

MAR 11 2024

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S.C. SUPREME COURT

1 that way either. And it's quite often and I've told my
 2 kids and remind them about who you hanging out with and
 3 also I'm teach you right from wrong because one day you
 4 gone be from under my roof, and you ain't never gone look
 5 back at me and say, daddy, you didn't teach me any better
 6 because one day and you kind of hit on this, Mrs. Hudson.
 7 They get to an age that you don't -- you can't control it.
 8 It's up to them. And so I sympathize with both of you. I
 9 can tell you not long after I got on the bench one of my
 10 colleagues another judge told me said sentencing is the
 11 hardest part of this job. It is.

12 Most of the cases that come in front of us
 13 are -- come by virtue of a negotiation or recommendation
 14 on behalf of the State and for the most part judges go
 15 along with what's recommended or negotiated in cases.
 16 This is one of those cases that you have a negotiation or
 17 recommendation. I want you to understand that as well.

18 Mr. Hudson, I really don't know what to say to
 19 you other than, you know, appreciate your service in the
 20 military. I never served in the military, but I went to a
 21 military college. And I do know that through military and
 22 through training and the discipline that you get and more
 23 importantly leadership skills that you obtain. I don't
 24 know these other guys that you were with that night, but I
 25 will suspect that you were more educated, more

1 experienced, especially when it comes to leadership
2 skills.

3 Your lawyer's conveyed to me you all were either
4 drunk and or high another example of the fact that
5 95 percent -- if that's true, 95 plus percent of what ends
6 up in this courtroom is because of drugs or alcohol
7 because people don't act like they usually do when they
8 sober. You get high. You get drunk. You think you're
9 invincible and bullet proof. And then you go do something
10 dumb that affects somebody like Mr. Cameron's family and
11 it also affect your mom, your sister, your dad, your
12 children because they depend on you. They depend on you.
13 They going to depend on you, but because of bad choices
14 you made you put yourself in a position for them not to be
15 able to.

16 On 2018-GS-21-2120, defendant's hereby committed
17 to the state department of corrections on the attempted
18 arm robbery 20 years. On 2018-GS-21-2120 on voluntary
19 manslaughter, defendant's hereby committed to the state
20 department of corrections for a period 28 years, given
21 credit for 613 days. They're to run concurrent, mental
22 health counseling as well as addictions treatment unit.
23 Good luck to you, Mr. Hudson.

24 MR. WHITE: Thank you, Judge.

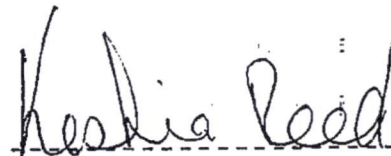
25 : : END OF REQUESTED TRANSCRIPT

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 32, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Florence County, South Carolina, on the 30th day of August, 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 30th day of June 2022.



Keshia Reed, Court Reporter

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18-2120

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
TWELFTH JUDICIAL CIRCUIT

v.

**MOTION TO RECONSIDER
SENTENCE**

ANTHONY HUDSON,

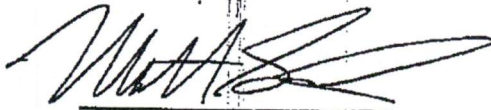
WARRANT NO.: 2017A2110201151
INDICTMENT: 2018-GS-21-2120, A

DEFENDANT.

CHARGES: VOLUNTARY MANSLAUGHTER
ATTEMPTED ARMED ROBBERY

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the above-named Defendant moves before this Court to reconsider the Defendant's sentence pursuant to Rule 29 SCRCrimP. The Defendant was sentenced to twenty-eight years for Voluntary Manslaughter and twenty years for Attempted Armed Robbery to be served concurrently on August 30, 2019 before The Honorable D. Craig Brown.

Respectfully Submitted,



Matt Swilley
Attorney for Defendant
129 S. Coit Street
Florence, SC 29501
Phone: 843-250-3632
Email: Matt@swilleylaw.com

Florence, South Carolina

September 4, 2019

CLERK OF COURT
GENERAL SESSIONS
COUNTY OF FLORENCE, SC
2019 SEP -11 PM 3:49

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF GENERAL SESSIONS
FOR THE TWELFTH JUDICIAL CIRCUIT

FILED

The State

2021 NOV 22 P 3:22
Indictment number 2018-GS-21-2120

vs.

DORIS ROULOS O'HARA
CCCP & GS
FLORENCE COURT
Order Denying Defendant's Motion to Reconsider

Anthony Hudson,


Defendant.

THIS MATTER came before the Court by way of Defendant's Motion to Reconsider Sentence pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. The motion was filed on behalf of Defendant by his attorney, Mr. Matt Swilley, on September 4, 2019. Mr. Swilley submitted mitigating evidence as well as an email brief on December 7, 2020. Assistant Solicitor Ryan White responded via email on December 8, 2020.

After reviewing the briefs of both parties and upon consideration of the mitigating evidence submitted by Mr. Swilley, Defendant's motion to reconsider is DENIED. This motion is decided without oral argument pursuant to Rule 29(a) of the South Carolina Rules of Criminal Procedure.

IT IS SO ORDERED.

November 22, 2021
Florence, South Carolina


The Hon. D. Craig Brown
Presiding Judge

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- 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) Trial counsel had filed a motion to reconsider
- (b) Trial counsel's illadvised against Direct Appeal
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: {

- (a) Hill v. Lockhart
 - (b) There is evidence that warrants a trial.
 - (c) Ineffective assistance of counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) U.S. Supreme Court case Law
 - (b) Inconsistence statements that exculpatory evidence
 - (c) Ineffective assistance of Counsel
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? None
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? None
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? None
 - (d) any other petitions, motions or applications in this or any other Court? None
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?
- NONE
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) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? Yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
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. Matt Switney
- ii. 129 S. Coit street, Florence, S.C. 29501
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment and plea
- ii. sentencing
- iii. _____
19. State clearly the relief you seek in filing this application:
Sentence Reduction, Lesser Charge, Parole.
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Anthony Hudson Anthony Hudson

SWORN to and subscribed before me this 6th
day of November, 2019.

Beth Mangold (L.S.)
Notary Public

My Commission Expires: _____
BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires 8/40/2028

2022 APR 21 PM 2:19
DORIS POULOS O'HARA,
CCCP & GS
FLORENCE COUNTY, SC

FILED

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

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

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

Anthony Hudson *Anthony Hudson*
Applicant

SWORN or affirmed to and subscribed before me this
6th day of November, 2019.

[Signature]
BETH A. WANGOLD
Notary Public, State of South Carolina
My Commission Expires: 6/10/2028

FILED
2022 APR 21 PM 2:19
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

2021. Applicant did not appeal.

II. Allegations

Applicant timely commenced this PCR action on April 11, 2022. In his application, Applicant alleges he is being held in custody unlawfully on the following grounds:

- a. Hill v. Lockhart: U.S. Supreme Court Case Law
- b. There is evidence that which warrants a trial: Inconsistence statements that exculpatory evidence
- c. Ineffective assistance of counsel

As relief, Applicant requests "sentence reduction, lesser charge, parole."

Attached to this return and incorporated herein are the Florence County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, and the transcript of Applicant's guilty plea. The State reserves the right to amend this return upon receipt of any additional relevant material.

III. Motion for More Definite Statement

The State moves for a more definite statement on Applicant's allegations. The Uniform PCR Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50. In an application for PCR, the applicant must make a prima facie showing of entitlement to relief before an evidentiary hearing will be held. Weich v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965). Where a PCR applicant fails to adequately set forth the grounds upon which he seeks relief, the court may at any time prior to entry of judgment "issue orders for amendment of the application or any pleading or motion." S.C. Code Ann. §17-27-70(a); see also Rule 12(e), SCRCP (permitting the Court to order a more definite statement if a pleading "is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading"). The Court may, in its discretion, fix the time for which a more definite statement shall be made. Rule 12(e), SCRCP. Appointed PCR counsel "shall insure that all

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE 2022 OCT -6 PM 2:03 FOR THE TWELFTH JUDICIAL CIRCUIT

Anthony Hudson,)
DORIS POULOS D'HOIAS)
Applicant,)
FLORENCE COUNTY, SC)

v.)

State of South Carolina,)

Respondent.)

RETURN AND MOTION FOR
MORE DEFINITE STATEMENT
(Counsel Appointed)

Respondent, making its return and motion for more definite statement to the application for post-conviction relief (PCR) filed by Anthony Hudson on April 21, 2022, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving a twenty-eight-year sentence pursuant to orders of commitment of the Florence County Clerk of Court. In November 2018, the Florence County Grand Jury indicted Applicant for murder, armed robbery, first-degree burglary, and criminal conspiracy (2018-GS-21-2120). These charges arose from a home invasion that led to the fatal shooting of Johnny Cameron on December 24, 2017.

On August 30, 2019, Applicant pled guilty to the lesser-included offenses of voluntary manslaughter and attempted armed robbery before the Honorable D. Craig Brown. Matthew Swilley, Esquire, represented Applicant and Assistant Solicitor Ryan White represented the State. The plea was without any negotiation or recommendation. Judge Brown found Applicant knowingly and voluntarily pled guilty and sentenced him concurrently to twenty-eight years' imprisonment for voluntary manslaughter and twenty years' imprisonment for attempted armed robbery. Applicant filed a motion to reconsider the sentence, which was denied on November 22,

available grounds for relief are included in the application and shall amend the application if necessary.¹ Rule 71.1(d), SCRCP. Furthermore, Rule 8(a), SCRCP, requires all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Here, Applicant has failed to state with any specificity the facts giving rise to his allegations. Therefore, the State moves pursuant to Rules 12(e) and 71.1(d), SCRCP, to require Applicant, through PCR counsel, to provide a more definite statement of his allegations. Specifically, the State moves to require Applicant to file an amended application in advance of any hearing scheduled in this matter. If Applicant fails to timely file a responsive amended application setting forth specific allegations for relief, the State reserves the right to move for summary dismissal of this application for failure to state a claim.

IV. Ineffective Assistance of Counsel

The State contends Applicant's allegations of ineffective assistance of counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice because of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant cannot satisfy either requirement of Strickland. However, the record likely does

¹ Applicant was appointed counsel to represent him in this action on May 19, 2022.

not refute or disprove Applicant's allegation of ineffective assistance of counsel; therefore, the State requests an evidentiary hearing to resolve the issues once Applicant has filed an amended application. 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").²

V. Any Future Amendments and Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney (and not Applicant) is the only individual authorized to file amendments to this applicant. 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 (2018), or, alternatively, the State will request a continuance. See id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

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

² The State reserves the right to move for summary dismissal should Applicant fail to file an amended application that adequately sets for the basis for his allegations.

testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

VI. Conclusion

WHEREFORE, the State respectfully requests Applicant, through PCR counsel, provide a more definite statement of his allegations. Once a more definite statement is provided, the State requests an evidentiary hearing. However, if Applicant fails to timely file a responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss the application for failure to state a claim.

Respectfully Submitted,

ALAN WILSON
Attorney General

MEGAN HARRINGAN JAMESON
Senior Assistant Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

By:



Danielle Dixon

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

October 3, 2022

FILED

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Anthony Hudson

vs

State of South Carolina,

Respondent,

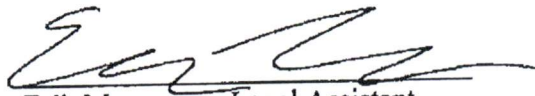
2022 OCT 6 PM 2:07
DORIS FOULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC 2022-CP-21-821

AFFIDAVIT OF SERVICE BY MAIL

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

Steven W. Fowler
730 Main Street Unit # 237
North Myrtle Beach, SC 29582

DATED this the 3rd day of October, 2022.


Erik Marcusson, Legal Assistant
for Respondent

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE 2022 OCT 20 PM 2:08) FOR THE TWELFTH JUDICIAL CIRCUIT

Anthony Hudson,)
Applicant,)
FLORENCE COUNTY, SC)

v.)

State of South Carolina,)
Respondent.)

**ORDER GRANTING
RESPONDENT'S MOTION FOR
MORE DEFINITE STATEMENT**

This matter is before the Court on an application for post-conviction relief (PCR) filed by Anthony Hudson (Applicant) on April 21, 2022. This Court has before it the application and Respondent's return and motion for more definite statement. For the reasons set forth below, Respondent's motion is **GRANTED**.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving a twenty-eight-year sentence pursuant to orders of commitment of the Florence County Clerk of Court. In November 2018, the Florence County Grand Jury indicted Applicant for murder, armed robbery, first-degree burglar, and criminal conspiracy (2018-GS-21-2120). These charges arose from a home invasion that led to the fatal shooting of Johnny Cameron on December 24, 2017.

On August 30, 2019, Applicant pled guilty to the lesser-included offenses of voluntary manslaughter and attempted armed robbery before the Honorable D. Craig Brown. Matthew Swilley, Esquire, represented Applicant and Assistant Solicitor Ryan White represented the State. The plea was without any negotiation or recommendation. Judge Brown found Applicant knowingly and voluntarily pled guilty and sentenced him concurrently to twenty-eight years' imprisonment for voluntary manslaughter and twenty years' imprisonment for attempted armed

CERTIFIED: A TRUE COPY
[Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

robbery. Applicant filed a motion to reconsider the sentence, which was denied on November 22, 2021. Applicant did not appeal.

II. Allegations

Applicant timely commenced this PCR action on April 11, 2022. In his application, Applicant alleges he is being held in custody unlawfully on the following grounds:

- a. Hill v. Lockhart: U.S. Supreme Court Case Law
- b. There is evidence that which warrants a trial: Inconsistence statements that exculpatory evidence
- c. Ineffective assistance of counsel

As relief, Applicant requests "sentence reduction, lesser charge, parole." Before this Court are the Florence County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, and the transcript of Applicant's guilty plea.

III. Respondent's Motion for More Definite Statement

The State has moved for a more definite statement on Applicant's allegations. The Uniform PCR Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50. Rule 8(a), SCRCP, requires all civil pleading to include "a short and plain statement of the facts showing that the pleader is entitled to relief."

In an application for PCR, the applicant must make a prima facie showing of entitlement to relief before an evidentiary hearing will be held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965). Where a PCR applicant fails to adequately set forth the grounds upon which he seeks relief, the court may at any time prior to entry of judgment "issue orders for amendment of the application or any pleading or motion[.]" S.C. Code Ann. §17-27-70(a); see also Rule 12(e), SCRCP (permitting the Court to order a more definite statement if a pleading "is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading."). The Court may, in its discretion, fix the time for which a more definite statement shall be made. Rule 12(e),

SCRCP.

Based on its review, this Court finds Applicant has failed to state with any specificity the facts giving rise to his allegations. The claims are vague and provide no specific facts to support them, and thus they fall short of meeting the specificity requirements of the Uniform PCR Act. Therefore, a more definite statement is necessary, and Applicant, through appointed counsel, shall amend the application to set forth specific facts upon which the allegations are based.¹ See 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."); Coardes v. State, 262 S.C. 493, 206 S.E.2d 264, 265 (1974) ("[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the [PCR] Act. The bare assertion by the appellant that he was deprived of adequate and effective assistance of counsel is insufficient.").

VI. Conclusion

Based on the foregoing, this Court finds and concludes that Applicant has not provided adequately specific allegations to support his request for PCR. Therefore, Respondent's motion for a more definite statement is **GRANTED**. Applicant, through counsel, shall file an amended PCR application within sixty days of service of this order. Applicant is cautioned that failure to comply with this order may result in such orders as this Court deems just, including the evidentiary hearing being continued, the tardy amendments being stricken, or dismissal of this action for PCR.

IT IS THEREFORE ORDERED:

1. Applicant shall have sixty days from the date of services of this order to file an amended application for post-conviction relief that specifically states the allegations upon which his claims rest; and
2. Once the application is amended, an evidentiary hearing

¹ Applicant was appointed counsel to represent him in this action on May 19, 2022.

shall be set.

AND IT IS SO ORDERED this 17th day of October, 2022.

[Signature]
THE HONORABLE STEVEN DEBERRY IV
Chief Administrative Judge - General Sessions²
Twelfth Judicial Circuit

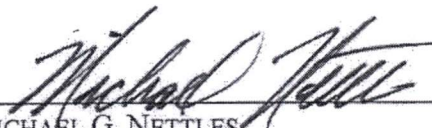
Florence, South Carolina

FILED
2022 OCT 20 PM 2:08
DORIS FOSTER QUINN
CLERK
FLORENCE COUNTY, SC

² The Chief Administrative Judge for Common Pleas in the Twelfth Judicial Circuit presided over Applicant's guilty plea hearing.

therewith shall be merged into 2022-CP-21-821 as amendments to the original application. All future pleadings shall bear the surviving docket number 2022-CP-21-821.

AND IT IS SO ORDERED this 17 day of April, 2023.


MICHAEL G. NETTLES
Chief Administrative Judge
Twelfth Judicial Circuit

Florence, South Carolina

1 State of South Carolina) **TRANSCRIPT OF RECORD**
2 COUNTY OF FLORENCE) CASE NO. : 2022-CP-21-821

3 -----

4 June 13, 2023

5 **BEFORE:** The Honorable Debra McCaslin

6 -----

7

8 Anthony Hudson,)

9 Applicant,)

10 vs.)

11 State of South Carolina,)

12 -----

13 **APPEARANCES:**

14 Russell Barlow, II Esquire
15 Attorney for the State of South Carolina

16 Steven W. Fowler, Esquire
17 Attorney for the Defendant.

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19 Julie A. Kevish
20 Official Court Reporter

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	I-N-D-E-X	
	<u>APPLICANT WITNESS</u>	PAGE
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3	Anthony Hudson	
4	Direct by Mr. Fowler	6
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8	<u>STATE'S WITNESS</u>	
9	Matthew Swilley	
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June 13, 2023

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

THE COURT: Call the case.

MR. BARLOW: May it please the Court? Russ Barlow on behalf of the State of South Carolina. This is the post-conviction relief matter of Anthony M. Hudson versus the State. Case Number 2022-CP-21-821 out of Florence County. In November of 2018 the Florence County Grand Jury indicted Applicant for murder, armed robbery, first degree burglary and criminal conspiracy, 2018-GS-21-2120. These charges arose from a home invasion that lead to the fatal shooting of Johnny Cameron on December 24, 2017. On August 30, 2019, Applicant pled guilty to the lesser included offenses of voluntary manslaughter and attempted armed robbery before the Honorable D. Craig Brown. Matthew Swilley, Esquire represented Applicant and Assistant Solicitor Ryan White represented the State. The plea was without any negotiation or recommendation. Judge Brown found Applicant knowingly and voluntarily pled guilty and sentenced him concurrently to 28 years imprisonment for voluntary manslaughter and 20 years imprisonment for attempted armed robbery. Applicant filed a motion to reconsider the sentence which was denied on November 22, 2021, Applicant did not appeal. Applicant timely commenced this PCR action on April 11, 2022 where he alleged various grounds for being in

1 custody unlawfully. Applicant requested relief in the form of
2 a sentence reduction, a lesser charge for parole. On March 28,
3 2023 Applicant filed a Petition for Writ of Habeas Corpus,
4 which was then merged under caption 2023-CP-21-700 which was
5 subsequently merged with 2022-CP-21-821 with 2022-CP-21-821(b),
6 the remaining docket number, the surviving docket number, and
7 that was filed April 17, 2023 with Judge Michael Nettles.
8 Before this Court is the Florence County Clerk of Court
9 records, Applicant's records from the South Carolina Department
10 of Corrections, Applicant's plea transcript, Applicant's
11 transcript from August 8, 2019 to relieve counsel, Applicant's
12 Petition for Writ of Habeas Corpus filed March 28, 2023, and
13 Applicant's records for this PCR action. At this time we'll
14 turn it over to Mr. Fowler.

15 THE COURT: Before I do that, Mr. Hudson, this is
16 your post-conviction relief hearing. I can't reduce your
17 sentence. I can't put you on parole. If you are successful in
18 this hearing all I can do is send you back to General Sessions
19 Court. If there were any charges dismissed they would be
20 reinstated and you would go back to trial. Do you understand
21 that?

22 THE APPLICANT: Yes, ma'am.

23 THE COURT: Your lawyer explained it to you?

24 THE APPLICANT: Yes, ma'am.

25 THE COURT: Knowing that do you still wish to go

1 forward?

2 THE APPLICANT: Yes, ma'am.

3 THE COURT: Alright, Mr. Fowler, I'll be glad to hear
4 from you.

5 MR. FOWLER: Your Honor, I'd like to call Mr. Hudson
6 as a witness, please.

7 THE COURT: And I'm going to tell you, Mr. Fowler,
8 before you call him in front of me, I do have the transcript
9 about relieving counsel, I have his post-conviction relief
10 application dated April 21, 2022, I also have his Writ for
11 Habeas, that also incorporates ineffective assistance of
12 counsel. It's a handwritten document, 2023-21-700, which was
13 combined by order of Judge Nettles on April 17th of 2023. I
14 also have the full packet from the PCR, the transcript of his
15 plea hearing.

16 MR. FOWLER: And Your Honor, just for clarification,
17 we ask the Court to accept the judicial notice of those
18 documents.

19 THE COURT: Sure. I do. Okay. You can call your
20 witness.

21 MR. FOWLER: Mr. Hudson, please?

22 THE COURT: Mr. Hudson, you can come forward and be
23 sworn.

24

25

1 **ANTHONY HUDSON WAS DULY SWORN AT THIS TIME AND**
2 **TESTIFIED AS FOLLOWS:**

3 MR. FOWLER: Your Honor, I may approach the witness
4 periodically. Is that acceptable?

5 THE COURT: Absolutely.

6 **DIRECT EXAMINATION**

7 BY MR. FOWLER:

8 Q. Mr. Hudson, will you please state and spell your full
9 name for the Court, please?

10 A. Anthony Markell Hudson, A-n-t-h-o-n-y, M-a-r-k-e-l-l,
11 H-u-d-s-o-n.

12 Q. You filed an application for post-conviction relief,
13 correct?

14 A. Yes, sir.

15 Q. And it's the one that is filed April 21, 2022; is that
16 correct?

17 A. Yes, sir.

18 Q. And you verified that with your signature at the back;
19 is that correct?

20 A. Yes, sir.

21 Q. So that is your application, right?

22 A. Yes, sir.

23 Q. In questions number ten and 11, you mentioned various
24 things. In both you mentioned ineffective assistance of
25 counsel, correct?

1 A. Yes, sir.

2 Q. And that's the primary issue that we're going forward
3 with today, correct?

4 A. Yes, sir.

5 Q. And A lot can, perhaps, be fit into that, correct?

6 A. Yes, sir.

7 Q. And the Court has taken judicial notice of the
8 transcript from August 8, 2019, correct?

9 A. Yes, sir.

10 Q. And also, your summons and Petition for Writ of Habeas
11 Corpus filed on March 28, 2023, correct?

12 A. Yes, sir.

13 Q. And you'd like for the Court to consider those, correct?

14 A. Yes, sir.

15 Q. Now, this is kind of unique for me, anyway, but there is
16 the transcript on August 8, 2019. That basically spells out a
17 lot of your issues with Mr. Swilley; is that correct?

18 A. Yes, sir.

19 Q. And you contend that he was ineffective as counsel,
20 right?

21 A. Yes, sir.

22 Q. And that ineffectiveness rises to the Strickland versus
23 Washington standard, correct?

24 A. Yes, sir.

25 Q. On page seven and eight of the transcript, if I may join

1 you up here briefly, page seven and eight, that is where the
2 Court, Judge Russo basically spoke to you and allowed you to
3 speak; is that correct?

4 A. Yes, sir.

5 Q. And seven and eight are the primary pages; is that
6 correct?

7 A. Yes, sir.

8 Q. And it basically says that Mr. Swilley -- well, in your
9 words what does this mean? What did you try to get across to
10 on Judge Russo in this transcript?

11 A. Since my time at the county, there has been, as you say,
12 jailhouse cykes floating around between two of my
13 co-defendants.

14 Q. Let me hold you right there, and this is on page seven,
15 line six, what in your description here is a jailhouse "Cyke?"

16 A. Basically, a little note from one cellmate to another.

17 Q. So, and I didn't mean to interrupt you, but I just
18 wanted to be clear on that. So you're saying that there was a
19 passing of notes between inmates?

20 A. Between two of my co-defendants.

21 Q. Well, let me go ahead and ask you again. Page seven and
22 eight, what were you trying to get across to Judge Russo?

23 A. I was basically trying to get to him that a C.O.
24 confiscated some of these jailhouse cykes, turned him in, they
25 were placed in my motion of discovery. I asked Mr. Swilley

1 about that, like, because the cykes were implementing me as
2 being the prime suspect of the case, which from the start I
3 told investigators I had nothing to do with anything. They say
4 my card had been used. I gave my keys to someone else that
5 night. I had nothing to do with it.

6 Q. Well, let me ask you this question. How does jailhouse
7 cykes, and that's what letters, or however you refer to it, how
8 does that relate to his alleged ineffective assistance of
9 counsel in your case?

10 A. When I pointed out that the letters were saying that I
11 did, you know, such and such part of the crime I pointed out to
12 Mr. Swilley and, you know, is there anything that we can do
13 about this, because this right here is basically telling them,
14 okay, they are plotting against me to basically take me down.

15 Q. Did he do anything about that?

16 A. No, sir.

17 Q. Did you talk to him about it?

18 A. Yes, sir.

19 Q. What did he say?

20 A. I can't recall at this moment, but no action was taken
21 as far as investigating about these cykes.

22 Q. And you feel like that was -- his lack of doing anything
23 about it was detrimental to you; is that correct?

24 A. Yes, sir.

25 Q. And you feel like that's ineffective assistance of

1 counsel?

2 A. Yes, sir.

3 Q. Why do you feel that's ineffective assistance of
4 counsel?

5 A. Improper investigation.

6 Q. So you're saying that he didn't investigate those notes,
7 right?

8 A. Yes, sir.

9 Q. Do you feel like if he did it would help out in your
10 case?

11 A. Yes, sir.

12 Q. Why?

13 A. Because it would have let the judge at that time, or if
14 I would have taken it to trial it would have let the jury know
15 that two of my co-defendants were conspiring against me to
16 place blame on me.

17 Q. Is there anything else about the jailhouse cykes or
18 letters that you wish to bring to the Court's attention?

19 A. No, sir. It just, like I said, it was two of my
20 co-defendants just saying that me and another co-defendant was
21 the mastermind behind everything and we took part in doing
22 whatever the crime was.

23 Q. And you feel like Mr. Swilley should have done more --

24 A. Yes, sir.

25 Q. -- to help you out on that, right?

1 A. Yes, sir.

2 Q. You're a military vet, correct?

3 A. Yes, sir.

4 Q. And I certainly thank you for your service. In page
5 seven, lines 14 through 19, it talks about you being a military
6 vet and it says on page 16 and 17: I ask him to see as far as
7 what he could do possibly to make my V.A. appointments. Now,
8 what does his V.A. appointments have to do with his
9 representation of you?

10 A. At the time I was in the process of getting all my V.A.
11 benefits started up and going. I had a couple appointments
12 while I was in the county and I asked him to look into that as
13 far as what process do I have to go by as far as rescheduling
14 my appointments or getting them because I've been diagnosed
15 with PTSD, I did five and a half years in the military. As far
16 as I know I got sentenced to mental health counseling so I
17 could tell the judge knew I had some type of, you know, mental
18 issues, but Mr. Swilley never checked into that, looked into
19 it, as far as my knowledge I never heard anything about it.

20 Q. So you feel like -- now, were you diagnosed with PTSD --
21 by who?

22 A. The military.

23 Q. So the military said, in your words, you had PTSD?

24 A. Yes, sir.

25 Q. What is that? Post Traumatic Stress Disorder?

1 A. Yes, sir.

2 Q. And you feel like Mr. Swilley should have helped you out
3 with working with the V.A. on some things?

4 A. Basically, it was, I guess, what I'm trying to say is
5 for my mental health status as far as what the military had to
6 say as far as my rehabilitation and mental health status.

7 Q. So you feel like Mr. Swilley should having looked into
8 your mental health status through the Veteran's Administration;
9 is that correct?

10 A. Yes, sir.

11 Q. He did not do that, did he?

12 A. No, sir.

13 Q. Do feel like he should have?

14 A. Yes, sir.

15 Q. Starting on line 20 -- well, first of all, is there
16 anything about your PTSD or Mr. Swilley's interaction, or lack
17 thereof, with the Veteran's Administration that you'd like to
18 bring to the Court's attention?

19 A. From my knowledge of my medical records from the
20 military, certain interaction as far as with -- socially, it
21 describes how I interact socially with other people. It
22 describes how I react to loud noises and stuff like that, so
23 what I'm saying is, putting it towards this case, me being
24 around a gun or anything like that would have caused some type
25 of reaction as far as would I be able to actually pull a gun or

1 take part into some type of crime. Me socializing, I don't
2 really socialize, you know like that, so as far as me with this
3 group of individuals, I'm not going to sit there and talk to
4 them or plan anything with them, I'll be off in my own little
5 world, you know, doing my own little thing.

6 Q. So you're saying that you could have an adverse reaction
7 to just being around a gun, possibly, correct?

8 A. Not just being around the noise, like, really the noise
9 that, like -- okay, they say there was gun fire. Me, I would
10 have reacted. I would have probably took cover or did
11 something, you know, to as far as mess up whatever they had
12 going on at that time.

13 Q. And Mr. Swilley did nothing to look into that?

14 A. No, sir.

15 Q. Did he have you take a mental health evaluation?

16 A. No, sir.

17 Q. Do you feel like you should have?

18 A. At the time, yes, sir, because the way I look at it, if
19 Judge Brown sentenced me to mental health counseling then that
20 means some type of mental health issue was brought up and that
21 he felt like I should get it looked at while I'm incarcerated.

22 Q. And that could have helped you in your defense, correct?

23 A. Yes, sir.

24 Q. Do you feel like his lack of interaction with your
25 mental health records or evaluation served as ineffective

1 assistance of counsel?

2 A. Yes, sir.

3 Q. Anything else on that?

4 A. No, sir.

5 Q. If you'll look at lines 20 through 24, at least, at this
6 to point it says, talking about the discovery: I looked at it,
7 I feel like various issues should be looked into because it
8 doesn't add up. Tell me what you were talking about that you
9 felt didn't add up with the discovery.

10 A. One, it states, I believe, in there, if I'm not
11 mistaken, because I don't have it on record right now up here
12 with me, one of the co-defendants said he never got out the car
13 but he also turned around and made a statement saying this is
14 what happened and if you never got out of the car how do you
15 know what happened, how many gunshots or who you saw went in
16 first, how did you see anything in the dark when you're sitting
17 in the car? Ballistic reports, at that time I never saw any of
18 those. Trajectory of gun fire, everything was in a straight
19 line. If they said I was the first man and they said the
20 shooter was behind me, how did the shooter shoot this man if
21 I'm in front of him and we're at the door? No one ever
22 breached the door, the doorway, so just things in the motion,
23 in my motion to the discovery I pointed out to Mr. Swilley that
24 didn't add up as far as my knowledge of how everything went.

25 Q. And that was the placement of the persons for one. Did

1 you have any kind of gun residue testing on your hands?

2 A. No, sir.

3 Q. Anything else about the discovery that you feel is
4 pertinent here?

5 A. As far as my motion goes, my motion discovery goes, no
6 evidence was found against me placing me at the scene of the
7 crime or with any gunshot residue, any DNA from the victim or
8 anything.

9 Q. Did he go over that with you thoroughly?

10 A. He went over it but not thoroughly.

11 Q. What do you mean by that?

12 A. He touched bases on some things that were in the motion.
13 One was the fact that in the interrogation room I did speak to
14 the investigator for the simple fact, me, I was trying to be
15 helpful, you know, because, I was the first one the
16 investigator actually pulled up on. He pulled up that morning
17 at my house, asked me questions about my car, I let them tow my
18 car, you know, so they could do fingerprints, whatever, and he
19 showed me three pictures of three people he was looking for. I
20 remember one time he said I was in question, this, that and the
21 third, he gave me his ID card and told me if I find out
22 anything just give him a call. I was trying to, you know, to
23 be a perfect citizen to try to help out, and one of the things
24 he said was probably a downfall was me actually talking to the
25 investigator. I've never been in trouble day in my life. I

1 was 28 years old when this happened, I got in trouble. I don't
2 know nothing about the law, none of that, so if it was a
3 mistake, that was on me, but I'm trying to turn everything
4 around now, so.

5 Q. Sure. Well, you feel like his -- now, also in the
6 discovery you said that he basically didn't investigate it; is
7 that correct?

8 A. Yes, sir.

9 Q. And do you feel like that lack of investigation and lack
10 of thorough discovery review with you served as ineffective
11 assistance of counsel?

12 A. Yes, sir.

13 Q. So anything else about the discovery?

14 A. A statement from one of my co-defendants. He said it
15 was five shots, but in the discovery they only found two gun
16 shell casings. So I'm still trying to figure out where did he
17 get five shots from? Like I said, the victim's brother made a
18 statement of what he saw because he was in the house. They did
19 not bring that up in nowhere, whatever. They did not bring up
20 the victim's brother's statement. They went off of, basically,
21 what this one co-defendant said, and that was the gist of it.

22 Q. Well, I think that may relate to this -- so if there's
23 nothing else about discovery, let's move to line 25 on page
24 seven.

25 A. Yes, sir.

1 Q. It says, and I'm trying to decipher exactly specifically
2 what you mean here, and if you could explain to the Court.
3 Line 25 going over to page eight, it says: Let's see what else
4 at the same time I've been trying to contact him a couple of
5 times before, you know, this co-defendant went to trial because
6 there's some things that, you know, I -- I know he didn't tell
7 me to lie about, what I said, but you know, I told him some
8 things, I know I lied about it, so I tried to contact him to
9 get him to come, you know, and talk to me so I can, you know,
10 get things situated, and he, you know, wasn't responding. My
11 mother also has contacted a couple of times. He wasn't in the
12 office, never called her back. So what -- as far as this, what
13 does this mean?

14 A. He came to the county to talk to me and we were going
15 over the motion of discovery and one of the things he pointed
16 out was a ten to 15-year sentence, one either for strong armed
17 robbery or a conspiracy charge, never anything about no murder
18 charge, no first degree burglary, none of that, so I talked to
19 him about the situation. When it came down to it to -- I lied
20 about a couple things, I tried to contact him to let him know,
21 hey, this is not how it happened, this is how it happened. I
22 couldn't get in touch with him. I call my mom, told her, hey,
23 get Matt down here to the county, you know, come talk to me
24 before, you know, things get out of hand so we can get things
25 situated. I wrote him up once that time, I think I wrote it to

1 appeal it in Columbia, the thing in Columbia first. I got a
2 response from them, but it wasn't nothing, so that's when I
3 wrote again to remove Mr. Swilley from counsel, that's the next
4 time that I talked to him was August 8th.

5 Q. So you tried to clarify some things, correct?

6 A. Yes, sir.

7 Q. And Mr. Swilley did not return your call; is that
8 correct?

9 A. No, sir.

10 Q. Anything else about that section you feel is pertinent
11 here?

12 A. Also, at that time Mr. Swilley and Ryan White also came
13 to the county to talk to me, and I asked both of them for a
14 polygraph. Both of them said it wouldn't matter if I told the
15 truth or lied, got it wrong or not because it would be
16 inadmissible in court anyway.

17 Q. Who told you that?

18 A. Both Ryan White and Mr. Swilley.

19 Q. Did you ever take a polygraph?

20 A. No, sir.

21 Q. Do you feel like you should have?

22 A. Yes, sir.

23 Q. Why?

24 A. At least it would have proved that if I was telling the
25 truth whether it could have been used in court or not, but I

1 guarantee if it would have showed I was lying Ryan White would
2 have used it in court so I feel like it would have helped out.

3 Q. Anything else about that section that you feel like
4 needs to be brought to the Court's attention?

5 A. Also at that same time I told Ryan White let's go to
6 trial.

7 Q. Let's go to page eight, and I think this may wrap up our
8 references to the transcript. Page eight, line 15 through 21.
9 It says: So I told him that I'd rather just, you know, see if
10 we can go to trial because I think, you know, we might have a
11 good chance and he continued to talk me out of going to trial.
12 He also called my mother and told my mother to talk me -- talk
13 to me and tell me he thinks that it might be -- let me rephrase
14 that -- told my mother to talk to me and tell me that he think
15 it best that we not go to trial because if the Solicitor do
16 come with a plea it will be criminal conspiracy, five to ten
17 years. Explain that section to me.

18 A. Basically --

19 Q. And you do have a copy of the transcript up there,
20 right?

21 A. Yes, sir.

22 Q. Okay. Go ahead, I'm sorry.

23 A. Basically, Mr. Swilley, he's been hounding me about not
24 really going to trial, but like I said in there, I'm not
25 going -- I'm not getting in trouble for something I did not do,

1 you know, and if me, I'd rather go to trial and take the stand
2 like I'm doing now, tell my side of the story, but he talked to
3 my mother, he also, I think, had his investigator talk to my
4 mother to see if -- tell him don't go to trial, let's just take
5 a plea, and the date of my sentencing, August 30th, my mother
6 and my little sister was up here at the courthouse out there on
7 the computer on Skype, I was on Mr. Swilley's phone on Skype
8 talking to my mother and my sister, and basically, he persuaded
9 them to convince me to take a plea deal. He was saying
10 probably get ten years at 85 and out of that my mom said, you
11 do eight, you'll be home pretty soon, go ahead and get it over
12 with, take the plea, so that's what I did.

13 Q. Did he ever contact you about -- so you're saying that
14 you got more time than he said that you would get?

15 A. Yes, sir.

16 Q. And what were the numbers again? He said you would get
17 what?

18 A. Five the ten.

19 Q. And how much did you wind up getting?

20 A. Twenty-eight. And then he also has wrote a letter right
21 after that.

22 Q. Let me show you this. Okay? And Mr. Swilley's in the
23 courtroom; is that correct?

24 A. Yes, sir.

25 Q. Okay. So I'm showing this you this letter. What is the

- 1 letter head on it?
- 2 A. The Swilley Law Firm, LLC.
- 3 Q. And what's the date?
- 4 A. 11/9/2019.
- 5 Q. And who is it addressed to?
- 6 A. Me.
- 7 Q. And does it reference anything?
- 8 A. State of South Carolina versus Anthony Markell Hudson,
- 9 warrant 2017A2110201151, charge: Murder.
- 10 Q. And this was sent to you, correct?
- 11 A. Yes, sir.
- 12 Q. Did you receive it?
- 13 A. Yes, sir.
- 14 Q. And you presented this to me, right?
- 15 A. Yes, sir.
- 16 MR. FOWLER: Your Honor, I'd like to enter this as an
- 17 exhibit.
- 18 THE COURT: Any objection?
- 19 MR. BARLOW: No objections, Your Honor.
- 20 THE COURT: It's admitted.
- 21 MR. FOWLER: I'm presenting one to the Court.
- 22 THE COURT: Okay.
- 23 MR. FOWLER: I apologize, Your Honor, and here's one
- 24 copy to the court reporter.
- 25 THE COURT: Mark it as Exhibit Number 1.

1 (Applicant's Exhibit No. 1 was marked for
2 identification and admitted into evidence.)

3 BY MR. FOWLER:

4 Q. And you have is a copy up there; is that correct?

5 A. Yes, sir.

6 Q. What does the first two sentences of it say?

7 A. I am in receipt of your last correspondence. I was
8 sincerely shocked at the sentence that was handed down by the
9 judge at your plea hearing. I did to not expect him to
10 sentence you to that much time.

11 Q. And then it goes on to say --

12 A. He planned on doing a motion to reconsider.

13 Q. Did he do a motion to reconsider?

14 A. Yes, sir.

15 Q. Okay. What happened then?

16 A. It got denied like a year later.

17 Q. So it got denied a year later, right?

18 A. Yes, sir.

19 Q. But what -- let's focus on these first two sentences.

20 What does that mean to you that it says: I am in receipt of
21 your last correspondence, I was sincerely shocked at the
22 sentence that was handed down by the judge at your plea
23 hearing. What does that mean to you?

24 A. Basically, he didn't know that I was going to get
25 sentenced to 28 years. So basically, I signed a plea agreement

1 involuntarily, unknowingly that I would get 28 years on his
2 behalf.

3 Q. So you walked in there thinking you were going to get
4 ten years and came out with 28?

5 A. Yes, sir.

6 Q. How is that Mr. Swilley's responsibility?

7 A. From the time he mentioned any kind of number I been
8 asking him to get it some type of writing, he never did, and if
9 he was really saying that or trying to get the ten years, I
10 think that he really should have put it in writing or when it
11 came down to it on August the 30th of my sentencing when the
12 judge said 28 years, he should have objected and said something
13 about it, but he never did.

14 Q. And it's also a combination of all of this that we're
15 going over today; isn't it?

16 A. Yes, sir.

17 Q. Okay. The things that you mentioned in the transcript
18 to Judge Russo?

19 A. Yes, sir.

20 Q. And also what's already been in judicial notice, the
21 Summons and Writ of Habeas Corpus Petition, all of this kind of
22 goes into that pot where you thought you were getting ten and
23 then walk out with 28?

24 A. Yes, sir.

25 Q. Are you familiar with the legal term "negotiated

1 sentence?"

2 A. I can -- I can -- I can basically get the concept of
3 what it is, but.

4 Q. What does it mean to you?

5 A. Basically a negotiated is something you, your attorney
6 and the Solicitor come to agree upon a certain sentence, like
7 putting a cap on it, like ten with a cap, or something like
8 that.

9 Q. And although a judge can, I believe --

10 A. Override it.

11 Q. It kind of helps in terms of going to the judge,
12 correct?

13 A. Yes, sir.

14 Q. Did he ever bring up the possibility of a negotiated
15 sentence with you?

16 A. He talked about it with me, but on the sentencing he
17 didn't.

18 Q. So he never -- so he never said let's do a negotiated
19 sentence, did he?

20 A. No, sir.

21 Q. Okay. Just briefly. Referring to the summons and the
22 Petition for Writ of Habeas Corpus, that kind of backs up
23 everything you're saying here today; is that correct?

24 A. Yes, sir.

25 Q. There's a lot of case law in here, correct?

1 A. Yes, sir.

2 Q. And in your application I think you mentioned Hill
3 versus Lockheart; is that correct.

4 A. Yes, sir.

5 Q. And that's mentioned under section four, correct?

6 A. Yes, sir.

7 Q. And you'd like the Court to take notice of that,
8 correct?

9 A. Yes, sir.

10 Q. And there's also Supreme Court case law in here that you
11 mention in 11(a), correct?

12 A. Yes, sir.

13 Q. Is there anything about Hiller Lockheart or the Supreme
14 Court case law that you wish to bring to the Court's attention,
15 or is it explained in this sufficiently?

16 A. It's explained in this.

17 Q. Alright. Now, let's talk about the appeal. In your and
18 I discussion several weeks ago you said something about a
19 direct appeal, and I think in subsection number three these are
20 not numbered, and I'll refer to section three of the Writ. It
21 says: When defendant fails to file a requested appeal, a
22 defendant is entitled to a new appeal without showing his
23 appeal would likely have merit. You quoted Strickland versus
24 Washington on that. So tell me about the appeal process. Did
25 he appeal this?

1 A. No, sir. As soon as I caught the time I asked him, hey,
2 let's do some type of appeal. I even told my mother to contact
3 him and make sure that we get an appeal for this because, like
4 I said, I'm not finna do time for nothin' behind somebody else
5 responsibility, you know, whatever. The thing he told me was
6 he would do a motion to reconsider.

7 Q. And I think in the letter it says that he would file a
8 motion the reconsider; is that correct?

9 A. Yes, sir.

10 Q. And you expressed to him at that time that you want an
11 appeal, right?

12 A. Yes, sir.

13 Q. But he didn't do an appeal?

14 A. No, sir.

15 Q. Did he ever tell you why he didn't do an appeal?

16 A. No, sir.

17 Q. Did you ask him?

18 A. No, sir.

19 Q. But you asked him to file an appeal, correct?

20 A. Yes, sir, but when he said about the motion to
21 reconsider I thought that was a type of appeal, so when he said
22 he'd put that in, I was thinking everything would be okay.

23 Q. So you were thinking that, am I correct in saying that
24 you felt a motion to reconsider is an appeal?

25 A. Yes, sir.

1 Q. But it's not the same, is it?

2 A. No, sir.

3 Q. How did you learn that?

4 A. After the motion got denied, and then I put in for the
5 PCR application.

6 Q. Throughout the Petition for Writ of Habeas Corpus you
7 state various case law that comes to mind in this case, it says
8 at the bottom of section four, the page after section four, at
9 the very bottom it says: In addition the Applicant submits
10 that he can meet the prejudice requirement, basically quoting
11 Hill, and what have you, why do you feel like Mr. Swilley's
12 representation was prejudicial to you?

13 A. I feel like if everything that he did was effective and
14 that everything he did was loyal to me as far as him being my
15 attorney, I felt like I would have probably beaten this and I
16 wouldn't be incarcerated at this time.

17 Q. So it was kind of a shock when you walked out of there
18 with 28 years expecting ten, wasn't it?

19 A. Yes, sir.

20 Q. On section five, it says: In the third allegation
21 Applicant alleges that he did not plead guilty -- let me
22 rephrase that: In his third allegation the Applicant alleges
23 that he did not plead guilty freely and voluntarily, and then
24 you go into some come case law of Boyken versus Alabama. Why
25 did you not plead guilty freely and voluntarily?

1 A. In determining a voluntary guilty plea it also falls
2 under ineffective assistance of counsel. If my counsel was
3 ineffective than that means the plea agreement is also
4 involuntary. Not only that, but referring back to the letter
5 where he stated that he was shocked that I got that much time.
6 If he didn't know I was going to get that much time then how
7 did I know I was going to get that much time, or how did I know
8 what I was signing if he didn't expect for me to get that much
9 time?

10 Q. And also you stated in section five that the Applicant
11 submits the transcript reflects that the plea was not knowing
12 and voluntarily entered with a full understanding of the
13 charges and consequences of the plea; is that correct?

14 A. Yes, sir.

15 Q. And why is that?

16 A. You're referring to the letter?

17 Q. I'm referring to number five, five in your Writ, and
18 we'll wind up here in a second, I believe, but right there
19 (indicating,) underlined with my writing.

20 A. Okay. Yeah, because like, it's like I say, um, if -- if
21 my attorney doesn't know or understand the amount of time that
22 I'm getting, how would I know even if I'm signing, I'm looking
23 at what I'm signing? You know what I mean? I'm not the legal
24 counsel here so I'm just going by what he told me. If he told
25 me to sign this, this is what's going on, okay, get in front of

1 the judge, it's a different story, then, you know, how could I
2 take that? I think it's involuntary, really.

3 Q. Anything else in this Summons or Petition and Writ that
4 you want to bring to the Court's attention?

5 A. Yes. It's also -- I mentioned it earlier, the day of my
6 sentencing my mother and my little sister was here at the time.
7 They told me my daddy was just stabbed 16 times. He had -- he
8 was in the hospital, and I believe at that point in time, too
9 emotionally, I probably wasn't fit to really sign a plea deal
10 at that time, but like I said, he persuaded my mother and my
11 little sister, hey, just take the ten, you'll be home in a
12 while and everything would be okay, but like I said, Judge
13 Brown hit me with 28.

14 Q. So you feel like the sentencing, like you were in an
15 emotional state that you should not be entering a plea at that
16 time, right?

17 A. Yes, sir.

18 Q. There's two other things that I wanted to mention. I
19 think we've gone over everything in your application numbers
20 ten and 11, we reviewed the Writ of Petition in the transcript
21 from August 8th, it says there was -- and I just want to make
22 sure that we cover this. In Number 10(b) it says: There is
23 evidence that which warrants a trial. What did you mean by
24 that?

25 A. Referring back to my motion, like I said, there is no

1 evidence saying that I had anything to do with any of this.
2 Even in the county there was a guy that overheard two of my
3 co-defendants talking, and he went in interrogation -- it's a
4 CD on this, too, he went in the interrogation room and voiced
5 what he heard and he never implemented another party, this,
6 that and the third, so with that being said, everything I felt
7 like Matt could have did a better job as far as investigating
8 and checking into all allegations, hearsay, and everything
9 else. I don't think I would have been in this predicament.

10 Q. Okay. In number 10(b) and then in number 11(b), and
11 this might be -- inconsistent statements that, I guess, creates
12 exculpatory evidence. What did you mean by that? Is that what
13 you just went over with 10(b)?

14 A. Yes, sir.

15 Q. As I've said, we've gone over your application, we've
16 gone over your Writ of Habeas Corpus, and the transcript, is
17 there anything else that you would like to bring to the Court's
18 attention at this time?

19 A. One of the things -- me, as far as me being my
20 personality, I'm a good, kindhearted person. I don't do no
21 wrong to anybody. I'd give you the shirt off my back if you
22 need to. Like I said, I've been a military vet five and a half
23 years. People in the community love me. I think it's written
24 in here, people wrote a couple -- I think it's in here, I'm not
25 sure. No. It should have been some written statements, too,

1 from people in the community, you know, speaking on my behalf,
2 and whatnot. Prior convictions, the only thing I got on my
3 record is a bank fraud, which I did 11 months probation for
4 that. Other than that, I'm a pretty stand up guy. I was
5 working at the Honda Plant right here in Timmons ville when all
6 of this went down. I was living with my baby mother. You
7 know, everything was fine and no real reason for me to really
8 --

9 Q. And like I said, we're talking about Mr. Swilley and his
10 representation of you.

11 A. Okay, true.

12 Q. You feel like the evidence that's been presented today
13 in this court shows that he was ineffective assistance of
14 counsel to you in this matter, right?

15 A. Yes, sir.

16 Q. Thank you.

17 MR. BARLOW: Very good quickly, Your Honor.

18 THE COURT: Go ahead.

19 CROSS-EXAMINATION

20 BY MR. BARLOW:

21 Q. Good afternoon, Mr. Hudson.

22 A. How are you doing, sir?

23 Q. I'm doing well, how are you?

24 A. I'm doing good.

25 Q. Alright. There's been a lot of talk about the motion to

1 relieve counsel in the transcript, but I want to jump to the
2 actual date of your plea and ask you a few questions on that.
3 Do you recall telling the Court that you had talked to Mr.
4 Swilley and I?

5 A. Yes, sir.

6 Q. Do you recall telling Court that he had done everything
7 you had asked him to do?

8 A. Yes, sir.

9 Q. Do you recall telling the Court that you needed more
10 time with him and they gave you more time with him?

11 A. Yes, sir.

12 Q. Do you recall then telling the Court that you did not
13 need to have anymore time with him?

14 A. Yes, sir.

15 Q. Okay. Do you recall the Court telling you the maximum
16 for each charge that you were charged with that they could give
17 you?

18 A. Yes, sir.

19 Q. Okay. And you signed the sentencing sheet after the
20 judge sentenced you, correct?

21 A. No, I signed it before. I signed it with Mr. Swilley
22 before we came in front of the judge.

23 Q. Last question. What would the basis of an appeal be?

24 A. Wrongful conviction, ineffective assistance of counsel.
25 For an appeal? Yeah. Wrongful conviction and ineffective

1 assistance of counsel.

2 Q. Thank you.

3 MR. BARLOW: Nothing further.

4 REDIRECT EXAMINATION

5 BY MR. FOWLER:

6 Q. You stated that you were in an emotional state that day,
7 correct?

8 A. Yes, sir.

9 Q. And that would possibly prohibit you from thinking
10 clearly about what you signed and entered that day; is that
11 correct?

12 A. Yes, sir. And can I also state for the record, too,
13 what would you do if you just tried to fire an attorney --

14 THE COURT: You can't ask questions. You're not here
15 to ask questions.

16 A. Okay. I just tried to fire my attorney twice.

17 Q. Answer the question.

18 A. Okay.

19 Q. You were in an emotional state?

20 A. Yes, sir.

21 Q. You answered the question. And also, there have been
22 several items that have come to your attention since that plea
23 at that time; is that correct?

24 A. Yes, sir.

25 MR. FOWLER: No further questions, Your Honor.

1 MR. BARLOW: Nothing from the State, Your Honor.

2 THE COURT: Mr. Hudson, you can step down. Call your
3 next witness, Mr. Fowler.

4 MR. FOWLER: If I may have just one moment with my
5 client? After consulting with my client, no further questions.

6 THE COURT: Okay. Mr. Barlow?

7 MR. BARLOW: Thank you, Your Honor. The State would
8 call Mr. Matthew Swilley.

9 **MATTHEW SWILLEY WAS DULY SWORN AT THIS TIME AND**
10 **TESTIFIED AS FOLLOWS:**

11 **DIRECT EXAMINATION**

12 BY MR. BARLOW:

13 Q. Good afternoon Mr. Swilley.

14 A. How are you doing?

15 Q. Good. Thank you. How are you?

16 A. Very good.

17 Q. Alright. How long have you been practicing law?

18 A. Passed the bar in 2009 and began practicing shortly
19 thereafter.

20 Q. How much of that has been in criminal law?

21 A. Almost entirely.

22 Q. Were you retained or appointed?

23 A. I was appointed.

24 Q. And roughly how long before his guilty plea were you
25 appointed?

1 A. I was appointed in early 2018.

2 Q. And you received discovery in this case?

3 A. We did.

4 Q. Did you review the discovery with Mr. Hudson?

5 A. Yes.

6 Q. Could you give us a brief overview of your understanding
7 of the State's evidence?

8 A. On Christmas Eve the State alleged that Mr. Hudson along
9 with other individuals traveled to the home of Mr. Johnny
10 Cameron who I believe was known to be a bootlegger of some
11 sort. It was alleged that there was an attempted robbery, kind
12 of an attempt to force entry through the front door of the
13 trailer down the Lake City section of Florence. Mr. Cameron
14 was shot during this forced entry, and subsequently, expired
15 after the assailants had, I guess, left the residence. I
16 believe it was alleged they were in Mr. Hudson's vehicle which
17 was without a muffler and it was very loud and I think some
18 other individuals were able to identify that, and I think
19 eventually that led to Mr. Hudson and the other individuals.
20 Mr. Hudson was arrested, gave a statement to Investigator
21 Tilton, or a video statement, where I think he told
22 Investigator Tilton that he was present but that he did not go
23 into the home, and I think that subsequently he was arrested.
24 Q. Were you able to craft a defense strategy based off of
25 that?

1 A. We did -- I did -- well, we did do beforehand, I don't
2 think that Mr. Hudson was, I guess, the primary target of the
3 State, I believe, at the beginning. I discussed the matter
4 with Mr. White and discussed the matter with Mr. Hudson to see
5 if, you know, he wanted to cooperate. I think it was
6 anticipated that the individual who actually shot Mr. Cameron
7 was going to end up going to trial and then see if Mr. Hudson
8 wanted to cooperate. We did give a -- he did agree to speak
9 with Mr. White and Investigator Tilton at the Sheriff's Office
10 at some point, I believe, it was in 2018, and that did not go
11 very well. Mr. Hudson, I guess, was inconsistent with a lot
12 of things that he said, and it was not a fruitful endeavor.

13 Q. Well, let's jump right into some of the allegations.
14 You've already said that you reviewed discovery with him.
15 There was some testimony about V.A. appointments. Do you
16 recall that?

17 A. I know there was some issue with the V.A. I don't
18 believe really, I can't recall anything of any substance about
19 him getting any kind of V.A. treatment. I did get some
20 records, I think some military records and mental health
21 records from the V.A. after the guilty plea for the motion to
22 reconsider sentence, and those were provided to the Court. I
23 think that I've provided that. The e-mail that I provided to
24 Judge Brown and his clerk, I think I forwarded to you and Mr.
25 Fowler, as well.

1 Q. Let me ask you, is it within your purview to facilitate
2 V.A. treatment through the county jail?

3 A. I mean, if I could do anything to help my client I can,
4 but I just, you know, you don't -- it's kind of hard to
5 coordinate that type of stuff. I figured if you had
6 appointments, mental health appointments or medical
7 appointments, the jail is supposed to coordinate those.

8 Q. Did you have any reason to have Mr. Hudson mentally
9 evaluated?

10 A. I believed Mr. Hudson was competent, you know, under
11 M'Naghten and Blair. There were no questions in my mind about
12 his competency, so I didn't think we needed an evaluation.

13 Q. There were some inconsistent statements that there was
14 testimony on. Do you recall those inconsistent statements of
15 his, I believe it was his co-defendants?

16 A. I think he mentioned about the cykes in the jail that
17 were intercepted by the corrections officers. Those were
18 receipted, I think they given to Mr. White, and I believe they
19 were turned over in supplemental discovery to me.

20 Q. Were there any ballistic reports that you can recall?

21 A. Not that I can recall.

22 Q. Was it ever alleged that Mr. Hudson was the shooter?

23 A. It was alleged that he fired a shot, I believe, and I
24 think he admitted to that in the second interview at the
25 Sheriff's Office, but I don't think it was ever alleged that he

1 was the, I guess for lack of a better term, trigger man. I
2 don't think it was ever alleged that what he did, shot -- that
3 he physically killed Mr. Cameron. I don't think it was ever
4 alleged that that was the scenario. I think that the State was
5 moving forward on an accomplice liability theory.

6 Q. Would it surprise you if the State found two gun shell
7 casings versus a statement saying that there were five
8 gunshots?

9 A. Would it surprise me? No.

10 Q. And did you have any reason to have a polygraph done on
11 Mr. Hudson?

12 A. No. I didn't believe that that would be fruitful for
13 us, particularly after the meeting we had at the Sheriffs, you
14 know, with Mr. Tilton and Mr. White.

15 Q. Did you talk Mr. Hudson out of going to trial?

16 A. Well, Mr. Hudson, he didn't, I don't think he took a lot
17 of stock in what I was telling him a lot of times. I had my
18 investigator -- I think he was doing what his mother was
19 telling him to do. I had my investigator go meet with his
20 mother, who was very cooperative with us when we met with her,
21 and he went out, I think, to her home and showed her Anthony's
22 initial interview where he, you know, admits to being present
23 at the scene and not going in, and I think that really -- the
24 day of the plea, I think, you know, we did have a FaceTime with
25 his mom, and she said, you know, I've seen your interview, you

1 need to enter into a guilty plea, and he agreed at that point.

2 Q. Did you ever tell him he would get ten years?

3 A. No, I never guaranteed him anything, but I did tell him
4 I would anticipate, you know, you serving an actual amount of
5 about ten years more. I was truly flabbergasted when Judge
6 Brown imposed the sentence, it's very unfortunate.

7 Q. Do you control the sentencing?

8 A. I wish I did, but no, I don't.

9 Q. Did the Solicitor ever make any plea deal, did he ever
10 come to you with any numbers?

11 A. We had -- not with any hard offers. We had discussed,
12 and I had been really optimistic at first, you know, at the
13 very beginning before they sat down with Anthony, that we had
14 discussed some kind of, maybe, like, strong armed robbery, you
15 know, nonviolent type plea, that's why I was trying to sway him
16 that way, but no, I don't think we ever got -- I think the only
17 plea offer we ever got was straight up to voluntary
18 manslaughter and armed robbery.

19 Q. Did Mr. Hudson ever ask you to appeal?

20 A. Not that I can recall.

21 MR. BARLOW: Court's indulgence.

22 THE COURT: Take your time.

23 BY MR. BARLOW:

24 Q. And did you have any reason to doubt his competency the
25 day he pled?

1 A. No.

2 Q. Do you stand by your representation today?

3 A. What do you mean by, stand by my representation?

4 Q. Do you feel that your representation was competent?

5 A. Yeah. I mean, there's things I wish I had done
6 differently, certainly.

7 Q. That's hindsight?

8 A. Right.

9 Q. Do you see today looking back on it at that time through
10 that lens, do you feel that your representation was competent?

11 A. Yes.

12 MR. BARLOW: Thank you. Nothing further.

13 CROSS-EXAMINATION

14 BY MR. FOWLER:

15 Q. So you just said that you feel like your representation
16 was competent, right?

17 A. Yes.

18 Q. You were in the courtroom the entire time of Mr.
19 Hudson's direct examination, correct, right?

20 A. Yes.

21 MR. FOWLER: And if I may approach the witness, Your
22 Honor?

23 THE COURT: You may.

24 Q. I believe this is entered in as Exhibit 1. Is that your
25 signature at the bottom of the page?

1 A. It is.

2 Q. And you sent that letter to Mr. Hudson, correct?

3 A. That's correct.

4 Q. And what is the -- well, the first three sentences, I
5 guess?

6 A. I'm in receipt of your last correspondence, I was
7 sincerely shocked at the sentence that was handed down by the
8 judge at your plea hearing. I did not expect him to sentence
9 to you that much time.

10 Q. Okay. If I may have that back, please? In terms of
11 your representation, if you feel like you were competent why
12 were you shocked, from your own handwriting, basically, of the
13 judge's sentencing that was handed down?

14 A. Well, I didn't think that it was really commiserate with
15 in role that Mr. Hudson had played in the homicide. I think he
16 played kind of an ancillary role, so to speak. I mean, he did
17 allow his car to be used. I think he was influenced by some of
18 the co-defendants at the time. I certainly don't think that he
19 was the ring leader, so to speak, and I'd like to think that it
20 was articulated to Judge Brown, but it didn't -- I don't he
21 really was in agreement with that. I really -- I anticipated
22 it being somewhere around a 15-year sentence, is what I had
23 anticipated.

24 Q. So with that being said, you did know that going in he
25 could receive the maximum amount, right?

1 A. Yes, it was possible.

2 Q. And you still, basically, brought him into an open-ended
3 plea with the judge where he could, even if you feel like he
4 was an ancillary actor in this, he could still get a maximum
5 sentence; is that correct?

6 A. Yes.

7 Q. So do you feel like you should have done a negotiated
8 plea at this point?

9 A. Well, I would have liked to but we were never offered a
10 negotiated plea.

11 Q. Did you ever ask for it?

12 A. We had discussed it, yeah, but --

13 Q. Discussed it with who?

14 A. Ryan White.

15 Q. What did he say? Well, strike that. So you never --
16 there was never any negotiated plea agreed to between you and
17 the State, right?

18 A. Now that I recall, we may have had a conversation about
19 it, but I truly felt comfortable going forward -- at the time,
20 going forward with an open plea versus a negotiated plea or a
21 recommendation from him. I want to say based on my
22 recollection he was going to ask -- he was asking for, you
23 know, time in the twenties, and certainly I wasn't to going to
24 agree to that because I thought we could do better than that in
25 an open plea.

1 Q. In terms of, I did not expect the sentence -- strike
2 that. It says: What I plan on doing at this point is moving
3 for a reduction in your sentence by gathering some mitigation
4 materials. Tell me about that. What did you do in terms of a
5 reduction of the sentence?

6 A. I made a written motion for a reduction of sentence. I
7 went and got some records, I believe, of Mr. Hudson, and I
8 presented those to the judge via e-mail, you and Mr. Barlow
9 have been afforded that e-mail, and I presented that to Judge
10 Brown, I think he kind of sat on it for a long time and then
11 when it came back up I think he asked for me to send it again,
12 I sent it again, and then he issued a written order, I guess,
13 denying my motion after that.

14 Q. But you could have just simply appealed it, couldn't
15 you?

16 A. I could have done that, yeah.

17 Q. But you didn't, did you?

18 A. No.

19 Q. Even though you said you were shocked at the sentence
20 that was handed down, right?

21 A. Right, yes, that's correct.

22 Q. So why didn't you appeal it?

23 A. Because I didn't think there was any way the Court of
24 Appeals was going to reverse it, you know, based upon just the
25 issue of sentencing. I thought we had a better chance of going

1 back before the judge, asking him to reconsider and then to
2 reconsider some of this mitigating, to present it to him, I
3 didn't think there was virtually any chance that the Court of
4 Appeals would have -- I mean, it was a voluntary guilty plea
5 and the sentencing is in discretion of the judge so I didn't
6 believe that the Court of Appeals would have --

7 Q. But that was the decision for the Court of Appeals, not
8 you, right?

9 A. Yes.

10 Q. In terms of the jailhouse cykes, or letters, or whatever
11 is said in the transcript, you didn't do any investigation on
12 that, did you?

13 A. No. I got copies of the cykes. I didn't do -- I mean,
14 I didn't do any further investigation of the circumstances
15 around it.

16 Q. But that could have been helpful in this case, right?

17 A. I don't know.

18 Q. Did you know that he had PTSD?

19 A. I know that he had told me about some post-traumatic
20 stress disorder, I know he had told me about that.

21 Q. Did he explain to you the issues about him being around
22 guns or inability, perhaps, to fire a gun?

23 A. No. We never discussed anything of that nature.

24 Q. So he told you about the PTSD, but you did not send him
25 to Columbia or through whatever channels to get a mental health

1 evaluation, right?

2 A. That's correct.

3 Q. On page eight, lines 17 and 18, it says, from Mr.
4 Hudson: And he continued, you, Mr. Swilley, to talk me out of
5 going to trial. Why did you talk him out of going to trial?

6 A. If he was convicted of murder he would be facing 30 to
7 life.

8 Q. Well, he got 28 years based on your plea deal with
9 the -- or before the Court, right?

10 A. That's correct.

11 Q. It says here, also, in the transcript, lines 19 through
12 21: It best that we not go to trial because if the Solicitor
13 do come with a plea it will be criminal conspiracy five to ten
14 years. So where did Mr. Hudson -- how did he get that criminal
15 conspiracy from you? Did he? Did you talk about that?

16 A. I don't think, no, we were never issued a plea to just
17 criminal conspiracy. I mean, I would have advised him to take
18 that if that were the case, but, no, that was never an offer.

19 Q. Okay. On Direct, you said that you did not control the
20 sentencing, but you could have worked out a negotiated sentence
21 with the Solicitor; is that correct?

22 A. I don't know. I mean we had discussed it, but I don't
23 know if he would have agreed to a negotiated sentence or not.

24 Q. Well, I guess what I'm saying is that if you were
25 shocked at the sentence that he got and you felt like he was an

1 ancillary character in all this, that perhaps he should not be
2 walking out of there with a 28-year sentence instead of a five
3 to ten; is that right?

4 A. Well -- .

5 Q. Go ahead.

6 A. If I understand your question correctly, I think, yeah,
7 I didn't think he deserved a 28-year sentence. I don't
8 think -- I still don't.

9 MR. FOWLER: If I may have a moment, Your Honor.

10 THE COURT: Sure.

11 MR. FOWLER: Your Honor, after consulting with my
12 client, no further questions.

13 THE COURT: Anything else?

14 MR. BARLOW: Your Honor, nothing further.

15 THE COURT: Mr. Swilley, he was indicted on murder;
16 is that right?

17 THE WITNESS: That's correct, Your Honor.

18 THE COURT: Thirty to life, day for day?

19 THE WITNESS: That's correct.

20 THE COURT: And he was offered a plea deal of
21 voluntary manslaughter which is, what, 85 percent, 0 to -- or
22 two to 30?

23 THE WITNESS: Two to 30; that's correct.

24 THE COURT: Two to 30. So there was an incentive for
25 the plea. I understand your testimony, you didn't like what

1 the judge gave, but tell me how many times has that happened to
2 you?

3 THE WITNESS: Happened to me?

4 THE COURT: Yeah.

5 THE WITNESS: I don't know if I could count that many
6 times, Your Honor. Well, no --

7 THE COURT: Sentencing is within the discretion of
8 the judge.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: And you explained that to your client?

11 THE WITNESS: I did, Your Honor.

12 THE COURT: And at any time did he seem to you to
13 need a mental evaluation?

14 THE WITNESS: No, Your Honor.

15 THE COURT: Did he ever ask you for a mental
16 evaluation?

17 THE WITNESS: I don't believe so.

18 THE COURT: Did he -- when you went through all the
19 discovery with him did he appear to understand it?

20 THE WITNESS: He did.

21 THE COURT: And as far as a negotiated plea, it's
22 usually the Solicitor who offers you a negotiated plea, is it
23 not?

24 THE WITNESS: Typically, yes, Your Honor.

25 THE COURT: And was there a negotiated, I know you

1 said you all talked about it, but were you ever, or Mr. Hudson,
2 ever offered a negotiated plea?

3 THE WITNESS: No, Your Honor.

4 THE COURT: That was not on the table?

5 THE WITNESS: No, Your Honor.

6 THE COURT: Do you know of any way that you could
7 make it be on the table?

8 THE WITNESS: No. No.

9 THE COURT: Thank you. Anything else from the
10 lawyers?

11 MR. BARLOW: Your Honor, the State rests.

12 THE COURT: Alright. May I excuse Mr. Swilley,
13 please?

14 MR. BARLOW: No objection from the State.

15 MR. FOWLER: No objection.

16 THE COURT: Mr. Swilley, thank you.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: I will take it under advisement and issue
19 an order.

20

21

22

23

24

25 CERTIFICATE

1 STATE OF SOUTH CAROLINA

2 COUNTY OF FLORENCE

3 I, Julie A. Kevish, Official Court Reporter for the
4 State of South Carolina, do hereby certify that the foregoing
5 is a true, accurate and complete Transcript of Record of the
6 proceedings had and evidence introduced in the Court of Common
7 Pleas for Florence County, South Carolina, on the 13th of June,
8 2023.

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

11 June 13, 2023

12
13 *Julie Kevish*

14 JULIE A. KEVISH
15 OFFICIAL COURT REPORTER
16
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25

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

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. 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—a mere allegation of ineffective assistance is insufficient to warrant granting relief. Rule 71.1(e), SCRCP; 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. Strickland v. Washington, 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice due to 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 "[without 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 that 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. However, the second, or "prejudice" prong "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.

voluntary (Plea Tr. p. 10); 8. Applicant affirmed he was not on drugs, and nothing affected his ability to understand the plea proceedings (Plea Tr. p. 4); 9. Applicant affirmed he understood the minimum and maximum range of sentencing for both charges (Plea Tr. p. 4; p. 6); 10. Applicant agreed with the allocution of the facts surrounding the State's case against him, and he still wanted to plead guilty (Plea Tr. pp. 11-17); 11. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into. (Plea Tr. p. 17).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS²

Allegation: Failure to Investigate

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate. Specifically, Applicant avers Plea Counsel did not investigate the kite exchanges between his co-defendants, and Plea Counsel should have investigated his mental health.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite

² This Court notes that Applicant was ordered to provide a More Definite Statement to Respondent on October 20, 2022, by the Honorable H. Steven DeBerry, IV. As of the date of this evidentiary hearing, Applicant failed to comply with Judge DeBerry's order. This Court will address the allegations in the order they were raised at the evidentiary hearing.

properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

1. Failure to Investigate Kites³ Exchanged by Co-Defendants

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate the kites exchanged by his co-defendants. Specifically, Applicant avers that if Plea Counsel had investigated the kites, they would have shown his co-defendants were conspiring against Applicant. This Court disagrees and finds this allegation is without merit.

³ "'Kite' is a prison term for an informal message or a complaint. According to one theory, the term originated in the mid-1800s when prisoners were not allowed to speak and instead passed messages to each other using Kite branded cigarette rolling papers. Another theory holds that the word came from the practice of people communicating with others by attaching a note to a string and swinging it to their friend's cell, much like a kite." <https://prisonjournalismproject.org/category/kites>.

that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome).

This Court further notes Applicant's representation to the plea judge that he was completely satisfied with Plea Counsel and that Plea Counsel had answered all of Applicant's questions. Applicant also represented to the plea court that Plea Counsel had done everything he was asked to do. (Plea Tr. pp. 9-10); 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.").

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's discovery investigation or his time spent reviewing discovery, Applicant was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Involuntary Guilty Plea

Applicant contends his guilty plea was involuntary because he relied on erroneous advice from Counsel regarding the potential sentence he could have faced, and that he was emotionally unfit to sign a plea agreement. Applicant cites Hill v. Lockhart specifically, asserting that the voluntariness of his plea depends on whether Plea Counsel's advice to enter an open plea was within the range of competence required of criminal attorneys. This Court finds this allegation is without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leekc, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

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. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

After a review of the record and testimony at the evidentiary hearing, this Court finds Plea Counsel's representation was well within the range of competence required of criminal attorneys. Also, this Court finds Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly, voluntarily, and intelligently. At the plea hearing, the plea judge explained to Applicant the constitutional rights he was waiving by pleading guilty, including his rights to remain silent and confront and cross-examine the State's witnesses and

present any defenses. (Plea Tr. pp. 4-8). Applicant informed the court that he understood the charges he was pleading to, he understood the range of sentencing the plea court could impose, and the implications of being convicted of a crime classified as violent. (Plea Tr. pp. 4-7). Applicant advised the court he had no emotional, physical, or nervous problems preventing him from understanding the agreement and that he had not been threatened, pressured, intimidated, or promised anything in exchange for his guilty plea. (Plea Tr. p. 4; p. 10). Lastly, Applicant affirmed that he was pleading guilty of his own free will. (Plea Tr. p. 11).

Further, this Court finds Applicant has failed to present any valid reason why he should be able to depart from the above statements made during his guilty plea. 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).

Based on the foregoing, this Court finds Applicant's guilty plea was knowingly, voluntarily, and intelligently entered into. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

Allegation: Failure to File an Appeal

Applicant alleges that he was denied the right to a direct appeal of his plea and sentence. This Court finds this allegation is without merit.

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, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (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, 596, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders⁷ procedure, "White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served."⁸ Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

At the evidentiary hearing and on direct examination, Applicant testified that he asked Plea Counsel to do "some type of appeal." (PCR Tr. p. 26). Applicant testified that Plea Counsel told him he would file a motion to reconsider. Id. Applicant testified that he asked Plea Counsel to file an appeal and thought the motion to reconsider was an appeal. Id.

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⁸ White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).



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February 8, 2024

Anthony M. Hudson, #381313
Kershaw Correctional Institution
4848 Gold Mine Highway
Kershaw, SC 29067-8069

Re: Your Case

Dear Mr. Hudson:

Enclosed please find a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in your case, which I have filed with the South Carolina Supreme Court. The Court will write to you in the future eliciting any **written memorandum** you may want to submit for the Court's consideration of your appeal. That memorandum should be sent to the Supreme Court, and **not to me**. Please understand that the State does **not file a return** when a Johnson petition is filed. The petition to be relieved is a standard part of the Johnson procedure, it does not mean that I do not wish to represent you.

Please contact me if you have any questions.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/sl

Enclosure

LEGAL
MAIL
ONLY

Dear Mrs. O'Hara.

I'm writing because I want to ask why didn't I ever receive any appeal paperwork after I got sentenced about how I go about an appeal process. My sentencing judge was Judge Brown, my attorney was Matt Swilley and my solicitor was Ryan White. Matt Swilley was asked to file for an appeal but I don't think he did so, this is my first time ever coming to prison and I'm in need and is asking all that I need to ask about filing appeals and PCR's. Also upon my arrival to Kirkland R & E (SCDC) my County FCDC did not show me with my property. I've had my mother to go up there to FCDC to check on my property but they don't have it up there and I've wrote the Property Room here and my property isn't here either. I've also filed a Motion for PCR I need to know is it in process, I've asked for a copy of my Motion of Discovery/Rule 5 and sit possible can a copy be mailed and giving to my mother, Anethia Hudson, at 354 West Thomas Street Lake City S.C. 29560, or can she pick it up. If you can please help me out or give this to the right person and file this on record I would gratefully appreciate it, please and Thank you.

P.S. Is a PCR Motion already in process

Thank you

Sincerely
Anthony
Hudson