 years.

19 Did you do --?

20 A. Yes.

21 Q. Okay. And during those discussions, were there any
22 talks about him being able to get that 30 years?

23 A. We discussed that and also he had an offer. It was
24 basically a choice between a, a sentence with a
25 recommendation of 60 years that the solicitor had offered

Gregory Cole - Direct examination
by Mr. Richey

1 and a straight up plea. And, to the best of my memory, we
2 reviewed -- we talked about both of those options thoroughly
3 and I told him that the minimum he could get, if he pled,
4 pled straight up, would be 30 years but that the maximum
5 would be life in prison. And he had to know that he could
6 be sentenced to the maximum if he wanted to go forward with
7 that.

8 I believe, from the best of my memory, I also spoke
9 with him about that sentence of recommendation of 60 years
10 and told him that I may be able to get the solicitor to come
11 down from that some. But that he ultimately chose to plead
12 straight up.

13 Q. Okay. And, and was he aware that he would have to do,
14 do it day for day to -- did, did you discuss that with him?

15 A. Yes, I discussed the -- that it was a, a mandatory
16 minimum of 30 years and that it would be no parole and
17 the -- there would be no good time credit in that situation.
18 I tried to make sure, as much as I could, to emphasize to
19 him that that would be the absolute minimum, absolute best
20 case scenario if we went in there. But by no means was it
21 the -- was it a guarantee or what, what was definitely going
22 to happen.

23 Q. And, and I'm, I'm looking at the transcript on Page 23,
24 24, and 25. You go through an, an extended theme talking
25 about the issues he had with his mental health.

Gregory Cole - Direct examination
by Mr. Richey

1 Is that correct?

2 well, that's what's on the transcript.

3 Do you -- so you went through that, correct?

4 A. Yes.

5 Q. And, and his mother, you talked about how the mother --
6 how at his young age he witnessed that his father beat and
7 almost killed his mom, correct?

8 A. Yes.

9 Q. And was the -- and the mother was not present at the
10 guilty plea.

11 Do you know why she was not there?

12 A. I don't remember.

13 Q. Okay. All right. Answer any questions the attorney
14 general has for you.

15 CROSS-EXAMINATION

16 BY MS. MEADOWS:

17 Q. All right. Mr. Cole, would you mind giving the Court
18 just a brief explanation of these charges and how they
19 arose?

20 A. To the, the best of my memory in this case, the
21 allegations were that Mr. Villarreal carjacked an elder --
22 well, he -- that he got a ride from an elderly couple as a
23 hitchhiker and that he ended up shooting both of them,
24 killing one of them, injuring the other, and then taking the
25 car and picking up or taking the car with the intent to pick

Gregory Cole - Cross-examination
by Ms. Meadows

1 up a girlfriend and drive her out of state.

2 Q. Okay. And I believe she was a minor, correct?

3 A. That's the -- that is my memory that she was a minor.

4 Q. Okay. And during your course of rep -- representation,
5 did Mr. Villarreal appear to comprehend everything you
6 discussed and his rights and et cetera?

7 A. Yes, he appeared to be very responsive and to
8 comprehend everything that I was telling him.

9 Q. Okay. And then, when you took over, Mr. Young had
10 already had the DMH evaluations done, correct?

11 A. That's correct.

12 Q. Okay. And did he also have the evaluations from Doctor
13 Maddox and Doctor Brawley?

14 A. Yes, he had already had those completed as well.

15 Q. Okay. And based on, on those two evaluations, and
16 perhaps your discussions with Mr. Young, did you discuss or
17 entertain the possibility of going to trial with -- and
18 presenting an insanity defense?

19 A. I looked at that possibility and I spoke to Mr.
20 Villarreal about the possibility. But based on my review of
21 those reports, I thought that our chances of prevailing with
22 an insanity defense would be very small.

23 Q. Okay. Okay. And so I believe you said there was just
24 the one offer, the 60 year recommendation?

25 A. Yes.

Gregory Cole - Cross-examination
by Ms. Meadows

1 Q. Okay. And did you believe it was in Mr. Villarreal's
2 best interest to plead guilty?

3 A. Yes.

4 Q. Okay. All right. And then as far as the notice of
5 appeal, is it your general practice to discuss appealing
6 with your clients following guilty plea?

7 A. Yes.

8 Q. Do you dis -- do you recall discussing this with him?

9 A. Yes. Prior to the plea I would have given him -- told
10 him that he would of had 10 days to appeal after that.

11 Q. Okay. Did you think there was any factual or legal
12 basis to appeal?

13 A. No.

14 Q. Okay. Did he ask you to file an appeal?

15 A. No.

16 Q. Okay. All right. Nothing further.

17 THE COURT: All right. Redirect?

18 MR. RICHEY: No questions.

19 Call Ms. Villarreal.

20 THE COURT: All right. You may step down.

21 THE CLERK: would you please come forward and raise
22 your right-hand?

23 THE WITNESS: Yes, ma'am. I'm not allowed by my faith
24 to vow certain things but I will vow, to the best that I
25 can, according to my faith.

Marie Villarreal - Direct examination
By Mr. Richey

1 THE CLERK: Okay. I'll ask.

2 MARIE VILLARREAL, first duly
3 affirming, testified as follows:

4 THE CLERK: Please take a seat there at the witness
5 stand. Thank you.

6 DIRECT EXAMINATION

7 BY MR. RICHEY:

8 A. Move to this?

9 Q. Yeah, a little bit closer so, so we can hear you.

10 A. Okay.

11 Q. Ma'am, can you state your name please?

12 A. My name is Marie Katherine Carol Villarreal. However
13 it has not always been my name.

14 Q. Well, you got to pull that mic up there so we can under
15 -- go -- excuse me.

16 A. However it has not always been my name.

17 Q. Okay. Well, let's go---

18 A. I am---

19 Q. Well, that's your name now, correct?

20 A. It is my name now.

21 Q. Okay. And who's your son in this case?

22 A. My son is John Asher Ferrell Villarreal.

23 Q. Okay. I, I understand.

24 That's your son, right, and, and you have been the
25 primary caretaker for him the majority of his life or all of

Marie Villarreal - Direct examination
By Mr. Richey

1 his, all of his life, correct?

2 A. Yes.

3 Q. And, and you were in a good position to understand what
4 his mental and physical needs are, correct?

5 A. Absolutely.

6 Q. And, in, in this case, can you tell me your level of
7 your involvement in this case?

8 A. I'm not exactly sure what you're asking. But what I
9 can tell you is that I've always been there in the
10 background and there are things that I know about the case
11 that probably no one else here actually knows because of
12 being in the background.

13 When I tried to get involved in the case, when I spoke
14 with the first public defender, he did not even want to give
15 me an audience. He felt that what I had to say and what I
16 had to present wasn't actually important. I even stopped by
17 the office when I would go to the county jail to visit my
18 son and he refused to allow me to actually be involved.

19 When Mr. Lee Cole came on board, I spoke with him when
20 it was time for the sentencing hearing and I explained to
21 him my victim status and how dangerous it is for me actually
22 to be publically exposed. I have criminal felony criminal
23 protective order.

24 Q. Okay. Hold on. Let me, let me chop this up a little
25 bit.

Marie Villarreal - Direct examination
By Mr. Richey

1 A. Okay.

2 Q. Let me ask you this question.

3 A. Okay.

4 Q. Let me ask you this.

5 You got in a real bad domestic -- a domestic situation
6 with your ex-husband, correct?

7 A. We were kidnapped, taken to Ohio. My son doesn't know
8 this part. I hate for him to have to hear it. I was raped
9 and I got assault and battery with intent to kill. My son
10 is the individual who came and found me in the woods curled
11 up in a ball as I was being kicked, slapped, punched in the
12 head. He was the one who actually went and got help for me
13 when I was 10 -- when he was 10 years old.

14 When I got to the hospital, I had a spine that was
15 stick straight.

16 Q. Well, let me, let me ask you this.

17 Your son witnessed you getting beaten, correct?

18 A. He saw it. He saw---

19 Q. Yeah.

20 A. ---his dad making the effort -- when his dad told me
21 that it was my last look.

22 Q. And then -- well, let me say this to you.

23 Then, after you -- after he witnessed that, did that
24 cause any kind of emotional distress or mental health issue
25 with him?

Marie Villarreal - Direct examination
By Mr. Richey

1 A. That's an understatement.

2 Q. Okay.

3 A. My son---

4 Q. But you, you got to say yes or no.

5 A. Yes.

6 Q. Okay. It did and isn't the thing about this case is
7 that he was supposedly going down to Georgia to rescue this
8 young girl, correct, or what he thought was a young girl,
9 correct?

10 A. Correct. And the details---

11 Q. Okay.

12 A. ---all too parallel the actual crime that I was a
13 victim of. In other words, this supposed young girl knew
14 every single thing to target. She knew exactly what to
15 target in reference to what I experienced and what he
16 experienced. Even what he experienced in the hospital at
17 Riverview. He was very close with the young woman there.
18 They had matched them up because their IQs are high. She
19 was the one who cut herself.

20 Q. Okay. Let me, let me do this -- let me -- cause I want
21 to make sure we get the information in, ma'am.

22 okay.

23 A. That's okay.

24 Q. You believe that that, that the incident that occurred
25 with you and your ex-husband that's been documented, you got

Marie Villarreal - Direct examination
By Mr. Richey

1 all the information there, correct?

2 A. Correct.

3 Q. You believe that that inform -- that situation that he
4 was going to was similar to what you had -- he thought was
5 similar to what you were experiencing, right?

6 A. Absolutely.

7 Q. And, and it is your position that that incident
8 triggered, triggered the September -- the first incident
9 triggered the second one, correct?

10 A. Absolutely.

11 Q. And---

12 MS. MEADOWS: Your Honor, I object to this line---

13 Q. ---let me ask this question.

14 THE COURT: Hold on.

15 what's you -- what's the basis?

16 MS. MEADOWS: Just lack of personal knowledge of what
17 her son was or was not thinking.

18 THE COURT: All right. Sustained.

19 Q. Okay. This -- no, no, no, no, no, no. No, it's not
20 important.

21 Okay. Let me -- let me say this.

22 Based off what, what your -- what you believe and what
23 you saw, it is your position that these two incidents are
24 similar based on what you believe, correct?

25 A. Yes, and I have evidence.

Marie Villarreal - Direct examination
By Mr. Richey

1 Q. Okay. All right. Now, ma'am, did you talk to Mr. Cole
2 or anybody about this trigger thing, about the trigger of
3 the incident, the trigger?

4 Did you talk to Mr. Cole about that?

5 A. I wasn't given any opportunity. It moved so fast into
6 flat out guilty plea. I was actually shocked because I'd
7 already been told by Mr. Herbert Young that what I had
8 actually obtained, the evidence that's not just like what
9 was in -- I actually have the factual printed evidence. I
10 was told that it wasn't worth anything.

11 Q. Okay. So, did, did you and Mr. Cole have a
12 conversation about his mental health at all?

13 A. I don't believe so.

14 Q. Okay. Is that something that you seek out to Mr. Cole
15 or anything at all?

16 A. I think by the time Mr. Cole came along it was just
17 such an open and shut deal and I had already had the public
18 defender's door slammed in my face.

19 Q. Okay. Did you -- now, the guilty plea, was it your
20 desire to be there?

21 A. I would of really liked to have been there. But not be
22 exposed. But there was nothing presented to me, when I
23 presented to Mr. Cole my victim status and my need to be
24 kept private, okay, and, and if you don't understand the
25 need, my son was contacted in a letter by his father, who

Marie Villarreal - Direct examination
By Mr. Richey

1 did the assault, while either in jail or at Lee. I can not
2 remember which. I have---

3 MS. MEADOWS: Objection, Your Honor, based on
4 relevance.

5 THE COURT: Mr. Richey.

6 Q. Let me ask -- let me ask you this question, ma'am.

7 Did you want to be involved with your son's case?

8 A. I would of loved to have been involved.

9 Q. And if---

10 A. I tried.

11 Q. And you believe, if you had of been involved with based
12 on all the information you had, his mental health, his
13 history, and all that, that you could of assisted and aided
14 in his case?

15 A. Absolutely.

16 Q. And do you believe that that was been -- beneficial to
17 his case?

18 A. Absolutely.

19 Q. And were you there available and ready to give the
20 information?

21 A. As long as I could of been kept safe and protected.

22 Q. Right.

23 So, as long as your identity -- because the ex-husband
24 was threatening you and all this stuff, correct?

25 A. Yes.

Marie Villarreal - Direct examination
By Mr. Richey

1 Q. Okay.

2 A. This is the first attorney who made any effort to tell
3 me that there were mechanisms to keep me safe. That's the
4 only reason I'm here today. I would not be here today if
5 this man had not told me there were mechanisms to keep me
6 safe and keep me out of public eye because Ms. Yernal's
7 (phonetic) had already put me in the public eye. She
8 printed my name when I told her not to. She printed my
9 address with a map and location.

10 MS. MEADOWS: Objection, Your Honor.

11 Q. Okay---

12 MS. MEADOWS: Relevance.

13 Q. ---ma'am.

14 THE COURT: Sustained.

15 Q. Let me, let me just say this.

16 So, in -- let me just ask you this final question.

17 You wanted to help your son in any way you could,
18 didn't you?

19 A. Absolutely.

20 Q. Okay. Thank you. Answer any questions the attorney
21 general has.

22 THE COURT: All right. Cross.

23 MS. MEADOWS: Just briefly.

24 CROSS-EXAMINATION

25 BY MS. MEADOWS:

Marie Villarreal - Cross-examination
by Ms. Meadows

1 Q. So, is it your testimony today that you never spoke
2 with a social worker or anyone for purposes of Mr.
3 Villarreal obtaining a mental health evaluation?

4 A. When I spoke with someone, I didn't know where they
5 were coming from. They did -- they only asked very specific
6 limited things. I was never given an opportunity to go
7 through all of the medical -- mental history and I often
8 knew I was -- if you can read my report you will find out
9 that there are great reasons why both myself and my son have
10 very difficult times trusting the psychiatric community.

11 His own trauma therapy was thwarted by the main
12 psychiatrist at Riverview. It took for Doctor David Russell
13 to go in and intervene. He was the main trauma
14 psychologist. Psychiatrist was trying to prevent the trauma
15 therapy. It took for Doctor Russell to explain my co-victim
16 status, and, until that happened, we couldn't even get help
17 even though I was the one who was footing the bill.

18 We also have reason to not trust the psychiatric
19 community because they double crossed two medications,
20 Thorazine and Ativan. And for a minimum of three days, that
21 young man, back in 2008, suffered complete short term memory
22 loss. He could not even identify me as his mother. I sat
23 in there with him three straight days in an isolated room
24 comforting him because he did not even have a memory. So,
25 we have a great difficulty trusting the psychiatric

Marie Villarreal - Cross-examination
by Ms. Meadows

1 community.

2 It took for other people to intervene to bring him
3 through and get him out of it and we went through eight,
4 eight years of intensive therapy and at times having to
5 fight the psychiatric community because they didn't want to
6 give him the aid he needed.

7 We even had it arranged, at the end of high school, for
8 him to attend his mansion in New Hampshire. I have all the
9 documentation in here of all of the letters of
10 recommendation that were written.

11 I was basically put in a position of having no say. My
12 hands were tied. He was 18 and they gave him a guardian ad
13 litem who thwarted all the efforts to get him the help in
14 New Hampshire. Had that happened in New Hampshire, we may
15 not be sitting here today.

16 So, ma'am, with all due respect, it is very difficult
17 for the two of us to trust the psychiatric community.

18 Q. So, were you or were you not involved to the extent
19 that a social worker came and spoke with you about your son
20 for purposes of this mental health evaluation?

21 A. No one ever came to me. They did not come to me.

22 Q. You did not speak with anyone?

23 A. On the telephone. That's it.

24 Q. Okay. So you did speak with someone?

25 A. In a very limited fashion, yes.

Marie Villarreal - Cross-examination
by Ms. Meadows

1 MS. MEADOWS: Okay. Nothing further.

2 THE COURT: All right. Redirect?

3 MR. RICHEY: No other questions.

4 We call Mr. Villarreal.

5 THE COURT: Thank you, ma'am.

6 THE CLERK: Sir, if you're able to, can you please
7 stand and raise your right-hand?

8 JOHN VILLARREAL, being first duly
9 sworn, testified as follows:

10 THE CLERK: Thank you. You may take a seat.

11 DIRECT EXAMINATION

12 BY MR. RICHEY:

13 Q. Sir, will you state your name please?

14 A. My name is John Asher Ferrell Villarreal.

15 Q. And are you currently in the Department of Corrections?

16 A. Yes, I am.

17 Q. And are you in there for the charges that was discussed
18 by -- that was outlined by the attorney general?

19 A. Yes, I am.

20 Q. Okay. And who -- did, did Lee Cole represent you on
21 those cases?

22 A. Yes, he did.

23 Q. At the guilty plea?

24 He did?

25 A. Yes, he did.

John Villarreal - Direct examination
by Mr. Richey

1 Q. And did you have any discussions with him about this
2 sentencing and all that about your case?

3 A. Yes, very briefly.

4 Q. Okay. When you say very briefly, what does that mean?

5 A. We met for about a half hour or less one time.

6 Q. Okay. And is that all the time that you met with him
7 prior to the case?

8 A. Yes, it is.

9 Q. Okay. And during that 30 minute window, y'all
10 discussed the potential sentences.

11 What was your understanding of what the potential
12 sentence you would receive is?

13 A. My understanding was that the only two options he was
14 willing to pursue were either a trial, in which case I would
15 plead not guilty, or to take an open guilty plea and he led
16 me to believe that I would get approximately 30 years due to
17 my young age and having never been in trouble with the law
18 before.

19 Q. Okay. And you just said because of your age.

20 How old were you?

21 A. When I was arrested I was 22 years old.

22 Q. Okay. And he said based on your age and your lack of a
23 prior record.

24 Is that correct?

25 A. Yes.

John Villarreal - Direct examination
by Mr. Richey

1 Q. Okay. And what type of prior record did you have?

2 A. I had no prior criminal record.

3 Q. Okay. And so, so you were -- pretty much felt
4 comfortable thinking you were gonna get 30 years, correct?

5 A. Yes.

6 Q. Okay. And after the sentence, did you have an
7 opportunity to talk with Mr. Cole?

8 A. No, I did not.

9 Q. Okay. Were you, were you surprised at the sentence you
10 got?

11 A. Yes, I was.

12 Q. Okay. And this, this case, there was a lot of issue
13 dealing with your mental health.

14 Is that correct?

15 A. Yes.

16 Q. Okay. And you heard your mom's testimony.

17 Was that a major part of it, some of the stuff she
18 said?

19 A. Absolutely.

20 Q. And was she the -- was she the sole provider for you or
21 sole custodial person for you when you were growing up?

22 A. Yes, she was.

23 Q. She had, from your understanding, she had primary
24 custody of you?

25 A. Yes.

John Villarreal - Direct examination
by Mr. Richey

1 Q. And when you went to doctors or stuff, did she take
2 you?

3 A. Yes, she did.

4 Q. Okay. And did she have a good understanding about your
5 mental health situation growing up?

6 A. A perfect understanding.

7 Q. And, and when you were in Connecticut she did all that
8 stuff, right?

9 Correct?

10 A. Yes.

11 Q. Baltimore, all these places, she's the one that got you
12 to these places?

13 A. Yes.

14 Q. Okay. And do you believe that she was in a good
15 enough -- the best position to outline to everybody what was
16 going on with you?

17 A. Yes, I do.

18 Q. Okay. Do you believe that she's in a -- the best
19 position to come to court and outline what was wrong with
20 you?

21 A. Yes, I do.

22 Q. Okay. And you -- she was not at your guilty plea,
23 correct?

24 A. That's correct.

25 Q. And do you understand why she wasn't here?

John Villarreal - Direct examination
by Mr. Richey

1 A. Not entirely.

2 Q. Okay. Did, did -- you heard her testimony and there
3 was some issue of safety with her, correct?

4 A. Yes.

5 Q. Okay. Let me go back to this.

6 When you were young, your mother and father, there was
7 a bad situation with them, correct?

8 A. Yes, there was.

9 Q. And your mother took a substantial amount of abuse from
10 your daddy, correct?

11 A. Yes.

12 Q. Okay. And how old were you then?

13 A. That was from the time I was eight until the time I was
14 10.

15 Q. Okay. And, and that, that has created this
16 posttraumatic stress under all -- and a trigger for you,
17 correct?

18 A. Yes.

19 May I add one brief comment?

20 Q. What's that?

21 A. May I add one brief comment?

22 Q. Yeah, go ahead.

23 A. There was also extremely early abuse by my father
24 toward me --

25 Q. Right.

John Villarreal - Direct examination
by Mr. Richey

1 A. -- both physical and sexual when I was extremely young,
2 one and a half and two years old.

3 Q. Okay.

4 A. I still have flashbacks from it.

5 Q. And, and did you discuss the sex abuse with any of
6 these evaluators?

7 A. I did not.

8 Q. Okay.

9 A. I was too embarrassed to.

10 Q. Did your mom know about the sex abuse?

11 A. Yes.

12 Q. Okay. And so, when this girl down in Georgia basically
13 called you up as -- well, contacted you and said she was
14 suffering from an abuse from a stepdad, that, that really
15 triggered you.

16 Is that correct?

17 A. Yes, it did.

18 Q. And, and, and it kind of put you in the state of mind
19 that, that that was not normal, correct?

20 A. Very much so.

21 Q. And, and so did you, did you talk with Mr. Cole about,
22 about this before your plea?

23 A. I didn't have an opportunity to.

24 Q. So, you didn't have an opportunity to talk to him at
25 all about this trigger, this -- any of the sort?

John Villarreal - Direct examination
by Mr. Richey

1 A. No.

2 Q. And did -- Mr. Cole represented you for more than a,
3 more than two months, correct?

4 A. Yes.

5 Q. It was like what, about six months?

6 A. Approximately.

7 Q. And so, in six months time before that plea, you
8 didn't -- you weren't able to discuss all this with him,
9 correct?

10 A. No, I was not.

11 Q. Okay. And do you believe that that was beneficial to
12 your case?

13 A. No, it was not.

14 Q. Okay. And so, you're asking this Court, based on that,
15 to grant you a new trial, correct?

16 A. Yes, I do.

17 Q. And you believe that Mr. Cole did not effectively
18 represent you, correct?

19 A. That's correct.

20 Q. And, and you relied on your mom's testimony and yours
21 too, correct?

22 A. Yes, I do.

23 Q. Thank you. Answer any questions the attorney general
24 may have for you.

25 THE COURT: Cross.

John Villarreal - Cross-examination
by Ms. Meadows

1 MS. MEADOWS: Just briefly, judge.

2 CROSS-EXAMINATION

3 BY MS. MEADOWS:

4 Q. So you testified that Mr. Cole told you you would get
5 30 years?

6 A. He led me to believe that, yes.

7 Q. How did he lead you to believe that?

8 A. He told me that it was most likely that I would get
9 about 30 years. He told me that I would probably not get
10 any where near the maximum sentence.

11 Q. Okay. But he did tell you you could possibly receive
12 life in prison, correct?

13 A. He told me that the sentence carried 30 to life but
14 that I would probably not receive life.

15 Q. Okay. But he told you that there -- that that was a
16 possibility, correct?

17 A. A very remote one.

18 Q. Okay. And then you also claimed he failed to file an
19 appeal on your behalf.

20 When did you ask him to file that appeal?

21 A. I had not asked him to file because I had not been
22 advised that I was able to appeal.

23 Q. So he---

24 A. I was never told I could.

25 Q. So he never told you before your plea that you could

John Villarreal - Cross-examination
by Ms. Meadows

1 appeal?

2 A. No, he did not.

3 MS. MEADOWS: Okay. Nothing further, judge.

4 THE COURT: All right. Any redirect?

5 MR. RICHEY: No other questions.

6 THE COURT: All right. You may step down, sir.

7 MR. RICHEY: No other witnesses.

8 THE COURT: All right. Anything else -- anything from
9 the State?

10 MS. MEADOWS: Your Honor, I'd just like to re, recall
11 Mr. Cole briefly.

12 THE COURT: All right. Mr. Cole, remember you are
13 under oath.

14 GREGORY COLE, having been previously
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MEADOWS:

18 Q. All right. Mr. Cole, do you recall approximately how
19 many times you met with Mr. Villarreal?

20 A. From the best of my memory, and, and also in looking
21 back at my notes, I believe that I met with him three times.

22 Q. Okay. And as far as sentencing, did you -- what
23 specifically did you advise him, if you recall, about
24 whether he would get 30 years to life or what his chances
25 were based on your opinion?

Gregory Cole - Direct examination
by Ms. Meadows

1 A. The best of my memory, as to the, the sentencing, that
2 would of been that I advised him that he could get life---

3 Q. Okay.

4 A. ---as the maximum sentence, that I did advise him that,
5 due to his youth and due to his lack of record, that we had
6 a chance of getting a better sentence than that and getting
7 something closer to the minimum or closer to a term of years
8 instead of life. And I told him that I would do everything
9 that I could to make the argument to the Court in doing
10 that, and that generally, in my experience, a person in his
11 situation, especially based on the evidence in this case,
12 that if he were to plead guilty, he had a better chance of
13 not getting life than he would have if we would of went
14 forward with a trial.

15 Q. Okay. And I believe the judge also advised him of the
16 minimum and maximum he could receive, correct?

17 A. Yes.

18 Q. Okay. And then do you recall -- I might -- may ask you
19 this before.

20 But do you recall ever speaking with his mother or his
21 mother to reach out to you?

22 A. I do recall speaking to her and, and her testimony
23 jogged my memory. I, I do recall -- I'm not, not sure how
24 many times I spoke to her. But I do recall speaking to her
25 specifically about whether she wanted to come to the plea

Gregory Cole - Direct examination
by Ms. Meadows

1 and she had a reason -- she had some reasons based on her
2 safety, I can't remember exactly what they were, that she
3 did not want to attend in person.

4 Q. Okay. And did she approach you or attempt to speak
5 with you about Mr. Villarreal's mental health history or
6 anything like that?

7 A. Not that I can recall.

8 MS. MEADOWS: Okay. Nothing further, judge.

9 THE COURT: All right.

10 MR. RICHEY: No questions.

11 THE COURT: All right. Thank you, sir.

12 MS. MEADOWS: And, Your Honor, the State rests.

13 If we could, if we could approach briefly?

14 THE COURT: Yeah.

15 (WHEREUPON, a bench conference was held at this time.)

16 THE COURT: All right. Anything else from the State?

17 MS. MEADOWS: Nothing further, Your Honor.

18 THE COURT: All right. Anything from the applicant?

19 MR. RICHEY: No, Your Honor.

20 THE COURT: All right. I thank you both. I will take
21 it under advisement and will let you know of my decision.

22 Thank you.

23 MR. RICHEY: Thank you, Your Honor.

24 MS. MEADOWS: Thank you, judge.

25

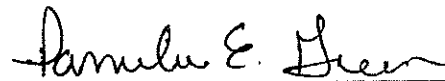
1 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Anderson County, South Carolina, on the 22nd day of August, 2022.

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

December 19th, 2022



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

John A. Villarreal, SCDC #373533,

Applicant,

v.

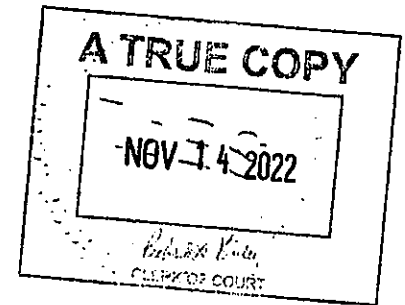
State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2018-CP-04-1051

ORDER OF DISMISSAL



I. INTRODUCTION

This matter comes before the Court by way of post-conviction relief (PCR) action commenced by John A. Villarreal (Applicant) on May 30, 2018, alleging he is entitled to post-conviction relief based on constitutionally ineffective assistance of counsel. The State requested an evidentiary hearing through its return on October 12, 2018. A hearing into the matter convened before the undersigned on August 22, 2022, at the Anderson County Courthouse. Applicant was present at the hearing and represented by Rodney W. Richey. Assistant Attorney General Lillian L. Meadows appeared on behalf of the State. During the course of the hearing, the following individuals testified: (1) Applicant; (2) Applicant's trial counsel, Gregory Lee Cole, Jr.; and (3) Applicant's mother, Maria Catherine Farrell Villarreal.

In addition to testimony from those individuals, this Court had before it: (1) the transcript from Applicant's August 10, 2017, plea; (2) the records from the Anderson County Clerk of Court regarding the subject convictions, including the indictments and arrest warrants; (3) the consent orders for a competency to stand trial evaluation and a criminal responsibility and capacity to confirm evaluation; (4) Applicant's inmate records from the South Carolina Department of

Corrections; and (5) the pleadings filed in Applicant's post-conviction relief action. This Court additionally had before it extensive records and reports pertaining to Applicant's mental health, including (1) the pre-trial report issued by Dr. Richard L. Frierson of the South Carolina Department of Mental Health evaluating Applicant's competency to stand trial; (2) the pre-trial report issued by Dr. Frierson evaluating Applicant's criminal responsibility and capacity to conform; (3) Dr. Frierson's addendum to his competency to stand trial and criminal responsibility evaluations based on additional records obtained; (4) the pre-trial report issued by forensic psychiatrist, Dr. Donna Maddox, who conducted a psychiatric evaluation on Applicant; and (5) the pre-trial report issued by clinical psychologist and neuropsychologist Dr. Tora L. Brawley, who conducted an extended clinical interview and administered a battery of psychological tests to Applicant.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant failed to establish any constitutional violations or deprivations entitling him to post-conviction relief. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. Applicant was arrested on December 31, 2014, following an investigation into the murder of Mary Fowler and attempted murder of James Dobson. During its April 2015 term, the Anderson County Grand Jury indicted Applicant for murder (2015-GS-04-0693); attempted murder (2015-GS-04-0692); carjacking (2015-GS-04-0691); and possession of a weapon during the commission of a violent crime (2015-GS-04-0693).

On August 10, 2017, Applicant appeared before the Honorable R. Scott Sprouse and pleaded guilty as indicted without formal negotiations or recommendations from the State as to sentencing. Gregory L. Cole, Jr., represented Applicant. Tenth Circuit Solicitor David R. Wagner, Jr., and Senior Assistant Solicitor Lauren D. Price prosecuted the case. Judge Sprouse accepted Applicant's plea and sentenced him to concurrent terms of life imprisonment for murder, thirty years for attempted murder, thirty years for carjacking, and five years for possession of a weapon during the commission of a violent crime. Applicant did not appeal his pleas or sentences.

III. SUMMARY OF FACTS

On December 23, 2014, Applicant received a Facebook message from a seventeen-year-old girl living in Fitzgerald, Georgia, telling Applicant her stepfather was abusing her. (Plea Tr. 7). She and Applicant were in an online romantic relationship at the time. (Plea Tr. 7). Because he did not own a vehicle, Applicant responded by asking the girl if she would go with him if he was able to steal a car and come pick her up. (Plea Tr. 7-8). The girl agreed. (Plea Tr. 8).

The following day, on December 24, 2014, Applicant unsuccessfully attempted to hot-wire a car. (Plea Tr. 8). He was standing on Fletcher Street in Greenville when the victims, James Dobson and Mary Fowler, stopped their car to speak with him. (Plea Tr. 8). Applicant asked if they could give him a ride to I-85 in exchange for five dollars. (Plea Tr. 8). The couple agreed. (Plea Tr. 8). Once they reached I-85, Mr. Dobson and Ms. Fowler additionally agreed to take Applicant to the Georgia state line for an additional twenty-five dollars. (Plea Tr. 8). At some point during their drive to Georgia, Applicant asked Mr. Dobson to pull over so he could urinate. (Plea Tr. 8). As soon as Mr. Dobson pulled over and put the car in park, Applicant shot Ms. Fowler in the back of the head. (Plea Tr. 8). He then shot Mr. Dobson multiple times. (Plea Tr. 8). Applicant dumped their bodies on the side of I-85. (Plea Tr. 8).

At 6:17 am, a call came into 9-1-1, reporting a male lying on the right shoulder of I-85 at mile marker 16 in Anderson County. (Plea Tr. 9). Deputies responded and found Mr. Dobson and Ms. Fowler, both of whom were still alive at that point. (Plea Tr. 9). They were transported to the hospital via EMS. (Plea Tr. 9).

Meanwhile, Applicant drove their vehicle, a Hyundai Elantra, to the first exit south from that location and dumped the couple's belongings on the side of the road. (Plea Tr. 8). He then drove up the street and swapped the license plate with one registered for a white SUV. (Plea Tr. 8). Applicant then proceeded to a Love's truck stop, where he cleaned out the car and cut out the seatbelts, which had blood stains on them. (Plea Tr. 8-9). He then continued driving to Georgia. (Plea Tr. 9).

Applicant arrived at the seventeen-year-old girl's home around noon. (Plea Tr. 9). Once there, he immediately got in an altercation with her mother. (Plea Tr. 9, 19). The girl's parents called police, who released Applicant shortly after their arrival. (Plea Tr. 9, 19). He then proceeded back to South Carolina, again in the stolen Elantra (Plea Tr. 9). At some point during his drive, Applicant was stopped by a Georgia State Trooper, who issued him a speeding ticket. (Plea Tr. 9). Applicant then continued driving to the property on Fletcher Street in Greenville where he was initially picked up by Mr. Dobson and Ms. Fowler. (Plea Tr. 9). He then proceeded to his home in Travelers Rest via bicycle. (Plea Tr. 9). That same evening, Ms. Fowler died from the gunshot wound to her head. (Plea Tr. 9).

Five days later, on December 29, 2014, Applicant again attempted to retrieve the teenage girl from Georgia in the stolen Elantra. (Plea Tr. 9). He was again unsuccessful. (Plea Tr. 9). Upon his return to South Carolina, Applicant stopped at the Anderson County library to send the girl a Facebook message before driving to a friend's home. (Plea Tr. 9-10). Deputy Coward with the

Anderson County Sheriff's Office happened to drive by the residence the following morning. (Plea Tr. 10). He noticed the vehicle, which was occupied by a white male, matched the description of the vehicle officers were searching for as part of their investigation into the shooting of Ms. Fowler and Mr. Dobson. (Plea Tr. 10). Deputy Coward approached the vehicle and ultimately apprehended Applicant. (Plea Tr. 10).

Applicant gave two statements to law enforcement. (Plea Tr. 10). In the first statement, he provided a false narrative and blamed his possession of the vehicle on a friend, who Applicant claimed let him borrow the car. (Plea Tr. 10). In the second statement, however, Applicant confessed to all of the aforementioned events. (Plea Tr. 10). He provided explicit details about his plans, including how he intended to return to Georgia for a third time to conduct what he called a "wet extraction" of the girl from her home. (Plea Tr. 10, 17). He planned to kill the girl's stepfather, mother, and older brother. (Plea Tr. 10, 17-18). Applicant explained that he called it a "wet extraction" because it would be so bloody. (Plea Tr. 10-11, 17-18). He also gave details about his plan to kill the law enforcement officers he encountered. (Plea Tr. 19).¹

Four firearms belonging to Applicant were recovered from the stolen Elantra, including the Walther P22 that a firearms expert matched to the bullets recovered from Mr. Dobson and Ms. Fowler. (Plea Tr. 11). A rain suit was also found in the vehicle, which Applicant told investigators he planned to wear during the "wet extraction" because it was dark in color and because blood would wash off easily. (Plea Tr. 10). While searching Applicant's home, law enforcement recovered materials from Mr. Dobson's wallet; articles from local newspapers, which detailed the

¹ Applicant told Detective Mitchell that he did not kill the first officer he encountered in George because he noticed a red light on the patrol car, which indicated he was being recorded. (Plea Tr. 19). He stated he did not kill the other two officers—the George trooper and the Deputy Coward—because they were being nice to him. (Plea Tr. 19).

killing and the investigation; and the two shell casings from the bullets used to shoot Mr. Dobson and Ms. Fowler. (Plea Tr. 11).

Mr. Dobson survived the attack but was in critical care for a lengthy period of time. (Plea Tr. 9). He suffered two gunshots wounds to the head, both of which entered behind his right ear and exited out of his left eye. (Plea Tr. 12). As a result, Mr. Dobson lost his left eye and is paralyzed on the entire left side of his body. (Plea Tr. 12).

IV. ISSUES BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following reasons (verbatim):

1. Ineffective assistance of trial counsel for failing to file notice of appeal;
2. Ineffective assistance of trial counsel for failing to present an insanity defense;
3. Ineffective assistance of trial counsel for failing to advise applicant of all available defenses;
4. Ineffective assistance of trial counsel for failing to adequately investigate and prepare for trial;
5. Ineffective assistance of trial counsel for failing to challenge statements presented by prosecution; and
6. Prosecutorial misconduct for presenting misleading and inflammatory statements to the plea court.

At the start of the hearing before this Court, Applicant, through PCR counsel, expressly withdrew the allegation of prosecutorial misconduct and the related claim of ineffective assistance of counsel for failing to challenge statements presented by the prosecution. He indicated Applicant would be proceeding only on the following claims in addition to the five remaining allegations of ineffective assistance of trial counsel pled in the original application:

1. Ineffective assistance of trial counsel for promising Applicant he would only receive a thirty-year sentence; and
2. Ineffective assistance of trial counsel for failing to sufficiently investigate and present mitigating circumstances regarding Applicant's mental health.

V. SUMMARY OF TESTIMONY FROM EVIDENTIARY HEARING

John Villarreal

At the hearing, Applicant testified he met with Mr. Cole only once for thirty minutes or less. When asked about his understanding of the potential sentence he could receive, he stated there were only two options Mr. Cole was willing to pursue—a trial or an “open” guilty plea. Applicant testified Mr. Cole led him to believe that he would receive a thirty-year sentence because he was young and had no prior criminal record. Applicant further stated Mr. Cole told him it was “most likely” that he would receive approximately thirty years and that he “wouldn’t get anywhere near the max.” Specifically, Applicant recalled Mr. Cole telling him it was a “remote possibility” that he would receive life. He further testified that he did not have the opportunity to speak with Mr. Cole after his plea and that he was surprised he received a life sentence. Additionally, Applicant testified he did not ask Mr. Cole to file an appeal because he was never told that he could appeal his plea.

Regarding the claims pertaining to his mental health, Applicant confirmed he had mental health issues and that his mother could have testified to those issues. He stated that she had primary custody of him when he was younger; that she took him to doctors’ appointments; and that she had a “perfect understanding” of his mental health status. He testified that he was not sure why his mother was not at his plea hearing, although he had heard her say there was some issue with safety.

Applicant also testified that his father started abusing his mother when he was eight years old and that the abuse continued until he was ten. He explained he had post-traumatic stress disorder (PTSD) as a result of the abuse. He also testified that his father sexually abused him when he was one or two years old and that it still gives him flashbacks. Applicant stated he was too embarrassed to tell the doctors, but that his mother was aware of the abuse.

Applicant further explained that, when the girl in Georgia told him she was being abused by her stepfather, it triggered him such that it put him in an “abnormal state of mind.” However, Applicant testified he never spoke with Mr. Cole about any of this.

Maria Catherine Farrell²

Applicant’s mother, Maria Catherine Farrell, also testified at the PCR hearing. She stated that she has been Applicant’s primary caretaker his entire life and that she understands his mental and physical needs. When asked about her level of involvement in Applicant’s case, Ms. Farrell stated she had “always been there in the background.” She also stated that she knows things about the case that nobody else knows. Ms. Farrell additionally testified that, when she tried to speak with the first public defender that represented Applicant, he did not want to listen to her and did not think what she had to say was important. In fact, Ms. Farrell testified that the public defender “refused to let [her] get involved” and that he “wouldn’t let [her] see [her] son.”

She additionally testified that she advised Mr. Cole of her victim status; that she has a federal felony protective order; and that it would be dangerous for her to be exposed. Ms. Farrell explained that she had a bad domestic violence situation with her ex-husband. She stated that she and Applicant were kidnapped by her ex-husband and taken to Ohio. She testified she was raped and that her ex-husband committed assault and battery with the intent to kill her. Ms. Farrell recalled one instance where Applicant found her curled into a ball and helped her get to the hospital after she was slapped and kicked by her ex-husband.

She also stated Applicant witnessed her being beaten, which caused him extreme distress. She believes the details of the crimes Applicant committed against Mr. Dobson and Ms. Fowler parallel those that she experienced at the hands of her ex-husband. Ms. Farrell also testified that

² Ms. Farrell testified her last name used to be Villarreal, but that she changed her name in 2008.

the victim, Ms. Fowler, "knew exactly how to attack" Applicant and stated that Ms. Fowler was cutting herself in the hospital. She further reiterated that the incident she experienced and the incident Applicant committed were similar. She said she had enemies.

When asked if she spoke with Mr. Cole about abuse involving her ex-husband, Ms. Farrell stated she was not given the chance to because the case quickly turned into a guilty plea. She testified she was shocked by this. Ms. Farrell also testified that Mr. Young told her that her "evidence wasn't worth anything." When asked if she discussed Applicant's mental health with Mr. Cole, Ms. Farrell stated that she does not believe she did. By the time Mr. Cole came along, she explained, it was an "open and shut deal." She stated the public defender's door had already been shut in her face.

Ms. Farrell was then asked why she did not attend Applicant's plea hearing. She stated that she wanted to be there but she could not attend without being "exposed." She reiterated that she must "keep things private" but that she wanted to help her son in any way she could. Ms. Farrell then reiterated that she wanted to be involved in Applicant's case and that she tried. She stated she could have helped had she been involved. She testified she was there and ready to give information as long as she could be kept safe and protected from her ex-husband. She recalled a journalist printing her name without her permission. She also mentioned that Applicant's father contacted him by letter while he was in jail.

On cross-examination, Ms. Farrell was asked if she ever spoke with a social worker or anyone regarding Applicant's mental health evaluations. She stated that she, while she did speak with someone, she "didn't know where they were coming from." She later testified that she only spoke with the person on the phone and in a very limited fashion and that she was never given a chance to go through all of her son's mental and physical history. Ms. Farrell also explained that

she and her son did not trust the psychiatric community because they crossed two medications that caused Applicant to suffer short-term memory loss such that he “did not have any memories.” She stated that the two of them went through eight years of intense therapy while fighting the psychiatric community because they allegedly did not want to give Applicant the treatment he needed. She stated “they” assigned Applicant a guardian ad litem, which meant her hands were tied. Had that not happened, Ms. Farrell explained, Applicant “probably would not be in this situation.”

Gregory Lee Cole, Jr.

Mr. Cole testified that former Chief Tenth Circuit Public Defender Hervery B.O. Young first represented Applicant. However, Mr. Cole took over representation of Applicant after Mr. Young was hired as Deputy Director of the South Carolina Commission of Indigent Defense. Mr. Cole testified that, by the time he became involved in the case in 2017, several mental health evaluations had been completed on Applicant. Specifically, Mr. Cole was given reports issued by Dr. Richard L. Frierson of the South Carolina Department of Mental Health on Applicant’s competency to stand trial and criminal responsibility in March 2016;³ a report issued by forensic psychiatrist Dr. Donna Maddox in May 2015; and a report issued by clinical psychologist and neuropsychologist Dr. Tora L. Brawley in February 2016.

Mr. Cole testified he met with Applicant at least three times to discuss his case. He stated Applicant was engaging and responsive in their conversations, and that he appeared to comprehend everything they discussed. Regarding the evaluations, Mr. Cole testified he reviewed the reports

³ These evaluations were conducted pursuant to a consent order for competency to stand trial evaluation pursuant to *State v. Blair* and a consent order for criminal responsibility and capacity to confirm evaluation. Both orders were issued by the Honorable R. Lawton McIntosh on January 14, 2016.

extensively and spoke with Applicant about his history of mental health issues and trauma he had been through. When asked whether Applicant's mental health was an issue, Mr. Cole testified he planned on bringing it up in mitigation if Applicant chose to plead guilty. Mr. Cole then confirmed that he did ultimately advise the plea court of Applicant's mental health issues, diagnoses, and childhood trauma, which he learned about from the evaluations and his conversations with Applicant.

When asked whether he considered pursuing an insanity defense, Mr. Cole testified he did consider doing so at first and that he spoke with Applicant about it. However, based on his review of the evaluations, Mr. Cole believe that their chances of successfully asserting an insanity defense would be minimal. Mr. Cole recalled thoroughly explaining to Applicant why an insanity defense would not be successful in his case and the legal standard for insanity in South Carolina.

Mr. Cole was then asked whether he ever spoke with Applicant's mother and, if so, what they discussed. Mr. Cole testified he recalled speaking with Applicant's mother on at least one occasion. He could not tell from his notes whether they specifically discussed Applicant's mental health. However, Mr. Cole specifically recalled asking Applicant's mother if she would attend the plea hearing. She told him she did not want to attend in person due to safety concerns of some sort.

Regarding sentencing, Mr. Cole testified that he advised Applicant he could receive a life sentence. However, he told Applicant that due to his youth and lack of record, there was a possibility he would receive something close to the minimum or a term of years rather than life. Mr. Cole advised Applicant he would do everything he could to convince the court to sentence him accordingly.

When asked about plea offers, Mr. Cole testified that there was only one offer made by the solicitor, which was for Applicant to plead guilty as indicted with a recommendation from the State

for sixty years' imprisonment. He advised Applicant that he may be able to convince the solicitor to come down from that sixty-year recommendation.

The other option was a "straight up" plea, meaning Applicant would plead guilty as indicted without formal negations or recommendations from the State as to sentencing. Mr. Cole testified that he and Applicant discussed both options thoroughly. He advised Applicant that if he pled straight up, the minimum sentence he could receive was thirty years and the maximum was life. Mr. Cole also confirmed that Judge Sprouse advised Applicant of the minimum and maximum sentence he could receive.

Mr. Cole also testified he made it clear to Applicant that, if he chose to plead guilty, he would be required to serve whatever sentence he received day-for-day and that he would not be eligible for parole. He additionally told Applicant that he would not qualify for any good time, work, or education credits in SCDC that would reduce his sentence.

When asked if he discussed with Applicant whether he would receive a thirty-year sentence, Mr. Cole reiterated that he never guaranteed to Applicant that he would receive the minimum. Rather, he advised Applicant that thirty years would be the best possible scenario. Mr. Cole additionally testified that he believed it was in Applicant's best interest to plead guilty given the egregious nature of the crimes and the evidence against him, including the multiple confessions to law enforcement. In his experience, Mr. Cole explained, it would be significantly more likely that Applicant would receive a life sentence if he went to trial and that he had a better chance of receiving a more favorable sentence if he pleaded guilty.

Regarding Applicant's claim that Mr. Cole failed to file an appeal, Mr. Cole testified that it is his general practice to discuss with his clients their right to appeal prior to pleading guilty. He stated he did so in this case, and that he told Applicant prior to the plea hearing that he would have

ten days to file a notice of appeal. Mr. Cole stated that he did not see any basis to appeal and that Applicant never asked him to file a notice of appeal for him.

VI. STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act⁴ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief 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).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee all criminal 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

⁴ S.C. Code Ann. §§ 17-27-10 to -160.

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).

The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective 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) there is a reasonable probability the outcome of the proceeding would have been different but for counsel's deficient performance. *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing *Strickland*, 466 U.S. 668). 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 bears the heavy burden of establishing both prongs of the *Strickland* standard by a preponderance of the evidence. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "fell below an objective standard of reasonableness" as measured by "prevailing professional norms." *Strickland*, 466 U.S. at 688. Reviewing courts should be deferential in this inquiry, and apply "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at

689. With respect to prejudice, the applicant must demonstrate “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.* When evaluating this probability, the reviewing court “should consider the specific impact counsel’s error had on the outcome of the trial” coupled with “the strength of the State’s case in light of . . . the [totality of the] evidence presented to the jury.” *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018). Significantly, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, 466 U.S. at 696.

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler v. State*, 286 S.C. 441, 445, 334 S.E.2d 813, 816 (1985). “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’” *Dunn v. Reeves*, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

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 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*, 582 U.S. ___, ___, 137 S. Ct. 1958, 1966 (2017). However, the 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. Judges must “look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Lee*, 582 U.S. at ___, 137 S. Ct. at 1967. 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).

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. at ____, 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. at ____, 137 S. Ct. at 1967. 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).

VII. FINDINGS OF FACT & CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of trial counsel through the post-conviction relief action presently before this Court. This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. Additionally, this Court has considered the legal arguments by counsel and the records in this action incorporated by way of the State's return. Upon conducting and completing its analysis, this Court finds Applicant has failed to meet the high burden required for a grant of post-conviction relief. Pursuant to S.C. Code Ann. § 17-27-80,

this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

A. Failure to Investigate and Prepare Defense

Applicant first raises a general claim of ineffective assistance of counsel for failure to adequately investigate, prepare for trial, and advise Applicant of all available defenses. This Court disagrees, and finds Applicant failed to overcome the strong presumption that Mr. Cole rendered adequate assistance and exercised reasonable professional judgment in his representation of Applicant at all stages of the proceedings. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, 466 U.S. at 689); see *White v. Singletary*, 972 F.2d 1218, 1220 (11th Cir. 1992) (instructing reviewing courts evaluating a claim of ineffective assistance of counsel to “at the start presume effectiveness” and “always avoid second guessing with benefit of hindsight”). Mr. Cole’s credible testimony demonstrates he met with Applicant several times; discussed the possibility of going to trial and potential strategies; and thoroughly advised Applicant of all of his options for resolving the charges he faced. Applicant’s own testimony, although predominantly incredible, establishes he met with Mr. Cole to discuss the State’s evidence and the possibility of going to trial prior to his plea.

This Court finds that Applicant’s representations to the plea court additionally undermine these claims of ineffective assistance by Mr. Cole. Judge Sprouse thoroughly reviewed with Applicant the constitutional rights he waived by pleading guilty, and specifically advised Applicant that he would waive his right to present any defenses he may have. (Plea Tr. 6). Applicant stated he understood and wished to waive these rights in order to plead guilty. (Plea Tr. 6). Further, Applicant advised Judge Sprouse during the plea colloquy that he had enough time to speak with Mr. Cole about his case; that Mr. Cole had answered all of this questions; that Mr. Cole had done

everything Applicant asked him to do; and that he was completely satisfied with Mr. Cole's services. (Plea Tr. 7).

Finally, Applicant failed to present evidence or testimony of any viable defense, investigative tactic, or alternate strategy Mr. Cole should have explored which would have helped Applicant's case or affected his decision to plead guilty. *See, e.g., Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court's grant of relief where the applicant failed to "present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial"); *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) ("To establish applicant was prejudiced as a result of counsel's failure to prepare for trial, the applicant must present evidence to show how the discoverable matters or defenses would have resulted in a different outcome."); *see also Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (noting that to establish prejudice based on failure to investigate or prepare for trial when the applicant enters a guilty plea, he must ordinarily present some evidence "that would have affected counsel's advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it"). Accordingly, Applicant's general claims of ineffective assistance of counsel for failure to investigate and prepare defense are **DENIED**.

B. Mental Health

Applicant's specific claims of ineffective assistance of counsel pertaining to Mr. Cole's purported failure to investigate and prepare for trial stem from the same underlying issue—

Applicant's mental health and, specifically, Mr. Cole's alleged failure to adequately consult Applicant's mother about her son's mental health issues. Specifically, he contends Mr. Cole's failure to (1) pursue an insanity defense for trial; and (2) present mitigating circumstances regarding Applicant's mental health at his guilty plea constitutes deficient performance under *Strickland* and that he was prejudiced as a result. This Court disagrees.

1. Deficiency

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). Essentially, trial "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691.

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 597 ("Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation."). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690–91; *see id.* ("In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision

that makes particular investigations unnecessary.”). Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

For both the insanity defense and mitigation claims, Applicant’s deficiency prong is predicated on Mr. Cole’s failure to adequately confer with Applicant’s mother, involve her in the process, and ultimately use her as a resource to navigate the investigation into his mental health issues. Recognizing the strength and applicability of the presumption that counsel rendered effective assistance, this Court finds Applicant failed to demonstrate Mr. Cole’s performance “fell below an objective standard of reasonableness” as measured by “prevailing professional norms” in this regard. *Id.* at 688.

First, Mr. Cole credibly testified that he spoke with Applicant’s mother on at least one occasion although he could not recall whether they discussed Applicant’s mental health issues. However, he specifically recalled Applicant’s mother telling him she did not want to attend in person due to safety concerns of some sort. Second, Mr. Cole reasonably relied on the conclusions and information relied upon in all four evaluations—two of which included Applicant’s mother as a source of information—in deciding not to investigate further. Third, Applicant failed to identify any information his mother could have contributed to Mr. Cole’s investigation or strategy pertaining to Applicant’s mental health in any significant way. *See Strickland*, 466 U.S. at 690 (To prove deficient performance, the applicant must “identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment” and 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.). Accordingly this Court finds Applicant failed to satisfy the deficiency prong of *Strickland*.

2. *Prejudice*

i. Insanity Defense

Regarding Applicant’s claim he was prejudiced by Mr. Cole’s failure to pursue an insanity defense, this Court finds Applicant failed to demonstrate a reasonable probability that, but for Mr. Cole’s failure to adequately consult with his mother and further investigate his mental health issues, Applicant would not have pleaded guilty and would have insisted on going to trial. Even assuming Counsel was deficient in this regard, this Court finds Applicant failed to meet his burden. *Hill* makes clear the prejudice prong ordinarily requires “something more” than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pleaded guilty but would have gone to trial.

In South Carolina, insanity is an affirmative defense to prosecution if the accused, “as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong” at the time of the offense.” *State v. Senter*, 396 S.C. 547, 552, 722 S.E.2d 233, 236 (Ct. App. 2011) (quoting S.C. Code Ann. § 17-24-10(A) (2003)); see *State v. Hinson*, 253 S.C. 607, 620, 172 S.E.2d 548, 554 (1970) (“It is well settled in this State that insanity is an affirmative defense in a criminal prosecution and that, in order to make out such defense, sufficient proof of insanity must be shown, by a preponderance of the evidence, to overcome in the first place the presumption of sanity and any other proof of sanity that may be offered.”); cf. *State v. Lewis*, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997) (“[T]he key to insanity is ‘the power of the defendant to distinguish right from

wrong in the act itself—to recognize the act complained of is either morally or legally wrong.’ ” (alterations in original) (citations omitted)).

Accordingly, to prevail on a claim of ineffective assistance of counsel for failure to pursue an insanity defense, the applicant need only demonstrate a reasonable probability that he was insane at the time the crime was committed. *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992). To establish prejudice, the applicant “must produce some evidence of insanity or a showing that with the exercise of due diligence, an insanity defense could have been developed.” *Id.* at 233–34, 417 S.E.2d at 596. As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues which undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. *Garren v. State*, 423 S.C. 1, 13–14, 813 S.E.2d 704, 711 (2018).

Here, Dr. Frierson made the following conclusion in his report regarding criminal responsibility:

Mr. Villarreal provided a fairly detailed recollection of the alleged offense. He does not relate symptoms of mental illness to the alleged offense in any way. Furthermore, there is abundant evidence that if he committed the acts for which he is charged that he would have known they were wrong. This evidence includes driving backroads to Georgia to avoid detection, disposing of evidence (victims clothing), changing the license plates on the stolen car, cleaning up blood evidence, and denying his involvement to the police initially. Furthermore, he alleges that he acted in self-defense in regards to the charges of Murder and Attempted Murder.

After examining evidence and interviewing this defendant, it is our opinion that although he has a history of treatment for mental illness (PTSD), he was not mentally ill to an extent that he would have lacked the ability to distinguish legal or moral right from legal or moral wrong or to recognize the particular acts charged as legally or morally wrong. Therefore it is our opinion that he would have been criminally responsible on or about December 31, 2014 pursuant to S. C. Code Ann. §17-24-10 (1976).

Applicant failed to present any evidence or identify anything in Dr. Frierson's report that would cause this Court to question his conclusion regarding Applicant's mental state at the time of the crimes. In fact, Applicant did not present any evidence suggesting he was insane under South Carolina law at the time of the shooting nor did his testimony at the PCR hearing in any way suggest an insanity defense could have been developed. *See* S.C. Code Ann. § 17-24-10 (for insanity to be applicable, there must be some evidence from which a factfinder can conclude by a preponderance of the evidence the defendant lacked the capacity to distinguish right from wrong at the time of the crime or to recognize his actions as wrongful).

Rather, Applicant testified he had PTSD from his father abusing him. Regarding his state of mind at the time of the crime, he testified that, when he learned that his teenage girlfriend's stepfather was abusing her, it triggered him such that it put him in an "abnormal state of mind." Applicant admitted that he never told Mr. Cole about his purported "abnormal state of mind" at the time of these crimes. *See Strickland*, 466 U.S. at 691 ("Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information"); *see also id.* (highlighting that "inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions" because "[t]he reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions").

Further, Applicant's testimony about his "abnormal state of mind" does not indicate he could not differentiate between right and wrong or recognize his conduct as wrong. *See State v. Lewis*, 328 S.C. 273, 279, 494 S.E.2d 115, 117 (1997) (holding appellant was not entitled to a jury charge on insanity where "[e]ven appellant's own testimony that he was 'out of [his] mind' does

not indicate he could not differentiate between right and wrong or recognize his conduct as wrong” and “not[ing] ‘there are but few instances where one slays another while his mind is in normal condition.’ ” (citations omitted)); *see id.* at 279 n.6, 494 S.E.2d at 117 n.6 (collecting cases); *cf. State v. Gardner*, 219 S.C. 97, 106, 64 S.E.2d 130, 135 (1951) (“Subnormal mentality is not a defense to crime unless the accused is by reason thereof unable to distinguish between right and wrong with respect to the particular act in question.”).

Additionally, to the extent Applicant claims that he could have successfully presented an insanity defense had Mr. Cole adequately consulted Applicant’s mother, nothing in Ms. Farrell’s testimony before this Court indicated her son lacked the capacity to distinguish moral or legal right from moral or legal wrong at the time the offense. She merely confirmed that Applicant suffered from PTSD because he witnessed her ex-husband’s abuse. When asked if she told Mr. Cole or anyone about this “trigger incident,” she stated that she was “never given the chance to.” However, when shown Dr. Frierson’s report that lists her as a source of information,⁵ she admitted that she spoke with a social worker about Applicant’s mental health and social history.

Further, Mr. Cole stated at the plea hearing—and confirmed at the PCR hearing—that he did not believe the evaluators missed anything and did not see anything in their reports that would cause him to question their conclusions regarding Applicant’s competency and criminal responsibility. (Plea Tr. 14). *See Wilson v. Greene*, 155 F.3d 396, 403 (4th Cir. 1998) (“To be reasonably effective, counsel was not required to second-guess the contents of [their expert’s] report. . . . [C]ounsel understandably decided not to spend valuable time pursuing what appeared to be an unfruitful line of investigation.”) (internal citations omitted); *cf. Green v. French*, 143 F.3d

⁵ Specifically, the report states Applicant’s social history that was “obtained from the defendant’s mother, Maria Catherine Farrell Villarreal by Marsha Derosier, LMSW.”

865, 892 (4th Cir. 1998) (“Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client.”), *abrogated on other grounds by Williams v. Taylor*, 529 U.S. 362 (2000).

Accordingly, Applicant’s claim of ineffective assistance of counsel for failure to pursue an insanity defense is **DENIED**.

ii. Mitigation

This Court further finds Applicant failed to establish ineffective assistance of counsel for failure to adequately present mitigating circumstances regarding Applicant’s mental health at his guilty plea. At sentencing, “the formulation of the standard [for deficient performance under *Strickland*] is the same: reasonable competence in representing the accused.” *Premo v. Moore*, 562 U.S. 115, 126 (2011); *cf. Wiggins v. Smith*, 539 U.S. 510, 533 (2003) (explaining, in case involving similar issue of counsel’s responsibility to present mitigating evidence at sentencing, that “*Strickland* does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant . . . [or even to] present mitigating evidence at sentencing in every case”).

To establish prejudice, the applicant must show he received a greater sentence than he would have but for counsel’s unprofessional errors. *See Lafler v. Cooper*, 566 U.S. 156, 165 (2012) (noting that “[e]ven though sentencing does not concern the defendant’s guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in *Strickland* prejudice because ‘any amount of [additional] jail time has Sixth Amendment significance’ ” (second alteration in original) (quoting *Glover v. United States*, 531 U.S. 198, 203 (2001))).

Here, at the outset of the plea hearing, Applicant confirmed to Judge Sprouse that he was able to read, write, and understand the proceedings that day. (Plea Tr. 4). He stated that he had been previously treated for a mental illness but that he was not in treatment at that time. (Plea Tr. 4–5). Judge Sprouse then asked Mr. Cole about Applicant's competency, to which Mr. Cole replied that Applicant does have a history of mental illness but that he would present to the court at the appropriate time the evaluations finding Applicant competent to stand trial and criminally responsible at the time of the crimes. (Plea Tr. 5).

Later on during the plea hearing, Judge Sprouse asked for more information about the evaluations and any mental health concerns. (Plea Tr. 13). Mr. Cole gave copies of the evaluations to Judge Sprouse and advised him that he thoroughly reviewed Applicant's mental health records going back to his teenage years. (Plea Tr. 13–14). In light of those records, coupled with his conversations with Applicant, Mr. Cole opined that Applicant was competent. (Plea Tr. 14). Further, he stated that he did not believe the evaluators missed anything and did not see anything in their reports that would cause him to question Applicant's competency. (Plea Tr. 14). Accordingly, Judge Sprouse found Applicant competent to enter the plea after reviewing the reports. (Plea Tr. 15).

Mr. Cole subsequently gave an extensive mitigation presentation on Applicant's behalf. (Plea Tr. 23–27). He began his presentation with, in relevant part, the following:

Thank you, Your Honor. May it please the court. Your Honor, I understand and my client understands that he has committed a horrific act. It's horrific acts, really. And that from the -- it appears that he is an evil person, a cold-hearted person. But I'd like to tell the court some things that I've learned about my client, Your Honor, that I think mitigate that to some extent as far as sentencing is concerned.

Your Honor, as we saw before, he does have a history of mental illness. And he has experienced extreme trauma in his life. At a young age, he witnessed his father beat and almost kill his mother.

And that left him with posttraumatic stress disorder that -- of an effect -- the effect, I can't imagine what that would be like as a young child to see that. It was a horrific beating, really, and his father ended up going to prison.

He, as a teenager, started to suffer the consequences of this posttraumatic stress, and he was hospitalized in a mental hospital for around a year and a half, until he was 18. He was treated and he is - - he was trying to get by in society, Your Honor, as he's also been diagnosed with autism spectrum disorder. As the court knows, that keeps a person from having the type or from showing the type of empathy and social cues that a normal person would. So I think some of the cold-heartedness that the State has described is actually just the way that he is due to this disorder that he has.

Now, as I said before, Your Honor, I have no doubt that he's competent and knows what he's doing; however, the history that he has, the history of these illnesses, I think, contributed to what happened. And the history of the trauma that he suffered contributed to what happened.

(Plea Tr. 23–25). Mr. Cole went on to discuss Applicant's support system, young age, the fact that he was remorseful, and other mitigating circumstances.

Here, Applicant failed to establish that any information regarding his mental health presented to this Court through Applicant's or his mother's testimony would have impacted the plea court's sentencing decision. *Cf. Williams v. Head*, 185 F.3d 1223, 1237 (11th Cir. 1999) (rejecting a per se rule of ineffective assistance where counsel does not consult family members for possible mitigating circumstances to present at sentencing phase of death penalty case). Rather, Applicant's mental health issues were only one of the mitigating circumstances Mr. Cole strategically chose to present in mitigation. Too much emphasis on Applicant's mental health issues could have undermined Mr. Cole's statements to the plea court that Applicant was remorseful and accepted responsibility for his actions. *Cf. Strickland*, 466 U.S. at 689 ("Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for

a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable."').

Applicant is simply not entitled to satisfy the prejudice requirement through "rank speculation, defying calculation of a reasonable probability." *United States v. Fulks*, 683 F.3d 512, 522 (4th Cir. 2012); *cf. State v. Sidell*, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974) ("A broad discretion is allowed the trial judge in imposing sentence within the legal limits."); *Cummings v. State*, 274 S.C. 26, 260 S.E.2d 187 (1979) (a sentence is not excessive if within statutory limitations and not the result of partiality, prejudice, or corrupt motive).

Accordingly, claim of ineffective assistance of counsel for failure to adequately investigate and present mitigating circumstances regarding Applicant's mental health at sentencing is **DENIED**.

C. Sentence

Applicant next contends Mr. Cole provided ineffective assistance for promising Applicant he would receive only a thirty-year sentence if he pled guilty. This Court disagrees, and finds the combined record from the plea hearing and the PCR hearing contradicts Applicant's assertion he was under a misapprehension that he would receive a certain sentence when he decided to proceed with his plea. *Bennett v. State*, 371 S.C. 198, 204, 638 S.E.2d 673, 675–76 (2006) ("In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing."); *see Rayford v. State*, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994) (holding that the record of the plea proceeding, including applicant's answers to the plea judge's questions, clearly established that applicant understood the possible sentences and refuted applicant's claim on PCR that he did not understand the terms of a plea agreement).

i. Plea Hearing

Here, at the outset of the plea hearing, Assistant Solicitor Price read the indictments, charges, and advised the plea court the State was not making a recommendation as to sentencing.

(Plea Tr. 1). Judge Sprouse then engaged in the following colloquy with Applicant:

THE COURT: You have a charge of murder, which carries a minimum sentence of 30 years and a maximum sentence of life in prison. Do you understand that?

APPLICANT: Yes.

THE COURT: You have a possession of a weapon during the commission of a violent crime, which carries up to five years incarceration. Do you understand that?

APPLICANT: Yes.

THE COURT: You have a charge of attempted murder, which carries up to 30 years. Do you understand that?

APPLICANT: Yes.

THE COURT: And you have a carjacking charge, which also carries up to 30 years. Do you understand that?

APPLICANT: Yes.

THE COURT: Now, Mr. Villarreal, the court can impose consecutive sentences, meaning that if that were to happen, you would have to serve each sentence separately. Do you understand that?

APPLICANT: Yes.

THE COURT: Now, you have heard from the solicitor that this is a plea without recommendation, meaning that the State may ask for the maximum sentence just as your attorney may ask for something in the alternative. And like any sentence, ultimately it's up to the court to determine what the appropriate sentence should be. Do you understand that?

APPLICANT: Yes.

(Plea Tr. 2–4). In mitigation, Mr. Cole asked the plea court to consider imposing a thirty-year sentence. (Plea Tr. 26–27).

ii. Discussion

This Court finds Applicant failed to present any valid reasons why he should be allowed to depart from the truth of the statements he made during the plea proceeding regarding sentencing. *See Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (holding that “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.” (quotation marks and citations omitted)); *accord. Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975) (finding that the accuracy and truth of an accused’s statements at a guilty plea proceeding are “conclusively” established unless he makes some reasonable allegation why this should not be so), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985). Specifically, Applicant did not allege any facts tending to prove he was prevented from informing the plea court that it was his understanding he would receive a certain sentence. Although Applicant testified that Mr. Cole “led him to believe” he would receive a thirty-year sentence, “[t]he colloquy establishes that [Applicant] did not have any misconceptions regarding sentencing.” *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000); *see Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (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); *see generally United States v. Stephens*, 427 F. Supp. 3d 680, 689 (D.S.C. 2019) “[W]hen a defendant pleads guilty, the court must be able to rely on the defendant’s self-interest and his truthful testimony in deciding to find the defendant guilty based on a guilty plea.”).

This Court further finds credible Mr. Cole's testimony that he advised Applicant that he could certainly receive a life sentence but that, due to his youth and lack of record, there was a *possibility* he would receive something close to the minimum or at a term of years rather than life. Mr. Cole further reiterated that he never *guaranteed* to Applicant that he would receive the minimum. Rather, he advised Applicant that thirty years would be the *best possible scenario*. Mr. Cole's testimony is corroborated by Applicant's representations to the plea court. *Cf. Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977) (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").

"Courts naturally look with a jaundiced eye upon any defendant who seeks to withdraw a guilty plea after sentencing on the ground that he expected a lighter sentence." *United States v. Crusco*, 536 F.2d 21, 24 (3rd Cir. 1976); *see Daniel v. Cockrell*, 283 F.3d 697, 703 (5th Cir. 2002) (absent a showing of force of threat by some other actor, the "guilty plea is not rendered involuntary by the defendant's mere subjective understanding that [he] would receive a lesser sentence . . ."); *McMann v. Richardson*, 397 U.S. 759, 774 (1970): (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). The fact that Mr. Cole advised Applicant that there was a *possibility* he could receive the minimum sentence does not render Applicant's guilty plea invalid, especially given Applicant's acknowledgment on the record that he knew the sentencing range and that no recommendations were being made by the State.

Accordingly, Applicant's claim pertaining to Mr. Cole allegedly promising Applicant he would receive a thirty-year sentence is **DENIED**.

D. Appeal

Finally, Applicant claims Mr. Cole was constitutionally ineffective for failing to file a notice of appeal on his behalf. At the PCR hearing, Applicant testified he did not ask Mr. Cole to file an appeal because he was never told that he could appeal his plea. Mr. Cole testified that it is his general practice to discuss with his clients their right to appeal. He stated he told Applicant prior to the plea hearing that he would have ten days to file a notice of appeal. Mr. Cole stated that he did not see any basis to appeal and that Applicant never asked him to do so.

In light of Mr. Cole's credible regarding his discussion with Applicant about filing an appeal, coupled with his established practice for advising his clients about their right to appeal, this Court finds no deficiency in Counsel's failure to file a notice of appeal on Applicant's behalf. *See Roe v. Flores-Ortega*, 528 U.S. 470, 478 (2000) (explaining that when counsel has consulted with the defendant regarding the right to appeal, "[c]ounsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal"). Applicant further failed to identify any factual or legal issue that could have been successfully raised on appeal.

Accordingly, Applicant's claim pertaining to Mr. Cole's alleged failure to file an appeal is **DENIED**.

VIII. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

IX. CONCLUSION

Based on the evidence presented at the PCR hearing and a thorough review of the record, this Court finds and concludes Applicant failed to meet his burden of proof pursuant to *Strickland* and Rule 71.1, SCRCF. Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

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

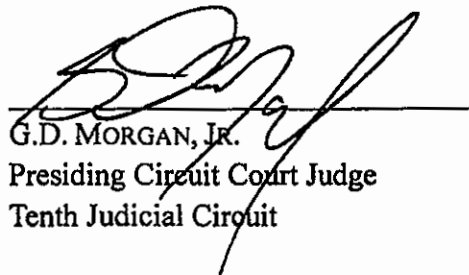
IT IS THEREFORE ORDERED:

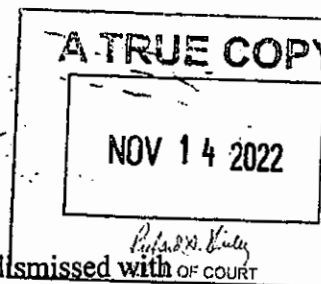
1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 4th day of November, 2022.

'22 NOV 14 PM 12:23:30
Anderson, SCCOC, CP/BS

Anderson, South Carolina


G.D. MORGAN, JR.
Presiding Circuit Court Judge
Tenth Judicial Circuit



WITNESSES

Anderson Co. Sheriff's Office
Nathan M. Mitchell

ARREST WARRANT NUMBER

2014A0410101577, 2014A0410101580

ACTION OF GRAND JURY

TRUE BILL

APR 21 2015

Foreperson of Grand Jury
Date:

Foreperson

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS-04-00693

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

APR 21 2015

, TERM

THE STATE

VS.

**JOHN ASHER FARRELL
VILLARREAL**

COMMITMENT

8/10/17-RT

INDICTMENT FOR

MURDER

SC Code: § 16-03-0010
CDR Code: 0116

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME**

SC Code: § 16-23-0490
CDR Code: 0549

A TRUE COPY

MAY 30 2018

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on APR 21 2015, the Grand Jurors of Anderson County present upon their oath:

MURDER

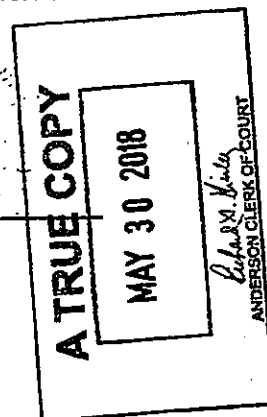
That John Asher Farrell Villarreal did in Anderson County, on or about on or about December 24, 2014, unlawfully and with malice aforethought, either express or implied, kill Mary Crowder Fowler by means of shooting her with a firearm, and the victim died as a proximate result thereof. All in violation of §16-3-10, *South Carolina Code of Laws* (1976), as amended.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That John Asher Farrell Villarreal did in Anderson County, South Carolina, on or about December 24, 2014, possess a firearm during the commission of the violent crime of Murder, in violation of Code Section 16-23-0490, *Code of Laws of South Carolina* (1976), as amended.

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

Rame L Campbell
RAME L. CAMPBELL
SR. CAREER PROSECUTOR



WITNESSES

Anderson Co. Sheriff's Office
Nathan M. Mitchell

ARREST WARRANT NUMBER

2014A0410101578

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

APR 21 2015
Charles B. Bell
Foreperson

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS-04-00692

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

APR 21 2015, TERM

THE STATE

VS.

**JOHN ASHER FARRELL
VILLARREAL**

INDICTMENT FOR**ATTEMPTED MURDER**

SC Code: § 16-03-0029
CDR Code: 3410

COMMITMENT

8/10/17-RT

A TRUE COPY

MAY 30 2018

Debra M. King
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

APR 21 2015

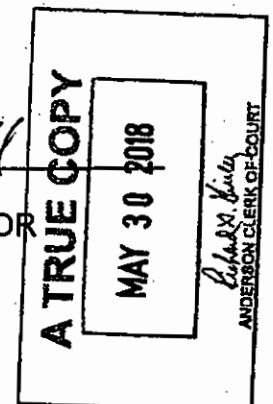
At a Court of General Sessions, convened on _____, the Grand
Jurors of Anderson County present upon their oath:

ATTEMPTED MURDER

The defendant, John Asher Farrell Villarreal, did on or about December 24, 2014 in Anderson County, unlawfully, with malice aforethought, either express or implied, and with the intent to kill, attempted to kill James Jerry Dobson by shooting the victim with a firearm. All in violation of 16-03-0029 of the *South Carolina Code of Laws* (1976), as amended.

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

Rame L. Campbell
RAME L. CAMPBELL
SR. CAREER PROSECUTOR



WITNESSES

Anderson Co. Sheriff's Office
Nathan M. Mitchell

ARREST WARRANT NUMBER

2014A0410101579

ACTION OF GRAND JURY

TRUE BILL

APR 21 2015

Foreperson of Grand Jury
Date:

Foreperson

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS-04- 00691

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

APR 21 2015

, TERM

THE STATE

VS.

**JOHN ASHER FARRELL
VILLARREAL**

COMMITMENT

8/10/17-RT

INDICTMENT FOR

CARJACKING

SC Code: § 16-03-1075(B)(2)
CDR Code: 2600

A TRUE COPY

MAY 30 2018

Richard D. Kiley
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

APR 21 2015

At a Court of General Sessions, convened on _____, the Grand
Jurors of Anderson County present upon their oath:

CARJACKING

The defendant, John Asher Farrell Villarreal, did on or about December 24, 2014, in Anderson County, South Carolina, take or attempt to take a motor vehicle from the victim James Jerry Dobson by force and violence or by intimidation while the victim was inside or operating the vehicle and great bodily injury resulted. All in violation of 16-03-1075(B)(2), *South Carolina Code of Laws* (1976), as amended.

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

Rame L Campbell
RAME L. CAMPBELL
SR. CAREER PROSECUTOR

