

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Mar 08 2024

Certiorari to Dorchester County

S.C. SUPREME COURT

Honorable Kristi F. Curtis, Circuit Court Judge

ANTHONY SANDERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001544

APPENDIX

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

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

DANIELLE DIXON
Assistant Attorney General

Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-4117

ATTORNEY FOR PETITIONER

DAVID PASCOE
Solicitor, First Judicial Circuit

101 Ridge Street, Second Floor
St. George, SC 29135
(843) 871-2640

ATTORNEYS FOR RESPONDENT

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1 a dad. He's never had a relationship with
2 anyone that he knows to be his dad. I don't
3 know if Xavier Walker has the same Y chromosome
4 test and DNA as Mr. Sanders or not. But what I
5 do know is that it was easy for the State to
6 figure that out, and they didn't. They dropped
7 the ball on it and they didn't check it out
8 because the puzzle fits.

9 I believe they would have stuck with
10 the first puzzle fit that they had. I mean, we
11 heard from the witness stand, from Earl Asbill
12 -- Lieutenant Asbill saying that the Captain
13 told them -- Tom Marshall -- that 'what we have
14 here is a murder-suicide.'
15 They thought it was the mom -- I mean, the
16 sister and brother. We have a murder-suicide.
17 And that only fell apart when, later, whether
18 hours or what later, they find Deanne Devore.
19 And so then all of a sudden, 'well, maybe we
20 don't have a murder-suicide.' So they start to
21 look.

22 And that's how it works with law
23 enforcement. They get fixed on a solution and
24 they stay on that solution. They get Xavier
25 Walker to tell them that it's Anthony Sanders,

1 and they quit looking at Xavier Walker. The
2 same Xavier Walker that they let out on bond
3 and now we understand was involved in another
4 murder, because we hear that witnesses from
5 that murder tell Major Garrison ---

6 SOLICITOR JENNINGS: Objection, Your
7 Honor. I know you'll disregard, but none of
8 that is in evidence.

9 MR. LEIENDECKER: It certainly was
10 testimony by Major Garrison from the witness
11 stand that witnesses in that other case told
12 them that the gun from the murder in our case
13 was disposed of in a ditch on Dorchester Road.
14 Not only that but Major Garrison told us that
15 they went there to look in the ditch and what?
16 It was inconvenient because it had water in it.
17 So they went back two days later and it had
18 water in it. And have they gone back and
19 checked since then? The Major told us no.
20 Why? Because it might not fit the theory of
21 the case. Because we might get a gun, a gun
22 that even the coroner tell us today, or the
23 medical examiner, could be used to determine
24 distances and other things that could be
25 important in this case. So we don't go look

1 for it. In Dorchester County we've got the
2 case solved, so we don't want any more evidence
3 that might screw up the theory of the case.

4 They want to add these things. They
5 want to stack the footprints and say that
6 because there's Nike Air Force Ones going in
7 and out of this apartment that it's our client.
8 However, the SLED expert tells us that when
9 she's asked to look at foot impressions that
10 involve tennis shoes, ninety to ninety-five
11 percent of them are Air Force Ones. Obviously,
12 a very common shoe. A very common shoe. She
13 says, 'I can't tell you for sure if it's a size
14 nine, but I can tell you it wasn't a size ten
15 or the eleven.'

16 Now, is it a nine and a half? Is it an
17 eight and a half?

18 'I don't know. I didn't have
19 them to compare. I didn't have them to look
20 at.'

21 Did she get samples from any place else?

22 'No, I didn't.'

23 The SLED expert on DNA, she got a swab
24 that gave a Y match and a one-in-two hundred
25 match for Mr. Sanders. But she also had DNA

1 from the pajama bottoms that she couldn't
2 match. Yet we don't go out and check DNA
3 against a viable suspect, Mr. Walker, who was
4 at the other two crimes that we say Mr. Sanders
5 was involved in? We don't check it.

6 Your Honor, what that is in the
7 context of a murder trial is reasonable doubt.
8 And the State can't just think that it's
9 probable. The State has to show you beyond a
10 reasonable doubt that it was, to the exclusion
11 of other people, Mr. Sanders that committed
12 this murder. And I don't believe we're there.

13 We don't know where Xavier Walker was
14 that night. His phone was conveniently turned
15 off.

16 We do know that Anthony Sanders was on
17 his phone that night. We're not sure exactly
18 where on that phone. And we do know that he
19 talked to multiple people. And, as I say, we
20 certainly can conclude he never told any of
21 them he was involved in a murder or they'd be
22 here today.

23 We do know that Anthony Sanders has a
24 fetish for Air Force Ones tennis shoes. No one
25 has that many of them in their room unless

1 they're into them. But we don't know if his
2 shoes made any of those impressions. There's
3 no unique marks on the bottom of his that would
4 convince them as the sole that made the
5 impression. There's no dirt or blood or
6 anything else on them. There's nothing on
7 them.

8 They want to suggest that Mr. Sanders
9 committed this murder and was smart enough to
10 get rid of the gun but stupid enough to keep
11 all of the accouterments with the gun.

12 They want to suggest that a gun that
13 was reported stolen in August of 2007 was the
14 gun that was used at a shooting at The Anchor
15 Bar in March, that was used at Hunters Ridge
16 later in March and then used at a murder in
17 July. Yet we heard Mr. Alexander testify that
18 he took that gun in and out of the car. So it
19 couldn't have been that gun. Either that or
20 something's wrong.

21 Your Honor, all of these incon-
22 sistencies add up to the fact that the State
23 has not met its burden. The State has not met
24 the burden of showing that Mr. Sanders
25 committed these murders.

1 They got over the hurdle of probable
2 cause, but they haven't gotten over the hurdle
3 of reasonable doubt.

4 I would suggest that in these matters
5 that are the most serious, when a person's
6 entire life and future hangs in the balance,
7 that we, as the State, must demand absolute
8 perfection in the presentation of the case by
9 our prosecutors. That they must show to us
10 that the individual they want to put in prison
11 for the rest of his life is the person who
12 committed that murder. And that they must show
13 it beyond a reasonable doubt.

14 They must not be allowed to say 'well,
15 telephone records show he was in the area.
16 Well, he wears the same kind of shoe. Well,
17 his DNA matches, although the second DNA
18 doesn't. And please ignore the fact that we
19 didn't look at Mr. Walker, the person who
20 actually put us on this track' -- the person
21 who had, I would suggest, the semi-automatic at
22 the Anchor Bar in his hand. The person who was
23 identified as the shooter at Hunters Ridge.

24 I would ask the Court, after full
25 consideration of all these facts, to find that

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1 the State has failed to meet its burden and
2 return a verdict of not guilty as to all three
3 of these indictments. Thank you.

4 THE COURT: Thank you, Mr.
5 Leiendecker. Anything else from the defense
6 team?

7 MR. YOUNG: No, Your Honor.

8 THE COURT: Thank you very much.
9 We'll be in recess. I'll go back and review my
10 notes and be out to render my decision.

11 (RECESS)

12 (DEFENDANT PRESENT)

13 THE COURT: Thank you. Please be
14 seated. Let the record reflect that Mr.
15 Sanders is present.

16 Thank you all for your arguments and
17 the case presentation. After considering all
18 of the arguments and reviewing the evidence, I
19 find that the defendant is guilty of all three
20 murders and have written that accordingly.

21 SOLICITOR JENNINGS: Is Your Honor
22 prepared to proceed with sentencing?

23 THE COURT: I am if the defendant is
24 ready. I've written that on the indictment
25 rather than a verdict form, if that's

1 satisfactory.

2 SOLICITOR JENNINGS: Your Honor,
3 there's one representative of the family that
4 would like to address you.

5 THE COURT: I'll be happy to hear
6 from any of the family members. If you would
7 give me your full name, please.

8 MS. ANDERSON: Carolina Yvette
9 Grant Anderson.

10 THE COURT: Yes, ma'am.

11 MS. ANDERSON: I'd like to speak
12 on behalf of the Grant family and the Devores.
13 This was a family never bothered anyone.

14 I knew Diane. We worked together for
15 the past nine and a half years of her life and
16 I really got to know Diane. Every morning even
17 if it meant being late for work, I would
18 automatically -- she made sure that her job got
19 done, regardless. The boss could tell her
20 things and there was nothing that she'd say.
21 She would walk away, she wouldn't harm a fly.
22 She was always a sweet, kind, loving person,
23 very quiet. She loved to laugh and she loved
24 to eat and have a good time with her family.

25 Deanna helped me with my being able to

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1 read and go on with school. Deanna was a
2 sweetheart.

3 Jatavius was always known as the clown
4 of the family.

5 I don't understand why things happen
6 and I know that God's will has to be done. I
7 assume that this was God's way of saying, "Come
8 on home."

9 But the way that it was done, we may
10 never know what or why. All we can do is ask
11 that you bring justice. I didn't just lose a
12 first cousin and a coworker. I lost a good
13 friend. This was a tight-knit family. My
14 grandmother raised them pretty much all
15 together. I came from New Jersey at six years
16 old and my grandmother raised us all as sisters
17 and brothers, so it was a tight-knit family.

18 That Saturday Diane was home with
19 Deanna. She was so happy-go-lucky. For the
20 first time in her life she was going to meet
21 her brother that she had never seen before.
22 I thank God he spared his children, that
23 Marquis wasn't around.

24 No matter what you say here today, it
25 won't bring them back. But if some justice can

1 be served on behalf of this, our family can get
2 closure. We will really appreciate it.
3 Marquis' mother, no sister and no brother --
4 and they were all real close. And you do what
5 you have to do. But we appreciate what you do
6 and ask for justice for our family. I thank
7 you, Your Honor.

8 THE COURT: Thank you, ma'am.

9 SOLICITOR JENNINGS: Your Honor,
10 we would just ask you to sentence him to life.
11 This is probably one of the more senseless
12 murders that I've seen in the time that I've
13 been doing this. The elements that you heard
14 about during this trial, the drugs and guns and
15 those sorts of things, none of that was
16 associated with this family. It was just a
17 family -- Diane was working at NuCor. Really
18 no trouble from either of her two children, and
19 we may never know how Mr. Sanders came into
20 their lives. But certainly it was a tragic
21 occurrence for them, to say the least.
22 None of this had to happen. Certainly it's a
23 brutal, brutal crime. When you look at the
24 manner in which Jatavius was shot in the face,
25 in close proximity, within three feet. Diane

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1 was shot in the back of the head. And then
2 poor Deanna, as she was running for her life,
3 to be gunned down really like an animal. He
4 chased her, shot her in the back, came upon her
5 and then shot her execution style in the head.

6 We're really at this point only
7 because of the family, only because they want
8 closure. Certainly this would have been a
9 case, I think, that would have been appropriate
10 for Mr. Sanders to pay for this with his life.
11 But they wanted to put this behind them, and
12 they didn't want to think about Mr. Sanders
13 again. The fact that he waived his appeals,
14 waived his PCRs is the reason that we're here.
15 I think that the only just sentence is that he
16 will spend the rest of his life in the
17 Department of Corrections. Thank you.

18 THE COURT: Thank you, sir.

19 MR. YOUNG: Your Honor, you've heard
20 this story thousands of times around the
21 Charleston area. A family with little or no
22 money and little or no resources with too many
23 kids, too many mouths to feed, that turns
24 people to a lifestyle where that's the only
25 outlet they know. And that's certainly

1 applicable to Mr. Sanders and Mr. Sanders'
2 family. I would love to know who Mr. Sanders'
3 father was, but we don't who his father is or
4 of any of his siblings.

5 I think there were some bad influences
6 in Mr. Sanders' life, particular his older
7 brothers. None of his family has attended any
8 of his trial. They were here earlier, Your
9 Honor, and I had a very frank discussion when
10 we were trying to resolve this case, some of
11 the issues, and what Mr. Sanders' family had
12 told him with regard to resolving this case.

13 Your Honor has also met Mr. Sanders'
14 son and Fason's (phonetic) mom, who has been
15 here today. She is a wonderful influence on
16 his son, and he is a good influence on his son.
17 She has made sure that he maintains an
18 influence in his son's life. Your Honor has
19 seen a card that Fason wrote to Your Honor to
20 allow them to have a visit, that we prepared in
21 a mitigation attempt, in an attempt to develop
22 some mitigation should this be a capital trial
23 before a jury.

24 The best influence in Anthony's life
25 was his sister, Patty. She passed away in 2006

1 through sickle cell complications after having
2 a child. On her deathbed she pretty much told
3 Anthony that he had to start being a dad and
4 that was Anthony started becoming involved in
5 Fason's life.

6 However Anthony also started to drink
7 and to drink heavily, drink heavily, drink a
8 lot. There is some evidence -- it wasn't
9 presented in the case, but the police did
10 confirm that Anthony was highly intoxicated on
11 the night of these occurrences and had been
12 experimenting with other psychotropic drugs
13 too, ecstasy and other things. Ecstasy is
14 something that you don't know what effect it is
15 going to have on -- you don't know what it is
16 made of, every pill is different.

17 To the Grant family, we express our
18 deepest condolences.

19 We want the Court to be aware that we
20 didn't want -- that we haven't tried to
21 approach anybody in Court or at the court
22 house. We did send out some letters from the
23 defense outreach specialist; they didn't want
24 to talk, and that's fine. I certainly respect
25 that and have continued to try to respect that

1 throughout the course of these proceedings.

2 I would ask the Court to consider that
3 -- whatever sentence that you give is the
4 minimum, that it's a term that's not a global
5 sentence and that there's no time cut in any
6 way, shape or form. And Your Honor certainly
7 has the discretion from thirty years to Life.
8 Mr. Sanders is twenty-eight years old. I would
9 ask the Court to consider fashioning a sentence
10 that would allow some possibilities,
11 understanding that his prison life expectancy
12 is around seventy-four, that would allow some
13 possibility of Mr. Sanders looking at the
14 possibility of one day getting out. That would
15 be our request to the Court.

16 THE COURT: Thank you, Mr. Young.
17 Anything else? Anything further?

18 MR. YOUNG: No, Your Honor.

19 THE COURT: Very well. Thank you
20 very much, Mr. Young and Mr. Jennings. I
21 certainly have come to understand --
22 "understand" in the sense of being able to
23 intellectualize something. Understanding in
24 the sense of ever understanding or appreciating
25 it, no way, because I have never experienced

1 that sort of situation in my life. I've been
2 fortunate to have respect. But I see a lot of
3 people and families unfortunately in that
4 situation and it's tragic. It really is. If
5 there was something I could do to change that,
6 I wish I could do it. It's tragedy all the way
7 around, because it leads to where we are here,
8 what brings us here. It doesn't have to, but
9 it can. And I don't know what separates that.
10 I don't know what causes the difference. Maybe
11 the recognition given to the life of a
12 gentleman who's changed his life -- he's
13 playing pro football and made a movie out of it
14 -- it shows you that you can rise above some of
15 those things. Maybe that will help a lot of us
16 to go to the right way of changing the obvious
17 and the inevitable. If anybody sees that
18 movie, one of the scenes in that movie that's
19 tragic is when he goes back to the room where
20 everybody is and all of his buddies are there.
21 So many of them are still caught and trapped in
22 that environment. That's tragic. I think that
23 really says what I see daily here.

24 Having said all of that, Mr. Sanders
25 and Mr. Young, one -- maybe I can say 'okay'.

1 But I believe the physical evidence shows that
2 there had to be two killed pretty quickly and
3 then one chased down. Really, there was no
4 other way for it to happen. I think that was
5 -- for me, that was the one that decides the
6 sentence. So the sentence, Mr. Sanders, is
7 that you be confined to the Department of
8 Corrections for the balance of your life.
9 God bless you and good luck.

10 (TRIAL CONCLUDED)

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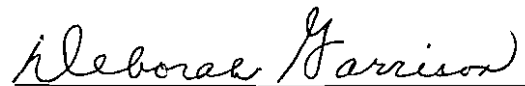
State of South Carolina v. Anthony Sanders
Case No. 07-GS-18-1296 et al
Bench Trial of March 8-9, 2010
Before The Honorable R. Markley Dennis, Jr.

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CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the bench
trial held before The Honorable R. Markley
Dennis, Jr., on March 8-9, 2010;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

March 3, 2011

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM Dorchester County
Court Of General Session

Circuit Court Judge

R. Dennis Jr.

Case No.

07-65-18-1296

STATE OF SOUTH CAROLINA
VS

Anthony Sanders

NOTICE OF APPEAL

RECEIVED

MAR 24 2010

SC Court of Appeals

PRC
PM 3/23/10

Anthony Sanders appeals his conviction and sentence in this
case. The sentence was imposed by the (Honorable) R. Dennis Jr.
on Date 3/9/10.

SI. Atty Gen

Sworn to and Subscribed before me
This 18 day of March 2010

Hoein B...
Notary Public for South Carolina

My Commission Expire on: My Commission Expires November 8, 2017

RECEIVED

MAR 24 2010

SC Court of Appeals

IN THE STATE OF South Carolina
In The Supreme Court

APPEAL FROM Dorchester County
Court of General Session

Circuit Court Judge

R. Dennis Jr.

Case No.

07-65-18-1296

STATE of South Carolina
vs

Anthony Sanders

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Henry D. McMaster, Attorney General, by depositing a copy of it in the United States mail, postage prepaid, on (date), addressed to him at P. O. Box 11549, Columbia, SC 29211

s/ Anthony Sanders

Sworn to and Subscribed before me
this 18 day of March 2010

Notary Public
Notary Public for South Carolina
My Commission Expires on: My Commission Expires November 8, 2017

The South Carolina Court of Appeals

The State,

Respondent

v.

Anthony Sanders,

Appellant.

The Honorable R. Markley Dennis, Jr.
Dorchester County
Trial Court Case No. 2007-GS-18-01296

ORDER

The above entitled case is pending on appeal in this Court. Due to the failure of Appellant to provide the Court with a proof of service showing the Notice of Appeal was timely served on opposing counsel, as provided for in Rule 203 of the South Carolina Appellate Court Rules, and as requested by letter from this office dated April 1, 2010 :

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Dorchester County after fifteen (15) days, exclusive of the date of filing this

JOHN CANNON FEW, CHIEF JUDGE

BY *V. Claire Allen, Deputy Clerk*
Clerk

Columbia, South Carolina
4/22/2010

cc: Anthony Sanders #339645
Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott
The Honorable Cheryl L. Graham

FILED
4/22/10 *THA*

The South Carolina Court of Appeals

The State,

Respondent

v.

Anthony Sanders,

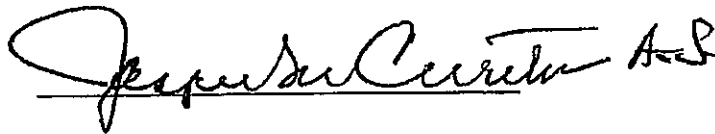
Appellant.

The Honorable R. Markley Dennis, Jr.
Dorchester County
Trial Court Case No. 2007-GS-18-01296

ORDER

The above-captioned appeal was dismissed due to Appellant's failure to provide a proof of service showing the Notice of Appeal was timely served on Respondent. Subsequently, Appellant filed a letter, which we construe to be a request to rehear our order of dismissal. Appellant also submitted a proof of service that shows it was mailed to the Respondent, but does not provide the actual date the proof of service was mailed. Appellant has ten days to provide this Court with a proof of service showing when the Notice of Appeal was mailed to Respondent. The petition will be considered in ten days.

AND IT IS SO ORDERED.



Columbia, South Carolina

May 19, 2010

FILED
5/20/10

cc: Anthony Sanders #339645
Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott

June 30, 2010

Anthony Sanders #339645

McCormick Correctional Institution **RECEIVED**

386 Redemption Way

McCormick, SC 29899

JUL 12 2010

SC Court of Appeals

Re: The State v. Sanders, Anthony

Dear Ms. Tanya A. Gee:

Forgive me for being a nuisance if that's what I'm looked at as, but I'm trying to obtain a copy of my trial transcript and I'm unsure about how I'm supposed to go about getting it. I have sent out a letter to the Clerk of Court, Court Reporter and to my counsel at trial requesting for it with no avail. I have yet to hear back from the first two and the latter said they won't be able to get it for me since I won't be represented by them in any of my appeal process. Whether that has anything to do with me getting my trial transcript or not, that still

leaves me without a means to receiving it. Now, I'm asking the Court if they can help me get my trial transcript or perhaps, get things in motion for me to receive it? Also, as soon as I can recover the address for the Office of Court Administration, I, too, will be sending them a letter regarding my transcript because all I have to rely on is me, myself and I since others (not calling no names) have steered me wrong with their advice and actions.

Please excuse my narrative writing if it was a waste of your time. I do not mean to trouble the Court with things that are not of their concern, but I had to try in case of if it is. Surely, you all understand.

Sworn to and subscribed before me this 07 day of July, 2010

S/Anthony L. Linder

J. C. Franklin

Notary Public for South Carolina

12-16-2019

The South Carolina Court of Appeals

The State,

Respondent

v.

Anthony Sanders.

Appellant.

The Honorable R. Markley Dennis, Jr.
Dorchester County
Trial Court Case No. 2007-GS-18-01296

ORDER

On April 22, 2010, this court dismissed Appellant's appeal for failure to serve and file a Notice of Appeal with proper proof of service. Appellant has now filed several documents with this court, which we construe as a petition for rehearing. After careful consideration, this court is unable to discover that any material fact or principle of law has been either overlooked or disregarded; hence, there is no basis for granting a rehearing or reinstating the appeal.

AND IT IS SO ORDERED.

H B Wo
C K O

Christopher C. Custer H.S.

Columbia, South Carolina

7/14 2010

FILED

7/15/10

526
10-1012

ATTORNEY GENERAL'S OFFICE
RECEIVED 8-26-10

The South Carolina Court of Appeals

The State.

Respondent

v.

Anthony Sanders.

Appellant.

ADMINISTRATIVE INSURANCE
END
HAG OFFICE
ROUTE 101
ORANGE 8-26-2010
GENERAL RECORDS
ATTORNEY GENERALS
OFFICE

The Honorable R. Markley Dennis, Jr.
Dorchester County
Trial Court Case No. 2007-GS-18-01296

REMITTITUR

The Petition for Rehearing having been denied on July 14, 2010 in the above matter,
IT IS SO ORDERED that the above appeal be and hereby is remitted to the Clerk of Court for
Dorchester County.

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claire Allen, Deputy
Clerk

Columbia, South Carolina
8/25/2010

Original to: The Honorable Cheryl L. Graham

cc: Anthony Sanders #339645
Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott
The Honorable Cheryl L. Graham

FILED
8/25/10

STATE OF SOUTH CAROLINA

County of Dorchester

In the Court of Common Pleas

Anthony Sanders #339645
Full name and prison number (if any) of Applicant,

vs.

The State
Name of Respondent.2011-CP-18- 27APPLICATION FOR
POST-CONVICTION RELIEF

2011 JAN -6 PM 3:22

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Court of General Session, Dorchester County
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2007-GS-18-1296
 - (b) 2007-GS-18-1297
 - (c) 2007-GS-18-1298
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 9, 2010 Life
 - (b) _____
 - (c) _____

5. 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 _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list

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

- i. The South Carolina Court of Appeals
 ii. _____
 iii. _____

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

- i. Dismissed
 ii. _____
 iii. _____

(c) the date of each such result:

- i. May 19, 2010
 ii. _____
 iii. _____

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

- i. failure to serve and file a Notice of Appeal w/ proper
 ii. proof of service
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
 (b) _____
 (c) _____

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

- (a) Ineffective Assistance of Counsel
 (b) _____
 (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) (See Attachment of Additional Page 1)
 (b) _____
 (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?
NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

(b) the name and location of the Court in which each was filed:

- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

- i. May 19, 2010
- ii. _____
- iii. _____
- iv. _____

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

- i. failure to serve and file a Notice of Appeal w/ proper
- ii. proof of service
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
 ii. N/A
 iii. A

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

- i. N/A
 ii. N/A
 iii. A

15. If any ground set forth in (9) 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) See 9(a) Applicant's first time presenting ground
 (b) _____
 (c) _____

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

- (a) your arraignment and plea? N/A
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

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

- i. (See Attachment of Additional Page 2)
 ii. _____
 iii. _____

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

- i. (See Attachment of Additional Page 2)
 ii. _____
 iii. _____

18. State clearly the relief you seek in filing this application.

Plea & Sentence vacated, and any other relief the court may deem that I am entitled to

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

NO

" Additional Page"

17. If you answered "yes" to one or more parts of (16), list:

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

i. S. Boyd Young
1330 Lady Street, Suite 401
Columbia, SC 29201

ii. Mark A. Leindecker
107 West 6th N. Street
Summerville, SC 29483

iii. Laura E. Wood
1330 Lady Street, Suite 401
Columbia, SC 29201

iv. Name: Unknown
107 West 6th N. Street
Summerville, SC 29483

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

i. Motions' Hearing, Trial

ii. Motions' Hearing, Trial

iii. Trial

iv. Trial

STATE OF SOUTH CAROLINA

County of McCormick

VERIFICATION

I, Anthony Sanders, 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.

Anthony Sanders

SWORN to and subscribed before me this 08

day of December, 19 2010

J C Frankler (L.S.)
Notary Public

My Commission Expires: 12-16-2019

2011 JAN -6 PM 3:22
NOTARY PUBLIC
SOUTH CAROLINA

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

I, Anthony Sanders, 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 therefor.

Anthony Sanders

Applicant

SWORN or affirmed to and subscribed before me this

08 day of December, 19 2010

J C Frankler
Notary Public

My Commission Expires 12-16-2019

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2011-CP-18-0027

Anthony Sanders, #339645,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

(Appointment of Counsel Request)

FILED-RECORDED
2011 MAY -4 PM 3:01
CLERK OF COURT
DORCHESTER COUNTY

The Respondent, making its Return to the Application for Post-Conviction Relief filed January 6, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. The Applicant was indicted at the September 4, 2007, term of the Dorchester County Grand Jury for three (3) counts of Murder (2007-GS-18-1296/1297/1298). He was represented by March A. Leiendecker, Esquire, and Mitchell Farley, Esquire. On March 8, 2010, the Applicant proceeded to a bench trial before the Honorable R. Markley Dennis, Jr. On March 9, 2010, the Applicant was found guilty of three (3) counts of murder. Judge Dennis sentenced the Applicant to life without parole.

Applicant filed a Notice of Appeal. The South Carolina Court of Appeals dismissed the appeal on April 22, 2010, for failure to provide proof of service. Applicant subsequently filed a letter to the Court of Appeals, which the Court construed as a request to rehear the order of dismissal. In an order dated May 19, 2010, the Court of Appeals gave Applicant ten (10) days to

provide proof of service of the notice of appeal showing when the notice was mailed. In an order dated July 14, 2010, the Court of Appeals noted several additional documents filed by Applicant construed as a petition for rehearing; the Court found no basis for rehearing or reinstating the appeal. The Remittitur was sent August 25, 2010.

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

II.

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

1. Ineffective assistance of counsel.
 - a. "Counsel misadvised me with misleading statements that render my signing of the 'Contractual Consent Order to waive right to jury trial' involuntary and not an intelligent decision, especially in light of the prosecutor's weak case."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

 3, 2011

STATE OF SOUTH CAROLINA FILED-RECORDED
 COUNTY OF DORCHESTER 2011 MAY -4 PM 3:08 THE COURT OF COMMON PLEAS

CHERYL GARNER
 CLERK OF COURT
 DORCHESTER COUNTY

2011-CP-18-0027

ANTHONY SANDERS, 339645,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

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

**Melvin D. Williamson, Esquire
 Williamson Law Office, PA
 1810 Old Trolley Road, Ste. F
 Summerville, SC 29485-7623**

DATED this 3rd day of May, 2011.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. NO. 2011-CP-18-0027
COUNTY OF DORCHESTER	)	
	)	
Anthony Sanders,	)	
S.C.D.C. No. #339645,	)	
	)	
Applicant,	)	NOTICE OF MOTION AND
	)	MOTION TO DISMISS APPLICATION
VS.	)	PURSUANT TO TERMS OF
	)	PRIOR CONSENT ORDER
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 6, 2010. Applicant is challenging his convictions and sentence for three counts of murder. Applicant was indicted during the September 2007 term of the Dorchester Grand Jury for three counts of murder. Applicant and his attorneys entered into a waiver agreement with the Solicitor's Office signed by Applicant, two of his attorneys, the Solicitor and Assistant Solicitor, and the Honorable R. Markley Dennis, Circuit on January 21, 2010. A status conference on the waiver was held before Judge Dennis on the same day which was transcribed. In exchange for the State not seeking the death penalty, Applicant, under the express terms of the agreement, agreed to waive his right to jury trial and be tried without jury before Judge Dennis. Further, Applicant agreed to waive his right to direct appeal in the event of conviction and waive the right to seek post-conviction relief.

Applicant was tried before Judge Dennis on March 8 and 9, 2010. Judge Dennis found Applicant guilty and sentenced him to life imprisonment.

The PCR application should be dismissed as it violates the bargained for agreement of the parties. Specifically, Applicant waived seeking post-conviction agreement under the terms of the

agreement. Further, the agreement explicitly stated that Applicant by signing the order, acknowledged and attested that he fully understood the terms of the agreement, read the consent order in detail, and had ample opportunity to discuss and discussed at length the terms of the agreement with his counsel. Finally, he indicated by his signature that: "He understands the provisions of this consent order are permanent and irrevocable such that he will not have a jury decide his guilt for the above referenced indictments, and he will never be entitled to appeal any aspect of this case."

Accordingly, Respondent moves before this Court to dismiss this PCR application with prejudice pursuant to the explicit and bargained for terms of the agreement.

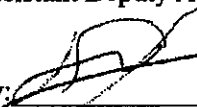
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DAVID SPENCER
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3727

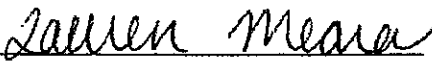
May 17, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
	)	2011-CP-18-0027
	)	
ANTHONY SANDERS, 339645,	)	
	)	
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 **Notice of Motion and Motion to Dismiss Application Pursuant to Terms of Prior Consent Order** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jessica Cassick, Esquire
Law Office of Ashley Ameika, LLC
7555 Northside Drive
North Charleston, SC 29420

DATED this 17th day of May, 2012.


Lauren Meara, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2011-CP-18-00027

Anthony Sanders,

Plaintiff,

v.

State of South Carolina,

Defendant.

)
)
)
)
) Transcript of Record
)
)
)
)
)
)

May 22, 2012
Orangeburg, South Carolina

B E F O R E:

The Honorable DeAndrea G. Benjamin, Judge

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

David Spencer, Esquire
Attorney for the State

Ms. Cassic, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

Sanders v. State 5/22/12

2

I N D E XWITNESS/DESCRIPTIONPAGE NO.

EXHIBITS:

No exhibits were marked to this proceeding.

Certificate of Court Reporter 13

Sanders v. State 5/22/12

3

1 THE COURT: You may be seated.

2 Yes, sir.

3 MR. SPENCER: Oh, we're without the applicant. I'm
4 sorry.

5 Can you bring up Mr. Sanders?

6 Sorry about that, Judge.

7 THE COURT: That's okay.

8 MR. SPENCER: Thank Your Honor.

9 This next case I would call is Anthony Sanders verses
10 South Carolina, 2011-CP-18-00027. This is from an
11 application that was filed on January 6, 2011.

12 The applicant was indicted on September of 2007 for
13 three counts of murder. Judge, let me bring you up on the
14 facts.

15 He was represented by Mr. Leiendecker, Mr. Farley, also
16 Boyd Young and Laura Wood on these charges. He proceeded to
17 a bench trial in March, March 8, 2010 and was found guilty
18 by Judge Dennis and sentenced by Judge Dennis to life
19 imprisonment for all three counts of murder on March 9,
20 2010.

21 A little back story as to how we got to the bench trial
22 is that Mr. Sanders was facing a death penalty trial. There
23 were negotiations then between the solicitor's office and
24 defense counsel and they reached an agreement, which Mr.
25 Sanders was part of, where he would agree to waive his right

1 to jury trial, waive his right to direct appeal, waive his
2 right to post-conviction relief. Nonetheless, he filed an
3 application for post-conviction relief in January 2011, and,
4 Your Honor, as I understand there is a Motion for
5 Continuance. I think the appropriate thing, although, I'm
6 probably going to talk about this contract a little more, I
7 think the appropriate thing would be, Ms. Cassic, who
8 represents the applicant today, to make her motion, but I
9 anticipate the State would oppose it.

10 THE COURT: Yes, ma'am.

11 MS. CASSIC: Your Honor, may it please the Court.

12 This morning my client presented me with information
13 which I need to investigate further surrounding three
14 additional witnesses.

15 There were three incidents surrounding my client's
16 arrest. First there was an Anchor Bar shooting. Second,
17 there was a Hunter's Ridge shooting. Third, was the
18 Archdale Apartments, which led to my client's indictment for
19 murder on August 30, 2007.

20 Xavier Walker was an individual who identified my
21 client in the Hunter's Ridge shooting, which later led to
22 his indictments in these three murders at the Archdale
23 Apartments. Trent Brown and James Jenkins were two other
24 individuals who provided the Dorchester County Sheriff's
25 Department statements that Xavier was the individual at the

Sanders v. State 5/22/12

5

1 Anchor Bar and Hunter's Ridge shooting.

2 How these are all linked, the shell casings from the
3 Hunter's Ridge shooting and the Archdale Apartment shooting.
4 There was a ballistics report, however, no gun was ever
5 recovered, therefore Xavier Walker's ID linked him to
6 Archdale yet he was never called as a witness. To my
7 client's knowledge he was never investigated by his
8 attorneys nor were Trent Brown or James Jenkins interviewed
9 or present at the trial and testified. These three
10 individuals testimony is pertinent to Mr. Sanders claim for
11 post-conviction relief. His attorneys failed to investigate
12 these witnesses and offer their testimony during Mr. Sanders
13 trial

14 We respectfully request a continuance to allow me
15 adequate time to prepare the newly developed evidence which
16 is pertinent to his post-conviction relief hearing.

17 THE COURT: All right. Now, ma'am, when did you learn
18 of these witnesses?

19 MS. CASSIC: Your Honor, it was this morning. He
20 presented me with a statement that he had which I didn't
21 know that he had this morning, up until this morning. He
22 carries his file around like this. It's obviously not as
23 organized as mine. We did have a meeting prior to today to
24 prepare for this and at that point, this was never brought
25 to my attention. It wasn't until I actually read the

1 documentation that I found the significance of it to be some
2 thing I needed to address to the Court. Clearly, I wasn't
3 able to subpoena these witnesses as I just learned of their
4 relevance today.

5 THE COURT: All right. Yes, sir.

6 MR. SPENCER: Your Honor, we oppose the Motion first of
7 all because it is an eleventh hour thing that has been
8 brought up. Mr. Sanders had filed this application over a
9 year ago, a year and some months. So we would oppose it. I
10 believe there are four witnesses here, all four attorneys
11 here. I'm unaware -- it doesn't look like to me we have the
12 victims families here today, but nonetheless we have gone to
13 the expense of transporting Mr. Sanders. The time from the
14 office that it's taken to review all these materials, some
15 of which were lengthy trial transcript, not as long as some,
16 but still several pages.

17 That would be something that I would normally be
18 objecting to, but then there's the additional element that
19 goes into a motion that I also have made which is to dismiss
20 this PCR because, as I mentioned before, part of the
21 contract in which the State was giving up the right to seek
22 the death penalty.

23 Your Honor, I can bring the contract up. I think I
24 made it part of the Judge's packet.

25 THE COURT: All right. I was going to ask, that was

Sanders v. State 5/22/12

7

1. going to be my next question.

2. Ms. Cassic?

3. MS. CASSIC: Yes, Your Honor.

4. THE COURT: What's your position regarding -- you know,
5. if I find that he's waived his right to this PCR hearing,
6. according to this contract, then really none of that's going
7. to be -- it's not going -- I don't want to say -- it's
8. really not going to be relevant because we wouldn't have to
9. call any witnesses or anything.

10. What's your position regarding the contract?

11. MS. CASSIC; Yes, Your Honor. Again, with that being
12. said I would obviously have to amend his post-conviction
13. relief application to add in the allegations we just
14. discussed. As for the contractual waiver, Mr. Sanders,
15. that's one of the underlying reasons of his post-conviction
16. relief application that he did not enter into that contract
17. knowingly and voluntarily.

18. THE COURT: Is there any colloquy in the transcript with
19. Judge --

20. MR. SPENCER: Your Honor, I'm glad you brought that up,
21. because I neglected to put that in. There is a transcript,
22. I believe Ms. Cassic has a copy. It is labeled as a, for
23. the event that anyone has to go back and look, it's labeled
24. as a Transcript of Status Conference. That is actually a
25. hearing that went though these rights and I'd like to put

1 that in the Judge's packet as that is something we only
2 received in the last few months.

3 And, Your Honor, I did also want to call your
4 attention, I did file a written motion or serve a written
5 Motion to Dismiss on the basis of the contract. It didn't
6 get filed in my file, so I actually don't have a copy of the
7 written motion to give to this Court, but, you know, it was
8 nothing more than simply looking at the contract and saying,
9 express terms of this contract was that the PCR hearing
10 would be waived by the State giving up the right to seek the
11 death penalty. That was a bargained for item from the
12 State. That's something that I think public policy should
13 allow parties to negotiate because that was an important
14 concession from the State and -- and that was something that
15 was important to the defense to be able to get that waiver
16 of the death penalty. I think it's terribly unfair for
17 somebody to go back and file a PCR when they've agreed not
18 to file a PCR in order to, you know, save their own lives,
19 if you will. I have a case, Your Honor, concerning the
20 contractual waiver of the right to appeal and PCR which is
21 called *Spoone v. State of South Carolina*. It's 379 SC
22 138, 665 SE2d, 605, and it's where as part of a guilty plea
23 a defendant waived his right to have a direct appeal and a
24 PCR and Supreme Court upheld that. This is an enforceable
25 contract and we certainly want to enforce it, and certainly,

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9

1 the way I see it we have two questions. One is the ability,
2 first of all, to come in and challenge the voluntariness of
3 the contract, if you will, which I think is an allegation
4 which is expressly raised in the application. The second
5 question is can he come back and allege counsel error in
6 terms of what witnesses are called and what defense strategy
7 was employed or didn't employ or other acts and omissions
8 you made during the course of the bench trial. And Your
9 Honor, I would strongly argue those kind of claims have been
10 made by this free and voluntarily given contract. Further,
11 the hearing transcript, it's not terribly long. It's only
12 about 27 pages. Judge Dennis does go through and explain, I
13 think it's Pages 13 and 14 of the hearing transcript that
14 the rights he's giving up and on 13 and 14, you understand
15 in giving up your right to post-conviction relief and Mr.
16 Sanders indicates he understands.

17 Your Honor, this is an important question in
18 enforceability of this contract because there may be others
19 who find themselves in Mr. Sanders position who want to make
20 this contract and hindrance of the State's ability to
21 enforce this kind of contract. It's going to negatively
22 impact future defendants. This is an important issue. This
23 is freely and voluntarily made and on that basis we move to
24 dismiss the PCR application but we certainly -- it also goes
25 to our motion -- our opposition to a Motion for Continuance,

1 because these are witnesses that should not be needed
2 because under the contract we should not be here
3 entertaining those kind of allegations.

4 THE COURT: Anything else, Ms. Cassic?

5 MS. CASSIC: Yes, Your Honor. The circumstances that
6 surround the waiver is what is questionable as to his
7 knowingly entering -- voluntarily, excuse me, entering into
8 it. There was a plea negotiations prior to the contract --
9 him signing this contractual waiver that essentially
10 discussed for a few months prior to and he was faced with
11 three options, one of which was this contractual waiver. He
12 signed it within an hour of seeing it, talking to his
13 attorneys. He asked if he could still appeal. That, to me,
14 shows that he did not know what everything mean, that he was
15 actually contracting away his rights, and the caption is
16 entitled Waiver of Jury Trial. It doesn't indicate anything
17 else, and that may not be significant but to Mr. Sanders it
18 may be because that may be the one thing that is stuck in
19 his head. He may not have realized that he waived his right
20 to a direct appeal and to this post-conviction relief
21 hearing.

22 We would, again, respectfully request you would allow
23 him to have an evidentiary hearing and certainly would allow
24 us to have a continuance in order to present testimony.

25 THE COURT: All right. Well, the only thing, I

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11

1 understand what you're saying, but Judge Dennis specifically
2 asked him about post-conviction relief and reviewing his
3 decision and appeals and his answer is yes sir on all of
4 them. And then he goes into -- I mean, Judge Dennis asks
5 him about is anyone forcing him, is it voluntary, does he
6 understand that, did he talk to his lawyers. He's saying
7 yes, sir; yes, Your Honor.

8 MS. CASSIC: In my discussions with him about that
9 transcript, again, obviously he was there, he was present,
10 he was listening, but I don't think he fully understood. He
11 just knew that there was a judge talking to him and he
12 didn't feel that his attorneys fully advised him of
13 everything. He went into it and just said, okay, fine, but
14 didn't fully understand what he was doing.

15 THE COURT: Yes, sir.

16 MR. SPENCER: There's no point in a Court trying to make
17 colloquy with a defendant if the defendant is not going to
18 let somebody know when they have trouble understanding
19 something. There is 20-something pages of Judge Dennis
20 making sure he understands it. Making sure that if he has
21 any questions to raise them. And, Your Honor, in particular
22 I would want to point out Page 18, Judge Dennis comes right
23 out and says, is there any reason for me not to accept that
24 -- I'm paraphrasing. I'd better to look at that page of the
25 transcript. The actual question is; Can you think of any

1 reason from your vantage point, that I should not accept
2 this decision. No, sir. This is following a series of
3 questions about what he's waiving, whether he understands it
4 or not. Whether he's freely voluntarily knowing what he's
5 doing and whether he's had enough time to talk to his
6 attorneys.

7 Your Honor, Courts do this for a reason and I think the
8 record transcript speaks for itself, although, I'd be
9 prepared to call witnesses to substantiate that he knew what
10 he was doing.

11 THE COURT: All right. Well, I'm going to -- based on
12 the case law and -- I've sat up here and I've read the
13 transcript and I've read through the contract as you all
14 have spoken. It looks like Judge Dennis covered everything
15 that he could possibly cover in his questioning. Even down
16 to the specifics of a PCR and explaining the process. For
17 that reason I am going to grant the Motion to Dismiss the
18 Application.

19 Thank you.

20 MR. SPENCER: Thank Your Honor. I'll prepare an order
21 if you would like?

22 THE COURT: Yes.

23 MR. SPENCER: Thank you.

24 (This proceeding was concluded.)
25

Sanders v. State 5/22/12

13

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT
REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
HEARING IN THE ABOVE CAPTIONED CAUSE, IN THE COURT OF COMMON
PLEAS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 22 DAY
OF MAY, 2012.

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



Hilda M. Jordan, CVR-M

March 14, 2013

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Anthony Sanders,
S.C.D.C. No. #339645,

Applicant,

VS.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. NO. 2011-CP-18-0027**ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 6, 2010. Applicant is challenging his convictions and sentence for three counts of murder. The State has moved to dismiss the PCR application on the basis that Applicant waived post-conviction relief pursuant to a consent agreement accepted by the trial court in exchange for the State not seeking the death penalty.

A hearing on the State's motion was heard before this Court on May 22, 2012 at the Orangeburg County Courthouse. Applicant was present and represented by Jessica Cassick, Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General. In addition to hearing arguments from counsel on the motion, this Court has before it the pleadings for both parties, the Applicant's records from the Department of Corrections, the Clerk of Court's records regarding the subject convictions, the trial transcript and a transcript of the waiver hearing. This Court finds that it must dismiss this application with prejudice.

Applicant was indicted during the September 2007 term of the Dorchester Grand Jury for three counts of murder. Applicant and his attorneys entered into a waiver agreement with the Solicitor's Office signed by Applicant, two of his attorneys, the Solicitor and Assistant Solicitor, and

the Honorable R. Markley Dennis on January 21, 2010. A status conference on the waiver was held before Judge Dennis on the same day. The conference was transcribed. In exchange for the State not seeking the death penalty, Applicant, under the express terms of the agreement, agreed to waive his right to jury trial and be tried before Judge Dennis. Further, Applicant agreed to waive his right to direct appeal in the event of conviction and to waive the right to seek post-conviction relief.

Applicant was tried before Judge Dennis on March 8 and 9, 2010. Judge Dennis found Applicant guilty and sentenced him to life imprisonment.

The State argues that the PCR application should be dismissed as it violates the bargained for agreement of the parties. Specifically, Applicant waived seeking post-conviction relief under the terms of the agreement. Further, the agreement explicitly stated that by signing the order, Applicant acknowledged and attested that he fully understood the terms of the agreement, read the consent order in detail, had ample opportunity to discuss the agreement with his attorneys, and did discuss at length the terms of the agreement with his counsel. Finally, he indicated by his signature that: "He understands the provisions of this consent order are permanent and irrevocable such that he will not have a jury decide his guilt for the above referenced indictments, and he will never be entitled to appeal any aspect of this case."

In addition to the written agreement, this Court has reviewed the transcript of the waiver hearing and finds that Judge Dennis went over Applicant's rights thoroughly and extensively; and determined that Applicant was waiving his rights, including the right to seek post-conviction relief, freely and voluntarily. Applicant's trial attorneys explained to Judge Dennis the essence of the bargain, including Applicant's waiver of appellate rights and post-conviction relief for an agreement the State would not seek the death penalty. They advised Judge Dennis that they fully discussed the terms of the agreement with Applicant. January 21, 2010 Status Conference Transcript (Conf. Tr.)

pp. 3-5. Judge Dennis specifically went over Applicant's right to post-conviction relief and the fact that he was waiving this right. Judge Dennis verified that the reason Applicant wanted to waive that right was to avoid the death penalty as a possible punishment, which Applicant verified was a real benefit from his perspective. Conf. Tr. pp. 13-15. Judge Dennis's colloquy ensured that Applicant was making the decision voluntarily and that Applicant was comfortable with the decision. Judge Dennis asked Applicant if there was any reason from Applicant's vantage point that Judge Dennis should not accept the agreement, and Applicant responded in the negative. Conf. Tr. pp. 17-18.

Based on the express terms of the agreement and the clear demonstration from the colloquy that Applicant freely and voluntarily waived his rights in exchange for the agreement, this Court finds that the State's motion to dismiss should be granted and that pursuant to the terms of the bargained for agreement between the State and Applicant, Applicant is precluded from seeking post-conviction relief. See Spooone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008) (finding waiver of appellate and post-conviction relief rights was voluntarily made based on the text of the plea agreement and the transcript of the plea hearing, and where both attorneys attended the plea hearing and signed the written plea agreement, along with Spooone himself; therefore, the PCR court did not err in enforcing the waiver and dismissing the PCR application).

CONCLUSION

Based on the foregoing, this Court finds and concludes that the PCR application must be dismissed pursuant to the express terms of the aforementioned consent agreement. This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-

conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27 day of July, 2012.


DeAndrea G. Benjamin
Presiding Judge
1st Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NUMBER: 2012-CP-18-027
	)	
ANTHONY SANDERS	)	
SCDC ID 336149,	)	
	)	
Applicant,	)	
	)	NOTICE OF MOTION AND
v.	)	MOTION TO RECONSIDER
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

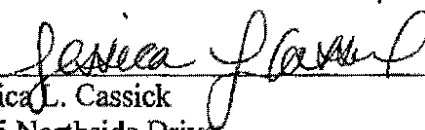
PLEASE TAKE NOTICE that the Applicant, through his undersigned attorney and pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure, will move before the Honorable DeAndrea G. Benjamin in the Orangeburg County Courthouse, Orangeburg, South Carolina, at such time as the Court may appoint, for an Order vacating the Order of Dismissal, filed on August 20, 2012, and received by Applicant's counsel on August 22, 2012, or, in the alternative, a new hearing, or granting such other relief as the Court deems just and proper.

1. The Applicant inadvertently filed a Motion for Reconsideration prior to the receipt of written notice of the entry of the order in this matter. Applicant respectfully renews his Motion to Reconsider the Court's ruling dismissing this Post-Conviction Relief action without allowing the Applicant to present any evidence that he did not knowingly, voluntarily, or intelligently waive his right to Post-Conviction Relief.
2. Applicant respectfully asks the Court to reconsider the ruling by Judge Benjamin on May 22, 2012, granting the State's Motion to Dismiss his Application for Post-Conviction Relief based upon the Contractual Consent Order to Waive Rights to Jury Trial.

present his case to the Court to show that he did not knowingly, voluntarily, and intelligently enter into the Contractual Consent Order to Waive Rights to Jury Trial, which not only waived his rights to jury trial, but also to direct appeal, post-conviction relief, and habeus corpus proceedings.

Wherefore, the Applicant prays that the Court reconsider the ruling dismissing this action with prejudice, and allow the Applicant an opportunity to present his case at a Post-Conviction Relief Hearing.

LAW OFFICE OF ASHLEY AMEIKA, LLC

By: 
Jessica L. Cassick
7555 Northside Drive
North Charleston, SC 29420
Telephone: (843) 820-9719
Facsimile: (843) 820-9720
Email: jessicacassick@me.com
ATTORNEY FOR APPLICANT

North Charleston, South Carolina
Dated: August 28, 2012

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Anthony Sanders, #339645,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2011-CP-18-0027

**RETURN TO APPLICANT'S MOTION
FOR RECONSIDERATION**

This matter comes before this Court by way of the Applicant's "Motion to Reconsider" in which Applicant asks this Court to vacate its Order of Dismissal issued by this Court denying and dismissing Applicant's application for post-conviction relief, or in the alternative, grant Applicant a new hearing. The Respondent would submit the following:

I.

The Order of Dismissal issued by the Honorable DeAndrea G. Benjamin on July 27, 2012 and filed August 20, 2012, contains the required findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRPC. *See McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits this Court did not err in granting the Order of Dismissal and the Order fully addresses all of the Applicant's claims.

In his Motion for Reconsideration, the Applicant merely reiterates his allegations from his application for post-conviction relief and the arguments he presented during the May 22, 2012 motion hearing. Respondent submits that Applicant has not provided additional authority or support for the grounds. Furthermore, these grounds were all directly and properly addressed by this Court in its Order of Dismissal. Respondent submits that Applicant has not provided any reason why this

Court should reconsider his same positions and arguments again. The Applicant does not allege that the Order does not contain the required findings of fact and conclusions of law. This Court ruled on properly that Applicant waived his right to post-conviction relief pursuant to a consent agreement accepted by the trial court in exchange for the State not seeking the death penalty. Applicant fails to provide any reason why this Court's rulings were in error or that any of Applicant's allegations were not addressed properly. Accordingly, this Court did not err when it denied the remaining allegations.

II.

The State therefore requests that the relief requested by the Applicant be denied and that his Motion be dismissed.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

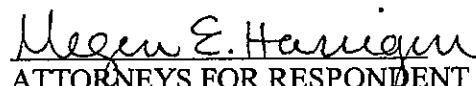
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

August 30, 2012

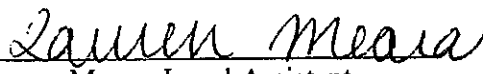
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
	)	2011-CP-18-0027
	)	
ANTHONY SANDERS, 339645,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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 to Applicant's Motion for Reconsideration** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

The Honorable DeAndrea G. Benjamin
Presiding Judge
Post Office Box 192
Columbia, SC 29202

Jessica Cassick, Esquire
Law Office of Ashley Ameika, LLC
7555 Northside Drive
North Charleston, SC 29420

DATED this 30th day of August, 2012.


 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
Anthony Sanders, #339645	)	Case No. 2011-CP-18-0027
Applicant,	)	
	)	
v.	)	ORDER DISMISSING APPLICANT'S
	)	MOTION FOR RECONSIDERATION
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter comes before the Court by way of Applicant's "Motion to Reconsider" of the Order dismissing his application for post-conviction relief. Applicant filed his application for post-conviction relief on January 6, 2010. The State made its Return on May 3, 2011. A hearing into this matter was convened on May 22, 2012, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Jessica Cassick, Esquire. The Respondent was represented by David Spencer of the South Carolina Attorney General's Office. At the hearing, the State moved to dismiss the post-conviction relief application on the basis that Applicant waived post-conviction relief pursuant to a consent agreement accepted by the trial court in exchange for the State not seeking the death penalty. After hearing arguments from the State and Applicant's counsel regarding the State's motion to dismiss the application, this Court found that it must dismiss the application with prejudice and asked the State to prepare a proposed Order for the Court.

This Court had before it the records of the Dorchester County Clerk of Court, the trial transcript, the transcript of the status conference where applicant waived his right to seek post-conviction relief, and the Applicant's records from the South Carolina Department of Corrections.

Prior to the entry of a written Order, Applicant filed a "Motion for Reconsideration" on June

the motion to be premature, as the formal Order had yet to be entered.

On July 27, 2012, this Court issued an Order denying and dismissing Applicant's application for post-conviction relief with prejudice. This Order was filed on August 20, 2012 and served upon Applicant and Applicant's counsel on the same date.

On August 29, 2012, Applicant filed a second Motion to Reconsider pursuant to Rule 52 and 59, SCRCP, in which he asks the Court to vacate its Order dismissing his Application for post-conviction relief, or in the alternative, grant Applicant another hearing. The State made its Return to this motion on August 30, 2012, asking that the motion be denied.

This Court has reviewed Applicant's motion, the State's return and the record in this matter and finds the following:

The Order of Dismissal dated July 27, 2012 and filed August 20, 2012, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRCP. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of the Applicant's motion and supporting testimony, this Court is not persuaded to vacate its judgment or grant Applicant a new hearing.

IT IS THEREFORE ORDERED that the Applicant's Motion for Reconsideration is **DENIED.**

AND IT IS SO ORDERED this _____ day of _____, 20____.

DEANDREA G. BENJAMIN
Presiding Judge
First Judicial Circuit

_____, South Carolina

THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Judge

Case No.
(11-CP-18-00027)

Anthony Sanders, 339645 Appellant,

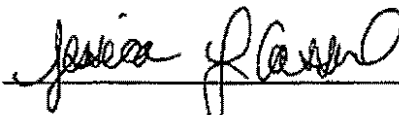
v.

State of South Carolina Respondent.

NOTICE OF INTENT TO APPEAL

Appellant appeals the decision of the Honorable Judge Benjamin based upon the order denying Motion to Reconsider, signed on September 19, 2012, which was sent by the United States Postal Services by the Clerk of Court for Dorchester County and filed on October 2, 2012.

Counsel for Applicant received written notice of the Order on October 4, 2012, and files this Notice by regular mail today October 8, 2012.



JESSICA L. CASSICK, ESQUIRE

LAW OFFICE OF ASHLEY E. AMEIKI, LLC
7555 Northside Drive, North Charleston SC 29420
(843) 820-9719
(843) 820-9720 (fax)
APPOINTED ATTORNEY FOR PCR PETITIONER

Other Counsel of record:
David Spencer, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

RECEIVED

OCT 11 2012

S.C. SUPREME COURT

THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Judge

Case No.
(11-CP-18-00027)

Anthony Sanders, # 339645 Appellant,

v.

State of South Carolina Respondent.

PROOF OF SERVICE

I certify that the foregoing was served on the persons listed below by placing same in the U.S. Mail postage prepaid this day, October 8, 2012.

RECEIVED

OCT 11 2012

S.C. SUPREME COURT

Jessica L. Cassick

JESSICA L. CASSICK, ESQUIRE
LAW OFFICE OF ASHLEY E. AMEIKA, LLC
7555 Northside Drive
North Charleston, South Carolina 29420
(843) 820-9719
(843) 820-9720 (fax)
APPOINTED ATTORNEY FOR PCR PETITIONER

David Spencer, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL - 5 2013

S.C. Supreme Court

Certiorari to Dorchester County

DeAndrea G. Benjamin, Circuit Court Judge

ANTHONY SANDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213162

PETITION FOR WRIT OF CERTIORARI

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

INDEX

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ISSUE PRESENTED

The PCR court erred in summarily dismissing Petitioner's application for post-conviction relief without affording Petitioner the opportunity to present evidence that his purported waiver of his right to seek collateral relief was tainted by the advice of constitutionally ineffective trial counsel.

STATEMENT

On August 30, 2007, the Dorchester County grand jury indicted Petitioner for three counts of murder. App. 359 – 360; App. 362 – 363; App. 365 – 366 (2007-GS0-18-1296, -1297, -1298). The prosecution sought the death penalty against Petitioner. On November 21, 2009, the Honorable R. Markley Dennis, Jr. presided over pretrial hearings. Supp. App. 1. On January 21, 2010, the parties again appeared before Judge Dennis for a status conference. The state was represented by Russell Hilton and Blair Jennings. Petitioner was represented by Mark Leiendecker, Mitchell Farley, Boyd Young, and Laura Wood. App. 1. The purpose of the status conference was to place on the record a “Contractual Consent Order to Waive Rights to a Jury Trial.” App. 2, lines 14 – 20. On March 8, 2010, Petitioner proceeded to a bench trial before Judge Dennis. App. 28. Judge Dennis found Petitioner guilty of all three counts of murder. App. 296, lines 16 – 20. Thereafter, Judge Dennis sentenced Petitioner to life imprisonment. App. 305, lines 6 – 8; App 361, App. 364; App. 367.

Petitioner attempted to file a pro se notice of appeal on March 24, 2010. App. 310 – 311. On April 22, 2010, the Court of Appeals dismissed the notice of appeal due to Petitioner’s failure to provide the Court with a proof of service showing the notice of appeal was timely served on opposing counsel. App. 312 – 314. Following subsequent communication between the Court and Petitioner, the Court of Appeals finally dismissed the notice of appeal on July 14, 2010. App. 317 – 318. On August 25, 2010, the Court issued remittitur. App. 319.

Petitioner filed an application for post-conviction relief (PCR) on January 6, 2011. App. 320 – 326. On May 4, 2011, the state filed its return. App. 327 – 331. On May 17, 2012, the state signed and served a motion to dismiss Petitioner’s application for PCR. App. 332 – 334. On May 22, 2012, the matter proceeded to a hearing before the Honorable DeAndrea Benjamin.

David Spencer represented the state and Jessica Cassick represented Petitioner. App. 335. On August 20, 2012, Judge Benjamin dismissed Petitioner's application. App. 348 – 351. On August 30, 2012, Petitioner filed a motion for reconsideration. App. 352 – 354. The state, represented by Megan Harrigan, filed its return to Petitioner's motion for reconsideration. Subsequently, Judge Benjamin denied Petitioner's motion for reconsideration. App. 357 – 358.

Petitioner filed a timely notice of appeal. This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred in summarily dismissing Petitioner's application for post-conviction relief without affording Petitioner the opportunity to present evidence that his purported waiver of his right to seek collateral relief was tainted by the advice of constitutionally ineffective trial counsel.

Relevant facts.

Relevant facts from the status conference.

On January 21, 2010, Petitioner, his trial attorneys, and the prosecutors appeared before Judge Dennis to place on the record a "Contractual Consent Order to Waive Rights to a Jury Trial." App. 1; App. 2, lines 14 – 20. The prosecutor and trial counsel explained the terms of the contract as follows: the prosecution would withdraw its notice of intent to seek the death penalty in exchange for Petitioner waiving his right to a jury, a direct appeal, and PCR. App. 3, line 23 – App. 5, line 9. Initially, the court engaged in a colloquy with trial counsel to determine whether they discussed the agreement with Petitioner. App. 5, lines 8 – App. 6, line 1. Thereafter, Judge Dennis engaged in a colloquy with Petitioner concerning the agreement. Judge Dennis explained that the purpose of the colloquy was to convince the Court that the agreement was fair and that it truly represented the agreement of both sides. App. 7, lines 22 – 25. Petitioner responded affirmatively that he had sufficient time to discuss the hearing and the agreement with his lawyers. App. 9, lines 9 – 12; App. 9, lines 21 – 24. Petitioner informed the court that he wanted to accept the agreement. App. 10, lines 4 – 6. The judge then informed Petitioner that he was giving up his right to have the judge's decision reviewed by the court. Judge Dennis explained that an individual has a right to have a decision reviewed by another court to determine whether there were any errors of law other issues which may be addressed on

appeal. App. 11, lines 17 – App. 12, line 14. Petitioner responded affirmatively when Judge Dennis asked if he wanted to give up his right to appeal. App. 12, lines 9 – 16.

Judge Dennis then explained the portion of the contract dealing with PCR as follows:

The Court: The second part of is kind of a second trial issue, if you will, they can arise in some cases – – not always but it certainly can. It's a very real and substantial right that you have as a person accused of a criminal offense in this state. That is after a person has concluded all their "options," so to speak, of having the matter reviewed, if they believe that their lawyer(s) did something improper or that the judge did something improper, it could be a legal decision issue. They're multiple, but those are statutorily provided. Your lawyers have talked with you about the post-conviction relief statute. Is that correct?

Defendant: Yes, sir.

The Court: And you understand that you're giving up that right, too, kind of a second review, if you will, really. This same process would apply. You'd have a right to a hearing where you'd present evidence, you've had a right to appeal from that hearing or have that matter reviewed by the Court. Do you understand?

Defendant: Yes, sir.

The Court: And you want to give up that right, too, this morning; is that right?

Defendant: Yes, sir.

App. 13, line 17 – app. 14, line 19.

Judge Dennis explained that in his seventeen years of being a judge, he had never been asked to accept an agreement in which a person waived his right to appellate review and collateral review. App. 18, lines 18 – App. 19, line 3. Nevertheless, Judge Dennis accepted the agreement and found that Petitioner entered into the agreement freely and voluntarily without any threat or coercion. App. 19, lines 19 – 24.

Relevant facts the bench trial.

At the start of the bench trial on March 2010, Judge Dennis, again broached the subject of the consent order. Judge Dennis asked Petitioner if he confirmed and ratified the consent order. Petitioner responded affirmatively. App. 37, lines 18 – 25. The agreement was entered as a Court's exhibit to the bench trial. App. 38, lines 2 – 15; App. 307-309. Thereafter, the parties proceeded with the bench trial.

The agreement was a total of three pages with the final page primarily consisting of signatures. In the third paragraph of the agreement, Petitioner purported to waived his right to a jury trial and agreed for the case to be resolved by bench trial before Judge Dennis. App. 307. The agreement further provided:

[Petitioner] has been informed by his counsel that appealable error may have already occurred in evidentiary hearings or may occur during the bench trial which may entitle him to a new trial. [Petitioner] agrees to waive absolutely and unconditionally all future rights to appeal any legal issues associated with this case, or conviction in state or federal court. [Petitioner] waives the right to appeal any evidentiary rulings made by the Honorable R. Markley Dennis. [Petitioner] also waives the right to appeal the verdict and sentence entered by the trial judge. This waiver applies to all rights of judicial review, including, but not limited to direct appeal, post-conviction proceedings, or habeas corpus proceedings in state or federal court.

App. 307 – App. 308. Petitioner, Petitioner's trial counsel, the prosecutors, and Judge Dennis signed the agreement. App. 309..

Although the facts of the underlying trial are not relevant to the issue presented, a brief recitation of the facts provides some context for consideration of the issue. The prosecutor's closing argument demonstrates the weak case against Petitioner. As the prosecutor explained, the case was "truly the quintessential who-done-it." The killings occurred "in the middle of the night with no eyewitnesses." The state's case was purely circumstantial. App. 275, lines 15-23,

The investigation began when officers, responding to a 911 call, found two dead bodies in an apartment with the door partially open on July 10, 2007. App. 49, lines 3-9; App. 50, lines 2-25. Officers obtained gel lifts of footwear in the apartment and found several shell casings. The shell casings were .40 caliber ammunition manufactured by Smith and Wesson and Federal. App. 60, lines 8-13; App. 64, line 6 – App. 65, line 8. While working the scene in the apartment, officers found a partially nude female behind an apartment in the same complex. App. 70, line 24 – App. 71, line 9. Officers found several shell casings, which were .40 caliber ammunition manufactured by Federal and Smith and Wesson, near the female's body as well. App. 74, lines 2-18.

Officers recovered several pairs of Nike Air Force One sneakers from Petitioner's bedroom, which he shared with his twin brother, and .40 caliber ammunition manufactured by Federal and Smith and Wesson. App. 80, lines 19-23; App. 81, lines 1-6. Officers also seized a safe from the bedroom. App. 81, line 10.

Using the Integrated Ballistics Identification System (IBIS), officers determined the markings on the shell casings matched markings on shell casings from two other shootings, one of which occurred at a local bar. App. 79, lines 1-11. Xavier Walker was a suspect, and had been charged, in the shooting at the bar. Officers interviewed Walker, who, "after some negotiations," told them that Petitioner had committed one of the shootings despite the fact that several eyewitnesses had identified Walker as the shooter. In light of Walker's cooperation, the charges against him were dropped. App. 124, lines 12-App. 125, line 22. A bouncer at the bar, Reginald Chavers, identified Petitioner as one of two shooters that night. He explained that on March 4, 2007, he removed Petitioner from the bar. He then observed Petitioner walk across the street and enter a truck. The front and back passenger windows then rolled down. Petitioner,

sitting in the back, fired a single shot from a semi-automatic handgun. Another individual, sitting in the front, fired multiple shots using a Tec-9 submachine gun. App. 196, line 21 – App. 198, line 17; App. 199, line 15 – App. 200, line 8; App. 202, line 15 – App. 203, line 15; App. 203, line 25 – App. 204, line 6; App. 205, line 14 – App. 206, line 13; App. 207, lines 18-25.

The State Law Enforcement Division (SLED) concluded that the gel lifts of the footwear impressions from the scene were consistent with the Nike Air Force One sneakers recovered from Petitioner's room. SLED's analysis merely determined the gel lifts were consistent with all Nike Air Force One sneakers of that type and size. SLED was unable to determine that Petitioner's shoes made the impressions. App. 147, line 4 – App. 148, line 25; App. 155, lines 13-16.

A partial DNA profile developed from oral swabs from the partially nude female found dead behind the apartment complex matched Petitioner's DNA profile. App. 162, lines 14-25. "[T]he probability of randomly selecting an unrelated individual having a DNA profile matching the semen on this item [was] approximately one in two hundred sixty." In other words, one out of every two hundred and sixty people, who were unrelated to Petitioner, would have DNA matching the profile developed from the oral swab. App. 163, lines 1-8. SLED also developed a DNA profile that was a mixture of two individuals from the female's pajama pants. The major contributor was an unidentified male individual. App. 168, line 24 – App. 169, line 16.

Police obtained the phone records for Walker and Petitioner. Walker's phone was turned off from 10:30 p.m. on the night before the incident until 8:46 a.m. the morning after the incident. App. 251, lines 1-22. Petitioner's phone records showed multiple calls during the early morning hours of July 10, 2007, the day of the deaths. Petitioner's phone received a call at 2:06 a.m. and then someone using the phone placed a call at 2:24 a.m. App. 253, lines 3-9. An

officer testified that the first 911 call regarding the incident began at 2:24 a.m. App. 253, lines 10-14. The call placed at 2:24 a.m. was to Madea Thompson, Petitioner's girlfriend, who lived near the apartment complex. App. 254, lines 3-23.

An officer testified that the closest cell tower to the incident location was tower 6040. App. 258, lines 2-6. He further testified that when Petitioner's phone made calls from 1:38 a.m. until 2:26 a.m., the phone was pinging off Tower 6040. Thereafter, the phone pinged off towers 6139 and 6024. Over objection, the officer testified the changing of the towers would indicate the phone was heading southeast in the general direction of Petitioner's mother's apartment. App. 258, line 7 – App. 259, line 5. Importantly, officers found no numbers connected to the deceased individuals on the records of Petitioner or Walker. App. 259, lines 16-23. The records indicated Walker's phone was using cell tower 6040 prior to it being turned off at 8:46 p.m. App. 261, lines 14-25. The prosecutor presented no evidence connecting Petitioner to the deceased individuals.

In closing argument, the prosecutor argued that Petitioner shot and killed the three deceased individuals during the eighteen minute gap on his phone when no calls were placed or received. The prosecutor argued "it cannot be explained away as a coincidence that his phone – there's no activity while all these actions are going on." App. 277, line 4 – App. 278, line 10. The prosecutor argued the "most condemning piece of evidence" was the safe recovered from Petitioner's room. The safe contained photographs, correspondence, an arrest warrant, and a newspaper article about the deaths. The prosecutor argued the newspaper article was kept as a trophy or a memento of "what he did." App. 279, line 23 – App. 280, line 11.

The only evidence against Petitioner was that his phone made calls using a tower close to the apartment complex close to the time of the incidents, a bouncer identified him as shooting a

weapon at a bar months before the deaths, and the markings on the shell casings from that unrelated shooting matched the markings on the shell casings from the incident location, Petitioner had a girlfriend who lived in the area, Petitioner kept a newspaper article describing the deaths, Petitioner had access to a .40 caliber weapon and ammunition, the DNA profile developed from the oral swab of one of the deceased “matched” Petitioner to the same extent that it would also match one out of two-hundred and sixty people randomly selected, and Petitioner’s ownership of Nike Air Force One sneakers that were consistent with shoe impressions left at the apartment. The prosecution presented no evidence of any relationship between Petitioner and the deceased individuals and no motive for their deaths. The state’s case was purely circumstantial and failed to amount to substantial circumstantial evidence indicating Petitioner’s guilt.

Relevant facts from the PCR hearing.

Although Petitioner specifically alleged in his PCR application that trial counsel “misadvised [him] with misleading statements that render[ed his] signing of the ‘Contractual Consent Order to Waive Right to Jury Trial’ involuntary and not an intelligent decision, especially in light of the prosecutor’s weak case,” Judge Benjamin refused to allow Petitioner to present evidence that his waiver was tainted by the advice of constitutionally ineffective trial counsel. Petitioner argued to the court that he did not enter into the waiver contract knowingly and voluntarily based upon ineffective assistance of trial counsel. App. 340, lines 14 – 17. Petitioner argued that the circumstances surrounding the waiver were questionable as to whether he had knowingly and voluntarily entered into the contract. In support of this argument, Petitioner explained that this waiver occurred during the context of plea negotiations in which Petitioner was presented with three options, one of which was the waiver contract. Petitioner signed the waiver within an hour of seeing it, and after signing the waiver, Petitioner asked his

attorneys if he could still appeal. Petitioner further noted that the caption of the contract was entitled "Waiver of Jury Trial" and made no mention of the additional significant rights that the contract attempted to waive. App. 344, lines 5 – 21. Specifically, Petitioner requested an evidentiary hearing to allow him the opportunity to present testimony that his entering into the contract was tainted by the ineffective assistance of trial counsel. App. 344, lines 22 – 24.

Based upon her reading of the contract and the transcript, Judge Benjamin determined that Judge Dennis covered everything he possibly could in his questioning; therefore, she granted the motion to dismiss. App. 346, lines 11 – 18.

Order of dismissal.

Judge Benjamin dismissed Petitioner's application for PCR based upon Petitioner's written waiver of his right to seek post-conviction relief. Judge Benjamin's decision was based upon the arguments of counsel, the pleadings filed, Petitioner's records from the Department of Corrections, the Clerk of Court's records regarding the convictions, the trial transcript, and a transcript of the waiver hearing. App. 348. Despite the fact that Judge Benjamin dismissed the application based upon the waiver, she went on to find that Petitioner had freely and voluntarily waived his rights based upon the express terms of the agreements and the judge's colloquy with Petitioner concerning the agreement. App. 350.

Petitioner requested the court reconsider its ruling dismissing the application without allowing Petitioner to present any evidence that he did not knowingly, voluntarily, or intelligently waive his right to seek PCR. App. 352. Specifically, Petitioner asked for an opportunity to present his case. App. 354. Judge Benjamin denied the motion. App. 357 – 358.

Discussion.

A criminal defendant, who has been convicted of, or sentenced for a crime, has a statutory right to seek post-conviction relief of his conviction and sentences. S.C. Code Ann. § 17-27-20(a). “A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and may be accomplished by a colloquy between the court and defendant, between the court and defendant’s counsel, or both.” Moore v. State, 399 S.C. 641, 732 S.E.2d 871 (2012)(citing Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000)); see also, Brannon v. State, 345 S.C. 437, 548 S.E.2d 866 (2001).

In Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008), this Court held a criminal defendant may waive his right to appellate and post-conviction review as long as the waiver is knowing and voluntary. Recognizing the issue was novel in South Carolina, this Court turned to federal precedent for guidance. First, this Court explained the Fourth Circuit Court of Appeals held a defendant may waive his federal statutory right to appeal just as he may waive his right to counsel and right to a jury trial. Id. at 142, 665 S.E.2d at 607 (quoting United States v. Wessells, 936 F.2d 165, 167 (4th Cir. 1991)). Turning to the issue of collateral review, this Court recognized the Fourth Circuit’s holding that there was “no reason to distinguish the enforceability of a waiver of direct-appeal rights from a waiver of collateral-attack rights’ in a plea agreement.” Id. (quoting United States v. Lemaster, 403 F.3d 216, 220 (4th Cir. 2005)). Nevertheless, such waivers are only valid if entered into knowingly and voluntarily by the defendant. Id. This Court adopted the test announced by the Fourth Circuit to determine the validity of a waiver of direct appeal and post-conviction relief rights: the reviewing court examines the particular facts and circumstances surrounding the case, including the background, experience, conduct of the accused, and whether the issue sought to be appealed falls within the

scope of the waiver. Id. at 143, 665 S.E.2d at 607. Spoone concerned the general enforceability of a plea agreement in which a defendant waived his right to collaterally attack his conviction. Conversely, Spoone did not address whether a waiver of post-conviction relief remedies included waiving the right to challenge ineffective assistance of counsel as it affected the waiver itself.

Despite a knowing and voluntary waiver, a plea agreement that waives the right to collaterally attack a conviction and sentence is unenforceable with respect to an ineffective assistance of counsel claim that challenges the voluntariness of the plea. United States v. Johnson, 410 F.3d 137, 151 (4th Cir. 2005) (“[E]ven if the court engages in a complete plea colloquy, a waiver ... may not be knowing and voluntary if tainted by the advice of constitutionally ineffective trial counsel.”); see also, United States v. Attar, 38 F.3d 727, 732 (4th Cir. 1994) (holding “a defendant’s agreement to waive appellate review of his sentences is implicitly conditioned on the assumption that the proceedings following entry of the plea will be conducted in accordance with constitutional limitations”).

In Johnson, the Fourth Circuit explained that an appeal waiver pursuant to a plea agreement “cannot be knowing and voluntary when the plea agreement itself is the result of advice outside the range of competence demanded of attorneys in criminal cases.” Johnson, 422 F.3d at 151 (internal quotations omitted); see also Washington v. Lampert, 422 F.3d 864, 871 (9th Cir. 2005) (holding that a plea agreement that waives the right to file a federal habeas petition pursuant to 28 U.S.C. § 2254 is unenforceable with respect to an ineffective assistance of counsel claim that challenges the voluntariness of the waiver); United States v. White, 307 F.3d 336, 339 (5th Cir. 2002) (holding that a waiver of a right to file a petition for federal habeas corpus does not apply to a claim that the waiver was tainted by ineffective assistance of counsel); United States v. Cockerham, 237 F.3d 1179, 1183-1184 (10th Cir. 2001) (holding although a waiver of

collateral review rights is generally enforceable, such a waiver is unenforceable against a claim of ineffective assistance in connection with the negotiation of the waiver itself because it would deprive the defendant the opportunity to assert his Sixth Amendment right to counsel where he had accepted the waiver in reliance on delinquent representation); DeRoo v. United States, 223 F.3d 919 (8th Cir. 2000)(“A defendant’s plea agreement waiver of the right to seek section 2255 post-conviction relief does not waive defendants’ right to argue, pursuant to that section, that the decision to enter into the plea was not knowing and voluntary because it was the result of ineffective assistance of counsel.”); Jones v. United States, 167 F.3d 1142, 1145 (7th Cir. 1999)(“Justice dictates that a claim of ineffective assistance of counsel in connection with the negotiation of a cooperation agreement cannot be barred by the agreement itself – the very product of the alleged ineffectiveness.”); United States v. Henderson, 72 F.3d 463, 465 (5th Cir. 1995)(holding that a dismissal of an appeal based on a waiver in the plea agreement was improper where the motion to withdraw the plea incorporated a claim that the defendant’s waiver of appeal was tainted by ineffective assistance of counsel).

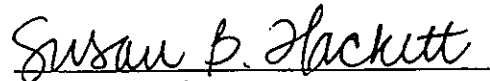
Following federal precedent, as this Court did in Spoone, *supra*, this Court should hold that a defendant’s waiver of his post-conviction relief rights may not be voluntary and knowing if tainted by constitutionally ineffective assistance of counsel. A defendant who makes such a claim should be afforded an opportunity to prove his waiver was affected by ineffective assistance of counsel as the trial or guilty plea record is unlikely to provide evidence to support the claim. If the record before the lower court accepting the waiver contained such evidence, a lower court would never accept the waiver. Thus, the PCR court erred in denying Petitioner an opportunity to present evidence that his waiver to seek PCR was tainted by the ineffective assistance of trial counsel. Petitioner’s PCR application clearly explained he signed the

“Contractual Consent Order to Waive Rights to Jury Trial” based upon misleading statements and advice falling outside the range of competent performance. Put simply, Petitioner argued his waiver was based upon ineffective assistance of counsel. Petitioner requires an opportunity to present facts to support his contention.

CONCLUSION

Petitioner respectfully requests this Court remand the matter to the Court of Common Pleas for a hearing on Petitioner's claim that his waiver of the right to seek PCR was tainted by ineffective assistance of trial counsel.

Respectfully submitted,

A handwritten signature in cursive script, reading "Susan B. Hackett", is written over a horizontal line.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of July, 2013.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

 Certiorari to Dorchester County

 DeAndrea G. Benjamin, Circuit Court Judge

ANTHONY SANDERS,

PETITIONER,

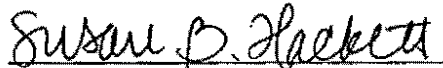
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

 CERTIFICATE OF SERVICE

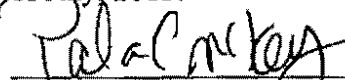
I certify that a true copy of the petition for writ of certiorari, a copy of the appendix and a copy of the supplemental appendix in this case have been served on Megan Harrigan, Esquire, AT Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Anthony Sanders, #339645, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 5th day of July, 2013.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 5th day
of July, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

NOV 18 2013

Appeal from Dorchester County
DeAndrea G. Benjamin, Circuit Court Judge

S.C. Supreme Court

Anthony Sanders,

Petitioner,

vs.

State of South Carolina,

Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 58671

Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3727

ATTORNEYS FOR RESPONDENT

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ISSUE PRESENTED

The PCR court did not err in dismissing Petitioner's PCR application where the record firmly established his knowing and voluntary waiver of the right to file a PCR application pursuant to agreement with the prosecution.

STATEMENT OF THE CASE

Petitioner Sanders was indicted for three counts of murder. The prosecution was seeking the death penalty against Sanders. Sanders was represented by a team of four attorneys. On January 21, 2010, a hearing was held before the Honorable R. Markley Dennis, Jr., to place on record a "Contractual Consent Order to Waive Rights to a Jury Trial" and to establish that Sanders was freely and voluntarily entering the agreement, which included Sanders' waiver of: (1) the right to a jury trial, (2) the right to a direct appeal, and (3) the right to seek post-conviction relief (PCR).

Sanders proceeded to a bench trial before Judge Dennis on March 8, 2010, and Judge Dennis found Sanders guilty as charged for all three counts of murder. Judge Dennis sentenced Sanders to life imprisonment.

Sanders first attempted to violate the agreement by filing a *pro se* notice of appeal, but the appeal was dismissed for failure to provide the Court of Appeals a proof of service. Sanders filed an application for post-conviction relief (PCR) on January 6, 2011. The State filed its return on May 4, 2011. On May 17, 2012, the State filed a motion to dismiss the PCR application pursuant to the terms of the prior consent order. The matter was heard before the Honorable DeAndrea Benjamin on May 22, 2012. Judge Benjamin granted the State's motion to dismiss the application by order dated August 20, 2012. Sanders filed a motion for reconsideration on August 30, 2012. Judge Benjamin denied the motion for reconsideration.

ARGUMENT

The PCR court did not err in dismissing Petitioner's PCR application where the record firmly established his knowing and voluntary waiver of the right to file a post-conviction relief application pursuant to an agreement with the prosecution.

Petitioner Sanders complains that the PCR court erred in dismissing his PCR application pursuant to the agreement he had entered into with the State to waive his right to file a PCR application. However, the PCR court did not err in granting the State's motion as Sanders failed to offer a specific reason why his agreement was not voluntarily entered into.

The agreement is permissible under Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008). In Spoone, this Court found permissible the terms of a plea agreement where Spoone waived the right to file a direct appeal and the right to file a PCR application. In exchange, the State refrained from pursuing the death penalty. Like the instant case, Spoone filed a PCR application and the State moved for dismissal based on the written agreement. This Court declared "such a waiver will be held effective only if it is knowing and voluntary." Id., 379 S.C. at 142, 665 S.E.2d at 607.

This Court then examined the facts and circumstances of Spoone's case as follows:

Looking at the particular facts and circumstances of the instant case, including: (1) the background, experience and conduct of the accused, (2) the text of the plea agreement, and (3) the transcript of the plea hearing, we find petitioner's waiver was voluntarily, knowingly, and intelligently made. Although petitioner only has a ninth grade education, the text of the written plea agreement was straightforward. Furthermore, the plea colloquy shows

that the trial court specifically asked petitioner about the waiver both in the language of the plea agreement, as well as in plain language. Petitioner was represented by two attorneys at the trial level. Both lawyers attended the plea hearing and both signed the written plea agreement, along with petitioner himself.

Id., 379 S.C. at 143-44, 665 S.E.2d at 608.

In the instant case, Judge Dennis engaged in an extensive colloquy with Sanders and his attorneys concerning the terms of the agreement to ensure Sanders understood the terms of the agreement and that he wanted to enter into the agreement.

At the outset of the hearing, Assistant Solicitor Jennings explained the terms of the agreement as follows:

that in return for the State asking that he would be sentenced from thirty years to life that he and his counsel are willing to waive that right to a jury trial, in addition to waiving any right to appeal Your Honor's – whatever that verdict might be – nor could he bring any PCR action.

App. p. 4, lines 14-21.

Attorney Boyd Young responded as follows:

... the agreement before the Court signed by all the parties, the offer, uh, that the State would be basically withdrawing seeking the death penalty. The consideration is that withdrawal. We agree that in exchange for that to a trial before Your Honor, putting the burden on the evidence. We also agree to waive any appeal and/or PCRs from that trial. We accept their offer and are ready to proceed.

App. p. 5, lines 1-9. Young verified that he and co-counsel discussed the agreement fully with Sanders. App. pp. 5-6. Judge Dennis went over in detail the waiver of the right to direct appeal with Sanders. App. pp. 11-12.

Judge Dennis specifically went over Sanders' right to post-conviction relief and the fact he was waiving this right. Judge Dennis verified that the reason Sanders wanted to waive that right was to avoid the death penalty as a possible punishment, which Sanders verified was a real benefit from his perspective. App. pp. 13-15. Judge Dennis' colloquy ensured that Sanders was making the decision voluntarily and that Sanders was comfortable with the decision. Judge Dennis asked Sanders if there was any reason from Sanders' vantage point that Judge Dennis should not accept the agreement, and Sanders responded in the negative. App. pp. 17-18.

Judge Dennis noted the following:

And, Mr. Sanders, if the State is able to convince me beyond a reasonable doubt of each element of the crime or crimes charged, then of course it would be closure for you and for the family, too, because that will be the last proceeding in this process. Do you understand that?

App. p. 21, lines 5-11. Sanders indicated that he understood. App. p. 21, line 12.

Approximately six weeks after Sanders entered into the agreement, Judge Dennis asked Sanders at the beginning of the bench trial whether he still desired to go forward based on the consent order. Sanders indicated he still wished to go forward. App. pp. 37-38.

As in Spoone, the consent agreement itself is straightforward and not difficult to understand. App. pp. 307-310. The text of the agreement itself is barely more than two pages. In relevant part, the agreement indicates the following:

Anthony Sanders agrees to waive absolutely and unconditionally all future rights to appeal any legal issues associated with this case or conviction in State or Federal Court. The Defendant waives the right to appeal any

evidentiary rulings made by the Honorable R. Markley Dennis. The Defendant also waives the right to appeal the verdict and sentence entered by the trial judge. This waiver applies to all rights of judicial review, including, but not limited to direct appeal, post-conviction proceedings, or habeas corpus proceedings in State or Federal Court.

App. pp. 307-308.

The consent order further states the following:

e) He understands the provisions of this consent order are permanent and irrevocable such that he will not have a jury decide his guilt for the above referenced indictments, and he will never be entitled to appeal any aspect of this case.

App. p. 308.

PCR counsel asserted the following claims in response to the State's motion:

The circumstances that surround the waiver is what is questionable as to his knowingly entering – voluntarily, excuse me, entering into it. There was a plea negotiations [sic] prior to the contract – him signing this contractual waiver that essentially discussed for a few months prior to and he was faced with three options, one of which was this contractual waiver. He signed it within an hour of seeing it, talking to his attorneys. He asked if he could still appeal. That, to me, shows that he did not know what everything means, that he was actually contracting away his rights, and the caption is entitled Waiver of Jury Trial. It doesn't indicate anything else, and that may not be significant but to Mr. Sanders it **may be** because that may be the one thing that is stuck in his head. He **may** not have realized that he waived his right to a direct appeal and to this post-conviction relief hearing.

App. p. 344, lines 5-21 (emphasis added).

Accordingly, it appears that Sanders is contending the PCR court erred because he should have a hearing because he **may** have not realized he waived his right to direct appeal and post-conviction relief. This position is untenable. The record is replete

with references to the waiver of direct review and post-conviction relief and Sanders' indication that he understood the rights he was waiving. In the time between the conference and bench trial, Sanders had six weeks to decide if it was a decision he regretted. Yet, Sanders indicated to Judge Dennis before the bench trial that he still wished to proceed with the agreement. Sanders never affirmatively claimed he did not understand the agreement and the waivers.

Sanders attempts to support his argument by claiming that the prosecution's case was weak. However, even viewing the evidence as summarized by Sanders in his petition, the State easily presented sufficient evidence for a jury to convict Sanders. Accordingly, the contract represented a reasonable allocation of risk where the very real possibility of the death penalty was removed for Sanders yet the State was still required to convince a fact finder of Sanders' guilt.¹

This is the principal weakness in Sanders' argument. The argument appears to be premised on the belief the agreement is somehow facially unreasonable and Sanders may have misunderstood something, although he fails to affirmatively state what he misunderstood. However, the record is clear that it is an advantageous agreement for Sanders, that the terms of the agreement were made abundantly clear to him, and that he

¹ In some cases, it actually may be to the defendant's advantage to waive a jury trial. See Waiver, after not guilty plea, of jury trial in felony case, 9 A.L.R.4th 695 (1981) § 2[b] ("It may be obvious to defense counsel in a given case that it is to his client's advantage to submit a felony charge for trial by the court -- where facts are particularly loathsome, where pretrial publicity has been so wide spread as to make change of venue ineffective, or where there is a possibility that the defendant's past record, attitude, or appearance seem clearly to suggest to counsel that the potential for conviction is more likely before a jury than before a judge.").

understood the terms of the agreement. Therefore, the PCR court did not err in dismissing the PCR application. Accordingly, this petition should be denied.

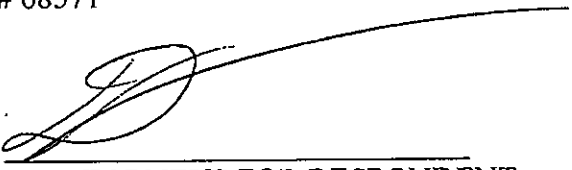
CONCLUSION

For the above stated reasons, the petition should be denied. If this Court sees fit to grant this petition for writ of certiorari, respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 68571

BY: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Columbia, South Carolina
November 18, 2013

The Supreme Court of South Carolina

Anthony Sanders, Petitioner,

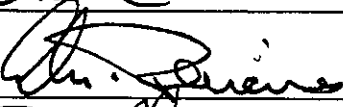
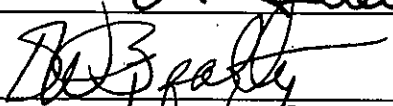
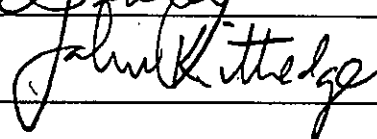
v.

State of South Carolina, Respondent.

Appellate Case No. 2012-213162

ORDER

This matter is before the Court on a petition for a writ of certiorari. The petition for a writ of certiorari is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.

	C.J.
	J.
	J.
	J.

Hearn, J., not participating

Columbia, South Carolina

September 11, 2014

cc:

Susan Barber Hackett, Esquire

David A. Spencer, Esquire

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

DeAndrea G. Benjamin, Circuit Court Judge

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OCT 18 2014

S.C. Supreme Court

ANTHONY SANDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213162

BRIEF OF PETITIONER

SUSAN B. HACKETT
Appellate DefenderSouth Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

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ISSUE PRESENTED

The PCR court erred in summarily dismissing Petitioner's application for post-conviction relief without affording Petitioner the opportunity to present evidence that his purported waiver of his right to seek collateral relief was tainted by the advice of constitutionally ineffective trial counsel.

STATEMENT

On August 30, 2007, the Dorchester County grand jury indicted Petitioner for three counts of murder. App. 359 – 360; App. 362 – 363; App. 365 – 366 (2007-GS0-18-1296, -1297, -1298). The prosecution sought the death penalty against Petitioner. On November 21, 2009, the Honorable R. Markley Dennis, Jr. presided over pretrial hearings. Supp. App. 1. On January 21, 2010, the parties again appeared before Judge Dennis for a status conference. The state was represented by Russell Hilton and Blair Jennings. Petitioner was represented by Mark Leiendecker, Mitchell Farley, Boyd Young, and Laura Wood. App. 1. The purpose of the status conference was to place on the record a “Contractual Consent Order to Waive Rights to a Jury Trial.” App. 2, lines 14 – 20. On March 8, 2010, Petitioner proceeded to a bench trial before Judge Dennis. App. 28. Judge Dennis found Petitioner guilty of all three counts of murder. App. 296, lines 16 – 20. Thereafter, Judge Dennis sentenced Petitioner to life imprisonment. App. 305, lines 6 – 8; App 361, App. 364; App. 367.

Petitioner attempted to file a pro se notice of appeal on March 24, 2010. App. 310 – 311. On April 22, 2010, the Court of Appeals dismissed the notice of appeal due to Petitioner’s failure to provide the Court with a proof of service showing the notice of appeal was timely served on opposing counsel. App. 312 – 314. Following subsequent communication between the Court and Petitioner, the Court of Appeals finally dismissed the notice of appeal on July 14, 2010. App. 317 – 318. On August 25, 2010, the Court issued remittitur. App. 319.

Petitioner filed an application for post-conviction relief (PCR) on January 6, 2011. App. 320 – 326. On May 4, 2011, the state filed its return. App. 327 – 331. On May 17, 2012, the state signed and served a motion to dismiss Petitioner’s application for PCR. App. 332 – 334. On May 22, 2012, the matter proceeded to a hearing before the Honorable DeAndrea Benjamin.

David Spencer represented the state and Jessica Cassick represented Petitioner. App. 335. On August 20, 2012, Judge Benjamin dismissed Petitioner's application. App. 348 – 351. On August 30, 2012, Petitioner filed a motion for reconsideration. App. 352 – 354. The state, represented by Megan Harrigan, filed its return to Petitioner's motion for reconsideration. Subsequently, Judge Benjamin denied Petitioner's motion for reconsideration. App. 357 – 358.

Petitioner filed a timely notice of appeal. On July 5, 2013, Petitioner filed a petition for writ of certiorari. On November 18, 2013, the state filed its return. On September 11, 2014, Chief Justice Toal, Justice Pleicones, Justice Beatty, and Justice Kittredge granted the petition. Justice Hearn did not participate. In accordance with this Court's order, Petitioner now files this brief.

ARGUMENT

The PCR court erred in summarily dismissing Petitioner's application for post-conviction relief without affording Petitioner the opportunity to present evidence that his purported waiver of his right to seek collateral relief was tainted by the advice of constitutionally ineffective trial counsel.

Relevant facts

Relevant facts from the status conference.

On January 21, 2010, Petitioner, his trial attorneys, and the prosecutors appeared before Judge Dennis to place on the record a "Contractual Consent Order to Waive Rights to a Jury Trial." App. 1; App. 2, lines 14 – 20. The prosecutor and trial counsel explained the terms of the contract as follows: the prosecution would withdraw its notice of intent to seek the death penalty in exchange for Petitioner waiving his right to a jury, a direct appeal, and PCR. App. 3, line 23 – App. 5, line 9. Initially, the court engaged in a colloquy with trial counsel to determine whether they discussed the agreement with Petitioner. App. 5, lines 8 – App. 6, line 1. Thereafter, Judge Dennis engaged in a colloquy with Petitioner concerning the agreement. Judge Dennis explained that the purpose of the colloquy was to convince the Court that the agreement was fair and that it truly represented the agreement of both sides. App. 7, lines 22 – 25. Petitioner responded affirmatively that he had sufficient time to discuss the hearing and the agreement with his lawyers. App. 9, lines 9 – 12; App. 9, lines 21 – 24. Petitioner informed the court that he wanted to accept the agreement. App. 10, lines 4 – 6. The judge then informed Petitioner that he was giving up his right to have the judge's decision reviewed by the court. Judge Dennis explained that an individual has a right to have a decision reviewed by another court to determine whether there were any errors of law other issues which may be addressed on

appeal. App. 11, lines 17 – App. 12, line 14. Petitioner responded affirmatively when Judge Dennis asked if he wanted to give up his right to appeal. App. 12, lines 9 – 16.

Judge Dennis then explained the portion of the contract dealing with PCR as follows:

The Court: The second part of is kind of a second trial issue, if you will, they can arise in some cases – – not always but it certainly can. It's a very real and substantial right that you have as a person accused of a criminal offense in this state. That is after a person has concluded all their "options," so to speak, of having the matter reviewed, if they believe that their lawyer(s) did something improper or that the judge did something improper, it could be a legal decision issue. They're multiple, but those are statutorily provided. Your lawyers have talked with you about the post-conviction relief statute. Is that correct?

Defendant: Yes, sir.

The Court: And you understand that you're giving up that right, too, kind of a second review, if you will, really. This same process would apply. You'd have a right to a hearing where you'd present evidence, you've had a right to appeal from that hearing or have that matter reviewed by the Court. Do you understand?

Defendant: Yes, sir.

The Court: And you want to give up that right, too, this morning; is that right?

Defendant: Yes, sir.

App. 13, line 17 – App. 14, line 19.

Judge Dennis explained that in his seventeen years of being a judge, he had never been asked to accept an agreement in which a person waived his right to appellate review and collateral review. App. 18, lines 18 – App. 19, line 3. Nevertheless, Judge Dennis accepted the agreement and found that Petitioner entered into the agreement freely and voluntarily without any threat or coercion. App. 19, lines 19 – 24.

Relevant facts the bench trial.

At the start of the bench trial on March 2010, Judge Dennis, again broached the subject of the consent order. Judge Dennis asked Petitioner if he confirmed and ratified the consent order. Petitioner responded affirmatively. App. 37, lines 18 – 25. The agreement was entered as a Court’s exhibit to the bench trial. App. 38, lines 2 – 15; App. 307-309. Thereafter, the parties proceeded with the bench trial.

The agreement was a total of three pages with the final page primarily consisting of signatures. In the third paragraph of the agreement, Petitioner purported to waived his right to a jury trial and agreed for the case to be resolved by bench trial before Judge Dennis. App. 307. The agreement further provided:

[Petitioner] has been informed by his counsel that appealable error may have already occurred in evidentiary hearings or may occur during the bench trial which may entitle him to a new trial. [Petitioner] agrees to waive absolutely and unconditionally all future rights to appeal any legal issues associated with this case, or conviction in state or federal court. [Petitioner] waives the right to appeal any evidentiary rulings made by the Honorable R. Markley Dennis. [Petitioner] also waives the right to appeal the verdict and sentence entered by the trial judge. This waiver applies to all rights of judicial review, including, but not limited to direct appeal, post-conviction proceedings, or habeas corpus proceedings in state or federal court.

App. 307 – App. 308. Petitioner, Petitioner’s trial counsel, the prosecutors, and Judge Dennis signed the agreement. App. 309.

Although the facts of the underlying trial are not relevant to the issue presented, a brief recitation of the facts provides some context for consideration of the issue. The prosecutor’s closing argument demonstrates the weak case against Petitioner. As the prosecutor explained, the case was “truly the quintessential who-done-it.” The killings occurred “in the middle of the night with no eyewitnesses.” The state’s case was purely circumstantial. App. 275, lines 15-23.

The investigation began when officers, responding to a 911 call, found two dead bodies in an apartment with the door partially open on July 10, 2007. App. 49, lines 3-9; App. 50, lines 2-25. Officers obtained gel lifts of footwear in the apartment and found several shell casings. The shell casings were .40 caliber ammunition manufactured by Smith and Wesson and Federal. App. 60, lines 8-13; App. 64, line 6 – App. 65, line 8. While working the scene in the apartment, officers found a partially nude female behind an apartment in the same complex. App. 70, line 24 – App. 71, line 9. Officers found several shell casings, which were .40 caliber ammunition manufactured by Federal and Smith and Wesson, near the female's body as well. App. 74, lines 2-18.

Officers recovered several pairs of Nike Air Force One sneakers from Petitioner's bedroom, which he shared with his twin brother, and .40 caliber ammunition manufactured by Federal and Smith and Wesson. App. 80, lines 19-23; App. 81, lines 1-6. Officers also seized a safe from the bedroom. App. 81, line 10.

Using the Integrated Ballistics Identification System (IBIS), officers determined the markings on the shell casings matched markings on shell casings from two other shootings, one of which occurred at a local bar. App. 79, lines 1-11. Xavier Walker was a suspect, and had been charged, in the shooting at the bar. Officers interviewed Walker, who, "after some negotiations," told them that Petitioner had committed one of the shootings despite the fact that several eyewitnesses had identified Walker as the shooter. In light of Walker's cooperation, the charges against him were dropped. App. 124, lines 12-App. 125, line 22. A bouncer at the bar, Reginald Chavers, identified Petitioner as one of two shooters that night. He explained that on March 4, 2007, he removed Petitioner from the bar. He then observed Petitioner walk across the street and enter a truck. The front and back passenger windows then rolled down. Petitioner,

sitting in the back, fired a single shot from a semi-automatic handgun. Another individual, sitting in the front, fired multiple shots using a Tec-9 submachine gun. App. 196, line 21 – App. 198, line 17; App. 199, line 15 – App. 200, line 8; App. 202, line 15 – App. 203, line 15; App. 203, line 25 – App. 204, line 6; App. 205, line 14 – App. 206, line 13; App. 207, lines 18-25.

The State Law Enforcement Division (SLED) concluded that the gel lifts of the footwear impressions from the scene were consistent with the Nike Air Force One sneakers recovered from Petitioner's room. SLED's analysis merely determined the gel lifts were consistent with all Nike Air Force One sneakers of that type and size. SLED was unable to determine that Petitioner's shoes made the impressions. App. 147, line 4 – App. 148, line 25; App. 155, lines 13-16.

A partial DNA profile developed from oral swabs from the partially nude female found dead behind the apartment complex matched Petitioner's DNA profile. App. 162, lines 14-25. “[T]he probability of randomly selecting an unrelated individual having a DNA profile matching the semen on this item [was] approximately one in two hundred sixty.” In other words, one out of every two hundred and sixty people, who were unrelated to Petitioner, would have DNA matching the profile developed from the oral swab. App. 163, lines 1-8. SLED also developed a DNA profile that was a mixture of two individuals from the female's pajama pants. The major contributor was an unidentified male individual. App. 168, line 24 – App. 169, line 16.

Police obtained the phone records for Walker and Petitioner. Walker's phone was turned off from 10:30 p.m. on the night before the incident until 8:46 a.m. the morning after the incident. App. 251, lines 1-22. Petitioner's phone records showed multiple calls during the early morning hours of July 10, 2007, the day of the deaths. Petitioner's phone received a call at 2:06 a.m. and then someone using the phone placed a call at 2:24 a.m. App. 253, lines 3-9. An

officer testified that the first 911 call regarding the incident began at 2:24 a.m. App. 253, lines 10-14. The call placed at 2:24 a.m. was to Madea Thompson, Petitioner's girlfriend, who lived near the apartment complex. App. 254, lines 3-23.

An officer testified that the closest cell tower to the incident location was tower 6040. App. 258, lines 2-6. He further testified that when Petitioner's phone made calls from 1:38 a.m. until 2:26 a.m., the phone was pinging off Tower 6040. Thereafter, the phone pinged off towers 6139 and 6024. Over objection, the officer testified the changing of the towers would indicate the phone was heading southeast in the general direction of Petitioner's mother's apartment. App. 258, line 7 – App. 259, line 5. Importantly, officers found no numbers connected to the deceased individuals on the records of Petitioner or Walker. App. 259, lines 16-23. The records indicated Walker's phone was using cell tower 6040 prior to it being turned off at 8:46 p.m. App. 261, lines 14-25. The prosecutor presented no evidence connecting Petitioner to the deceased individuals.

In closing argument, the prosecutor argued that Petitioner shot and killed the three deceased individuals during the eighteen minute gap on his phone when no calls were placed or received. The prosecutor argued "it cannot be explained away as a coincidence that his phone – there's no activity while all these actions are going on." App. 277, line 4 – App. 278, line 10. The prosecutor argued the "most condemning piece of evidence" was the safe recovered from Petitioner's room. The safe contained photographs, correspondence, an arrest warrant, and a newspaper article about the deaths. The prosecutor argued the newspaper article was kept as a trophy or a memento of "what he did." App. 279, line 23 – App. 280, line 11.

The only evidence against Petitioner was that his phone made calls using a tower close to the apartment complex close to the time of the incidents, a bouncer identified him as shooting a

weapon at a bar months before the deaths, and the markings on the shell casings from that unrelated shooting matched the markings on the shell casings from the incident location, Petitioner had a girlfriend who lived in the area, Petitioner kept a newspaper article describing the deaths, Petitioner had access to a .40 caliber weapon and ammunition, the DNA profile developed from the oral swab of one of the deceased “matched” Petitioner to the same extent that it would also match one out of two-hundred and sixty people randomly selected, and Petitioner’s ownership of Nike Air Force One sneakers that were consistent with shoe impressions left at the apartment. The prosecution presented no evidence of any relationship between Petitioner and the deceased individuals and no motive for their deaths. The state’s case was purely circumstantial and failed to amount to substantial circumstantial evidence indicating Petitioner’s guilt.

Relevant facts from the PCR hearing.

Although Petitioner specifically alleged in his PCR application that trial counsel “misadvised [him] with misleading statements that render[ed his] signing of the ‘Contractual Consent Order to Waive Right to Jury Trial’ involuntary and not an intelligent decision, especially in light of the prosecutor’s weak case,” Judge Benjamin refused to allow Petitioner to present evidence that his waiver was tainted by the advice of constitutionally ineffective trial counsel. Petitioner argued to the court that he did not enter into the waiver contract knowingly and voluntarily based upon ineffective assistance of trial counsel. App. 340, lines 14 – 17. Petitioner argued that the circumstances surrounding the waiver were questionable as to whether he had knowingly and voluntarily entered into the contract. In support of this argument, Petitioner explained that this waiver occurred during the context of plea negotiations in which Petitioner was presented with three options, one of which was the waiver contract. Petitioner signed the waiver within an hour of seeing it, and after signing the waiver, Petitioner asked his

attorneys if he could still appeal. Petitioner further noted that the caption of the contract was entitled “Waiver of Jury Trial” and made no mention of the additional significant rights that the contract attempted to waive. App. 344, lines 5 – 21. Specifically, Petitioner requested an evidentiary hearing to allow him the opportunity to present testimony that his entering into the contract was tainted by the ineffective assistance of trial counsel. App. 344, lines 22 – 24.

Based upon her reading of the contract and the transcript, Judge Benjamin determined that Judge Dennis covered everything he possibly could in his questioning; therefore, she granted the motion to dismiss. App. 346, lines 11 – 18.

Order of dismissal.

Judge Benjamin dismissed Petitioner’s application for PCR based upon Petitioner’s written waiver of his right to seek post-conviction relief. Judge Benjamin’s decision was based upon the arguments of counsel, the pleadings filed, Petitioner’s records from the Department of Corrections, the Clerk of Court’s records regarding the convictions, the trial transcript, and a transcript of the waiver hearing. App. 348. Despite the fact that Judge Benjamin dismissed the application based upon the waiver, she went on to find that Petitioner had freely and voluntarily waived his rights based upon the express terms of the agreements and the judge’s colloquy with Petitioner concerning the agreement. App. 350.

Petitioner requested the court reconsider its ruling dismissing the application without allowing Petitioner to present any evidence that he did not knowingly, voluntarily, or intelligently waive his right to seek PCR. App. 352. Specifically, Petitioner asked for an opportunity to present his case. App. 354. Judge Benjamin denied the motion. App. 357 – 358.

Discussion

A criminal defendant, who has been convicted of, or sentenced for a crime, has a statutory right to seek post-conviction relief of his conviction and sentences. S.C. Code Ann. § 17-27-20(a). “A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and may be accomplished by a colloquy between the court and defendant, between the court and defendant’s counsel, or both.” Moore v. State, 399 S.C. 641, 732 S.E.2d 871 (2012)(citing Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000)); see also, Brannon v. State, 345 S.C. 437, 548 S.E.2d 866 (2001).

In Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008), this Court held a criminal defendant may waive his right to appellate and post-conviction review as long as the waiver is knowing and voluntary. Recognizing the issue was novel in South Carolina, this Court turned to federal precedent for guidance. First, this Court explained the Fourth Circuit Court of Appeals held a defendant may waive his federal statutory right to appeal just as he may waive his right to counsel and right to a jury trial. Id. at 142, 665 S.E.2d at 607 (quoting United States v. Wessells, 936 F.2d 165, 167 (4th Cir. 1991)). Turning to the issue of collateral review, this Court recognized the Fourth Circuit’s holding that there was “‘no reason to distinguish the enforceability of a waiver of direct-appeal rights from a waiver of collateral-attack rights’ in a plea agreement.” Id. (quoting United States v. Lemaster, 403 F.3d 216, 220 (4th Cir. 2005)). Nevertheless, such waivers are only valid if entered into knowingly and voluntarily by the defendant. Id. This Court adopted the test announced by the Fourth Circuit to determine the validity of a waiver of direct appeal and post-conviction relief rights: the reviewing court examines the particular facts and circumstances surrounding the case, including the background, experience, conduct of the accused, and whether the issue sought to be appealed falls within the

scope of the waiver. Id. at 143, 665 S.E.2d at 607. Spoone concerned the general enforceability of a plea agreement in which a defendant waived his right to collaterally attack his conviction. Conversely, Spoone did not address whether a waiver of post-conviction relief remedies included waiving the right to challenge ineffective assistance of counsel as it affected the waiver itself.

Despite a knowing and voluntary waiver, a plea agreement that waives the right to collaterally attack a conviction and sentence is unenforceable with respect to an ineffective assistance of counsel claim that challenges the voluntariness of the plea. United States v. Johnson, 410 F.3d 137, 151 (4th Cir. 2005)("[E]ven if the court engages in a complete plea colloquy, a waiver ... may not be knowing and voluntary if tainted by the advice of constitutionally ineffective trial counsel."); see also, United States v. Attar, 38 F.3d 727, 732 (4th Cir. 1994)(holding "a defendant's agreement to waive appellate review of his sentences is implicitly conditioned on the assumption that the proceedings following entry of the plea will be conducted in accordance with constitutional limitations").

In Johnson, the Fourth Circuit explained that an appeal waiver pursuant to a plea agreement "cannot be knowing and voluntary when the plea agreement itself is the result of advice outside the range of competence demanded of attorneys in criminal cases." Johnson, 422 F.3d at 151 (internal quotations omitted); see also Washington v. Lampert, 422 F.3d 864, 871 (9th Cir. 2005)(holding that a plea agreement that waives the right to file a federal habeas petition pursuant to 28 U.S.C. § 2254 is unenforceable with respect to an ineffective assistance of counsel claim that challenges the voluntariness of the waiver); United States v. White, 307 F.3d 336, 339 (5th Cir. 2002)(holding that a waiver of a right to file a petition for federal habeas corpus does not apply to a claim that the waiver was tainted by ineffective assistance of counsel); United States v. Cockerham, 237 F.3d 1179, 1183-1184 (10th Cir. 2001)(holding although a waiver of

collateral review rights is generally enforceable, such a waiver is unenforceable against a claim of ineffective assistance in connection with the negotiation of the waiver itself because it would deprive the defendant the opportunity to assert his Sixth Amendment right to counsel where he had accepted the waiver in reliance on delinquent representation); DeRoo v. United States, 223 F.3d 919 (8th Cir. 2000)(“A defendant’s plea agreement waiver of the right to seek section 2255 post-conviction relief does not waive defendants’ right to argue, pursuant to that section, that the decision to enter into the plea was not knowing and voluntary because it was the result of ineffective assistance of counsel.”); Jones v. United States, 167 F.3d 1142, 1145 (7th Cir. 1999)(“Justice dictates that a claim of ineffective assistance of counsel in connection with the negotiation of a cooperation agreement cannot be barred by the agreement itself – the very product of the alleged ineffectiveness.”); United States v. Henderson, 72 F.3d 463, 465 (5th Cir. 1995)(holding that a dismissal of an appeal based on a waiver in the plea agreement was improper where the motion to withdraw the plea incorporated a claim that the defendant’s waiver of appeal was tainted by ineffective assistance of counsel).

Furthermore, in recent years, several state ethics boards and at least one state supreme court have held that waivers of claims of ineffective assistance present a defense attorney with an impermissible conflict of interest. Several ethics boards have applied the equivalent of Model Rule 1.7 of the Rules of Professional Conduct¹ to find that waivers of ineffective assistance of counsel claims present impermissible conflicts of interest that may compromise the quality of representation. See, e.g., Ala. State Bar Office of Gen. Counsel, Formal Op. 2011-02 (2011)

¹ South Carolina prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest. Rule 1.7(a), RPC, Rule 407, SCACR. The Rule further defines a conflict of interest as one where there is a significant risk that the representation will be materially limited by a person interest of the lawyer. Rule 1.7(a)(2), RPC, Rule 407, SCACR.

(finding advising a criminal defendant to enter into an agreement prospectively waiving the client's right to assert an ineffective assistance of counsel claim against that lawyer would violate Alabama's professional conduct rule concerning conflicts of interest); Ky. Bar Ass'n, Advisory Op. KBA E-435 (2012)(stating that a criminal defense lawyer may not advise defendants to accept plea agreements waiving claims of ineffective assistance of counsel because such agreements create a conflict of interest); Advisory Comm. of the Supreme Court of Mo., Formal Op. 126 (2009)(finding that "[i]t is not permissible for defense counsel to advise the defendant regarding waiver of claims of ineffective assistance of counsel by defense counsel" due to the personal conflict of interest created by such waivers); Nat'l Ass'n of Criminal Def. Lawyers Ethics Advisory Comm., Formal Op. 12-02 (2012)(opining that "the rules of professional ethics prohibit a criminal defense lawyer from signing a plea agreement limiting the client's ability to claim ineffective assistance of counsel" based on the inherent conflict of interest. Thus, these ethics boards have concluded that attorneys cannot advise clients to waive future ineffective assistance claims because such would be advice to waive pending claims against them and an inherent conflict of interest.

Other state ethics boards have concluded that such agreements violate the rules that prevent an attorney from prospectively limiting the attorney's liability for malpractice as found in Model Rule 1.8(h) of the Rules of Professional Responsibility.² See Ohio Supreme Court Bd. of Comm'rs on Grievances & Discipline, Informal Op. 2001-06 (2001) (stating "[i]t is unethical ... for a ... criminal defense attorney to advise a defendant to enter a plea agreement that waives

² South Carolina prohibits a lawyer from making an agreement "prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement." Rule 1.8(h)(1), RPC, Rule 407, SCACR.

the defendant's appellate or postconviction claims of ineffective assistance of trial counsel" as a violation of the rule prohibiting a lawyer from attempting to exonerate himself from liability for personal malpractice); Vt. Bar Ass'n, Advisory Op. 95-04 (1995)(stating that "[a]n attorney may not recommend that a client enter into a plea agreement in a criminal case that contains provisions waiving post-conviction rights or remedies that would be based on allegations of ineffective assistance of counsel" due to the ethical rules barring a lawyer from limiting his liability to a client for personal malpractice). These boards have recognized that malpractice and collateral review are not the same, they have found significant connections between the two to apply the rule to the waiver of collateral review setting.

Recently, the Supreme Court of Kentucky held that advising a defendant regarding a waiver of ineffective assistance claims in a proffered plea agreement constitutes professional misconduct by defense counsel as it presents an unwaivable conflict of interest. United States, ex rel. U.S. Attorneys, ex rel. Eastern, Western Districts of Kentucky v. Kentucky Bar Association, ___ S.W.3d ___, 2014 WL 4159988 (Ky. August 21, 2014). The court explained that "[w]hen defense counsel is forced, through the introduction of an IAC waiver in a plea agreement, to advise a client on the attorney's own conduct, a personal interest certainly exists." Id. Specifically, the court pointed to the time an IAC claim may consume for the attorney, the tarnish the attorney's reputation may suffer, the possibility of attorney discipline, and even serious financial consequences as examples of the personal interests a lawyer may have in such an agreement. Id. The court pointed to psychological studies that have "uncovered biases that make it extremely difficult for professionals, even those who are acting in good faith and whose only limitation is unconscious, to appreciate the deleterious consequences of conflicts of interest." Id. (quoting Tigran W. Eldred, The Psychology of Conflicts of Interest in Criminal

Cases, 58 U. Kan. L. Rev. 43, 48 (2009)). Due to how the human brain works when considering personal conflicts, “even an attorney acting in good faith, diligently attempting to provide the best advice for a client, is at risk of unconsciously painting an ethical gloss over his or her decision.” Id.

Further, the Kentucky Supreme Court found such agreements violated the state’s Rules of Professional Conduct prohibiting lawyers from making agreements prospectively limiting the lawyer’s liability to a client for malpractice. Id. The court recognized that advising a client to waive an ineffective assistance claim in a plea agreement was an indirect limit on an attorney’s malpractice, but found the limitation existed, nonetheless. Id. The court explained that a defendant’s attempt to prove the lawyer’s malfeasance was the proximate cause of the defendant’s conviction is “extraordinarily difficult, virtually impossible” unless the defendant can get his conviction overturned. Id. The court found it plainly evidence that advising a defendant to waive a potential ineffective assistance claim, which is one method of obtaining relief, limits the potential for malpractice liability. Id. “An attorney should not be allowed to do indirectly that which the attorney is prohibited from doing directly.” Id.

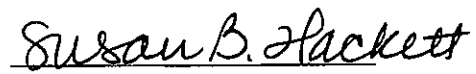
Following federal precedent, as this Court did in Spoone, supra, and in line with the governing Rules of Professional Conduct, this Court should hold that a defendant’s waiver of his post-conviction relief rights may not be voluntary and knowing if tainted by constitutionally ineffective assistance of counsel. A defendant who makes such a claim should be afforded an opportunity to prove his waiver was affected by ineffective assistance of counsel as the trial or guilty plea record is unlikely to provide evidence to support the claim. If the record before the lower court accepting the waiver contained such evidence, a lower court would never accept the waiver. Thus, the PCR court erred in denying Petitioner an opportunity to present evidence that

his waiver to seek PCR was tainted by the ineffective assistance of trial counsel. Petitioner's PCR application clearly explained he signed the "Contractual Consent Order to Waive Rights to Jury Trial" based upon misleading statements and advice falling outside the range of competent performance. Put simply, Petitioner argued his waiver was based upon ineffective assistance of counsel. Petitioner requires an opportunity to present facts to support his contention.

CONCLUSION

Petitioner respectfully requests this Court remand the matter to the Court of Common Pleas for a hearing on Petitioner's claim that his waiver of the right to seek PCR was tainted by ineffective assistance of trial counsel.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER.

This 13th day of October, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County

DeAndrea G. Benjamin, Circuit Court Judge

ANTHONY SANDERS,

PETITIONER,

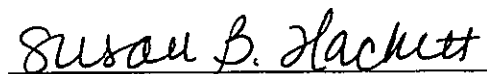
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

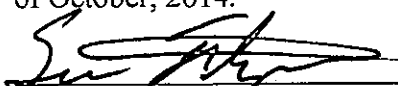
I certify that a true copy of the brief of petitioner, in this case has been served on Megan Harrigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Anthony Sanders #339645, at Broad River Correctional Institution, 4460, Broad River Road, Columbia, SC 29210, this 13th day of October, 2014.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day
of October, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County
DeAndrea G. Benjamin, Circuit Court Judge

Anthony Sanders,

Petitioner,

vs.

State of South Carolina,

Respondent.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 58671

Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3727

ATTORNEYS FOR RESPONDENT

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<u>Jones v. Gomez</u> , 66 F.3d 199, 205 (9th Cir. 1995).....	7
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<u>Spoone v. State</u> , 379 S.C. 138, 665 S.E.2d 605 (2008)	3, 4, 5, 9
<u>State v. Robinson</u> , 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992)	8
<u>United States v. Kentucky Bar Assoc.</u> , 439 S.W.3d 136 (Ky 2014)	11
<u>Wright v. Hopper</u> , 169 F.3d 695, 707 (11th Circuit 1999)	10

Other authorities:

S.C. Code Ann. § 17-27-50.....	6
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ISSUE PRESENTED

The PCR court did not err in dismissing Petitioner's PCR application where the record firmly established his knowing and voluntary waiver of the right to file a PCR application pursuant to agreement with the prosecution.

STATEMENT OF THE CASE

Petitioner Sanders was indicted for three counts of murder. The prosecution was seeking the death penalty against Sanders. Sanders was represented by a team of four attorneys. On January 21, 2010, a hearing was held before the Honorable R. Markley Dennis, Jr., to place on record a "Contractual Consent Order to Waive Rights to a Jury Trial" and to establish that Sanders was freely and voluntarily entering the agreement, which included Sanders' waiver of: (1) the right to a jury trial, (2) the right to a direct appeal, and (3) the right to seek post-conviction relief (PCR).

Sanders proceeded to a bench trial before Judge Dennis on March 8, 2010, and Judge Dennis found Sanders guilty as charged for all three counts of murder. Judge Dennis sentenced Sanders to life imprisonment.

Sanders first attempted to violate the agreement by filing a *pro se* notice of appeal, but the appeal was dismissed for failure to provide the Court of Appeals a proof of service. Sanders filed an application for post-conviction relief (PCR) on January 6, 2011. The State filed its return on May 4, 2011. On May 17, 2012, the State filed a motion to dismiss the PCR application pursuant to the terms of the prior consent order. The matter was heard before the Honorable DeAndrea Benjamin on May 22, 2012. Judge Benjamin granted the State's motion to dismiss the application by order dated August 20, 2012. Sanders filed a motion for reconsideration on August 30, 2012. Judge Benjamin denied the motion for reconsideration.

Sanders filed a petition for writ of certiorari to this Court. This Court has granted Sanders' petition. The Brief of Respondent follows.

ARGUMENT

The PCR court did not err in dismissing Petitioner's PCR application where the record firmly established his knowing and voluntary waiver of the right to file a post-conviction relief application pursuant to an agreement with the prosecution.

Petitioner Sanders complains that the PCR court erred in dismissing his PCR application pursuant to the agreement he had entered into with the State to waive his right to file a PCR application. However, the PCR court did not err in granting the State's motion as Sanders failed to offer a specific reason why he believed his agreement was not voluntarily entered into.

The agreement is permissible under Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008). In Spoone, this Court found permissible the terms of a plea agreement where Spoone waived the right to file a direct appeal and the right to file a PCR application. In exchange, the State refrained from pursuing the death penalty. Like the instant case, Spoone filed a PCR application and the State moved for dismissal based on the written agreement. This Court declared "such a waiver will be held effective only if it is knowing and voluntary." Id., 379 S.C. at 142, 665 S.E.2d at 607.

This Court then examined the facts and circumstances of Spoone's case as follows:

Looking at the particular facts and circumstances of the instant case, including: (1) the background, experience and conduct of the accused, (2) the text of the plea agreement, and (3) the transcript of the plea hearing, we find petitioner's waiver was voluntarily, knowingly, and intelligently made. Although petitioner only has a ninth grade education, the text of the written plea agreement was straightforward. Furthermore, the plea colloquy shows that the trial court specifically asked petitioner about the

waiver both in the language of the plea agreement, as well as in plain language. Petitioner was represented by two attorneys at the trial level. Both lawyers attended the plea hearing and both signed the written plea agreement, along with petitioner himself.

Id., 379 S.C. at 143-44, 665 S.E.2d at 608.

In the instant case, Judge Dennis engaged in an extensive colloquy with Sanders and his attorneys concerning the terms of the agreement to ensure Sanders understood the terms of the agreement and that he wanted to enter into the agreement.

At the outset of the hearing, Assistant Solicitor Jennings explained the terms of the agreement as follows:

[T]hat in return for the State asking that he would be sentenced from thirty years to life that he and his counsel are willing to waive that right to a jury trial, in addition to waiving any right to appeal Your Honor's – whatever that verdict might be – nor could he bring any PCR action.

App. p. 4, lines 14-21.

Attorney Boyd Young responded as follows:

... the agreement before the Court signed by all the parties, the offer, uh, that the State would be basically withdrawing seeking the death penalty. The consideration is that withdrawal. We agree that in exchange for that to a trial before Your Honor, putting the burden on the evidence. We also agree to waive any appeal and/or PCRs from that trial. We accept their offer and are ready to proceed.

App. p. 5, lines 1-9. Young verified that he and co-counsel discussed the agreement fully with Sanders. App. pp. 5-6. Judge Dennis went over in detail the waiver of the right to direct appeal with Sanders. App. pp. 11-12.

Judge Dennis specifically went over Sanders' right to post-conviction relief and the fact he was waiving this right. Judge Dennis verified that the reason Sanders wanted

to waive that right was to avoid the death penalty as a possible punishment, which Sanders verified was a real benefit from his perspective. App. pp. 13-15. Judge Dennis' colloquy ensured that Sanders was making the decision voluntarily and that Sanders was comfortable with the decision. Judge Dennis asked Sanders if there was any reason from Sanders' vantage point that Judge Dennis should not accept the agreement, and Sanders responded in the negative. App. pp. 17-18.

Judge Dennis noted the following:

And, Mr. Sanders, if the State is able to convince me beyond a reasonable doubt of each element of the crime or crimes charged, then of course it would be closure for you and for the family, too, because that will be the last proceeding in this process. Do you understand that?

App. p. 21, lines 5-11. Sanders indicated that he understood. App. p. 21, line 12.

Approximately six weeks after Sanders entered into the agreement, Judge Dennis asked Sanders at the beginning of the bench trial whether he still desired to go forward based on the consent order. Sanders indicated he still wished to go forward. App. pp. 37-38.

As in Spoone, the consent agreement itself is straightforward and not difficult to understand. App. pp. 307-310. The text of the agreement itself is barely more than two pages. In relevant part, the agreement indicates the following:

Anthony Sanders agrees to waive absolutely and unconditionally all future rights to appeal any legal issues associated with this case or conviction in State or Federal Court. The Defendant waives the right to appeal any evidentiary rulings made by the Honorable R. Markley Dennis. The Defendant also waives the right to appeal the verdict and sentence entered by the trial judge. This waiver applies to all rights of judicial review, including, but

not limited to direct appeal, post-conviction proceedings, or habeas corpus proceedings in State or Federal Court.

App. pp. 307-308.

The consent order further states the following:

e) He understands the provisions of this consent order are permanent and irrevocable such that he will not have a jury decide his guilt for the above referenced indictments, and he will never be entitled to appeal any aspect of this case.

App. p. 308.

During the hearing, PCR counsel asserted the following claims in response to the State's motion:

The circumstances that surround the waiver is what is questionable as to his knowingly entering – voluntarily, excuse me, entering into it. There was a plea negotiations [sic] prior to the contract – him signing this contractual waiver that essentially discussed for a few months prior to and he was faced with three options, one of which was this contractual waiver. He signed it within an hour of seeing it, talking to his attorneys. He asked if he could still appeal. That, to me, shows that he did not know what everything means, that he was actually contracting away his rights, and the caption is entitled Waiver of Jury Trial. It doesn't indicate anything else, and that may not be significant but to Mr. Sanders **it may be** because that may be the one thing that is stuck in his head. He **may** not have realized that he waived his right to a direct appeal and to this post-conviction relief hearing.

App. p. 344, lines 5-21 (emphasis added).

The Uniform Post-Conviction Relief Act (PRC Act) imposes several requirements as to the pleadings. Integral to this case is the requirement that the PCR applicant set forth the facts within the applicant's knowledge in support of the applicant's claims. S.C. Code Ann. § 17-27-50. In the instant case, Sanders made a generalized allegation

that he was misadvised and misled by his trial counsel. Sanders does not assert how he was misadvised or how he was misled. These assertions, if based on fact, should be within Sanders' own personal knowledge. Besides the PCR application, Sanders had the ability to bring any alleged specific misadvice or misinformation to his PCR counsel's attention for the motion hearing. During the State's motion to dismiss, PCR counsel did not bring any specific facts to the PCR court's attention suggesting misadvice or misinformation. PCR counsel in fact only asserted that Sanders "may" have misunderstood or failed to understand something. The PCR court did not err in dismissing the case pursuant to the agreement based on generic and speculative pleading that failed to establish a fact in controversy.

The PCR Act specifically provides for dismissal of an application, as follows:

(b) When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a material issue of fact.

S.C. Code Ann. § 17-27-80. Dismissal is warranted where a PCR applicant fails to plead a specific claim for relief. Jones v. Gomez, 66 F.3d 199, 205 (9th Cir. 1995) (finding conclusory suggestions of ineffective assistance of counsel did not entitle petitioner to an evidentiary hearing).

Judge Benjamin did not err in dismissing the case as Sanders failed to show the existence of a material issue of fact. In his PCR application, Sanders failed to state a material issue of fact with any specificity showing he should be entitled to a hearing on the voluntariness of the agreement. The only response to the State's motion to support the need for an evidentiary hearing was the speculative assertion Sanders **may** have not realized he waived his right to direct appeal and post-conviction relief. The pleading and argument was insufficient to show an entitlement to an evidentiary hearing.

Further, the assertion that the agreement was involuntary is patently absurd. The record is replete with references to the waiver of direct review and post-conviction relief and Sanders' indication that he understood the rights he was waiving. In the time between the conference and bench trial, Sanders had six weeks to decide if it was a decision he regretted. Yet, Sanders indicated to Judge Dennis before the bench trial that he still wished to proceed with the agreement. Sanders never affirmatively claimed he did not understand the agreement and the waivers.

Sanders attempts to support his argument by claiming that the prosecution's case was weak. However, even viewing the evidence as summarized by Sanders in his petition, the State easily presented sufficient evidence for a jury to convict Sanders.¹ Accordingly, the contract represented a reasonable allocation of risk where the very real

¹ Unlike analysis at the directed verdict state, which requires evidence be viewed in the light most favorable to the State, Judge Dennis found Sanders guilty beyond a reasonable doubt. See State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)).

possibility of the death penalty was removed for Sanders yet the State was still required to convince a fact finder of Sanders' guilt.²

This is the principal weakness in Sanders' argument. The argument appears to be premised on the belief the agreement is somehow facially unreasonable and Sanders **may** have misunderstood something, although he fails to affirmatively state what he misunderstood. However, the record is clear that it is an advantageous agreement for Sanders, that the terms of the agreement were made abundantly clear to him, and that he understood the terms of the agreement. Spoone, supra. Therefore, the PCR court did not err in dismissing the PCR application. See also Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978) (noting "in the 'give-and-take' of plea bargaining, there is no such element of punishment or retaliation so long as the accused is free to accept or reject the prosecution's offer").

Sanders, for the first time in Sanders' Brief of Petitioner, asserts that the agreement represents some sort of conflict of interest because counsel's advice would be tainted by the motive to avoid being called upon to discuss his performance in a PCR hearing.³ This issue was not raised to the circuit court and therefore is not proper on

² In some cases, it actually may be to the defendant's advantage to waive a jury trial. See Waiver, after not guilty plea, of jury trial in felony case, 9 A.L.R.4th 695 (1981) § 2[b] ("It may be obvious to defense counsel in a given case that it is to his client's advantage to submit a felony charge for trial by the court – where facts are particularly loathsome, where pretrial publicity has been so wide spread as to make change of venue ineffective, or where there is a possibility that the defendant's past record, attitude, or appearance seem clearly to suggest to counsel that the potential for conviction is more likely before a jury than before a judge.").

³ The idea that counsel was motivated to advise Sanders to accept the agreement to avoid a claim of ineffective assistance of counsel is patently absurd. For one thing, the agreement was entered into six weeks prior to trial. Trial counsel would need to be clairvoyant to

appeal. Plyler v. State, 309 S.C. 408, 409, 424 S.E.2d 477, 478 (1992) (“Since this issue was neither raised at the PCR hearing nor ruled upon by the PCR court, it is procedurally barred.”). In the instant case, Sanders did not raise a conflict of interest claim, but instead vaguely and inadequately alleged his decision to enter the agreement was involuntary. Sanders also did not allege that such waiver agreements are categorically void. Accordingly, this argument should not be reviewed.

On the merits, the argument is misplaced. Sanders relies on ethics opinions issued in several states. However, such considerations have no place in PCR. This Court has said clearly, “the Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction. Their purpose is to regulate and guide the legal profession by defining proper ethical conduct and ‘nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.’” Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993) (quoting Rule 407, SCACR and rejecting conflict of interest claim based on Rule 1.7 of the Rules of Professional Conduct).⁴

believe counsel’s performance would be deficient in the future.

⁴ The reality is that while trial and appellate attorneys mostly provide objective testimony at PCR hearings, their bias is far more likely to be for their former client and not the State, and often, they will suggest they were ineffective. See generally Wright v. Hopper, 169 F.3d 695, 707 (11th Circuit 1999) (the issue of ineffectiveness is for the court to decide, so admissions of deficient performance by attorneys are not decisive – no error in finding trial strategy, even though counsel categorically denied making a strategic choice); Edwards v. LaMarque, 475 F.3d 1121, 1126 (9th Cir. 2007) (en banc) (a trial court is not obligated to “accept a self-proclaimed assertion of trial counsel”); Gentry v. Sinclair, 576 F.Supp.2d 1130, 1154 n.38 (W.D. Wash. 2008) (finding “counsel’s current regret about their performance . . . does not support a claim that trial counsel performed deficiently at the time of trial”).

In addition to the ethics opinions, Sanders cites United States v. Kentucky Bar Assoc., 439 S.W.3d 136 (Ky 2014). The Kentucky Supreme Court stated: “We concede that federal jurisprudential support for the waivers at issue here is nearly unanimous. Our research indicates that every federal circuit to consider the validity of an IAC waiver – ten out of twelve – has explicitly permitted defendants to plead guilty and waive collateral review, including IAC.” Id. at 144. The Kentucky Supreme Court then found that the supremacy clause was not at issue because it was determining the ethical obligations of attorneys and not a constitutional issue. Id. In the instant case, the underlying substantive issue is Sanders’ constitutional rights to effective assistance of counsel in entering an agreement that is permissible under the federal constitution. This is not an ethics case and the argument should not be considered.

The PCR court did not err in enforcing the bargained for agreement where Sanders failed to present any reasons to revisit the voluntariness of an agreement that was systematically established by Judge Dennis. No issue of fact was presented to Judge Benjamin requiring a hearing. Judge Benjamin’s order should be affirmed.

CONCLUSION

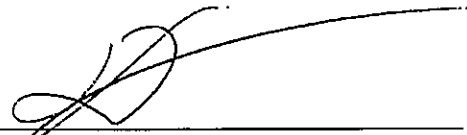
For the above stated reasons, the PCR court's order dismissing the PCR application should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 68571

BY:



ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Columbia, South Carolina
February 11, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

RECEIVED

FEB 11 2015

Appellate Case No. 2012-213162

S.C. Supreme Court

Anthony Sanders,.....Petitioner,

v.

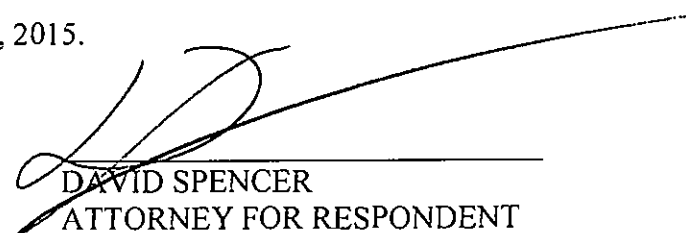
State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

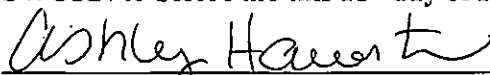
The undersigned hereby certifies that a copy of the **Brief of Respondent** has been served upon the applicant by mailing two (2) copy in the United States mail, postage prepaid, addressed to Petitioner's counsel:

Susan B. Hackett, Appellate Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211

This 11th day of February, 2015.


DAVID SPENCER
ATTORNEY FOR RESPONDENT

SWORN to before me this 11th day of February, 2015.



Notary Public for South Carolina.

My Commission Expires: 3-18-23

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Anthony Sanders, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-213162

ON WRIT OF CERTIORARI

Appeal from Dorchester County
DeAndrea G. Benjamin, Circuit Court Judge

Opinion No. 27531
Submitted May 1, 2015 – Filed June 17, 2015

REVERSED AND REMANDED

Appellate Defender Susan B. Hackett, of Columbia, for
Petitioner.

Attorney General Alan M. Wilson and Assistant Deputy
Attorney General David A. Spencer, of Columbia, for
Respondent.

JUSTICE HEARN: In exchange for the State's promise not to seek the death penalty on three charges of murder, Anthony Sanders consented to a bench trial and waived his right to any appellate, post-conviction, or habeas corpus review. He was convicted of three counts of murder and sentenced to life imprisonment. His subsequent application for post-conviction relief (PCR) was

dismissed based on the agreement. He now argues the PCR court erred in dismissing his petition without an evidentiary hearing. We reverse and remand.

FACTUAL/PROCEDURAL BACKGROUND

Sanders was charged with three counts of murder.¹ During a pre-trial status conference, the parties presented a negotiated "Contractual Consent Order to Waive Rights to a Jury Trial" (the Agreement) to the trial court. The terms of the Agreement provided that in exchange for the State not seeking the death penalty, Sanders would agree to a bench trial and would also waive any right to further judicial review, including direct appeal, PCR, or habeas corpus proceedings.

Prior to approving the Agreement, the trial court engaged in a lengthy colloquy with Sanders. Sanders said he had sufficient time to discuss the Agreement with his counsel and desired to freely enter into it. The court explained to Sanders he was giving up the right to have another court review its decision, and Sanders acknowledged he understood. The court discussed PCR and stated Sanders would be waiving the right to challenge his attorneys' actions afterward. Sanders said he had discussed the PCR statute with his lawyers and wanted to waive that right as well. Additionally, the court explained the process of a death penalty jury trial and explained Sanders was agreeing to waive his rights to a jury trial in exchange for the removal of the death penalty. Ultimately, the trial court accepted the Agreement, finding Sanders had freely and voluntarily entered into it.

The case proceeded to a bench trial. The court again questioned Sanders about the Agreement before the trial began, and Sanders confirmed he still wished to waive his rights in exchange for eliminating the death penalty. The court ultimately convicted Sanders of all three murders and sentenced him to life imprisonment without the possibility of parole on each count.

Sanders filed a *pro se* appeal to the court of appeals, which was dismissed for failure to serve and file a notice of appeal with proper proof of service. Sanders then filed the instant action for PCR alleging he received ineffective assistance of counsel because his attorneys "misadvised him with misleading statements" which rendered his signing of the Agreement involuntary. The State moved to dismiss

¹ The facts of the underlying triple homicide are horrific and involve the shooting deaths of Diane Grant, her twenty-year-old son Jatavius Devore, and her fifteen-year-old daughter Deanna Devore. Grant and Jatavius were found just inside the entrance to their apartment with single gunshot wounds to the head. Deanna was found behind the apartment, nude from the waist down and shot multiple times.

pursuant to the terms of the Agreement.

A hearing was held before the PCR court. Sanders initially moved for a continuance based on his assertion that his attorneys failed to investigate potential witnesses, which the State opposed based on the Agreement. Sanders argued that his entering into the Agreement was not knowing and voluntary because his lawyers did not adequately apprise him of the rights he was waiving. He therefore requested an evidentiary hearing.

The State argued the PCR court need only review the colloquy between the trial court and Sanders to determine whether he had voluntarily waived his right to an ineffective assistance of counsel claim, and if the court so found, the Agreement should be enforced. After reviewing the record and the Agreement, the PCR court agreed and dismissed the application.

This Court granted certiorari to review the decision of the PCR court.

STANDARD OF REVIEW

On certiorari in a PCR action, this Court applies an "any evidence" standard of review. *Moore v. State*, 399 S.C. 641, 646, 732 S.E.2d 871, 873 (2012). Accordingly, the Court will affirm the PCR court's findings if any evidence of probative value exists in the record. *Narciso v. State*, 397 S.C. 24, 34–35, 723 S.E.2d 369, 374 (2012). However, the Court will reverse the PCR judge's decision when it is controlled by an error of law. *Pierce v. State*, 338 S.C. 139, 145, 526 S.E.2d 222, 225 (2000).

LAW/ANALYSIS

Sanders argues the PCR court erred in failing to allow him to present evidence that his waiver was entered into upon the advice of constitutionally ineffective trial counsel. We agree.

The State, however, would frame the issue differently as a simple question of whether Sanders entered into the Agreement knowingly and voluntarily, which the PCR court found he did. The State therefore argues this Court is bound by its previous holding in *Spoone v. State*, 379 S.C. 138, 665 S.E.2d 605 (2008), where

we held a knowing and voluntary waiver of PCR is enforceable. We believe the State misapprehends the issue raised by Sanders and thus *Spoone* is not dispositive here.

In *Spoone*, the Court addressed the enforceability of a guilty plea agreement wherein Spoone waived his right to a direct appeal, PCR, and habeas corpus relief. *Id.* at 141, 665 S.E.2d at 606. Spoone filed an application for PCR, which the PCR court dismissed after finding his waiver was knowingly and voluntarily entered into. *Id.* On certiorari, Spoone argued his waiver was not knowing and intelligent, and therefore his case should be remanded to the PCR court for a merits hearing on his separate claims for ineffective assistance of counsel. *Id.* at 141, 665 S.E.2d at 607. In addressing his allegations, the Court first acknowledged that such waivers were allowed under federal law and noted the Court's practice of following federal jurisprudence in the area of plea agreements. *Id.* at 142, 665 S.E.2d at 607. The Court held such waivers were enforceable provided they are knowing and voluntary. *Id.* In affirming the PCR court's finding that Spoone's waiver was enforceable, the Court considered "the particular facts and circumstances of the instant case, including: (1) the background, experience and conduct of the accused, (2) the text of the plea agreement, and (3) the transcript of the plea hearing." *Id.* at 143, 665 S.E.2d at 608.

The State argues that under *Spoone*, the threshold issue is whether the waiver was knowingly and voluntarily entered into. Because the PCR court reviewed the record and found Sanders entered into the Agreement knowingly and voluntarily, the State urges the Court to affirm under *Spoone*. However, *Spoone* addressed only whether such waiver agreements may be enforced. Sanders readily concedes a waiver of PCR is permissible under this Court's jurisprudence, but raises the narrower issue of whether a defendant can challenge the attorney's conduct in advising a defendant to enter into the waiver. We view this issue as significantly different from the issue in *Spoone*.

Instead, we agree with the wealth of federal jurisprudence which allows for ineffective assistance of counsel claims to proceed despite a previous waiver of collateral review where the challenge directly attacks the effectiveness of the advice to agree to that waiver. *See e.g., United States v. White*, 307 F.3d 336, 343 (5th Cir. 2002) (holding "an ineffective assistance of counsel argument survives a waiver of appeal only when the claimed assistance directly affected the validity of that waiver or the plea itself"); *Washington v. Lampert*, 422 F.3d 864, 871 (9th Cir. 2005) ("We therefore hold that a plea agreement that waives the right to file a federal habeas petition pursuant to 28 U.S.C. § 2254 is unenforceable with respect

to an [ineffective assistance of counsel] claim that challenges the voluntariness of the waiver."); *United States v. Cockerham*, 237 F.3d 1179, 1187 (10th Cir. 2001) ("[W]e hold that a plea agreement waiver of postconviction rights does not waive the right to bring a § 2255 petition based on ineffective assistance of counsel claims challenging the validity of the plea or the waiver."). As the United States Court of Appeals for the Seventh Circuit succinctly stated:

Justice dictates that a claim of ineffective assistance of counsel in connection with the negotiation of a cooperation agreement cannot be barred by the agreement itself—the very product of the alleged ineffectiveness. To hold otherwise would deprive a defendant of an opportunity to assert his Sixth Amendment right to counsel where he had accepted the waiver in reliance on delinquent representation.

Jones v. United States, 167 F.3d 1142, 1145 (7th Cir. 1999). Although we recognize the value in allowing defendants to waive certain rights in exchange for concessions by the State, we cannot countenance a rule in which a defendant is precluded from challenging the very advice he received in agreeing to that waiver.²

² Furthermore, we express our concern with the ethical implications of a waiver of ineffective assistance of counsel claims. A number of jurisdictions have acknowledged the conflict of interest that arises when an attorney counsels his client to waive the right to challenge his representation. *See, e.g.*, Advisory Opinion of the Board of Commissioners on Grievances and Discipline, Ohio Adv. Op. 2001-6 (Ohio Bd. Com. Griev. Disp. 2001) ("[T]he Board advises that it is unethical under the Ohio Code of Professional Responsibility for a prosecutor to negotiate and a criminal defense attorney to advise a defendant to enter a plea agreement that waives the defendant's appellate or postconviction claims of ineffective assistance of trial counsel or prosecutorial misconduct."); Nebraska Ethics Advisory Opinion for Lawyers No. 14-03 (Neb. Jud. Eth. Comm. 2014) ("[I]t [is] the opinion of the committee that a defense attorney may not advise a criminal defendant regarding a plea agreement which contains a waiver of the right to seek post-conviction relief on the basis of a claim of ineffective assistance of counsel. A conflict of interest for the attorney is present in such situations [and] is so serious as to be a conflict that cannot be waived by a defendant."); Waiver of Appellate and Postconviction Rights in Plea Agreement, N.C. Eth. Op. RPC 129 (N.C. St. Bar. 1992) ("[T]he waiver of rights arising from the ineffective assistance of counsel or prosecutorial misconduct appears to be, and shall prospectively be deemed to be, in conflict with the ethical duties expressed or implied in the rules."); Utah State Bar Ethics Advisory Opinion Committee, Utah Eth. Op. 13-04

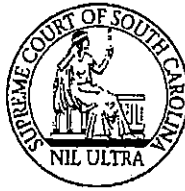
Consequently, we hold that although a defendant may waive his right to collateral review, he is nevertheless still entitled to challenge whether the advice he received in agreeing to that waiver was constitutionally defective. Accordingly, the PCR court erred in not allowing Sanders to present evidence of ineffective assistance of counsel on the limited issue of his counsel's advice in connection with entering into the agreement.

CONCLUSION

Based on the foregoing, we reverse and remand to the PCR court for an evidentiary hearing on the narrow issue of whether Sanders received ineffective assistance of counsel in being advised to enter into the Agreement.

TOAL, C.J., PLEICONES, BEATTY, and KITTREDGE, JJ., concur.

(Utah St. Bar. 2013) ("The Committee concludes that it is a violation of Rule of Professional Conduct 1.7 for an attorney to counsel his client to enter into a plea agreement which requires the client to waive the attorney's prospective possible ineffective assistance at sentencing or other postconviction proceedings."). The Supreme Court of Kentucky issued a recent opinion finding the use of an ineffective assistance waiver constitutes professional misconduct. *United States, ex rel. U.S. Attorneys for E. & W. Dist. of Ky. v. Ky. Bar Ass'n*, 439 S.W.3d 136 (Ky. 2014). In the opinion, it held such "waivers in plea bargain agreements (1) create[] a nonwaivable conflict of interest between the defendant and his attorney, (2) operate[] effectively to limit the attorney's liability for malpractice, and (3) induce[], by the prosecutor's insertion of the waiver into plea agreements, an ethical breach by defense counsel." *Id.* at 140. We find this practice especially troubling where, as here, the defendant enters into the agreement prior to a trial, which allows significantly more potential for error than a guilty plea.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

July 06, 2015

The Honorable Cheryl L. Graham
5200 E Jim Bilton Blvd
St George SC 29477-8020

REMITTITUR

Re: Anthony Sanders v. State
Lower Court Case No. 2011CP1800027
Appellate Case No. 2012-213162

Dear Clerk of Court:

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

Very truly yours,

Daniel E. Shearouse
SS

CLERK

cc:

Susan Barber Hackett, Esquire
David A. Spencer, Esquire

State of South Carolina)
)
County of Dorchester)

In the Court of Common Pleas
First Judicial Circuit
2011-CP-18-00027

Anthony Sanders,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record

July 9, 2018
St. George, South Carolina

B E F O R E:

The Honorable Robin B. Stilwell, Judge

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

Leslie T. Sarji, Esquire
Attorney for Applicant

Christian Saville, Esquire
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Circuit Court Reporter
Certified Verbatim Reporter - Master
Certificate of Merit
Realtime Verbatim Reporter - Master

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TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 11:49 a.m.)

THE COURT: All right, Mr. Seville. Be happy to hear from you, sir.

MR. SEVILLE: Your Honor, this is the case of *Anthony Sanders v. the State of South Carolina*. This is actually a remand from the South Carolina Supreme Court. Now, Mr. Sanders was actually indicted in September 2007 in Dorchester County for three counts of murder. He was reported by Mark A. Leiendecker and Mitchell Farley and S. Boyd Young.

He proceeded to a bench trial on March 8th, 2010, before the Honorable R. Markley Dennis, Jr., and was found guilty of all three counts of murder. He was sentenced to life without parole.

Now, prior to this bench trial, he entered into an agreement, which he, the solicitor, and all his attorneys signed, which waives appellate review of the judge's eventual decision and waived PCR. He filed application for PCR nonetheless on January 6th, 2011. The state moved to dismiss at the hearing. And the application was dismissed without a hearing.

Applicant appealed; it made its way to the Supreme Court. And the Supreme Court decided that it was error for there not to be a hearing at all. And they remanded for

1 the narrow issue of whether he received ineffective
2 assistance of counsel in entering into the agreement.

3 And so that -- that's where we stand today, Your
4 Honor.

5 THE COURT: Okay. Good enough. All right.

6 Ms. Sarji?

7 MS. SARJI: Thank you, Judge. I'm going to ask you to
8 allow me to do things a little bit backwards today, because
9 I think it's necessary for me to lay out my legal reasoning
10 for you to see where I'm going when I ---

11 THE COURT: Okay.

12 MS. SARJI: --- to put Mr. Sanders up, Judge. Our
13 Supreme Court in that *Sanders* decision did note in Footnote
14 2 that there were some ethical implications of advising a
15 client to enter into a waiver of ineffective assistance of
16 counsel because of the inherent personal conflict that the
17 attorney has the inherent interest ---

18 THE COURT: Right.

19 MS. SARJI: --- the attorney has himself in not being
20 the subject of an ineffective-assistance-of-counsel claim
21 later on. And part of what our Supreme Court did was to
22 cite a Kentucky case. I have a copy of it to hand up if
23 Your Honor is -- is interested in reading it. That's the
24 *United States of America through the U.S. Attorneys for the*
25 *Eastern and Western Districts of Kentucky v. the Kentucky*

1 *Bar Association.*

2 And what -- again, our -- our Court cited the *Kentucky*
3 opinion ---

4 THE COURT: Uh-huh.

5 MS. SARJI: --- I believe, with favor. And what that
6 case says is that it is an unwaivable conflict for -- for
7 the attorney and that it was recognized as being even more
8 troubling where the waiver is prior to a trial, not in the
9 context of a plea.

10 So if we take that decision, Judge, and we recognize
11 that there is an inherent -- there is an -- an -- a
12 conflict of interest for the attorney personally, and then
13 we use the reasoning of our Court in *Gonzales v. State*,
14 which is a 2017 Supreme Court decision, and in that case,
15 Judge, what our Supreme Court said is that where a -- an
16 applicant can show that an actual conflict of interest
17 exists, you no longer have to reach the prejudice prong of
18 *Strickland*; that prejudice is presumed.

19 So what I'm hoping for, Judge, and what I intend to
20 show you is that Mr. Sanders relied on incorrect advice by
21 his attorney in entering into the waiver. I believe that
22 his attorney will end up -- or trial counsel will end up
23 kind of backing him up on what Mr. Sanders says he
24 understood with regard to the waiver.

25 So if we get to that point and the Court recognizes

1 that there was a conflict, I don't think I have to go any
2 further in proving prejudice. If you're not willing to
3 give that to me at the close of either Mr. Sanders'
4 testimony or at the close of trial counsel's testimony,
5 then I would ask for the opportunity to recall Mr. Sanders
6 in order to get into sort of the meat of what he would say
7 was done wrong during the trial ---

8 THE COURT: Right.

9 MS. SARJI: --- in order to satisfy that prejudice
10 prong. I understand that you would not be saying: "Oh,
11 yes. There was ineffective assistance of counsel at trial
12 and so you get a new trial." I -- I understand that.

13 But I don't see how, if I'm required to prove
14 prejudice, which I don't believe I have to -- but if I am
15 required to, I don't see how I get there without getting
16 into sort of the facts of what Mr. Sanders says that Mr.
17 Young was not effective in doing.

18 THE COURT: Okay. So is it -- is it your position,
19 based on the law that you -- to which you refer, that if,
20 in fact, his counsel had him waive his right to
21 postconviction-relief review, then that would, per se,
22 amount to ineffective assistance of counsel and -- and it
23 should -- and his PCR should be granted?

24 MS. SARJI: I don't know that the *Gonzales* case goes
25 quite so far as to say that the conflict alone is, per se,

1 enough to get us past there. I think I still have to be
2 able to show that there was the conflict and that the
3 conflict of interest adversely affected his lawyer's
4 performance. So if, because of that conflict in his
5 inherent personal interest in having that ineffective ---

6 THE COURT: I understand.

7 MS. SARJI: --- if that and -- rendered him
8 ineffective in the advice that he gave to him ---

9 THE COURT: Right.

10 MS. SARJI: --- then I think that's what's gets me
11 there.

12 THE COURT: I understand.

13 MS. SARJI: I think it's the conflict plus the
14 ineffective ---

15 THE COURT: Uh-huh. So if ---

16 MS. SARJI: --- advice.

17 THE COURT: --- if trial counsel was operating under
18 the assumption that he was just freewheeling and he was not
19 subject to any type of review, either at the appellate
20 level or on postconviction relief, then it may have
21 compromised his efficacy, his conduct, and thereby was --
22 was deficient to the defendant.

23 MS. SARJI: I think that that is how we would prove
24 prejudice.

25 THE COURT: Okay. And I ---

1 MS. SARJI: I ---

2 THE COURT: --- understand exactly where you are.

3 Yeah. I understand ---

4 MS. SARJI: So ---

5 THE COURT: --- where you are.

6 MS. SARJI: So I -- I don't -- again, I don't know
7 that we have to get there, based on this *Gonzales* decision,
8 if Your Honor sort of follows the -- the case law and if
9 you're inclined to read it in the same way that I am.

10 THE COURT: Okay.

11 MS. SARJI: But I just -- I wanted to lay that out for
12 you so ---

13 THE COURT: Do you ---

14 MS. SARJI: --- that if ---

15 THE COURT: --- have that ---

16 MS. SARJI: --- I start to ---

17 THE COURT: --- *Gonzales* case?

18 MS. SARJI: --- question ---

19 THE COURT: Do you have ---

20 MS. SARJI: I'm sorry?

21 THE COURT: --- that *Gonzales* case?

22 MS. SARJI: I do, sir. I have ---

23 THE COURT: Can I ---

24 MS. SARJI: --- got both the *Gonzales* decision and the
25 *Kentucky* decision. And I have ---

1 THE COURT: Okay.

2 MS. SARJI: --- provided copies of both to Mr. Seville
3 during the break.

4 THE COURT: Okay.

5 MS. SARJI: Judge, the only other thing that I would
6 say: In reading the *Gonzales* decision, it did have to deal
7 with an attorney who represented two codefendants. And so
8 the Court said there was an actual conflict because he had
9 -- he took one of them to trial while he was representing
10 the other. In this case I would say the *Gonzales* decision
11 applies because how could it be any less a conflict when
12 the interest that is adverse to the client's in your own?

13 THE COURT: Right. So you -- you're not suggesting
14 that this is a like conflict? That is, he wasn't
15 representing any other defendant. The conflict was that he
16 had him waive the postconviction-relief remedies?

17 MS. SARJI: Which represented a personal interest for
18 the attorney and, I think, rises to a higher level of
19 conflict than there would be when representing
20 codefendants.

21 THE COURT: I -- I -- I'm with you now. I'm with you
22 now.

23 MS. SARJI: Thank you, Judge.

24 THE COURT: Okay. And I -- and, you know, I -- I -- I
25 don't know whether I agree with you or not in that regard.

1 But I do, just intuitively without reading all of this,
2 think that there are problems with waiving the
3 postconviction relief at trial. I -- I don't know what the
4 facts and circumstances here were. But I -- but -- but I
5 -- I have a -- again, just an intuitive opinion that
6 there's problems with that.

7 Now, whether that substantively rises to the level of
8 -- of postconviction relief is a question that remains to
9 be seen. But I do think -- I do think that you are correct
10 in that some of the substance of his complaint needs to be
11 put into the record so that I can make an informed and
12 intelligent decision as to whether there was prejudice.
13 Because I don't think the conflict alone -- it -- the
14 nature of this conflict alone would rise to the level of
15 prejudice that would cause it to be overturned. But I'm --
16 my -- but my mind is open.

17 MS. SARJI: Well, and ---

18 THE COURT: Okay.

19 MS. SARJI: --- Judge, the -- the remedy that we're
20 seeking is not -- I -- I think in -- in the narrow relief
21 that the Supreme Court has given to Mr. Sanders, it is only
22 to determine whether counsel was ineffective in advising
23 him to sign the waiver it -- and then -- so that then he
24 could file a PCR on the merits ---

25 THE COURT: Okay.

1 MS. SARJI: --- of the rest of it.

2 THE COURT: I got you.

3 MS. SARJI: Thank you, Judge.

4 THE COURT: I got you. Okay. All right. So are you
5 ready to proceed?

6 MS. SARJI: Yes, Your Honor ---

7 THE COURT: Okay.

8 MS. SARJI: --- I am.

9 THE COURT: Uh-huh. You can call your witness ---

10 MS. SARJI: Thank you.

11 THE COURT: --- please, ma'am.

12 MS. SARJI: I would call Anthony Sanders to the stand,
13 Judge.

14 THE COURT: Sure.

15 (Off the record briefly.)

16 (Whereupon, the witness came forward.)

17 DEPUTY CLERK OF COURT: Please stand right here for
18 me.

19 THE WITNESS: (Complied.)

20 DEPUTY CLERK OF COURT: Please raise your right hand.
21 State your full name for the record.

22 THE WITNESS: Anthony Sanders.

23 ANTHONY SANDERS, having been first duly sworn,
24 testified as follows:

25 DEPUTY CLERK OF COURT: Thank you. You can have a

1 seat.

2 THE WITNESS: (Complied.)

3 DEPUTY CLERK OF COURT: Make sure to speak into the
4 microphone.

5 THE COURT: Yes, ma'am.

6 MS. SARJI: Thank you, Judge.

7 DIRECT EXAMINATION

8 BY MS. SARJI:

9 Q Mr. Sanders, where are you currently residing?

10 A The Liber Correctional Institution.

11 Q Okay. And you filed a petition for postconviction
12 relief in this case; is that correct?

13 A Yes, ma'am.

14 Q And in that application, you allege that your counsel
15 gave you the wrong advice regarding the waiver of appellate
16 rights and -- and ineffective-assistance-of-counsel claims;
17 is that correct?

18 A Yes, ma'am.

19 Q Okay. Can you tell me what it is specifically that
20 you think that Mr. Young did wrong in the advice that he
21 gave you about that waiver?

22 A Well, just advising me to -- to -- to go about the
23 proceeding in a bench-trial way and just waiving all my
24 appellate rights in the process.

25 Q Okay. Did he talk to you about -- when did he first

DIRECT EXAMINATION BY MS. SARJI - ANTHONY SANDERS

14

1 talk to you about the waiver of appellate rights and
2 ineffective assistance of counsel?

3 A That was -- like, you want an actual day?

4 Q No. You can just tell me when it -- like, was it when
5 you came over for the first plea hearing? Was it when you

6 ---

7 A Yeah.

8 Q --- came for ---

9 A It was ---

10 Q --- your ---

11 A --- after the -- the plea hearing. And I think the
12 plea hearing was on a Friday, I think. And I think it was
13 that -- that following Monday.

14 Q So -- and when you came over on Monday, were you here
15 to start having your trial?

16 A No. Monday -- the trial ended up coming about a month
17 -- a month and a half afterwards.

18 Q Okay. Before you started your trial, at some point
19 did Mr. Young present you with options that included this
20 waiver that you ended up signing?

21 A Yeah. When that waiver came, it was three options.
22 And one of them was plead guilty and ask for leniency. The
23 other one was still claim innocence, but plead guilty based
24 upon the evidence itself and then the -- the waiver.

25 Q Okay. And did you have more than an hour to consider

1 that waiver before you had to sign it?

2 A No. You talking about like at -- like, right then and
3 there at that time?

4 Q Uh-huh. Yes, sir.

5 A I don't believe it -- I don't believe so.

6 Q Okay. Were you -- at that point you -- were you told
7 that if you waived -- if you signed this waiver, that --
8 that the state would take death off the table for your
9 trial?

10 A Yes, ma'am.

11 Q And at any point did you talk about what the PCR
12 statute was?

13 A No.

14 Q Mr. Young didn't go through the PCR statute with you?

15 A No, ma'am.

16 Q Okay. Do you remember, during the hearing with Judge
17 Dennis, Judge Dennis asking you if Mr. Young had gone
18 through the PCR statute with you?

19 A Yes, ma'am.

20 Q And do you remember you told him "yes"? Do you ---

21 A I ---

22 Q --- remember that?

23 A I remember.

24 Q Why did you tell him "yes" if Mr. Young had not gone
25 through it with you?

DIRECT EXAMINATION BY MS. SARJI - ANTHONY SANDERS 16

1 A Well, I mean, as you notice, I was, like -- throughout
2 that whole proceeding, I just pretty much said "yeah" to
3 everything. But I didn't want to disrupt the -- the plan
4 that my counsel already had in play. And that was that the
5 -- the bench trial would've been our best route at
6 achieving the objective for getting acquittal.

7 Q Okay. So your attorneys advised you to do the bench
8 trial; is that right?

9 A Yes, ma'am.

10 Q And could you have had the bench trial without signing
11 that waiver?

12 A No, ma'am.

13 Q And would the state have taken death off the table
14 without you signing that waiver?

15 A Nah. Death still would've been on the table.

16 Q Okay. Did you sign that waiver based on what your
17 attorney told you that you should do?

18 A Yes, ma'am.

19 Q And would you have signed the waiver if you believed
20 it to be enforceable?

21 A No, ma'am.

22 Q Did Mr. Young talk to you about whether or not the
23 waiver was enforceable?

24 A Yeah, he did state -- yeah. He -- he talked to me
25 about it and stated that he didn't believe that it was

1 enforceable.

2 Q Okay. Did you actually tell him that you planned to
3 appeal the case at any point?

4 A Yeah. I said that at the -- like, if, like, things go
5 wrong and I get convicted for this, I still plan on
6 appealing.

7 Q And did he tell you: "Oh, no. You can't do that
8 because of this waiver"? Did he ever say anything like
9 that?

10 A Nah. He said, "You can still appeal; you can see what
11 happens."

12 Q Okay. And did he -- did Mr. Young talk to you when
13 y'all were discussing the waiver of the PCR rights -- okay?
14 -- so when y'all were talking about the waiver of the
15 ineffective-assistance-of-counsel claims, did Mr. Young
16 ever tell you about things that he might've done wrong up
17 to that point?

18 A No.

19 Q Did he ever talk to you about that he had a conflict
20 of interest in discussing this waiver with you?

21 A No, ma'am.

22 Q Did he ever talk to you about the fact that he might
23 have a personal interest in having you sign this waiver of
24 -- of a PCR claim against him?

25 A No.

DIRECT EXAMINATION BY MS. SARJI - ANTHONY SANDERS 18

1 Q At the point that you signed the waiver, you had not
2 yet had your trial; is that right?

3 A Right.

4 Q And so you had no idea what -- what ineffective-
5 assistance claim you might have had after the trial; is
6 that right?

7 A Yes, ma'am.

8 Q Okay. Did Mr. Young ever tell you that even if he
9 makes really bad mistakes at trial, that you wouldn't be
10 able to come back and complain about those mistakes later?

11 A No, ma'am.

12 Q Did he tell you that he didn't think that you could
13 waive your right to an ineffective-assistance claim for
14 things that were to happen in the future?

15 A Yeah. He did say that he didn't think that would
16 stand.

17 Q Did Mr. Young ever talk to you about how much time it
18 would take up for you if you filed -- or for him -- I'm
19 sorry -- if you did file an ineffective-assistance-of-
20 counsel claim against him?

21 A No, ma'am.

22 Q Okay. Did he ever talk to you about how his
23 reputation might suffer if you won an ineffective-
24 assistance-of-counsel claim against him?

25 A No, ma'am.

1 Q Did he ever talk to you about waiving a potential
2 ineffective-assistance-of-counsel claim against him and how
3 that would impact a potential professional-malpractice case
4 against him?

5 A No, ma'am.

6 Q Did you sign this waiver because your attorney told
7 you that it was not enforceable?

8 A Yes, ma'am.

9 Q Would you have signed this waiver if you had believed
10 that it was enforceable?

11 A No, ma'am.

12 Q All right.

13 MS. SARJI: Judge, at this point I think that's all
14 that I need to ask him with regard to the advice and -- and
15 his reliance on it, as far as the waiver goes. Would Your
16 Honor like for me to proceed with the substantive ---

17 THE COURT: No. I'm -- I'm comfortable with that.
18 I'm comfortable -- and I presume, at this point, you're
19 going to call other witnesses to the stand as well?

20 MS. SARJI: Well, I -- Mr. Young would be the next
21 witness ---

22 THE COURT: Okay.

23 MS. SARJI: --- Judge.

24 THE COURT: That's good.

25 MS. SARJI: Yes.

DIRECT EXAMINATION BY MS. SARJI - ANTHONY SANDERS

20

1 THE COURT: Well, let's do that. And -- and ---

2 MS. SARJI: Although I think he probably ---

3 THE COURT: That's okay.

4 MS. SARJI: --- wants to ---

5 THE COURT: Mr. Sanders ---

6 MS. SARJI: --- cross him.

7 THE COURT: --- can remain under oath and just sit
8 down. And we'll -- you can call your next witness. And
9 we'll -- we'll -- because right now I know we're just
10 looking at that narrow issue, right?

11 MS. SARJI: Okay.

12 MR. SEVILLE: Your ---

13 THE COURT: And you want to cross-examine now, sir?

14 MR. SEVILLE: Yes, Your Honor. And should I have an

15 ---

16 THE COURT: Okay.

17 MR. SEVILLE: --- opportunity ---

18 THE COURT: Yeah. Hold on.

19 MR. SEVILLE: --- to cross Mr. Sanders ---

20 THE COURT: Hold on, Mr. Sanders.

21 MR. SEVILLE: --- after -- after Mr. Young?

22 THE COURT: Go ahead and cross-examine him with
23 respect to what he's already testified to. Then, we won't,
24 for lack of a better term, booger up the record, okay?

25 MR. SEVILLE: Yes, Your Honor. Thank you.

1 MS. SARJI: Sorry, Judge.

2 CROSS-EXAMINATION

3 BY MR. SEVILLE:

4 Q Good morning, Mr. Sanders. Thank you for being here.

5 Now, Mr. Sanders, do you remember signing the waiver of
6 your PCR rights, which stated that you understood that the
7 terms of the waiver were permanent?

8 A I remember signing it.

9 Q Okay. Now, do you remember telling the judge that
10 your lawyers had talked to you about the PCR statute?

11 A I remember.

12 Q Okay. And do you remember telling the judge that you
13 understood you were giving that up?

14 A I did.

15 Q And do you remember telling the judge that you were
16 totally satisfied with their representation?

17 A I did.

18 Q And do you remember telling the judge that you can't
19 think of any reason that he should not accept your
20 decision?

21 A I remember.

22 Q Okay. Do you recall telling the judge that there were
23 no promises made to you, other than the removal of the
24 death penalty?

25 A I remember.

REDIRECT EXAMINATION BY MS. SARJI - ANTHONY SANDERS 22

1 Q All right. Do you remember telling the judge that you
2 had enough time with the lawyers -- with your lawyers to
3 talk about the agreement?

4 A Yes, sir.

5 Q Okay. And that you were satisfied and comfortable
6 with your decision?

7 A Yes, sir.

8 Q And that you understood the rights you were giving up?

9 A Yes, sir.

10 Q Do you remember telling the judge that you made this
11 decision because you wanted to avoid the death penalty as a
12 possible punishment?

13 A I remember.

14 Q That's all I have at this time. Thank you.

15 THE COURT: All right. Do you want to ask him any
16 questions limited to that, the -- to the scope ---

17 MS. SARJI: Just ---

18 THE COURT: --- for that direct?

19 MS. SARJI: --- very quickly, Judge.

20 THE COURT: Sure.

21 REDIRECT EXAMINATION

22 BY MS. SARJI:

23 Q Mr. Sanders, despite what the agreement actually said,
24 your lawyers told you it meant something different, didn't
25 they?

1 A Yes, ma'am.

2 Q They told you that you could still come back -- or at
3 least Mr. Young told you that you could still come back and
4 file these claims?

5 A Yes, ma'am.

6 MS. SARJI: Thank you, Judge. I don't have anything
7 further.

8 THE COURT: Okay. Any recross, limited to the scope
9 of that redirect?

10 MR. SEVILLE: No, Your Honor ---

11 THE COURT: Okay.

12 MR. SEVILLE: --- for now. Thank you.

13 THE COURT: All right. Mr. Sanders, you can step --
14 step down now. Thank you.

15 (Whereupon, the witness exited the witness stand.)

16 THE COURT: Yes, ma'am. You can call your next
17 witness.

18 MS. SARJI: I know this is a little unorthodox, Judge.
19 But I would call Boyd Young to the stand.

20 THE COURT: , Okay.

21 (Whereupon, the witness came forward.)

22 DEPUTY CLERK OF COURT: Please raise your right hand.
23 State your full name for the record.

24 THE WITNESS: Stanley Boyd Young.

25 S. BOYD YOUNG, having been first duly sworn,

DIRECT EXAMINATION BY MS. SARJI - S. BOYD YOUNG

24

1 testified as follows:

2 DEPUTY CLERK OF COURT: Thank you. Have a seat,
3 please.

4 THE WITNESS: (Complied.)

5 THE COURT: Yes, ma'am.

6 MS. SARJI: Thank you, Judge.

7 DIRECT EXAMINATION

8 BY MS. SARJI:

9 Q Mr. Young, where do you currently work?

10 A I am the director for the South Carolina Capital Trial
11 Division, which is a branch of the South Carolina
12 Commission of Indigent Defense.

13 Q And what do you do at that place of employment?

14 A We represent defendants around the state facing the
15 death penalty or a potential a death penalty at the trial
16 level.

17 Q And did you have occasion in your employment there to
18 represent Mr. Anthony Sanders?

19 A I did. I started representing Mr. Sanders -- I think
20 he was one of my first cases when I arrived in the state in
21 2008.

22 Q Okay. And do you recall discussing with him a waiver
23 of his appellate rights and ineffective-assistance-of-
24 counsel claims?

25 A I do.

1 Q And can you tell me when the waiver that he ended up
2 signing was first discussed with him?

3 A Yes. So we were gearing up for trial. We had a trial
4 date, I believe, in March of 2010. We had had a number of
5 pretrial hearings leading up to that. And I believe it was
6 around Christmas that the state had first indicated they
7 might be willing to accept a plea.

8 We had a hearing date for that plea in January. We
9 all met for that hearing. Mr. Sanders had decided that he
10 was not going to plead guilty. And at that point in time,
11 I brought up to the judge and the prosecutor's office that
12 maybe if they were willing to drop death, we could do a
13 bench trial as an option. At that point in time is when
14 the -- we started talking about what the terms of that
15 would be and what it would look like.

16 Q Okay. And at some point did you actually present him
17 with the form that he ended up signing?

18 A Yes.

19 Q And when was that?

20 A I believe it was the next Monday, like Mr. Sanders
21 said.

22 Q Okay. And at that time did you feel -- was there any
23 pressure to do something one way or another at that point?

24 A Yes.

25 Q Can you describe that for ---

1 A Certainly.

2 Q --- us, please?

3 A Sure. We -- I mean, we were -- we had a death penalty
4 trial scheduled. They had to get out jury summonses and
5 questionnaires that they were trying to get out. At that
6 point in time, we were -- you know, the train was full
7 steam ahead on a death penalty trial.

8 Q Was there a -- sort of an understanding that either
9 you sign this waiver and death is off the table; or you
10 don't sign it and -- and they're going to seek the death
11 penalty against you?

12 A That's exactly -- absolutely right.

13 Q Okay. So there was no -- was there ever a context in
14 which you discussed with the solicitor in the case that
15 y'all would proceed to a jury trial, Mr. Sanders' appellate
16 and PCR rights would remain intact, but death would be off
17 the table?

18 A That was not an option.

19 Q Okay. When you did discuss this agreement with him,
20 did you ever tell him that the waiver was unenforceable?

21 A I did. I told him that it was my belief, my personal
22 belief, that he could not knowingly and intelligently waive
23 a claim about future performance; that under the terms, the
24 way this thing is written, Judge Dennis can show up drunk
25 and sleep through the trial; I can show up drunk and sleep

1 through the trial; and he couldn't do anything about it.

2 And that would clearly be unenforceable.

3 Q Okay. And did you ever talk to him about the PCR
4 statute? Did you specifically discuss that with him?

5 A I did not.

6 Q Okay. Did you discuss any conflict of interest with
7 him, that you may have had a personal interest in him
8 signing this waiver, for all of the reasons that an
9 attorney might wish to limit an -- or a defendant's ability
10 to come back later on an ineffective-assistance claim?

11 A I did not talk to him about that stuff.

12 Q Did you ever talk to him about any aspect of the
13 effect of a PCR on you?

14 A No.

15 Q Do you still advise clients with regard -- do -- do
16 you still have clients that get presented with these types
17 of waivers?

18 A We do, not in the context of "sign this now; we'll
19 have a trial later and waive future performance." But we
20 certainly often come up with those agreements and requests
21 as part of plea negotiations that you waive your rights up
22 to this point or performance up to this point.

23 In light of the opinion in this case, we do not handle
24 those in-house. We hire private, independent counsel to
25 independently advise clients about whether to waive appeal

DIRECT EXAMINATION BY MS. SARJI - S. BOYD YOUNG

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1 or PCR rights, even at -- as to cases up to that point.

2 Q Okay. Are these kinds of agreements -- now do you
3 have any where they're being presented with these in the
4 context of a trial, or is strictly plea negotiations?

5 A Strictly pleas. Most solicitor's office have -- you
6 know, I send them the *Sanders* opinion; here's what you're
7 asking; why are you even putting this in there. It just
8 creates an issue, and most of them just take it out.

9 Q Have you read the *Kentucky* opinion that the Supreme
10 Court relied on?

11 A I have not.

12 Q If -- I'll talk to you about it later. But ---

13 A Okay.

14 Q --- are you ---

15 A I've read the briefs. And I understand the -- the
16 arguments regarding the case.

17 Q And that there -- it's actually considered, at least
18 in *Kentucky*, an ethical violation for the prosecutors to
19 insert that language into a plea agreement or a -- a --
20 because it's trying to induce a defense attorney to commit
21 an ethical violation. Have you ---

22 A Right. And the -- South Carolina was on track when we
23 issued those opinions about waiving discovery and -- and
24 those types of things as part of plea agreements too.

25 Q Did you intend, when you gave Mr. Sanders the advice

1 about the waiver being unenforceable, for him to rely on
2 your advice?

3 A Yes.

4 Q And at that point did you believe that that was the
5 best thing for him to do because it got death off the
6 table?

7 A Yes.

8 MS. SARJI: I don't have any further questions for
9 this witness, Judge. Thank you.

10 THE COURT: Okay. All right.

11 Mr. Seville?

12 CROSS-EXAMINATION

13 BY MR. SEVILLE:

14 Q Good morning, Mr. Young. How you doing?

15 A Good morning.

16 Q Now, Mr. Young, what -- what punishment do you receive
17 as a result of a PCR getting granted in which you were the
18 trial counsel?

19 A I don't know.

20 Q Now ---

21 A I mean, I ---

22 Q --- just when ---

23 A --- can elaborate on that a little bit. Just based on
24 my meetings with the director of SCCID and the board, the
25 whole reason for the formation of my office was that the

CROSS-EXAMINATION BY MR. SEVILLE - S. BOYD YOUNG

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1 death penalty-reversal rate was upwards of 60 percent,
2 mostly based on ineffective-assistance claims and that if
3 my office started seeing those numbers come up and started
4 having successful ineffective-assistance claims made
5 against us, then we -- I imagine we would be defunded and
6 sort of a lost cause for the state.

7 Q Okay. That's just what you imagine?

8 A Yes.

9 Q Now, at the status conference held on January 21st,
10 2010, do you recall that you and Mr. Leiendecker both
11 confirmed to the judge that you full discussed the
12 agreement with Mr. Sanders?

13 A Yes.

14 Q And do you recall Mr. Sanders saying that he was
15 signing those to avoid the death penalty?

16 A Yes.

17 Q And do you recall the judge remarking that he had
18 received very competent counsel who endeavored to represent
19 him fully in every way?

20 A Yes.

21 Q Now, Mr. Young, are you aware that the rules of
22 professional conduct have no bearing on the
23 constitutionality of a conviction?

24 A Yes.

25 Q And to what extent were the other attorneys involved

1 in the waiver agreement?

2 A As far as Mr. Farley and Mrs. Young, they -- they were
3 not involved.

4 Q Okay. But did all parties sign the agreement?

5 A I don't remember who all signed -- I know that Mr.
6 Leiendecker and I and Mr. Sanders signed the agreement. I
7 don't . . .

8 Q Now, could you walk us through the -- the facts of the
9 case, Mr. Young?

10 A Yeah. I think the original was in 2006 or 2007. I
11 don't remember.

12 MS. SARJI: I'm going ---

13 A Because I think ---

14 MS. SARJI: --- to object, Judge. I'm not sure how
15 this bears on the narrow issue before the Court.

16 MR. SEVILLE: The -- the ---

17 THE COURT: How is it relevant?

18 MR. SEVILLE: I -- I would submit that the facts of
19 the case bear on the -- his chances in a death penalty
20 trial and why you would choose to waive PCR or other
21 avenues in order to avoid a possible ---

22 THE COURT: Well ---

23 MR. SEVILLE: --- death penalty.

24 THE COURT: --- I -- I understand and appreciate that.
25 You don't have to go into any testimony regarding that. I

CROSS-EXAMINATION BY MR. SEVILLE - S. BOYD YOUNG

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1 get that.

2 MR. SEVILLE: Okay.

3 THE COURT: That's -- that's abundantly clear to me.

4 MR. SEVILLE: Okay. Thank you, Your Honor.

5 Q About how many times did you meet with Mr. Sanders
6 prior to the signing of this wavier, Mr. Young?

7 A I -- I don't -- more than 50.

8 Q Okay. What do you think the main reason was he signed
9 this waiver?

10 A Because I told him, "This is how to not get the death
11 penalty."

12 Q Do you think it was a good idea for him to sign the
13 waiver?

14 A I do.

15 Q Do you still think it was a good idea?

16 A Yes.

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

18 (Off the record briefly.)

19 Q Now, Mr. -- Mr. Young, you -- you just -- you
20 testified on direct that you did not discuss the PCR
21 statute with Mr. Sanders.

22 A That's correct.

23 Q Okay. Do you remember us speaking on the phone last
24 week?

25 A Yes.

1 Q Okay. Do you remember telling me that you did discuss
2 the PCR statute with Mr. Sanders?

3 A I don't know what the PCR statute is, so -- I mean, I
4 ---

5 Q The ---

6 A --- we talked about your waiving PCR rights, which is
7 basically if I mess something up. But ---

8 Q Okay.

9 A --- as far as, like, what the statute is or what it
10 says, I have no idea.

11 Q Okay. So you talked about the substance of the ---

12 A We talked about waiving ---

13 Q --- of the PCR?

14 A --- PCR. Yes.

15 Q Okay. And whose decision was it to sign this waiver?

16 A I mean, ultimately, it was Mr. Sanders' decision.

17 Q Okay. That's all I have. Thank you.

18 THE COURT: Okay. All right.

19 Anything in redirect, ma'am?

20 MS. SARJI: Nothing, Judge.

21 THE COURT: Okay. Thank you, Mr. Young. You can step
22 down.

23 THE WITNESS: Thank you, Judge.

24 (Whereupon, the witness exited the witness stand.)

25 THE COURT: All right. Anything else?

1 MS. SARJI: Judge, I think at this point, I've -- I've
2 carried my burden here. I am happy to call other counsel
3 to the stand that was involved in the case, particularly
4 Mr. Leiendecker to confirm that he was not involved in the
5 discussions. But ---

6 THE COURT: Okay. Mr. Seville, is there any evidence
7 that you wish to put into the record regarding this matter?

8 MR. SEVILLE: None other than a brief argument, Your
9 Honor.

10 THE COURT: Okay. Well, let -- well, let's go ahead
11 and hear those arguments, then.

12 MR. SEVILLE: Sure. Your Honor, I think the record is
13 clear, from the testimony and the status conference and the
14 testimony from Mr. -- Mr. Young, Mr. Sanders signed this
15 waiver to avoid the death penalty. He didn't sign this
16 waiver because he was looking forward to having a PCR
17 hearing someday. That was not what it -- the -- the -- any
18 alleged belief that this was not an enforceable waiver is
19 not what made him sign it. He signed it to avoid the death
20 penalty.

21 I will submit as well, I think we have very different
22 interpretations of *Gonzales v. State*. I don't think it
23 eliminates prejudice. I think the conclusion actually says
24 that the applicant is entitled to relief when the conflict
25 of interest adversely affect the trial counsel's

1 performance.

2 I submit, it did not in this case. It achieves the --
3 what they wanted to do, which was avoid the death penalty,
4 and it was the only way to do it. I think if such a waiver
5 was defective in effectiveness, we wouldn't be here on
6 remand. The Supreme Court would not have needed to send
7 this back to us. The opinion's footnote does cite the
8 *Kentucky* case and other cases involving bar associations
9 and rules of professional conduct, which, pursuant to
10 *Langford*, do not have bearing on a postconviction-relief
11 constitutionality of a conviction.

12 And lastly, I would submit that if indeed Mr. Sanders
13 did not believe this waiver was enforceable, yet made
14 representations to the Court that he wished to enter into
15 this agreement knowingly and knew that he was waiving his
16 rights, not only did he lie to the Court, but he also
17 entered into an agreement with the state in which the state
18 was giving up substantial consideration in exchange for, as
19 Mr. Sanders would've understood it, nothing. Yet he
20 entered into it. And I don't think, notwithstanding all of
21 the other testimony of record, he should be rewarded for
22 entering into the agreement with dirty hands.

23 THE COURT: I understand.

24 MR. SEVILLE: That's all I have. Thank you.

25 THE COURT: I understand.

1 All right. Anything in reply to that?

2 MS. SARJI: Yes, Your Honor. I don't believe that we
3 have to show prejudice under the *Gonzales* decision. Again,
4 Judge, I think that if we have to get -- all we're looking
5 at right now is whether or not he received ineffective
6 assistance of counsel in signing the waiver. What we have
7 proven to the Court, I believe, is that he was given advice
8 that it was unenforceable; that he relied on that advice.
9 His attorney admits that he was given that advice. His
10 attorney admits that he intended for him to rely on that
11 advice in signing it.

12 Whether or not there was any part -- Mr. Sanders
13 doesn't have an obligation to the state to be on the up-
14 and-up with the state, who is trying to kill him by virtue
15 of the death penalty. There is no obligation in that way.
16 Judge, the -- in the very same -- you know, if you take his
17 reasoning a little bit further, if the attorneys believed
18 that this agreement was unenforceable, but they signed it
19 as well, then they are in the exact same shoes as Mr.
20 Sanders.

21 You know, just because they may know or have a belief
22 in the efficacy of an agreement or a contract and the other
23 side isn't as well informed in their belief, they don't
24 have any duty to tell the state: "Hey, guys, y'all are
25 making a mistake, because this isn't enforceable." There's

1 no reciprocal duty in that way, Judge. So I think that his
2 argument fails in that regard.

3 And I think that we've proven what we have to prove in
4 order to have this waiver -- the -- the provisions of the
5 waiver be found not to be applicable to Mr. Sanders and to
6 allow him to have a full PCR on the merits at a later time,
7 Judge.

8 THE COURT: Okay. All right. I'm going to grant the
9 relief requested and allow a -- a full hearing on the
10 postconviction-relief application. I do find that Mr.
11 Sanders received ineffective assistance of counsel in
12 advising him to waive the -- any and all collateral attack.

13 I'll say, first and foremost, you know, whether there
14 was an ethical -- and ethical violation or not is an issue
15 for another tribunal. I don't make those considerations.
16 And that's not determinative in this issue.

17 I recognize -- I recognize that by the very nature of
18 death penalty proceedings, that oftentimes
19 attorneys/counsel make very calculated and even cynical
20 decisions regarding how to proceed in a case. It looks to
21 me as though this were a very calculated and even cynical
22 decision made by counsel. Mr. Young was very clear in that
23 he discussed postconviction-relief rights, collateral
24 attack, if not the specific statute.

25 I'm not certain that I could discuss the specifics of

1 the statute intelligently either. But clearly, the
2 collateral -- collateral attacks or -- or collateral review
3 of the conviction was discussed. And it was clear the he
4 gave Mr. -- Mr. Sanders the clear indication that it would
5 not be -- excuse me -- that the waiver would not be a valid
6 waiver. Therefore, I think that Mr. -- Mr. Sanders
7 received advice that was ineffective.

8 I will also tell you that in the last sentence of the
9 -- of the footnote, is what I was talking about when --
10 when we first started this case, which -- which says we
11 find this practice especially troubling where, as here, the
12 defendant enters into the agreement prior to trial, which
13 allows significantly more potential for error than a guilty
14 plea. I don't know how you could waive your right to
15 appeal or to ineffective assistance of counsel before you
16 try a full-blown evidentiary case. And there certainly is
17 -- there is a problem with counsel getting an agreement up
18 front to waive, on the record, any collateral attack to his
19 professional conduct.

20 Now, I've been around long enough to know that
21 generally in that proceeding, trial counsel doesn't really
22 mind a collateral attack on his conduct. As a matter of
23 fact, as I indicated, oftentimes that's part of the
24 calculation. However, in this instance, that -- the -- the
25 waiver wasn't entered into freely and voluntarily. Because

1 he had been advised to the contrary, expressly by counsel.

2 So I believe it is appropriate to have a substantive
3 hearing on the postconviction-relief application inasmuch
4 as, again, Mr. Sanders received ineffective assistance of
5 counsel, however calculated it may have been. All right?

6 MR. SEVILLE: Thank you, Your Honor.

7 MS. SARJI: Thank you, Judge.

8 THE COURT: Yes. All right.

9 (Off the record briefly.)

10 THE COURT: Before we go, Ms. Sarji, are you going to
11 prepare an order?

12 MS. SARJI: Yes, sir, I'll prepare an order.

13 THE COURT: Okay.

14 MS. SARJI: I'll submit it to you within 10 days.
15 Would that be acceptable?

16 THE COURT: That -- I -- you can -- you can take 15 or
17 30 if you want to.

18 MS. SARJI: Okay. Awesome.

19 THE COURT: Okay.

20 MS. SARJI: Thanks, Judge.

21 THE COURT: All right. Thank you.

22 (Whereupon, the proceeding was concluded at 12:31 p.m.)

23 --- END OF TRANSCRIPT OF RECORD ---

24

25

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, RVR-M, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 9th day of July, 2018.

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



Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Official Court Reporter

West Columbia, South Carolina
July 14, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2011-CP-18-0027

Anthony Sanders, #339645,)
Applicant,)
-versus-)
State of South Carolina,)
Respondent.)

ORDER
(Invalidating Wavier of Right to
Collateral Review)

CHERYL GRAYMAN
CLERK OF COURT
DORCHESTER COUNTY

2018 OCT 17 AM 9:28

FILED-RECORDED

DATE OF HEARING: July 9, 2018
PRESIDING JUDGE: Robin B. Stilwell
APPLICANT'S ATTORNEY: Leslie T. Sarji
RESPONDENT'S ATTORNEY: Christian Saville
COURT REPORTER:

This matter came before me in Dorchester County on July 9, 2018 upon remand from the South Carolina Supreme Court, for a hearing on the issue of whether Applicant received ineffective assistance of counsel in being advised to enter into an agreement to waive his right to collateral review of his conviction. Based upon the testimony presented during the hearing of this matter, I find that Applicant received ineffective assistance of counsel in being advised to enter into the agreement waiving his right to collateral review of his conviction.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was indicted in case numbers 2007-GS-18-1296, -1297, and -1298 for three counts of Murder. Applicant entered a not guilty plea and was scheduled for a jury trial. During a pre-trial status conference on January 21, 2010, Applicant's trial counsel, Boyd Young, Esquire, submitted a signed "Contractual Consent Order to Waive Rights to Jury Trial"

[Handwritten signature]

(hereafter referred to as "Waiver") to the Honorable R. Markley Dennis, Jr. The Waiver provided that in exchange for the State not seeking the death penalty, Applicant would proceed to a bench trial and he would waive his rights to a direct appeal, to post-conviction relief proceedings, or habeas corpus proceedings. After questioning Appellant as to his understanding of the Waiver, Judge Dennis approved the Waiver.

Appellant proceeded to a bench trial before Judge Dennis on March 8, 2010. At the conclusion of the bench trial, Applicant was found guilty of three (3) counts of murder on March 9, 2010, and was sentenced to life without parole.

Applicant then filed a *pro se* appeal to the Court of Appeals, which was dismissed for failure to serve and file a notice of appeal with proper proof of service. Applicant then filed an application for post-conviction relief ("PCR") on January 6, 2011, alleging ineffective assistance of counsel for providing him with "misleading statements" that rendered his entry into the agreement contained in the Waiver to be involuntary. The State moved to dismiss pursuant to the Waiver.

A hearing was held on Applicant's application for post-conviction relief. Applicant moved for a continuance to allow for more time to investigate potential witnesses. The State opposed the continuance based on the Waiver. Applicant then requested an evidentiary hearing on the issue of whether he received ineffective assistance of counsel that rendered his entry into the Waiver involuntary. The State opposed, and the PCR court dismissed Applicant's application.

Applicant appealed the dismissal of his PCR application, arguing that he should have been allowed to present evidence that his entry into the waiver was based upon ineffective assistance of counsel. The South Carolina Supreme Court agreed and remanded Applicant's case for "an evidentiary hearing on the narrow issue of whether

Sanders received ineffective assistance of counsel in being advised to enter into the Agreement.” *Sanders v. State*, 412 S.C. 611 (2015).

Applicant’s application for post-conviction relief alleges that trial counsel “misadvised [him] with misleading statements that render [his] signing of the [Waiver] involuntary”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony provided at the hearing in this matter. Further, this Court has had the opportunity to observe the witnesses presented at the hearing, determine their credibility, and has weighed their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” *Fraiser v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Post-Conviction Relief Applicant must prove that (1) counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that the deficient performance prejudiced the Applicant’s case. *Porter v. State*, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). In order to prove prejudice, an Applicant must show that but for counsel's errors, there is a

reasonable probability the result of the trial would have been different. *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id.* Courts presume that “counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Strickland*, 466 U.S. at 690. Ordinarily, a PCR Applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

However, where there is an actual “conflict of interest in a criminal matter, the [Applicant] is not required to show prejudice in the traditional Strickland sense.” *Gonzales v. State*, 795 S.E.2d 835 (2017).

Trial counsel was ineffective in advising Applicant to sign the Waiver

Applicant alleged trial counsel was ineffective for advising him to sign the Waiver. Applicant testified that the waiver was presented to him within the context of plea negotiations, and that he was presented with three options, one of which was the waiver. Applicant testified that he had signed the waiver based upon his attorney’s advice and that his attorney had advised him that the waiver was not enforceable. Applicant testified that he would not have signed the waiver if he had believed it was enforceable. Applicant testified that trial counsel informed him that he could still appeal.

At the point Applicant signed the Waiver, he had not yet had a trial and he could not have known what errors might occur. Applicant testified that trial counsel did not advise him that trial counsel had an inherent conflict of interest in advising him to sign a waiver that included a waiver of an ineffective assistance of counsel claim. Applicant

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testified that but for his attorney's representations regarding the waiver being unenforceable, he would not have signed it.

Applicant's trial counsel, Boyd Young, testified during the hearing in this matter that he told Applicant that the Waiver was unenforceable. Mr. Young testified that he told applicant that he could still appeal the case, as he believed that Applicant could not waive rights related to future performance. Mr. Young testified that he did not discuss any conflict of interest or personal interest he might have in advising Applicant to waive his right to file an ineffective assistance of counsel claim against him. Nor did Mr. Young discuss with Applicant any aspect of the potential effect of a PCR on himself. Mr. Young further testified that he intended for Applicant to rely upon his advice in deciding whether to sign the Waiver.

Mr. Young also testified that his office now handles these types of situations in an entirely different manner. After the Supreme Court's decision in Applicant's case, Mr. Young's office now hires independent counsel to discuss the waiver of the right to collateral review with defendants.

Based upon the testimony of the Applicant and trial counsel, it is unnecessary to reach the question as to whether a *per se* ethical violation occurred when trial counsel advised Applicant to enter into the Waiver. By the very nature of death penalty cases, attorneys representing defendants facing the death penalty must make very calculated decisions. It is not for this Court to determine whether an ethical violation occurred.

It is, however, appropriate to conclude that trial counsel provided Applicant with ineffective assistance of counsel when he advised Applicant that the Waiver was unenforceable with regard to collateral review of Applicant's conviction. It is also clear

that Applicant relied upon trial counsel's advice in signing the Waiver and that trial counsel intended for Applicant to rely upon his advice in signing the Waiver.

CONCLUSION

Based on the foregoing reasons, this Court finds and concludes that the Applicant has established that he received ineffective assistance of counsel in being advised to enter into the Waiver. Accordingly, this Court finds the Waiver to be invalid.

IT IS THEREFORE ORDERED:

That the "Contractual Consent Order to Waive Rights to Jury Trial" wherein Applicant waived his right to collateral review of his conviction, including his right to seek post-conviction relief, is invalid. Applicant's request for a hearing on the merits of his Application for Post-Conviction Relief must be granted. This matter is hereby REMANDED for further prosecution.

AND IT IS SO ORDERED!


 JUDGE ROBIN B. STILWELL
 PRESIDING JUDGE, 1ST CIRCUIT

GLENNVILLE, South Carolina

1 OCT, 2018

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

ANTHONY SANDERS, #339645
Applicant,

vs.

STATE OF SOUTH CAROLINA,
Respondent.) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT

) CASE NO.: 2011-CP-18-0027

) **AMENDED APPLICATION FOR**
) **POST CONVICTION RELIEF**

2019 MAR 18 PM 2:01

FILED-RECORDED

The Applicant, ANTHONY SANDERS, now having the benefit of appointed counsel alleges the following, in addition to the grounds previously stated:

1. Anthony Sanders is detained at Lee Correctional Institution under Inmate Number: 339645.
2. Applicant, by and through undersigned counsel, submits this Amended Application for Post Conviction Relief, and alleges the following errors by trial counsel in addition to those already alleged, which rendered trial counsel's assistance ineffective and but for which, there is a reasonable probability that the result of the proceeding would have been different:
 - a. Trial counsel provided ineffective assistance of counsel in advising Applicant to waive his rights to a jury trial, a direct appeal, and to any claims for ineffective assistance of counsel, all of which amount to a structural error that requires grant of a new trial;
 - b. Trial counsel failed to subject the prosecution's case to "meaningful adversarial testing";
 - c. Trial counsel failed to object to the admissibility of the shell casings;
 - d. Trial counsel failed to inform Applicant or to advise him regarding trial counsel's personal conflict in advising him to sign the

waiver of a jury trial, resulting in ineffective assistance of counsel sufficient to require reversal of Applicant's conviction and remand for a new trial;

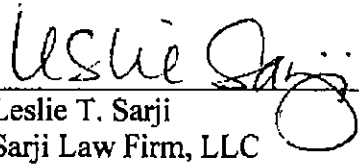
e. Trial counsel failed to adequately investigate the case prior to trial;

f. Trial counsel failed to present any expert testimony regarding the DNA evidence; and

g. Trial counsel failed to object to hearsay evidence of Xavier Walker's identification of Applicant.

Wherefore, based on this Amended Application as well as all grounds previously alleged, the Applicant requests that a hearing on the merits be scheduled.

Respectfully submitted,



Leslie T. Sarji
Sarji Law Firm, LLC
P.O. Box 20248
Charleston, South Carolina 29413
(843)722-5354

Attorney for Applicant

Charleston, South Carolina
July 16, 2019

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF COMMON PLEAS
2011-CP-18-00027

Anthony Sanders

)

) TRANSCRIPT OF RECORD

-vs-

)

) May 17, 2021

State of South Carolina)

) Orangeburg, South Carolina

B E F O R E:

The Honorable Kristi F. Curtis, Judge

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

Benjamin H. Limbaugh, Esquire
Attorney for the State

Leslie T. Sarji, Esquire
Attorney for the Applicant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
First Judicial Circuit

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

NO EXHIBITS INTRODUCED

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1 THE COURT: Thank you. Please have a seat.
2 Okay. Good morning. We're here on Anthony Sanders
3 versus the State of South Carolina. Mr. Limbaugh
4 on behalf of the State, and tell me who you've got
5 with you.

6 MR. LIMBAUGH: Ms. McCallister, Your Honor.

7 THE COURT: Nice to see you again.
8 It's hard to tell who everybody is with the mask on.
9 Good morning. And Ms. Sarji?

10 MS. SARJI: Sarji, Your Honor, yes, ma'am.

11 THE COURT: Okay. First of all,
12 Mr. Sanders, good morning. I'm Judge Curtis. We're
13 here today on your petition for post-conviction relief,
14 and so I want to go over all of the consequences of your
15 actions today. And I know you have discussed this with
16 Ms. Sarji, probably at length.

17 But you understand that in a post-conviction
18 relief action, I cannot change your sentence. I can
19 either grant the application, or I can deny the
20 application. If I grant the application, it means
21 you go back to your status before you had the trial.
22 That means that the State can seek the death penalty.
23 It means that it's as though that trial never happened.

24 And so you understand that if you are
25 successful in this application, that the State can seek

1 the death penalty?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And have you had a chance to
4 discuss that with your attorney?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Have you discussed it with her
7 prior to today -- this morning?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Have you had a chance to think
10 about that and discuss it with family, friends, anybody
11 else that you wanted to discuss it with?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And is it your decision that
14 you want to go forward this morning?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Ms. Sarji, is there anything you
17 want to put on the record with respect to Mr. Sanders'
18 decision to go forward on the PCR?

19 MS. SARJI: No, Your Honor. Thank you.

20 THE COURT: Okay. Mr. Limbaugh, I'm going
21 to turn it over to you if you want to call the case,
22 call the procedural history.

23 MR. LIMBAUGH: May it please the Court,
24 Your Honor.

25 THE COURT: Yes.

1 MR. LIMBAUGH: Applicant is presently
2 confined to the South Carolina Department of Corrections
3 pursuant to orders of commitment from the Dorchester
4 County clerk of court. The Applicant was indicted in
5 case numbers 2017-GS-18-1296, 1297 and 1298, for three
6 counts of murder. Applicant entered a not guilty plea
7 and was scheduled for a jury trial.

8 During a pretrial status conference on
9 January 21, 2010, Applicant's trial counsel, Boyd Young,
10 Esquire, submitted a signed contractual consent order to
11 waive rights to jury trial to the Honorable R. Markley
12 Dennis, Jr. The waiver provided that in exchange
13 for the State not seeking the death penalty, Applicant
14 would proceed to a bench trial, he would waive his
15 rights to a direct appeal, to post-conviction relief
16 proceedings, or habeas corpus proceedings.

17 After questioning Appellant -- Applicant
18 as to his understanding of the waiver, Judge Dennis
19 approved the waiver. Applicant proceeded to a bench
20 trial before Judge Dennis on March 8, 2010. At the
21 conclusion of the bench trial, Applicant was found
22 guilty of three counts of murder on March 9, 2010,
23 and was sentenced to life without parole.

24 Applicant then filed a pro se appeal to
25 the Court of Appeals, which was dismissed for failure

1 to serve and filed a notice of appeal with proper proof
2 of service. Applicant then filed an application for
3 post-conviction relief on January 6, 2011, alleging
4 ineffective assistance of counsel for providing him
5 with misleading statements that rendered his entry into
6 the agreement contained in the waiver to be involuntary.
7 The State moved to dismiss pursuant to the waiver.

8 A hearing was held on Applicant's
9 application for post-conviction relief. Applicant
10 moved for a continuance to investigate further potential
11 witnesses. The State opposed. The Applicant then
12 requested an evidentiary hearing on the issue of whether
13 he received ineffective assistance of counsel that
14 rendered his entry into the waiver involuntary.
15 The State opposed, and the PCR court dismissed
16 Applicant's application.

17 Applicant appealed the dismissal of his PCR
18 application, arguing that he should have been allowed
19 to present evidence that entry into the waiver was based
20 upon ineffective assistance of counsel. South Carolina
21 Supreme Court agreed, and remanded Applicant's case for
22 an evidentiary hearing on the narrow issue of whether
23 Sanders received ineffective assistance of counsel
24 in being advised to enter into the agreement.

25 A hearing was had on that narrow issue.

1 An order was filed and issued by Judge Stillwell on
2 October 17, 2018, finding that the contractual consent
3 order to waive rights to a jury trial, wherein Applicant
4 waived his rights to collateral review of his
5 conviction, including his right to seek post-conviction
6 relief, is invalid. Applicant's request for a hearing
7 on the merits of his application for post-conviction
8 relief must be granted.

9 After that order, Your Honor, Applicant,
10 through counsel of Ms. Sarji, filed an amended
11 application alleging the following grounds: Trial
12 counsel provided ineffective assistance of counsel in
13 advising Applicant to waive his rights to a jury trial,
14 a direct appeal, and to any claims for ineffective
15 assistance of counsel, all of which amount to a
16 structural error that requires grant of a new trial;
17 trial counsel failed to subject the prosecution's case
18 to meaningful adversarial testing; trial counsel failed
19 to object to the admissibility of the shell casings;
20 trial counsel failed to inform Applicant, or to advise
21 him, regarding trial counsel's personal conflict in
22 advising him to sign the waiver of a jury trial,
23 resulting in effective assistance of counsel, sufficient
24 to require reversal of Applicant's conviction and remand
25 for a new trial; trial counsel failed to adequately

1 investigate the case prior to trial; trial counsel
2 failed to present any expert testimony regarding the
3 DNA evidence; finally, trial counsel failed to object
4 to hearsay evidence of Xavier Walker's identification
5 of Applicant.

6 Applicant is represented by -- today
7 by Ms. Leslie Sarji, and I will hand it over to her
8 at this time, Your Honor, to discuss the allegations
9 upon which he -- Mr. Sanders wants to proceed.

10 THE COURT: And let me just ask both of you,
11 Mr. Limbaugh and you, Ms. Sarji, anything else you want
12 me to put on the record with Mr. Sanders regarding his
13 decision to go forward today?

14 MS. SARJI: Nothing, Your Honor. Thank you.

15 MR. LIMBAUGH: No, Your Honor. The State
16 is satisfied.

17 MS. SARJI: May I take my mask off just
18 for ---

19 THE COURT: Sure.

20 MS. SARJI: So, Your Honor, we do intend
21 to proceed on all the bases that we set forth in our
22 amended application for post-conviction relief, Judge.
23 At the outset, I do just want to give you sort of an
24 umbrella, if I can, about this waiver that Mr. Sanders
25 entered into, and which Judge Stillwell had already

1 recognized he entered into involuntarily.

2 Our position is that the entire waiver,
3 which included a waiver of the right to a jury trial,
4 included a waiver of appellate rights, and then the
5 waiver of ineffective assistance of counsel claims.
6 So, we have already won, obviously, on the basis
7 of the ineffective assistance of counsel claim.

8 Our position is that if the -- if one
9 portion of the waiver was invalid, the entire waiver
10 was invalid. And that, as a matter of law, my client
11 is entitled to a reversal of this conviction and a new
12 trial based on the invalidity of the waiver itself.
13 I would refer the Court to United States v. Cronic,
14 which discusses structural errors within a trial itself
15 that are so egregious that the only way to correct them
16 is to grant Mr. Sanders a new trial.

17 In this case, because trial counsel -- our
18 allegation at the last hearing is that trial counsel
19 actually had sort of a personal conflict of interest
20 in advising him to enter into this waiver, specifically,
21 with regard to the ineffective assistance of counsel
22 claims. Our position is that conflict, that personal
23 conflict, rises to the level of what was found in State
24 v. Gonzales, which is cited in Judge Stillwell's order,
25 Judge, and I can give you the cite. I'm sorry. It was

1 Gonzales v. State; that's 795 SE 2d 835.

2 So just as a matter of procedure,
3 at the outset, we would move the Court for grant
4 of a reversal of Mr. Sanders' conviction as a matter
5 of law, Judge.

6 MR. LIMBAUGH: May it please the Court,
7 Your Honor. There's specifically a case law on point
8 from the United States Supreme Court, Weaver v.
9 Massachusetts, stating that a structural error is not
10 presumed prejudiced, that the Applicant must still prove
11 prejudice in order to get the grant for relief on
12 a structural error, and I could provide that case cite,
13 if Your Honor would like, Weaver v. Massachusetts,
14 137 S.Ct. 1899 (2017).

15 Your Honor, the Applicant is using Cronic.
16 However, since there's a more specific Supreme Court
17 case law on point stating that the structural error
18 is not presumed prejudice, the State argues that would
19 cover the current situation for this. And, therefore,
20 the Applicant should not be granted relief as a matter
21 of law, and that it should go forward.

22 And, we're also not conceding that it is
23 a structural error, Your Honor. We don't feel, again,
24 that this is a structural error, and we will be arguing
25 against that. However, if the Court were to construe

1 it that way, we still believe that the Applicant would
2 have to prove prejudice. Thank you.

3 THE COURT: I'm not going to rule on that
4 at this point. I'm going to read the case law
5 carefully, take that under advisement.

6 MS. SARJI: Thank you, Your Honor.
7 As my first witness, I would call Mr. Anthony Sanders
8 to the stand.

9 THE CLERK: May you please raise your right
10 hand for me?

11 MR. ANTHONY SANDERS was called as a witness,
12 being duly sworn, was examined and testified as follows:

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MS. SARJI:

16 Q. And, Mr. Sanders, could you just please state
17 your full name for the record for us?

18 A. Anthony Sanders.

19 Q. And where are you currently housed?

20 A. Lee Correctional.

21 Q. And is that the -- what sentence did you get?

22 A. Life sentence.

23 Q. Okay. And was that the result of a plea
24 or a trial?

25 A. Trial.

1 Q. And did you have a jury trial?

2 A. Bench trial.

3 Q. A bench trial. You have to answer out loud for
4 the court reporter.

5 A. I'm sorry. Yes, ma'am.

6 Q. Okay. Thank you. And how did you end up having
7 a bench trial in your case versus a jury trial?

8 A. Through my attorney, brought the contractual
9 consent order to me for me to sign.

10 Q. Okay. And when you say your attorney,
11 are you talking about Boyd Young and Mr. Leiendecker
12 and Mr. Farley?

13 A. Yes, ma'am.

14 Q. Okay. Who did you mainly talk with about the
15 terms of that waiver that you signed?

16 A. Boyd Young.

17 Q. And did Mr. Young tell you that the waiver was
18 unenforceable?

19 A. Yeah. Yes, ma'am.

20 Q. Okay. And did you -- when you talked to
21 Mr. Young about that waiver, did he tell you that
22 you could take certain parts of it and not other parts
23 of it?

24 A. No, ma'am.

25 Q. Okay. And in exchange for this waiver of your

1 jury trial right, your appellate right and your
2 ineffective assistance of counsel right, what did you
3 get for that?

4 A. You're talking about the removal of the death
5 penalty?

6 Q. Yes. So you went into that agreement because
7 you thought you were going to get the death penalty
8 off the table; is that right?

9 A. I really went into the agreement because counsel
10 said that would have been the best approach for us.

11 Q. He told you that was the best approach for you
12 to take?

13 A. Yes, ma'am.

14 Q. Did he tell you that if you signed this agreement
15 that you later couldn't come back and do a hearing like
16 what we're doing now?

17 A. No.

18 Q. Did he tell you that you could, in fact, still
19 challenge him even with what was written on that waiver?

20 A. I mean, I brought it up and stated that I would
21 still wish to appeal, and he said, yeah, I would be able
22 to still appeal.

23 Q. Okay. So was it your understanding at the time
24 that you signed this waiver that it wasn't going to hold
25 up in any respect later on?

1 A. Correct.

2 Q. And was that based on explicit statements that
3 your lawyer gave to you?

4 A. Yes, ma'am.

5 Q. Okay. Do you want an appeal?

6 A. Yes, ma'am.

7 Q. Do you want a jury trial?

8 A. Yes, ma'am.

9 Q. Do you believe that your lawyer gave you
10 ineffective assistance of counsel during the bench trial
11 that you did have?

12 A. Yes, ma'am.

13 Q. Okay. Well, let's talk about that. In your
14 amended application, aside from that waiver, we talked
15 about the DNA testing and the DNA testimony. Do you
16 remember that?

17 A. Yes, ma'am.

18 Q. Okay. Can you tell the judge what it is that
19 you think that your lawyers either did wrong, or didn't
20 do enough of, with regard to the DNA testing?

21 A. Confrontation clause violation based upon the --
22 the chemist who actually performed the testing was never
23 subpoenaed or presented at trial. And the finishing
24 form -- the results of that testing was submitted into
25 evidence.

1 Q. Okay. So you said a confrontation clause
2 violation. Tell me what you mean by that. How was
3 it a violation of your rights?

4 A. Well, the -- there was -- the paperwork was
5 admitted into evidence, but it was -- but the chemist
6 that actually performed the testing never testified.
7 The SLED agent was allowed to read the findings of that
8 report, and the SLED agent didn't conduct the test.
9 And so it's like he couldn't really affirm or speak
10 about anything related to it, per se. Everything was
11 pretty much opinionated.

12 Q. Okay. Do you recall which lawyer that it was
13 that questioned the SLED agent about the DNA, that did
14 that cross-examination?

15 A. I don't remember exactly. I could guess.

16 Q. You don't have to guess. Was it Mr. Farley,
17 Mitch Farley, or do you just not remember?

18 A. I don't remember who it was.

19 Q. Okay. Okay. Do you know whether your team
20 of lawyers consulted with their own DNA expert?

21 A. I don't.

22 Q. You don't know, or they didn't?

23 A. I don't know.

24 Q. Okay. Did they ever discuss with you that they
25 were going to do that?

1 A. Not that I can recall.

2 Q. Okay. And do you recall whether or not there
3 was a point in your trial that the SLED agent said,
4 I'm not qualified to talk about that? Do you remember
5 that?

6 A. I do. I can't pinpoint it, but I do remember
7 that being said.

8 Q. Okay. Do you -- so did y'all call in anybody
9 to testify? Did your lawyers call in anyone to testify
10 that would have been qualified to address those issues?

11 A. There was no witnesses called.

12 Q. Okay. So for the defense, no witnesses were
13 called at all; is that right?

14 A. Yes, ma'am, no witnesses at all.

15 Q. Okay. Your DNA match, there was a pretty --
16 do you recall there being any discussion about how low
17 of a number that it was?

18 A. Yeah, there was a discussion.

19 Q. Okay. Do you recall what that was?

20 A. Not really. I just know that the probability --
21 the statistical numbers were real low and stuff.

22 Q. Okay. Does 1 in 260 sounds good, sound like
23 about right?

24 A. Sounds about right, yes, ma'am.

25 Q. Okay. And do you remember -- did your lawyers

1 call in anybody to talk about what results in DNA cases
2 usually are?

3 A. No, ma'am.

4 Q. Okay. Now you -- there was also some testimony
5 at your trial about some shoes, right, Nike Air?

6 A. Yes, ma'am.

7 Q. And do you feel like your lawyers didn't do
8 a good job for you on that?

9 A. No, ma'am.

10 Q. Okay. Tell us how do you feel like your lawyers
11 messed up.

12 A. The -- I was told that there was going to be an
13 expert from Nike to testify about the shoe impressions,
14 about the -- the shoe itself, about the tread wear being
15 the same since 1982. Also, I didn't like the fact that
16 some shoes that were actually confiscated in the search
17 warrant was admitted into evidence, and those shoes
18 itself didn't left the impression. That didn't sit well
19 with me either.

20 Q. Okay. So it was your understanding that the
21 shoes that got entered into evidence could not be
22 matched to the gel impressions?

23 A. Yes, ma'am.

24 Q. Okay. So who told you that they were going to --
25 that your lawyers were going to call in somebody from

1 Nike to testify?

2 A. Boyd. Boyd Young.

3 Q. And did they end up calling somebody from Nike
4 to testify?

5 A. I can't say.

6 Q. Okay. While you were at your trial, did they
7 call ---

8 A. Oh, no, nobody was called at trial.

9 Q. Okay. Okay. And did they talk to you about why
10 or why not they made that decision not to call the Nike
11 expert in?

12 A. No, ma'am.

13 Q. Did you -- so you didn't -- did you know at the
14 point that y'all started the trial, or as you were
15 getting into it, that y'all weren't going to call an
16 expert on that?

17 A. I didn't know.

18 Q. Okay. How about investigation? I think we
19 included in your amended application that you felt like
20 there wasn't enough investigation done in your case.

21 A. Yes, ma'am.

22 Q. Okay. Can you tell us about that?

23 A. In relation to the Hunter's Ridge incident, which
24 was one of the prior bad acts that was mentioned inside
25 the motion, there was no -- I don't think no witnesses,

1 that they talked to any of the witnesses and stuff,
2 and they could have actually got subpoenaed, and that
3 could have helped with the -- kind of mitigating certain
4 things and stuff. I don't believe any of those
5 witnesses were investigated and stuff. I'm not sure
6 that they actually contacted anybody really.

7 Q. Okay. And so do you -- did you go through the
8 discovery with your lawyers?

9 A. Yes, ma'am.

10 Q. Okay. Did y'all talk about investigation
11 that you wanted them to follow up on?

12 A. I mentioned some things.

13 Q. Okay. What did you mention to them?

14 A. The Hunter's Ridge incident was a big thing
15 because they charged me with it. And there were
16 statements stating that somebody else did the shooting.
17 I didn't like the fact that the person that they said
18 did the shooting turned around and said that I was the
19 shooter, and that the detectives went along with them.
20 So, I wanted witnesses from that incident to actually
21 take the stand and prove that I wasn't the shooter.

22 Q. And so during your trial, you had pretrial
23 motions, didn't you?

24 A. Yes, ma'am.

25 Q. And one of those motions was Mr. Young asking

1 the judge to keep out the Hunter's Ridge incident,
2 right? Do you recall that?

3 A. Yeah, but it was more in line with asking for
4 a trial prior to the murder trial itself being that
5 I got charged with the discharging a firearm charge
6 first, thought it would have been okay to actually
7 have the charge -- I mean, the trial for the discharging
8 the firearm charge first prior to the murder trial.

9 Q. Okay. But that was done with the context
10 of a discussion about prior bad acts and what would
11 be admissible. Do you recall that?

12 A. Yes, ma'am.

13 Q. And do you recall then that the judge actually
14 made a comment about if the witnesses came in and said
15 something different, then that might undermine the
16 admissibility of that evidence?

17 A. Yes, ma'am.

18 Q. Do you recall that?

19 A. Yes, ma'am.

20 Q. And I think if I give you your transcript -- your
21 envelope and stuff, you can actually point us to that
22 specific page in the transcript.

23 MS. SARJI: Judge, may I approach and hand
24 him? Thank you.

25 THE DEFENDANT: I have it right here.

1 MS. SARJI: Okay.

2 BY MS. SARJI:

3 Q. What page was that in your record?

4 A. Page 145.

5 Q. Okay. And that is -- can you -- I'm going to try
6 to find Page 145 here quickly. Can you ---

7 MS. SARJI: Judge, can he read into the
8 record the specific comments made by the judge that
9 we believe ---

10 THE COURT: Sure.

11 MS. SARJI: --- points? Okay.

12 THE DEFENDANT: Read it now?

13 MS. SARJI: Yes, sir.

14 THE DEFENDANT: It says, "If those persons
15 at trial said, no, he never made such a statement,
16 then things started breaking down a little bit."

17 BY MS. SARJI:

18 Q. Okay. And so that was with regard to the
19 statements that we're talking about, with regard
20 to those two prior bad acts; is that right? If you were
21 to go backwards in your transcript?

22 A. Yes, ma'am.

23 Q. Okay. So certainly at that point, would you
24 believe that your lawyers were sort of put on notice
25 by the judge that here's a way for you to attack these

1 things as being relevant?

2 A. Yes, ma'am.

3 Q. And that would have involved calling the
4 witnesses, or investigating those witnesses that made
5 those statements; is that right?

6 A. Yes, ma'am.

7 Q. To your knowledge, did your lawyers ever talk to
8 those ladies or those folks that made -- that said these
9 things, or try to call them into court?

10 A. To my knowledge, I don't think so.

11 Q. Did the -- do you recall ever having any
12 conversation with any of your defense team about
13 actually bringing those witnesses in, aside from
14 what the judge said? Like after the judge said that,
15 did y'all talk about it?

16 A. We may have, but I can't actually recall the
17 conversation.

18 Q. It's been 12 years, right, almost 12?

19 A. Yeah, yeah.

20 Q. Yeah. So -- okay. So -- but you do know
21 that they didn't call any witnesses into your trial;
22 is that right?

23 A. Yes, ma'am.

24 Q. And you're not aware, or did your team discuss
25 with you any investigation that they were performing?

1 A. I'm not aware.

2 Q. Okay. What about the firearms evidence? We have
3 -- in our amended application, we included a grounds for
4 relief based on that tool mark evidence. Do you recall
5 what that is?

6 A. The markings on the shell casings?

7 Q. Yep, that's what I'm talking about. What do
8 you think that your lawyer should have done with regard
9 to the firearms evidence?

10 A. Well, there was never a gun presented into
11 evidence, and I was told that shell cases are not
12 normally admitted without a weapon.

13 Q. So who told you that?

14 A. Boyd.

15 Q. Mr. Young told you that?

16 A. Yes, ma'am.

17 Q. So did he -- did y'all discuss that the shell
18 casings wouldn't come in because they didn't have the
19 gun?

20 A. I was told that they was going to make an
21 exception in my case.

22 Q. To let them in?

23 A. To let them in.

24 Q. Okay. And did you and Mr. Young talk about
25 having another expert review what SLED had done on those

1 shell casings?

2 A. No, ma'am.

3 Q. You didn't even talk about it?

4 A. I don't recall.

5 Q. Okay. So, to your knowledge, your defense team
6 didn't go behind what law enforcement was doing at all?

7 A. No, ma'am. He stated that he understood
8 ballistic evidence and stuff when it comes to striations
9 and markings and stuff. That's about the only thing
10 I can actually recall.

11 Q. When you say he told you, who told you that
12 he understood the ---

13 A. Boyd Young.

14 Q. Mr. Young told you that he understood it,
15 and he didn't need to talk to anybody else?

16 A. Yes, ma'am.

17 Q. Okay. So do you think that your defense team
18 did a good job for you during the bench trial?

19 A. No, ma'am.

20 Q. Okay. Tell me how -- why not.

21 A. Well, based upon some of the things that we
22 already spoke about, but there's things that came to my
23 attention after my arrest when I started doing research
24 myself, particularly, the false statement and the arrest
25 warrant affidavit by the lead detective on the case.

1 We already had an issue itself with his credibility.

2 We had a Jackson v. Denno issue that the judge ---

3 MR. LIMBAUGH: Objection, Your Honor.

4 This isn't a part of the allegations in the application.

5 MS. SARJI: I think, Judge, this goes to
6 that he does not believe that trial counsel vigorously
7 defended his case the way that they would have if he had
8 been in front of a jury.

9 THE COURT: I'm going to allow it.

10 Thank you.

11 THE WITNESS: Yeah, we already had a Jackson
12 v. Denno issue, and I already stated that some of the
13 stuff that the lead detective was saying was untrue.
14 And, furthermore, the lead detective stated a lie inside
15 the arrest warrant affidavit, that this is more than
16 conclusive. I actually have documents to support that
17 in itself. My defense team didn't argue it, didn't
18 present it into evidence or anything.

19 Q. Okay. And if that arrest warrant had been
20 invalidated, what is your understanding that the result
21 would have been?

22 A. No trial.

23 Q. Well -- okay. So let me ask you another
24 question. Before you went to your bench trial --
25 and you had Judge Dennis; is that right?

1 A. Yes, ma'am.

2 Q. So was Judge Dennis assigned to your case from
3 the beginning because it was a death penalty case?

4 A. Judge Dennis got assigned the case, I want
5 to say, either in mid 2008 -- but, I mean, pretty
6 much it was at the onset of the death penalty notice.
7 That was, like, a year or so later.

8 Q. Okay. And so at some point, did your trial
9 counsel inform Judge Dennis before you entered into
10 the waiver? Did your trial counsel inform Judge Dennis
11 that you wanted to plead guilty?

12 A. Yes, ma'am.

13 Q. And was that the case?

14 A. That was not the case.

15 Q. So when you then went to a bench trial in front
16 of Judge Dennis, he had already been told that you
17 wanted to plead guilty?

18 A. Yes, ma'am.

19 Q. Did your trial team ask the judge to get you
20 a new trial judge who wouldn't have been privy to that
21 statement by defense counsel?

22 A. No, ma'am.

23 Q. Do you think that the judge was perhaps --
24 already sort of had one point of view?

25 MR. LIMBAUGH: Objection again, Your Honor.

1 This isn't alleged in their -- it's another judge's
2 bias. It's also speculation that Judge Dennis was
3 tainted somehow with these previous actions.

4 THE COURT: Thank you. Again, I'm going
5 to allow it.

6 THE WITNESS: Yeah, the plea agreement
7 should have -- the hearing itself with the plea
8 agreement should have never been about -- like, the
9 judge, the solicitor, and also family members were
10 informed that I was willing to take a plea, and I was
11 not. And then I went all the way down there, and they
12 was trying to convince me to still take the plea,
13 and I was like, nah, I never stated I was going to take
14 a plea in the first place.

15 And at the end of -- this is what actually
16 brought about the beginning of the contractual consent
17 order to waive the rights to a jury trial. And Boyd
18 Young never told me that -- he actually accepted blame
19 on that part, and said it was pushed off on me, as
20 stating that my family or whoever had an influence
21 on my decision.

22 But I didn't like the fact that it was -- it
23 appeared in the judge's eyes that I was actually going
24 to plea, and that I was taking it back and changing
25 my mind. I felt that it prejudiced and damaged me,

1 at least in the judge's eyes, being that the contractual
2 consent order came to be about afterwards, in which
3 case, my case would be tried in front of Judge Dennis
4 itself.

5 Q. Okay. My last question for you. Do you remember
6 Mr. Young talking to you about asking the State to put
7 in something called a severability clause into your
8 waiver agreement?

9 A. Severability? I don't recall.

10 Q. You've never heard that? Okay. Is there
11 anything else that you want to tell the judge about
12 what you feel like your lawyers did or don't do for
13 you that they should have?

14 A. I can't think of nothing right now.

15 Q. Okay. Would you have signed that waiver if
16 Mr. Young had not told you that it was unenforceable?

17 A. Would I have signed it? No.

18 Q. Okay.

19 MS. SARJI: I don't have any other
20 questions, Judge. Thank you.

21 THE COURT: Mr. Limbaugh.

22 MR. LIMBAUGH: May it please the Court,
23 Your Honor.

24 CROSS-EXAMINATION

25 BY MR. LIMBAUGH:

1 Q. Good afternoon, Mr. Sanders. So what were those
2 conversations like with Mr. Young about this waiver
3 form, or this waiver order, that you signed?

4 A. It was a conversation, like, meaning?

5 Q. So what did you all talk about in terms of what
6 it meant to waive your right to a jury trial, those sort
7 of things?

8 A. He brought -- I remember when he brought
9 the contractual consent order form to me. It was that,
10 and it included two other options. There were three
11 options altogether. It was an option to plead guilty
12 and asking for mercy. There was a second option
13 to plead -- still plead guilty but still claiming
14 innocence. And the third option was the contractual
15 consent order to waive right to a jury trial.

16 At the time, I'm not aware of the actual bench
17 trial itself, and he was informing me what a bench trial
18 consisted of with the judge being the person who's going
19 to hear all the facts and render the decision and stuff,
20 telling me that this was going to be our best bet,
21 that this would actually help him enforce a defense.
22 And we talked about the waiver not being enforced,
23 and I stated that I still wished to appeal regardless
24 of the outcome.

25 Q. Okay. Did some of those -- were any of those

1 conversations having to deal with the fact that there
2 were, again, a number of experts testifying, and that
3 it might be better for a judge to hear this?

4 A. No, I don't recall any of that being spoken.

5 Q. Okay. And, again, do you remember why they were
6 trying to get you or advising you to enter into this
7 agreement? What benefit you were getting?

8 A. I believe that he said against the death penalty.
9 And I believe that was his main thing, to have the death
10 penalty removed from off the table.

11 Q. Okay. So by entering into this agreement you
12 pretty much saved your own life; is that correct?

13 A. Excuse me?

14 Q. You saved your own life; is that correct?

15 A. By entering into the agreement?

16 Q. Well, you were found guilty, and ---

17 A. Yeah, but the thing is I'm entering into
18 the agreement thinking that I'm going to have an actual
19 fair chance at representing myself. The agreement
20 itself -- it seems like it has a face of a trial,
21 but in all actuality when I reflect on it, it's like
22 a plea agreement, like a little plea agreement.

23 Q. For a bench trial?

24 A. It had the face of a trial, but when I looked
25 upon it, it just seems like it was just for show more

1 than anything.

2 Q. Okay. And do you remember the numerous
3 conversations and colloquies that Judge Dennis had
4 with you regarding your waiver of right to a jury trial,
5 you agreeing to those?

6 A. The colloquy, yeah, I remember.

7 Q. Okay. And asking, again, if you had time to talk
8 to your lawyers, or anybody else, about your decision
9 to enter into that agreement?

10 A. I remember.

11 Q. Okay. Remember saying yes to that?

12 A. Yeah.

13 Q. Okay. And that was in the pretrial hearing,
14 but it was also at the beginning of the bench trial,
15 was it not?

16 A. Correct.

17 Q. Okay. And it was confirmed that you ratified
18 it, and that you still wanted to proceed with a bench
19 trial. Do you remember that?

20 A. I remember.

21 Q. Okay. Now you said -- you testified earlier
22 that you don't recall your lawyers doing anything
23 with the DNA evidence; is that accurate?

24 A. Yes.

25 Q. Okay. So you're not aware of any independent

1 testing in the report that they had done?

2 A. I'm not aware.

3 Q. Okay. Finding that the testing done by SLED ---

4 MS. SARJI: Objection, Your Honor.

5 He's already said he's not aware of it.

6 THE COURT: I'll sustain.

7 BY MR. LIMBAUGH:

8 Q. And what was your issue with the Nike shoes again
9 and the evidence that was admitted? What did you want
10 to have happened?

11 A. The issue was that he stated he was going to do,
12 as contesting the shoe impression, but he never did
13 anything at all.

14 Q. Okay. But wasn't the evidence at trial that,
15 basically, that print impression was the same as every
16 other Nike Air Force One that's ever been made?

17 A. Yes.

18 Q. Which is exactly what you testified earlier that
19 you wanted evidence to be in?

20 A. Again, like I said, he stated some things that
21 he was going to do that he didn't do.

22 Q. But the result of what you wanted was the same,
23 that the evidence admitted at trial was that the
24 impression was the same as every other Nike Air Force
25 One. I believe the expert even testified that it was

1 the same as 95 percent of the impressions they've ever
2 had?

3 A. Right.

4 Q. Okay.

5 (Pause.)

6 MR. LIMBAUGH: That's it for the State,
7 Your Honor. But I would like to reserve the right
8 to recall him.

9 THE COURT: Any redirect?

10 MS. SARJI: Just very briefly, Your Honor.
11 Thank you.

12 REDIRECT EXAMINATION

13 BY MS. SARJI:

14 Q. Mr. Sanders, did you have any idea what a bench
15 trial really was at the point that you said you wanted
16 to go forward with this?

17 A. No, ma'am.

18 Q. You've never had a jury trial in your past?

19 A. No, ma'am.

20 Q. So you didn't really have a full understanding
21 of what you were giving up?

22 A. No, ma'am.

23 MS. SARJI: I don't have anything further,
24 Judge.

25 THE COURT: Okay. Sir, you can step down.

1 MS. SARJI: Your Honor, may I ask that
2 he have his -- his right or left hand, so he can take
3 notes during Mr. Young's testimony, just unlocked so
4 that he can write?

5 THE COURT: I'm going to leave that
6 with SCDC. They are the ones here that are in charge
7 of keeping everybody safe in here.

8 MS. SARJI: I just want him to be able
9 to take notes so that he's not whispering to me while
10 counsel is testifying, if there were things that he
11 wanted to have asked.

12 THE COURT: I'm not going to change any
13 security protocol.

14 MS. SARJI: Okay. Understood, Judge.
15 Thank you. Oh, I'm sorry, Judge. We would rest
16 on that. Thank you.

17 THE COURT: Thank you. Mr. Limbaugh.

18 MR. LIMBAUGH: The State would like to call
19 Mr. Young.

20 THE CLERK: Place your left hand on the
21 Bible and raise your right hand for me.

22 MR. BOYD YOUNG was called as a witness,
23 being duly sworn, was examined and testified as follows:

24 THE CLERK: Thank you. May you please be
25 seated and state your first and last name for the

1 record.

2 THE WITNESS: Stanley Boyd Young.

3 MR. LIMBAUGH: May it please the Court,
4 Your Honor.

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 BY MR. LIMBAUGH:

8 Q. Good afternoon, Mr. Young.

9 A. Good afternoon.

10 Q. How long have you been practicing law?

11 A. Twenty-one years.

12 Q. And about how much of that has been criminal?

13 A. Twenty-one years.

14 Q. Okay. Do you remember getting Mr. Sanders' case?

15 A. I do.

16 Q. Okay. And what generally were the facts of this
17 case, as you recall them?

18 A. It was a home invasion, and a lady and her son
19 were found shot in the head inside. It was originally
20 thought to be a murder-suicide situation. Later that
21 morning, a young woman was found dead near the
22 apartment. She was the younger daughter of the woman
23 who was in the house, and she was shot and killed
24 outside of the apartment.

25 Q. Okay. And along those lines, do you mind

1 describing, again just generally, the evidence the State
2 had against Mr. Sanders?

3 A. Well, I think it went unsolved for a pretty long
4 time. It was a fairly circumstantial evidence case,
5 as it relates to Mr. Sanders. He was dating a woman
6 who lived in the apartment complex near who -- her
7 apartment was where the younger victim's body was
8 located. I know that they had talked to Mr. Sanders
9 or Mr. Sanders' girlfriend in relation to it just
10 because of the proximity.

11 But they didn't develop him as a suspect until
12 they got some shell casings from the scene that
13 Charleston matched up to shell casings at some other
14 scenes, both involving a guy named Xavier Walker.
15 And one of those scenes was a shooting outside of a bar
16 in North Charleston, and eventually the bouncer from
17 that bar identified Anthony Sanders as the guy who fired
18 the rounds at the bar that night, in addition to Xavier
19 Walker also shooting at the bar that night.

20 And then Xavier Walker identified Mr. Sanders
21 as being the person who fired the .40-caliber shell
22 casings that were in question. And those shell cases
23 also matched shell casings from Hunter's Ridge, where
24 a number of witnesses said Xavier Walker was shooting,
25 and I think Mr. Walker said it was Anthony Sanders.

1 Q. Okay. There's also DNA recovered and tested
2 at the scene, was there not?

3 A. Yep. After Mr. Sanders' arrest, he was initially
4 appointed Don Sorenson, who was basically between jobs
5 at the solicitor's office, and he got Mr. Sanders to
6 consent to a DNA swab on a Schmerber order, and that
7 resulted in Mr. Sanders' profile being in. It was
8 a partial match to the oral swab from the 14-year-old
9 victim.

10 Q. And I'll get back to the DNA stuff here in
11 a little bit.

12 A. Okay.

13 Q. There was also some cell tower data that either
14 -- it definitely took away from what his alibi was,
15 which I believe was that he was at his mother's house?

16 A. I don't think that Anthony -- I mean, I know that
17 a detective said that, but I don't think that Anthony
18 ever gave an alibi. I don't think that was a correct
19 statement by the detective. There were cell phone tower
20 records. It was historical data and not a lot of
21 tracking.

22 And by the time they got the data, they weren't
23 able to get the directional sector stuff that they get
24 off of the towers because they didn't have his cell
25 phone in the tower closest to the scene around the times

1 of the shootings. But we knew that he had been over
2 there and had been at his girlfriend's earlier that
3 night, so we didn't think it was that big of a deal.

4 Q. Okay. And then, again very circumstantial,
5 but I believe there was a search of a safe that was
6 in his room with clippings and editorials of the murder?

7 A. There was a safe in his room that did have
8 newspaper articles, I don't recall exactly, but it was,
9 like, whole paper or clippings, or anything like that.
10 I know that the State referred to them as his trophies.

11 Q. Okay. So let's go on to this consent waiver
12 agreement.

13 A. Okay.

14 Q. What were those conversations with Mr. Sanders,
15 as you recall them?

16 A. My recollection is that we had been in
17 discussions, we had gone through what I would consider
18 a vast majority of the pretrial motions typical
19 in a capital case as far as what was the State going
20 to be allowed to say about the shell casings, any prior
21 bad actions going to come in, any Fourth Amendment
22 suppressions done. We hadn't gotten to any of the jury
23 stuff.

24 But, at that point in time, the State said --
25 they put a light bulb out there that, you know, you'll

1 have to plead guilty if you take life. My recollection
2 is that Mr. Sanders initially wanted to accept that
3 offer, and we took steps towards that. I don't think
4 that he was ever excited about taking that offer,
5 but my recollection is that we had agreed to accept
6 the offer.

7 We went to court to do the plea, and Mr. Sanders'
8 family was there, his girlfriend was there, his son was
9 there. We had -- we were also doing -- all the physical
10 evidence was there, so we also did a review of all the
11 physical evidence while we were there.

12 Mr. Sanders -- you know, we signed off on two
13 of the sheets, and then on the third sheet said, I can't
14 do it, I'm not going to do it. I said that's fine.
15 All right. Let's see what we can do. What's the
16 problem? My recollection is that he didn't want
17 to plead guilty in front of his family and his mom,
18 and I understood that.

19 So -- but if we did a bench trial, you wouldn't
20 have to say you were guilty. We can do a bench trial.
21 It's a circumstantial evidence case, in my opinion.
22 Judge Dennis is going to give you as good of a trial
23 as you're going to get on a circumstantial evidence
24 case, and so we did get a presented agreement.

25 The agreement, despite my saying I don't want

1 that in there, included a PCR waiver. And I said,
2 well, you can't waive PCR or future performance.
3 I mean, according to this agreement, I can just show up
4 drunk and sleep through the trial, and there's nothing
5 you can do about it.

6 And so I did say that I didn't think that the PCR
7 waiver portion was enforceable, but we're going to give
8 you as good a trial as you'll ever get with Judge
9 Dennis. And, at that point in time, we signed that
10 agreement. We met back in Charleston to confirm that
11 agreement, and then we had the trial.

12 Q. Okay. And let's kind of walk through this
13 a little. Having him waive his PCR rights and his
14 appellate rights is different, that involves a conflict
15 -- in your personal performance; is that correct?

16 A. It wasn't as clear -- I guess, it wasn't as clear
17 in the state court at the time because there were some
18 South Carolina Supreme Court cases that seem to hold,
19 you know, it's a contract. Defendants can waive
20 whatever they want to, and then there was a number
21 of opinions where different solicitor's offices were
22 requiring people to, like, waive discovery in order
23 to get the plea offer and stuff like that. It later
24 turned out to be sort of unenforceable.

25 Q. But those potential issues don't really translate

1 at all over to waiver of a jury trial, do they?

2 A. Not in my opinion, no. I think the decision
3 about a jury trial versus a bench trial is generally
4 a strategy one.

5 Q. And part of that strategy in trying to get that
6 waiver, certainly was having the State drop the death
7 penalty. Is that your ---

8 A. Well, sure. I mean, death qualified. We know
9 from a lot of studies that jurors that go through the
10 death qualification procedure, where you only have
11 people who are willing supporters of the death penalty,
12 and you exclude, you know, a good 20, 30 percent of the
13 population.

14 I don't believe -- those people are also people
15 that are more critical of police involvement, more
16 critical of police searches, more critical of police
17 credibility. And that by losing that squad of the
18 population, it makes juries in capital cases much more
19 likely to convict, even in actual innocent cases.
20 So that was part of the reason for waiving the jury.

21 And the other part was I've been practicing in
22 front of Judge Dennis for a number of years and have
23 seen him handle a number of circumstantial evidence
24 cases. I've seen him direct verdicts, acquittal
25 in circumstantial murder cases.

1 Q. But it wasn't as the obvious suspect to some
2 pro forma guilty plea, that wasn't any reason for going
3 onto the bench trial? I believe you just testified
4 that you thought ---

5 A. Sure.

6 Q. --- acquittal?

7 A. I've heard, and I have described bench trials
8 as slow guilty pleas in certain cases, particularly,
9 in cases where it's a search issue that you want
10 to preserve, that sort of slow guilty plea bench trial.
11 But in this case, with the circumstantial nature of the
12 State's case, I do not feel that this was a slow guilty
13 plea.

14 Q. Okay. And kind of moving into the more technical
15 aspects, what investigation do you recall doing for this
16 case?

17 A. My recollection is we didn't leave any stone
18 unturned. I mean, we interviewed every witness. I went
19 to every scene. There were, like, four or five people
20 from law enforcement, and I think the bouncer from
21 the Anchor Bar in North Charleston that refused to meet
22 with us. But those are the only people we didn't
23 interview, and that wasn't because we didn't try
24 to interview them. It's because they said I don't
25 want to talk to you.

1 Q. And part of the investigation involved getting
2 an analysis of the DNA; is that correct?

3 A. Yep. We did an independent analysis of the DNA.
4 The DNA -- so SLED ran the oral swab that achieved
5 a fraction, a male fraction. They got Mr. Sanders' DNA,
6 and they did not get a full profile. So a full profile
7 would be like all 13 or 17 cytes, depending on what kit
8 they ran. I think -- I want to say they only got, like,
9 four or five null alleles in the unknown male profile
10 that matched to Mr. Sanders.

11 So then they sent it off to a different lab
12 to do what's called Y-STR testing because they did have
13 a Y chromosome. And the Y-STR testing developed a full
14 profile -- not a full profile of the Y chromosome,
15 but 13 cytes on the Y chromosome that all matched
16 to Mr. Sanders.

17 Q. Okay. And I think the number was 1 in 260;
18 does that sound right to you?

19 A. That does sound right to me.

20 Q. Okay.

21 A. For the initial fraction, yes.

22 Q. Okay. And that's not as large a number as we
23 hear on a number of instances, is it?

24 A. No. I thought that was -- I thought that Judge
25 Dennis would lend that to very little weight as to

1 circumstantial evidence of guilt.

2 Q. And the reason why I say it is because you would
3 think that a bench trial in front of a circuit judge
4 whose seen hundreds, dozens at least, DNA experts who
5 testify about the numbers, would see a number like that
6 and weigh it differently, potentially, than a jury,
7 wouldn't you think?

8 A. That was my impression and my strategy.

9 Q. Okay. And so to kind of touch back a little bit,
10 the DNA analysis that you had done wasn't anything
11 different than what the State had done, was it?

12 A. We sent off the bench notes, the raw notes,
13 and the electropherogram data from both the SLED testing
14 and the Orchid Cellmark testing to an independent guy,
15 Dr. Morrison I think. And, I mean, I talked to him,
16 and he's like there's no major mistakes here.
17 They're -- you know, what they're calling an allele
18 seems to be an allele. There's no real problems with
19 either the SLED testing or the Orchid Cellmark testing.

20 Q. Okay. With the shoe evidence, is my
21 representation earlier, my questions to the Applicant
22 accurate in that the evidence that ultimately came out
23 was that the impressions were the same as any other Nike
24 Air Force One that's been ever produced?

25 A. Yes.

1 Q. Okay. So would there have been any benefit added
2 to bring in an expert -- another expert to say the same
3 thing?

4 A. No, I don't -- I didn't talk to anybody.
5 I talked to a guy named Bill Bodziak, who's a guy in
6 Florida that I use for most of my footwear and tire wear
7 impression cases. And he was the one who said you could
8 probably get somebody from Nike to do the sizing on the
9 shoe impressions because there was a question about
10 could Agent Holmik [ph.] call it a size 9. And she was
11 saying, well, I can't call it a size 9. I can tell you
12 it's not an eight; it's not a ten.

13 And he said, you know, it might be that you
14 can get somebody from Nike to come with the soles
15 and confirm the exact size of the shoes, whereas she
16 was a little bit more waffly on it. But I did not end
17 up doing that.

18 Q. Do you see really any added benefit from that
19 testimony compared to the testimony that it was going
20 to be the same sole from ---

21 A. No.

22 Q. Okay.

23 A. I felt like that would not be in our best
24 interest.

25 Q. And did you submit a report or consult with

1 anyone about the shell casing evidence in this case?

2 A. At the time that this case was going on, I was
3 involved in another case involving firearm
4 identification. It was another capital case, also out
5 of Dorchester, Mary Bowman and Jim Brown.

6 And we had a metallurgist come and talk about
7 the same stuff that the SLED expert had talked about,
8 how good -- in our opinion, how subjective shell casing
9 comparison was, and how these studies that law
10 enforcement cites to about taking ten slides that are
11 sequentially manufactured, or ten barrels that are
12 sequentially punched, and then always identify them
13 correctly or not accurate.

14 And we tried to get Judge Dennis to really limit
15 the testimony of the firearms expert to say that they
16 were consistent with each other, but we hadn't test
17 fired all the guns in the world, we don't know about
18 that, but we didn't do that.

19 I submitted the testimony that we used in Bowman
20 to talk about the subjective nature of the firearms,
21 and the shell casings in this case had -- I want to say
22 it was like 90 percent of the shell casings in this case
23 had a fairly distinctive firing pin drag mark.

24 So, in my opinion, there wasn't -- it's not like
25 you could call up a different SLED examiner and say

1 shell casing comparison is worthless as evidence,
2 and get them to agree with you.

3 Q. Okay. Again, isn't submitting that type of
4 report kind of a nuance benefit of having a bench trial,
5 where you get to submit that type of thing to Judge
6 Dennis to consider where it would be harder to present
7 that type of evidence to a jury?

8 A. It's going to be harder -- right. When an expert
9 -- when a SLED firearms expert is saying this gun to
10 the exclusion of all others in the world, I think Judge
11 Dennis knows -- knew from our pretrial hearing that
12 that's not accurate.

13 Q. Okay. Mr. Young, did you have any concerns
14 or conversations with Judge Dennis being the one who
15 was going to take the plea and then proceeding forward
16 with the bench trial?

17 A. I mean -- no, I didn't. I don't think that Judge
18 Dennis held that against him. That's my opinion about
19 who Judge Dennis is.

20 Q. Okay. And you don't have any reason to believe
21 that he would have held it against him for any
22 particular reason?

23 A. No. I mean, it was very clear between us and the
24 State that this is not a foregone conclusion, just get
25 it done, I'll find him guilty and sentence him to life.

1 I mean, it was very clear to myself and Mr. Jennings
2 that the State didn't come through in their case,
3 that they were going to get a direct verdict.

4 MR. LIMBAUGH: Thank you. That's all
5 I have, Your Honor.

6 MS. SARJI: Thank you, Judge.

7 CROSS-EXAMINATION

8 BY MS. SARJI:

9 Q. Mr. Young, you -- talking about the waiver,
10 we came in previously and had a hearing about the waiver
11 and whether it was voluntary and what you said to
12 Mr. Sanders. Do you recall that?

13 A. Yes.

14 Q. And at the time that -- my understanding of that
15 testimony was that it wasn't just with regard to the
16 ineffective assistance of counsel provision that you
17 advised Mr. Sanders that that waiver would have been
18 unenforceable, but that you told him it was an
19 unenforceable waiver, which would encompass more than
20 just the PCR rights. Do you recall that testimony?

21 A. My recollection of that conversation was that
22 this PCR waiver is unenforceable because we hadn't done
23 it yet.

24 Q. Okay. You hadn't done his appeal yet either?

25 A. That's correct.

1 Q. And do you recall telling him that he would still
2 be able to appeal his case?

3 A. I don't recall telling him.

4 Q. Okay. Do you recall -- all right. So, you
5 talked about doing an investigation a second ago.

6 A. Yes.

7 Q. Do you remember giving me this thumb drive with
8 your file on it?

9 A. Yes.

10 Q. Okay. Can you show me where on that thumb drive
11 the results of your investigation are?

12 A. Possibly.

13 Q. Okay. And this is -- I'm just wondering if maybe
14 I didn't have all the stuff.

15 A. I have the file there. You might not.

16 Q. I'm sorry. It's a Mac, so that's all that I have
17 on the investigation. Should highlight -- I can double
18 click it.

19 A. Oh, just the one folder?

20 Q. Yeah, that's ---

21 MS. SARJI: And, Judge, I'm happy to show
22 it to you as well. The thumb drive that I have has
23 a -- for the record, it has a folder labeled
24 investigation, and then within it, it has several
25 documents. And I don't want to lean too closely over

1 your shoulder without my mask on.

2 THE WITNESS: I'm fully vaccinated.

3 MS. SARJI: Okay, me too.

4 BY MS. SARJI:

5 Q. So there's a to-do list in there, and there's
6 other notes. But there's no actual result of an
7 investigation, no investigator's reports or anything
8 like that within what I had. Do you have in your file
9 actual reports of investigators?

10 A. I might.

11 Q. Do you generally have your investigators give
12 you summaries of what they are finding out in cases?

13 A. Yes.

14 Q. And so if you had done an investigation in the
15 case and talked to witnesses and tracked all these
16 to-dos down, would there be some written record of it?

17 A. Yes. And they might be in ---

18 Q. It's just in a different folder?

19 MS. SARJI: Court's indulgence. I'm sorry,
20 Judge.

21 THE COURT: That's fine.

22 THE WITNESS: And there's one folder
23 that's sort of Boyd's folder, and it could be in there,
24 but I'm not going to swear to that.

25 MS. SARJI: Okay.

1 BY MS. SARJI:

2 Q. Did you ---

3 A. I'm sorry.

4 Q. No, please go ahead.

5 A. I think -- we didn't do a lot of outside
6 investigator stuff in Mr. Sanders' case. I think
7 I personally talked to most of the people, and those
8 would be in my notes.

9 Q. Okay.

10 A. I don't recall if Mr. Leiendecker had an
11 investigator in his office. We were -- that might
12 be a better question for him.

13 Q. Okay. Is it your practice not to have outside
14 investigators go and track down witnesses and whatnot?

15 A. It varies from case to case, depending on who
16 I'm working with and what the allegations are.

17 Q. Okay. And so would you agree with me though
18 that you try a case differently to a judge than you
19 do to a jury?

20 A. Yes.

21 Q. And because you know Judge Dennis well, and you
22 felt that he had sort of outside knowledge, other than
23 what was presented as evidence in this particular case,
24 would you say that you tried this case differently to
25 him than you would have to a jury?

1 A. Yes.

2 Q. And did you actually file the notice of appeal
3 for Mr. Sanders in this case?

4 A. No.

5 Q. Did he instruct you to do so?

6 A. I don't recall.

7 Q. Okay. Did you ask the State to include
8 a severability provision within the waiver itself?

9 A. I did.

10 Q. And why did you do that?

11 A. Because I thought that there was a real problem
12 by putting the PCR waiver in the agreement, and that
13 they needed to make it clear that if that part was
14 struck down that the rest of the agreement would be
15 valid.

16 Q. And, in fact, the State, did they include that
17 provision for you?

18 A. They declined.

19 Q. And so your concern, your foresight, was that
20 the agreement would not be found to be severable
21 if any portion of it was invalidated; is that correct?

22 A. I mean, I certainly thought that was
23 a possibility.

24 Q. Okay. And that if the agreement was not found
25 to be severable, that, in fact, it would invalidate

1 not only the PCR waiver but also the appellate waiver
2 and the waiver of the jury trial?

3 A. And the jury trial, that's right.

4 Q. Okay. Did you guys ever talk to Xavier Walker?

5 A. No, I was never allowed to talk to Mr. Walker
6 directly.

7 Q. Did you talk to the witnesses at the Hunter's
8 Ridge shooting that said that Mr. Walker was the one
9 who shot the gun out there?

10 A. Yes.

11 Q. And you didn't call them into court to testify
12 at all during Mr. Sanders' trial though?

13 A. No.

14 Q. Why?

15 A. Because the State didn't bring up the Hunter's
16 Ridge allegation, other than to say that there were
17 shell casings there at another location. But the only
18 ones that they introduced were from the bar incident
19 in North Charleston.

20 Q. But the Hunter's Ridge incident had been
21 discussed pretrial with Judge Dennis?

22 A. That's correct.

23 Q. And he had said that the prior bad acts would
24 be considered; is that right?

25 A. Yes.

1 Q. And you heard the portion of the judge's
2 statements during pretrial that if these witnesses came
3 in and said something different than what the State was
4 saying that it would unravel the prior bad acts being
5 admissible; is that right?

6 A. As far as the identity issue for Anthony Sanders
7 being at the Hunter's Ridge incident location, yes.

8 Q. They actually called in the bouncer, right,
9 to testify during the trial?

10 A. The bouncer came from the bar shooting.
11 The State didn't put in anything about the Hunter's
12 Ridge shooting.

13 Q. Okay. So, I'm getting the two shootings
14 confused?

15 A. Yep.

16 Q. Okay. But the ultimate identification
17 as Mr. Sanders came from the witness in Hunter's Ridge
18 -- the witnesses in Hunter's Ridge who identified Xavier
19 Walker?

20 A. All of the witnesses at Hunter's Ridge, the only
21 person they ever identified as shooting at them was
22 Xavier Walker.

23 Q. And Xavier Walker then identifies Mr. Sanders;
24 is that right?

25 A. That's correct.

1 Q. And then they end up going and executing a search
2 warrant based on that?

3 A. Right.

4 Q. On Mr. Sanders' residence?

5 A. Right.

6 Q. So that if the initial identity of Mr. Sanders,
7 you don't think that would have held any weight at all
8 with Judge Dennis, if the female witnesses -- I don't
9 know why I keep calling them females because I don't
10 know that they were specifically identified as women.
11 If the other women who identified Mr. Walker came in --
12 the witnesses came in and unraveled that line of
13 reasoning for the judge, you don't think that would have
14 maybe made a difference?

15 A. I think it would have made a difference if the
16 State had introduced anything about the Hunter's Ridge
17 shooting into evidence.

18 Q. Okay.

19 A. The bouncer from ---

20 Q. From the Anchor Bar.

21 A. --- from the Anchor Bar had already picked
22 Mr. Sanders out of a lineup and identified him as being
23 the person that fired the shots at the club.

24 Q. Okay.

25 A. Now, I thought that there were a number

1 of problems with his testimony too, where people were
2 in the car and stuff like that.

3 Q. If you had tried this case to a jury, would you
4 have explored those issues at all?

5 A. Yeah.

6 Q. And you are not the one who handled the DNA cross
7 at trial; is that right?

8 A. I don't think so. I mean, I think I -- I was
9 lead counsel and certainly worked closely with all
10 of the attorneys on the team to develop what I thought
11 were impeachable areas of their cross-exams.

12 MS. SARJI: I'm sorry, Judge. I just
13 want to make sure that I'm asking the right attorney
14 the right question.

15 THE COURT: Sure.

16 MS. SARJI: And this is when I wish that
17 I would have had it printed out instead of on my
18 computer. I apologize, Judge. I think it was Mitch
19 Farley that actually did the questioning.

20 THE WITNESS: Mr. Farley did the questioning
21 of the ---

22 MS. SARJI: The DNA SLED guy.

23 THE WITNESS: --- the DNA expert.

24 MS. SARJI: Okay. Okay.

25 BY MS. SARJI:

1 Q. And you didn't do the shoe cross-examination
2 either; is that right?

3 A. I don't think so.

4 Q. Okay. With regard to the tool mark comparison,
5 so you were aware at the time of Mr. Sanders' trial
6 about all of the research that was being done in terms
7 of trying to invalidate tool mark evidence in general?

8 A. Yes, still going on today. I believe that the --
9 one of the first national association of science for
10 forensic accountability, some fed study weighing pros
11 and cons of different types of forensic evidence that
12 come out with a number of recommendations about limiting
13 testimony concerning firearms to not saying this gun to
14 the exclusion of all others. It's got to be consistent
15 with, unless there was some sort of unique mark.

16 Q. And in this case, did you -- you didn't talk to
17 any other firearms expert to specifically look at what
18 SLED did in this case?

19 A. I did not. As far as putting it side by side on
20 the comparison microscope, I didn't talk to anybody else
21 about their procedure or anything like that.

22 Q. Why not?

23 A. I've never been able to find somebody that says
24 that it's -- that they've done it wrong. Everybody
25 always says, well, that microscopic difference doesn't

1 make it an invalid comparison like on a DNA case where
2 you have an allele that doesn't fit. It has to be
3 accounted for because it didn't get made up.

4 In firearms cases, fingerprint cases, there's
5 more subjectivity, and it's sort of like, well, that was
6 a piece of dust, and it moved before the next round came
7 through, so that's why.

8 Q. So you didn't feel like it was worth pursuing
9 because of what had happened in prior cases?

10 A. Correct.

11 Q. Okay.

12 MS. SARJI: Court's indulgence, Your Honor.

13 BY MS. SARJI:

14 Q. Why would the State be in favor of an agreement
15 that gave Mr. Sanders a fair chance after being under
16 the impression that he wanted to plead guilty?

17 A. The ---

18 MR. LIMBAUGH: Objection. Speculation,
19 Your Honor. He doesn't know why the State would agree
20 to anything.

21 MS. SARJI: They engaged in negotiations,
22 Judge.

23 THE COURT: I'm going to allow it.

24 Thank you.

25 THE WITNESS: The victim's family in this

1 case was not in favor of the death penalty, and they
2 did not want to go along with the State in continuing
3 that.

4 BY MS. SARJI:

5 Q. And one other question. So is Blair Jennings
6 with the first circuit solicitor's office?

7 A. He was at the time.

8 Q. So Don Sorenson, who was with the first circuit
9 solicitor's office, represented Mr. Sanders during
10 a brief stint in private practice; is that right?

11 A. Yes.

12 Q. Had Don Sorenson gone back to the solicitor's
13 office at the time of the trial of this case?

14 A. Yes.

15 Q. So, the lawyer had someone ---

16 MR. LIMBAUGH: Objection, Your Honor.
17 This hasn't been pled. It's not part of the
18 application.

19 THE COURT: I'm going to give them a little
20 latitude here. Thank you.

21 MS. SARJI: Thank you, Your Honor.

22 BY MS. SARJI:

23 Q. So the solicitor's office kept a case where one
24 of the lawyers they had on staff at the time of his
25 trial had represented the Defendant?

1 A. Yes.

2 Q. Was that ever discussed with anyone as being
3 a potential conflict?

4 A. Yes.

5 Q. With whom?

6 A. Myself and Mr. Jennings talked about it. He said
7 that Don was the Chinese wall and didn't have anything
8 to do with the Sanders case. I never could prove
9 otherwise.

10 Q. Okay. Thank you.

11 MS. SARJI: I don't have any other
12 questions.

13 MR. LIMBAUGH: Brief redirect, Your Honor.

14 THE COURT: Yes.

15 MR. LIMBAUGH: May it please the Court.

16 REDIRECT EXAMINATION

17 BY MR. LIMBAUGH:

18 Q. Putting attention back on the gun and the shell
19 casing issue, there was a distinct mark on the key shell
20 casings in this case, as you recall, right?

21 A. The gun actually was never recovered in this
22 case, had a firing pin that would most of the time
23 remain in the outward position when the shell was
24 ejected, and it created a distinctive offset on the
25 firing pin, and they called it a firing pin drag.

1 Q. Okay.

2 A. Now, there were, I don't know -- there were,
3 like, four shells -- and all the shells that didn't
4 have it, and the SLED guy said, well, occasionally,
5 it wouldn't stick out.

6 Q. Okay. So you were able to cross on all of those
7 issues, right?

8 A. Yes.

9 Q. Okay. And bring that evidence up before Judge
10 Dennis?

11 A. Yes.

12 Q. Okay. And back to the bench trial again.
13 You testified that you did try this case differently
14 than you would have before a jury, correct?

15 A. Well, for sure, yeah.

16 Q. And that's kind of the point, is it not?
17 That part of why he wanted a bench trial is to try
18 it differently than you would in front of a jury?

19 A. Right.

20 Q. Because Judge Dennis is a different audience than
21 a jury, and has more knowledge on some of these things,
22 and is better able, presumably, to understand the
23 testimony and work through the case; is that accurate?

24 A. Yeah. We didn't have a defense story; we had
25 an attack on the State's case. And without the story,

1 without being able to fully present that story, it was
2 better to present it to the judge as the State failed
3 to meet its burden of proof as to the substantial
4 circumstantial evidence.

5 Q. So the benefit -- the benefits of the bench trial
6 to Mr. Sanders were not just the death ---

7 MS. SARJI: Objection, Your Honor.
8 He's leading ---

9 THE COURT: I will allow it.

10 MS. SARJI: --- a lot. Sorry.

11 BY MR. LIMBAUGH:

12 Q. What were the two benefits in your mind of the
13 bench trial for Mr. Sanders?

14 A. I thought our chances were better of an acquittal
15 with Judge Dennis, and we were facing the death penalty.

16 Q. And did you discuss that with Mr. Sanders before
17 having him agree to that ---

18 A. Yes.

19 Q. --- bench trial?

20 A. Yes, sir.

21 Q. And he understood that?

22 A. Yes, sir.

23 Q. And who made the decision to have a bench trial?

24 A. Ultimately, Mr. Sanders did.

25 Q. Okay. And he had to sign to ratify that

1 agreement?

2 A. He did.

3 Q. Thank you.

4 MR. LIMBAUGH: That's all I have,
5 Your Honor.

6 THE COURT: You may step down.

7 THE WITNESS: Thank you, Judge.

8 THE COURT: Thank you.

9 MR. LIMBAUGH: State calls Mr. Leiendecker,
10 Your Honor.

11 THE CLERK: Please place your left hand
12 on the Bible and raise your right hand for me.

13 MR. MARK LEIENDECKER was called as a
14 witness, being duly sworn, was examined and testified as
15 follows:

16 THE CLERK: Thank you. Please have a seat
17 and state your first and last name for the record.

18 THE WITNESS: My name is Mark Leiendecker.

19 THE COURT: And can you spell your last
20 name? It's a different spelling.

21 THE WITNESS: It is. L-E-I-E-N-D-E-C-K-E-R.

22 THE COURT: Thank you.

23 MR. LIMBAUGH: A moment's indulgence,
24 Your Honor.

25 THE COURT: Sure.

1 MR. LIMBAUGH: May it please the Court.

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION

4 BY MR. LIMBAUGH:

5 Q. Good afternoon, Mr. Leiendecker.

6 A. Good afternoon.

7 Q. Were you involved and present for conversations
8 with Mr. Sanders regarding the waiver agreement?

9 A. I was certainly involved and present for some
10 of them, not certain I could say for all of those
11 conversations, but, yes, sir.

12 Q. And what were the nature of those conversations
13 that you were a part of?

14 A. I'm not sure I understand the question.
15 But if you're asking what was discussed and how
16 it was conducted ---

17 Q. Yes, please.

18 A. Most of the discussions centered around the
19 drafted agreement itself and the terms of that
20 agreement. As has already been discussed, there was
21 concern by the defense team that we did not understand
22 how Mr. Sanders could waive PCR when we hadn't had
23 a trial yet, and that was expressed and went back
24 and forth.

25 The major play was that trying this case

1 to the judge, and thereby waiving the jury, took death
2 off of the table, and there was no risk or potential
3 that Anthony would be sentenced to death if convicted
4 of the crimes that he was charged with.

5 Q. And was it also part of the conversations that
6 you would have a benefit from a bench trial as opposed
7 to a jury trial?

8 A. Certainly, Mr. Young discussed the aspects
9 of the bench trial. And the conversations centered
10 around the idea that this was a totally circumstantial
11 case, that there were no eyewitnesses. The only thing,
12 other than that potential, was the DNA, and that
13 he felt, and that we felt better, the judge was better
14 able to understand or interpret those -- this case
15 that way, and that Judge Dennis, you know, could direct
16 a verdict if he didn't find the evidence substantial
17 after the State presented their case.

18 Q. Do you recall going over that line of thinking
19 with Mr. Sanders as well?

20 A. I remember that being discussed in group
21 conversations with Mr. Sanders and Mr. Young and myself
22 and maybe even Laura Young.

23 Q. And, ultimately, whose decision was it to accept
24 and sign and ratify that agreement, was it Mr. Sanders?

25 A. Ultimately, it was Mr. Sanders' decision to go

1 forward and to sign it, and, you know, that was also
2 then presented in front of the judge. I think we went
3 to Charleston County to do that because he was down
4 in Charleston County at the time.

5 Q. And based on your conversations with Mr. Sanders
6 and being present in the colloquy, do you think he
7 understood what he was agreeing to?

8 A. I do.

9 MR. LIMBAUGH: A moment's indulgence,
10 Your Honor. That's it.

11 MS. SARJI: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. SARJI:

14 Q. Mr. Leiendecker, very briefly. You said
15 you weren't present for all of the conversations that
16 Mr. Young would have had with Mr. Sanders about the
17 waiver; is that right?

18 A. I said I'm not certain whether I was there
19 for all the conversations. I know I was there
20 for conversations, but, I -- you know, I don't know
21 if Boyd had other conversations with him.

22 Q. Were you present during the conversation
23 when Mr. Young told Mr. Sanders that the agreement
24 was unenforceable?

25 A. I was present when we all discussed the reality

1 that we didn't believe that the PCR provision was
2 enforceable, that we didn't understand how the State
3 could be trying to include in there a waiver of the
4 incompetence of the representation of counsel at trial
5 when we hadn't had a trial yet. I don't recall anybody
6 ever discussing that this would make the entire
7 agreement unenforceable.

8 Q. And along those same lines, the appellate waiver
9 would be addressing errors of law that had not yet been
10 made. And so where is it that you think that that
11 distinction was made to Mr. Sanders?

12 A. Well, there was a lot of discussion about case
13 law, and I don't remember exactly what it was at the
14 time, and that's where we got in a really sticky point
15 about the PCR because some South Carolina cases that
16 apparently, you know, said that that was acceptable.
17 But there was also discussion that courts had recognized
18 the ability -- the ability and contract to waive your
19 right to appeal.

20 Q. Within the context of a plea agreement though,
21 correct?

22 A. Within the context of this agreement.

23 Q. But the case law would have been within the
24 context of plea agreements that allow for appellate
25 waiver?

1 A. And I know, Ms. Sarji -- I really, at this point,
2 12 years later, do not remember the case at all,
3 specifically.

4 Q. Okay. Thank you. And other than the discussions
5 that you were present for with him, you didn't do
6 a whole lot in the trial in terms of the questioning
7 and that sort of thing, right, do you recall?

8 A. I do not -- I certainly do not remember or recall
9 handling a lot of the individual witnesses for the case.

10 MS. SARJI: Court's indulgence, Your Honor.
11 I don't have any other questions for him, Judge.
12 Thank you.

13 THE COURT: Any redirect?

14 MR. LIMBAUGH: No redirect from the State,
15 Your Honor.

16 THE COURT: Sir, you may step down.

17 THE WITNESS: Thank you.

18 MR. LIMBAUGH: State would call Mitchell
19 Farley.

20 THE CLERK: Can you place your left hand
21 on the Bible?

22 MR. MITCHELL FARLEY was called as a witness,
23 being duly sworn, was examined and testified as follows:

24 THE CLERK: Thank you. Will you please have
25 a seat and state your first and last name for the

1 record?

2 THE WITNESS: Mitchell Farley.

3 MR. LIMBAUGH: May it please the Court,
4 Your Honor.

5 DIRECT EXAMINATION

6 BY MR. LIMBAUGH:

7 Q. Good afternoon, Mr. Farley. So my understanding
8 is that you handled the cross-examination for the DNA
9 expert; is that accurate?

10 A. That and the shoe.

11 Q. And the shoe. Okay. And there's testimony
12 so far that you've been here and heard, is it accurate,
13 that it was 1 in 260 for the DNA sample for pulling
14 off more random individual ---

15 A. Looking back at the transcript, that's what
16 it said.

17 Q. Okay. And were you able to -- what were you able
18 to bring out in cross-examination that you think was
19 beneficial to the defense?

20 A. I mean, we hit it hard, just most of the stuff
21 we see has a lot of zeros behind it. There were no
22 zeros, you know, just three digits ---

23 Q. 1 in 260, correct?

24 A. --- so we tried to ---

25 Q. And would you think that a sitting circuit judge

1 would have more experience with those numbers of zeros
2 for DNA evidence than the jury might?

3 A. Absolutely. And having practiced in front of him
4 many times since then, that only reinforces my opinion.

5 Q. Okay. And, again, there was independent
6 examination done by the defense on the DNA, reviewed
7 the report; is that accurate?

8 A. That's my recollection.

9 Q. Okay. And it didn't say anything different than
10 what you were getting on cross, or that was brought out
11 by the State's expert, was there?

12 A. Not that I recall, no.

13 Q. Okay. So you think you were able to effectively
14 cross-examine the State's witnesses on the DNA to bring
15 out the evidence that you needed to?

16 A. Yes.

17 Q. Okay. And I believe -- was there some testimony
18 about DNA that was found in one of the victim's pajama
19 pants that was from an unidentified male contributor?

20 A. Yes. And so I had to, like, basically take
21 a class, you know, self-taught class in Y-STR DNA and
22 all of that. I guess there was some semen in the pants
23 of the girl that was raped, allegedly.

24 Q. Okay. Were you able to get out that the DNA
25 wasn't able to be matched to Mr. Sanders?

1 A. Yes, I believe so.

2 Q. Okay. Now with the shoe evidence again, the
3 testimony that you were able to elicit was essentially
4 that the impressions matched every Air Force One that's
5 ever been made?

6 A. We actually went to the SLED lab and met them,
7 saw the facility, and all of that. And, you know,
8 we hit that as hard as we could. So, yes, Air Force
9 One is Air Force One, his shoe, what size, and, you
10 know, that's ---

11 Q. Okay. So, you're basically able to make a
12 non-issue out of the shoe impressions; is that accurate?

13 A. That's correct.

14 Q. Okay.

15 MR. LIMBAUGH: That's all I have for this
16 witness, Your Honor.

17 THE COURT: Ms. Sarji.

18 MS. SARJI: Court's indulgence.

19 No questions, Judge. Thank you.

20 THE WITNESS: May I be excused?

21 THE COURT: No objection?

22 MR. LIMBAUGH: No objection, Your Honor.

23 MS. SARJI: No objection. Thank you.

24 MR. LIMBAUGH: State rests, Your Honor.

25 THE COURT: Anything further, Ms. Sarji?

1 MS. SARJI: Nothing, Judge. Just in terms
2 of the case law that I have been able to find,
3 everything that I have found with the -- within
4 the context of waiving appellate rights, or that sort
5 of thing, is all within the context of plea agreements,
6 rather than waiving trial rights. That's not to say
7 that it doesn't exist. It's just not coming up when --
8 in the research that I've done on the case, and I have
9 done quite a bit of research.

10 We would still reassert our position that,
11 as a matter of law, Judge, the waiver should not be held
12 to be severable. The State even declined to include
13 a severability provision. I think that the State
14 is getting what it bargained for because it refused
15 to include that severability provision. The State
16 wanted all or nothing, and now they've got nothing,
17 Judge.

18 So, it's our position that the waiver, as
19 a whole, should be held unenforceable, and Mr. Sanders'
20 conviction should be reversed. At the very least,
21 Judge, I do think that Mr. Sanders certainly testified
22 that he believed that the prospective right, at least
23 with regard to the PCR, but certainly I think the
24 appellate rights should also be seen as something that
25 he couldn't waive at the outset of a trial because

1 you're unaware at that point of what errors of law may
2 be committed, and it's different than within the context
3 of a plea agreement.

4 So, we would just ask that at the very least
5 he be allowed a direct appeal, but that we still assert
6 that this waiver is invalid as a whole, and he should
7 have a new trial, Judge.

8 THE COURT: Thank you.

9 MR. LIMBAUGH: On the outset, we don't
10 dispute that this was a failure. However, if the Court
11 considers that it is one, then citing back to Weaver v.
12 Massachusetts, the State would argue that the Applicant
13 would have to be prejudiced.

14 And, Your Honor, he's gotten the benefit
15 of this deal because on the outset, the State bargained
16 for is to take the death penalty off the table if
17 he waived his rights to a PCR, direct appeal, and then
18 to have a bench trial. He had the bench trial, which
19 took the death penalty off the table, and then now
20 we're here having the PCR. So he's gotten two benefits,
21 one of which he wasn't originally supposed to have with
22 the agreement.

23 So, I don't -- the State doesn't see where
24 there's prejudice where the Applicant has benefitted
25 twice, where he originally only bargained to benefit

1 once, with the death penalty and potentially to have
2 the advantages of having a bench trial in front of Judge
3 Dennis with the intricacies of the case.

4 Your Honor, moving into the specific
5 allegations, counsels all testified, at least Mr. Boyd
6 [sic.] more specifically, that there was significant
7 investigation done in this case. They had the DNA
8 tested on their own. Mr. Young had looked at the shell
9 casing evidence and looked at the reports from previous
10 cases to determine whether or not another expert would
11 be required in this case.

12 As Mr. Boyd testified to -- Mr. Young,
13 my apologies, that there was a specific marking on these
14 shell cases that was not sort of the more general nature
15 of a dust strike or a piece of dust. It was more
16 of a significant marking on it than that. But he got
17 out evidence on that on cross, and he believes he did
18 so.

19 The DNA evidence, they had another expert
20 come in and look at a testing that was done by SLED.
21 Both of the experts found that it was 1 in 260, which
22 as Your Honor is well aware, is a low number. And they
23 were able to bring that out in cross-examination to
24 Judge Dennis, who, like Your Honor, is a sitting circuit
25 court judge who sees DNA testing all the time, and see

1 that those numbers are usually exorbitant and
2 understands the significance of 1 in 260 versus
3 1 in 260 quintillion.

4 The Air Force One evidence, the shoes,
5 Applicant testified that he wanted an expert from Nike
6 to come in, potentially to talk about the size.
7 However, the evidence that was elicited before Judge
8 Dennis at trial essentially came down to it's the exact
9 same impression of any Air Force One shoe that's ever
10 been created.

11 And there was no significance at all that
12 they found an Air Force One shoe in Mr. Sanders' room,
13 and there happened to be an Air Force One impression
14 at the scene of the crime, Your Honor. That was
15 a non-issue pointed across by Mr. Farley.

16 And there's also no expert here to testify
17 what -- Applicant has failed to bring forth an expert
18 in this hearing to testify what they would have
19 testified to at a trial, which is the Applicant's
20 burden, Your Honor, both on the DNA and on the shoe
21 evidence.

22 He waived his right to the jury trial
23 on three separate occasions; in the agreement at the
24 beginning, pretrial in his colloquy with Judge Dennis,
25 and at the beginning of the bench trial. He did so

1 freely and voluntarily. Mr. Boyd and Mr. Leiendecker
2 both testified, and in the colloquies on the record,
3 that Mr. Sanders was doing this of his own will
4 and was doing so freely and understood what he is doing,
5 Your Honor.

6 It's his right to waive; it's a personal
7 right. He had the right to a jury trial, if he wanted
8 it, and he acknowledged he understood what he was
9 waiving when he signed the agreement and had the bench
10 trial, Your Honor. And it's a different right than
11 having a PCR right. It's not a collateral review;
12 it's a direct and personal right. And it's one that
13 he understood and waived. A moment's indulgence,
14 Your Honor. That's all the State has, Your Honor.

15 MS. SARJI: May I have a brief rebuttal,
16 Your Honor? First of all, with regard to the conflicts,
17 Judge, there's South Carolina case law that is on point
18 in Gonzales v. State. Again, that cite is 419 S.C. 2
19 (2017).

20 And, in that case, our courts have made
21 it clear that when counsel has a conflict of interest
22 in a criminal matter, the Defendant is not required
23 to show prejudice in the traditional Strickland sense.
24 "When counsel is burdened by an actual conflict
25 of interest, he breaches the duty of loyalty,

1 perhaps the most basic of counsel's duties."

2 In Gonzales, Judge, in that case, and stop
3 me if you're familiar with the case, but the trial
4 counsel in that case represented two co-defendants.
5 We would submit to the Court that in this case there
6 was a personal motivation, so to speak, with regard to
7 the PCR waiver that amounts -- tantamount to a personal
8 conflict for counsel. And we would submit that Gonzales
9 applies and eliminates the requirement of prejudice.

10 Your Honor, as to the agreement and the
11 waiver of rights, State V. Thrift, 312 S.C. 282,
12 that's a 1994 Supreme Court case, in which our Supreme
13 Court cites back to the United States Supreme Court,
14 again, in the context of plea agreements. But, Judge,
15 in that context because -- and it really -- this is sort
16 of a unique case. Again, I can't find any case law,
17 any precedent at all that deals with this sort of thing.

18 But what our court have said is that a plea
19 agreement analysis, at least, has to be more stringent
20 than a contract because the rights involved are
21 fundamental and constitutionally based, and that
22 the court also noted that the Government had to be held
23 to a higher degree or responsibility than the Defendant
24 for imprecisions or ambiguities.

25 In this case, we have, and certainly

1 something that defense counsel, that trial counsel,
2 asked the State to include in an effort to preclude
3 exactly the situation that the Court now finds itself
4 in. The Government declined to do that. And so this
5 is a problem created by the Government.

6 The Government must be held to a higher
7 standard when we're evaluating these types of
8 agreements, and, in this case, it just fails, Judge.
9 And the waiver itself should be held to be something
10 that is addressed as a whole and invalidated as a whole.
11 Thank you, Judge.

12 THE COURT: Thank you all. I'm going
13 to take that under advisement, look at it closely.
14 There's a lot of complex issues at play here.
15 So, I want to take my time to evaluate it. Thank you.

16 MS. SARJI: Thank you, Your Honor.

17 MR. LIMBAUGH: Thank you, Your Honor.

18 (End of Transcript of Record)
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CERTIFICATE OF REPORTER

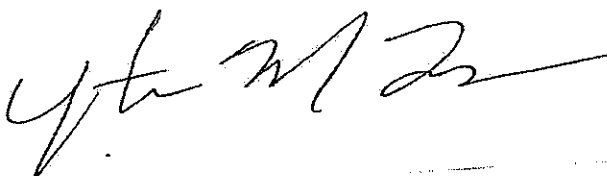
State of South Carolina)

County of Orangeburg)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Orangeburg County, South Carolina, on the 17th of May, 2021.

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

November 12, 2021



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO.: 2011-CP-18-0027
ANTHONY SANDERS, #339645	)	
	)	ORDER
Applicant,	)	(Granting Applicant a Direct Appeal)
	)	
-versus-	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

Hearing Date:	May 17, 2021
Presiding Judge:	Kristi F. Curtis
Attorney for the State:	Benjamin H. Limbaugh
Attorney for the Applicant:	Leslie T. Sarji
Court Reporter:	Yvestre Torres

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 Clerk of Court
 DORCHESTER COUNTY

This matter came before me in Orangeburg County on May 17, 2021 for a hearing on Applicant's Petition for Post-Conviction Relief, alleging ineffective assistance of counsel in being advised to enter into an agreement to waive his right to a jury trial, a direct appeal, and to any claims for ineffective assistance of counsel. Applicant alleges that this waiver constitutes a structural error requiring the court to grant him a direct appeal and a new trial. Based upon the testimony presented during the hearing of this matter and for the reasons stated herein, I find that Applicant received ineffective assistance of counsel in being advised to sign the agreement waiving his right to direct appeal and therefore grant Applicant a belated appeal. The court finds Applicant's remaining grounds for post-conviction relief are without merit and denies Applicant's request for a new trial.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was indicted in

case numbers 2007-GS-18-1296, -1297, and -1298 for three counts of Murder. Applicant entered a not guilty plea and was scheduled for a jury trial. During a pre-trial status conference on January 21, 2010, Applicant's trial counsel, Boyd Young, Esquire, submitted a signed "Contractual Consent Order to Waive Rights to Jury Trial" (hereafter referred to as "Waiver") to the Honorable R. Markley Dennis, Jr. The Waiver provided that, in exchange for the State not seeking the death penalty, Applicant would proceed to a bench trial and he would waive his rights to a direct appeal, to post-conviction relief proceedings, or habeas corpus proceedings. After questioning Appellant as to his understanding of the Waiver, Judge Dennis approved the Waiver.

Appellant proceeded to a bench trial before Judge Dennis on March 8, 2010. At the conclusion of the bench trial, Applicant was found guilty of three (3) counts of murder, and on March 9, 2010 he received a life sentence for all three counts.

Applicant filed a *pro se* appeal to the Court of Appeals, which was dismissed for failure to serve and file a notice of appeal with proper proof of service. Applicant then filed an application for post-conviction relief on January 6, 2011, alleging ineffective assistance of counsel for providing him with "misleading statements" that rendered his entry into the Waiver Agreement involuntary. The State moved to dismiss pursuant to the Waiver.

A hearing was held on Applicant's application for post-conviction relief. Applicant moved for a continuance to allow for more time to investigate potential witnesses. The State opposed the continuance based on the Waiver. Applicant then requested an evidentiary hearing on the issue of whether he received ineffective assistance of counsel that rendered his entry into the Waiver involuntary. The State opposed, and the PCR court dismissed the application.

Applicant appealed the dismissal of his PCR application, arguing that he should have been allowed to present evidence that his entry into the Waiver was based upon ineffective assistance of counsel. The South Carolina Supreme Court agreed and remanded Applicant's case for "an evidentiary hearing on the narrow issue of whether Sanders received ineffective assistance of counsel in being advised to enter into the Agreement." Sanders v. State, 412 S.C. 611, 773 S.E.2d 580 (2015).

Applicant's petition for post-conviction relief alleged that trial counsel "misadvised [him] with misleading statements that render [his] signing of the [Waiver] involuntary"

A hearing on the issue of whether Applicant received ineffective assistance of counsel when his attorney advised him to enter into the Waiver was held on July 9, 2018, before the Honorable Robin B. Stillwell. By Order filed October 17, 2018, Judge Stillwell found that trial counsel was ineffective for advising Applicant to enter into an agreement waiving his right to collateral review of his conviction. Judge Stilwell remanded Applicant's petition for a hearing on the merits of Applicant's claim for post-conviction relief.

Applicant is now before the Court on the merits of his claim for post-conviction relief. Applicant raises the following issues in his petition:

1. Trial Counsel provided ineffective assistance of counsel in advising Applicant to waive his right to a jury trial, a direct appeal, and to any claim of ineffective assistance of counsel, all of which amount to a structural error that requires the grant of a new trial.
2. Trial Counsel failed to subject the prosecution's case to meaningful adversarial testing.
3. Trial Counsel failed to object to the admissibility of the shell casings.

4. Trial Counsel failed to inform Applicant, or to advise him, regarding Trial Counsel's personal conflict in advising him to sign the waiver of a jury trial, resulting in ineffective assistance of counsel sufficient to require reversal of Applicant's conviction and remand for a new trial.
5. Trial Counsel failed to adequately investigate the case prior to trial.
6. Trial Counsel failed to present any expert testimony regarding the DNA evidence.
7. Trial Counsel failed to object to hearsay evidence of Xavier Walker's identification of Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony provided at the hearing in this matter. Further, this Court has had the opportunity to observe the witnesses presented at the hearing, determine their credibility, and has weighed their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Standard for Establishing Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Post-Conviction Relief Applicant must prove that (1) counsel failed to render reasonably effective assistance under prevailing professional

norms, and (2) that the deficient performance prejudiced the Applicant's case. Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)). In order to prove prejudice, Applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Courts presume that "counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Ordinarily, a PCR Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624, 625 (1989).

When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an 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.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696.

However, where there is an actual “conflict of interest in a criminal matter, the [Applicant] is not required to show prejudice in the traditional Strickland sense.” Gonzales v. State, 419 S.C. 2, 795 S.E.2d 835 (2017).

- I. Does the prior order of the court holding the Waiver Agreement invalid as to Applicant’s “waiver of the right to collateral review of his conviction” require this court to grant Applicant a belated appeal? [Applicant’s grounds 1 and 4]

The South Carolina Supreme Court remanded Applicant’s case to the circuit court for a hearing on the issue of whether Applicant received ineffective assistance of counsel in being advised to enter into an agreement to waive his right to collateral review of his conviction. Sanders v. State, 412 S.C. 611, 773 S.E.2d 580 (2015). At the hearing before Judge Stilwell, Applicant testified that his attorney advised him that the waiver was not enforceable and that trial counsel informed him that he could still appeal and could still have a PCR hearing. Judge Stilwell found that Applicant could not, as a matter of law, waive his right to collateral review of a trial that had not yet occurred, as he could not have known yet what errors might occur at trial. He further found that it was an inherent conflict of interest for Trial Counsel to advise him to sign an agreement that

included a waiver of an ineffective assistance of counsel claim. Judge Stilwell ruled that “trial counsel provided Applicant with ineffective assistance of counsel when he advised Applicant that the Waiver was unenforceable with regard to collateral review of Applicant’s conviction.” [Stilwell order of 10-17-2018]. Judge Stilwell remanded the case for a hearing on the merits of his Application for Post-Conviction Relief.

For the same reasons cited by Judge Stilwell in granting Applicant a hearing on the merits of his claims for Post-Conviction Relief, this court finds Applicant is entitled to a direct appeal. An applicant who meets the burden of showing that he did not knowingly and voluntarily waive his right to a direct appeal of his trial conviction is entitled to a belated appeal. Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002). An indigent defendant convicted by trial has the right to be informed of the right to appeal and the manner and method for taking the appeal. Cherry, 300 S.C. at 116, 386 S.E.2d at 626.

The South Carolina Supreme Court has upheld the enforceability of a guilty plea agreement wherein the Defendant waived his right to a direct appeal, PCR, and habeas corpus relief. In Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008), the court held that such an agreement was enforceable within the context of a guilty plea if the defendant entered into the waiver agreement knowingly and voluntarily. The Court noted in its review of Applicant’s case, however, that the practice of waiving any claim of ineffective assistance of counsel prior to a trial was “especially troubling” because a trial allows “significantly more potential for error than a guilty plea.” Sanders, 412 S.C. 611, 616, 773 S.E.2d 580, 582 (2015) (footnote 2).

This court finds that it was ineffective assistance of counsel for Trial Counsel to advise Applicant to waive his right to appeal any trial errors where the trial had not yet occurred. Unlike a guilty plea, where the defendant is admitting guilt and is only in front of the trial judge for

acceptance of the plea and sentencing, a trial has an unlimited number of opportunities for legal error by the attorneys or the judge. It is difficult to conceive of a scenario where any pre-trial waiver of the right to appeal any errors of law committed during a future trial would be enforceable. This court finds that such a waiver prior to trial is unenforceable as a matter of law.¹

In this case, Applicant attempted to file a *pro se* appeal, which was dismissed for failure to perfect the appeal. This court finds, however, that Applicant's attempt to appeal was likely thwarted by the Waiver Agreement. Because he signed the Waiver, Trial Counsel did not file the Notice of Appeal on his behalf. This court finds Applicant certainly wanted to appeal these convictions sentencing him to a term of life imprisonment, and he did not knowingly and voluntarily waive that right. This court therefore finds Applicant is entitled to a belated Appeal.

II. Does the prior order of the court holding the Waiver Agreement invalid as to Applicant's "waiver of the right to collateral review of his conviction" require this court to also invalidate his waiver of the right to a jury trial and grant Applicant a new trial? [Applicant's grounds 1 and 4)

Applicant argues that because the waiver of Applicant's right to collateral review of the conviction was declared invalid, this court should also invalidate the waiver of his right to a jury trial as the result of ineffective assistance of counsel. This court disagrees. The court finds that Applicant knowingly and voluntarily waived his right to a trial by jury, and that he was not prejudiced by that decision.

¹ This court recognizes that Trial Counsel himself believed that the Waiver was unenforceable as to both the waiver of PCR and of direct appeal, and that he instructed his client that those waivers were likely unenforceable. In that respect, Trial Counsel was absolutely correct. Trial Counsel testified his primary concern in this case was removing the death penalty, and signing the Waiver accomplished that primary goal.

The facts of this case were particularly horrific. Applicant was charged with the murders of three people: 44-year old Diane Grant, along with her 20-year old son Jatavius Devore and 15-year old daughter Deanna Devore. Both Diane Grant and Jatavius Devore were killed in their apartment by a single, close-range gunshot wound to the head. [Trial Tr. at 28, 205, 207] The body of 15-year old Deanna was found the next morning behind a nearby apartment building. [Trial Tr. at 43-44] The pathologist testified Deanna was shot 4 to 5 times - in the back, in the face, and several more times in the neck. [Trial Tr. at 211-15] Deanna was found partially nude. Her pajama pants were found near her body and semen was recovered from her mouth and pajama pants. [Trial Tr. at 46, 217, 141, 142] Witnesses testified they heard a gunshot and a scream, followed by multiple additional gunshots. [Trial Tr. at 13, 17] The State's theory was that Applicant was sexually assaulting Deanna when her brother and mother either walked in on the assault or woke up to find Applicant in the apartment assaulting Deanna. The State theorized that Applicant first shot and killed Diane and Jatavius, but that Deanna was able to flee from the scene before Applicant chased her down and killed her behind the apartment building. [Trial Tr. at 249, 250]

The State sought the death penalty for these murders. Trial Counsel testified that his primary concern was to remove the death penalty as a possible punishment. [PCR Tr. at 42] The parties entered into plea negotiations wherein the State agreed to remove the death penalty and agree to a life sentence in exchange for Applicant's guilty plea to the murders. [PCR Tr. at 39, 40] Applicant was transported to the courthouse to review the State's evidence with his attorney and to possibly enter a plea, but he ultimately declined to enter into the plea agreement. [PCR Tr. at 40] The State then offered to remove the death penalty in exchange for Applicant's waiver of the right to a jury trial and waiver of his right to appeal, PCR, and habeas corpus relief. [PCR Tr. at

40-41] Applicant agreed and signed the Waiver Agreement, and came before Judge Dennis on January 21, 2010 for approval of the agreement. [Status Conf. Tr. at 2-3].

During the status conference, Judge Dennis questioned Applicant's trial attorneys and Applicant himself about the Waiver Agreement. Judge Dennis advised Applicant of his constitutional right to remain silent, and then questioned him extensively about his decision to enter into the Waiver. He asked Applicant whether he was under the influence of any alcohol or medication, whether he had taken any medication or drugs in the past 24 hours, and whether he was now or in the past treated for any emotional or mental health conditions. [Status Conf. Tr. 8-9] He asked whether Applicant had sufficient time to discuss the Waiver with his lawyers, and Applicant indicated that he had. [Status Conf. Tr. at 9] Judge Dennis asked Applicant whether he was comfortable with his decision and wanted to accept the Waiver, and Applicant answered "Yes."

Judge Dennis specifically advised Applicant that he was giving up the right "to have a jury empaneled, a fair and impartial jury, to listen to the evidence and decide what they believe to be the true facts. I wouldn't have anything to do with that process if we had a jury trial. Do you understand that? . . . the actual decision on the issues of fact would be made by a jury. Do you understand that? . . . You're not going to have that right now and you understand that, sir?" Applicant responded "Yes" to these questions. [Status Conf. Tr. at 11]

Judge Dennis further questioned Applicant about the reasons behind his decision to enter into the agreement, stating:

Court: The reason that you make this decision is because you want to avoid the death penalty as a possible punishment; is that correct?

Applicant: Yes, sir.

Court: Because that's a real right -- that's a real benefit for you, from your vantage point?

Applicant: Yes, sir. [Status Conf Tr. at 14-15].

Judge Dennis went on to explain the process if Applicant elected a jury trial. He explained that the jury would not have to agree to the death penalty, but that the jury trial would be a "two-phase" trial process where the jury first determined the issue of guilt, and then in the second phase would consider the potential sentence. Judge Dennis explained the potential sentences a jury could consider, and then asked, "But you have removed something and that is the death penalty option. That's what you seek to do. Is that right?" Applicant agreed that it was. [Status Conf. Tr. at 17]

At the hearing on the merits of Applicant's claim for Post-Conviction Relief, both of Applicant's Trial Counsel, Boyd Young and Mark Leindecker, testified that out of their main objective was to remove the death penalty as a sentencing option. [PCR Tr. At 65-66] Young felt that entering into the Waiver was the best option to take the death penalty off the table. Young further testified as to why he felt that a bench trial was in Applicant's best interest in this case. He testified that the difficulty in selecting a jury in a death penalty case is that the court has to exclude those potential jurors who are opposed to the death penalty. The remaining jury panel then consists of those people who are willing supporters of the death penalty. Young testified that in his experience, those jurors who are opposed to the death penalty are also the ones who tend to be more critical of police searches and more critical of police credibility. By losing that sector of the population, "it makes juries in capital cases much more likely to convict, even in innocent cases." [PCR Tr. at 42].

Young further testified that he thought a bench trial was a better option for Applicant than a jury trial because of the relative weakness of the DNA evidence in Applicant's case. In

Applicant's case, the DNA report indicated there was a 1 in 260 chance that the DNA belonged to someone other than Applicant. Young testified that the DNA evidence in most criminal cases is much more statistically significant. He felt Judge Dennis, as a very experienced trial judge, would recognize how weak the DNA evidence was in this case, where a jury might not appreciate that weakness. [PCR Tr. At 44-45, 70-71]

Young also felt Judge Dennis would be a particularly good choice to hear the bench trial in Applicant's case, which was based largely on circumstantial evidence. Young felt Judge Dennis would be willing to hold the State to their high evidentiary standard. Given his prior experience with Judge Dennis, the horrific facts of the case, the weakness of the DNA evidence, and the circumstantial nature of the evidence, he felt Applicant's chances of acquittal were much better with a bench trial in front of Judge Dennis than with a jury trial. [PCR Tr. at 42, 44, 45, 48, 62, 63, 64]

The court finds Trial Counsel articulated valid, strategic reasons for advising Applicant to waive his right to a jury trial. While Applicant was not ultimately acquitted, the agreement accomplished the goal of removing the death penalty from consideration. Moreover, the standard for establishing ineffective assistance of counsel is independent from the trial outcome. What matters is whether counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. This court finds that Trial Counsel did exercise reasonable professional judgment.

In addition, Applicant has suffered no prejudice from the waiver of the right to a bench trial, despite the fact that the waiver of his right to collateral review has been declared invalid. Applicant entered into an agreement to waive his right to a bench trial, a direct appeal, PCR, and habeas corpus proceedings all in exchange for the State's withdrawal of the death penalty. Because

this court has now granted Applicant a direct appeal and PCR, Applicant actually now has a better bargain than he initially negotiated. Instead of waiving both his right to a jury trial and his right to collateral review of the conviction, he now in effect has only waived his right to a jury trial in exchange for the same concession from the State - the exact outcome Trial Counsel predicted when he advised Applicant to sign the Waiver.

Applicant specifically argues that he was prejudiced at trial because the bench trial was conducted by the same judge who stood ready to accept his guilty plea. At the PCR hearing, Applicant testified it was never his intention to plead guilty. [PCR Tr. at 28] However, at the Status Conference before Judge Dennis, the Solicitor stated:

Your Honor . . . you'll recall that on January 8th we had all congregated at the Dorchester County Courthouse, that we had all the physical evidence, and Mr. Sanders and his attorney looked through that evidence. Part of the premise of being there was based on prior conversations that **Mr. Sanders had intended to plead guilty that Friday to three counts of murder.** We'd met with the victim's family and discussed that proposition, that he would be sentenced to life without parole pursuant to that plea and they were all in agreement. That Friday we were not able to execute the plea, but had some discussion at that time of the possibility of a bench trial. Essentially where we are procedurally is that the State has agreed that in the event we do have a bench trial the defendant waives his right to a jury trial. We're prepared to consent to a bench trial before Your Honor and agree with Mr. Young that in the event of a bench trial, should he be found guilty by Your Honor, that he would be sentenced pursuant to 16-3-20, under the normal murder statute, where he would face thirty years to life. [Status Conf. Tr. at 3-4] (emphasis added)

Judge Dennis then questioned Applicant extensively regarding whether he was freely and voluntarily entering into the Waiver. Judge Dennis stated:

as I recall when we were last assembled, there were family members present. We were glad to give you as much time as you needed to talk with those family members and you had that opportunity. . . when I was requested to come talk about a possible plea and I certain respect your decision fully, a hundred percent, saying 'I am not going to plead' I understand that and I respect you for that. It's a tough decision, I'm sure. And I don't know anything about what went on. I just know that there was substantial time that we sat and ultimately a decision was made. That was your conscious decision, something that you chose to do. Is that correct?

Applicant then confirmed that it was his decision not to accept the plea. [Status Conf. Tr. at 9, 17-18].

It is clear from the record that there were unsuccessful plea negotiations prior to trial between the State and Applicant. Judge Dennis was aware of the fact that plea negotiations took place in this case, as they do in the vast majority of criminal cases prior to trial. Judge Dennis also knew that Applicant ultimately refused to accept the plea, even though he was facing the death penalty. This court disagrees that the trial judge would have assumed when Applicant entertained plea negotiations it was somehow an implied admission of his guilt. One could just as easily presume that the fact Applicant refused to plead guilty, even when doing so would remove the threat of the death penalty, was because he was in fact innocent of the crime. Of course, there were downsides to agreeing to a bench trial instead of a jury trial. However, those were well known to Applicant and to his attorneys at the time he voluntarily entered into the Waiver in exchange for the State's agreement to withdraw the death penalty.

This court finds Trial Counsel exercised reasonable professional judgment in advising Applicant to waive his right to a jury trial in exchange for the State withdrawing the death penalty, and denies relief on this ground.

III. Was Trial Counsel ineffective for failing to present any expert testimony regarding the DNA evidence? (Applicant's ground 6)

Applicant argues Trial Counsel was ineffective for failing to call a DNA expert to refute the State's expert witness testimony. The Supreme Court of South Carolina "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish

prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). This court finds Applicant failed to meet his burden of proof as to this allegation because he did not present the testimony of an expert at the evidentiary hearing, and therefore, he has not established he was prejudiced by Counsel's allegedly deficient representation. See, e.g., Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding Applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

In any event, this Court finds Counsel offered a reasonable, strategic explanation for his decision not to call a DNA expert. Counsel testified he consulted a DNA expert who reviewed the DNA testing and analysis done by the State. Counsel further testified he chose not to call the defense expert as a witness because the defense expert did not disagree with the analysis done by the State's expert. The record reflects Counsel thoroughly cross-examined the State's expert and clearly established the defense's best argument regarding the DNA – the fact that it was not a statistically significant match. Importantly, Counsel was able to emphasize the weakness of the DNA evidence in this case (1 in 260) in comparison to the exponentially higher probability usually seen in a DNA match. In addition, Counsel was able to elicit testimony from the SLED DNA expert that there was semen detected on the victim's pajamas pants that did not match Applicant's DNA profile, and that Applicant was excluded as a contributor for that semen sample. Counsel thus elicited testimony from the SLED expert that there was the presence of semen from an unknown male contributor present on the victim's clothing.

“Strickland does not enact Newton’s third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense.” Harrington v. Richter, 562 U.S. 86, 11 (2011). Further, “[c]ounsel’s failure to procure expert witnesses does not render their representation deficient when counsel vigorously cross-examines the State’s witnesses and attacked the accuracy of the evidence.” Lorenzen v. State, 376 S.C. 521, 531, 657 S.E.2d 771, 777 (2008). Indeed, in this case, Counsel retained an expert to test the accuracy and methodology of the state’s expert and to prepare a vigorous cross-examination of the State’s expert witness.

This Court therefore finds Counsel was not deficient in declining to call the expert as a witness, nor was Applicant prejudiced by Counsel’s decision. This Court denies relief as to this ground.

IV. Did Trial Counsel fail to adequately investigate the case prior to trial? (Applicant’s Ground 7) :

Applicant contends Counsel was ineffective for failing to adequately investigate. “Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (citations omitted). “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.” Tucker v. Ozmint, 350 F.3d 433, 442 (4th Cir. 2003) (quoting Green v. French, 143 F.3d 865, 892 (4th Cir. 1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Strickland, 466 U.S. at 691; Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Moreover, “failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” Porter v. State, 368 S.C. at 385-86, 629 S.E.2d at 357, abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836 (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Trial Counsel Young testified he and the other defense attorneys “didn’t leave any stone unturned” in the investigation. He testified they interviewed all of the witnesses in the case, except for those witnesses who refused to meet with them. He further testified he went to every location himself to view the various crime scenes. They also did an independent analysis of the DNA evidence, [PCR Tr. At 43, 45] and consulted with an expert in shoe impression analysis. [PCR Tr. At 46] In addition, Counsel testified the defense attorneys went to the SLED lab and met with them with respect to the shoe impression evidence. [PCR Tr. At 72]

This court finds Applicant has failed to show how Trial Counsel failed to investigate and therefore denies relief on this ground.

V. Was Trial Counsel ineffective for failing to object to the admissibility of the shell casings? (Applicant's ground 3)

As a preliminary matter, Applicant has failed to allege on what grounds Trial Counsel could have objected to the admissibility of the shell casings. Detective Earl Asbill, the lieutenant in charge of the Dorchester County Sheriff's Office Crime Scene Unit, testified that he responded to the scene of the murders and collected spent shell casings from the scene. [Trial Tr. At 37-40, 47-48] Applicant has not alleged any grounds for the exclusion of that evidence.

Applicant also testified he felt Trial Counsel was ineffective for failing to call a ballistic expert to dispute the State's expert opinion that the shells from the murder scene matched the spent shell casings from two prior shooting scenes and were all likely fired from the same handgun. This court finds Applicant failed to meet his burden of proof as to this allegation because he did not present the testimony of an expert at the evidentiary hearing, and therefore, he has not established he was prejudiced by Counsel's allegedly deficient representation. The Supreme Court of South Carolina "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Trial Counsel testified he had prior experience challenging ballistics evidence in another capital case and had consulted with a metallurgist. [PCR Tr. At 47] He felt he was able to adequately cross examine the State's expert himself, regarding the subjective nature of toolmark identification. [PCR tr. At 47]. The trial transcript reflects that Trial Counsel thoroughly cross-

examined the State's expert regarding the reliability of that evidence, including studies that have cast doubt as to the reliability of toolmark evidence. [Trial Tr. at 161-68]

The court finds Applicant has failed to meet its burden of proof on this issue and denies relief on this ground.

VI. Was Trial Counsel ineffective for failing to object to hearsay evidence of Xavier Walker's identification of Applicant? (Applicant's Ground 7)

One of Trial Counsel's defense strategies was to show that another individual, Xavier Walker, was a person of interest whom law enforcement failed to investigate as a suspect in this case. At trial, SLED expert Tracy Thrower testified that the shell casings from the murders matched shell casings found at the scene of two different shootings – the "Hunters Ridge" shooting and the "Anchor Bar" shooting. [Trial Tr. at 144-56] Xavier Walker had been identified by witnesses as one of the shooters from the Hunters Ridge incident, and he had been arrested in connection with the shooting. [Trial Tr. at 98] A bouncer from the Anchor Bar, Reginald Chambers, witnessed the shooting at that location and had given a statement to law enforcement that he had spoken with one of the shooters earlier that evening and he believed he could identify the shooter. [Trial Tr. at 89, 90, 169-80]

When law enforcement questioned Xavier Walker in connection with the murders, Walker implicated Applicant in both the Hunters Ridge and Anchor Bar shootings. [Trial Tr. at 97-98] Law enforcement then showed Chambers a photo lineup containing Applicant's photo. Chambers identified Applicant as the individual who was kicked out of the Anchor Bar and later got in a truck and fired at the bar from the vehicle. [Trial Tr. at 90, 169-180] Trial Counsel elicited testimony from the lead investigator that Walker had already been arrested for the

Hunters Ridge shooting, yet his photo was never shown to Chambers as part of a photo lineup in connection with the Anchor Bar shooting. [Trial Tr. at 99]

Trial Counsel also questioned investigators as to whether they knew Xavier Walker's whereabouts on the night of the murders, and pointed out that investigators had never gotten a DNA sample from Xavier Walker to compare with the DNA recovered from victim Deanna Devore. [Trial Tr. at 102-103] In addition, Trial Counsel brought out on cross examination that Walker was subsequently charged in another murder that took place after Applicant was arrested and denied bond. Law enforcement received a tip regarding the possible location of the gun used in the subsequent murder, but had failed to follow up on the tip. [Trial Tr. at 103-104]

In closing argument, Trial Counsel refers to Xavier Walker as a person who implicated Applicant to deflect from his own involvement in the case, stating:

And the whole time that I've worked on this case I don't understand that, until I start to add up that how do we get here? We don't get here just because of ballistics. We don't get here just because ultimately of DNA. **We get here and we get pointed in this direction because of one individual and one individual only, Xavier Walker.** Xavier Walker is arrested not long after the incident in March at Hunters Ridge, the second place that we see these shell casings that SLED says match. Xavier Walker is the only person identified by the victims of that crime as the shooter at Hunters Ridge. Xavier Walker, after he is arrested . . . gets somehow a bond to get out. Then when this murder comes down, Xavier Walker, the person who had the gun at Hunters Ridge, probably the same person who had the gun at The Anchor Bar, becomes cooperative and points a finger at Anthony Saunders. Xavier Walker, a person whose cell phone was off during the time of the murder, who wasn't in communication, who wasn't talking to girlfriends and other people . . . And the question was asked again and again and over and over by Mr. Young and others on the defense team: 'Did you take a sample from Xavier Walker? Did you get a DNA sample?' The answer, "no." 'Did you get footwear from Xavier Walker?' The answer, "no." 'Do you know what size Xavier Walker wears?' The answer, "no." . . . They get Xavier Walker to tell them that it's Anthony Saunders, and they quit looking at Xavier Walker. The same Xavier Walker that they let out on bond and now we understand was involved in another murder. . . . The SLED expert on DNA . . . also had DNA from the pajama bottoms that she couldn't match. Yet we don't go out and check DNA against a viable suspect, Mr. Walker, who was at the other two crimes that we say Mr. Sanders was involved in? We don't check it? Your Honor, what that is in the context of a murder trial is reasonable doubt. [Trial Tr. 259-66]

This court finds that Applicant has failed to show any deficiency on the part of Trial Counsel in eliciting testimony regarding Xavier Walker's self-serving identification of Applicant. This court finds that Trial Counsel elicited this testimony as part of a valid strategy to show potential third-party guilt and denies relief on this ground.

VII. Was Trial Counsel ineffective for failing to subject the prosecution's case to meaningful adversarial testing? (Applicant's Ground 2).

In United States v. Cronic, 466 U.S. 648, (1984), the United States Supreme Court characterized the protection that the Sixth Amendment affords the defendant:

The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of **meaningful adversarial testing**. When a true adversarial criminal trial has been conducted—even if defense counsel may have made demonstrable errors—the kind of testing envisioned by the Sixth Amendment has occurred. But if the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated. As Judge Wyzanski has written: "While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators."

466 U.S. at 656-657, (citations omitted). The Court stated in Cronic that prejudice to the defendant can be presumed if "counsel entirely fails to subject the prosecution's case to a meaningful adversarial testing." When there has been no meaningful adversarial testing, then "the adversary process itself [is] presumptively unreliable." Id. In Bell v. Cone, the U.S. Supreme Court explained further that "the attorney's failure [to test the prosecutor's case] must be complete" for this standard to be met. 535 U.S. 685, 697 (2002).

A thorough review of the trial transcript in this case convinces the court that Applicant has failed to show the kind of deficiency contemplated by Cronic and Bell. Counsel thoroughly cross-examined the State's witnesses and demonstrated familiarity with both the subject matter and the weaknesses in the State's case. Trial counsel elicited testimony showing that there was another potential suspect in the case who was never seriously investigated by law enforcement.

Counsel elicited testimony that there was the presence of semen and DNA on victim's clothing from an unknown male. Importantly, Counsel also elicited testimony that Applicant had an identical twin brother with whom he shared a bedroom, and that all of the items seized from Applicant's home were taken from their shared room. At the PCR hearing, Counsel articulated valid strategic reasons for his decisions. This court finds Applicant has failed to show any deficiency in the representation, sufficient to support this claim and denies relief on this ground.

CONCLUSION

Based on the foregoing reasons, this court finds and concludes that Applicant has established that he received ineffective assistance of counsel when his Trial Counsel advised Applicant to waive his right to direct appeal of his conviction. This court finds Applicant is therefore entitled to a belated appeal of his trial conviction. Applicant's remaining grounds for relief are denied. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

This court notes Applicant must also file and serve a notice of appeal within thirty days from the receipt of this order by counsel of record to secure the appropriate appellate review of this order. See Rule 203, SCACR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant remain in the custody of the South Carolina Department of Corrections; and
2. Applicant is granted the right to seek a belated appeal of his trial conviction.

AND IT IS SO ORDERED!

Kristi F. Curtis
JUDGE KRISTI F. CURTIS
PRESIDING JUDGE, 1ST CIRCUIT

Sumter, South Carolina

Sept. 1, 2023

WITNESSES

Garrison, John

DCSO

Agency Case #: 07-006385

ARREST WARRANT NUMBER

K269838

Arrested: Aug 02, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE

8-30-07

Foreperson of Grand Jury
Date: August 30, 2007

VERDICT

Guilty

Foreperson of Petit Jury
Date:

03/9/10

DOCKET NO. 2007GS18-1296

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

September 04, 2007 TERM

**THE STATE
vs.**

Anthony Sanders

Indictment for

MURDER

SC Code: 16-03-10 / 16-03-20
CDR Code: 0116
Class: FEL-X

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

Defendant

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

Defendant

Witness:

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

RECEIVED

Sep 27 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

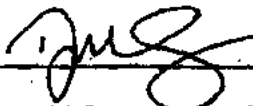
INDICTMENT
2007GS18-1298

At a Court of General Sessions, convened on September 04, 2007 the Grand Jurors of Dorchester County present upon their oath:

MURDER

The defendant, Anthony Sanders, did in Dorchester County on or about July 10, 2007, with malice aforethought, kill one Diane Grant by means of shooting the victim, and the said victim did die as a proximate result thereof, this being in violation of section 16-3-10 of the South Carolina Code of Laws, as amended and the common law of South Carolina.

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


Donald Sorenson, SOLICITOR

WITNESSES

Garrison, John

DCSO

Agency Case #: 07-006585

ARREST WARRANT NUMBER

K289837

Arrested: Aug 02, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE

8-30-07

Foreperson of Grand Jury

Date: August 30, 2007

VERDICT

Guilty

Foreperson of Petit Jury

Date:

3/9/10

DOCKET NO. 2007GS18-1297

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

September 04, 2007 TERM

THE STATE

vs.

Anthony Sanders

Indictment for

MURDER

SC Code: 16-03-10 / 16-03-20

CDR Code: 0118

Class: FEL-X

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

Defendant

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

Defendant

Witness:

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

RECEIVED

Sep 27 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

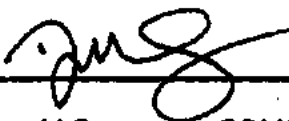
INDICTMENT
2007GS18-1297

At a Court of General Sessions, convened on September 04, 2007 the Grand Jurors of Dorchester County present upon their oath:

MURDER

The defendant, Anthony Sanders, did in Dorchester County on or about July 10, 2007, with malice aforethought, kill one Deanna Devore by means of shooting the victim, and the said victim did die as a proximate result thereof, this being in violation of section 16-3-10 of the South Carolina Code of Laws, as amended and the common law of South Carolina.

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



Donald Sorenson, SOLICITOR

WITNESSES

Garrison, John

DCSO

Agency Case #: 07-000585

ARREST WARRANT NUMBER

K209838

Arrested: Aug 02, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE 8-30-07

Foreperson of Grand Jury
Date: August 30, 2007

VERDICT

Guilty

Foreperson of Petit Jury
Date:

3/9/10

DOCKET NO. 2007GS18-1298

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

September 04, 2007 TERM

**THE STATE
vs.**

Anthony Sanders

Indictment for

MURDER

SC Code: 16-03-10 / 16-03-20

CDR Code: 0116

Class: FEL-X

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

Defendant

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

Defendant

Witness:

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

RECEIVED

Sep 27 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

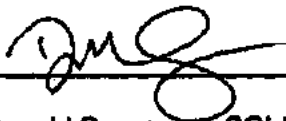
INDICTMENT
2007GS18-1298

At a Court of General Sessions, convened on September 04, 2007 the Grand Jurors of Dorchester County present upon their oath:

MURDER

The defendant, Anthony Sanders, did in Dorchester County on or about July 10, 2007, with malice aforethought, kill one Jatavius Lee Devore by means of shooting the victim, and the said victim did die as a proximate result thereof, this being in violation of section 16-3-10 of the South Carolina Code of Laws, as amended and the common law of South Carolina.

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


Donald Sorenson, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF

Dorchester

STATE

VS.

Anthony Sanders

AKA:

Race:

B

Sex:

M

Age:

27

DOB:

[REDACTED]

Address:

N. Charleston, SC 29418

DUI:

SID:

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

TO: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code #

0118

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC

winner 1st or Lowd Act)

☐ § 17-25-43The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Jennings, Blair

SCB12046

SC Bar#

Anthony Sanders

Attorney for Defendant

SC886328

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 years or ☐ under the Youthful Offender Act, not to exceed 10 years and/or to pay a fine of \$ 1000; provided that upon the service of 10 days/months/years and/or payment of \$ 1000; plus costs and assessments as applicable; the balance is suspended with probation for 10 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Dept. of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-136.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-85 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

Total: \$ 1000 plus 20% fee: \$ 200

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fees:

§ 14-1-308 (Assessments 107.5%)

§ 14-1-211(A)(1)(Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2935 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 35-13 (Public DefProb)

§ 73-3, 1B TP (Law Enforce. Funding)

§ 33-7, 1B TP (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90-11 TP (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Christy Hanam

Clerk of Court/Deputy Clerk

Court Reporter:

Deborah Garrison

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2007GS18-1298

A/N#:

K269838

Date of Offense:

7/10/2007

S.C. Code §

16-3-10

CDR Code #:

0118

RECEIVED

Sep 27 2023

SENTENCE SHEET

SC Court of Appeals

☒ CONVICTED OF or ☐ PLEADS

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Dorchester

VS.
Anthony Sanders

AKA:

Race:

B

Sex: M

Age:

27

DOB:

SSN:

Address:

N. Charleston, SC 29418

DUI:

SID:

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

TO: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code #

0118

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC
within 1st or Last Act)☐ § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Jennings, Blair C.

SCB12048

SC Bar#

Anthony Sanders

Attorney for Defendant

SCB65328

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of Life Impr days/months/years or ☐ under the Youthful Offender Act, not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Dept. of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fines

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1)(Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-6-2995 (DUI Assessment)

\$12

\$

§ 56-1-288 (DUI Breath Test)

\$25

\$

§ 35.13 (Public Def/Prob)

\$500

\$

§ 73.3, 18 TP (Law Enforce. Funding)

\$25

\$

§ 33.7, 18 TP (Drug Court Surcharge)

\$100

\$

§ 50-21-114 (BLI Breath Test Fee)

\$50

\$

§ 56-6-2942(J) (Vehicle Assessment)

\$40/fee

\$

§ 90.11 TP (SOLJA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

TOTAL

\$

Cheryl Graham

Clerk of Court/ Deputy Clerk

Court Reporter:

Arona Harrison

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2007GS18-1297

AN#:

K268837

Date of Offense:

7/10/2007

S.C. Code §

16-3-10

CDR Code #:

0118

Sep 27 2023

SENTENCE SHEET

SC Court of Appeals

☒ CONVICTED OF or ☐ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ paid to Public Defender Fund

Other:

No Prob

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

PRESIDING JUDGE

Judge Code:

Sentence Date:

3/9/2010

SCCA/217 (06/2009)

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Dorchester

VS.

Anthony Sanders

AKA:

Race:

B

Sex: M

Age:

27

DOB:

SSN:

Address:

N. Charleston, SC 29418

CLR:

SID#:

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

TO: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing COR Code #

0118

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC
within 1st or Last Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury. (Defendant Initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jennings, Blair C.

SCB12045

SC Bar#

Anthony Sanders

Attorney for Defendant

SCB01328

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of Life 100 days/months/years or ☐ under the Youthful Offender Act, not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Dept. of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

§ 14-1-205 (Assessments 107.5 %)

§ 14-1-211(A)(1)(Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 58-5-2055 (DUI Assessment)

§ 58-1-288 (DUI Breath Test)

§ 35-13 (Public Def Prob)

§ 73-3, 1B TP (Law Enforce. Funding)

§ 33-7, 1B TP (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 58-5-2543(J) (Vehicle Assessment)

§ 90-11 TP (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Cristie Graham

Clerk of Court/Deputy Clerk

Court Reporter:

Abraham Harrison

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS18-1288

A/W#: K269838

Date of Offense: 7/10/2007

S.C. Code § 16-3-10

COR Code #: 0118

Sep 27 2023

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

SC Court of Appeals

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve WVE beginning Substance Abuse Counseling ☐Random Drug/Alcohol ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ Beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, § 35-13 TP requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2060Sentence Date: 3/9/2010

SCCA217 (08/2009)