

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Oconee County

Honorable Daniel D. Hall, Circuit Court Judge

RECEIVED

Mar 08 2024

S.C. SUPREME COURT

STEVEN L. REYNOLDS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001651

APPENDIX

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

3
4 State of South Carolina,)
5) 2019-GS-37-523, 524,
6) 525, 526
7 -vs-) November 21, 2019
8 Steven L. Reynolds,)
9 Defendant.) Transcript of Record
10 -----)
11

12 B E F O R E:

13 The Honorable R. Lawton McIntosh, Judge
14

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

16 Lindsey Simmons, Esquire
17 Tenth Circuit Solicitor's Office
18 Attorney for the State

19 Rodney W. Richey, Esquire
20 Attorney for Defendant
21

22

23

24

25

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

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 10:25 a.m.)

4 MS. SIMMONS: Your Honor, this is Steven Lee
5 Reynolds. He's here on 2019-GS-37-523 and 524,
6 pleading to two counts of murder with a
7 negotiated 35 years from the State.

8 Your Honor, he is pleading also on 2019-GS-37-525
9 to armed robbery with a recommendation of the maximum
10 sentence of 30 years.

11 Your Honor, he's also pleading on 2019-GS-37-526,
12 malicious injury to property, with a recommendation of
13 a maximum sentence of five years. All of those to run
14 concurrent, your Honor.

15 There are representatives of both victims present
16 in court today. I will put on the record their
17 thoughts, and one will speak at the appropriate time.

18 (WHEREUPON, the defendant was sworn.)

19 MS. SIMMONS: Judge, just for the record, the
20 defendant's competency was evaluated prior to this
21 plea, and he was found to be competent.

22 THE COURT: Is that correct, Mr. Richey?

23 MR. RICHEY: I didn't hear.

24 MS. SIMMONS: For the record, his competency was
25 evaluated by the Department of Mental Health, and he

1 was found to be competent.

2 MR. RICHEY: Yes, sir. That's correct.

3 THE COURT: Do you want to make that a court
4 exhibit to this plea? Doesn't matter to me. If you
5 don't -- if you want to stipulate that he's competent.

6 MR. RICHEY: He is. We got the evaluation.

7 THE COURT: Okay. Then that's fine.

8 You're Steven Lee Reynolds?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: I need you to speak so I can hear you,
11 Mr. Reynolds.

12 THE DEFENDANT: Yes. Yes, sir.

13 THE COURT: Are you 19 years old?

14 THE DEFENDANT: No, sir. I just turned 20 on the
15 7th of November.

16 THE COURT: Okay. Mr. Reynolds, how far have you
17 gone in school?

18 THE DEFENDANT: I got my GED.

19 THE COURT: You did?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: When did you get your GED?

22 THE DEFENDANT: Oh, when I was at Birchwood
23 Academy -- well, Birchwood High School in Columbia.

24 THE COURT: Okay, sir. I assume that you're not
25 married?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you have any children?

3 THE DEFENDANT: No, sir.

4 THE COURT: You're pleading guilty to some big
5 charges. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you understand that, typically, a
8 murder charge can go up to life with you to serve
9 day-for-day --

10 THE DEFENDANT: Yes, sir.

11 THE COURT: -- of whatever sentence imposed?
12 Minimum of 30 years up to life?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: In this case, it's a negotiated plea.
15 I'm going to ask the lawyers to see if they agree or
16 disagree with me, but in a negotiated plea situation,
17 either I accept the recommendation or I reject the
18 recommendation.

19 In this case the State is recommending 35 years on
20 the murder charges, 30 years on the armed robbery
21 charges, and five years for malicious injury to
22 property, the charges to be concurrent or run together.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And knowing that I could either accept

1 it or reject it, do you still want to go forward with
2 your plea today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you under the influence of any
5 medications, drugs, or alcohol today?

6 THE DEFENDANT: Oh, just the antidepressant.

7 THE COURT: What did you take?

8 THE DEFENDANT: Zoloft.

9 THE COURT: When did you take it?

10 THE DEFENDANT: This morning.

11 THE COURT: Does that impact on your ability to
12 comprehend and understand what you're doing right now?

13 THE DEFENDANT: No, sir.

14 THE COURT: Mr. Ritchey, do you have any doubts
15 whatsoever that Mr. Reynolds is competent and capable
16 of going forward with his plea today?

17 MR. RICHEY: No, sir.

18 THE COURT: Mr. Reynolds, has anybody forced,
19 threatened, or promised you anything to get you to
20 plead today?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you doing so of your own free
23 will?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that on the murder

1 charges, you will serve at least -- you will serve
2 day-for-day if I go forward with your recommended
3 sentence?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You will not be given good time or
6 good credits; you will serve day-for-day 35 years?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Reynolds, do you understand that
9 you have a right to a jury trial on these charges?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: During that trial or trials, you would
12 be presumed innocent. The State would have to prove
13 each and every element of the charges against you by
14 proof beyond a reasonable doubt before you could be
15 found guilty.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You have a right to testify, and you
19 would have a right not to testify. Do you also
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If you didn't testify, I would
23 instruct the jury or the trial judge would instruct the
24 jury they couldn't consider that against you whatsoever
25 because that's your right under the Fifth Amendment,

1 and the State has the burden at all times of proving
2 your guilt.

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you wish to give up or waive your
6 right to a jury trial?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: On all charges?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you do so freely and voluntarily?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Reynolds, if there are any
13 constitutional violations in the manner in which you
14 were arrested such as a search and seizure or something
15 along those lines, any constitutional violation will be
16 given up if you go forward with your plea today. You
17 will waive any claims for any constitutional
18 violations.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you still want to go forward?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: If you were to go to trial,
24 Mr. Reynolds, you could exercise the following
25 additional constitutional rights during that trial or

1 trials:

2 First, you would have a right to cross-examine any
3 of the State's witnesses who testify against you. You
4 would also have the right to present evidence in your
5 own defense. You could subpoena people here to court
6 to testify on your behalf, and under the Fifth
7 Amendment to the United States Constitution, you would
8 have a right not to testify or to remain silent.

9 Have these rights been explained to you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand them?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that you will give
14 them up if I go forward -- if you go forward with your
15 plea today?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: That is what you want to do?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you freely and voluntarily give up
20 your constitutional rights in order to plead guilty to
21 all four charges?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Under indictment 2019-00523 and
24 2019-00524, are you guilty of two counts of murder?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Under indictment 2019-00525, are you
2 guilty of armed robbery?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Under indictment 2019-00526, are you
5 guilty of malicious injury to property?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Are you satisfied with the services of
8 Mr. Richey?

9 THE DEFENDANT: Yes, sir.

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

12 THE DEFENDANT: Yes, sir.

13 THE COURT: As you stand here in court today, do
14 you have any complaints whatsoever with regard to your
15 legal representation?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right.

18 Mr. Richey, have you gone over the elements of all
19 these charges with Mr. Reynolds?

20 MR. RICHEY: Yes, sir, I have.

21 THE COURT: Have you explained to him the time he
22 could get, including up to life in prison?

23 MR. RICHEY: Yes, sir, I have.

24 THE COURT: Have you explored whether or not he
25 has any defenses to these charges?

1 MR. RICHEY: Yes, sir, I have.

2 THE COURT: Have you also explained to him his
3 constitutional rights?

4 MR. RICHEY: I have, your Honor.

5 THE COURT: And you agree with his decision to
6 plead?

7 MR. RICHEY: Yes, sir, I do.

8 THE COURT: Very good.

9 Tell me about him, please.

10 MS. SIMMONS: Thank you, your Honor. May it
11 please the Court.

12 On September 10, 2018, here in Oconee County, the
13 defendant, with malice aforethought, did shoot and kill
14 Tim Caldwell and David Tranah during the course of an
15 armed robbery.

16 During the course of events prior to the killings,
17 the defendant also did shoot into an unoccupied vehicle
18 belonging to the Oconee County Sheriff's Office causing
19 damage in an amount between 2- and \$10,000.

20 Your Honor, the victims are here and would like to
21 be heard at the appropriate time, and I could give you
22 law enforcement's impact -- thoughts and more facts at
23 the appropriate time.

24 THE COURT: Give me law enforcement, and then I'll
25 hear from the victims.

1 MS. SIMMONS: Judge, law enforcement is not
2 present today. They were not able to be here. This
3 case was investigated by Sergeant Barry Owens and
4 Sergeant David McMahan. They have been part of the
5 negotiations of this plea and support the 35-year
6 recommendation.

7 Deputy Ike Lewis is actually the victim of the
8 malicious injury. I have spoken with Deputy Lewis. He
9 fully supports this resolution and the plea agreement,
10 and he also did not wish to be present.

11 David Holbrooks is the father of David Tranah. He
12 was his victim's representative. He was notified, your
13 Honor. He is not present here today. His sisters are
14 here today. I have had the opportunity to speak with
15 them. They do not wish to be heard, and they
16 understand this plea agreement and support it.

17 Ms. Lisa Caldwell is Tim Caldwell's widow. She is
18 also present in court today. She does not wish to be
19 heard. During my conversations with her recently, she
20 has told me that she had repeatedly begged her husband
21 to leave the compound, and she supports this plea
22 resolution and just wants all of this to be over.

23 Your Honor, the compound is an area in Seneca
24 which is known for drug and criminal activity where all
25 of this took place.

1 And there is one victim's representative who does
2 wish to speak. Your Honor, this is Candace Tranah.

3 Okay. I'm sorry. We have two victims that would
4 like to speak.

5 Your Honor, this is Candace Tranah. She is the
6 widow of David Tranah, and Ms. Judy Crane would also
7 like to speak. She is the aunt of David Tranah.

8 MS. CRANE: Yes, I am Judy Holbrooks Crane. I'm
9 the aunt of David Tranah. And I just wanted to say a
10 little over a year ago, that our lives changed. And
11 pieces of my heart that will never be here on earth
12 again. But I know that David knew the Lord, and I know
13 where he is, in Heaven.

14 It's so sad to all of us to think that someone
15 even younger than him took a life, you know. But we
16 pray for these kids. We pray for Mr. Reynolds, that,
17 you know, this time will give him time to think about
18 what he has done and the hearts that he has broke, not
19 only with us, but within his own family.

20 And I just wanted to say today that my brother
21 can't be here, and that's his dad. He's been through a
22 lot of psychological evaluations and things, that this
23 has just torn him apart. And I'd just like to say on
24 behalf of all of us and how our hearts hurt, that you
25 will take this time or he will take this time to

1 reflect on the things that he's done and then maybe
2 have a better life for him. Thank you.

3 THE COURT: Thank you, Ms. Crane.

4 MS. TRANAH: I'm Candace Tranah. I'm the widow of
5 David Tranah. I tried to write it down because I
6 didn't know if I would be able to speak correctly.

7 I think of the day I got the phone call myself
8 because I was in prison when I got the phone call. It
9 not only changed my life and my kids' life forever,
10 because every time I talk to my kids, it has to be...
11 what the kids have to deal with their dad's life
12 because I don't want to hurt them and tell them what
13 happened. I don't think that it should be a day or a
14 moment that will go by that I'll ever forget what his
15 voice sounds like or what it was like to be around
16 David.

17 I don't -- I don't have anything nice to say like
18 Judy, so I'm not going to say much because I'm not
19 there to say "I forgive you" of anything. I hope he
20 gets there and helps himself while he's there, but,
21 your Honor, I'm not at the point of forgiveness, and I
22 don't know that I ever will be.

23 35 years, for me, isn't long enough. So I don't
24 agree my children have to wake up every day and ask me
25 where their dad's at. But God handles everything in

1 his own way, right?

2 So I just ask that you really think about the
3 sentencing because my husband was 29 years old. 29. I
4 can't say anything else.

5 THE COURT: All right.

6 Ms. Simmons, anything further?

7 MS. SIMMONS: Judge, just to kind of give you a
8 little more background, and I think Mr. Richey will
9 also do that.

10 This incident did occur in an area of Seneca
11 called "the compound." It's well known to law
12 enforcement. The defendant was well known to those who
13 frequented the compound, and I think he had a
14 long-standing relationship with people who stayed
15 there. And at the time of the incident, both victims
16 in this case were staying at the compound with multiple
17 other people.

18 And multiple statements that we collected during
19 the course of investigation indicated that Mr. Reynolds
20 had gone to the compound to collect a debt which was
21 alleged to be drug related, and the evidence suggested
22 that the only shots fired in this incident were by
23 Mr. Reynolds.

24 THE COURT: Say that last sentence, please.

25 MS. SIMMONS: The evidence suggests that the only

1 shots fired were by Mr. Reynolds.

2 THE COURT: He had no prior record?

3 MS. SIMMONS: Your Honor, he does have -- he's
4 well known to us. He is very young. He does have a
5 prior record from 2016 where he received a YOA sentence
6 for grand larceny, strong armed robbery, and assault
7 and battery second degree. Your Honor, I believe his
8 GED was probably obtained while he was on that
9 sentence.

10 THE COURT: I figured something like that.

11 All right. Mr. Richey.

12 MR. RICHEY: Thank you.

13 MS. SIMMONS: And, Judge, I wrote how many days'
14 credit he has. His time served is written on the
15 sentencing sheet. I believe it was --

16 THE COURT: 437.

17 MS. SIMMONS: Yes.

18 MR. RICHEY: Thank you, your Honor. May it please
19 the Court.

20 THE COURT: Yes, sir.

21 MR. RICHEY: Your Honor, I'll just say that we
22 don't -- we don't -- I'm not trying to diminish the
23 loss to these people because we do believe and
24 understand the grief they have. I just want to take
25 the Court through a little background on how

1 Mr. Reynolds got here.

2 Judge, he's a really young guy. He's 20 years
3 old. As a child, your Honor, we could all -- a lot of
4 people could see this coming, unfortunately. In his
5 mental evaluation, it says he started doing meth at ten
6 years old.

7 THE COURT: Ten years old?

8 MR. RICHEY: Ten years old. Started doing meth,
9 marijuana on a daily basis at ten years old. And, your
10 Honor, a ten-year-old just don't go out and start
11 getting this stuff. I mean, I believe the stuff was
12 brought to him at sort of a very early age. He just
13 didn't have a shot at it.

14 The mother reports in here that his dad molested
15 him. And so for this period of time, he was just a
16 kid, a young kid out there, just roaming around. He
17 was in the foster care system. And so, really, at the
18 beginning, people can make it through all these
19 obstacles. I 100 percent agree with that. You can
20 overcome everything. But sometimes the statistics are
21 not very good for these folks.

22 And, Judge, I've talked to him, and he has not
23 given me any problems. And I say that because a lot of
24 times in these cases, that's not the case. But he's
25 been very polite, nice to me. And, your Honor, when I

1 thought about it and I talked to my wife, I think he
2 sees me as somebody who actually cares about him, okay,
3 because I went to the jail, I was very respectful to
4 him, and he kind of gave me the impression that he was
5 okay because someone came down here and actually cared
6 about him. Okay?

7 And I'm not saying his parents didn't care about
8 him. I'm not saying that. I'm just saying the facts
9 of how this gentleman got here, because at a very early
10 age he was just, and I'll use the phrase thrown to the
11 wolves, okay, because you don't do meth at ten if you
12 have got somebody there helping you. Okay? He's very
13 close to his grandmother, his mother. He's still
14 respectful of them.

15 Your Honor, I think this gentleman can actually be
16 an asset in the Department of Corrections. The reason
17 why I say that is because he's a bright, young, smart
18 guy. And it's my hope that he would take these years
19 and mentor some of the younger kids. I can see him
20 20 years from now mentoring some of the younger guys
21 that come down in the situation that he's in. Because
22 he's aware of where he's at, the situation he's in. He
23 understands what he did was wrong. There's no doubt he
24 understands all that.

25 But I just think he was set up on a path at a very

1 early age that, unfortunately, we were going to be
2 here. I just don't see how we were going to avoid
3 being here. Maybe not in this form, but in some form
4 he was going to be here. And some of the stuff that he
5 tells me and reading this stuff, it's just really,
6 really hard to believe that a young child at 11,
7 12 years old would be out there in that kind of
8 environment and just, basically, fending for yourself.

9 And that caused a lot of anger in him. He has an
10 anger issue, and you see that in these kids his age.
11 They have this anger pent up in them, and he has that.
12 But I do believe that he's a smart, smart guy, and I
13 believe that one day he's going to be an asset because
14 he's going to be able to look back and tell the younger
15 people down there, "Hey, look, this is what I dealt
16 with. You can overcome it." And I think with age,
17 he's going to be an asset down there.

18 And, hopefully, if that would right some of this
19 stuff that, he's done. We know this lady lost her
20 husband. We feel for her. I mean, that is tough. It
21 is really, really tough, and we understand that. But I
22 just think this gentleman, he's smart enough that he
23 could make an impact at the Department of Corrections
24 over time. I think he can do that.

25 Thank you, your Honor.

1 THE COURT: Mr. Reynolds, anything you would like
2 to say?

3 THE DEFENDANT: I don't remember her name, but to
4 the widow, I'd like to tell her, I hope some day she
5 can find it in her heart to forgive me because that
6 could be one of the biggest things, no matter what
7 happens here in the courtroom today, to know that the
8 family could be able to forgive me for the wrongs in my
9 life and just to make me feel better, even though I
10 don't deserve it, but I hope she will be able to find
11 it in her heart to forgive me.

12 THE COURT: Mr. Richey, anything further?

13 MR. RICHEY: No, your Honor.

14 THE COURT: All right.

15 This is before me on a negotiated plea sentence,
16 and I think under the circumstances it's appropriate,
17 especially considering law enforcement is on board.

18 Under indictments 2019-00523 and 2019-00524, the
19 sentence would be 35 years. All of these will be
20 concurrent. Credit for 437 days. I'm recommending
21 that while he's in the Department of Corrections, that
22 he have a psychological evaluation, and if necessary,
23 any treatment that would be appropriate under the
24 circumstances.

25 Under indictment 2019-00525, the sentence is

1 30 years with the same credit.

2 And under indictment 2019-00526, the sentence is
3 five years, same credit, same conditions.

4 You have ten days to appeal. Good luck to you.

5 MR. RICHEY: Thank you, your Honor.

6 MS. SIMMONS: Thank you, Judge.

7 THE COURT: Let's take about a five-minute break.

8 (WHEREUPON, proceedings concluded at 10:47 a.m.)

9 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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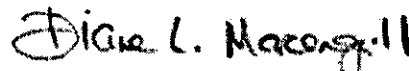
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter
for the Tenth Judicial Circuit of the State of South
Carolina at the time of the proceedings, do hereby
certify that the foregoing is a true, accurate, and
complete transcript of record of a portion of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Circuit
Court for Oconee County, South Carolina, on the 21st
day of November 2019.

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

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

July 16, 2020



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

STATE OF SOUTH CAROLINA)

County of Oconee)Steven L. Reynolds, 370355)

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

v.)

State of South Carolina)

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
IN THE COURT OF COMMON PLEAS

2020 JUN -9 PM 3:36

2020-CF 37.367

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE COUNTY CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence OCONEE COUNTY COURT HOUSE P.O. Box 678 WALHALLA, S.C. 29691
3. Name(s) of co-defendant(s) (if any) Jemery Trotter
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2019-GS-37-00523; 2019-GS-37-00524;
 - (b) 2019-GS-37-00525; 2019-GS-37-00526

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Nov. 21, ~~2018~~ 2019
- (b) 35 yrs. For Murder (2 counts); 30 yrs For ARMED
- (c) ~~Robbery~~ Robbery; 5 yrs. for MAL. Injury to property
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) LAWYER NEVER ADVISED me of the appeal process
- (b) LAWYER never informed me of the necessity of An appeal if needed.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) ~~Prosecutorial~~ Prosecutorial misconduct
- (c) Will Amend other issues upon receipt of representation
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) counsel failed to do An adequate investigation
- (b) Prosecutor failed to indict within 90 days And no showing of an ongoing
- (c) investigation to warrant such a delay
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (3)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) counsel failed to communicate the right to An appeal

(b) _____

(c) _____

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

(a) your arraignment and plea? ~~no~~ yes

(b) your trial, if any? _____

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

No

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

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

i. Richey And Richey P.A. P.O. Box 10916
Greenville S.C. 29603 ~~PO~~

ii. _____

iii. _____

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

i. plea and sentencing

ii. _____

iii. _____

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

Sentence vacate and/or sentence reduction

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

No

STATE OF SOUTH CAROLINA)

County of Oconee)

VERIFICATION

2020 CP37.367

I, Steven L Reynolds

, 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.

Steven Reynolds

SWORN to and subscribed before me this 13
day of April, 2020.

Debra Eastudy
Notary Public

(L.S.)

My Commission Expires: 3/3/2021

FILED OCONEE COUNTY, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2020 JUN -9 PM 3:36

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

2020 CP 31.367

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

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

Steven Reynolds

Applicant

SWORN or affirmed to and subscribed before me this

13 day of April, 2020.

Debra Eastudy
Notary Public

My Commission Expires: 3/3/2022

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2020 JUN -9 PM 3:36

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

FILED OCONEE COUNTY, SC
CLERK OF COURT
2020 DEC -7 P 3:14

Steven L. Reynolds, SCDC #370355,

Case No. 2020-CP-37-0367

Applicant,

v.

**RETURN AND MOTION FOR
A MORE DEFINITE STATEMENT**
(Counsel Appointed)

State of South Carolina,

Respondent.

In response to the post-conviction relief (PCR) action commenced by Steven L. Reynolds (Applicant) on June 6, 2020, the State makes this return:

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Oconee County Clerk of Court. Applicant was arrested on September 11, 2018, following an investigation into the shooting deaths of Timothy Caldwell and David Tranah, which occurred during the course of an armed robbery.¹ During its April 2019 term, the Oconee County Grand Jury indicted Applicant for two counts of murder (2019-GS-37-0523, -0524); two counts of possession of a weapon during the commission of a violent crime (2019-GS-37-0523, -0524); armed robbery (2019-GS-37-0525); and malicious injury to property (2019-GS-37-0526).

On November 21, 2019, Applicant appeared before the Honorable R. Lawton McIntosh

¹ During the court of events prior to the killings, Applicant shot into an unoccupied vehicle belonging to the Oconee County Sheriff's Office, which caused damage in the amount between \$2,000 and \$10,000. (Plea Tr. 10).

and pleaded guilty as indicted. Rodney W. Richey, Esquire represented Applicant and Assistant Solicitor Lindsey Simmons prosecuted the case. Judge McIntosh sentenced Applicant to concurrent terms of thirty-five years' imprisonment on each murder charge pursuant to negotiations entered into between Applicant and the State. As to the remaining indictments, Judge McIntosh followed the State's recommendation and sentenced Applicant to concurrent terms of thirty years' imprisonment for armed robbery and five years for malicious injury to property. Applicant did not appeal his guilty pleas or sentences. Applicant timely commenced this PCR action on June 9, 2020.

II. CURRENT APPLICATION

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

1. Ineffective assistance of counsel
 - a. "Counsel failed to do an adequate investigation"
2. Prosecutorial misconduct
 - a. "Prosecutor failed to indict within 90 days and no showing of an ongoing investigation to warrant such a delay"

Applicant requests relief as follows:

"sentence vacate and/or sentence reduction"

Attached to this return and incorporated by reference are the Oconee County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Plea Counsel, Generally

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and

Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty

plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

B. Involuntary Guilty Plea

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

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one’s accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326

S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge “usually questions the defendant about the facts surrounding the crime and punishment that could be imposed.” *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty

plea”). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.* at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf.* *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

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

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 582 U.S. ___,

137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies.” *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Id.* Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

C. Failure to Investigate

Applicant contends Counsels were ineffective for “failing to do an adequate investigation.” As discussed below, the State is presently without sufficient information to fully respond to this claim because Applicant does not indicate with any specificity what Counsel should have investigated and how he was prejudiced.

“A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel

need only interview potential witnesses “when it is reasonable to do so.” *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691.

“There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” *Ard*, 372 S.C. at 331, 642 S.E.2d at 596. 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) (citation omitted), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46 (citation omitted). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citation omitted).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (noting that “this duty is limited to a reasonable investigation”). Reviewing courts “should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014).

D. Failure to File a Direct Appeal

In response to question nine as to why he did not pursue a direct appeal, Applicant states “lawyer never advised me of the appeal process” and “lawyer never informed me of the necessity of an appeal if needed.” Applicant further states in question sixteen of his application that the grounds on which he is basing his application have not previously been presented to any court because “counsel failed to communicate the right to an appeal.” The State submits these claims are without merit.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that she was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000). When counsel has consulted with the defendant regarding the right to appeal, “Counsel performs in a professionally unreasonable manner *only* by failing to follow the defendant’s express instructions with respect to an appeal.” *Id.* at 478 (emphasis added). In order to establish she was prejudiced by counsel’s failure to file an appeal, Applicant must show she would have appealed absent counsel’s deficient performance. *Id.* at 484. “Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” *Bonnette v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981).

In determining whether counsel has a duty to consult, “[o]ne highly relevant factor will be whether the conviction follows a trial or a guilty plea, because a plea both reduces the scope of potentially appealable issues and may indicate that the defendant seeks an end to judicial proceedings.” *Flores-Ortega*, 528 U.S. at 480. As such, though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard

applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted); *see also Flores-Ortega*, 528 U.S. at 480 (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); *contra Frazer v. South Carolina*, 430 F.3d 696 (4th Cir. 2005) (reading *Flores-Ortega* to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the “bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.” *Jones v. State*, 382 S.C. 589, 598, 677 S.E.2d 20, 23–24 (2009) (citation omitted).

The State submits Applicant cannot show any “extraordinary circumstances” were present at the time of the plea which would trigger plea counsel’s duty to consult with Applicant about his right to appeal. Judge McIntosh nonetheless informed Applicant of his right to appeal during the plea proceeding. (Plea Tr. 20). Applicant further failed to present any facts that would show he inquired of plea counsel about filing an appeal, communicated to counsel his desire to appeal, or instructed counsel to file an appeal. As such, Applicant likely cannot show that counsel was ineffective for failing to consult with Applicant about filing an appeal.

E. Conclusion and Action Requested

For the above-reasons, Applicant cannot satisfy either requirement of *Hill*. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of plea counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper*

v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

IV. RESPONSE TO ALLEGATION OF PROSECUTORIAL MISCONDUCT

Applicant raises an allegation of prosecutorial misconduct based on “fail[ure] to indict within 90 days and no showing of an ongoing investigation to warrant such a delay.” The State construes this claim as an alleged violation of Rule 3(c), SCRCrimP. Our Supreme Court has held that this requirement is administrative not jurisdictional; therefore, the “failure of solicitor to act on warrant within 90 days does not within itself invalidate warrant or prevent subsequent prosecution.” *State v. Edwards*, 649 S.E.2d 112, 127 (S.C. App. 2007), *rev’d on other grounds*, 682 S.E.2d 820 (S.C. 2009) (citing *State v. Culbreath*, 282 S.C. 38, 316 S.E.2d 681 (1984)). To the extent Applicant alleges the indictments were insufficient or defective, “the defendant must raise that issue before the jury is sworn and not afterwards.” *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (citing S.C. Code Ann. § 17–19–90 (2003)). “The statute is no less applicable because the [applicant] . . . waived jury trial by his guilty plea.” *State v. Phillips*, 215 S.C. 314, 318, 54 S.E.2d 901, 903 (1949). Thus, the State submits any alleged violation of Rule 3(c), SCRCrimP does not constitute prosecutorial misconduct.

Applicant has failed to present any evidence tending to establish bad faith or intent on the part of the prosecution. *See Alabama v. Smith*, 490 U.S. 794 (1989) (finding that, with regard to prosecutorial misconduct, the burden is on the defendant to prove actual vindictiveness). However, the record likely does not refute or disprove Applicant’s allegations of prosecutorial misconduct; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper*, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR

application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

V. MOTION FOR A MORE DEFINITE STATEMENT

The State submits Applicant’s claims of ineffective assistance of counsel and prosecutorial misconduct are without merit. However, it is impossible for the State to adequately respond to Applicant’s allegations because Applicant has completely failed to provide any specific facts to support such claims. “[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the [applicant] that he was deprived of adequate and effective assistance of counsel is insufficient.” *Coardes v. State*, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974); *see* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to “specifically set forth the grounds upon which the application is based”); *see also* Rule 8(a)(2), SCRCP (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRCP (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”).

Accordingly, the State moves for Applicant, through counsel, to amend his application to provide a more definite statement of his allegations of ineffective assistance of counsel and prosecutorial misconduct pursuant to Rule 12(e), SCRCP and the Post-Conviction Procedure Act.

VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the

PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCPP; *see also* Rules 15(a)–(b), SCRCPP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCPP.

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

VII. GENERAL DENIAL

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

[Conclusion and signature on following page]

VIII. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section IV, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel and prosecutorial misconduct.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: s/LillianMeadows
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

December 1, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	TENTH JUDICIAL CIRCUIT
	)	
STEVEN L. REYNOLDS,	)	AMENDED APPLICATION
APPLICANT.	)	
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	CASE # 2020-CP-37-367
_____	)	

This matter comes before the Court by way of application of post conviction relief filed June 6, 2020, alleging ineffective assistance of counsel for failing to investigate and prosecutorial misconduct for failing to indict within ninety days. A Return and Motion for a More Definite Statement was made on December 1, 2020. This application is intended to supplement the Applicant's pro se Application to provide a more definite statement of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution due to ineffective assistance of plea counsel for:

1. failing to visit and review discovery with Applicant;
2. failing to adequately explain the elements of the charges prior to the plea; and
3. failing to appeal the plea.

Respectfully submitted,

s/ Susannah Ross

 Susannah Ross #11204
 Attorney for the Applicant
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This 21 day of February, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	TENTH JUDICIAL CIRCUIT
	)	
STEVEN L. REYNOLDS,	)	AFFIDAVIT OF SERVICE BY
APPLICANT.	)	ELECTRONIC MAIL
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	CASE # 2020-CP-37-807
_____	)	

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by electronic mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Notice of Appeal** on the above-captioned matter on the following person by electronic mail:

Taylor Smith@scag.gov

s/ Susannah Ross
Attorney for Defendant

This 21st day of February, 2023

State of South Carolina
County of Oconee

Court of Common Pleas

Steven L. Reynolds)

v.)

State of South Carolina)

Defendant.)

Transcript of Record
2020-CP-37-00367

August 22, 2023
Oconee, South Carolina

B E F O R E:

The Honorable Daniel Dewitt Hall, Judge.

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

Susannah C. Ross, Esquire
Attorney for the Applicant

Donald J. Zelenka, Esquire
Attorney for the Respondent

Lisa Scott
Circuit Court Reporter

I N D E XWITNESSPAGE

Steven Reynolds

Direct examination by Ms. Ross.....

Cross-examination by Mr. Zelenka.....

Rodney Richey

Direct examination by Mr. Zelenka.....

Cross-examination by Ms. Ross.....

- - -

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits.

P R O C E E D I N G S

* * * * *

THE COURT: All right. We're on the record in 2020-CP-37-00367. This is *Steven L. Reynolds v. The State of South Carolina*. This is a hearing for post-conviction relief. Mr. Reynolds is represented by Susannah Ross. Mr. Don Zelenka is representing the State in the case. Mr. Reynolds is present here in the courtroom and it appears that we are ready to proceed with this post-conviction relief hearing.

Ms. Ross, I'll be -- or Mr. Zelenka, I'll be glad to hear from you.

MR. ZELENKA: Thank you, Your Honor. This matter involves a post-conviction relief action that was filed by Mr. Reynolds pro se on June 6, 2020. It involves a -- two charges of murder, two counts of possession of a weapon during the commission of a violent crime, armed robbery, and malicious injury to property.

On November 21, 2019, he appeared before Judge Mc -- McIntosh and pled guilty. He was represented at that time by Rodney Richey, and the State was represented by Assistant Solicitor Lindsey Simmons.

He was sentenced by Judge McIntosh pursuant to a negotiated sentence to concurrent terms of 35

1 years on each of the murder charge -- charges and on
2 the remaining indictment, 30 years for armed
3 robbery, five years for malicious injury to
4 property. There was no appeal of that matter.

5 In the PCR application, he alleges ineffective
6 assistance of counsel claiming counsel failed to do
7 an adequate investigation, prosecutorial misconduct,
8 asserting the prosecutor failed to indict within
9 90 days, and there was no showing of an ongoing
10 investigation to warrant such a delay.

11 On February 21, 2023, counsel for Mr. Reynolds
12 filed an amended application, serving more
13 specificity to the grounds with ineffective
14 assistance of counsel for, number one, failing to
15 visit and review discovery with the applicant;
16 number two, failing to adequately explain the
17 elements of the charges prior to the plea; and
18 failing to appeal the plea.

19 Mr. Richey is present here, and the State's
20 ready to go forward. And he's represented by
21 Susannah Ross who is court appointed counsel, and
22 the applicant is present here in the courtroom also.

23 THE COURT: All right. Thank you. Ms. Ross.

24 MS. ROSS: May it please the Court? I was
25 appointed to represent Steven Reynolds at our

1 February hearing on this matter. He relayed to me
2 that -- that he wanted -- he planned to hire private
3 counsel, and it was continued to be -- to be
4 rescheduled at the next term and the judge said he
5 had 60 days to get private counsel. I have not seen
6 any other notice of representation.

7 Mr. Reynolds' mother was here at the last
8 hearing. I was -- I did not contact her about this
9 hearing myself, so I don't know if she had notice of
10 this hearing and what the status of his retaining
11 representation is. So on his behalf, I'd -- I'd
12 move to continue so he can retain counsel.

13 THE COURT: Well, do you have any objections to
14 me having a conversation with him about -- simply
15 about attorney representation?

16 MS. ROSS: No.

17 THE COURT: Mr. Reynolds, Ms. Ross has
18 indicated that the last -- at the hearing back in
19 the spring, that you or someone on your behalf had
20 indicated that you were going to hire a private
21 attorney. Have you been able to do that?

22 THE APPLICANT: I have not had any contact with
23 my mother, so I don't know if she had the
24 opportunity to do that or not, sir. I haven't
25 spoken to my mother in the last six months or so

1 since our last hearing.

2 THE COURT: All right.

3 THE APPLICANT: I'm pretty sure if she was
4 contacted, she would've been present today.

5 THE COURT: Well, here's the thing, the last
6 hearing was six months ago. And she was present for
7 that hearing; is that right, Ms. Ross?

8 MS. ROSS: Yes.

9 THE COURT: Six months later, there's no -- you
10 do have an attorney. Ms. Ross is your lawyer.
11 She's a good lawyer, a good post-conviction relief
12 attorney. I'm going to deny the motion for
13 continuance. It's six months later.

14 The defendant has indicated or the applicant's
15 indicated that for six months he has had no
16 conversations with his mom. It appears that she has
17 not made any attempt to contact him or him to
18 contact her. She certainly hasn't contacted the
19 Court. The Court has not received any type of
20 letter of representation. I find that the six
21 months has such a time -- sufficient time for him to
22 be able to retain an attorney for purposes of this
23 matter, a private attorney. He does have -- he has
24 been protected by the appointment of an attorney, so
25 I'm go to deny the motion for continuance. All

1 right.

2 MS. ROSS: Thank you, Your Honor.

3 MR. ZELENKA: Your Honor, if I might add to
4 that. In the -- the order signed by Judge Gravely
5 on May 19th, the final paragraph -- of May 19, 2023,
6 the final paragraph of that says, "This Court finds
7 the matter should be continued until the next term
8 of court for post-conviction relief matters for the
9 Tenth Circuit.

10 "Further, this Court finds that if applicant
11 fails to hire private counsel by the next term, this
12 case is placed on the docket. The matter must
13 proceed with appointed PCR counsel."

14 THE COURT: All right. Thank you. That's
15 where we are today. He does have counsel and it
16 appears that all the necessary witnesses are
17 present. I understand we're prepared to go forward
18 with the hearing.

19 MS. ROSS: Thank you, Your Honor. We call
20 Steven Reynolds at this time.

21 THE CLERK: Sir, please come forward and raise
22 your right hand.

23 THE APPLICANT: (Complying.)

24 THE CLERK: Do you swear or affirm to tell the
25 truth, the whole truth, and nothing but the truth?

1 THE APPLICANT: Yes, ma'am.

2 THE CLERK: You can go take the witness stand.

3 THE APPLICANT: (Complying.)

4 STEVEN L. REYNOLDS,

5 having been produced and first duly sworn as a
6 witness on behalf of the Applicant, then testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MS. ROSS:

10 Q. Good morning, Mr. Reynolds.

11 A. Good morning.

12 Q. This is my first question in this
13 post-conviction relief hearing. Do you understand
14 that the relief that you could get is to start back
15 over where you would be facing a potential life
16 sentence?

17 A. Yes, ma'am.

18 Q. And how do you want to proceed?

19 A. To continue.

20 Q. All right. Now ---

21 THE COURT: Well, I think his answer is he
22 wanted -- I took that as he wanted to continue.
23 Does that mean you want to go forward?

24 THE APPLICANT: Yes.

25 THE COURT: Okay.

1 THE APPLICANT: Yes, sir.

2 THE COURT: All right. We have -- we have been
3 in context of seeking a continuance. That's been
4 denied, but we are going to continue with the
5 hearing and go forward today. I want to be sure
6 it's clear. All right. Go ahead.

7 BY MS. ROSS:

8 Q. So understanding the potential outcome, you'd
9 like to proceed with the PCR hearing today?

10 A. Yes, ma'am.

11 Q. Now, you had an appointed lawyer, Rodney
12 Richey, correct?

13 A. Yes, ma'am.

14 Q. You've alleged he was ineffective. Tell me
15 some ways why you think he was ineffective in his
16 assistance of you.

17 A. During the whole time with him being my
18 attorney and my whole stay at the county jail, I
19 maybe had a total of 45 minutes of documented time
20 we actually met. He never took time to actually go
21 over my whole motion of discovery really. Like
22 there was no time we actually spent enough time
23 together for me to be -- to actually understand what
24 was going on. I don't know -- I didn't know none of
25 the legal terms that I know now. I didn't know -- I

1 had no legal knowledge of what was going on.

2 Q. And what -- what exactly did he talk to you
3 about then even during that 45 minutes?

4 A. Basically, he was informing me the best thing
5 would be if he could get me -- just anything he
6 could do better than getting a life sentence
7 would've been him doing an adequate job.

8 Q. That's all he said to you for 45 minutes?

9 A. Yes, ma'am.

10 Q. And did -- you ended up pleading guilty?

11 A. Yes, ma'am.

12 Q. Why did you pled guilty if you didn't think
13 there was any evidence against you?

14 A. I didn't feel safe in the county jail. I have
15 a lawsuit that's pending where I asked for removal
16 from the county jail due to where I had an
17 altercation with a CO that was ordering me. I had
18 to go to the hospital and get like 10 -- it was 10
19 or 12 staples in my head. I still got a scar on my
20 head.

21 Q. So what exactly happened at the jail? Were you
22 attacked?

23 A. Yeah, I was attacked by the CO.

24 Q. And so for that -- for that reason, you don't
25 think that the plea was voluntarily made?

1 A. I didn't -- the only -- when I took a deal, I
2 had to get somewhere where I had a chance -- I had
3 to get a fighting chance. I didn't feel like I was
4 going to have a chance in the county jail. I
5 thought I was going to lose my life due to police
6 brutality.

7 Q. Now, when you pled, did you understand the
8 elements of the charge against you?

9 A. No. Well, let me back up. Can you explain
10 what you're...

11 Q. You were charged with two counts of murder for
12 two -- two people who were shot.

13 A. Yes, ma'am.

14 Q. When you pled guilty to that, did you
15 understand what malice aforethought was during the
16 sentencing?

17 A. No, ma'am.

18 Q. Did you understand anything about the legal
19 implications of your plea?

20 A. I was still under the impression that I was
21 going to have 85 percent. Like I didn't understand
22 that because it being a capital murder charge, it
23 was a day-for-day charge too.

24 Q. Now, did -- did Mr. Richey tell you it was an
25 85 percent charge?

1 A. No.

2 Q. But that was just your understanding ---

3 A. Yes, ma'am.

4 Q. --- since the other ones were?

5 A. Yes, ma'am.

6 Q. Now, did you ask for an appeal in your case?

7 A. No, ma'am. I filed -- I actually did my PCR as
8 soon as I got to the institution.

9 Q. And why did you file the PCR at that time
10 without an appeal?

11 A. Because I was under the impression that I had a
12 year from that day to end up filing my PCR for that
13 date to be correct.

14 Q. All right. Is there anything else you'd like
15 to tell the judge about this case about why your
16 attorney was ineffective or what prosecutorial
17 misconduct was involved in your case?

18 A. The prosecutorial misconduct, you stated with
19 the indictment -- with her failing the indictment
20 within the 90 days.

21 The only thing that I feel with Mr. Richey,
22 like what I feel like he handled it was I feel like
23 due to them not having no murder weapon, due to them
24 not having no gunpowder residue testing to prove who
25 was shooting what, due to not having no physical

1 proof besides hearsay from a codefendant that had a
2 wrap sheet that I didn't have no -- I'm the only one
3 in the case that didn't have no charges before I was
4 a juvenile. With my codefendant's background, I
5 feel like he should've invited me to go to trial.

6 I can understand to a point why he didn't
7 because 35 wasn't no bad deal for no two murder
8 charges, a minimum of 30. And I could see him
9 thinking, well, if he went to trial, he could get
10 life, so that's -- that's it.

11 Q. All right. And -- and had you realized that
12 the status of the evidence against you, would you
13 have pled guilty?

14 A. No, ma'am.

15 Q. You would've insisted on going to trial?

16 A. I would've insisted on going to trial. If I
17 knew then about her failing the indictment when they
18 did and proof of an ongoing investigation for them
19 to not having a murder weapon to no gunpowder
20 residue, yes, ma'am, I would've went to trial.

21 MS. ROSS: All right. I've got no further
22 questions.

23 THE COURT: Mr. Zelenka.

24 CROSS-EXAMINATION

25 BY MR. ZELENKA:

1 Q. Mr. Reynolds, you knew that you were charged
2 with the -- the -- the murders of Tim Caldwell and
3 David Tranah, didn't you?

4 A. Yes, sir.

5 Q. All right. And you knew those charges were
6 related to an assertion that you shot at them -- at
7 them, right?

8 A. Yes, sir.

9 Q. Okay. And you also knew that you were charged
10 with malicious injury to personal property involving
11 shooting in the unoccupied vehicle of Oconee County
12 sheriff's officers, correct?

13 A. Yes, sir.

14 Q. Okay. And those aren't difficult concepts to
15 understand, are they?

16 A. No, sir.

17 Q. Okay. And with respect to that, you knew at
18 the time you pled guilty, you could've received 30
19 years to life possibly for the crime of murder,
20 correct?

21 A. Yes, sir.

22 Q. And, similarly, you knew you could receive up
23 to five years for the malicious injury to personal
24 property, correct?

25 A. Yes, sir.

1 Q. And when you pled guilty, your lawyer had met
2 with the State, and they negotiated a very favorable
3 plea negotiation for you; isn't that correct?

4 A. Yes, sir.

5 Q. And -- and that plea negotiation was to receive
6 a negotiated sentence of 35 years on both the murder
7 charges; is that correct?

8 A. Yes, sir.

9 Q. And, in fact, that is what you got, isn't it?

10 A. Yes, sir.

11 Q. And, also, the 30 years for armed robbery, that
12 was involved with -- with those two murders,
13 correct?

14 A. Yes, sir.

15 Q. And -- and those were supposed to run
16 concurrent, correct?

17 A. Yes, sir.

18 Q. And your lawyer told you that before, hadn't
19 he?

20 A. Yes, sir.

21 Q. Okay. So at the time of the plea, you knew
22 that if you went to trial, you could face a life
23 sentence?

24 A. Yes, sir.

25 Q. And on two life sentences actually. One for

1 each of the victims in -- in that incident, correct?

2 A. Yes, sir.

3 Q. And also the 30 years, if you went to trial,
4 that could be a sentence. You could possibly
5 receive the same sentence for armed robbery,
6 correct?

7 A. Yes, sir.

8 Q. And malicious injury to property, you could get
9 five years, correct?

10 A. Yes, sir.

11 Q. So you chose that whether to go to trial, which
12 you knew you had the right to do, to accept the
13 negotiated plea with the information Mr. Richey had
14 given you and take the aggregate sentence of
15 35 years?

16 A. Yes, sir.

17 Q. Did you talk to Mr. Richey about what you did
18 on that day?

19 A. No, sir.

20 Q. You never talked to him about it?

21 A. No. Well, I mean, we spoke, but not about -- I
22 never -- I never actually gave a statement saying
23 that my actions through this crime. Like I never
24 actually gave him -- they don't have no actual
25 statement from me from that, so, no, we didn't

1 really...

2 Q. Okay. So you didn't talk to the police at all?

3 A. No.

4 Q. Okay. So all you did was talk to Mr. Richey
5 after you were charged with the crimes?

6 A. Yes, sir.

7 Q. Is that correct?

8 A. Yes, sir.

9 Q. And you understood that by pleading guilty, you
10 were acknowledging that you had committed the
11 offenses; isn't that correct?

12 A. Yes, sir.

13 Q. And in doing that, you decided you did want to
14 plea, correct?

15 A. In a way, yes, sir.

16 Q. Okay. What do you mean "in a way"?

17 A. I'm just saying agreeing to plea. Like it to
18 me at the time was the best interest from my legal
19 knowledge, because coming from him it was in my
20 interest to make a plea deal or I'm going to face
21 the other possibility of facing life. He said
22 anything that was better than a life sentence was
23 better for me to have. Like it was better than
24 doing something better.

25 Q. Okay. And when you were sitting there during

1 the plea, the Court asked Mr. Richey some questions
2 and you heard those questions, didn't you?

3 A. Yes, sir.

4 Q. All right. One of those first questions was,
5 this is on page nine of the transcript, that he had
6 gone over the elements of all the charges with you
7 and Mr. Richey said, yes, he had. Do you recall
8 hearing that?

9 A. Yes, sir.

10 Q. Did you agree with that at the time?

11 A. I didn't say "yes" or "no." I didn't say
12 anything to it.

13 Q. Okay. Did you agree with that at the time he
14 said it?

15 A. No, sir.

16 Q. Okay. And then he said he explained to you all
17 the time you could get, including up to life in
18 prison, and he had done that according to your
19 testimony ---

20 A. Yes, sir.

21 Q. --- is that right?

22 A. Yes, sir.

23 Q. Okay. So he told you that. Then the Court
24 asked Mr. Richey if he had explored whether or not
25 there were any defenses to the charges, and

1 Mr. Richey said, yes, he had. And was that true?

2 A. Can you -- can you restate that?

3 Q. I said that the Court asked him had you
4 explored whether or not he has any defenses to the
5 charges, and Mr. Richey said, yes, he had. Had he
6 explained to you whether you had any defenses to the
7 charges?

8 A. I mean, not -- not really. He was sort of
9 advising me from the jump that if he could get me
10 any kind of a deal, then that's what to go with. He
11 was never advising me to go to trial. He was
12 telling me it wasn't best to go to trial on the
13 charges because I would possibly end up with a life
14 sentence.

15 Q. Okay. So what was your defense?

16 A. (No response.)

17 Q. What was your defense?

18 A. I don't understand the question.

19 Q. What was your defense at the time to these
20 particular charges that you would've wanted to go to
21 trial on?

22 A. Well, my defense -- well, lack of evidence. It
23 would be like taking a gunpowder residue test on my
24 clothes and my hands to prove who the shooter was.
25 They didn't have no physical evidence. It was

1 really like a lack of evidence if I had known.
2 Everything I know now has already been to see about
3 them having 90 days to do indictments, about the
4 solicitor having to do certain -- there's time
5 limits on everything. I would've went to trial.

6 Q. Okay. So I don't want to put words in your
7 mouth, but it sounds like what you're saying your
8 defense was going to be is you were going to put the
9 State to its burden of proof?

10 A. Yes, sir.

11 Q. Oh, okay. And not that you were going to
12 essentially testify or make any other claims. You
13 were just going to put the State to its burden of
14 proof?

15 A. Yes, sir.

16 Q. Okay. Now, the Court advised you of your --
17 the ten days to appeal ---

18 A. Yes, sir.

19 Q. --- after the guilty plea. And did you
20 indicate to Mr. Richey that you wanted to appeal?

21 A. No. No, sir.

22 Q. Okay. So you never indicated to him that you
23 wanted to appeal?

24 A. No, sir.

25 Q. And the sentence that you received was the

1 sentence you expected to receive based upon your
2 negotiations, correct?

3 A. Yes, sir.

4 MR. ZELENKA: Okay. I don't think I have any
5 further questions. Thank you, Judge.

6 THE COURT: Thank you. Any redirect?

7 MS. ROSS: No, Your Honor.

8 THE COURT: Thank you. Mr. Reynolds, you can
9 step down.

10 (Applicant was excused.)

11 MS. ROSS: The applicant rests at this point.

12 THE COURT: All right. Thank you.

13 Mr. Zelenka, do you have any witnesses?

14 MR. ZELENKA: The State would call Rodney
15 Richey.

16 (Witness approached.)

17 THE CLERK: Please raise your right hand.

18 THE WITNESS: (Complying.)

19 THE CLERK: Do you swear or affirm to tell the
20 truth, the whole truth, and nothing but the truth?

21 THE WITNESS: Yes, ma'am.

22 THE CLERK: You can have a seat.

23 THE WITNESS: Thank you.

24 RODNEY RICHEY,

25 having been produced and first duly sworn as a

1 witness on behalf of the State, then testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. ZELENKA:

5 Q. Mr. Richey, how are you currently employed?

6 A. I'm employed at Richey and Richey.

7 Q. Okay. And what is Richey and Richey?

8 A. It's a law firm in Greenville.

9 Q. Okay. Approximately, how long have you been
10 practicing law?

11 A. Twenty-seven years I think.

12 Q. Okay. And what percentage of your practice is
13 criminal practice as opposed to civil?

14 A. Fifty percent.

15 Q. Okay. Has that been pretty consistent
16 throughout your career?

17 A. Yes, sir.

18 Q. Okay. Has a number of those clients been
19 involved in violent crimes?

20 A. Yes, sir.

21 Q. Has a number of those clients been involved in
22 murder cases?

23 A. Yes, sir.

24 Q. Has -- what is the percentage of -- of murder
25 cases, if any, that went to trial?

1 A. What is -- I missed the last part. I'm sorry.

2 Q. Let me ask it maybe simpler. How many murder
3 cases have you tried before a jury?

4 A. Oh, God, it's -- out at least ten, three of
5 them -- two or three would've been death penalty,
6 but at least ten at least.

7 Q. Okay. So, roughly, at least ten cases you
8 investigated and participated in trials involving
9 murder cases?

10 A. Yes, sir.

11 Q. So you were experienced in the investigation
12 and preparation of a murder case?

13 A. Yes, sir.

14 Q. Okay. How did you come to represent Steven
15 Reynolds, the applicant, in this case?

16 A. He -- this was an Oconee case and there was a
17 bunch of conflicts up there, and so I did it as a
18 conflict case.

19 Q. Okay. Conflict case, so you were essentially
20 court appointed?

21 A. Yeah. Yeah, it was a court appointed case.

22 Q. Okay.

23 A. He had had a couple of lawyers in Oconee and
24 they wanted somebody out of the county. I think
25 that's what it was.

1 Q. Okay. And, briefly, describe your interaction
2 with your client.

3 A. Well, Steven was a young defendant. I think he
4 was 18 at the time. Really a young kid. I got the
5 case, and he had had some previous lawyers. I went
6 to the jail to go over the initial, I'll say,
7 consultation with him to figure out what was going
8 on.

9 And we talked about it. I think he was in DJJ
10 or just recently got out. He had some juvenile
11 stuff, and we talked about that and the actual case.
12 And that first initial meeting, because I was the
13 second or third lawyer, he actually knew more about
14 the case than I did. I didn't know anything. I
15 just wanted to make contact with him.

16 I got discovery. We went over it the second
17 time I think. We went over discovery, and he -- he
18 had indicated to me at that point that he was not at
19 the scene. He was like, "No, I'm not guilty. I
20 wasn't even there."

21 Okay. So based upon that conversation with
22 him, I just looked and I got an ex parte order to
23 get an investigator. And so I hired an
24 investigator. And before the investigator met with
25 him, I went out to the jail to talk to him to get

1 some more information from him.

2 And so I basically went to the jail and said,
3 "Hey, man, you know, I got this investigator. If
4 you wasn't there, I mean, where were you? We got to
5 have somewhere to go. I mean, we just can't -- I
6 just can't send a guy out there. Can you kind of
7 tell me?"

8 And he's like, "Hmm, I was there."

9 And I was like, "Okay."

10 And then he told me that I shot both the
11 people. Okay. And at that point, it kind of
12 changed because he told me he shot the people. And
13 there was a witness I believe in the case too.

14 And so I then left. The solicitor called me
15 with some 50 or some 50-year offer. It was a good
16 amount of time. Well ---

17 Q. Which solicitor contacted you?

18 A. Lindsey called me.

19 Q. Okay.

20 A. And -- and -- well, I called her and said,
21 "Hey, is there an offer?" Just kind of basic
22 general stuff.

23 And then there was a sequence of events that
24 Steven discussed a little bit down at the jail. He
25 was getting in a bunch of -- and I say bunch, but he

1 was getting into some altercations down there. One
2 of them, the guy got his front teeth kicked out and
3 all this stuff.

4 So then Lindsey called me and basically said,
5 "Hey, we need to get this guy out of jail."

6 Okay. And so I proposed to them, you know, I
7 said, "Well, if you do murder 30, then we can do
8 this thing."

9 And she's like, "No. I'm not doing murder 30
10 on him. I'm not."

11 So she offered me 35. I got the 35-year offer.
12 I went out to the jail. Me and him discussed the
13 offer, going to trial, the whole nine yards. And,
14 quite frankly, he was -- he was excited that he got
15 that offer. I mean, we even computed at his age
16 that he would get out at 50-whatever years old he
17 was. So we -- we went through that this is what
18 this means. You're 18. When you get out, you'll be
19 whatever age. It was 50-something because we both
20 talked about that. And -- and he expressed to me
21 that he would still have some life to live and all
22 this stuff.

23 And we went over his right to a jury trial, but
24 he didn't want a trial. Once we got the 35, he was
25 relieved because he was expecting to get life on

1 this thing, but I did have a life offer. I did have
2 a 50-year offer or something like that, but -- so he
3 wanted to plead. I mean, he wanted to plead. I
4 mean, he was like, "Okay. I got that, I'll plead."
5 And -- and I discussed it with him. You have a
6 right to a trial, all this stuff. That's not what
7 he wanted to go.

8 And so because I had that offer, and I told
9 him, I was like, "You know, Steve, we got this
10 offer, but I don't know if the judge is going to
11 accept this for two murders. I mean, I just don't.
12 I mean, we got it, but it's going to be a question
13 to get the judge to approve this offer."

14 And before the hearing, me and the solicitor
15 went back and talked to Judge McIntosh. Initially,
16 he was -- and I'll use the phrase "not inclined" to
17 do it, but after we explained the dynamics in the
18 jail and this and that, and he decided and we did
19 the plea.

20 As far as an appeal, I mean, it was a guilty
21 plea. My client was satisfied with the sentence he
22 got. I mean, you know, and I didn't have a factual
23 basis for an appeal, but I just -- he was -- he was
24 happy he got that offer.

25 Q. Okay. Let me hone in on a couple of things.

1 You testified that you went over the discovery with
2 him?

3 A. Yeah.

4 Q. Describe that in a little bit more detail.

5 A. Well, I had the initial discovery. I went
6 through it with him, and we -- and he was
7 contradicting what was there. And at the time he
8 was saying, "Look, I wasn't there. This witness
9 is" -- you know, he gave me all kind of reasons, but
10 so I was trying to hone in this discovery now is
11 saying something different than what you're saying,
12 so where were you? He said, "I wasn't there."

13 And I said, "Okay. I'll go out and get an
14 investigator and we'll start having him go out and
15 talk to people and all this stuff." And -- and
16 that's when that prior -- you know, I did an ex
17 parte order. I saw on here at some point we get the
18 fee for the investigator, and -- and I talked to the
19 investigator. And he basically was like, "Where do
20 you want me to go? What do you want me to do?" I
21 said, "Oh, okay. I got to go back out and talk to
22 him and figure out, okay. You say you wasn't there.
23 We got to lead the investigator somewhere."

24 And -- and so I put -- I said, "Hey, man, if
25 you wasn't there, you got to tell me so we can

1 get" -- and that's when he told me, "Hey, I shot
2 them." And so the issue of him not being there was
3 pretty much over.

4 Q. Okay. Talk about he had mentioned whether
5 there was a weapon found that was connected to him?

6 A. I -- I don't think there was a weapon found. I
7 think in this case there were witnesses there when
8 he shot the two guys. And, I mean, he's right. The
9 witnesses told the cops what happened, and so -- and
10 it was -- it was multiple codefendants in this case.
11 Some had minor involvement; some had a lot. And so
12 we talked about that. And he's right. They just
13 had the statements from the alleged witnesses.

14 Q. Okay. Let me back up a step because the judge
15 may not know anything about the facts of the case.
16 Can you briefly describe the circumstances of the
17 State's version of the case?

18 A. Well, I don't remember the exact facts. What I
19 do remember that this involved drugs in this
20 particular case. And the thing about it is what
21 helped him in the case is that his parents, for lack
22 of a better phrase, were not very good and there was
23 an issue of whether his dad had actually gave him
24 the gun to go to this place and shoot this guy
25 over -- you know, drugs. I think one of the

1 statements, the second guy got shot because he
2 didn't want to have any witnesses to the first
3 shooting, which I told him that didn't make a lot of
4 sense because there were other people there, so this
5 theory about "I'm going to shoot the second because
6 I don't want any witnesses."

7 And so because of his mom and his dad -- he
8 pretty much raised himself. He pretty much had to
9 fend for himself pretty much his whole life. He was
10 adopted by these folks at some point or lived with
11 them. He was doing good with them, but then his mom
12 got in his life and just tore him apart. I mean,
13 just -- because he was doing good.

14 And then that helped him too in the
15 negotiations because everybody -- the prosecutors in
16 Oconee had a history with the family, and they knew
17 that his circumstances was not his own doing. It
18 had a lot to do with his parents and so, but that's
19 essentially what the shootings, if I recall
20 correctly, were over drugs.

21 And his dad, the whole big thing was that he
22 went to his dad's house first I believe and got the
23 gun and went and shot the guy. And so I don't
24 think -- that was the facts that I recall.

25 Q. Okay. With respect to explaining the elements

1 of the particular charges -- murder, possession of a
2 weapon during a violent crime, armed robbery, and
3 malicious injury to property. Do you -- you advised
4 the judge that you went over the elements with him.
5 Do you recall how you described those to the
6 defendant?

7 A. Well, most of the time in my preparation for
8 the guilty plea, we'll go through the elements.
9 Basically, read out what a murder is. And I
10 normally go over all these -- the charges in
11 preparation for the plea because the judge, in some
12 cases, asks the defendant, "Do you understand what
13 you're pleading to?" And so me and him went through
14 that prior to the plea.

15 Because once I went -- once I got the 30 -- 35
16 I think year offer, I went down to the jail because
17 I didn't know how long he -- you know, I didn't know
18 how long he was going to be out there.

19 And then we sat down. We went through the
20 whole thing because they gave us a deadline. I want
21 to say it was Monday. They gave us to Thursday to
22 plead if he wants this offer, so I pretty much had
23 to drop everything and go out to Oconee. Make sure
24 that he understood what he was doing, the elements,
25 all of this stuff, but he -- you know, he was

1 enthusiastic at the time over the offer, I mean,
2 because -- because I wanted 30. And my whole thing
3 was maybe if we kind of push them a little bit, we
4 could get 30 out of it, but he didn't want to do
5 that once we got the 35.

6 Q. Okay. At the time did you understand that
7 sentences for murder carry day-for-day?

8 A. Yeah. That's what I said, when we talked about
9 the charge, we talked about he would be in his early
10 50s when he got out. Me and him talked about that.
11 At his age at 18 at the time, he would be in his 50s
12 when he got out on his sentence. And -- and we
13 discussed at 50 years old because -- because at that
14 time I was around 50 years old myself. So I told
15 him, "Look, you'll be younger than me when you get
16 out."

17 MR. ZELENKA: Okay. I think that's all the
18 question I have. Thank you, Your Honor.

19 THE COURT: All right. Thank you. Any cross?

20 MS. ROSS: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. ROSS:

23 Q. How many days would you estimate it was between
24 the time you were appointed and the actual guilty
25 plea?

1 A. I noticed on here, I -- I think the guilty plea
2 was in November. I did the funding order in August,
3 and I had been appointed probably about three months
4 before that, so whatever that comes to.

5 Q. Around six months or so?

6 A. About eight months or somewhere around there.

7 Q. Now, as far as the discovery, so not really any
8 forensic, but one witness or more than one witness?

9 A. I think there were two witnesses and there was
10 about four codefendants in the jail that were going
11 to test -- they charged a bunch of people in this
12 case. I mean, I think -- I want to say five or six
13 people. There was a bunch of people that they
14 charged. Some of them got out of jail, the lesser
15 ones, I say, supposedly in their eyes, but there
16 were a lot of -- there were codefendants going to
17 testify against him.

18 Q. All right. And wouldn't you agree that after
19 this incident at the jail, Mr. Reynolds was just
20 eager to plea to move on and get out of the local
21 jail?

22 A. I think my understanding was the opposite.
23 They wanted him out. I mean, he -- there were some
24 incidents in the jail that they claimed -- I don't
25 know the truth of it. They claimed he was

1 instigating a bunch of stuff. Because when I went
2 to the jail, they had this hyper security around
3 him. I'm like, "Look, guys. I mean, I got to talk
4 to the guy. I mean, I -- you know, I mean, y'all
5 can't like come in the room and do all of this
6 stuff." But he -- he wanted -- once he got that
7 35-year offer, he was hot and heavy on it.

8 Q. And so do you recall him saying what he said
9 about getting staples in his head or anything like
10 that or getting ---

11 A. He -- I -- I mean, it was -- he -- had, I
12 believe, about two or three really bad incidents.
13 The first -- one of the ones is they had held the
14 guy down at the jail, and it was my understanding
15 they kicked all of his front teeth out. And the
16 jail -- it was just a big ruckus going on down
17 there, so he had a couple -- if I recall, a couple
18 of really bad incidents down there, so it -- it --
19 it was a mess. I'll say it like that.

20 MS. ROSS: All right. I've got no further
21 questions.

22 THE COURT: All right. Thank you. Redirect?

23 MR. ZELENKA: Nothing on redirect, Your Honor.

24 THE COURT: Mr. Richey, you can step down.

25 THE WITNESS: Thank you, Your Honor.

1 (Witness excused.)

2 MR. ZELENKA: Your Honor, that's the State's
3 case.

4 THE COURT: All right. I'll be glad to hear
5 from the attorneys.

6 MR. ZELENKA: May it please the Court? We
7 submit, the applicant, based upon credible testimony
8 of Mr. Richey, supported by the statements made
9 during the guilty plea, which would've been entitled
10 to a presumption of verity, has -- they failed to
11 meet their burden of proof to show that counsel was
12 either inefficient or that was prejudicial under the
13 decision of *Hill v. Lockhart*, which applies
14 *Strickland v. Washington* to guilty plea cases.

15 In particular, they failed to show any
16 potential performance related to failure to
17 adequately visit and investigate the matter based
18 upon the discussions he had with his client.
19 Particularly, there's credible evidence in the
20 record that discovery was provided by Mr. Richey.
21 They went over that discovery together.

22 During the outset of their inquiry and
23 discussions, there was an epiphany on the part of
24 Mr. Reynolds where Mr. Reynolds admitted he was
25 present at the scene to Mr. Richey. And, in fact,

1 he had done the shooting.

2 At that particular time, as Your Honor knows,
3 under the law, that ties the defense lawyer's hands
4 on how that case can be further investigated and --
5 and proceed if they went to trial, which essentially
6 the situation where they would merely require to put
7 the State to its burden of proof the way those
8 matters would necessarily have been presented.

9 So it -- it's clear that counsel well advised
10 his client concerning the elements of each of the
11 offenses, one of the allegations that are raised
12 before the Court, and that he went over the type of
13 time the defendant could receive if it went to
14 trial, as well as the impact of the negotiated
15 sentence, which is clearly that those discussions
16 supported and gave adequate information to the
17 defendant at the time prior to the plea and made
18 full understanding of the consequences of that plea
19 and the actual time he would receive.

20 At the time those negotiations were placed on
21 the record. Judge McIntosh accepted those
22 negotiations and sentences appropriately and there
23 was no basis to undermine that guilty plea. And it
24 appeared that from the testimony of the defendant
25 and his responses that he had that understanding

1 throughout.

2 So, again, that understanding came from the
3 judge as well as Mr. Richey and supports the
4 determination that that plea was appropriately
5 entered. There hasn't been any insufficient
6 performance, which would've changed the demeanor of
7 the defendant and the decision of the defendant to
8 cause him to a reasonable probability to have gone
9 to trial rather than enter the guilty plea, the
10 standards of *Hill v. Lockhart*. So we submit they
11 failed in their burden of proof and that the amended
12 application and application should be denied.

13 THE COURT: All right. Thank you. Ms. Ross.

14 MS. ROSS: Thank you, Your Honor. May it
15 please the Court? We move to have the motions or
16 the files in support of the testimony pursuant to
17 *Lowe v. State*. You did hear from the stand on the
18 applicant's testimony, you did hear that he found
19 out he was not indicted within the 90 days as
20 required by latest Rule 3, that he did state that he
21 did not know, I mean, what his testimony was, that
22 he did not realize it was not 85 percent. And I
23 don't think the transcript corrected that possible
24 misunderstanding.

25 I would also add that his testimony was that he

1 felt threatened and unsafe at the jail to the degree
2 that -- that he -- that his plea itself was coerced
3 by that situation going on at the jail. So based on
4 his testimony, we'd ask the Court to grant the
5 post-conviction relief.

6 THE COURT: All right. Thank you.

7 MS. ROSS: Thank you, Your Honor.

8 THE COURT: I'll review the records and the
9 testimony from today. I'll rule by the end of next
10 week. Thank you.

11 MS. ROSS: Thank you, Your Honor.

12 (At 10:37 a.m., proceedings concluded.)

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Oconee County, South Carolina, on the 22nd day of August, 2023.

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

January 4, 2024

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
OCONEE COUNTY	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
Steven L. Reynolds, SCDC #370355,	)	CASE NO. 2020-CP-37-0367
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

FILED OCONEE COUNTY, SC
 MELISSA C. BURTON
 CLERK OF COURT
 2023 OCT 18 A 10:06

This matter comes before the Court by way of Steven L. Reynolds (Applicant) application for post-conviction relief (PCR) filed on June 9, 2020. Respondent, the State of South Carolina, filed its Return on December 7, 2020, requesting an evidentiary hearing to resolve the claims set forth in the application. On February 22, 2023, Applicant filed an Amended Post-Conviction Relief Application.

On August 22, 2023, an evidentiary hearing was held at the Oconee County Courthouse before the Honorable Daniel Dewitt Hall. Applicant was present and represented by Susannah C. Ross, Esquire. Deputy Attorney General Donald J. Zelenka represented Respondent. In support of these claims, Applicant testified on his own behalf. Respondent presented testimony from Rodney W. Richey, Esquire (Plea Counsel).

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

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South

Carolina Department of Corrections (SCDC). During its April 2019 term, the November 17, 2021 County Grand Jury indicted Applicant for two counts of murder (2019-GS-37-0523, -0524); two counts of possession of a weapon during the commission of a violent crime (2019-GS-37-0523, -0524); armed robbery (2019-GS-37-0525); and malicious injury to property (2019-GS-37-0526).

On November 21, 2019, Applicant appeared before the Honorable R. Lawton McIntosh and pleaded guilty as indicted. Rodney W. Richey, Esquire represented Applicant. Tenth Circuit Solicitor Lindsey Simmons prosecuted the case. Judge McIntosh sentenced Applicant to concurrent sentences of 35 years on each murder charge, 30 years for armed robbery, and a maximum sentence of 5 years for malicious injury to property pursuant to the State's recommendation. Applicant did not appeal his conviction or sentence.

FACTS GIVING RISE TO THE CONVICTION

The facts giving rise to Applicant's conviction were articulated by the State at Applicant's plea hearing, as follows:

Thank you, your Honor. May it please the court. On September 10, 2018, here in Oconee County¹, the Defendant, with malice aforethought, did shoot and kill Tim Caldwell and David Tranah [during] an armed robbery. Prior to the killings, the Defendant also [shot] into an unoccupied vehicle belonging to the Oconee County Sheriff's Office causing damage between 2- and \$10,000.00.

(Plea Tr. p.10, 16-19).

¹ For the court's summary, the facts giving rise to conviction took place in the "compound." The compound is an area in Seneca widely recognized for drug and criminal activity. The course of investigation revealed Applicant went to the compound to collect an alleged drug related debt and the only shots fired were of Applicant. (Plea Tr. p. 11, 23-25; p. 14, 10-23).

CURRENT ACTION BEFORE THIS COURT

In his original application, Applicant alleged he was being held in custody unlawfully as set forth below:

1. Ineffective Assistance of Plea Counsel
 - a. "Counsel failed to do an adequate investigation."
2. Prosecutorial Misconduct
 - a. "Prosecutor failed to indict within 90 days and no showing of an ongoing investigation to warrant such a delay".
3. "Will amend other issues upon receipt of representation."

Applicant requested relief in the form of vacating sentence and/or sentence reduction.

On February 22, 2023, Applicant filed an amended PCR application adding the following additional claims for relief (verbatim):

1. Ineffective Assistance of Plea Counsel
 - b. "Failing to visit and review discovery with Applicant;"
 - c. "Failing to adequately explain the elements of the charges prior to the plea; and"
 - d. "Failing to appeal the appeal."

Before this Court are Oconee County Clerk of Court records regarding the subject's conviction, Applicant's records from SCDC, Applicant's guilty plea transcript, and records of Applicant's current PCR action.

SUMMARY OF THE TESTIMONY AT THE EVIDENTIARY HEARING

APPLICANT'S TESTIMONY

On direct examination, Applicant testified Plea Counsel was ineffective because he only spent forty-five minutes consulting with him and failed to review discovery with him before he pled. Applicant testified he did not understand the charges against him, and Plea Counsel merely advised him he could get him a better sentence than a life sentence if he pled. Applicant testified he pled because he did not feel safe in county jail, and believed he would lose his life to police brutality. Applicant testified he did not understand the legal implications of pleading guilty.

Applicant testified he was under the impression he would only have to serve eighty-five percent of his sentence and did not understand he would have to serve his sentence day for day since it was a capital case. Applicant testified he filed his PCR application without appealing because he believed that was what he had to do. Applicant testified Plea Counsel was ineffective for advising him to plea when the State had no evidence against him except hearsay testimony of a co-defendant. Applicant testified he should have gone to trial because of lack of evidence but understands Plea Counsel advised him to plea because he could have received a life sentence if found guilty at trial. Applicant testified if he knew everything he knows now, like State failing to indict within ninety days, he would have decided to proceed to trial.

On cross-examination, Applicant testified he knew he was charged with murder related to Applicant shooting the victim. Applicant testified these were not difficult concepts to understand. Applicant reiterated he knew what he was charged with. Applicant testified he knew he could receive thirty years to life for the charges against him, and that he could receive five years for other charge. Applicant testified Plea Counsel got him a favorable negotiated sentence. Applicant testified Plea Counsel advised him of the possible sentences he could receive, the terms of the negotiated plea offer, and Applicant was aware he could receive two life sentences if he proceeded to trial. Applicant testified he never spoke with Plea Counsel about his guilt and did not give a statement to law enforcement. Applicant testified he understood when he pled he acknowledged he committed the offense he was charged with. Applicant testified Plea Counsel did not explore possible defenses before his plea, and never advised him to go to trial. Lastly, Applicant testified he never indicated to Plea Counsel he wanted to appeal.

PLEA COUNSEL'S TESTIMONY

On direct examination, Plea Counsel testified he had been practicing law for twenty-seven years, criminal law making up about fifty percent of his practice. Plea Counsel testified he

has tried about ten murder cases, and is experienced in preparation of murder cases. Plea Counsel testified he was appointed to Applicant's case. Plea Counsel testified he was the second or third attorney appointed to Applicant's case, and in the initial meeting Applicant brought Plea Counsel up to speed on his case. Plea Counsel testified during initial consultation Applicant informed him he was not at the scene of the crime, which prompted Plea Counsel to hire an investigator. Plea Counsel testified he met with Applicant again before the investigator met with Applicant to ascertain Applicant's alibi, at which point Applicant informed him he was guilty. Plea Counsel testified Solicitor Simmons called him after and offered fifty-years. After the initial offer, Plea Counsel testified there was a sequence of events at the jail, and Solicitor Simmons informed Plea Counsel they needed Applicant out of jail. Upon receiving this information, Plea Counsel testified he proposed a thirty-year plea offer. Plea Counsel testified Solicitor Simmons rejected this offer, but then offered thirty-five years.

Plea Counsel testified he discussed the thirty-five-year offer with Applicant and discussed proceeding to trial. Plea Counsel testified Applicant was excited about 35 year offer and was relieved because he expected substantially more time. Plea Counsel testified he discussed Applicant's right to a jury trial with him, but Applicant did not want to proceed to trial. Plea Counsel testified he advised Applicant the judge might not accept offer. Regarding Applicant's right to appeal, Plea Counsel testified he did not advise Applicant of his right to appeal because Applicant pled guilty and there was no factual basis for an appeal. Plea Counsel testified the trajectory of Applicants case changed when Applicant informed Plea Counsel he was guilty of the charges. There were witnesses to the shooting, and there were multiple co-defendants.

Plea Counsel testified Applicant's case involved drugs and Applicant's tragic upbringing helped him in plea. Plea Counsel testified as soon as he received offer of thirty-five years, he went to the jail and discussed it with Applicant, because he did not know how long the offer would be available. Plea Counsel advised Applicant he could try and push Solicitor Simmons on a thirty-year offer, but Applicant wanted to take the thirty-five-year offer. Plea Counsel testified he advised Applicant the sentence carried day for day, and Applicant would be released when he was fifty.

On cross-examination, Plea Counsel testified he was appointed to Applicant's case three months before Applicant's plea hearing. Plea Counsel testified the State had two witnesses and four co-defendants ready to testify against Applicant at trial. Many people were charged in the case. Plea Counsel understood the officers at county jail wanted Applicant out because Applicant was instigating fights. Plea Counsel testified Applicant jumped to accept the thirty-five-years plea offer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCF (stating that in a post-conviction

relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

Ineffective Assistance of Plea Counsel

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases.

Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential[, as] [i]t is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance 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. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 693 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59.

Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 137 S. Ct. 1958, 1966, 198 L. Ed. 2d 476 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. 357, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a showing of 'prejudice' from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. 357, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres v. State, 282 S.C. at 134, 318 S.E.2d at

361 (1984).

This Court finds Applicant has not met his burden as to his claims of ineffective assistance of plea counsel rendering his guilty plea involuntary. The specific claims are addressed below.

Involuntary Guilty Plea

Applicant also claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusive unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to

trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, a claim of an involuntary guilty plea is, in essence, a claim of ineffective assistance of counsel, and is treated as such.

INITIAL FINDINGS

As a matter of general impression, this Court finds Plea Counsel's testimony at the evidentiary hearing credible and persuasive, where he presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*).

This Court makes the following findings from the record: 1) Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 4); 2) Applicant understood the details and circumstances of the negotiated plea (Plea Tr. pp. 4-5); 3) Applicant clearly indicated he was satisfied with Plea Counsel (Plea Tr. p. 9); 4) Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 5-7); 5) Applicant indicated he had enough time with Plea Counsel (Plea Tr. p. 9); 6) Applicant indicated no promises were made to him and his decision to plead guilty was voluntary (Plea Tr. p. 7-8); 7) Applicant was not on drugs or medications that would affect his ability to understand the plea proceedings (Plea Tr. p. 5); 8) Applicant understood the sentencing range (Plea Tr. p. 4-5); 9) Applicant agreed with the allocation of the facts surrounding the State's case (Plea Tr. 4); 10) Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 19-20).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegations (1)(a), (b): Counsel failed to do an adequate investigation, visit, and review discovery with Applicant.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to adequately investigate his case, visit with him, and review discovery. Counsel has a duty to investigate as “reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options.” Strickland, 466 U.S.at 680. There is no precise measurement for what constitutes reasonable pretrial investigation, and counsel's investigatory decisions must be assessed in light of the information known at the time of the decisions. Id. The investigation need not be exhaustive, but it must “include an independent examination of the facts, circumstances, pleadings and laws involved.” Id., quoting Rummel v. Estelle, 590 F.2d 103, 104 (5th Cir. 1979).

To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 345, 495 S.E.2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial). Also note, that the “brevity of time in consultation, without more, does not establish that counsel was ineffective.” Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980).

At the evidentiary hearing on direct examination, Applicant testified Plea Counsel was ineffective because he met with him for only forty-five minutes, did not go over discovery, and did not investigate possible defenses. On cross-examination, Applicant testified Plea Counsel did not explore possible defenses before his plea.

On direct examination, Plea Counsel testified he was the second or third attorney appointed to Applicant's case, and in their initial meeting, Applicant brought him up to speed on the status of his case. Plea Counsel testified Applicant informed him he was not at the scene of the crime, prompting Plea Counsel to hire an investigator to investigate a possible alibi. Plea Counsel testified that before the investigator could meet with Applicant, he met with Applicant to ascertain his alibi, at which point Applicant admitted his guilt to the charges against him. Plea Counsel testified the trajectory of Applicant's case after this admission. Plea Counsel testified the tragic upbringing of Applicant helped him in his plea. On cross-examination, Plea Counsel testified the State had two witnesses and four co-defendants ready to testify against Applicant at trial.

This Court finds the testimony of Plea Counsel credible, and finds Applicant has failed to show deficiency or any resulting prejudice from Plea Counsel's conduct. This Court finds Plea Counsel hired an investigator to look into a possible defense, but changed the trajectory of Applicant's defense after Applicant admitted his guilt. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996) (Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective). This Court finds Plea Counsel met with Applicant multiple times and discussed his case with him. Plea Counsel evidenced his knowledge of the facts, circumstances, and possible defenses in Applicant's case. Applicant failed to present testimony, documentary evidence, or other evidence of what Plea Counsel could

have discovered had he spent more time in consultation with Applicant or conducted more investigations. Therefore, Applicant's allegations are **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation (1)(c): **Plea Counsel failed to adequately explain the elements of the charges prior to the plea.**

Applicant alleged Plea Counsel failed to explain the elements of the charges against him. On direct examination, Applicant testified he did not understand the charges against him, and Plea Counsel merely advised him he could get him a better sentence than life if he pled.

However, on cross-examination, Applicant testified he knew he was charged with murder, and that charges against him were not difficult concepts to understand. Applicant testified he knew he could receive thirty years to life for murder, and five years for the other charge. Applicant testified Plea Counsel obtained a favorable negotiated sentence for him.

On direct examination, Plea Counsel testified he was Applicant's second or third attorney, and Applicant knew his case and informed Plea Counsel about his case in their initial meeting.

During Applicant's plea, in the presence of Applicant, Assistant Solicitor Simmons recited to the plea court all the charges against Applicant, including murder, armed robbery, and malicious injury of property. (Plea Tr. p. 2). Additionally, Applicant informed the plea court he understood murder carried a possibility of thirty years to life, and understood the sentences for each charge under the terms of the negotiated plea. (Plea Tr. p. 4). Moreover, Plea Counsel informed the plea court he went over all the elements of all the charges with Applicant and explained the possible sentences Applicant could have received. (Plea Tr. 9).

This Court finds the combination of the testimony presented at the evidentiary hearing and the plea record evidence Plea Counsel informed Applicant of the elements of the charges against him. Applicant initially testified he did not understand the charges against him, but the

rest of Applicant's testimony indicates Applicant knew exactly what he was charged with, and Applicant admits Plea Counsel's conduct ultimately benefited him. Moreover, the plea transcript reflects Plea Counsel explained the elements of the charges, and Applicant understood the nature of the charges against him and the possible sentences he faced. (Plea Tr. pp. 2-4; 9). Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so). Therefore, this Court finds Plea Counsel's representation of Applicant was not deficient, and Applicant cannot demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation (1)(d): Plea Counsel failed to "Appeal the Appeal."

In his amended application, Applicant alleged Plea Counsel failed to "appeal the appeal." Applicant did not provide specific facts to support this allegation in his amended application or present testimony or any other evidence in support of this allegation at the evidentiary hearing. Therefore, this Court treats this allegation as waived and abandoned. (See also Section related to an alleged failed to appeal the guilty plea below.) Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation (2)(a): Applicant alleges prosecutorial misconduct against Solicitor Simmons for failing to indict him within 90 days and no showing of an ongoing investigation to warrant such delay.

Applicant alleges Solicitor Simmons' failure to indict him within ninety days constituted prosecutorial misconduct, and had he known she failed to do so he would have elected to proceed to trial.

On direct examination, Applicant testified if he knew everything he knows now, including the fact the State failed to indict him within ninety days, he would have decided to go to trial.

This is not a showing of prosecutorial misconduct entitling to relief inasmuch as it did not create a jurisdictional bar to the prosecution under Rule 3, SCRCrimP. The Supreme Court of South Carolina has held Rule 3 of the South Carolina Rules of Criminal Procedure is an "administrative rule adopted for the purpose of insuring an orderly and prompt disposition of cases. While the rule is designed to secure a prompt handling of cases, it was not intended to be the criterion for determining whether the constitutional guaranty of a speedy trial has been met." State v. Culbreath, 316 S.E.2d 681, 681 (S.C. 1984) ("[T]he failure of the solicitor to act upon a warrant within ninety (90) days ... does not within itself invalidate a warrant or prevent subsequent prosecution."). Also, State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007), rev'd on other grounds, 384 S.C. 504, 682 S.E.2d 820 (2009). As an apparent non-jurisdictional defect, the defect must be timely raised as required by S.C. Code Ann. § 17-19-90 (2003), before the jury is sworn, or the defect is waived. Hooks v. State, 353 S.C. 48, 577 S.E.2d 211 (2003), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E. 2d 494 (2005). There is no prosecutorial misconduct prove and it must be dismissed.²

Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and

² In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). Applicant's allegation is not framed in the context of ineffective assistance of counsel.

DISMISSED WITH PREJUDICE.

ALLEGATIONS RAISED DURING THE EVIDENTIARY HEARING

Allegation: Failing to appeal conviction and sentence.

Applicant alleges Plea Counsel was constitutionally ineffective because Plea Counsel failed to appeal his conviction and sentence. “Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal.” Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). “However, the standard for a guilty plea differs.” Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). “Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.” Id. See Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000).

On direct examination, Applicant testified he never informed or otherwise indicated to Plea Counsel he desired to appeal his guilty plea. Applicant testified he filed his PCR application without appealing because he believed that was what he had to do.

On direct examination, when asked whether he discussed an appeal with the Applicant, Plea Counsel testified he did not consult with Applicant concerning his right to appeal because Applicant pled guilty and there was no factual basis for an appeal.

This Court finds Applicant has failed to show extraordinary circumstances requiring Plea Counsel to inform Applicant of his right to appeal or file an appeal from his guilty plea or sentence on Applicant's behalf. No objection was made during the guilty plea of the negotiated thirty-five (35) year sentence. Accordingly, Applicant's request for appellate relief by way of a

belated appeal of his guilty plea is **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation: **Applicant pled because of Plea Counsel's advice.**

Applicant alleged Plea Counsel was ineffective for advising him to plea. This Court finds that counsel advice was within the standards of competence demanded of lawyers practicing criminal law and not deficient. On direct examination, Applicant claimed Plea Counsel was ineffective for advising him to plea when the State had no evidence against him except hearsay testimony of a co-defendant. Applicant testified he should have gone to trial because of lack of evidence, but understands Plea Counsel advised him to plea because he could have received a life sentence if found guilty at trial. On cross-examination, Applicant testified Plea Counsel never advised him to proceed to trial.

On direct examination, Plea Counsel testified he met with Applicant at jail and discussed the State's thirty-five year offer. Counsel claimed Applicant was excited about the offer. Plea Counsel testified he also discussed Applicant's right to a jury trial, and fact the plea judge might not accept the negotiated thirty-five year recommendation by the State. Plea Counsel testified Applicant did not want to proceed to trial. Plea Counsel testified he advised Applicant he could push Solicitor Simmons to accept a thirty-year offer, but Applicant expressed he wanted to accept the thirty-five-year offer. Plea Counsel testified he met with Applicant multiple times before this, and during those times he discussed Applicant's case and possible defenses. Contrary to the claim of Applicant, Plea Counsel was aware and advised the Applicant about the evidence the State intended to use against Applicant at trial, including the possibility of the testimony of two eyewitnesses and four co-defendants. The Applicant was excited to learn of the thirty-five year sentence recommendation, as he expected to receive a higher sentence under the circumstances.

At his plea hearing, Applicant made the following statement to the plea court:

THE DEFENDANT: I don't remember her name, but to the widow, I'd like to tell her, I hope some day she can find it in her heart to forgive me because that could be one of the biggest things, no matter what happens here in the courtroom today, to know that the family could be able to forgive me for the wrongs in my life and just to make me feel better, even though I don't deserve it, but I hope she will be able to find it in her heart to forgive me.

(Plea Tr. p. 19).

This Court finds the combination of Plea Counsel's **credible** testimony and the record establish Applicant's plea was given freely and voluntarily. Notably, Applicant made a statement of guilt to the plea court during his plea hearing and expressed his remorse to the victim's family. (Plea Tr. p. 19). see Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements."). Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation: Plea Counsel failed to inform Applicant his negotiated sentence was to be served day to day prior to his plea.

Applicant alleged he did not understand his sentence was to be served day for day. On direct examination, Applicant testified he was under the impression he would only have to serve eighty-five percent of his sentence, and did not understand he would have to serve his sentence day for day since it was a capital case.

On direct examination, Plea Counsel testified he advised Applicant the negotiated sentence carried day for day and Applicant would not be released until he was fifty years old. Plea Counsel testified Applicant jumped to accept the thirty-five-year offer. The plea transcript

reflects Applicant understood the negotiated thirty-five-year sentence carried day for day, based on the following colloquy between Applicant and the plea court:

THE COURT: Do you understand that on the murder charges, you will serve at least -- you will serve day-for-day if I go forward with your recommended sentence?

THE DEFENDANT: Yes, sir.

THE COURT: You will not be given good time or good credits; you will serve day-for-day 35 years?

THE DEFENDANT: Yes, sir

(Plea Tr. pp. 5, l. 25 – 6, ll. 1-7).

This Court finds credible counsel testimony that he advised his client that he would serve day to day of the negotiated thirty-five year sentence for murder, rather than 85% requirement. Further, prejudice under Strickland cannot be shown. Even where counsel offers misinformation, this deficiency can be cured where the trial court properly informs the defendant about the sentencing range. See Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (even if counsel gives erroneous advice, an applicant is not entitled to PCR where any misconceptions are cured by the colloquy during the guilty plea proceeding); Burnett v. State, 352 S.C. 589, 576 S.E.2d 144 (2003) (any possible misconceptions on PCR applicant's part were cured by the colloquy during the plea proceeding); see also Moorehead v. State, 329 S.C. 329, 333, 496 S.E.2d 415, 416 (1998) (“the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing”); Bennett v. State, 371 S.C. 198, 205, 638 S.E.2d 673, 676 (2006) (same).

This Court finds the combination of Plea Counsel's credible testimony and the plea transcript reflect Applicant understood his murder sentences were to be served day to day. Accordingly, Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation: **Applicant's plea was coerced because he feared for his life in county jail.**

Applicant alleged his plea was coerced. On direct examination, Applicant testified he pled because he did not feel safe in county jail, and believed he would lose his life to police brutality.

On direct examination, Plea Counsel testified Solicitor Simmons informed Plea Counsel of a sequence of violent events and complaints at the county jail involving Applicant, where Applicant was instigating fights. Plea Counsel testified before this, Solicitor Simmons offered fifty (50) years, but because the officers wanted Applicant out of the local jail, she offered the lesser thirty-five-year negotiated sentence. Additionally, Plea Counsel testified with the 35 year offer, Applicant did not wish to proceed to trial but wished to plea. On cross-examination, Plea Counsel testified the officers at the county jail wanted Applicant out because of the issues he was causing.

At his plea hearing, the following colloquy occurred between the plea court and Applicant:

THE COURT: Mr. Reynolds, has anybody forced, threatened, or promised you anything to get you to plead today?
 THE DEFENDANT: No, sir.
 THE COURT: Are you doing so of your own free will?
 THE DEFENDANT: Yes, sir.

(Plea Tr. p. 5, ll. 18-25).

This Court finds the combination of Plea Counsel's credible testimony and the record establish Applicant's plea was given freely and voluntarily. Notably, Applicant informed the plea court he was not forced or threatened to plea, and was doing so of his own free will. see Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made

during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements."). Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

CONCLUSION

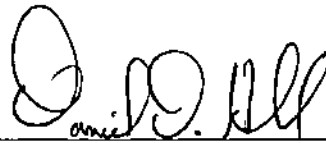
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED** and **DISMISSED with PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. 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 PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 South Carolina Department of Corrections.

AND IT IS SO ORDERED this 8th day of October, 2023.



THE HONORABLE DANIEL DEWITT HALL
Presiding Judge
Tenth Judicial Circuit

York

South Carolina

FILED OCONEE COUNTY, SC
MELISSA C. BURTON
CLERK OF COURT
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FILE NO. 2019-GS-37- DOCKET NO. 2019-GS-37- 00523
WITNESSES

Oconee Co Sheriff's Dept.

Barry L. Owens

ARREST WARRANT NUMBER

COUNT ONE 2018A3710100046
 COUNT TWO 2018A3710100050

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
 Date:

APR 08 2019

VERDICT

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 08 2019, TERM

THE STATE

VS.

STEVEN LEE REYNOLDS

INDICTMENT FOR

COUNT ONE - MURDER

SC Code: § 16-03-0010

CDR Code: 0116

**COUNT TWO - POSSESSION OF A
 WEAPON DURING THE COMMISSION OF
 A VIOLENT CRIME**

SC Code: § 16-23-0490

CDR Code: 0549

Foreperson of Grand Jury
 Date:

SC Code: § 16-03-0010
 CDR Code: 0549

SC Code: § 16-03-0010
 CDR Code: 0549

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 BEVERLY H. WHITFIELD
 CLERK OF COURT

2019 APR -8 P 3:51

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Grand Jurors

AP. J. C. C.

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

INDICTMENT

APR 08 2019

At a Court of General Sessions, convened on _____, the

Grand Jurors of Oconee County present upon their oath:

am. since

COURT

COUNT ONE - MURDER

That Steven Lee Reynolds did in Oconee County, on or about on or about September 10, 2018, unlawfully and with malice aforethought, either express or implied, kill, [REDACTED] by means of shooting with firearm, and the victim died as a proximate result thereof. All in violation of §16-3-10, *South Carolina Code of Laws* (1976, as amended).

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

The defendant, Steven Lee Reynolds, did, on or about on or about September 10, 2018, in Oconee County, South Carolina, while committing the crime of murder, a crime of violence, have in his possession a firearm. All in violation of 16-23-0490 of the *South Carolina Code of Laws* (1976) as amended.

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


LINDSEY SATTERFIELD SIMMONS
DEPUTY SOLICITOR

DOCKET NO. 2019-GS-37- DOCKET NO. 2019-GS-37- DOCKET NO. 2019-GS-37- 00524
WITNESSES

Oconee Co Sheriff's Dept.

Barry L. Owens

ARREST WARRANT NUMBER

COUNT ONE 2018A3710100047
 COUNT TWO 2018A3710100051

ACTION OF GRAND JURY

TRUE BILL

[Signature]
 Foreperson of Grand Jury
 Date:

APR 08 2019

VERDICT

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 08 2019, TERM

THE STATE

VS.

STEVEN LEE REYNOLDS

INDICTMENT FOR

COUNT ONE - MURDER

SC Code: § 16-03-0010
 CDR Code: 0116

**COUNT TWO - POSSESSION OF A
 WEAPON DURING THE COMMISSION OF
 A VIOLENT CRIME**

SC Code: § 16-23-0490
 CDR Code: 0549

Foreperson of Grand Jury
 A Date: 4/8/19

SC Code: § 16-03-0010
 CDR Code: 0549

A VIOLENT CRIME

SC Code: § 16-23-0490
 CDR Code: 0549

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 BEVERLY H. WHITFIELD
 CLERK OF COURT

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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

INDICTMENT

APR 08 2019

At a Court of General Sessions, convened on _____, the

Grand Jurors of Oconee County present upon their oath:

arranged,

COURT

COUNT ONE - MURDER

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The defendant, Steven Lee Reynolds, did, on or about on or about September 10, 2018, in Oconee County, South Carolina, while committing the crime of murder, a crime of violence, have in his possession a firearm. All in violation of 16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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



LINDSEY SATTERFIELD SIMMONS
DEPUTY SOLICITOR

DOCKET NO. 2019-GS-37 DOCKET NO. 2019-GS-37 DOCKET NO. 2019-GS-37-00525

WITNESSES

Oconee Co Sheriff's Dept.

Barry L. Owens

ARREST WARRANT NUMBER

2018A3710100052

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 08 2019

VERDICT

Foreperson of Grand Jury

Date:

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 08 2019, TERM

THE STATE

VS.

STEVEN LEE REYNOLDS

INDICTMENT FOR

ARMED ROBBERY

SC Code: § 16-11-0330(A)

CDR Code: 0139

LSS

STATE OF

COUNTY

STATE OF

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CLERK OF COURT

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Grand Jurors

weapon,

STATE OF SOUTH CAROLINA

of the State
COUNTY OF OCONEE

INDICTMENT

Oconee County

At a Court of General Sessions, convened on APR 08 2019, the

what a
Grand Jurors of Oconee County present upon their oath:

weapon,

a wallet
case made

ARMED ROBBERY

of the State

The defendant, Steven Lee Reynolds, did on or about September 10, 2018 in Oconee County, South Carolina, while armed with a deadly weapon or while displaying what a person present during the robbery would reasonably believe to be a deadly weapon, take by means of force, threats, or intimidation, goods or monies described as a wallet from the person or presence of [REDACTED] All in violation of 16-11-0330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such

case made and provided.

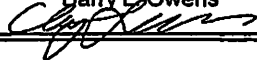

LINDSEY SATTERFIELD SIMMONS
DEPUTY SOLICITOR

DOCKET NO. 2019 GS 37 DOCKET NO. 2019 GS 37 DOCKET NO. 2019-GS-37-00526

WITNESSES

Oconee Co Sheriff's Dept.

Barry L. Owens



ARREST WARRANT NUMBER

2018A3710100065

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

APR 08 2019

VERDICT

Foreperson of Grand Jury
Date:

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 08 2019, TERM

THE STATE

VS.

STEVEN LEE REYNOLDS

INDICTMENT FOR

MALICIOUS INJURY TO PROPERTY

SC Code: § 16-11-0510(A)
CDR Code: 3416FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2019 APR -8 P 3:52

EX-100
STATE OF SOUTH CAROLINA
CLERK OF COURT
COMPUTER

describe
Grand Jurors

The said

of 16-11-0510
STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

The said

INDICTMENT

Occurrence of 16-11-0510
At a Court of General Sessions, convened on APR 08 2019, the

describe
Grand Jurors of Oconee County present upon their oath:

The said

of 16-11-0510
Case made

MALICIOUS INJURY TO PROPERTY

The defendant, Steven Lee Reynolds, did on or about September 10, 2018 in Oconee County, willfully, unlawfully and maliciously do damage to personal property described as a 2017 Chevrolet Tahoe patrol vehicle, the damage being more than Two Thousand (\$2,000.00) but less than Ten Thousand (\$10,000.00) Dollars. All in violation of 16-11-0510(A), Code of Laws of South Carolina, (1976), as amended.

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


LINDSEY SATTERFIELD SIMMONS
DEPUTY SOLICITOR