

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Orangeburg County

Honorable Diane Schafer Goodstein, Circuit Court Judge

MALCOM WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000094

APPENDIX

SARAH E. SHIPE
Appellate Defender

ALAN WILSON
Attorney General

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

DANIELLE E. DIXON
Assistant Attorney General

PO Box 11549
Rembert C. Dennis Building
Columbia, SC 29211
(803)734-3970

ATTORNEY FOR PETITIONER

DAVID PASCOE
Solicitor, First Judicial Circuit

151 Docket Street
Orangeburg, SC 29115
(803) 533-6252

ATTORNEYS FOR RESPONDENT

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State of South Carolina,
Plaintiff,
vs.
Malcolm Williams,
Defendant,

October 12, 2017

Orangeburg, South Carolina

B e f o r e:

The Honorable Edgar Dickson, Judge

A p p e a r a n c e s:

Thomas Scott, Esquire
Attorney for the Plaintiff

Doug Mallard, Esquire
Peggy Hines, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- NO EXHIBITS ENTERED --

1 MR. SCOTT: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. SCOTT: Your Honor, standing before you is Malcolm
4 Williams.

5 THE COURT: Okay.

6 MR. SCOTT: He's represented by Mr. Doug Mellard and
7 Ms. Peggy Hines. He was indicted for one count of murder.

8 THE COURT: Uh-huh.

9 MR. SCOTT: He's on the trial docket. This is a case
10 we have spoken to you about in chambers.

11 Initially this morning, Your Honor, I thought we were
12 going to be doing an appearance today in which Mr. Williams
13 would request a trial.

14 THE COURT: Uh-huh.

15 MR. SCOTT: It's my understanding, after further
16 discussions with his lawyer, he wishes to plead guilty.

17 THE COURT: Okay.

18 MR. SCOTT: I have a sentencing sheet here.

19 THE COURT: All right.

20 MR. SCOTT: 2015-GS-38-1360.

21 THE COURT: Okay. Are we doing the plea and
22 sentencing?

23 MS. HINES: No.

24 MR. MELLARD: No.

25 MR. SCOTT: I ask that you withhold sentencing 'til

1 one day next week.

2 THE COURT: Okay. All right.

3 MALCOLM WILLIAMS, having been
4 first duly sworn, testifies as follows:

5 THE COURT: All right. Mr. Mellard and Ms. Hines,
6 y'all are representing Mr. Williams?

7 MS. HINES: Yes, sir.

8 MR. MELLARD: Yes, sir.

9 THE COURT: Okay. I understand that he's got a true
10 billed indictment for murder on an event that occurred in
11 Orangeburg County on June -- July 29, 2015, and the victim
12 is Lateefah Williams; is that correct?

13 MS. HINES: Yes, sir.

14 MR. MELLARD: Yes, sir.

15 THE COURT: Okay. All right. And I understand he's
16 on the trial docket for next week.

17 MS. HINES: That would be correct.

18 THE COURT: Okay. And I know that y'all were
19 appointed on this case and have been representing him for
20 awhile, right?

21 MS. HINES: Yes, sir.

22 MR. MELLARD: Yes, sir.

23 THE COURT: Okay. Y'all have had an opportunity to
24 meet with him and review with him the evidence -- all
25 evidence that the State has against him regarding this

1 charge; is that correct?

2 MS. HINES: Many numerous times.

3 THE COURT: Okay. And you have explained to him the
4 law regarding murder in this state?

5 MS. HINES: Yes, sir.

6 THE COURT: Advised him that with a murder charge, the
7 sentence is between 30 years and life; is that correct?

8 MR. MELLARD: Yes, Your Honor.

9 THE COURT: Is that correct?

10 MS. HINES: I have, sir.

11 THE COURT: Okay. All right. At -- he has indicated
12 to you that he wishes to plead guilty to these charges --

13 MS. HINES: He does.

14 THE COURT: -- this charge, excuse me.

15 MS. HINES: He does.

16 THE COURT: And y'all believe it's in his best
17 interest to go forward with the plea?

18 MS. HINES: Very much so.

19 MR. MELLARD: Yes, sir.

20 THE COURT: Okay. All right.

21 DIRECT EXAMINATION

22 BY THE COURT:

23 Q Mr. Williams, you're 26 years old?

24 A Yes, sir.

25 Q Okay. And -- and Mr. Williams, before you got

1 arrested, what did you do for a living?

2 A I was working a chicken farm at Batesburg-Leesville.

3 Q Okay. And now, you -- and this is where they have all
4 the chickens kind of gathered together in one big --

5 A Yes, sir.

6 Q Okay.

7 A Yes, sir.

8 Q How long were you working there?

9 A I just -- it hadn't been long because I -- I was
10 working at one job. Then I quit and I went back --

11 Q Okay.

12 A -- eventually, but --

13 Q Okay. How far did you go in school?

14 A The 9th.

15 Q And where were you going to school?

16 A Hunter-Kinard-Tyler.

17 Q And why did you stop going in the 9th grade?

18 A Just -- I just couldn't get quite with the academics.

19 Q Okay. All right, sir. Never got your GED.

20 A No, sir.

21 Q Okay. Did you start working after you stopped?

22 A Yes, sir.

23 Q Okay. Where'd you start working at?

24 A Well, my first job -- it was McDonald's and I -- I
25 carry out to Amick's Farms and I went to Columbia Farms and

1 --

2 Q Okay.

3 A -- W.P. Rawl's.

4 Q Okay. All right. Now, have you ever been treated for
5 any mental health issues?

6 A No, sir.

7 Q Okay. Have you ever been treated for any drug or
8 alcohol abuse or dependency?

9 A No, sir.

10 Q Okay. Today are you under the influence of any
11 alcohol or illegal drugs?

12 A No, sir.

13 Q Okay. And are you taking any kind of prescription
14 medication?

15 A No, sir.

16 Q Okay. Are you thinking clearly today?

17 A Yes, sir.

18 Q Do you understand why you're here?

19 A Yes, sir.

20 Q Okay. Tell me why.

21 A For murder -- charge of murder.

22 Q Okay. And Lateefah Williams, she related --

23 A She's my girlfriend.

24 Q Your girlfriend.

25 A Yes, sir.

1 Q Okay. All right. And Mr. Williams, your attorneys
2 have met with you and reviewed with you all the evidence
3 that the State has against you?

4 A Yes, sir.

5 Q And they have explained to you the law that applies in
6 this situation?

7 A Yes, sir.

8 Q And they have advised you of your constitutional
9 rights.

10 A Yes, sir.

11 Q Have you understood everything they've told you?

12 A Yes, sir.

13 Q Have they answered all your questions?

14 A Yes, sir.

15 Q Okay. Are you satisfied with their services as your
16 attorney?

17 A Yes, sir.

18 Q Okay. Do you need any more time to talk with them?

19 A No, sir.

20 Q Okay. Do you understand by pleading guilty to these
21 charges you give up your right to remain silent --

22 A Yes, sir.

23 Q -- you give up your right to cross-examine any of the
24 State's witnesses or contest any evidence that they have.

25 A Yes, sir.

1 Q You give up your right to present any evidence on your
2 own behalf and you give up the right to testify on your
3 own, though you're not required to do so. You understand
4 that?

5 A Yes, sir.

6 Q And you wish to give up all those rights.

7 A Yes, sir.

8 Q Okay. Is anybody -- has anybody promised you anything
9 to get you to plead guilty here today?

10 A No, sir.

11 Q Okay. All right. Has anybody threatened you or
12 forced you to get you to plead guilty?

13 A No, sir.

14 Q And you're doing this freely and voluntarily.

15 A Yes, sir.

16 Q You understand what you're doing.

17 A Yes, sir.

18 Q You understand that today I will accept your plea, but
19 sometime next week is when I'll sentence you.

20 A Yes, sir.

21 Q Okay. You believe it's in your best interest to go
22 forward with this.

23 A Yes, sir.

24 Q Okay. All right.

25 THE COURT: Mr. Scott.

1 MR. SCOTT: Thank you, Your Honor. Your Honor, this
2 incident took place on July 29 of 2015. The victim in this
3 case is Lateefah Williams. She was the girlfriend of the
4 defendant at the time of this incident. I believe they
5 just shared a last name. I don't believe they were married
6 at the time.

7 They have three children in common -- together, Your
8 Honor. Lateefah -- I believe she was 21 years of age.
9 They also worked together, Your Honor.

10 On the incident date, July 29, 2015, a female by the
11 name of "Latensha Salley," [phonetic] who was a little bit
12 older than the defendant and the victim, she was -- she
13 worked with the defendant and the victim as well. And Ms.
14 Salley -- her routine basically was she would pick up the
15 defendant and the victim and take them to work at Amick
16 Farms, the chicken plant in Batesburg. I think it's just
17 across the line into Saluda County.

18 THE COURT: Uh-huh.

19 MR. SCOTT: On that incident date, Your Honor, Ms.
20 Williams, the victim -- she had an eye doctor's
21 appointment. Her eye doctor appointment was at the Wal-
22 Mart in Batesburg. So she needed to leave work early that
23 day.

24 The defendant, Your Honor -- he met her outside
25 unbeknownst to the victim, I believe, to go to her eye

1 doctor appointment with her.

2 They went to her eye doctor appointment at -- at 4. I
3 think the plan was for her to go to her eye doctor's
4 appointment, then come back and pick up Ms. Salley 'cause
5 it was Ms. Salley's car.

6 After going to her eye doctor appointment, Your Honor,
7 the victim -- she went to the gas station to get gas before
8 going back to Amick Farms to pick up Ms. Salley. We have
9 video surveillance, Your Honor, from the gas station. You
10 can see Ms. Williams. She goes into the gas station
11 several times. She buys lottery tickets and she pumps gas.

12 The defendant gets out of the car from the passenger
13 side. He goes into the gas station at one point.

14 Eventually, Your Honor, the defendant -- he gets back
15 in the passenger side of the vehicle, shuts the door. The
16 victim -- she comes out of the gas station. Gets in the
17 driver's side of the vehicle. Shuts the door. You cannot
18 see into the car on the video surveillance.

19 A few seconds later you can see on the video
20 surveillance the defendant gets out of the vehicle from the
21 passenger side, shuts the door, walks around to the
22 driver's side, and gets in the vehicle, presumably where --
23 well, not presumably, where you just saw Ms. Williams get
24 into the vehicle.

25 The car drives off.

1 We believe, Your Honor, the defendant -- he drove near
2 his residence in North.

3 THE COURT: Uh-huh.

4 MR. SCOTT: We believe that before he left the gas
5 station he stabbed Ms. Williams three times with a knife,
6 kind of in the neck area. We believe that she bled to
7 death on the way back towards North, South Carolina, the
8 defendant's residence.

9 When the defendant got near his residence in North, on
10 Delray Drive, he went off to a road that I don't think has
11 any houses on it called "Bricin Drive," B-r-i-c-i-n. He
12 pulled the car up into the woods, probably 100 to 200 yards
13 into the woods. I think there's some little campfire
14 places where people hang out in the woods. He drove the
15 car up there, he got Ms. Williams out of the vehicle, and
16 put her on the ground. He took off his rubber boots that
17 he wears to Amick Farms.

18 THE COURT: Uh-huh.

19 MR. SCOTT: He walked home. He told his aunt, Delores
20 Miller, what he had done. Ms. Miller called the
21 defendant's mother, Davoris [phonetic] Austin. Ms. Austin
22 came to the house. Ms. Austin called 911. The 911
23 operator spoke to the defendant's mother, spoke to the
24 defendant's aunt, and then spoke with the defendant. The
25 defendant told the 911 operator what he had done.

1 The police responded. Before the police got there,
2 the defendant -- he -- he ran from his house. They got the
3 SLED tracking unit out there. They were able to locate him
4 the next morning, take him into custody. He was advised of
5 his rights in writing by Investigator John Stokes of the
6 Sheriff's Office.

7 After that, Your Honor, the defendant gave a video-
8 taped statement to Investigator Shumpert and Investigator
9 Keisha Gilliard with the Orangeburg County Sheriff's
10 Office. He admitted he had stabbed Ms. Williams. I think
11 he told them he had stabbed her one to two times.

12 When he told them that he'd done it in Batesburg, they
13 thought it was necessary to get the Batesburg-Leesville
14 Police Department involved. Investigator Connie Billings
15 from the Batesburg-Leesville Police Department arrived at
16 the Sheriff's Office. She and Investigator Shumpert
17 interviewed the defendant. This interview was audio taped
18 only as far as I know. We don't have a video tape from
19 this interview.

20 The defendant never changed his story from what he
21 told 911 to what he told Investigator Shumpert. He
22 admitted that he stabbed his girlfriend.

23 They actually did a follow-up interview.

24 And the reason why I tell you all this, Your Honor,
25 'cause basically, the defendant -- he confessed to his

1 aunt, he confessed to his mother, he confessed to the 911
2 operator, he confessed to Investigator Shumpert, and he
3 confessed to Investigator Billings. That would be the
4 factual basis for the plea.

5 I can tell you that the Orangeburg County Crime Scene
6 Unit responded as did the SLED Crime Scene Unit. They
7 processed the woods where the vehicle and -- and Ms.
8 Williams's body were located. SLED also processed the
9 vehicle after it had been towed to the Orangeburg County
10 impound lot.

11 SLED found two pieces of a broken knife blade inside
12 the vehicle. There was also lots of blood inside of the
13 vehicle.

14 That's it as far as the factual basis, Your Honor.

15 THE COURT: Okay. All right. And before I ask Mr.
16 Williams some other questions, Ms. Hines and Mr. Mellard,
17 y'all also advised Mr. Williams that the murder charge is a
18 violent, most serious offense.

19 MS. HINES: Yes, sir.

20 THE COURT: And you explained the consequences of that
21 to him.

22 MS. HINES: More than once and in great detail.

23 THE COURT: Okay.

24 MS. HINES: He understands that whatever sentence he
25 gets also would be day-for-day.

1 THE COURT: Okay. All right.

2 Mr. Williams, you heard what the Solicitor told me
3 about the circumstances that led to your arrest?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. And you agree generally with what I
6 was told?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. Mr. Williams, this murder occurred
9 on July 29, 2015, here in Orangeburg County.

10 THE DEFENDANT: Batesburg.

11 THE COURT: Okay.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: How do you plead to that charge?

16 THE DEFENDANT: Guilty.

17 THE COURT: Mr. Williams, if I accept your guilty
18 plea, it's going to be a conviction on your record.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You understand it's a violent and most
21 serious offense.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you understand I'm going to take your
24 plea today and will be sentencing you sometime next week.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. Do you want me to accept your
2 guilty plea?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Williams, I find your decision to
5 plead guilty to be freely, voluntarily, and intelligently
6 made. I find you've had the advice and counsel of two
7 competent attorneys. I find that you're satisfied with the
8 services of your attorneys. I find there's a factual basis
9 on which to base your guilty plea, and I am going to accept
10 your guilty plea.

11 And Mr. Mellard, you want to tell me something.

12 MR. MELLARD: Just one more thing, Your Honor.

13 THE COURT: Yes, sir.

14 MR. MELLARD: As -- as you've heard, there is -- the --
15 -- part of the crime took place in Batesburg-Leesburg [sic].

16 THE COURT: Yeah.

17 MR. MELLARD: By doing this plea, we're waiving any
18 venue issues we would ---

19 THE COURT: Okay.

20 MR. MELLARD: -- have at trial.

21 THE COURT: All right. And you've made -- and Mr.
22 Williams is aware that -- that he's waiving venue and
23 pleading in front of me in Orangeburg even though Batesburg
24 -- there's some argument that it occurred in Lexington; is
25 that correct?

1 MR. SCOTT: Yes, Your Honor. We would rely on State
2 vs. -- *State vs. Luke Williams*.

3 THE COURT: Okay.

4 MR. SCOTT: 321 SC 327. It's a 1996 case.

5 THE COURT: Okay.

6 MR. SCOTT: Basically the Court in this case said (as
7 read): "We conclude that there was sufficient evidence
8 from which a trier of fact could reasonably infer the
9 victims died there." That is the case in which the bodies
10 were found in Edgefield County, but there was some
11 allegation that the crime might have been committed
12 elsewhere.

13 THE COURT: Okay.

14 MR. SCOTT: Obviously the best evidence in this case
15 is where Ms. Williams's body was located, and that is
16 Orangeburg County.

17 THE COURT: Okay.

18 MR. SCOTT: The only evidence that we have that
19 anything occurred in Batesburg-Leesville would be his
20 statements.

21 THE COURT: Okay. All right. And -- and -- and
22 that's why y'all are waiving venue and going forward in
23 this ---

24 MS. HINES: Yes, sir.

25 MR. MELLARD: Yes, sir.

1 THE COURT: Okay. All right.

2 All right. Mr. Williams, I have -- I have accepted
3 your -- your guilty plea.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And I'll see y'all sometime next week.

6 MR. MELLARD: Yes, sir.

7 MS. HINES: Thank you, Your Honor.

8 THE COURT: Thank y'all. Thank you, sir.

9

10 -- END OF TRANSCRIPT OF RECORD --

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the First Circuit Court for Orangeburg County, South Carolina, on the 12th day of October, 2017.

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

E/Bonnie H. Kelly

Bonnie H. Kelly, CVR
Official Court Reporter

Columbia, South Carolina

June 26, 2018

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Orangeburg	)	2015-GS-38-1360
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	SENTENCING
vs.	)	TRANSCRIPT OF RECORD
	)	
MALCOM WILLIAMS,	)	
	)	
DEFENDANT,	)	

October 17, 2017
Orangeburg, South Carolina

BEFORE:

THE HONORABLE EDGAR W. DICKSON, JUDGE.

APPEARANCES:

TOMMY SCOTT, ASSISTANT SOLICITOR
Attorney for the State

DOUG MELLARD, ASSISTANT PUBLIC DEFENDER
PEGGY HINDS, DEPUTY PUBLIC DEFENDER
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 MR. SCOTT: Your Honor, before you is Malcom
2 Williams. He is here today with his attorneys, Mr. Doug
3 Mellard and Ms. Peggy Hinds.

4 Your Honor, Mr. Williams, he was indicted for murder,
5 2015-GS-38-1360. He pled guilty to that indictment in
6 front of Your Honor last Thursday, and we are here today
7 for the purposes of sentencing.

8 THE COURT: Okay.

9 MR. SCOTT: I believe I placed the factual basis for
10 the plea on the record at the -- at the time of the plea.
11 I'm happy to provide any other information regarding the
12 facts that Your Honor might want.

13 THE COURT: All right.

14 MR. SCOTT: I can tell you as far as his prior
15 record, I believe it is a simple CDV from Aiken County in
16 2014.

17 THE COURT: Okay.

18 MR. SCOTT: The victim, Latifah Williams, her mother
19 Rose Staley is present in the courtroom along with several
20 other family members seated on the front row behind the
21 State's table.

22 THE COURT: Okay.

23 MR. SCOTT: I believe she would like to address Your
24 Honor at the appropriate time.

25 THE COURT: Okay. Okay. Well, then since I'm doing

1 sentencing, I'll be glad to hear from her right now.

2 MR. SCOTT: Thank you.

3 THE COURT: Okay. And -- and this is the victim's
4 mom?

5 MR. SCOTT: Yeah, Rose.

6 THE MOTHER: Yes. My name is Rose Stalely.

7 THE COURT: Your last name again?

8 THE MOTHER: Stalely.

9 THE COURT: Staley.

10 MR. SCOTT: Stalely.

11 THE COURT: Okay. And Ms. Staley, I am, again, very
12 sorry about this. I remember hearing Thursday about the
13 facts --

14 THE MOTHER: Yes, sir.

15 THE COURT: -- about those. Okay. What -- what
16 would you like to tell me please, ma'am?

17 THE MOTHER: Well, I just got a hole in my heart
18 because that was my baby, and she left three beautiful
19 babies. They're with me now, and they ask about their mom
20 all the time, and the only thing I can tell them, their
21 mama is just watching over them. And I miss her, too, and
22 that's my oldest daughter right here.

23 THE COURT: Hi. How are you?

24 THE MOTHER: And that's her sister, Tiesha Stalely.

25 THE COURT: Okay.

1 THE MOTHER: Yes, sir.

2 THE COURT: All right. Okay. Again, Ms. Stalely,
3 I'm very sorry. I don't remember. How old are the -- are
4 those three children?

5 THE MOTHER: They're five, three, and two.

6 THE COURT: You've got your hands full.

7 THE MOTHER: Yes, sir.

8 THE COURT: You do. You do. I'm -- I'm just sorry.

9 THE MOTHER: Thank you.

10 THE COURT: You had to go through what no parent
11 should have to do.

12 THE MOTHER: No, sir.

13 THE COURT: Okay. Thank you, ma'am.

14 THE MOTHER: You're welcome.

15 THE COURT: Yes, ma'am.

16 MR. SCOTT: Just I'd also like to add -- I don't have
17 them here today but the Orangeburg County Sheriff's
18 Office, Batesburg-Leesville Police Department, SLED, they
19 did an outstanding job investigating this case.

20 THE COURT: All right.

21 MR. SCOTT: I've spent a lot of time the last month,
22 month-and-a-half preparing this case for trial this week
23 before it pled this last week, but I would commend law
24 enforcement on the investigation that they did. That's
25 all we have, Your Honor.

1 THE COURT: Okay. All right.

2 MR. MELLARD: Just briefly, Your Honor. He is 26
3 years old. He went through the ninth grade. He had
4 trouble with math, and so was not able to complete. He
5 was working at the Amick Chicken Farms at the time. Prior
6 to that he worked at the Columbia Chicken Farms.

7 He has -- he's relatively young. He played football
8 in high school. He ran track in high school. He has been
9 locked up for 811 days, Your Honor.

10 Did you want to say something? Do you want to say
11 something?

12 THE DEFENDANT: Yeah, just...

13 MR. MELLARD: His -- his family is here, Your Honor.
14 They're seated in the back.

15 THE COURT: Okay.

16 MR. MELLARD: So he does have family support, and I
17 believe he wanted to say a few words.

18 THE COURT: Okay.

19 THE DEFENDANT: Judge, it's basically an apology
20 letter.

21 THE COURT: Sir?

22 THE DEFENDANT: I have an apology letter.

23 THE COURT: Okay.

24 THE DEFENDANT: I'd say I want to apologize to the
25 family and friends for all the pain and grief I've caused.

1 I especially want to apologize to our children.

2 My behavior has forced them to grow up without either
3 parent. While it is possible I may one day regain my
4 freedom and reunite back to my kids, I sincerely regret
5 they will never get the chance to see their mother, and I
6 pray that everyone can find in their hearts to forgive
7 give me as time goes by.

8 If -- if I would have minute to think about things
9 before I acted, none of this would have ever happened and
10 Cookie would have still been with us. I wish that I make
11 -- I wish I could bring her back, but that -- I can't, and
12 that pains me more than anything.

13 I am extremely sorry for what I've done, and I beg
14 the court for leniency in considering the sentence I am to
15 receive. This is a situation in which everyone loses
16 immediate extended family on both sides.

17 THE COURT: All right.

18 MR. MELLARD: That's all we have, Your Honor.

19 THE COURT: All right.

20 MS. HINDS: I would just like to add I think the
21 remorse was -- was almost instantaneous. He is the one
22 that -- in this particular case he came back, told his
23 aunt immediately something was wrong, he did something
24 bad, told his mama, had his mom call 9-1-1. He did what
25 he could to rectify something that couldn't be rectified

1 unfortunately.

2 THE COURT: Okay. All right. You said 811 days in
3 jail?

4 MR. MELLARD: Yes, sir.

5 THE COURT: Okay.

6 All right. Mr. Williams, the sentence of this Court
7 is you be committed to the State Department of Corrections
8 for a period of 32 years. I'm going to give you credit
9 for the 811 days you served.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Good luck.

12 MR. MELLARD: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MS. HINDS: Thank you.

15 (Whereupon, the proceedings were concluded.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Orangenburg County, South Carolina, on the 17th day of
October, 2017.

August 3, 2018

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of ORANGEBURG)MALCOM WILLIAMS #37426A)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018-CP-38-COG 40

APPLICATION FOR

POST-CONVICTION RELIEF

FILED FOR RECORD
WILLIAM B. CLARK
JUN 11 2018ORANGEBURG COUNTY, SOUTH CAROLINA
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention KIRKLAND CORRECTIONAL INST.
4344 BEAVER RIVER RD., COLUMBIA, SC 29210
2. Name and location of Court which imposed sentence ORANGEBURG COUNTY
151 DOCKET ST, ROOM 110, ORANGEBURG SC. 29116-1112
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2015-GS-38-478 (2015-A3810700085)(b) 2015-GS38-1360 (2015-A3810700466)**RECEIVED**

JUN 07 2018

Referred to

Answered

DPLW / PB

- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 10-17-2017, 32 YEARS
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. APPEALS COURT
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Failed to provide sufficient explanation
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. "Failed to provide sufficient explanation" 1-8-2018
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Rule 203 (1) (B) (iv) (SCACR)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHED PAGES; QUESTION 10
- (b) —
- (c) —
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED PAGES; QUESTION 11
- (b) —
- (c) —
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

PCR APPLICATION

QUESTION 10;

(a) DEFENSE COUNSEL LIES TO DEFENDANT AND UNDER THE ABA STANDARDS FOR REPRESENTATION CREATED CONSTITUTIONAL VIOLATIONS BECAUSE DEFENDANT WAS ENTITLED TO A DEFENSE FROM CRIME OF PASSION.

(b) COUNSEL'S DEFICIENT PERFORMANCE PREJUDICED DEFENDANT AND THIS WAS INEFFECTIVE PERFORMANCE/ ASSISTANCE

(c) DEFENSE COUNSEL FAILED TO FILE FOR OR ARGUE MITIGATING FACTORS FOR CRIME OF PASSION AND PRESERVE ISSUES FOR APPEAL. IN ADDITION COUNSEL ON APPEAL WOULD NOT BRING UP DEFICIENT COUNSEL FOR INEFFECTIVENESS BECAUSE HE WAS THE SAME ATTORNEY PRESIDING IN THE PCR CASE, THIS CREATING PREJUDICE.

FILED TO REPORT
WILLIAM L. CLARK
200 JUL - 14 P 2 11
CLERK OF COURT
COLUMBIA, SC

PCR APPLICATION

ATTEST: TRUE COPY

QUESTION 11;

Winnona B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

(a) COUNSEL ERRONEOUSLY STATED TO DEFENDANT OF ENTITLED TO AN INSTRUCTION OF INVOLUNTARY MANSLAUGHTER ONLY IF COURT DETERMINED A CHARGE WAS APPROPRIATE AND THUS THIS WAS INACCURATE ADVICE TO DEFENDANT UNDER STATE V. PAULWIG 264 S.C. 275 (1975), STATE V. COOLEY 342 S.C. @ 67, 536 S.E. 2d @ 668 (2000) AS EVIDENCE SUPPORTS MANSLAUGHTER FROM CRIME OF PASSION, STATE V. BYRD 323 S.C. 319 (1996). U.S.C.A. 6th AMEND.

(b) DEFENSE COUNSEL'S FAILURE TO ARGUE/MOTION BEFORE COURT AND BEFORE PLEA THAT DEFENDANT HAD MITIGATING FACTORS, THAT DEFENDANT WAS ENTITLED TO INVOLUNTARY MANSLAUGHTER BASED FROM FAMILY'S STATEMENT OF INCIDENT AND THAT ISSUE CREATED PLATFORM TO FORM CRIME OF PASSION, AS SUCH DEFENDANT WOULD OF BEEN ENTITLED TO VOLUNTARY MANSLAUGHTER, U.S.C.A. 6th AMEND.

(c) DEFENSE COUNSEL REFUSED TO MOTION THE COURT BEFORE PLEA FOR LESSER OFFENSE AS SUCH CREATED BIAS AND PREJUDICE FOR FAIR REPRESENTATION, U.S.C.A. 6th AMEND, 14th AMEND.

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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?

- N/A
- N/A

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

(a) which grounds have been presented:

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

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

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

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

- (a) COUNSEL FAILED TO DO SO
 (b) COUNSEL FAILED TO PRESERVE FOR RECORD (APPEAL)
 (c) COUNSEL STATED DEFENDANT WASN'T ENTITLED

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? N/A
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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

- (a) the name and address of each attorney who represented you:
- i. Re Douglas Mellard P.O. Box 1112 Orangeburg, SC 29116-1112
 - ii. Re Douglas Mellard P.O. Box 1112 Orangeburg SC 29116-1112
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Re Douglas Mellard P.O. Box 1112 Orangeburg SC 29116-1112
 - ii. Re Douglas Mellard P.O. Box 1112 Orangeburg SC 29116-1112
 - iii. _____

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

1.5 Year's

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

NO

STATE OF SOUTH CAROLINA)

County of Orangeburg)

VERIFICATION

I, Malcom Williams, 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.

Malcom Williams

SWORN to and subscribed before me this 29
day of May, 2018.

Melissa Spigner (L.S.)
Notary Public

My Commission Expires: Dec. 1, 2025

ATTEST: TRUE COPY
Winnys B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

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

I, Malcom Williams, 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.

Malcom Williams
Applicant

SWORN or affirmed to and subscribed before me this

29 day of May, 2018.

Melissa Dargie
Notary Public

My Commission Expires: Dec. 1, 2025

ATTEST: TRUE COPY

Winnaja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Malcom Williams #374269,	)	Case No.: 2018-CP-38-00640
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION FOR MORE
	)	DEFINITE STATEMENT
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return and Motion for More Definite Statement to the application for post-conviction relief filed by Malcom Williams (Applicant) on June 4, 2018, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of the Orangeburg Clerk of Court. During its December 2015 term, the Orangeburg County Grand Jury indicted Applicant for murder (2015-GS-38-1360). Applicant was represented by R. Doug Mellard and Peggy Hines, of the First Circuit Public Defender's Office. Tommy Scott of the First Circuit Solicitor's Office prosecuted the case. On October 12, 2017, Applicant appeared before the Honorable Edgar Dickson and pled guilty as indicted. On October 17, 2017, Judge Dickson sentenced Applicant to imprisonment for a term of thirty-two (32) years with corresponding credit of 811 days time served.

Applicant filed a timely notice of appeal, by and through attorney Mellard, on October 17, 2017. (Appellate Case No. 2017-002192). On October 24, 2017, the South Carolina Court of Appeals notified Applicant, through counsel, that he had 20 days to submit in writing to the Court

any arguable basis that there were issues preserved for appeal. On October 26, 2017, counsel mailed Applicant notice of his right to submit additional information to the Court within 20 days. The Court of Appeals received a timely response from Applicant on November, 14, 2017. On January 8, 2018, the Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR) and remitted the case back to the lower court on January 24, 2018.

Attached to this Return and incorporated by reference are the records of the Orangeburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript and sentencing transcript, Applicant's record on appeal, and current application. Respondent reserves the right to amend the Return upon receipt of any relevant materials.

II. STATEMENT OF FACTS

On July 29, 2015, Applicant met the Victim, Lateefah Williams, outside of the Amick Farms chicken plant in Batesburg-Leesville, where they both worked. Although they shared a last name, Applicant and Victim were not married, however they had three children together. The Victim had an eye appointment at the local Walmart that afternoon, and Applicant had borrowed a co-workers vehicle in order to take Victim. After Victim's eye appointment, she and Applicant stopped at a local gas station to get gas before returning the vehicle to their co-worker. A surveillance camera at the gas station recorded the last known movements of Applicant and Victim while she was alive. The video shows that Victim goes into the gas station several times to buy gas and lottery tickets. Applicant gets out of the car from the passenger side and goes into the gas station. Eventually, Applicant leaves the gas station and gets back in the passenger side of the vehicle and shuts the door. The Victim leaves the gas station, gets in the driver's side of

the vehicle and shuts the door. A few seconds later the recording shows Applicant getting out of the vehicle from the passenger side, shuts the door, walks around to the driver's side, and gets in the vehicle where the Victim was just sitting. Then the car drives off. It is believed that during the time Applicant and Victim were seated in the vehicle together he stabbed her three times with a knife in the side of the neck, and she bleed to death while Applicant drove back to his residence in North. When Applicant neared his home, he entered a small side road and then drove 100 to 200 yards into the woods. There, he removed Victim's body from the vehicle and left her on the ground and then walked home. Applicant immediately told his aunt what he had done, and she proceeded to call Applicant's mother, who in turn called 911. Defendant also spoke with the 911 operator and confessed to killing Victim. Applicant ran before police arrived at the home, however he was located and taken into custody the following morning.

III. CURRENT APPLICATION

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

1. "Defense counsel lied to defendant and under the ABA standards for representation created constitutional violations because defendant was entitled to a defense from crime of passion."
 - a. "Counsel erroneously stated to defendant of entitled to an instruction of involuntary manslaughter only if court determined a charge was appropriate and thus this was inaccurate advice to defendant under State v. Pauling, 264 S.C. 275 (1975), State v. Cooley, 342 S.C. @ 67, 536 S.E.2d @ 668 (200) as evidence supports manslaughter for crime of passion, State v. Byrd 323 S.C. 319 (1996). U.S.C.A 6th Amend."
2. "Counsel's deficient performance prejudiced defendant and thus was ineffective performance/assistance."

- a. “Defense counsel’s failure to argue/motion before court and before plea that defendant had mitigating factors, that defendant was entitled to voluntary manslaughter based from family’s statement of incident. And that issue created platform to form crime of passion, as such defendant would have been entitled to voluntary manslaughter. U.S.C.A. 6th Amend.”
3. “Defense counsel failed to file for or argue mitigating factors for crime of passion and preserve issues for appeal. In addition counsel on appeal would not bring up deficient counsel for ineffectiveness because he was the same attorney presiding in the PCR case, thus creating prejudice.”
 - a. “Defense counsel refused to motion the court before plea for lesser offense as such created bias and prejudice for fair representation, U.S.C.A. 6th Amend, 14th Amend.”

Applicant requests relief as follows:

- “15 years”

Attached to this Return and incorporated by reference are the records of the Orangeburg County Clerk of Court regarding the subject conviction, Applicant’s records from the South Carolina Department of Corrections, the plea transcript and sentencing transcript, Applicant’s record on appeal, and current application. Respondent reserves the right to amend the Return upon receipt of any relevant materials.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Plea Counsel, Generally

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, they must present evidence to satisfy the two prong test enumerated in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984), to determine whether plea counsel’s “assistance was

so defective as to require a reversal of” Applicant’s sentence. First, the applicant must show plea counsel’s performance was deficient; and second, the applicant must show they were prejudiced by that deficiency. *State v. Stalk*, 383 S.C. 559, 560-61, 681 S.E.2d 592, 594 (2009) (citing *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)) (extending the Court’s two prong *Strickland* test to apply to guilty pleas).

In order to prove deficient performance under the first prong of *Strickland*, the burden is on applicant to show that plea counsel’s representation fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 687-88, 104 S.Ct. at 2064. The proper measure of attorney performance remains simply reasonableness under prevailing professional norms. *Id.* In considering whether counsel’s performance was reasonable:

Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.... A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.

Strickland, 466 U.S. at 689, 104 S.Ct. at 2065; *Edwards v. State*, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011).

“[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing *Caprood v. State*, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). “[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (quoting *Strickland*, 466 U.S. at 690, 104 S.Ct. at 2066). The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Even if the applicant can establish that counsel's performance was deficient, they must still overcome their burden to demonstrate prejudice from that deficiency. The second prong of *Strickland* requires the applicant to prove that counsel's deficient performance prejudiced applicant to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." *Cherry*, 300 S.C., at 117-18, 386 S.E.2d, at 625 (citing *Strickland*, 466 U.S., at 694, 104 S.Ct., at 2068).

Hill v. Lockhart[474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)] extended the application of the two-part *Strickland* test "to challenges to guilty pleas based on ineffective assistance of counsel." *See also Stalk v. State*, 382 S.C. 559, 560, 681 S.E.2d 592, 594 (2009). The analysis of counsel's performance under the first prong of the *Strickland* test remains unchanged. *Hill*, 474 U.S., at 59, 106 S.Ct., at 370. The second requirement "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* The applicant must "show that there is a reasonable probability that, but for counsel's errors, [s]he would not have pleaded guilty and would have insisted on going to trial." *Id.*

B. Involuntary Guilty Plea

Respondent interprets Applicant's claim, that counsel's failure to provide mitigating factors to the plea Court prevented Applicant from pleading to the lesser offense of involuntary manslaughter, as an attack on the knowing and voluntary nature of Applicant's plea. Respondent submits this allegation is without merit.

Because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). The standard for determining the validity of a guilty plea is "whether the plea

represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). Where a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice “was within the range of competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56.

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights they are waiving: the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Id.* Additionally, in order to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived. *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624.

A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and when attempting to determine the voluntary and intelligent nature of a plea, the plea colloquy ordinarily serves as confirmation that a criminal defendant is waiving the right to raise certain constitutional claims by pleading guilty. *Hyman v. State*, 397 S.C. 35, 44, 397 S.E.2d 375, 379 (2012) (abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)); *See also Rivers v. Strickland*, 264 S.C. 121, 213 S.E.2d 97, 98 (1975) (“The general rule is that a plea of guilty, voluntarily and understandingly made, constitutes a waiver of nonjurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea. An accused also waives the right to trial and the incidents thereof and the constitutional guarantees with respect to criminal prosecutions.”) (citation omitted). However, “[g]iven the seriousness of the matter, the Constitution insists, among other things, that the

defendant enter a guilty plea that is ‘voluntary’ and that the defendant must make related waivers ‘knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and likely consequences.’ ” *United States v. Ruiz*, 536 U.S. 622, 628, 122 S.Ct. 2450, 153 L.Ed.2d 586 (2002) (quoting *Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970)) (alterations in original). Specifically, “a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000) (emphasis removed) (citing *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980)).

An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). 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 will be treated as such.

Applicant contends counsel lied to him because he was “entitled to a defense from crime of passion” and counsel was deficient for failing to argue mitigating factors that would entitle Applicant to a charge of voluntary manslaughter. Respondent submits Applicant cannot meet his burden by way of these allegations, as the record reflects Applicant was aware of the consequences of pleading guilty, rather than proceeding to trial, and voluntarily and intelligently relinquished his constitutional rights to a jury trial and all other attendant trial rights during the plea proceeding. Judge Dickson explained to Applicant that by pleading guilty he would waive certain constitutional

rights – his right to remain silent, his right to cross-examine State’s witnesses or contest evidence they have, and his right to present evidence and testify on his own behalf, to which Applicant responded that he understood. (Plea Tr. 9-10). Judge Dickson further explained the charge in greater detail, including its minimum and maximum sentences under the law; its classification as a violent, most serious offense. (Plea Tr. 15, 11. 17-18). Applicant indicated he understood and wished to proceed forward, and for Judge Dickson to accept his guilty plea. (Plea Tr. 15-17).

Based on the record from the guilty plea and the presumption provided to counsel under *Butler*, Applicant cannot satisfy the burden set forth in *Strickland*. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

V. MOTION FOR MORE DEFINITE STATEMENT

Respondent also hereby moves for a more definite statement. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50. It is incumbent upon Applicant, through counsel, to amend his application where necessary to set forth specific facts upon which his allegations are based. *See* Rule 71.1(d), SCRPC (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”); *see also Coardes v. State*, 262 S.C. 493, 497, 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 Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of adequate and effective assistance of counsel is insufficient.”). Where an 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 a circuit court judge to require a more definite statement when vague or ambiguous pleadings are filed).

Applicant has failed to set forth sufficient facts to "support each ground" or to explain with sufficient specificity the facts upon which his claims are based. The application is riddled with vague, non-specific allegations which provide Respondent no guidance as to what it is that Applicant actually intends to offer at in an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRCP; *Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests

that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII. GENERAL DENIAL

Respondent denies each allegation not expressly admitted, qualified, or explained.

VIII. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court grant its motion for a more definite statement as set forth in Section V, above, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

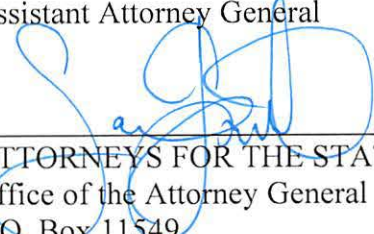
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SARA E. GUNTON
Assistant Attorney General

By:



ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

AUGUST 1, 2019

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF ORANGEBURG)

COURT OF COMMON PLEAS
2018-CP-38-00640

3
4 Malcolm Williams,)

5 Plaintiff,)

6 vs.)

7 State of South Carolina,)

8 Defendant.)

TRANSCRIPT OF RECORD

9 September 9, 2019
10 St. George, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE DIANE S. GOODSTEIN, JUDGE.
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16

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

18 JONATHAN D. WALLER, ESQ.
19 Attorney for the Plaintiff

20 SARA E. GUNTON, ASSISTANT ATTORNEY GENERAL
21 Attorney for the Defendant
22
23
24

25 DEBORAH M. McCURDY, RPR
Official Court Reporter

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SEPTEMBER 9, 2019

(WHEREUPON, the hearing began at 10:26
a.m.)

THE COURT: Now, Ms. Gunton, tell me about
this matter. Tell me about Mr. Williams.

Good morning, Mr. Williams.

MR. WILLIAMS: Good morning. How are you
doing?

THE COURT: Fine.

MS. GUNTON: May it please the Court?

THE COURT: Yes.

MS. GUNTON: Your Honor, this is the matter of
Malcolm Williams v. State of South Carolina, Docket
Number 2018-CP-38-00640.

Mr. Williams is present here in the courtroom
today, and is represented by Jonathan Waller.

Mr. Williams was indicted at the December 2015
term of the Orangeburg County Grand Jury for
murder. He was represented on that charge by
Mr. Doug Mellard and Ms. Peggy Hinds, of the First
Circuit Public Defender's Office, both of whom are
present in the courtroom today.

On October 12th, 2017, Mr. Williams appeared
before the Honorable Edgar W. Dixon and pled guilty
as indicted.

1 On October 17th, 2017, Judge Dickson sentenced
2 him to a term of imprisonment of 32 years.

3 Plea counsel filed a timely notice of appeal.
4 The Court of Appeals dismissed Applicant's appeal
5 by order filed January 8th, 2018, for failure to
6 provide a sufficient explanation as required by
7 Rule 203(d)(1)(B)(4) of the South Carolina
8 Appellate Court Rules. The remittitur was returned
9 to the Circuit Court on January 24th of 2018.

10 Mr. Williams filed an action for
11 post-conviction relief on June 4th, 2018.
12 Mr. Williams is alleging ineffective assistance of
13 counsel.

14 And would Your Honor like for me to give a
15 brief --

16 THE COURT: Not unless -- no.

17 MS. GUNTON: Okay. And the State is ready to
18 go forward, Your Honor.

19 THE COURT: Thank you so much.

20 Mr. Waller, do you need to make any
21 preliminary remarks, or are you ready to call your
22 first witness?

23 MR. WALLER: I am -- briefly, Your Honor.

24 THE COURT: Sure.

25 MR. WALLER: Mr. Williams did file an

1 application. Attached to his application was, you
2 know, some more lengthy issues that he intends to
3 raise. Your Honor should have a copy of that, so
4 we will stand on what he has previously provided
5 the Court.

6 THE COURT: Sure.

7 MR. WALLER: At this time I would call Malcolm
8 Williams.

9 THE COURT: All right, yes.

10 (Witness approaches.)

11 THE CLERK: Please raise your right hand.

12 (Witness complies.)

13 THE CLERK: State your full name for the
14 record.

15 THE WITNESS: Malcolm Williams.

16 THE CLERK: Do you solemnly swear or affirm to
17 tell the truth, the whole truth, and nothing but
18 the truth?

19 THE WITNESS: Yes, ma'am.

20 THE CLERK: Thank you. Have a seat, please.

21 (Witness seated.)

22 THE COURT: Mr. Williams, I am going to ask
23 you to state your name again for our record. And
24 there is some water for you if you need it. Thank
25 you.

1 All right. State your full name for us.

2 THE WITNESS: Malcolm Williams.

3 THE COURT: I can hear you just fine. Can
4 y'all hear? Everybody can hear?

5 MR. WALLER: I can.

6 THE COURT: Your witness.

7 MR. WALLER: Thank you, Your Honor.

8 THE WITNESS: Malcolm Williams.

9 MALCOLM WILLIAMS,
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WALLER:

13 Q Good morning, Mr. Williams. How are you today?

14 A I'm okay.

15 MR. WALLER: I am going to move up a little
16 bit.

17 THE COURT: Sure.

18 BY MR. WALLER:

19 Q All right, Mr. Williams, I want to kind of take you
20 back to when you were first arrested. Do you
21 recall that?

22 A Yes, sir.

23 Q Okay. Where were you arrested?

24 A Orangeburg.

25 Q You were arrested --

1 THE COURT REPORTER: I'm sorry?

2 THE WITNESS: In North.

3 BY MR. WALLER:

4 Q In North? But in Orangeburg County?

5 A Yes, sir.

6 Q Where were you living at the time?

7 A I was back and forth to my mother house and my
8 sister's house.

9 Q Okay. Where were those houses located?

10 A My mother's house in North, and my sister's house
11 is in Salley, South Carolina.

12 Q Okay. So around this area, though?

13 A Yes, sir.

14 Q Okay.

15 THE COURT: I'm so sorry. Your mother's house
16 is in Santee?

17 THE WITNESS: In North.

18 THE COURT: Okay. And your sister is in?

19 THE WITNESS: Salley, South Carolina.

20 THE COURT: Salley?

21 THE WITNESS: Yes, ma'am.

22 BY MR. WALLER:

23 Q All right. Mr. Williams, where were you were
24 working at the time?

25 A I was at Amick Farms.

1 Q Okay. Where is Amick Farms located?

2 A Between Batesburg and Saluda.

3 Q Okay. Between the Town of Saluda and Batesburg?

4 A Yes, sir.

5 Q Okay. So Lexington County almost to Saluda County,
6 is that right?

7 A Yes, sir.

8 Q Okay. And where did this incident take place?

9 A In Batesburg-Leesville.

10 Q Okay. And then you came back to Orangeburg?

11 A Yes, sir.

12 Q Okay. And so that is why you were arrested in
13 Orangeburg, is that right?

14 A Yes, sir.

15 Q Okay. When you were first arrested, did you have
16 an attorney?

17 A No, sir.

18 Q Okay. How long after you were arrested did you get
19 an attorney?

20 A I'd say -- I believe -- I recall that following
21 month or two or so, I believe. Yes, sir.

22 Q Who was that attorney you got?

23 A Mr. Douglas Mellard.

24 Q Okay. How did you -- how did he come to represent
25 you? Was he appointed or did you hire him?

1 A He was appointed.

2 Q Okay. Because he is a Public Defender, is that
3 right?

4 A Yes, sir.

5 Q Okay. When Mr. Mellard was appointed, had you had
6 a bond hearing at that point?

7 A No, sir.

8 Q Okay. Did you ever have a bond hearing?

9 A No, sir.

10 Q Did y'all talk about that?

11 A I mentioned it, but it never went forward with it.

12 Q Okay. When Mr. -- when you and Mr. Mellard first
13 met, do you recall what y'all talked about?

14 A We basically -- we went over the nature of the
15 crime, and stuff like that.

16 Q Okay. Did y'all talk about what you were charged
17 with?

18 A Yes, sir.

19 Q Did y'all talk about the potential penalties of the
20 murder charge?

21 A Yes, sir.

22 Q Did y'all talk about what the State would have to
23 prove, the elements of the charge and what they
24 would have to show in order for you to be found
25 guilty?

1 A As I recall, I think we did, yes, sir.

2 Q Okay. At the time, was there discovery provided at
3 that time?

4 A I believe -- I think, yes. I think, yes. I don't
5 know, I'm not for sure.

6 Q Did y'all talk about any potential defenses that
7 you might have?

8 A No, sir, he didn't -- he didn't have any.

9 Q Okay. Later on when y'all met, did y'all talk
10 about any potential defenses?

11 A When I -- when I brought it up, he said there
12 wasn't any.

13 Q Okay. Part of the incident was captured on video?

14 A Yes, sir.

15 Q Is that right? There was a video of the vehicle?

16 A Yes, sir.

17 Q Okay. Did the -- did you ever have a chance to see
18 that video?

19 A Yes, sir, I did.

20 Q Okay. Did the video show the inside of the car
21 where the incident actually took place?

22 A No, sir.

23 Q Okay. So it showed the outside of the car and it
24 showed, you know, people coming and going into the
25 car?

1 A Yes, sir.

2 Q Okay. Did you and Mr. Mellard have a chance to
3 discuss, you know, what took place inside the car?

4 A Yes, sir.

5 Q Did you tell him that?

6 A Yes, sir.

7 Q Did you think you had any defenses based on what
8 you were telling him?

9 A Yes, sir.

10 Q Okay. What was his response?

11 A He mentioned -- he said there wasn't any -- the
12 things that I was asking him, he said there wasn't
13 any.

14 Q Okay. What did you think were the defenses that
15 you had?

16 A Well, I asked him -- I had asked him about
17 voluntary manslaughter. I asked him about
18 manslaughter. He said there wasn't any
19 manslaughter involved, it was a clear-cut case of
20 murder.

21 Q Okay. And to back up so Judge Goodstein
22 understands, you and a female, your girlfriend, I
23 believe --

24 A Yes, sir.

25 Q -- were in a vehicle, and she was ultimately

1 stabbed, is that right?

2 A Yes, sir.

3 Q Okay. Did you and Mr. Mellard talk about any
4 self-defense, or anything like that?

5 A No, sir.

6 Q You mentioned voluntary manslaughter or involuntary
7 manslaughter?

8 A Yes, sir.

9 Q What did y'all talk about about those two lesser
10 charges?

11 A Well, when I asked him, he -- his answer was the
12 same. He said, like, there is no -- like, there is
13 no -- there is nothing involved with this case,
14 like, there is no manslaughter, no anything.

15 Q Okay. Your application indicates that Mr. Mellard
16 told you that involuntary manslaughter might be an
17 option. How did that come -- what made you put
18 that in your application?

19 A Well, to tell you the truth, I think I been rushing
20 my application.

21 Q Okay.

22 A And I just been focused on it. That's -- that's
23 how that came about.

24 Q Okay. Okay. All right. How did Ms. Hinds get
25 involved in your case?

1 A Ms. Hinds, she came like later at the end of my --
2 at my sentencing. I say like a month or two at the
3 end of my sentence.

4 Q Were y'all getting ready for trial?

5 A Yes, sir.

6 Q So that is why she came on to help with the trial?

7 A Yes, sir.

8 Q Okay. So your case had been going on for a while
9 and y'all were getting ready to go to trial?

10 A Yes, sir.

11 Q Okay. Had you and Mr. Mellard discussed, you know,
12 kind of the procedures of how a trial would go, you
13 know, everybody's responsibilities in the
14 courtroom, things like that?

15 A Yes, sir.

16 Q Okay. Did you have any questions for him?

17 A No, sir, because -- no, sir, I didn't have any.

18 Q Okay. So you were getting ready to go to trial --

19 A Yes, sir.

20 Q -- on the murder charge?

21 A Yes, sir.

22 Q What ultimately changed? I mean, you pled guilty
23 to murder, so what changed in your mind that caused
24 you to go from getting ready for trial to then
25 pleading guilty?

1 A Him and Ms. Hinds -- Mr. Doug Mellard and Ms. Hinds
2 mentioned, they said had I went to trial I would
3 end up with life.

4 Q Okay. All right. Do you know why they told you
5 that? I mean, what was their reasoning for that?

6 A I guess by the nature of the crime, and I had
7 confessed to it, and I guess by the nature of the
8 crime.

9 Q Okay. Back up just a little bit. How many times
10 do you think you and Mr. Mellard or you and
11 Ms. Hinds met?

12 A I'd say me and Mr. Mellard, we met several times, I
13 think about -- several times.

14 Q Okay. Did y'all have clear communication? You
15 understood what y'all were talking about?

16 A Yes, sir.

17 Q Did you have a chance to view, you know, all of
18 your discovery and all of those things?

19 A Yes, sir.

20 Q Okay. All right. Mr. Williams, you filed an
21 application for PCR?

22 A Yes, sir.

23 Q Okay. What do you allege that Mr. Mellard or
24 Ms. Hinds, for that matter, did wrong in
25 representing you?

1 A They failed to mention that with the nature of my
2 crime, I could have got a lesser included offense.

3 Q Okay. That takes me back to where we were before.

4 A Yes, sir.

5 Q I asked you about voluntary manslaughter or
6 involuntary manslaughter. What were y'all's --
7 what was y'all's conversation like? I mean, I know
8 you testified just a second ago that he said there
9 was no defense. Was that the extent of your
10 conversation or did y'all have a back-and-forth
11 conversation about it?

12 A I brought -- I had brought the manslaughter issue
13 up.

14 Q Okay. Why did you think that was appropriate?

15 A At the time, I had different people in my ear
16 because I don't know anything about the law or
17 anything, so that is what made me brought it forth.

18 Q Okay. Why do you think it is appropriate now?

19 A By me -- well, the studying -- I have been doing a
20 little studying, and the things I have seen in the
21 law library, I feel as though that is what I should
22 have got.

23 Q Okay. Did y'all discuss the elements of voluntary
24 manslaughter?

25 A As I can recall, I don't think so.

1 Q Okay. When you asked him about it, y'all didn't --
2 he didn't go over what that would be with you?

3 A No, sir.

4 Q Did he tell you why he didn't think it was
5 appropriate?

6 A I just mentioned, like, the nature of my crime,
7 just like it is murder, a clear-cut case of murder.

8 Q Okay. Based on what you told him took place in the
9 car outside of the view of the cameras, did you
10 think you had a potential defense to the murder
11 charge that might lead to a lesser included
12 offense?

13 A Yes, sir, I believe so.

14 Q Okay. All right. Mr. Williams, I think I have
15 asked you all the questions that I have for you.

16 A Yes, sir.

17 Q Is there anything you think I have left out or
18 neglected to ask that Judge Goodstein needs to be
19 aware of either Mr. Mellard or Ms. Hinds'
20 representation of you?

21 A No, sir.

22 Q Please answer any questions Ms. Gunton has.

23 THE COURT: Cross-examination.

24 MS. GUNTON: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. GUNTON:

2 Q Good morning, Mr. Williams. How are you?

3 A Good morning. How you doing?

4 Q I just want to ask you a couple of follow-up
5 questions. Just kind of the timeline of when -- so
6 Mr. Mellard first got involved in your case, is
7 that correct?

8 A Yes, ma'am.

9 Q At what point did Ms. Hinds get involved in your
10 case as well?

11 A Right about the end of my sentencing.

12 Q And at what point -- how many times did you meet
13 with either -- both of your attorneys? Do you
14 recall roughly?

15 A Mr. Mellard, he always been there, so I'd say about
16 several times with Mr. Mellard. I didn't meet
17 Ms. Hinds until the end of the sentencing.

18 Q Okay. And when you met the majority of the time
19 with Mr. Mellard, did you bring up -- you talked
20 about in your application that you were entitled to
21 a defense of crime of passion or voluntary
22 manslaughter. Did you discuss with him the reason
23 why you thought that you were entitled to that
24 charge instead of the murder charge?

25 A Yes, ma'am.

1 Q And his reasoning at the time was just that he
2 didn't think that the facts supported -- the facts
3 in your case would support a voluntary
4 manslaughter?

5 A Yes, ma'am.

6 Q And you had mentioned earlier to Mr. Waller that --
7 you said that you had people kind of in your ear
8 talking, you weren't familiar really with the law
9 and that -- was your idea of voluntary
10 manslaughter, was that someone else, like a family
11 member, friend, saying that they thought that that
12 was a better charge for you?

13 A It was like other inmates.

14 Q Okay.

15 A Yes, ma'am.

16 Q And why did they say that?

17 A I guess with their situation, like what they was
18 going through also, they was trying to basically I
19 think just help me get an understanding of, like,
20 this is what it is.

21 Q Okay. And did you -- you ultimately pled guilty.
22 At any point did you want to go ahead and go
23 forward with a trial?

24 A After they mentioned what they had said, I just --
25 I just had backed out.

1 Q Okay. So after they --

2 A Mentioned --

3 Q Your attorney said there weren't any --

4 A Yes, ma'am. After they mentioned the life
5 incident, where the -- that is when I backed out.

6 Q Okay.

7 A Yes, ma'am.

8 Q So it was the -- so you got -- you received a
9 32-year sentence?

10 A Yes, ma'am.

11 Q But in the sentencing range of murder, you got a
12 very light sentence in comparison to a full life
13 without the possibility of parole?

14 A Yes, ma'am.

15 Q So was that your concern with going to trial, that
16 there was a strong possibility that you would be
17 serving the rest of your life in prison?

18 A Yes, ma'am.

19 Q Okay. And were there any plea offers from the
20 State or was the -- do you know if the 32-year
21 sentence that you received, if that was a
22 recommended sentence or a negotiated sentence?
23 Were there any plea offers discussed with you?

24 A First, Mr. Mellard, he came with 30 years. And
25 then he stated that he can get it to 32 years

1 possibly. He can get to 30 years if possible. So
2 that is when he came with 32 years.

3 Q So your attorneys essentially -- part of the reason
4 why you decided to plead guilty was that -- was on
5 their suggestion that you were most likely going to
6 get a lenient sentence --

7 A Yes, ma'am.

8 Q -- of 32 years? Okay. And do you recall your --
9 so your plea was the week prior to your actual
10 sentencing date? Did you feel the need to bring or
11 bring up to Judge Dixon that you thought you were
12 entitled to a lesser included offense of voluntary
13 manslaughter?

14 A No, ma'am, because I just left it as it was because
15 they said that was in my best interest. I left it
16 at that.

17 Q Okay.

18 A Yes, ma'am.

19 Q So you -- overall, you feel that your plea was your
20 decision at the end of the day? It was freely and
21 voluntarily made, that no one was coercing you or
22 threatening you into pleading guilty?

23 A Yes, ma'am. Correct.

24 Q And is there anything that you wish that you had
25 told any of your attorneys about the facts of this

1 case that you did not at the time? Or were you
2 fully open and you communicated everything with
3 them?

4 A Yes, ma'am, I was fully open.

5 MS. GUNTON: I have no further questions, Your
6 Honor?

7 THE COURT: All right. Yes, redirect?

8 MR. WILLIAMS: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. WALLER:

11 Q Mr. Williams, we have kind of been dancing around
12 it, but there was a struggle in the vehicle, is
13 that right?

14 A Yes, sir.

15 Q Is that why you thought that you might have either
16 a defense or the opportunity of a lesser included
17 charge?

18 A Yes, sir.

19 Q You testified that your attorneys told you that
20 there was -- the facts didn't fit a lesser sentence
21 or a lesser charge or a defense, is that right?

22 A Yes, sir.

23 Q So you knew -- that was in your mind when you were
24 deciding whether to proceed with trial or not?

25 A Yes, sir.

1 Q In addition to the potential penalty, the
2 sentences?

3 A Yes, sir.

4 Q That was also in your mind that you, based on the
5 advice of your attorney, didn't have any sort of
6 possibility of a lesser offense?

7 A Yes, sir.

8 Q Nothing further. Thank you.

9 THE COURT: Recross?

10 MS. GUNTON: Briefly, Your Honor.

11 RECROSS-EXAMINATION

12 BY MS. GUNTON:

13 Q At your plea -- when you pled guilty on
14 October 12th, the Solicitor read off the facts of
15 the case to the judge, which detailed -- a lot of
16 it was from the surveillance video, that was the
17 only kind of quote, unquote eyewitness testimony
18 that they had. And so from reading the transcript,
19 and the only information that I can gather off of
20 it was the surveillance video showed you and your
21 girlfriend parked at the gas station, entering a
22 gas station, getting back in the vehicle, and then
23 after a brief period of time driving off?

24 A Yes, ma'am.

25 Q You agreed that those facts were correct?

1 A Yes, ma'am.

2 Q At no point in your -- at least as far as I can
3 tell, was there any indication that the Solicitors
4 were aware that there was some type of struggle
5 between you and your girlfriend, that there was any
6 type of altercation or fight that you had. Why
7 did -- did you tell that to your attorneys at all,
8 that you and your girlfriend had gotten into a
9 fight?

10 A I was under the impression, like, I was really
11 emotional, and I don't think I had mentioned it to
12 them.

13 Q Did you feel the need to mention that at all to the
14 judge at all or -- I believe you read a statement
15 that you had written during your sentencing where
16 you apologized to your girlfriend's family --

17 A Yes.

18 Q -- and your family and your children?

19 A Children, yes, ma'am.

20 Q Was there anything that you wanted to say that, you
21 know, kind of gave a reasoning for why this took
22 place, for the fight that you had?

23 A Like, we was like, like any other couples, we was
24 like, we was going through, we was going through
25 things, and it just happened.

1 MS. GUNTON: No further questions, Your Honor.

2 THE COURT: All right. Mr. Williams, you can
3 come on back down to the table with Mr. Waller.

4 (Witness steps down.)

5 THE COURT: Mr. Waller, call your next
6 witness.

7 MR. WALLER: No further witnesses, Your Honor.

8 THE COURT: All right. And, yes, ma'am?

9 MS. GUNTON: Thank you, Your Honor. The State
10 would call Mr. Mellard.

11 THE COURT: All right.

12 (Witness approaches.)

13 THE CLERK: Raise your right hand.

14 (Witness complies.)

15 THE CLERK: State your full name for the
16 record.

17 THE WITNESS: Robert Douglas Simmons Mellard.

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

21 THE WITNESS: Yes, ma'am.

22 THE CLERK: Have a seat.

23 (Witness seated.)

24 THE COURT: Your witness.

25 R. DOUGLAS MELLARD,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. GUNTON:

4 Q Good morning. Is it Mellard or Mellard?

5 A Mellard. I'll answer to either one.

6 Q Well, I'm going to go with Mellard. And I
7 apologize for saying it wrong earlier.

8 How are you doing this morning, Mr. Mellard?

9 A I'm doing good.

10 Q I just want to start off with a few brief
11 questions. How long have you been practicing law?

12 A Since 1997.

13 Q And how much of that has been criminal law?

14 A Started at the Public Defender's Office in 2005.
15 So that has been the bulk of criminal law. Most of
16 it before that was civil.

17 Q And how did you get involved with Mr. Williams'
18 case?

19 A I was appointed to it.

20 Q And did you -- and you were appointed, I believe
21 the testimony earlier was a month after he had been
22 arrested?

23 A Something like that.

24 Q And how many times did you meet with him?

25 A I can count them out if you want. All right, I'll

1 just read my file.

2 October 7th, when I got the case, I sent him a
3 status letter, told him about the law of murder,
4 ABHAN. We had another case involved in this too.
5 Serious, most serious offenses, all that kind of
6 stuff.

7 October 8th, 2015, I met with him.

8 I met with him again November 6th, 2015.

9 We had a preliminary hearing on December 1st,
10 2015. I moved for no probable cause based on
11 jurisdiction, that the death was in another county,
12 Orangeburg. The case got true-billed the next day.

13 I met with him again December 3rd.

14 Let's see, I met with his mom and his sister
15 on January 5th of 2016.

16 February 10th, 2016, I met with him again.
17 Then I got all these papers that are kind of out of
18 order. So I met with him -- I'll try to keep them
19 in order.

20 Q You met with him a --

21 A A lot of times.

22 Q -- a lot of times?

23 A Yes.

24 Q So I think that the issue we kind of danced around
25 in this hearing so far is that the only real piece

1 of evidence that was available in this case was the
2 surveillance video from the gas station?

3 A There was a couple of pieces of evidence. We are
4 talking something you can actually put your hands
5 on?

6 Q Uh-huh.

7 A Yes. Here is the thing. You have a broken off
8 knife, okay? You had a body. You had a
9 surveillance video. And then you had him admitting
10 to stabbing the person to his mom, a family member,
11 Marla Ryan, who is his aunt, two officers with
12 Orangeburg County, 9-1-1 operator, and a
13 Batesburg-Leesville P.D. So you had a lot of
14 admissions.

15 Q And I think the testimony we heard today where
16 Mr. Williams indicated that there was some type of
17 struggle in the vehicle that ultimately led to
18 Ms. Williams' death, was that any information that
19 you had been aware of, or was there any factual
20 information to support that assertion?

21 A That is not what I was led to believe by him.

22 Q Okay.

23 A If -- I mean, do you want me to go further or not?
24 I don't care. It is up to you.

25 Q And so your -- his version of the facts remained

1 fairly consistent the entire time with what his
2 initial calls were to dispatch and statements made
3 to law enforcement?

4 A His -- yes, it was pretty consistent.

5 Q And was it -- did you discuss the possibility of
6 going to trial with him, or was it always that you
7 thought it was in his best interest given the
8 factual basis of this case to go ahead and plead?

9 A Most of the time when you are looking at a murder
10 case, I mean, you kind of figure you are going to
11 trial. I mean, people are looking at 30 years
12 day-for-day and up. So most people are like, Well,
13 what have I got to lose? But, you know, at some
14 point we started talking about the defenses in the
15 case, and there weren't really any defenses in the
16 case. So at that point you start to kind of think,
17 What can we do to mitigate it and maybe get him out
18 at some point in his lifetime?

19 Q And were you in contact with the Solicitor's Office
20 kind of discussing the possibility of him going
21 forward and pleading and getting a lower sentence?

22 A We had worked it out with the Solicitor. We had
23 met with the judge. We had talked about it. And
24 if he was willing to plead, we had kind of worked
25 something out.

1 Q Okay. And did he, Mr. Williams, mention any
2 possible defenses to you or --

3 A You know, he is talking about voluntary. We
4 actually went over the problems in his case. This
5 is from October 11th, 2017. Here is what my notes
6 say. Me and Ms. Hinds met with him. We explained
7 the problems in his case, including all the people
8 that he had admitted it to. He says he did it.
9 And this is what it says: (a), there is no
10 sufficient legal provocation for voluntary
11 manslaughter -- and we went over a list of things,
12 that -- she didn't hit him, she didn't spit on him,
13 she didn't do anything of that nature; (b), he
14 stabbed her because she didn't want to be with him
15 anymore; and, (c), he asked for a kiss, then he
16 stabbed her.

17 Q And at any point in your representation did
18 Mr. Williams keep bringing up this concept that he
19 thought he was entitled to voluntary manslaughter?

20 A No. I mean, it -- I had him evaluated when we --
21 we -- what you see is who he is. I mean, he is --
22 that is how he is. He is quiet. He is -- what he
23 represented here on the stand is how he is. So I
24 had him evaluated. He came back competent. But we
25 didn't -- he didn't bring up stuff like that.

1 Q And did you -- so you spoke with him about pleading
2 guilty was in his best interest. Did he voice that
3 as well that he thought he would fare better
4 pleading guilty than going to trial?

5 A Let me look and see if he voiced it.
6 (Pause.)

7 A I think he was aware that he had no chance at
8 trial. That is what my notes say. But I don't
9 know that he would say -- I can't sit here and tell
10 you he verbalized, That would be in my best
11 interest. I don't know if he said those words.

12 Q And it is your understanding today, just looking
13 back, that his plea was freely entered into, he was
14 not coerced into pleading guilty, that this was
15 100 percent his decision at the end of the day to
16 go forward?

17 A The judge went through that, he answered the
18 questions, and we took -- we had the plea.

19 Q Thank you.

20 MS. GUNTON: No further questions, Your Honor.

21 THE COURT: Cross-examination.

22 MR. WALLER: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. WALLER:

25 Q Good morning, Mr. Mellard. How are you?

1 A I'm all right.

2 Q Mr. Mellard, what investigation, independent
3 investigation did you do in this case?

4 A We had our Investigator, Danny McDaniel, he -- let
5 me see what he did. I know me and Ms. Hinds, we
6 went -- where did we go? We went to see his -- I
7 don't want to tell you wrong. I think we went to
8 see -- all right, we traveled out to where he
9 lived. This is in -- Marla, who was one of the
10 people I talked about, Marla Ryan, she wouldn't
11 talk to us, okay? Delores Miller, his aunt, spoke
12 to us. And she gave us kind of a run-down of
13 everything, where the house was. We walked out
14 into the woods, and all that kind of stuff, where
15 the car was. I don't know -- I want to say we
16 talked to his sister, but I can't sit here and tell
17 you 100 percent that we did. But I know we went
18 out there and we went to the scene of where the
19 body was found and the people that were there.

20 And then we had an investigator. He -- I want
21 to say he went out -- I can't tell you, I don't
22 have this in my notes, I don't want to tell you
23 wrong, but we did have an investigator, Danny
24 McDaniel.

25 Q Okay. Did you do any investigation into the -- I

1 guess the incident itself, not the -- the car was,
2 you know, brought back to Orangeburg?

3 A Right.

4 Q Did Mr. McDaniel or anybody on your behalf go out
5 to the incident location, or anything like that?

6 A Let me look.

7 (Pause.)

8 A I can't tell you. I can't tell you that he did or
9 he didn't.

10 Q All right. You testified earlier that any time you
11 have a murder case, you kind of expect to go to
12 trial?

13 A Yes.

14 Q Where -- was this case on a trial roster?

15 A It was supposed to go to trial -- here we go -- it
16 was supposed to go to trial, I want to say in
17 October, but the Solicitor said it was going to be
18 postponed to November 6th and that David Pascoe
19 would try the case. That was in October.

20 Q Okay. So he pled, ended up pleading about a month
21 prior to -- I think it was October 12th?

22 A Something like that, yes.

23 Q At that point, where were you in your preparation
24 for trial? What had you done at that point?

25 A I think we had talked to everybody that we could

1 talk to. We had started putting together defenses.
2 Our one defense was jurisdiction, to be perfectly
3 honest with you. I mean, they were going to play
4 all those 9-1-1 tapes and they were going to -- I
5 mean, we could object to it, but, let's face it, he
6 wasn't in custody, that 9-1-1 tape was coming in.
7 So our big thing was the jurisdiction, that it
8 should have been tried somewhere else. That was
9 pretty much it.

10 MR. WALLER: Beg the Court's indulgence,
11 please.

12 THE COURT: All right.

13 (Pause.)

14 BY MR. WALLER:

15 Q Thank you, Mr. Mellard.

16 MR. WALLER: Nothing further.

17 THE COURT: Yes, ma'am, any redirect?

18 MS. GUNTON: No redirect, Your Honor.

19 THE COURT: All right. And is Mr. Mellard
20 free to go?

21 MS. GUNTON: Yes, Your Honor.

22 THE COURT: I guess y'all probably rode
23 together, though?

24 THE WITNESS: We actually didn't. We came
25 from two different directions.

1 THE COURT: All right. Very well, then.

2 Thank you, Mr. Mellard.

3 (Mr. Mellard excused.)

4 THE COURT: Call your next witness, please.

5 MS. GUNTON: We rest at this time.

6 THE COURT: All right. Very well. Will there
7 be any reply?

8 MR. WALLER: No reply, Your Honor, just a very
9 brief argument at the appropriate time.

10 THE COURT: Very well. Do you wish to make an
11 argument?

12 MS. GUNTON: Please, Your Honor.

13 If it may please the Court? The State would
14 argue that Mr. Williams voluntarily pled guilty to
15 this. If he had gone and proceeded to trial, that
16 the testimony that we have heard today, nothing in
17 the facts support a lesser included charge of
18 voluntary manslaughter. Therefore, I don't know
19 that that would have come out at trial that he
20 would have been entitled to that, and the chances
21 are that he might have gotten a much lengthier
22 sentence at trial.

23 Judge Dickson engaged in thorough colloquy
24 with him advising him of his rights. He knew the
25 full sentencing exposure. This appears to have

1 fully been his decision. We had testimony today
2 that he, Mr. Williams, had a mental examination and
3 was found competent.

4 So the State would say that his application
5 should be denied and dismissed with prejudice.

6 THE COURT: Thank you so much, Ms. Gunton.

7 All right. Yes, sir?

8 MR. WALLER: Your Honor, the State I guess in
9 this case or in this hearing today has asked a
10 bunch of questions and mentioned his sentence
11 several times. Obviously, that is not what we are
12 here to look for. We are looking at
13 constitutional -- violations of his constitutional
14 rights, and that comes from the conviction and not
15 the sentence.

16 Judge, I would kind of lean on Mr. Williams'
17 testimony and sprinkle in some of Mr. Mellard's
18 testimony as well, that Mr. Williams testified, you
19 know, very openly today about what took place. And
20 Mr. Mellard said that while he was not overly
21 forthcoming, you know, he is who he was on the
22 stand today, that he, you know, readily volunteers
23 information when asked. He might not necessarily,
24 you know, just throw it up there, though.

25 So, Judge, we would ask that you review the

1 transcript and review the application before
2 reaching your decision.

3 THE COURT: Thank you so much. All right,
4 thank you so much. I will take the matter under
5 advisement and let you know my decision. I ask one
6 of you to draft an order for me.

7 MR. WALLER: Thank you, Your Honor.

8 THE COURT: Thank you so much.

9 (WHEREUPON, the hearing adjourned at
10 11:03 a.m.)

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25 (END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Orangeburg County, South Carolina, on the 9th day of September, 2019.

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

January 10, 2020

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
Malcom Williams, SCDC #374269,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2018-CP-38-00640

ORDER OF DISMISSAL

FILED FOR RECORD
WINNIE B. CLARK
2023 JUN -5 PM 12:24
CLERK OF COURT
ORANGEBURG, SC

The matter before this Court is an action for post-conviction relief (PCR) commenced by Malcom Williams (Applicant) on June 4, 2018. The State made its return and motion for a more definite statement on August 1, 2019. A hearing into the matter convened before the undersigned on September 9, 2019, at the Dorchester County Courthouse. Applicant was present and represented by Jonathan D. Waller, Esquire. Assistant Attorney General Sara E. Gunton represented the State. Applicant testified on his own behalf at the hearing. Applicant's plea counsel, R. Douglas Mellard, Esquire, also testified.

In addition to the pleadings in this action, this Court had before it a copy of the Orangeburg County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the plea transcript, and the records regarding this post-conviction relief action.

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel and involuntary guilty plea are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Orangeburg Clerk of Court. During its December 2015 term, the Orangeburg County Grand Jury indicted Applicant for murder (2015-GS-38-1360). Applicant was represented by R. Doug Mellard and Peggy Hines, of the First Circuit Public Defender's Office. Tommy Scott of the First Circuit Solicitor's Office prosecuted the case. On October 12, 2017, Applicant appeared before the Honorable Edgar Dickson and pled guilty as indicted. On October 17, 2017, Judge Dickson sentenced Applicant to imprisonment for a term of thirty-two years with credit for time served (811 days).

Applicant filed a timely notice of appeal on October 17, 2017. On October 24, 2017, the South Carolina Court of Appeals notified Applicant, through Counsel, that he had 20 days to submit in writing to the Court any arguable basis that there were issues preserved for appeal. On October 26, 2017, counsel mailed Applicant notice of his right to submit additional information to the Court within 20 days. The Court of Appeals received a timely response from Applicant on November, 14, 2017. On January 8, 2018, the Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR) and remitted the case back to the lower court on January 24, 2018.

II. FACTS GIVING RISE TO GUILTY PLEA

On July 29, 2015, Applicant met the Victim, Lateefah Williams, outside of the Amick Farms chicken plant in Batesburg-Leesville, where they both worked. (Plea Tr. 11). Although they shared a last name, Applicant and Victim were not married; however, they had three children together. (Plea Tr. 11). Victim had an eye appointment at the local Walmart on the

date of the incident. (Plea Tr. 11). Applicant and Victim borrowed a vehicle from co-worker, Latensha Salley, in order to take Victim. (Plea Tr. 11-12). After Victim's eye appointment, she and Applicant stopped at a local gas station to get gas before returning to Amick Farms to pick up Ms. Salley. (Plea Tr. 12). A surveillance camera at the gas station recorded the last known movements of Applicant and Victim while she was alive. The video shows that Victim goes into the gas station several times to buy gas and lottery tickets. (Plea Tr. 12). The video also shows Applicant getting out of the car from the passenger side and going into the gas station. (Plea Tr. 12). Eventually, Applicant leaves from inside the gas station and gets back in the passenger side of the vehicle, and shuts the door. (Plea Tr. 12). The Victim leaves from inside the gas station, gets in the driver's side of the vehicle and shuts the door. (Plea Tr. 12). A few seconds later the recording shows Applicant getting out of the vehicle from the passenger side, shutting the door, walking around to the driver's side, and getting in the vehicle where the Victim was just sitting. (Plea Tr. 12). The car then drives off. (Plea Tr. 12).

It is the State's position that during the time Applicant and Victim were seated in the vehicle together, Applicant stabbed Victim three times with a knife in the side of the neck, where after Victim bled to death while Applicant drove back to his residence in North, South Carolina (Plea Tr. 13). When Applicant neared his home in North, he entered a small side road and then drove 100 to 200 yards into the woods. (Plea Tr. 13). There, he removed Victim's body from the vehicle and left her on the ground, he took off his rubber boots that he wore to work at Amick Farms, and walked home. (Plea Tr. 13). Applicant immediately told his aunt what he had done. (Plea Tr. 13). Applicant's aunt then called Applicant's mother, who called 911. (Plea Tr. 13). The 911 operator spoke to Applicant's mother, Applicant's aunt, and then to Applicant, who confessed to killing Victim. (Plea Tr. 13). Applicant ran

before police arrived at the home. (Plea Tr. 14). However, he was located and taken into custody the following morning. (Plea Tr. 14). While in custody, Applicant gave a video-taped statement, consistent with his 911 call, where he admitted to stabbing the Victim one to two times. (Plea Tr. 14).

III. ISSUES BEFORE THIS COURT

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

1. "Defense counsel lied to defendant and under the ABA standards for representation created constitutional violations because defendant was entitled to a defense from crime of passion."
 - a. "Counsel erroneously stated to defendant of entitled to an instruction of involuntary manslaughter only if court determined a charge was appropriate and thus this was inaccurate advice to defendant under State v. Pauling, 264 S.C. 275 (1975), State v. Cooley, 342 S.C. @ 67, 536 S.E.2d @ 668 (200) as evidence supports manslaughter for crime of passion, State v. Byrd 323 S.C. 319 (1996). U.S.C.A. 6th Amend."
11. "Counsel's deficient performance prejudiced defendant and thus was ineffective performance/ assistance."
 - a. "Defense counsel's failure to argue/motion before court and before plea that defendant had mitigating factors, that defendant was entitled to voluntary manslaughter based from family's statement of incident. And that issue created platform to form crime of passion, as such defendant would have been entitled to voluntary manslaughter. U.S.C.A. 6th Amend."
111. "Defense counsel failed to file for or argue mitigating factors for crime of passion and preserve issues for appeal. In addition counsel on appeal would not bring up deficient counsel for ineffectiveness because he was the same attorney presiding in the PCR case, thus creating prejudice."
 - a. "Defense counsel refused to motion the court before plea for lesser offense as such created bias and prejudice for fair representation, U.S.C.A 6th Amend, 14th Amend."

To the extent the allegations set forth in Applicant's original applications can be construed

as separate grounds for relief from the grounds stated at the PCR hearing, the Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

IV. RELEVANT TESTIMONY PRESENTED AT EVIDENTIARY HEARING

Applicant Malcom William's Testimony

Applicant testified on his own behalf at the PCR hearing. Applicant testified he was first arrested in North, South Carolina, located in Orangeburg County. (PCR Tr. 6-7). Applicant testified he was living between his mother's house in North, South Carolina, and his sister's house in Salley, South Carolina, as well as working at Amick Farms, located between Batesburg and Saluda, at the time of the incident. (PCR Tr. 8). He testified the incident took place in Batesburg-Leesville and that he returned to Orangeburg following the incident. (PCR Tr. 8). Following his arrest, Applicant stated he was appointed Public Defender, Douglas Mellard (Mellard). (PCR Tr. 8-9). When asked about discussions between him and Mellard, Applicant testified they discussed the nature of the crime, what Applicant was charged with and the elements of the charge, potential penalties of the charge, and what the State would have to prove. (PCR Tr. 9-10). Applicant alleged he and Mellard only discussed potential defenses once Applicant brought them up. (PCR Tr. 10). Applicant stated Mellard told him there were no defenses. (PCR Tr. 10). When asked how many times he met with counsel, Applicant testified they met several times. (PCR Tr. 14). Applicant testified he understood discussions Mellard and he had during these meetings. (PCR Tr. 14). Applicant confirmed he had had a chance to view all discovery in his case. (PCR Tr. 14).

Included in discovery was part of the incident that was captured on video. (PCR Tr. 10). Applicant stated he had seen the video; however, the video did not show the inside of the car where the incident took place. (PCR Tr. 10). When asked whether he and Mellard had a chance to discuss

what took place inside the car, Applicant testified they did and he told Mellard he had a defense based on what occurred. (PCR Tr. 11). Applicant stated he asked Mellard about the lesser charges of voluntary manslaughter and manslaughter. (PCR Tr. 11). Applicant stated in response, Mellard told him the case was a clear-cut case of murder. (PCR Tr. 11). When asked about the allegation in his application indicating Mellard told him *involuntary manslaughter* may be an option, Applicant testified, “I think I been rushing my application” and “I just been focused on it. That’s – that’s how that came about.” (PCR Tr. 12).

Additionally, Applicant testified Ms. Peggy Hinds (Hinds) was appointed to represent him in anticipation of the trial. (PCR Tr. 13). Applicant stated he was ready to go to trial on the murder charge. (PCR Tr. 13). He additionally testified Mellard and Hinds told him if he went to trial, he would receive a life sentence. (PCR Tr. 14). When asked what he alleged Mellard and Hinds did wrong while representing him, Applicant stated they failed to mention he could have received a lesser included offense – specifically, Applicant claims he had a potential defense to the murder charge. (PCR Tr. 15-16). On cross-examination, Applicant agreed Mellard’s reasoning for not pursuing a charge for a lesser-included offense was that Mellard did not think the facts supported one. (PCR Tr. 18, 21). When asked whether Applicant had told Mellard that the Victim and he had gotten into a fight, Applicant responded that he didn’t think he had mentioned it. (PCR Tr. 23).

Applicant further testified he pleaded guilty after learning he could receive a sentence of life without the possibility of parole and agreed his concern with proceeding to trial was that he could receive a life sentence. (PCR Tr. 18-19). When asked whether he believed he received a light sentence in comparison to life without the possibility of parole, Applicant agreed. (PCR Tr. 19). When asked if there were any plea offers, Applicant stated Mellard wanted to get 30 years, if possible, but was able to get an offer of 32 years. (PCR Tr. 19-20). Applicant stated he did not tell

Judge Dickson he believed he was entitled to a lesser-included offense as Counsels had told him the plea was in his best interest. (PCR Tr. 20). Applicant also conceded it was his decision to plead guilty, that decision was made freely and voluntarily, and no one coerced or threatened him into pleading guilty. (PCR Tr. 20). Applicant testified he communicated everything to his Counsel regarding the facts in this case. (PCR Tr. 20-21). Applicant further testified he agreed at his guilty plea hearing that the facts presented by the Solicitor's Office were correct. (PCR Tr. 22-23).

Plea Counsel Robert Mellard's Testimony

Mellard testified he has been practicing law since 1997 and started at the Public Defender's Office in 2005. (PCR Tr. 25). Mellard stated he was appointed to Applicant's case and met with Applicant multiple times over the course of his representation. (PCR Tr. 25-26). When asked about the evidence available in this case, Mellard testified there was – a broken off knife; the Victim's body; surveillance video; and Applicant's admissions to his mother, his aunt, multiple officers, and a 9-1-1 operator that he had stabbed the Victim. (PCR Tr. 27). When asked whether he was aware of the alleged struggle Applicant claimed occurred in the vehicle and led to Victim's death, Mellard testified he was not made aware of a struggle. (PCR Tr. 27). Furthermore, Mellard testified Applicant's version of the facts remained consistent with his initial statements to 9-1-1 and law enforcement. (PCR Tr. 27-28).

Mellard testified there were not really any defenses in this case. (PCR Tr. 28). Mellard further testified that during a meeting with Applicant, Hinds, and himself, on October 11, 2017, Counsels explained the problems with Applicant's case to him and told Applicant there was no sufficient legal provocation for a voluntary manslaughter charge. (PCR Tr. 29). Mellard further testified he had Applicant evaluated and he was found competent. (PCR Tr. 29).

When asked about his pre-trial investigation, Mellard testified that Counsel Hinds and

himself had traveled to where Applicant lived. (PCR Tr. 31). Mellard testified he spoke with Applicant's aunt, as well as went to the scene where the Victim's body was found. (PCR Tr. 31). Mellard testified he also had the assistance of Investigator Danny McDaniel. (PCR Tr. 31). Mellard stated Applicant pled guilty about a month prior to when the case was scheduled for trial. (PCR Tr. 32). He testified they had talked to everyone they could talk to about the case and had started putting together defenses at that point. (PCR Tr. 32-33).

V. STANDARD OF REVIEW

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

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

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *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 not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *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 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in

criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

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

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

VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State’s return, this Court proceeds to the claims raised and

finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

The issues before this Court are whether Applicant's plea was involuntary as a result of ineffective assistance of counsel for failure to request a lesser-included charge of voluntary manslaughter and for failure to investigate defenses on Applicant's behalf. This Court disagrees, and finds Applicant knew the nature of the charges against her and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions. Moreover, this Court finds credible and persuasive the testimony of Counsel Mellard, who presented well-recalled testimony of relevant events leading up to Applicant's guilty plea. The Court finds Applicant's testimony and assertions lack credibility and are self-serving. These credibility findings have been applied to the Court's findings and conclusions set forth below. Accordingly, Applicant's request for relief by way of these allegations is **DENIED** as addressed below.

***Allegation Counsel was Ineffective for Failing to Request Lesser-Included Offense
and for Failing to Investigate Defenses on Applicant's Behalf***

Applicant alleges Counsels were ineffective for failing to investigate defenses on Applicant's behalf and for failing to request a lesser-included charge. Applicant asserts this failure resulted in Applicant's involuntary guilty plea. This Court disagrees and finds the combined record from the plea hearing and the evidentiary hearing clearly establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685,

511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the

consequences of his guilty plea, the plea judge “usually questions the defendant about the facts surrounding the crime and punishment that could be imposed.” *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

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

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

omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 485 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him).

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their

guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’ “). Reviewing “[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies.” *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Id.* Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

As an initial matter, this Court finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. Moreover, any deficiency regarding Counsels’ advice was cured by the plea colloquy. The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court’s questions.

Specifically, during Applicant’s plea on October 12, 2017, the plea court explained to Applicant the constitutional rights he waived by pleading guilty. (Plea Tr. 9-10). Upon inquiry from the plea court, Applicant indicated he understood the charges against him. (Plea Tr. 8). Applicant affirmed he understood the nature of the negotiated plea agreement, and he had discussed the consequences of the violent and serious classifications with his attorneys. (Plea Tr. 16). Applicant indicated he was completely satisfied with his lawyers, that he had enough time to speak with them about the facts behind the indictments, the legal elements of the crimes he was charged with, and any possible defenses he may have. (Plea Tr. 9). Applicant further indicated to the plea court he was entering his plea freely and voluntarily, and that he had not been threatened

in any way or promised anything in exchange for his guilty plea. (Plea Tr. 10).

Therefore, the plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. At the PCR hearing, Applicant did not 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). Applicant did not allege any facts tending to prove he was prevented from informing the plea court his attorneys or the solicitor coerced him into pleading guilty. Thus, based on the evidence presented at the plea proceeding, the Court finds Applicant's plea was freely, knowingly, and voluntarily entered into.

At the evidentiary hearing, Applicant claimed his plea was involuntary based on Counsels' failure to discuss or argue potential lesser-included charges available to Applicant and investigate defenses on his behalf. For the reasons discussed below, this Court concludes Counsels were not constitutionally ineffective, nor was Applicant's plea involuntary as a result of any alleged ineffectiveness.

At the evidentiary hearing, Applicant testified he felt Counsels were ineffective because they failed to "mention that with the nature of my crime [and that] I could have got a lesser included offense". (PCR Tr. 15). The Court disagrees, and finds Counsels were not deficient based on Applicant's representations to the plea court as well as Counsels' credible testimony. At the evidentiary hearing, Mellard testified he met with Applicant multiple times over the course of his representation and explained to Applicant the issues with his case – including the fact there was

no sufficient legal provocation for a voluntary manslaughter charge. Furthermore, Applicant testified Counsel Mellard reviewed all discovery with him; discussed possible trial defenses with Applicant and explained to Applicant the charges and exposure he faced if convicted at trial. (PCR Tr. 9-19). Applicant further failed to provide evidence of any defenses or strategies he could have pursued had Counsels been more fully prepared. *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (“[T]o establish counsel failed to adequately prepare for trial, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared.”).

The Court finds credible Mellard’s testimony that both attorneys *did* in fact explore possible defenses and discuss the likelihood of success at trial with Applicant (PCR Tr. 29). Regarding Mellard’s trial preparation, Mellard concluded Applicant would likely be found guilty at trial and testified to discussing the possibility of Applicant entering into a plea deal with the Solicitor’s Office (PCR Tr. 28). Mellard further testified that during his pre-trial investigation, he and Counsel Hinds spoke with Applicant’s family, travelled to where Applicant had lived, as well as went to the scene where the Victim’s body was found. (PCR Tr. 31). Mellard testified he spoke with everyone he could talk to about the case. *See Tollett*, 411 U.S. at 268 (“Counsel’s concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law.”).

In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court’s principle concern is whether the investigation “*was itself reasonable*.” *Taylor*, 404 S.C. at 364, 745 S.E.2d at 104 (citing *Wiggins v. Smith*, 539 U.S. 510, 522–23 (2003) (emphasis in original)). Mellard testified that he had not been made aware of any type of struggle occurring between Applicant and the Victim, from which a mitigating defense could have arisen (PCR Tr.

27). *See Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630; 34 (Ct. App. 2014) (finding that counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions). Thus, there was no reason for Counsels to pursue further defenses or prepare for trial.

Further, Applicant indicated to the plea court he had enough time to discuss his case with Counsel prior to pleading guilty and was satisfied with Counsels' services. Specifically, during Applicant's plea, the following exchange occurred:

THE COURT: Okay. Are you satisfied with their services as your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Do you need any more time to talk with them?

THE DEFENDANT: No, sir.

(Plea Tr. 9).

Thus, the Court finds Counsels were not deficient for failing to prepare potential defenses and explore trial strategies based on Counsels' credible testimony they did so and Applicant's representations to the plea court. Moreover, the Court finds Applicant has not presented a valid basis to depart from the above statements made at his plea hearing. The Court finds credibility in Counsels' testimonies that they met with Applicant on multiple occasions and reviewed discovery, discussed the facts of the case, and explained to Applicant his constitutional rights and options for resolving the case (PCR Tr. 26). Therefore, the Court finds Applicant has failed to meet his burden of proof to show Counsels were deficient in failing to pursue a defense and trial strategy.

Further, Applicant presented no evidence of any issue Counsels missed in preparation of the case or any meritorious defense Applicant was unable to raise due to Counsels' allegedly deficient preparation. *See Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) ("To establish applicant was prejudiced as a result of counsel's failure to prepare for trial, the applicant

must present evidence to show how the discoverable matters or defenses would have resulted in a different outcome.”). Applicant has failed to show how any additional preparation or investigation by Counsels would have changed his decision to plead guilty. *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009); *see also Porter v. State*, 368 S.C. 378, 386, 629 S.E.2d 353, 357 (2006) (holding no evidence showed counsel’s failure to investigate a potential witness would have yielded a result different from that which defendant’s counsel believed at the time of the plea and defendant pleaded guilty in light of the complete information available at that time), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

The court will not credit Applicant’s present claim that he would have gone to trial absent Counsel’s alleged failure to prepare, as Applicant has failed to present evidence of any discoverable matters or defenses Counsel would have discovered had they been more prepared. Applicant has offered little more than mere speculation, and thus failed to meet his burden of showing anything to result in a different outcome. Therefore, the Court finds Applicant failed to make an adequate showing that he would have opted to go to trial but for Counsels’ lack of preparation. The Court finds no deficiency on the part of Counsels, nor any prejudice to Applicant from the deficiency alleged. Accordingly, Applicant’s allegations of ineffective assistance allegation are **DENIED**.

VI. ALL OTHER ALLEGATIONS

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

VII. CONCLUSION

Based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty and further failed to present any justification as to why the statements he made during the guilty plea hearing should not be considered conclusive. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

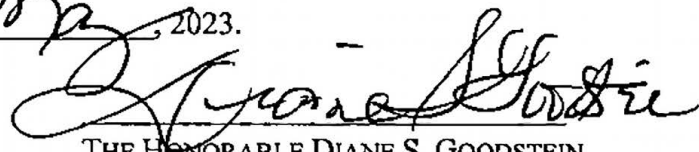
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR.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

IT IS THEREFORE ORDERED:

1. This Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 31 day of May, 2023.

St George South Carolina



THE HONORABLE DIANE S. GOODSTEIN
Presiding Circuit Court Judge
First Judicial Circuit

WITNESSES

Lakesha Gillard

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2015A3810700496

Arrested: July 31, 2015

ACTION OF GRAND JURY

TRUE BILL

Date: DEC 02 2015

Foreperson of Grand Jury

Date: December 2, 2015

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS38-1360

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

December 7, 2015 TERM

THE STATE
vs.

Malcom Williams

Indictment for

MURDER

SC Code: 16-3-10

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury. ✓

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY
CLERK OF COURT
ORANGEBURG COUNTY, SC
Winnifred B. Clark
FILED FOR RECORD
WINNIFRED B. CLARK
2015 DEC - 2 P 1:03

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2015GS38-1360

At a Court of General Sessions, convened on December 2, 2015 the Grand Jurors of Orangeburg County present upon their oath:

MURDER

That in Orangeburg County on or about July 29, 2015, with malice aforethought, the defendant, Malcom Williams did kill one Lateefah Williams by means of stabbing and, the victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

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

TL 3. Feb. 11

Thomas B Scott, III, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Orangeburg
 STATE VS.
Malcom Williams
 AKA: _____
 Race: BLACK Sex: M Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2015GS38-1360A/W#: 2015A3810700496Date of Offense: 7/29/2015S.C. Code §: 16-3-10CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder☐ CONVICTED OF or ☒ PLEADSin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: 7/31/15 15001 Malcom Williams 13521
 Scott, III, Thomas B SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections; ☐ County Detention Center,
 for a determinate term of 32 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 811 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3.75

TOTAL

\$128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge

Judge Code: 2153Sentence Date: 10/17/17Plea Date: 10/12/17