

**RECEIVED**

**May 31 2024**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County

Honorable Clifton Newman, Circuit Court Judge

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MONTRE DESEAN BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001807

---

APPENDIX

---

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State of South Carolina	)	Court of General Sessions
	)	Ninth Judicial Circuit
County of Charleston	)	Case No. 2015-GS-10-2263
	)	Case No. 2015-GS-10-2264
	)	
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
Montre Brown,	)	
	)	
Defendant.	)	
	)	

August 25, 2018  
Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis, Judge

A P P E A R A N C E

Burns Malone Wetmore, Esquire  
Attorney for the Plaintiff

Lauren Williams, Esquire  
Attorney for the Defendant

Krystal J. Smith  
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 AUGUST 25, 2018

2 (WHEREUPON, the proceedings began at 1:42 p.m.)

3 THE COURT: Sir, you're Michael Moore?

4 MS. WILLIAMS: No. This is Montre Brown, Your Honor. I  
5 think Mr. Moore was the last plea.

6 THE COURT: Yeah, that's right.

7 MS. WILLIAMS: Yes.

8 THE COURT: Thank you. We've got it.

9 Mr. Brown, Indictment 2015-2263 charges you, sir, with  
10 the offense of murder. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And your lawyer has explained that charge to  
13 you, sir?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And explained the lesser-included offense of  
16 voluntary manslaughter?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And the difference between them?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that voluntary  
21 manslaughter carries a potential sentence of 30 years with a  
22 minimum sentence of two years?

23 THE DEFENDANT: I understand.

24 THE COURT: Do you also understand that it is a non-  
25 parolable offense?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Which means that any sentence that I impose  
3 on that charge, you have to serve 85 percent of it. And  
4 anything -- if you are successful in getting out, the  
5 remaining 15 percent of that sentence, you could -- you'd  
6 still have to do a community supervision program  
7 successfully. It would be a two-year program. If you were  
8 to violate any of the provisions, you could be returned in  
9 increments up to one year at a time until the balance of that  
10 sentence is satisfied. Do you realize that, sir?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you understand it's also a violent  
13 offense?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: That is determined I assume by the non-  
16 parolable. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: What is your plea?

19 THE DEFENDANT: I plead guilty, sir.

20 THE COURT: All right. You are also charged in  
21 Indictment 2015-2264 with the offense of possession of a  
22 weapon during the commission of a violent crime. Do you  
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Your lawyer has explained that charge to

1 you, Mr. Brown?

2 THE DEFENDANT: Yes, sir, he has.

3 THE COURT: And that carries a potential sentence of up  
4 to five years that could be run consecutive to the other  
5 charge and it's a day-to-day charge. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Understanding that, what is your plea?

8 THE DEFENDANT: Guilty, sir.

9 THE COURT: Are you're satisfied with your lawyer?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And let me say on her behalf, thank you very  
12 much, Ms. Williams. I've had the opportunity to review the  
13 mitigation package that you submitted, and I appreciate it  
14 very, very much.

15 MS. WILLIAMS: Thank you, Your Honor.

16 THE COURT: It's very helpful.

17 Is there any recommendation, Solicitor?

18 MR. WETMORE: No, sir.

19 THE COURT: Ms. Williams, is that your understanding?

20 MS. WILLIAMS: It is, Judge.

21 THE COURT: Have you had the opportunity to investigate  
22 this matter fully on your client's behalf?

23 MS. WILLIAMS: Yes, sir.

24 THE COURT: And you have shared the results of the  
25 investigation with him?

1 MS. WILLIAMS: Yes, sir.

2 THE COURT: After discussing it with you, he indicated  
3 his desire to enter the pleas?

4 MS. WILLIAMS: He did, Your Honor.

5 THE COURT: And did you advise him of the rights that he  
6 would be relinquishing, as well as the consequences of his  
7 decision?

8 MS. WILLIAMS: Yes, Your Honor.

9 THE COURT: Based on your investigation, do you concur  
10 with the decision to enter the guilty pleas in each case?

11 MS. WILLIAMS: I do, Judge. We have discussed it  
12 extensively and we are both in agreement.

13 THE COURT: Mr. Brown, is all that true, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Then you understand, sir, that if I accept  
16 your plea, you will not have a jury trial, you will not  
17 confront the witnesses against you, and you're giving up the  
18 right to remain silent in each of these cases?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have there been any threats or any promises  
21 made to you, sir, to get you to plead guilty?

22 THE DEFENDANT: No, sir. None.

23 THE COURT: Is there any question in your mind of your  
24 guilt as to these charges?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you under the influence of any alcohol  
2 or any medication here today?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you consumed any alcohol or taken any  
5 type of medication in the last 24 hours?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you ever in the past been treated for  
8 any mental illness or emotional condition?

9 THE DEFENDANT: No, sir.

10 THE COURT: And have you had sufficient time to talk  
11 with your lawyer fully about what you're doing?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: She's answered -- she's answered any  
14 questions you may have had?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And this is your decision to go forward with  
17 these pleas?

18 THE DEFENDANT: Yes, sir. Totally.

19 THE COURT: Sir?

20 THE DEFENDANT: Totally.

21 THE COURT: Okay. Solicitor, would you be kind enough  
22 to tell me the facts?

23 MR. WETMORE: Sure, Judge.

24 The victim in this case is Kenneth Robinson. His family  
25 is here today to show their support of the case. They do not

1 wish to address the Court though.

2 A very brief history, because it is directly relevant to  
3 the plea.

4 THE COURT: Sure.

5 MR. WETMORE: The framework of which I can corroborate  
6 by North Charleston Police Department, their reports, days  
7 prior to the shooting, the victim was being chased by North  
8 Charleston, and he passed off some drugs to the defendant.  
9 When the victim was released from jail, he obviously looked  
10 to get those drugs back. The victim became frustrated,  
11 couldn't get the drugs back. There was a worsening of the  
12 relationship with the defendant.

13 And this kind of rise in tension came to a head on  
14 January the 9<sup>th</sup>, 2015, when the victim and the defendant ran  
15 into one another at a convenience store. The incident was  
16 captured on video surveillance. It happened in North  
17 Charleston.

18 What happened is Mr. Brown entered the store first, and  
19 you can see him standing in line at the counter for a few  
20 minutes. And he was, honestly, pretty obviously startled  
21 when he saw the victim approaching, about ready to come into  
22 the store. Mr. Brown stepped out of line at the counter and  
23 he ducked into a bathroom right there, and he was in the  
24 bathroom, according to my count, for about five seconds. You  
25 can see the door slowly swing closed. When it closes, it

1 immediately pops back open, and the defendant had armed  
2 himself.

3         And he comes out, ducks behind a -- like, an ATM  
4 machine, and quickly shoots the victim as he enters the  
5 store. There is no question that this man definitely got the  
6 jump on the victim. The victim had just entered the store,  
7 was approaching the counter. It looks like he had some money  
8 in his hands, and he's shot several times by the defendant.  
9 The victim falls. The defendant continues to shoot, and it  
10 appears that the defendant reaches down and scoops up the  
11 money or whatever is in the victim's hands before he flees  
12 out of the store.

13         The defendant was driven to the store by his girlfriend.  
14 She's parked outside. She has no idea of what's going on.  
15 He jumps in the car. He leaves a smear of the victim's blood  
16 on the exterior of the car, presumably from when he reached  
17 down and grabbed the money from the victim's hands.

18         He orders her to quickly drive to the Northwoods Mall.  
19 She does that. He enters the mall. Again, it's caught on  
20 surveillance. He goes straight to a clothing store, buys new  
21 clothes, strips down, and puts those clothes on right there  
22 in the store. Ditches his old clothes there.

23         North Charleston responds to the crime scene. They  
24 review the video. They obviously process the scene, and I do  
25 obviously want to note to you that they recovered a handgun

1 from the victim. As he laid there, they recovered a handgun.

2 They also stopped the defendant's girlfriend's car, and  
3 she describes sort of the background that had been going on  
4 between the two men and then describes what happened at the  
5 incident. They go to the mall. They review that video.  
6 They get the old clothing from the trashcan. Basically,  
7 build their case in that fashion.

8 Mr. Brown turns himself in, I believe, about three or  
9 four days later. So that is essentially the facts, Judge.

10 He has a prior record: a 2006 ABHAN; a 2010 possession  
11 of marijuana, assault and battery first degree; 2013  
12 possession of marijuana; and a 2014 assault and battery  
13 third.

14 THE COURT: Are those facts correct, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you truthfully responded to all of my  
17 questions, sir?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you understand and realize I'll be  
20 relying on those responses?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you want me to do that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you given me complete answers?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. I find there is a sufficient factual  
2 basis to support the pleas. I find that Mr. Brown certainly  
3 had the benefit of very competent counsel. He's indicated  
4 he's totally satisfied with the representation.

5 I, therefore, find the plea to be freely, voluntarily,  
6 knowingly, and intelligently made, and I will accept the  
7 plea.

8 I'll be happy to hear from you, Ms. Williams.

9 MS. WILLIAMS: Thank you, Your Honor. May it please the  
10 Court.

11 Judge, just to go into Mr. Brown's personal history and  
12 his background a little bit, he's 26 years old. He turned 26  
13 a week ago. He was 23 at the time of this incident. He was  
14 born and raised in Charleston, primarily in the Waylan  
15 neighborhood of North Charleston, which is where some of the  
16 original beef took place.

17 His mother, Ingrid Brown, is present, along with other  
18 family members, who I will introduce individually to you.  
19 She had Montre when she was 17 years old, firstborn, and she  
20 was a single mom with him for a while.

21 Judge, just to explain a little bit about his childhood,  
22 Montre's father died very suddenly when he was two years old  
23 and, despite his young age, his father was a very devoted  
24 father. Montre, of course, doesn't really remember that. He  
25 was just a toddler at the time.

1 His dad's twin brother stepped in and helped Ingrid  
2 raise Montre. His name is Kevin, and he was shot and  
3 murdered when Montre was 11 years old. So one morning before  
4 school when Montre was 11, his aunt came up and told him the  
5 only man he had really known as a father had been killed by  
6 gun violence.

7 He started to shut down after that. His mom, Ingrid,  
8 tells me that's when she started feeling him sort of slip  
9 away. He'd always been very bright in school. In third  
10 grade, he was reading on the middle school level and getting  
11 achievement awards.

12 At age 14, he was at a friend's apartment and his  
13 friend's mother's ex-husband came in and shot and killed her  
14 and then shot and killed himself with the kids in the next  
15 room.

16 Judge, all this to say that Montre knows what loss is  
17 and he knows what trauma is, and he knows that that hole and  
18 that pain never goes away and there's not much that you can  
19 do to fix that. You know, they say time heals all wounds.  
20 Sometimes that's true; sometimes that's not.

21 THE DEFENDANT: Not that.

22 MS. WILLIAMS: Exactly. And he -- what he knows and  
23 what he's been through, he's sickened to have caused that  
24 sort of pain and that sort of loss for the Robinson family.

25 Judge, at the time of this incident, he was living with

1 his grandfather, Harry Brown, who is also here. He was  
2 taking care of him. He was going through chemo for prostate  
3 cancer.

4 He's working full-time at Cobbs Painting. He still has  
5 that job if he is ever to be released. They are -- they are  
6 family friends.

7 Judge, I think the solicitor summarized the facts very  
8 well. I do think as far as provocation, the escalating  
9 tensions, as the dispute got worse, Montre's panic really got  
10 worse. And when he saw the victim that morning, he operated  
11 out of pure, intense emotion and not any kind of reasoned  
12 judgment.

13 We've spent a lot of time talking about the case.  
14 Obviously, it is on video, as the solicitor told you. Montre  
15 and I have reviewed it many, many times.

16 I can tell you, Judge, I got in this case about six  
17 months in. The first time I went to meet with Montre -- and  
18 this has been true the entire time -- I've been so impressed  
19 with his attitude and his composure, just because he knows  
20 why he's there. He knows what he did.

21 It was never -- there was never any posturing. He never  
22 lied to me. He never sent me on a wild goose chase. I mean  
23 he knows that as criminal defense attorneys, sometimes we get  
24 sent in the wrong direction. I never ever had that with  
25 Montre.

1           And I will say, Judge, he has been in the Charleston  
2 County Detention Center since his arrest, 955 days. Part of  
3 that, Judge, is because he knew I'm facing punishment. I'm  
4 going to have some punishment now. He knew that he would go,  
5 as they say, up the road on this because he knew what had  
6 happened.

7           Judge, if you would entertain some statements from --  
8 from the family, I think Ingrid Brown, his mother, is going  
9 to speak on her behalf, but just to let you know who else is  
10 here. Yolanda Guillard, who is a family friend and lives in  
11 the Waylan and mother of Tre's girlfriend. His cousin,  
12 Jerome Garrett, and then the patriarch of the family is Mr.  
13 Brown.

14           THE COURT: Thank you.

15           MS. WILLIAMS: Ingrid, if you would, introduce yourself  
16 to the Court.

17           THE COURT: Yes, ma'am?

18           MS. INGRID BROWN: Hi, sir. My name is Ingrid Brown.  
19 I'm Montre's mom.

20           THE COURT: Yes, ma'am.

21           MS. INGRID BROWN: I'm going to read from what I wrote.

22           THE COURT: That's fine.

23           MS. INGRID BROWN: If you don't mind.

24           THE COURT: Yes, ma'am.

25           MS. INGRID BROWN: It says, Your Honor, again, my name

1 is Ingrid Brown. I'm Montre's mother. Before I begin to  
2 speak on my son's behalf, I would like to offer my  
3 condolences to the Robinson family. I know his actions  
4 actually hurt them really deeply. As a parent, it saddens me  
5 to know what their kids have felt growing up.

6 I didn't intend any crying, sir.

7 THE COURT: It's all right, ma'am.

8 MS. INGRID BROWN: Your Honor, since Mr. Robinson's  
9 death, my son has expressed remorse for how he's acted  
10 multiple times. I know he regrets his actions and is  
11 prepared to take responsibility.

12 Montre is extremely bright and capable of achieving  
13 great things if he applies himself. My family and I love him  
14 very much and are committed to helping him accomplish those  
15 things when he is released. If given the chance to re-enter  
16 society, I know he will put forth the effort to be a  
17 productive citizen.

18 Your Honor, I am asking you to consider leniency on my  
19 son. Thank you.

20 THE COURT: Thank you, ma'am.

21 MS. WILLIAMS: Thank you. Thank you, Ingrid.

22 And, Judge, just to note the family have moved out of  
23 the Waylan at this point. So mom lives in Summerville and  
24 Tre always has a home with her.

25 And then Mr. Brown would also like to say a few words to

1 you, Your Honor.

2 THE COURT: I'll be delighted to hear from him.

3 THE DEFENDANT: Yes, sir. I just want to state I'm  
4 sincerely sorry to the family of Mr. Robinson. I'm sincerely  
5 sorry. I take full responsibilities for my actions and my  
6 entire role in the situation. I just pray one day you'll  
7 find a way to forgive me and someday maybe find closure.

8 That's all I've got to say, Your Honor.

9 THE COURT: Thank you, Mr. Brown. I know those were  
10 some heartfelt words that you sincerely mean, sir.

11 And I -- what you've had to observe was horrific. No  
12 human being ought to have to have seen that, but that doesn't  
13 excuse you. It doesn't excuse what you did on this  
14 particular day. There's no doubt.

15 It's sad that we don't make people aware that there are  
16 people that can help you before you do something like that,  
17 and it should be done after. We always look at it in  
18 hindsight, say, oh, I wish I would have done this and that.  
19 Monday morning quarterbacking is just that. It's easy.

20 But I hope you will find -- I wish there was something  
21 in prison that was offered. One day maybe there will be. I  
22 don't think I'm going to live long enough for this state to  
23 provide it.

24 It should be where you can get some help with things,  
25 mental things, because there's some discussion right now of

1 what's going on and the hatred that is being expressed in  
2 this country right now. And some interesting concepts that  
3 have been -- I've listened to several programs that talk  
4 about one of the reasons it's there is we've never addressed  
5 what we did and the evils that our society perpetrated over a  
6 period of time and worked through those things. Instead, we  
7 just sort of sloughed them off and pushed them under the rug,  
8 hoping they would go away.

9 Just like you said, time doesn't heal that, and we -- we  
10 need to address those things and I hope you will address  
11 those things so that when you are released, you will have a  
12 chance to have a full life, full in the sense of having some  
13 manner of peace.

14 But what you did was horrific. What you've presented to  
15 this family, no family should have to deal with.

16 SENTENCE

17 THE COURT: All right. The sentence of the Court -- I'm  
18 going to do this. The sentence of the Court is that you be  
19 committed to the Department of Corrections for a term of 28  
20 years, provided -- I'm going to suspend a portion of that --  
21 service of 18 years.

22 What that means is this, Mr. Brown. Your 85 percent is  
23 based on the 18 years. You will have to serve 85 percent of  
24 that. When you are released -- and this is an effort to try  
25 to help all of us, including you. There will be a community

1 supervision where you will have some opportunities to have  
2 some counseling and they'll fashion it for you and they'll  
3 consider all of your circumstances, but what we're doing for  
4 society is we'll have about a little over 12 years probably  
5 where we can protect society by returning you to prison for  
6 that 12-year period up to one year at a time, if you should  
7 not comply.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: If you do the two years, then everybody in  
10 this room will be benefited by it because you will have shown  
11 that you're a law-abiding, productive citizen, but if you  
12 don't, then we have a way of putting -- someone will put you  
13 back in prison and protect everybody.

14 So hopefully, it will work to your advantage and  
15 hopefully, it's a fair sentence. I wish you well and good  
16 luck to you, sir.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: The sentence of the Court on the possession  
19 of a firearm is five years. It's concurrent, and I give you  
20 credit for 955 days.

21 MS. WILLIAMS: Thank you, Your Honor.

22 MR. WETMORE: Thank you, Judge.

23 (WHEREUPON, the proceedings ended at 2:04 p.m.)

24

25 --- END REQUESTED TRANSCRIPT ---

1 State of South Carolina )  
 2 ) Certificate  
 3 County of Florence )  
 4

5 I, the undersigned, Krystal J. Smith, Notary Public and  
 6 Official Court Reporter for the Twelfth Judicial Circuit of  
 7 the State of South Carolina, do hereby certify that the  
 8 foregoing pages, numbered 1 through 19, constitute a true,  
 9 accurate, and complete Transcript of Record of all the  
 10 proceedings had and evidence introduced in the hearing of the  
 11 above captioned case, relative to appeal, in the Court of  
 12 General Sessions for Charleston County, South Carolina, on  
 13 the 25<sup>th</sup> day of August, 2017.

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

16  
 17 Krystal J. Smith  
 18 Court Reporter

19  
 20 Florence, South Carolina  
 21 October 13, 2018  
 22  
 23  
 24  
 25

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 County of CHARLESTON )  
 )  
 )  
 Full name and prison number (if any) of Applicant )  
MONTRE DESEAN BROWN )  
SC# 347523 v. )  
 )  
 State of South Carolina )  
 )  
 )  
 )

2018-CP-10-3968  
 IN THE COURT OF COMMON PLEAS

2018 FILED 10 APR 11 33  
 CLERK OF COURT

APPLICATION FOR  
 POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Sherrif Al Cannon Detention Center
2. Name and location of Court which imposed sentence Charleston County  
Court house 190 Lockwood Dr Charleston, SC 29403
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2015 GS 100 2263 - Voluntary Manslaughter
  - (b) \_\_\_\_\_

(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) Sentenced on 8-25-17

(b) 2 1/2 years suspended upon the service of 18 years

(c) 955 days credited

6. Check whether a finding of guilty was made:

(a)  after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

yes

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

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

i. Charleston county Courthouse

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. Denied

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. 11-3-17

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) \_\_\_\_\_

(b) \_\_\_\_\_

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

- (a) ineffective assistant Counsel
- (b) Reconsideration
- (c) Due process rights were violated

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

- (a) My lawyer mis-represented me on several aspects
- (b) I believe I was over sentence due to the facts in my case
- (c) My attorney provided me with paperwork for an appeal + told me to take that Act instead of PC

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? \_\_\_\_\_
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? \_\_\_\_\_
- (d) any other petitions, motions or applications in this or any other Court? Motion for appeal

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. Appeal
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

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

- i. Charleston County Courthouse 180 Lockwood Drive Charleston, SC
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

Yes I have done an appeal process upon which was denied due to me taking a plea

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

(a) which grounds have been presented:

- i. Ineffective assistant Counsel
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) Reconsideration - I was solely trying to be totally acquitted
- (b) Due rights process violated - Not yet observed at the time
- (c) \_\_\_\_\_

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

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

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. Ms. Lauren E. Williams, Esquire  
652 Rutledge Ave UNIFB Charleston, SC 29405
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Ms Lauren E Williams, initial guilty plea
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

I'm seeking reconsideration for the sentence  
of 18 years on the charge of voluntary manslaughter.

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

No

STATE OF SOUTH CAROLINA )

County of Charleston )

VERIFICATION

I, Monte Brown, 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.

Monte Brown ✓

SWORN to and subscribed before me this 1st  
day of August, 2018.

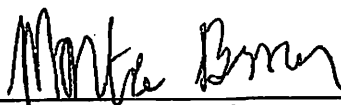
Nancy C. Merchant (L.S.)  
Notary Public

My Commission Expires: 1-23-2023

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

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

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



\_\_\_\_\_  
*Applicant*

SWORN or affirmed to and subscribed before me this

1<sup>st</sup> day of August, 2018.

  
\_\_\_\_\_  
*Notary Public*

My Commission Expires: 1-23-2023

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 )  
 Montre Desean Brown, #347523 )  
 )  
 Applicant, )  
 )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-3968

**RETURN AND MOTION FOR  
 MORE DEFINITE STATEMENT**

2018  
 AUG -5 PM 3:57  
 CLERK OF COURT  
 JB

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on August 10, 2018, would respectfully show this Court:

**I.Procedural History**

Montre Desean Brown (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In April 2015, the Charleston County Grand Jury indicted Applicant for one count of murder (2015-GS-10-02263) possession of a weapon during the commission of a violent crime (2015-GS-10-02264).

These charges stemmed from multiple incidents leading up to the shooting on January 9, 2015. Applicant shot and killed the victim while waiting in line at a convenience store. Applicant fled the scene with his girlfriend and proceeded to Northwoods Mall. Applicant then changed clothes in the mall and left. North Charleston law enforcement stopped Applicant’s girlfriend and she described the incident to them. Applicant turned himself in to authorities a few days after the incident occurred.

Lauren Williams, Esquire represented Applicant. Assistant Solicitor Burns Malone

Wetmore, Esquire prosecuted the case. On August 25, 2018, Applicant pleaded guilty as indicted to all charges before the Honorable R. Markley Dennis. Judge Dennis sentenced Applicant to imprisonment for twenty-eight years, suspended upon service of eighteen years and a concurrent five year sentence on the possession of a firearm, along with credit for time served of nine hundred and fifty-five days. Applicant appealed his conviction or sentence. The Remittitur was issued by the South Carolina Court of Appeals on November 27, 2017.

## **II. Current Application**

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

1. "Ineffective Assistance of Counsel"
  - a. "My lawyer misrepresented me on several aspects"
2. "Reconsideration"
  - a. "I believe I was over sentenced due to the facts in my case."
3. "Due Process rights were violated"
  - a. "My attorney provided me with paperwork for an appeal and told me to take that act instead of PCR."

In relief sought, Applicant is seeking for "reversal of convictions".

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

## **III. Response to Allegations of Ineffective Assistance of Counsel**

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's

conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing

to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### **IV. Reconsideration**

Respondent moves to dismiss this allegation with prejudice, as this is not a recognizable claim under the Uniform Post conviction Relief Act. S.C. Code Ann. § 17-27-10.

#### **V. Due Process Rights Were Violated**

Applicant alleges a denial of due process of law. Applicant's allegation claims infringement of his rights as afforded to him under the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "...specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon Applicant to make a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Because Applicant has failed to make a prima facie showing that his constitutional right to due process was violated, Respondent submits this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based and relief is sought.

#### **VI. Any Future Amendments**

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), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the 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), SCRCPP.

#### **V. Response to Any and All Other Allegations**

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

#### **VI. Motion for More Definite Statement**

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

**VII. Request for an Evidentiary Hearing**

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and involuntary plea.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

BENJAMIN HUNTER LIMBAUGH  
Assistant Attorney General

By: *Benjamin Limbaugh*  
ATTORNEYS FOR RESPONDENT

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

NOV 1, 2018

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 Montre D. Brown, #347523 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 Respondent, )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-3968

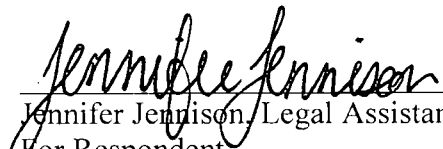
Affidavit of Service by Mail

BY \_\_\_\_\_  
 CLERK OF COURT  
 2018 NOV -5 PM 3:58  
 JENNIFER JENNISON

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

**Christopher L. Murphy, Esquire**  
**Murphy Law Offices, LLC**  
**234 Seven Farms Drive, Suite 128**  
**Charleston, SC 29492**

DATED this the 1<sup>st</sup> day of November, 2018.

  
 \_\_\_\_\_  
 Jennifer Jennison, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE 9th JUDICIAL CIRCUIT
	)	
Montre Brown 347523	)	2018-CP-10-3968
Applicant	)	AMENDED PCR APPLICATION
Vs.	)	
State of South Carolina	)	
Respondent,	)	
_____	)	

FILED  
 2020 DEC 10 PM 3:31  
 JULIE J. AMSTRONG  
 CLERK OF COURT

Applicant by counsel amends the PCR application filed August 10, 2018 to include the following specific allegation of ineffective assistance of counsel.

1. Trial counsel provided ineffective assistance of counsel by advising Applicant that if he were to go to trial for murder under warrant 2015A1010200160 he would be eligible to receive an LWOP sentence. Plea counsel advised him that he already had one strike on his record as a consequence of his August 22, 2011 conviction on indictment 2010-GS-18-1452. Although the 2011 indictment charged Applicant with murder, he plead guilty to the reduced charge of 1<sup>st</sup> degree assault and battery. Applicant intended to argue at trial that the shooting of Kenneth Robinson was justified because Applicant was acting in self-defense. At trial Applicant was prepared to call two fact witnesses who he expected would have testified that the night before the shooting, Kenneth Robinson came to his house, at night, and threatened him with a gun. Applicant only elected to accept the plea offer because he thought that a conviction for any serious or most serious offense would automatically result in an LWOP sentence. Had Applicant known that he did not have any strikes on his record he would have gone to trial where he would have argued self-defense or for a conviction on a lesser included offense.

2. Trial counsel provided ineffective assistance by failing to conduct an adequate review of his criminal record. As set forth above, Applicant was prepared to go to trial and plead self-defense. However his plea counsel advised him if he were to take the stand in order to testify regarding his

actions taken in self-defense, he would have been subject to cross-examination by the State regarding his prior murder conviction. Applicant asserts that this advice was incorrect because: 1) he did not have a prior murder conviction, and 2) such questioning would have been improper under SCRE 404B.

Respectfully Submitted,

*James Falk*

James K Falk  
Falk Law Firm  
PO Box 38  
Charleston, SC 29402  
(843) 606-6007  
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

A copy of the above was emailed this 7<sup>th</sup> day of November, 2020, to Benjamin Limbaugh Esq. at blimbaugh@scag.gov

*James Falk*

James Falk

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS  
FOR THE 9th JUDICIAL  
CIRCUIT  
Case no. 2018CP103968

MONTRE D. BROWN,

Applicant,

-against-

STATE OF SOUTH CAROLINA,

Respondents.

PCR HEARING

(VIRTUAL)

DATE: March 22, 2021

TIME: 2:27 p.m.

HON.: CLIFTON NEWMAN

Natalie A. Williams  
Court Reporter  
(914) 610-8863  
NatalieAWilliams726@gmail.com

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

S.C. ATTORNEY GENERAL POST CONVICTION RELIEF DIVISION  
NINTH CIRCUIT

Attorneys for the Respondent

BY: MR. BENJAMIN H. LIMBAUGH

(803) 734-3737

THE FALK LAW FIRM

Attorney for the Applicant

BY: JAMES K. FALK

(843) 606-6007

1 MR. LIMBAUGH: This is the case of  
2 Mr. Montre Brown, case number 2018CP103968.  
3 Mr. Brown is presently confined in the  
4 South Carolina Department of Corrections  
5 currently, pursuant to orders of commitment  
6 of the Charleston County Clerk of Court.

7 In April 2015, Charleston County  
8 Grand Jury indicted applicant for one count  
9 of murder and possession of a weapon during  
10 the commission of a violent crime.

11 Ms. Lauren Williams, Esq.  
12 represented the applicant. Assistant  
13 Solicitor Burns Wetmore prosecuted the  
14 case. On August 25, 2018, applicant pled  
15 guilty to the lesser included offense of  
16 voluntary manslaughter, as well as the  
17 possession of a weapon charge, before the  
18 Honorable R. Markley Dennis, Jr. Judge  
19 Dennis sentenced the anticipate to  
20 imprisonment for 28 years suspended upon  
21 service of 18 years, and a concurrent  
22 five-year sentence on possession of a  
23 firearm, along with credit for time served  
24 of 955 days.

25 Applicant appealed his conviction

1 and it was remanded. The remitter was  
2 issued by South Carolina Court of Appeals  
3 on November 27, 2017. Applicant then did  
4 file this application for post conviction  
5 relief on August 10, 2018, alleging  
6 ineffective assistance of counsel. My  
7 lawyer misrepresented me on several  
8 aspects. Reconsideration. I believe I was  
9 over sentenced due to the facts in my case.  
10 Due process rights were violated, my  
11 attorney provided me with paperwork for an  
12 appeal and told me to take that act instead  
13 of PCR.

14 Your Honor, I would hand over to  
15 Mr. Falk to just clarify the allegations  
16 that we're going forward with. I would ask  
17 that Your Honor just provide Mr. Brown with  
18 a brief colloquy since one of the  
19 allegations is -- appears to be  
20 resentencing, just informing him that  
21 that's not a ground in PCR and you don't  
22 have the jurisdiction to do that, Your  
23 Honor.

24 THE COURT: Okay. Mr. Brown, we'll  
25 swear you in, just for a brief testimony at

1                   this time and maybe more later.

2           M O N T R E       B R O W N, the Applicant, having been  
3           first duly sworn by the Court, was examined and  
4           testified as follows:

5                   THE COURT:   As I understand it,  
6                   you're complaining about the sentence that  
7                   you got from Judge Dennis, you're thinking  
8                   he should have given you less time, is that  
9                   right?

10                   THE APPLICANT:   Yes.   At the  
11                   beginning of my PCR that was one of my  
12                   arguments, but I since amended it.   I  
13                   really didn't know what I was doing when I  
14                   filled that application out.   I was told I  
15                   had a deadline, but since then I have made  
16                   amendments with Mr. Falk.

17                   THE COURT:   But you're not -- part  
18                   of your PCR is not the sentence itself  
19                   anymore?

20                   THE APPLICANT:   No, sir.

21                   THE COURT:   Okay.   So, that part  
22                   will not be addressed.   All right, Mr.  
23                   Falk, you may proceed.

24                   MR. FALK:   Yes, Your Honor.  
25                   Sometime about November 7th of last year we

1 filed an amendment to the PCR application.  
2 I don't know if that has gotten into your  
3 file or not, but I'm going to just maybe  
4 read the paragraph and it says, trial  
5 counsel provided infective assistance of  
6 counsel by advising applicant that if he  
7 were to go to trial for the murder warrant  
8 215A101020160, he would be eligible to  
9 receive L-WOP sentence. Plea counsel  
10 advised him that he already had one strike  
11 on his record as a consequence of his 2011  
12 conviction under a 2010 indictment for  
13 murder and attempted murder. He was  
14 charged -- that indictment did charge him  
15 with murder although pled to assault and  
16 battery first degree, so that would not  
17 have been a strike offense.

18 Then he goes on to say that -- and  
19 this is where we talk about Ms. Gilliard,  
20 is that had he gone to trial he would have  
21 wanted to assert a self-defense claim  
22 because of harassment that the victim,  
23 Kenneth Robinson, had done to Ms. Gilliard,  
24 his mother. So, there was grounds to  
25 possibly make a self-defense claim. Our

1 intention was to have Ms. Gilliard testify  
2 to that fact.

3 So then we go on to say that trial  
4 counsel was inadequate by not properly  
5 reviewing his criminal record and was not  
6 prepared to go forward with the  
7 self-defense claim. So that's the crux of  
8 that.

9 THE COURT: Okay. You may call  
10 your first witness.

11 MR. FALK: We would call Mr. Brown  
12 to the stand.

13 THE COURT: Okay, Mr. Brown, I've  
14 sworn you already and you're still under  
15 oath.

16 THE APPLICANT: Yes, sir.

17 DIRECT EXAMINATION BY MR. FALK:

18 Q Mr. Brown, you heard and I sent you  
19 a copy of this amendment that we talked about. And  
20 you understand what we're talking about here, you  
21 understand the claim that I read?

22 A Yes, sir, I do.

23 Q And essentially I was saying is  
24 that your lawyer advised you that you needed to plea,  
25 because you were going to -- you were eligible to get

1 a L-WOP sentence, is that right?

2 A Yeah, she didn't say that I needed  
3 to, but she did throw it out there that it could  
4 increase my chances with my record. My whole thing is  
5 I have a murder charge on my record that's not even  
6 suppose to be there, I have it right in front of me  
7 and it reads, charged, murder 2010, 9/14. It's not  
8 supposed to be there. And she advised me with that on  
9 my record it could increase the chances of 12 jurors  
10 looking at me as a murderer, and I could possibly get  
11 a life sentence, which I knew I could be facing a life  
12 sentence with the murder charge. But I also knew that  
13 this charge right here increased my chances of me  
14 being found guilty and possibly prejudice my the jury.  
15 And it says right here, murder charge 2010 and it's  
16 not supposed to even be on my record, that never  
17 happened.

18 So, I feel like if -- and she also  
19 told me that if I get on the stand the jury will be  
20 able to have access to my record if I testify and say  
21 what my state of mind was that day when I killed the  
22 victim and when I tried to prove self-defense. But I  
23 know this murder charge on my record did increase my  
24 chances of getting life without parole, so I backed  
25 out.

1                   But upon further study that I know  
2 now, it's not even supposed to be on my record. I  
3 never had a murder charge, this is my first murder  
4 charge I ever encountered. And I was just wondering  
5 like if I would be able to get that murder charge off  
6 my record, I would have went to trial, I would have  
7 stood firm and went to trial and stood in front of a  
8 jury, because I don't -- I have a record, but I don't  
9 have an extensive violent record. I have assault and  
10 battery and several misdemeanors, such as driving  
11 without a license and simple possession.

12                   By her telling me that the jury  
13 would have access to my record and they would see that  
14 murder charge, that right there backed me out of  
15 trial. That's the sole reason is the reason why I  
16 took the plea. But it's not supposed to be there.

17                   Q           So, let's kind of unpack a couple  
18 of things. I'm looking at a record from SC Courts  
19 which shows that on August 22, 2011, you plead guilty  
20 to assault and battery first degree, and you received  
21 the YOA sentence, not to exceeding five years.

22                   A           Yes, sir. And that's the same date  
23 where they have the murder charge. It's all the same  
24 thing, that charge, the murder charge that they have  
25 it is what happened that with the assault and battery

1 charge. It's all one in the same, but it says on my  
2 record as a murder, they recognized it as a murder,  
3 when it was attempted murder that got dropped down to  
4 assault and battery, and I got a YOA sentence for it.

5 Q Okay. So -- I don't know why it  
6 works this way in South Carolina, but the one code  
7 under the four digit code for defense is 3410 and it's  
8 described as murder/attempted murder. I have no idea  
9 why both of those get wrapped up under the same  
10 heading. On that charge, nobody was ever killed, is  
11 that correct?

12 A No. I was the only one shot in  
13 that instance, sir.

14 Q You plead guilty to assault and  
15 battery first degree?

16 A Yes.

17 Q So, you have never been convicted  
18 of attempted murder, is that correct?

19 A No, sir.

20 Q And you've never been found guilty  
21 of murder, is that correct?

22 A No, sir, that's correct. That's  
23 correct.

24 Q But your lawyer -- it's your  
25 recollection that your lawyer told you that if you

1 took the stand to testify on the self-defense claims,  
2 you would be subject to cross-examination for this  
3 murder charge, is that correct?

4 A Yes, sir.

5 Q Okay.

6 A There's other things also. That's  
7 not the only thing she told me, but that is the sole  
8 reason why I backed out of trial.

9 Q What else did she tell you that you  
10 think was inaccurate?

11 A That I didn't have full grounds  
12 that I needed for a self-defense claim, but I clearly  
13 do. I have everything I need, the only thing I was in  
14 the wrong what I feel like was I wasn't supposed to be  
15 in possession of a firearm that day. But I had the  
16 right to be where I was at, I had the right to protect  
17 my family and protect myself. And I just acted as if  
18 I feel like any human would have acted in that  
19 instance, and if I can get on the stand and prove that  
20 to the jury, I will take that shot. But I wasn't  
21 willing to risk that.

22 This was really a issue, a  
23 conversation like, me and my mother was like, well we  
24 don't feel like you should take that risk with those  
25 charges on your record, if he's getting a life

1 sentence. So, I backed out. I was ready to go to  
2 trial until she told me I didn't have all the grounds  
3 I needed for self-defense.

4 Q Why don't you tell me your  
5 recollection or what would your testimony have been  
6 had you testified about the shooting?

7 A I would have let the jury know -- I  
8 would have let them know, I would have been able to  
9 prove--

10 Q I don't -- I want to ask you  
11 specifically. So, where did it happen?

12 A At the Exxon, inside the gas  
13 station in front of--

14 Q Which?

15 A Sir?

16 Q Which Exxon station?

17 A On Northwoods Boulevard, North  
18 Charleston.

19 Q Okay. And how far is that from  
20 your house?

21 A Several miles, a couple of miles.

22 Q Okay. And why were you at the  
23 Exxon that night?

24 A It was 12:00 in the afternoon, but  
25 right there is the Red Roof Inn. I actually have a

1 receipt right here where I signed into the Red Roof  
2 Inn and my name, my initials, license plate and  
3 everything. I wasn't hiding, like the Exxon and Red  
4 Roof Inn is connected to each other.

5 I slept there -- my ex-girlfriend  
6 that night it was her birthday. We pulled up the next  
7 morning it was check out time, when to go get gas, I  
8 walked in the store I saw this dude approaching the  
9 store, I already knew what it was. He just left, the  
10 witness we trying to get on the phone, he just left  
11 her house that night, the night before with a gun  
12 brandishing saying he was going to have me killed and  
13 keep her daughter away from me, and her daughter was  
14 with me at the time.

15 That's the sole reason why we was  
16 at the Red Roof Inn, because he came to the house and  
17 threatened with a gun out, and they called the police,  
18 I have that on record too. This was 8:00 the night  
19 before the murder. My girlfriend called me and asked  
20 me to take her away from there, so I took her to the  
21 Red Roof Inn.

22 It had to be fate. Either he was  
23 following me or it had to be fate that he popped up  
24 there that day, because I walked in the store to pay  
25 for gas and when I looked back towards the door he was

1 walking in. I ran to the back of the store and when I  
2 came out he had his hand and he was reaching. They  
3 found the gun on him and everything and I overreacted.  
4 And I know my role.

5 Ms. Lauren will tell you from the  
6 getgo, I never lied about anything. I know my role in  
7 the situation and I did kill him, and I did overreact  
8 a little bit out of passion, but whatever. But that  
9 guy, he was following me, he was coming after me. And  
10 I just acted how I felt I should act at the moment.

11 Q Okay, let me back up for a moment.  
12 We're trying to get Yolanda Gilliard on the telephone,  
13 right?

14 A Yes, sir.

15 Q Who is she?

16 A That's my ex's mother. That's who  
17 called the police the night before. When the police  
18 came and she told them that the guy was on her  
19 residence porch with a gun out.

20 Q Okay. And so you were -- what's  
21 your ex's name?

22 A Kadiesha Gilliard.

23 Q Okay. And Kadiesha Gilliard was  
24 with you and she lives with Yolanda Gilliard?

25 A I'm not sure where she lives now,

1 I'm not really in contact.

2 Q But at that time, at that time.

3 A At that time, yes.

4 Q And it's your understand that the  
5 victim came to Yolanda Gilliard's house that night  
6 before, is that right?

7 A Yes, sir.

8 Q Was there some type of threat that  
9 was made the night before?

10 A Yes, sir. It's on 9-1-1 record,  
11 it's a police report on page -- in my motion, it's  
12 page 14 of my Rule 5, says right here where she called  
13 the police on him. This was at 6:00 p.m. the night  
14 before the murder, the cops were called for this guy  
15 coming to her house brandishing a firearm.

16 Q Okay, that is in your Rule 5, that  
17 was a police call from the home of your ex-girlfriend  
18 and that the victim was brandishing a firearm and  
19 threatening you at that time?

20 A Yes, sir. Page 14, 15 of my Rule  
21 5.

22 Q Okay. So, just to fill out the  
23 picture, did he used to have a relationship with her?

24 A No, no, sir. All us live in  
25 Dorchester on the same street, it's Alabama Drive, one

1 big circle. And he came there looking for me, he  
2 knocked on the door asking where I was at, told them  
3 to keep me away from him, because if they around me  
4 when I'm around he's going to have me dealt with. He  
5 don't want to have them hurt too.

6 Q Oh, I see what you're saying.

7 A But this was just the first threat  
8 that was recorded by the police. That was not the  
9 first threat.

10 Q So, the victim came to your ex's  
11 where she was living with her mother and looking for  
12 you, and then warning them to stay away from you  
13 because he was coming after you?

14 A Yes, sir.

15 Q Okay.

16 A Correct.

17 Q And so, this was noon time at the  
18 Exxon Station by the Red Roof Inn off Northwoods  
19 Boulevard, right?

20 A Yes, sir.

21 Q And you were there, what were you  
22 getting gas, getting a Coca-Cola? What were you  
23 doing?

24 A I was standing in line paying for  
25 gas. I actually looked to see what pump my girl was

1 at and when I looked to see, he was coming through the  
2 front door. I ran to the back of the store and when I  
3 came out he was walking up towards the back of the  
4 store, and he did -- and on the camera, Ms. Lauren  
5 showed me he did have his hand by his front right  
6 pocket where he did have the gun. And like I said, I  
7 mean, I know this guy, I knew him so I knew what time  
8 it was when he came in that store, like I knew what we  
9 was about to face and what was about to happen.

10 Q So, you were in the back of the  
11 store like where the beer coolers were or something?

12 A At first I was at the register but  
13 then I ran to the back of the store by the bathroom.

14 Q Is there an exit out the back of  
15 the store?

16 A No, sir.

17 Q When you ran to the back of the  
18 store, it would be your testimony that he was walking  
19 towards you, towards the back of the store, right?

20 A Yes, sir. It's one aisle right  
21 there in front of the register and he was coming.  
22 Some say he was about to go to the register but he was  
23 coming in there with that gun for me, sir. He was  
24 coming with that gun and he was walking towards the  
25 back of the store and I came out and I did what I did.

1 I shot him. I shot him a couple of times to be  
2 honest. I did overreact, but it was in self-defense.

3 Q When he was coming towards you, you  
4 couldn't have kept running, right?

5 A No, I don't believe I could have  
6 kept running.

7 Q Okay. So, you obviously spent a  
8 lot of time with Ms. Williams on this case, is that  
9 right?

10 A Yes, sir.

11 Q She went over your discovery with  
12 you and that's how you know there was the 9-1-1 call  
13 from the Gilliard house the night before, right?

14 A Yes, sir.

15 Q There is a video and it's your  
16 understanding that -- you saw the video?

17 A Yes, sir, I saw it several times.

18 Q So, the video had his hand on his  
19 pocket and there was a gun in that pocket, is that  
20 correct?

21 A Front right pocket.

22 Q Okay, all right. So, then -- but  
23 you went ahead and you plead guilty, right?

24 A Yes, sir.

25 Q Then let's go back through this.

1 So what did she say about -- what's your understanding  
2 of what Ms. Williams said about your Dorchester County  
3 conviction?

4 A That it could possibly prejudice  
5 me, and it could possibly -- the jury would be able to  
6 see that and it could possibly lead me up to getting a  
7 life sentence. It increases the possibility that I  
8 could get a life sentence, and it could prejudice me  
9 by my previous record and by me having to get on the  
10 stand and paint a picture where my mind frame was at.  
11 They would have access to my record and they would see  
12 those charges, and it could increase the chances of me  
13 being found guilty and found to life, versus me taking  
14 a plea.

15 Q But you're not disagreeing that you  
16 do have a conviction for assault and battery first,  
17 right?

18 A Yes, sir.

19 Q You were ready to go to trial and  
20 let the jury hear that you had that conviction, right?

21 A Yes, sir. Me knowing I had that  
22 assault and battery I was still ready.

23 Q What's your recollection -- were  
24 you on the trial docket that day or the day that you  
25 plead guilty, what's your recollection? Were you

1 ready to go to trial that day?

2 A At one point we was trial ready, it  
3 was talked about that we would be on the trial docket  
4 for -- I don't remember the date. And then that's  
5 when we came about with the, oh, we don't feel like I  
6 have the grounds for the self-defense claim again, and  
7 the charges I got on my record could possibly, you  
8 know what I mean, alter my trial and alter their view  
9 on things, like I'm a violent person. And that right  
10 there kind of backed me out.

11 I knew these things with the  
12 assault charge on my record. The murder charge, it  
13 was the presented to me, like, this was a whole murder  
14 charge like a ghost murder charge that the jury could  
15 see. And Ms. Lauren did go and send an e-mail to  
16 Dorchester County to try and clear it up, but I also  
17 recall her telling me that it couldn't be stricken and  
18 fixed on my record as how it was being read. They did  
19 send an incident report what really happened in  
20 Dorchester County for the murder charge, but it was  
21 still reading murder on my record and I wasn't ready  
22 to go in front of 12 jurors with that on my record.

23 Q So, what did you plead guilty to?  
24 You plead guilty to voluntarily?

25 A Voluntarily manslaughter, yes, sir.

1 Q And you got a 28 year sentence,  
2 suspend to 18 years, is that right?

3 A Correct.

4 Q And you understand that if the  
5 Court is inclined to grant your relief today, that  
6 your case is going to get sent back to the Charleston  
7 Solicitor's Office, right?

8 A Yes, sir.

9 Q And that the solicitor could then  
10 take this case to trial for murder?

11 A Yes, sir.

12 Q And if you're convicted -- what's  
13 your understanding of how much time you could get if  
14 you're convicted of murder?

15 A I understand I could get a life  
16 sentence, I could get the max for the charge of  
17 murder.

18 Q And you understand what the minimum  
19 is on a murder charge?

20 A I believe 25.

21 Q So, if it's 30 that's still a long  
22 time?

23 A Yes, sir.

24 Q It's 30 now. And you understand  
25 that that's kind of what you've got at risk here,

1 right?

2 A Yes, sir.

3 Q Okay. Is there anything else that  
4 you want to say about Ms. Williams?

5 A No, that's all. Those are all my  
6 issues right there.

7 MR. FALK: Your Honor, I have no  
8 further questions of Mr. Brown.

9 THE COURT: Thank you. Mr.  
10 Limbaugh?

11 MR. LIMBAUGH: May it please the  
12 Court, Your Honor.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION BY MR. LIMBAUGH:

15 Q Good afternoon, Mr. Brown. Do you  
16 remember the day of your guilty plea?

17 A Yes, sir.

18 Q Do you remember the judge asking if  
19 you're doing it freely and voluntarily?

20 A Yes, sir, I remember that.

21 Q And you remember telling them that  
22 you were.

23 A Yes, sir.

24 Q Do you remember the judge going  
25 over your constitutional rights, your right to a jury

1 trial and you waiving that?

2 A Yes, sir.

3 Q Do you remember the solicitor  
4 reading off the facts of your case and you agreeing  
5 that those facts were accurate?

6 A Yes, sir.

7 Q Okay. And do you remember those  
8 facts, including the fact that the victim was walking  
9 towards the counter and not you, and that his hands  
10 were in his pocket facing away from you and you  
11 couldn't see what was in his pocket. Do you remember  
12 those?

13 A I don't recall them saying he was  
14 facing away from me, I do recall them saying he was by  
15 the counter.

16 Q Okay. Is--

17 A With his hand in his pocket, with a  
18 firearm in his pocket.

19 Q But you couldn't see that, could  
20 you?

21 A No, no, sir.

22 Q And the facts as read by the  
23 solicitor that you agreed to, basically say that you  
24 saw him approaching, you went to the back of the  
25 store, hid, then came back out shooting until -- while

1 he was still on the ground after you shot him the  
2 first couple of times. Is that accurate?

3 A Yes, sir, that is what happened.

4 Q There is video of that that you  
5 reviewed with your attorney, is that correct?

6 A Yes, Your Honor -- yes, sir. Yes,  
7 sir, I apologize.

8 Q You're fine. More honor than I  
9 deserve, I appreciate it. So, you did go over and  
10 meet with Ms. Williams about the evidence in this  
11 case?

12 A Yes, several times.

13 Q Okay. And you said that your  
14 primary defense was self-defense?

15 A Yes.

16 Q Okay. That was mostly based off of  
17 the threats that you were getting, prior to this  
18 incident, is that accurate?

19 A Yes.

20 Q Okay. Other than just entering the  
21 store, did the victim do anything in particular at  
22 that moment to threaten you or cause you harm in any  
23 way?

24 A No, sir, not that I can prove. But  
25 I also wanted to get video footage from the outside of

1 the parking lot, but that was never provided. That  
2 could have indicated that he knew I was in that store,  
3 which I knew he did, it could have indicated, but it  
4 was never provided.

5 Q Okay. And Ms. Williams went over  
6 with you that if you testified your past record could  
7 potentially come out on cross-examination, is that  
8 true?

9 A Correct.

10 Q Okay. And that the jury might not  
11 look favorably on some of your more violent  
12 convictions?

13 A Yes, I had one prior violent  
14 conviction.

15 Q Assault and battery?

16 A Yes, sir.

17 Q You did tell the judge that your  
18 plea was ultimately your decision to plead guilty, is  
19 that right?

20 A Correct.

21 MR. LIMBAUGH: Moments indulgence,  
22 Your Honor. That's all I have of this  
23 witness, Your Honor.

24 THE COURT: Any redirect?

25 REDIRECT EXAMINATION BY MR. FALK:

1           Q           So you said that the victim lives  
2 near where you live on Dorchester Road, is that right?

3           A           Yes, sir, all of us live on the  
4 same street.

5           Q           So, how far away is that from the  
6 Exxon station by the Red Roof Inn? You said a couple  
7 of miles?

8           A           Yes, sir, that would be a good  
9 couple of miles, a nice distance.

10          Q           You weren't expecting to see him  
11 there that date right?

12          A           Not at all, sir. My whole point of  
13 having my girlfriend there in that area at that time  
14 was so she, not even so much me, but so she could be  
15 away from him because he just had left the house  
16 brandishing a firearm and her and her mother  
17 threatening me. So, I put my girlfriend right there,  
18 I slept there that night and we checked out at 12:00  
19 the next day at checkout time and he popped up right  
20 there.

21                       MR. FALK: Nothing further, Your  
22 Honor.

23                       THE COURT: Anything else, Mr.  
24 Limbaugh?

25                       MR. LIMBAUGH: No, Your Honor.

1 THE COURT: Okay, thank you. Your  
2 next witness.

3 MR. FALK: I'll call Ms. Williams.

4 THE COURT: All right.

5 Ms. Williams I'll swear you in.

6 THE WITNESS: Yes, sir.

7 L A U R E N W I L L I A M S, a Witness called on  
8 behalf of the Applicant, having been first duly sworn  
9 by the Court, was examined and testified as follows:

10 THE COURT: All right thank you.

11 DIRECT EXAMINATION BY MR. FALK:

12 Q Ms. Williams, are you aware that  
13 Mr. Brown has an assault and battery -- first degree  
14 of assault and battery on his record?

15 A Yes.

16 Q And that is not considered a  
17 violent offense in South Carolina?

18 A No, nor is it murder.

19 Q All right. What was your  
20 conversation with him about his -- what did you find  
21 to be the concerns about his self-defense claim?

22 A It was kind of twofold. So 'Tre  
23 was on YOA parole for that offense when he was  
24 arrested on the murder case that we're discussing  
25 right now. He had absconded from parole, so during

1 the course of my representation in the early days, his  
2 YOA was revoked and he had to go to Turbeville to  
3 serve out the nine months there.

4 Then we discussed, you know, with  
5 self-defense quite often it's reliant on the defendant  
6 to present, you know, their fear and whether or not it  
7 was a reasonable fear of emanant danger. In which  
8 case if 'Tre testified, then prior convictions could  
9 come in.

10 Now, the facts underlying those, it  
11 was a shooting, there was innocent bystander shot,  
12 that would not come in. It would just be the fact  
13 that he was in fact convicted. However, in 'Tre's  
14 case if we went to trial with a self-defense, I felt  
15 like we might have been able to avoid Tre testifying,  
16 just because of people like Ms. Gilliard, his  
17 girlfriend, he had a couple other friends who were  
18 witnesses to prior threats from the victim as well.

19 The second issue with his record  
20 was I said, okay, if we go to trial and you are  
21 convicted no judge is going to be impressed, in  
22 sentencing, by the fact that you have this prior and  
23 then you're charged and convicted of this new case,  
24 while you had absconded from parole. So, I felt that  
25 that might been an aggravating factor in sentencing.

1 But I never talked about what a sentence might be if  
2 he were convicted after trial, other than you're  
3 facing 30 to life.

4 Q It sounds like we may have a  
5 difficult time getting Ms. Gilliard onto the phone,  
6 but you reviewed discovery in this case, what do you  
7 think her testimony would have been?

8 A I think it would have been what Tre  
9 testified to. And my investigator met with her, I met  
10 with her several times, I met with Kadiesha, her  
11 daughter, Tre's ex-girlfriend as well. They were all  
12 pretty terrified of this guy. And like I said, Tre  
13 didn't mention it but there were other even more  
14 serious threats by the victim and the days leading up  
15 to Tre shooting him as well. But, yes, there was an  
16 incident report, she called the police and said  
17 there's this guy here, he is looking for my daughter's  
18 boyfriend and he's scaring the living day lights out  
19 of me.

20 Q And obviously, had you gone to  
21 trial you would have called her as a witness, right?

22 A Yes and her daughter, most likely  
23 her husband as well. Her husband had -- I don't think  
24 he was present for the actual threats, but I think he  
25 was home and I think he even tried to negotiated with

1 the victim, kind of as the man of the house, to you  
2 know call off the hunt for Tre.

3 It all stemmed from a drug exchange  
4 that I would characterize one way at trial, the State  
5 would characterize another way.

6 Q If you were -- oh, I know what I  
7 was going to ask you. Was there anything in the  
8 discovery to explain why the victim was at the Exxon  
9 station that day?

10 A No, and I agree with Tre. Either  
11 Tre was being followed or it was fate, one or the  
12 other, because it was away from the neighborhood.

13 Q That was my other question. Is it  
14 your recollection you told him that he's got a murder  
15 conviction and that's why he shouldn't testify?

16 A No. No, he doesn't have a murder  
17 conviction so I never told him that.

18 Q But you were telling him that --  
19 you were telling him that his problems would be the  
20 fact that he was on a YOA sentence, that he absconded  
21 from and that he did have the assault and battery  
22 charge or conviction, is that--

23 A What's the question exactly?

24 Q I was asking if you could just  
25 summarize what you had already testified to as to what

1 you thought the concerns might be.

2 A Sure. That if he took the stand he  
3 could be impeached with any prior conviction in  
4 certain circumstances according to the rules of  
5 evidence. Or if he were convicted after a trial, a  
6 judge could take his prior record, including  
7 absconding on parole, into a sentencing decision.  
8 Now, whether or not a judge would or would not, I  
9 don't know, but it would have been something I would  
10 feel obligated to tell him that that would be  
11 something a judge would look at.

12 Q So--

13 A But again, if I was going to try  
14 this case I would have tried to do it without Tre  
15 taking the stand, unless he really, really wanted to.

16 Q So, if he could have -- and you  
17 still would have tried to put forward a self-defense  
18 claim?

19 A Via the witnesses.

20 Q Through the other witnesses, okay.

21 A Part of the issue was the  
22 motivating factor for the victim was apparently \$5,000  
23 in cocaine. Police and the State thought Tre stole it  
24 from the victim. Tre told me, and I believe him and I  
25 think it's supported by discovery, that the victim was

1 running from police and tossed the cocaine at him.  
2 Which that's why the victim was on the hunt for Tre,  
3 because he wanted those drugs back. I didn't really  
4 want Tre to have to go through that on the stand, but,  
5 you know, that would have been a game time decision  
6 and it would have been Tre's decision.

7 Q Okay. How did you come about to  
8 pleading as opposed to going forward with the  
9 self-defense claim?

10 A We got a plea offer, I presented it  
11 to Tre and he accepted it.

12 MR. FALK: No further questions.

13 THE COURT: Mr. Limbaugh?

14 MR. LIMBAUGH: May it please the  
15 Court, Your Honor.

16 THE COURT: Yes.

17 CROSS-EXAMINATION BY MR. LIMBAUGH:

18 Q Ms. Williams, you didn't advise or  
19 discuss some phantom, non-existent murder charge, did  
20 you?

21 A No.

22 Q Okay. And you said that you were  
23 fully prepared and had investigated basically  
24 everything you needed to present a self-defense case  
25 at trial?

1           A           Yes. We weren't on the trial  
2 docket. If we hadn't pled that week I think we would  
3 have probably gone to trial in October, that's what  
4 the solicitor and I discussed, which was a couple of  
5 months down the road. But, yeah, I mean self-defense  
6 would have been the trial strategy 100 percent.

7           Q           And you talked to all the witnesses  
8 you named previously about the threats and degree of  
9 such, correct?

10          A           Yes.

11          Q           Okay.

12          A           And I actually obtained the 9-1-1  
13 call from Ms. Gilliard, shared it with the State when  
14 we were negotiating. And I then sent my investigator  
15 out to the neighbor to gather the witnesses including  
16 some close friends of Tre's who were witnesses to  
17 another threat, not the one with Ms. Gilliard, but  
18 another threat by the victim in the days preceding the  
19 shooting.

20          Q           Okay. Typically it would be  
21 difficult to present a self-defense claim without  
22 putting on the defendant, but it is possible. You  
23 were prepared to do that in this case?

24          A           Yes. It was Tre's decision if we  
25 went to trial if he wanted to testify, of course by

1 all means have at it. But depending on the State's  
2 presentation and what the, particularly the  
3 allegations of the problems with the defendant leading  
4 up to the shooting, you know, it would have been  
5 difficult to not put Tre up. But depending on how the  
6 State's case went, we might have been able to get  
7 around it. I had a good four or five witnesses who  
8 could testify to prior threats.

9 Now, I will say they may not have  
10 presented as the best witnesses, but they were  
11 witnesses for prior threats and I interviewed all of  
12 them at prior times.

13 Q And I would assume from Mr. Brown's  
14 testimony that you did share all the information and  
15 that strategy with him, correct?

16 A Yes, I mean, he pointed me to most  
17 of the witnesses. I didn't know who they were, but he  
18 obviously knew exactly who had been privy to the info.  
19 So, he directed me to that, them. And the ones I  
20 could meet in person, I met with as well.

21 Q Okay. And then this plea offer  
22 comes up and I'm assuming you went over the benefits  
23 and potential negatives of accepting versus going to  
24 trial with Mr. Brown?

25 A I did. We discussed it multiple

1 times. I think his mom went to meet with him -- I  
2 went to meet with her to explain the ins and outs to  
3 her. And yeah, I mean, he had -- I can't remember how  
4 long before we got the offer before we got a hearing  
5 date, I want to say it was a couple of weeks between  
6 the offer and the hearing date so, you know, during  
7 that time I was explaining and answering questions and  
8 seeing Tre and going over whatever we needed to go  
9 over.

10 Q So, you just reviewed with him his  
11 options and the pros and cons of each, but you  
12 didn't -- it was his decision to plead guilty,  
13 correct?

14 A Yes. He actually signed what I  
15 called a providency form several days prior to the  
16 plea, which I prep somebody for a plea hearing. So,  
17 we went over it. I mean, I didn't envy Tre in the  
18 decision. I think it was a tough one on the facts of  
19 the case, but it was his decision.

20 Q In that form, do you essentially  
21 just go over what the judge's colloquy will be and how  
22 the responses, you know, what he should be prepared  
23 for in that case?

24 A The colloquy, the rights he's  
25 waiving, no promises other than the plea offer have

1       been made. That it's voluntarily, etc. and that he  
2       has a right to appeal.

3               Q           Okay. And let's switch on that for  
4       a minute. So he was aware of his right to appeal and  
5       how long that deadline would be?

6               A           Yes. I actually gave him a pro se  
7       notice of appeal. I typically do that just because  
8       lot's of times if somebody is going to SCDC they're in  
9       transit before their timeframe to file that notice  
10      runs out. So, I gave him a blank notice of appeal and  
11      said, you know, that is your right if you want to do  
12      this, here's what you do.

13              Q           Okay. And just mostly for my  
14      clarification, you didn't advise him of any specifics  
15      if he went to trial versus taking a guilty plea or  
16      anything of that nature, did you?

17              A           No, the plea did not have a  
18      recommendation or a cap. I wanted a cap, so did Tre.  
19      The State wouldn't give it, but we decided to plea  
20      guilty anyway. For the plea I said, I don't think  
21      you'll get two years and I don't think you'll get 30,  
22      but it's always up to the judge. All he know for  
23      going to trial was if he were convicted of murder or  
24      any lesser charge that we could get a jury charge on  
25      and possibly get a verdict on, what he faced on each

1 of those particular charges.

2 Q Okay. So, it was a well considered  
3 calculous in terms of his sentencing risk, is that  
4 accurate?

5 A I believe so.

6 MR. LIMBAUGH: Thank you. That's  
7 all I have for this witness, Your Honor.

8 THE COURT: Any redirect?

9 MR. FALK: No, Your Honor.

10 THE COURT: All right, thank you.

11 THE WITNESS: Thank you, Judge.

12 THE COURT: Your next witness.

13 MR. FALK: I have no further  
14 witnesses, but I may want to recall  
15 Mr. Brown.

16 THE COURT: All right. Well, you  
17 can proceed with Mr. Brown if Ms. Gilliard  
18 is not yet available.

19 MR. FALK: Okay.

20 REDIRECT EXAMINATION BY MR. FALK:

21 Q Mr. Brown?

22 A Yes, sir.

23 Q You heard Ms. Williams's testimony.  
24 Is that your recollection of the advice she gave you  
25 about your charge, your criminal record?

1           A           Yeah, everything except for one  
2 thing. I do recall that murder charge being brought  
3 up and that throwing a wrench in my plans. I remember  
4 that being an issue. I remember Dorchester County  
5 being called to clear up the issue, and I remember  
6 this being said, that this could throw a wrench, but  
7 this could probably prejudice me if I go to court.  
8 That's the reason I backed out, the prior convictions.

9           MR. FALK: No further questions.

10          EXAMINATION BY THE COURT:

11           Q           Mr. Brown, I'm looking at the  
12 transcript of the guilty plea hearing where the  
13 solicitor Mr. Wetmore explains or tells the judge  
14 about your record. And he says to the judge that you  
15 have a prior record in 2006 assault and battery of a  
16 high and aggravated nature. 2010 possession of  
17 marijuana, assault and battery first degree, 2013  
18 possession of marijuana. And a 2014 assault and  
19 battery third.

20                   The judge says, are those facts  
21 correct, sir? And you responded, yes, sir. And his  
22 next question is, have you truthfully responded to all  
23 my questions, sir? And you said, yes, Your Honor.

24                   And then further went on to ask  
25 you, do you understand and realize I'll be relying on

1 those responses? And you said, yes, sir. And you  
2 want me to do that? And you said, yes, sir.

3 So, at the time you were pleading  
4 guilty and the solicitor reads off your criminal  
5 record, and the judge asks you whether that's correct  
6 and that you want him to rely on that as being your  
7 record, what is it about that you don't understand?

8 A I pretty much understand where I  
9 was at that day and I was taking the plea offer, but  
10 then I also didn't know what I know now about the law.  
11 I know that that murder charge was an issue, that was  
12 definitely an issue and that's the only thing that  
13 threw a wrench in me going to trial. But assault and  
14 battery, I know I was in the right mind, but that  
15 assault and battery 2006, that was juvenile, I was 13  
16 years old. And I haven't really -- I can pretty much  
17 say that I guess I didn't bypass what the solicitor  
18 stated that day. That assault and battery aggravated  
19 nature, that was a juvenile charge right there.

20 Q But did the lawyer tell you that  
21 that record might or might not have been presented  
22 before the jury?

23 A Sir?

24 Q Did Ms. Williams say your record  
25 might have been presented to the jury or might not

1 have been presented?

2 A Yes, sir. If I took the stand she  
3 said it could be presented to the jury.

4 Q So, the murder charge that you keep  
5 referring to, was that the original charge, did  
6 someone die?

7 A No, no, sir. No one died.

8 Q How could you have a murder trial  
9 if no one was --

10 A That's what I'm saying.

11 Q Not in this case but the earlier  
12 case.

13 A I was wondering the same thing,  
14 because I remember Ms. Williams calling trying to get  
15 a clearing on the situation. And right there, I mean,  
16 Mr. Falk to just told me that South Carolina has  
17 somewhere where they code it like that. But right  
18 here, a warrant reads arrest charge warrant, murder  
19 2010. And I know this was a wrench in my plan, at the  
20 time I was thinking about going to trial, this was the  
21 situation. I called my mom, I talked to her about it  
22 and they're saying well these charges that they got on  
23 my record could prejudice me and I could face life.

24 Q Absolutely it could prejudice you,  
25 but there's no way that a judge would ever allow

1 someone to claim that you have a murder conviction if  
2 it's not on your record.

3 A Sir, I wasn't aware of that at the  
4 time. Like I said, I wasn't too green on some of the  
5 things that I know now, going on back then. All I  
6 know was, oh, murder charge, I wasn't trying to go in  
7 front of the jury like that.

8 Q But you weren't too green about  
9 being in court because you had been to court before on  
10 all those other charges before.

11 A Yes, sir. Yes, Your Honor.

12 THE COURT: All right. Any further  
13 questions, Mr. Limbaugh?

14 MR. LIMBAUGH: Nothing from the  
15 State, Your Honor.

16 THE COURT: Mr. Falk?

17 MR. FALK: No, Your Honor.

18 THE COURT: Anything else you want  
19 to say, Mr. Brown?

20 THE APPLICANT: No, sir. I pretty  
21 much told you basically everything.

22 THE COURT: I guess one other  
23 question is it appears that Ms. Williams  
24 did quite a thorough job of explaining your  
25 life story, your history and all of the

1 tragedy that occurred in your life.  
2 Various people being killed in your  
3 presence and around you. Your father had a  
4 twin brother?

5 THE APPLICANT: Yes, sir.

6 THE COURT: Your father was killed,  
7 then you're raised by your uncle, then he  
8 was killed, then you're with someone else,  
9 some other childhood friends and the  
10 husband kills the wife and then kills  
11 himself. So, you had a lot of trauma in  
12 your life and the judge -- Ms. Williams  
13 explained that and the judge recognized  
14 that and it's sort of an unusual sentence  
15 that the judge gave. But it appears that  
16 he took all of that into consideration in  
17 imposing a sentence that, under most  
18 circumstances, would be considered a  
19 relatively light sentence based on the  
20 charge, because as I -- just reading  
21 through the transcript, this shooting  
22 occurred in broad daylight, in a gas  
23 station. I guess there were other people  
24 in the gas station as well?

25 THE APPLICANT: Yes, sir.

1 THE COURT: And on camera in the  
2 presence of my many people and then you  
3 shot the guy and went over him and shot him  
4 again or -- how many times did you shoot?

5 THE APPLICANT: Several times, Your  
6 Honor.

7 THE COURT: Several times. Then he  
8 had money in his hand, is that true?

9 THE APPLICANT: No, sir that's not  
10 true.

11 THE COURT: That was in the record  
12 of course.

13 THE APPLICANT: There was money on  
14 the floor that I did pick up. I didn't  
15 take anything from his hands.

16 THE COURT: Money in his hand and  
17 he got shot, he's not going to still have  
18 it.

19 THE APPLICANT: It was my money  
20 that I picked up off the ground.

21 THE COURT: You dropped your money?

22 THE APPLICANT: Yes, sir.

23 THE COURT: Before shooting him or?

24 THE APPLICANT: Before shooting  
25 him.

1 THE COURT: And the money landed by  
2 him?

3 THE APPLICANT: Yes, sir. And  
4 before I left out I moved him over and  
5 picked up everything and I left out. I  
6 never lied about that from the getgo. I  
7 never said that they had -- I was in a  
8 different state of mind. All I know was  
9 this dude is trying to get me, I had to get  
10 out of the store. I've been shot before, I  
11 just want to get out of here.

12 THE COURT: Well, you used the word  
13 a little earlier that you overreacted out  
14 of passion. You know that when someone  
15 kills someone in a heat of passion and they  
16 don't have an adequate self-defense, that's  
17 manslaughter, you know that? The heat of  
18 passion reduces the intension of killing,  
19 murder to manslaughter.

20 THE APPLICANT: Yes, sir. I was  
21 just trying to explain like, my state of  
22 mind, like from me being threatened and  
23 knowing this guy was after me with a  
24 firearm.

25 THE COURT: And you also used the

1 word overreacted like that, you know--

2 THE APPLICANT: As far as when I  
3 shot him and me squeezing the trigger and  
4 how many times I shot him. I do believe I  
5 overreacted, but I do also know I was in  
6 harms way.

7 THE COURT: Well, if you had a  
8 right to self-defense then you could keep  
9 shooting till you no longer had any danger  
10 going on.

11 Anything else you want to say for  
12 the record? And any other questions by  
13 anyone else based on my questions?

14 THE APPLICANT: No, sir, no, Your  
15 Honor.

16 THE COURT: Anything else, Mr.  
17 Falk?

18 MR. FALK: Your Honor, I don't  
19 think the testimony from Ms. Gilliard is  
20 going to be necessary. What she would have  
21 testified to I don't think is really in  
22 dispute. Ms. Williams -- I think she was  
23 basically going to say what Ms. Williams  
24 was planning on her saying had she called  
25 her as a witness, you know, as far as the

1 9-1-1 call. So, I don't think that waiting  
2 for her to come on is going to add anything  
3 to this hearing, because I think it's  
4 pretty clear what she would have said had  
5 she been able to testify.

6 THE COURT: All right. Well,  
7 regardless of what might have been on the  
8 rap sheet, clearly the record reflects that  
9 it does not reflect a murder conviction.  
10 Ms. Williams indicated that at no time did  
11 she ever indicate to Mr. Brown that he had  
12 a murder conviction.

13 It appears based on the State's  
14 recitation of the facts, that Mr. Brown  
15 agreed to, that the State -- this was a  
16 case of overwhelming evidence of guilt and  
17 Mr. Brown could have easily been convicted  
18 of murder. Well, knowing is easy in  
19 criminal court but it appears it appears  
20 there's a pretty good likelihood that he  
21 could have been convicted of murder based  
22 on the from a societal fashion, manner. We  
23 all in gas stations, and you're in a gas  
24 station and someone is in line and they may  
25 get out of line and go to the restroom and

1 next thing you know he comes out shooting  
2 someone else, placing the safety of  
3 everyone in jeopardy. And it's caught on  
4 camera and in the presence of multiple  
5 witnesses, and the person has a record of  
6 many assaults and the person was on parole  
7 at the time when this occurs.

8 You know, judges quite often would  
9 be looking at a life sentence under those  
10 facts. So, from what I could tell, Judge  
11 Dennis did a, you know, thorough job of  
12 evaluating and analyzing Mr. Brown's  
13 history and situation in fashioning a  
14 sentence. That took into consideration  
15 that the victim, you know, was no saint,  
16 particularly, I guess, the whole issue of  
17 searching for Mr. Brown because Mr. Brown  
18 had the man's drugs or the beef they have  
19 from earlier and on and that to some extent  
20 the victim might have gotten what he had  
21 coming to him, to an extent. But at the  
22 same time he had all these other balancing  
23 factors.

24 Then Ms. Williams did an excellent  
25 job representing in Mr. Brown. She had it

1 thoroughly investigated, she's obviously  
2 very knowledgable of the law and the rules  
3 and procedures. And she discussed it all  
4 thoroughly, not only with Mr. Brown but  
5 also Mr. Brown's family. You know, lawyers  
6 provide representation and assistance but  
7 in the end the decision is up to the client  
8 and Mr. Brown made a choice. He may not  
9 now think that he made the right choice,  
10 but -- and even looking at it these years  
11 later, it looks like Mr. Brown probably  
12 made the right choice in particularly  
13 considering the reduced sentence that he  
14 got, which adds up to excellent  
15 representation, in my mind. The judge  
16 would not have had all that compassion had  
17 Ms. Williams not explained all of the  
18 tragedy that had come up in Mr. Brown's  
19 life. And all of the other details  
20 involving the victim and the 9-1-1 calls  
21 and all the things that she did. You got  
22 your money's worth from her that time, your  
23 family did if you didn't.

24 You don't have a PCR here. You  
25 don't have a valid PCR. You know, I guess,

1           it might have been as an afterthought you  
2           might have thought about hanging your hat  
3           on this murder charge, on doing something  
4           that's coded as being murder, but that's  
5           not a criminal record. And the credibility  
6           is with Ms. Williams, that she did not  
7           represent you in any way to lead you to  
8           believe that the jury would be told that  
9           you've been previously convicted of murder.

10                   Based on all of that I deny the  
11           PCR. You sound good, Mr. Brown, you're an  
12           intelligent young man, you're still a young  
13           man, you've had a lot of hard times.  
14           Hopefully you'll be able to knock out this  
15           time and life will be better for you. If  
16           you'll prepare an order for me.

17                   MR. LIMBAUGH: Yes, sir. Your  
18           Honor, I will. I appreciate it.

19                   THE COURT: Thank you.

20                   THE WITNESS: Thank you.

21                   (Time noted: 3:27 p.m.)  
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C E R T I F I C A T I O N

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Certified to be a true and accurate  
transcript of the aforesaid proceeding.

Natalie A. Williams

AH  
GS  
SOL  
AG

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Montre Desean Brown, #347523, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-03968

**ORDER OF DISMISSAL**

FILED  
2023 OCT 18 AM 10:58  
JULIE J. ARMSTRONG  
CLERK OF COURT

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Montré Desean Brown (Applicant) on August 10, 2018. On March 22, 2021, a virtual evidentiary hearing convened before the Honorable Clifton Newman. Applicant was present and represented by James K. Falk. Assistant Attorney General Benjamin Limbaugh represented Respondent. At the hearing, Applicant testified and called as a witness plea counsel Lauren Williams. Following a thorough review of the transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections serving an active eighteen-year sentence. In April 2015, the Charleston County Grand Jury indicted him for murder (2015-GS-10-02263) and possession of a weapon during the commission of a violent crime (2015-GS-10-02264). These charges arose from the fatal shooting of Kenneth Robinson at a gas station on January 9, 2015; Applicant was captured on a surveillance video holding a gun.

On August 25, 2017, Applicant appeared before the Honorable Markley Dennis and pled guilty to the lesser-included offense of voluntary manslaughter and the weapon charge. Lauren

Williams, Esquire, represented Applicant, and Assistant Solicitor Burns Malone Wetmore represented the State. Judge Dennis sentenced Applicant concurrently to twenty-eight years for voluntary manslaughter, suspended upon the service of eighteen years; and five years for the weapon charge. Applicant filed a notice of appeal that was dismissed due to Applicant's failure to timely serve the State. The remittitur was sent November 27, 2017.

#### **CURRENT APPLICATION**

On August 10, 2018, Applicant timely filed the current PCR application alleging he is being held in custody unlawfully because:

1. Ineffective Assistance of Counsel
  - a. "My lawyer misrepresented on me several aspects"
2. "Reconsideration"
  - a. "I believe I was oversentence [sic] due to the facts in my case"
3. "Due process rights were violated"
  - a. "My attorney provided me with paperwork for an appeal and told to take that act instead of PCR."

The State filed a return requesting an evidentiary hearing.

On November, 7, 2020, Applicant amended his application to allege plea counsel was ineffective for:

1. Advising Applicant he would be eligible for LWOP if he proceeded to trial; and
2. Failing to conduct an adequate review of his criminal record.

At the PCR hearing, Applicant proceeded on the allegations in the amended application. Applicant also clarified he was proceeding on the ground that counsel was ineffective for not preparing a self-defense claim. (Tr. 6-7).

#### **FINDINGS OF FACT & CONCLUSION OF LAW**

This Court has had the opportunity to review the records before it, including the Charleston County Clerk of Court records from the underlying convictions; Applicant's records from the

South Carolina Department of Corrections; records from Applicant's direct appeal; the plea transcript; and the records of this PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

*Advise regarding potential sentence*

Applicant first contends counsel was ineffective for advising him that he already had one strike on his record because of an August 2011 conviction. He avers that although that prior indictment (2010-GS-18-1452) charged him with murder, he pled guilty to the reduced charge of first-degree assault and battery. Applicant asserts he intended to argue at trial that the shooting of Kenneth Robinson was justified because Applicant was acting in self-defense, and he was prepared to call two witnesses that would have testified Robinson went to Applicant's house the night before the shooting and threatened him with a gun. He contends he accepted the plea because he thought a conviction for any serious or most serious offense would automatically result in a life without parole sentence. Applicant contends that had he known he did not have any strikes, he would have proceeded to trial and argued self-defense or a lesser-included offense. This Court finds Applicant failed to prove counsel was ineffective in this regard.

At the PCR hearing, Applicant testified he had a murder charge on his record that was not supposed to be there. He explained he had previously pled guilty in August 2011 to first-degree assault and battery, and he received a YOA sentence not to exceed five years. Applicant averred his record indicated it was a murder charge, although it was supposed to be an attempted murder charge. He clarified he had never been convicted of murder or attempted murder. Applicant stated

counsel sent an email to the Clerk of Court to attempt to clear up his record, but she told him “that it couldn’t be stricken and fixed on [his] record as how it was being read.” (PCR 20). Applicant reiterated he did not want to go in front of a jury with a prior murder charge on his record.

Applicant stated he knew he faced a life sentence for the underlying murder charge, but he believed the prior charge would increase his chance of being found guilty. He averred counsel advised him the jury would have access to his record if he testified, and he believed the prior murder charge would increase his chances of receiving a life sentence. Applicant stated he would have proceeded to trial if the prior murder charge was not on his record, and counsel’s advice that the jury would see his prior charge was the reason he pled guilty. He testified counsel told him he would be subject to cross-examination for the prior murder charge if he testified, and he and his mother agreed he should not take a risk with the prior charges on his record.

Plea counsel recalled Applicant had a prior assault and battery conviction on his record, which is not a violent offense in South Carolina. She stated Applicant was on parole for his YOA offense when he was arrested for this murder charge. When asked whether she told Applicant he should not testify because he had a murder conviction, she replied, “No, he doesn’t have a murder conviction so I never told him that.” Rather, she stated she advised him that if he took the stand, he could be impeached with prior convictions under certain circumstance according to the Rules of Evidence, and if he were convicted, “a judge could take his prior record, including absconding on parole, into a sentencing decision.” (PCR 31). She reiterated she did not advise him or discuss with him a non-existent murder charge.

Counsel stated that if Applicant testified, then his prior convictions could come in. She explained, “[T]he facts underlying those, it was a shooting, there was [an] innocent bystander shot, that would not come in. It would just be the fact that he was in fact convicted.” However, she was

concerned that a judge may sentence Applicant more harshly following a trial due to his prior conviction and the fact he had absconded from parole.<sup>1</sup> She clarified she never discussed what his sentence might be after trial other than he would face thirty years to life if convicted of murder.

Counsel testified the State would not give a sentencing recommendation or a cap, although she and Applicant wanted a cap. She stated Applicant decided to plead guilty anyway, and she told him, “I don’t think you’ll get two years and I don’t think you’ll bet 30, but it’s always up to the judge.” She stated she explained to Applicant the constitutional rights he would waive and had him sign a form regarding those rights a few days before the plea.

After counsel testified, Applicant stated he agreed with her testimony about her advice regarding his charge and his record, except that he recalled “that murder charge being brought up and that throwing a wrench in [his] plans.” He stated he ultimately backed out of trial because of his prior convictions. (PCR 37-38).

This Court finds counsel’s foregoing testimony credible. This Court further finds counsel’s advice regarding the sentence Applicant faced was reasonable within prevailing professional norms. Specifically, counsel properly advised Applicant of the sentencing range, that the judge would likely consider the fact he previously absconded from parole in its sentencing decision, and that his prior conviction may be admissible if he decided to testify. This Court further finds that counsel did an excellent job representing Applicant, thoroughly investigated his case, had an accurate understanding of the law and legal procedure, and discussed this with Applicant. Ultimately, it was Applicant’s decision to plead guilty. This Court finds counsel’s excellent representation led to a reduced sentence for Applicant in this otherwise tragic crime. Based on the foregoing, Applicant did not prove counsel’s advice was deficient. Likewise, he did not prove

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<sup>1</sup> Counsel testified Applicant had absconded from parole and his YOA was revoked while she represented him.

resulting prejudice, and this claim is denied.

### *Investigation of prior record*

Applicant next contends counsel was ineffective for not adequately reviewing his prior criminal record. Specifically, he avers he was prepared to go to trial and plead self-defense, but counsel advised him that if he testified, he would be subject to cross-examination by the State regarding his prior murder conviction. He asserts this advice was incorrect because (1) he did not have a prior murder conviction and (2) such questioning would have been improper under Rule 404(b), SCRE. This Court finds Applicant did not prove counsel was ineffective in this regard.

This Court finds credible counsel's testimony that she did not advise Applicant about a prior murder conviction because he did not have a prior murder conviction, and she advised Applicant that if he testified, his prior convictions could come in under the rules of evidence. This Court further finds the foregoing advice is reasonable under prevailing professional norms. Notably, counsel had a duty to advise Applicant about the risk of testifying—that his prior convictions could come in under the Rules of Evidence. See Rule 609(a)(1) (providing evidence that an accused has been convicted of a crime punishable by imprisonment in excess of one year shall be admitted if the court determine that the probative value the evidence outweighs its prejudicial effect); Rule 609(b) (“Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines . . . that the probative value of the conviction . . . substantially outweighs its prejudicial effect.”).<sup>2</sup> This is in fact what counsel did; thus, Applicant did not prove her advice

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<sup>2</sup> Applicant's reliance on Rule 404(b) is misplaced. Although Rule 404(b) prohibits the admission of prior crimes “to prove the character of a person in order to show action in conformity therewith,” Rule 609 allows for the introduction of prior crimes for impeachment purposes.

was deficient in this regard. Likewise, this Court notes that at the plea hearing, the plea court relayed that Applicant had a prior *assault and battery* conviction—which Applicant agreed with. This Court finds Applicant did not prove deficiency or prejudice, and this claim is denied.

### *Self-defense*

Finally, Applicant contends counsel was ineffective for not adequately investigating self-defense. Applicant did not prove this claim.

At the PCR hearing, Applicant stated counsel advised him that he did not have grounds for a self-defense. He averred he had a right to be where he was and to protect himself, although he believed he was wrong for having a firearm that day. Applicant explained he was at a gas station when he saw the victim approach the store; he testified the victim had brandished a gun and threatened to kill Applicant the night before. Applicant averred,

It had to be fate. Either he was following me or it had to be fate that he popped up there that day, because I walked in the store to pay for gas and when I looked back towards the door he was walking in. I ran to the back of the store and when I came out he had his hand and he was reaching. They found the gun on him and everything and I overreacted. And I know my role.

(PCR 13-14). He agreed counsel reviewed discovery with him, including a video from the gas station.

Counsel testified that had they proceeded to trial, self-defense would have been their strategy. She averred she may have been able to present self-defense without Applicant's testimony based on testimony from other witnesses, but she clarified it would be Applicant's decision about whether to testify. (PCR 30-34). Counsel stated she sent an investigator to gather witnesses, and she interviewed four or five witnesses who could testify about prior threats from the victim, although they "may not have presented as the best witnesses." (PCR 33-34).

Counsel testified she spoke to a potential witness named Gilliard and anticipated that she would have testified they were all afraid of the victim and the victim had threatened Applicant prior to the shooting. She explained Gilliard had called the police previously when the victim was at her house, and there was an incident report to that effect. Counsel averred she would have called Gillard, her daughter, and possibly her husband as witnesses had they proceeded to trial. She reiterated that had she tried the case, she would have attempted to do so without Applicant taking the stand “unless he really, really wanted to.” (PCR 31). Counsel stated she had investigated, discussed this strategy with Applicant, and was prepared to present self-defense at trial. (PCR 32-33). Ultimately, she stated the State made a plea offer, she presented it to Applicant, and he accepted it. She stated it was Applicant’s decision to plead guilty.

This Court finds counsel’s foregoing testimony credible. This Court further finds counsel’s investigation of self-defense was reasonable within prevailing professional norms and not deficient. Specifically, counsel credibly testified she sent an investigator to gather witnesses; spoke to witnesses; had several witnesses to support self-defense; and discussed this with Applicant. Applicant has not shown what more counsel should have done to investigate and thus did not prove deficiency. This Court further finds that counsel did an excellent job representing Applicant, thoroughly investigated his case, had an accurate understanding of the law and legal procedure, and discussed this with Applicant. Ultimately, counsel did not present self-defense because Applicant chose to plead guilty, and this Court finds Applicant knowingly, voluntarily, and intelligently pled guilty with a full understanding of the potential sentence he faced and the constitutional rights he was waiving. Applicant did not prove deficiency or prejudice, and this claim is denied.

**CONCLUSION**

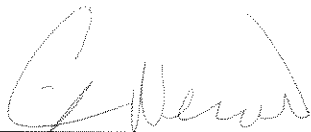
Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an 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). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

**AND IT IS SO ORDERED** this 10<sup>th</sup> day of October, 2023.

  
 \_\_\_\_\_  
 CLIFTON NEWMAN  
 Presiding Judge  
 Fourteenth Judicial Circuit

Columbia, South Carolina

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015000967

ARREST WARRANT NUMBER

2015A1010200161

DATE OF ARREST

January 12, 2015

ACTION OF GRAND JURY

**TRUE BILL**

*Nancy Ho Brown*  
Foreperson of Grand Jury

APR 7 2015

Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2015GS1002264

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2015

THE STATE

vs.

MONTRE DESEAN BROWN

DOB: 1991-08-18

B/M

Indictment for

Possession of a Firearm During the  
Commission of a Violent Crime

**FILED**

4/20/2015 12:58:37 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

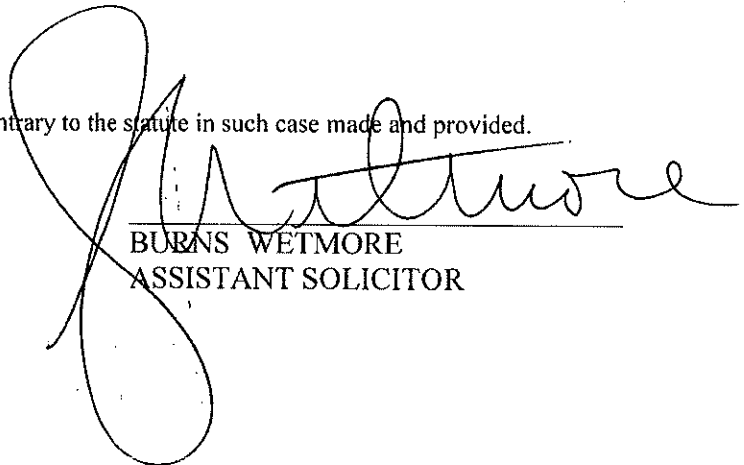
INDICTMENT

At a Court of General Sessions, convened on April 6, 2015 the Grand Jurors of Charleston County present upon their oath:

**Possession of a Firearm During the Commission of a Violent Crime**

That in Charleston County, South Carolina, on or about January 9, 2015, the Defendant, MONTRE DESEAN BROWN, did possess a pistol during the commission, or attempted commission, of murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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



BURNS WETMORE  
ASSISTANT SOLICITOR

BMW20150100287

DOCKET NO. 2015GSI002263

WITNESSES

The State of South Carolina

County of Charleston

North Charleston Police Department

AGENCY CASE NUMBER

COURT OF GENERAL SESSIONS

2015000967

April Term 2015

ARREST WARRANT NUMBER

2015A1010200160

THE STATE

DATE OF ARREST

vs.

January 12, 2015

ACTION OF GRAND JURY

MONTRE DESEAN BROWN

DOB: 1991-08-18

B/M

TRUE BILL

*Nancy H. Keenan*

For person of Grand Jury

APR 7 2015

Indictment for

VERDICT

Murder

For person of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

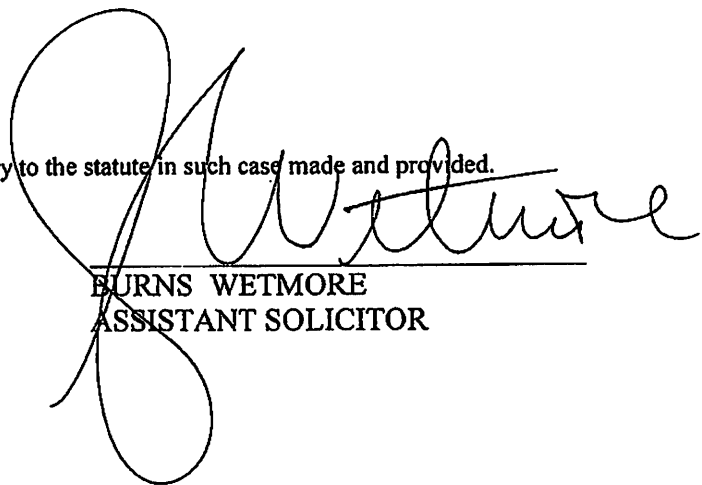
INDICTMENT

At a Court of General Sessions, convened on April 6, 2015 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County, South Carolina, on or about January 9, 2015, with malice aforethought, MONTRE DESEAN BROWN did kill and murder Kenneth Robinson by means of shooting, and that Kenneth Robinson did die in Charleston County as a proximate result thereof on January 9, 2015; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

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



BURNS WETMORE  
ASSISTANT SOLICITOR

COUNTY OF CHARLESTON  
STATE VS.

MONTRE DESEAN BROWN

INDICTMENT/CASE#: 2015GS1002264  
A/W: 2015A1010200161  
Date of Offense: 01/09/2015  
S.C. Code §: 16-23-0490  
CDR Code #: 0549

AKA:  
Race: Black/African American Sex: M  
DOB: 08/18/1991 SS#: 248-99-1529  
Address: 2943 Alabama Drive  
City, State, Zip: North Charleston, SC 29405-7384  
DL# 101822534 SID# SC01929181

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
TO: Possession Of A Weapon During The Commission Of A Violent Crime  
In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (def.'s initials)  
The pleas:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTES: [Signature] 17241 Montre Brown Samuel E. Williams 75158  
Burns Malone Wetmore, Asst. Solicitor 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 5 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 Service 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. 955 days  
 The Defendant is to be placed on 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 PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment  
Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_  
Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling

*Fine:		\$	
§14-1-206 (Assessments 107.5%)		\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	<u>100.00</u>
§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/Prob)	\$500	\$	
§14-1-212 (Law Enforce. Funding)	\$25	\$	<u>25.00</u>
§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)	\$	\$	<u>3.75</u>
<b>TOTAL</b>		\$	<u>128.75</u>

Random Drug/Alcohol Testing   
Fine may be pd. in equal consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_  
\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_  
\_\_\_\_\_ msc

Appointed PD or appointed other counsel,  
§47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/Deputy Clerk: Called  
Court Reporter: Kristal Smith

Presiding Judge: [Signature]  
Judge Code: 2000  
Sentence Date: 8-25-17 msc

COUNTY OF CHARLESTON  
STATE VS.

MONTRE DESEAN BROWN

AKA:  
Race: Black/African American Sex: M  
DOB: 08/18/1991 SS#: 248-99-1529  
Address: 2943 Alabama Drive  
City, State, Zip: North Charleston, SC 29405-7384  
DL# 101822534 SID# SC01929181

INDICTMENT/CASE#: 2015GS1002263  
A/W: 2015A1010200160  
Date of Offense: 01/09/2015  
S.C. Code §: 16-03-0010, 0020  
CDR 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

CONVICTED OF or  PLEADS

TO: Voluntary Manslaughter (2-30y)  
In violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (def.'s initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Burns Malone Wetmore 72241 SC Bar # \_\_\_\_\_ Defendant Montre Brown Attorney for Defendant Lauron E. Wilkins 75158 SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
for a determinate term of 28 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 18 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 Service 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. 95 days

The Defendant is to be placed on 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 PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_ Substance Abuse Counseling

§14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_ Random Drug/Alcohol Testing

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \_\_\_\_\_ pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

§56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_ \$ \_\_\_\_\_ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_ Other: \_\_\_\_\_

Proviso 61.6 (Public Def/Prob) \$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

Appointed PD or appointed other counsel,  
§47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/Deputy Clerk: Crystal Smith  
Court Reporter: \_\_\_\_\_

Presiding Judge: R. J. ...  
Judge Code: 2060  
Sentence Date: 8-25-17