

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Anderson County

Honorable Perry H. Gravely, Circuit Court Judge

GERALD AKEEM GADSDEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000153

APPENDIX

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

3
4 State of South Carolina,)
5) 2016-GS-04-07158
6 -vs-) January 8, 2020
7 Gerald Akeem Gadsden,)
8 Defendant.)
9) Transcript of Record
Plea & Sentencing

10
11 B E F O R E:

12 The Honorable J. Cordell Maddox, Jr. Judge
13

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

15 Catherine Huey, Esquire
16 Stan Overby, Esquire
Attorneys for the State

17 Gordon Senerius, Esquire
18 Attorney for Defendant
19
20

21 Reported by:
22 Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter
23
24
25

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 2:22 p.m.)

4 MR. OVERBY: Gerald Gadsden.

5 MR. SENERIUS: Your Honor, could I have permission
6 to speak to Mr. Gadsden over there?

7 (Pause in proceedings.)

8 MR. OVERBY: May it please the Court, your Honor.
9 Stan Overby for the State. I'm actually standing in
10 for Ms. Huey and doing the plea on this particular
11 case.

12 This is indictment number 2016-GS-04-01758, the
13 State versus Gerald Akeem Gadsden, indicted for murder
14 in this case and possession of a weapon during the
15 commission of a violent crime.

16 He is pleading to voluntary manslaughter, Judge.
17 There is a recommendation of 20 years concurrent with
18 his life without parole sentence from Greenville
19 County.

20 Your Honor, the victims in this case have been
21 notified. They are in agreement with this
22 recommendation, as is law enforcement.

23 THE COURT: Mr. Gadsden, if you would raise your
24 right hand.

25 (WHEREUPON, the defendant was sworn.)

1 THE COURT: How long have you been in prison on
2 this other Greenville charge?

3 THE DEFENDANT: About going on four years.

4 THE COURT: Say again.

5 THE DEFENDANT: About four years.

6 MR. OVERBY: 1,309 days is what we have, Judge.

7 THE COURT: Are you taking any kind of
8 prescription medicine that they have given you at all?

9 THE DEFENDANT: Not at this point in time.

10 THE COURT: Have you been diagnosed with any kind
11 of mental disorder? Are there emotional problems?

12 THE DEFENDANT: Yes.

13 THE COURT: What?

14 THE DEFENDANT: I'm schizophrenic.

15 THE COURT: And --

16 MR. SENERIUS: Your Honor, he's also been
17 diagnosed as bipolar.

18 THE COURT: Is there any question in your mind
19 that he's competent? I assume that was dealt with on
20 the Greenville case.

21 MR. SENERIUS: No, your Honor. My discussions
22 with him have been very fruitful. He seems to have
23 understood everything I've told him, asked me relevant
24 questions.

25 There was a challenge as to his competency in the

1 Greenville case, but he was found competent at that
2 time. I believe initially he was found not competent
3 but restorable, and then once restored.

4 THE COURT: Okay. All right.

5 Mr. Gadsden, you understand today what's going on
6 is that you're here to plead guilty to voluntary
7 manslaughter. There is a recommendation of 20 years.
8 That would be concurrent with your life sentence.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Has anybody threatened you in any way
12 or promised you anything to force you to plead guilty?

13 THE DEFENDANT: No.

14 THE COURT: You understand that -- and I'm not
15 going to do this because I don't think it would make a
16 whole lot of sense -- but you understand that, even
17 though there is a recommendation of 20 years, I could
18 sentence you up to 30?

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. In order to plead guilty, you
22 have to waive certain constitutional rights.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Are you waiving your right to a jury

1 trial?

2 THE DEFENDANT: Yes.

3 THE COURT: Are you waiving your right to remain
4 silent?

5 THE DEFENDANT: Yes.

6 THE COURT: Are you waiving your right to put up a
7 defense to these charges?

8 THE DEFENDANT: Yes.

9 THE COURT: And are you waiving your right to a
10 jury trial?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. And no one has threatened you
13 or forced you into this plea; is that correct?

14 THE DEFENDANT: No.

15 THE COURT: Have you had plenty of time to speak
16 with your lawyer or enough time to speak with your
17 lawyer? It's a weird word.

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. And are you satisfied with the
20 legal work that's been done on your behalf?

21 THE DEFENDANT: I mean, yes. Yes, I guess.

22 THE COURT: And my question, and you understand,
23 is not whether you're happy with it, but are you
24 satisfied and have they done everything you've asked
25 them to do?

1 THE DEFENDANT: I mean, under certain
2 circumstances, no. But, yes, because due to the
3 situation at the point in time, I was not in my right
4 mind at the time when the incident occurred.

5 And, in fact, I was just released from MUSC mental
6 institution less than, like, 72 hours before the
7 incident happened. And I only spent five days in the
8 mental institution, and they released me.

9 THE COURT: Who represents you in Greenville in
10 that charge?

11 THE DEFENDANT: Susannah Ross.

12 THE COURT: Okay. Y'all come around here. I need
13 to ask you something. Hold on just a second,
14 Mr. Gadsden.

15 (Whereupon, counsel approached the bench.)

16 THE COURT: Mr. Gadsden, he's going to talk to
17 you. I don't want you to think that things are being
18 hidden from you.

19 I think -- and I'm going to give him five minutes.
20 We'll break and give him five minutes. I think that my
21 wife worked on your case in Greenville.

22 THE DEFENDANT: Yes.

23 THE COURT: Do you remember talking to a
24 Dr. Maddox, a blond?

25 THE DEFENDANT: Yes.

1 MR. SENERIUS: Her name was Dr. Schwartz-Watts
2 then.

3 THE COURT: Yeah. Thanks. A long story.

4 I'm going to give y'all five minutes. I'll be
5 right back in here. In order -- I'm okay taking the
6 plea because it is less than the maximum and it's
7 concurrent with the charge, but I'm going to need you
8 to waive any potential conflict.

9 So let Mr. Senerius explain that to you. I just
10 want to be up front with you. And I have no idea about
11 what happened in your case in Greenville, but for some
12 reason, that lawyer's name strikes some chord in my
13 memory.

14 So I'll give you four or five minutes, or as much
15 time as you need. We'll take a break, and I'll be
16 right back.

17 (WHEREUPON, a recess was taken from 2:31 p.m. to
18 2:45 p.m.)

19 MR. SENERIUS: Yes, your Honor. May it please the
20 Court. I have had a discussion with my client about
21 the fact that your wife worked on the case in
22 Greenville that he was involved in.

23 He has told me that he is willing to go forward
24 today, that he doesn't see a particular conflict with
25 regard to that since you didn't have anything to do

1 with this case in Anderson.

2 THE COURT: Yeah. Mr. Gadsden, man to man, this
3 is just more of my concern. This happens occasionally.
4 I have gone to some counties -- in fact, I went to
5 Lexington to do PCRs one time, and I warned them a week
6 ahead of time, "Hey, check and make sure my wife wasn't
7 involved in a case." And when we got there, every case
8 they did that day, 11 of them, she was in. So I'm just
9 careful.

10 I don't know anything about this case in
11 Greenville. I know only what I hear today.

12 Do you have any questions for me about waiving any
13 issue or problem with me handling it?

14 THE DEFENDANT: No. No, sir.

15 THE COURT: Okay. All right. Like I said, it's
16 more just I want to make sure you and I are on the same
17 page.

18 So we had gotten to the point where you're,
19 obviously, pleading guilty. So I'm sure you're not
20 happy with your lawyer, but you said you were
21 comfortable with the amount of time they had spent and
22 what they had done. And you understand the
23 recommendation here is 20 years to run concurrent with
24 your life sentence without parole in Greenville?

25 THE DEFENDANT: Yes.

1 THE COURT: Okay.

2 And, Mr. Senerius, have you had plenty of time, do
3 you think, to speak with this client; do you think he
4 understands the elements of the charge and his waiver
5 of constitutional rights?

6 MR. SENERIUS: I do, your Honor.

7 THE COURT: Okay.

8 Mr. Gadsden, do you have any questions for me now
9 about what I've asked you?

10 THE DEFENDANT: No.

11 THE COURT: Hold on a minute. You want to plead
12 guilty to this charge?

13 THE DEFENDANT: Yes.

14 THE COURT: And are you guilty of voluntary
15 manslaughter?

16 THE DEFENDANT: No, but I'm willing to plead
17 guilty. I will say that I'm guilty of involuntary.

18 THE COURT: Yeah, but that's not what you're
19 pleading to.

20 THE DEFENDANT: I understand that.

21 THE COURT: Y'all sit down and talk. We'll...

22 (WHEREUPON, a recess was taken from 2:48 p.m. to
23 2:52 p.m.)

24 THE COURT: Back on the record with Gerald Akeem
25 Gadsden.

1 You know, given the fact that this is concurrent
2 with a life without parole sentence, does it suit
3 everyone to do this under North Carolina versus Alford
4 so the recitation of facts doesn't become an issue?

5 MR. SENERIUS: Yes, sir.

6 MR. OVERBY: I --

7 MR. SENERIUS: Give me one second to explain it.

8 (Off-record discussion between Mr. Senerius and
9 the defendant.)

10 MR. SENERIUS: Yes, your Honor. We'll go forward.

11 MR. OVERBY: I apologize, your Honor. Again, this
12 is not my case. This is Deputy Solicitor Huey's. I
13 know that it probably is not a major issue, but at the
14 same time, I hate to --

15 THE COURT: I can't see how it would be, but --
16 what would be the maximum sentence under involuntary
17 manslaughter, 15?

18 MR. OVERBY: Five years.

19 THE COURT: Sounds to me like Mr. Gadsden just has
20 an issue with the facts. The only way I know to --

21 MR. OVERBY: Well, I think, if I'm understanding
22 correctly Mr. Gadsden's issue, is with his --

23 MR. SENERIUS: Competency.

24 MR. OVERBY: -- competency during the facts.

25 THE COURT: Yeah.

1 MR. OVERBY: I don't think we have any issues as
2 far as the facts are concerned.

3 THE COURT: He just says he can't remember or he's
4 not going to admit to it.

5 MR. OVERBY: But I'll tell you what, I would
6 rather do an Alford plea on voluntary manslaughter than
7 I would an involuntary manslaughter.

8 THE COURT: That's what I'm going to do.

9 Do you want to wait on Ms. Huey to contact you
10 back?

11 MR. OVERBY: Do you mind if we do that briefly?
12 I'm very positive that that won't be an issue, but I
13 would rather do that and avoid any kind of heart attack
14 as far as that's concerned.

15 Thank you, Judge.

16 (The Court took up other matters from 2:54 p.m. to
17 3:46 p.m.)

18 THE COURT: We're back on the record with Gerald
19 Akeem Gadsden.

20 There's been some discussion two or three times,
21 and I think what we have decided to do is have him
22 plead under North Carolina versus Alford; is that
23 correct?

24 MR. SENERIUS: That's correct, your Honor.

25 THE COURT: And, Mr. Senerius, you have had plenty

1 of time to speak to him and he understands what that
2 means?

3 MR. SENERIUS: Yes, sir.

4 THE COURT: Mr. Gadsden, you understand the only
5 difference is I'm not going to ask you to agree with
6 what they say?

7 THE DEFENDANT: (Nodding.)

8 THE COURT: But you are, basically, telling me
9 that there's enough evidence that, if you went to a
10 jury trial, you most likely would be found guilty or
11 there is a high probability you would be found guilty.

12 Do you understand that?

13 So you're not admitting to anything they say;
14 you're just -- or to the facts.

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. All right.

17 Now, we have switched out lawyers over here for
18 the State. But the facts would be the same. So I'm
19 not going to ask that you agree to them, but do you
20 need for them to be restated, or do you remember what
21 they were?

22 THE DEFENDANT: About the plea agreement?

23 THE COURT: The facts, what the lawyer told me
24 happened.

25 THE DEFENDANT: Yes.

1 THE COURT: You remember all that? So you don't
2 need that restated?

3 I think, if I'm correct, we had gotten all the way
4 through the plea and the waiver of rights, and I was at
5 the point where I ask you if you agree with those
6 facts.

7 Since this is an Alford plea, I don't think --

8 MS. HUEY: Judge, I hate to interrupt. Would you
9 mind if I just briefly put them on the record? I
10 believe there is some discrepancy whether they were
11 actually read or not. I hate to --

12 THE COURT: Well, then. Go ahead.

13 MS. HUEY: Thank you, Judge.

14 This offense occurred on April 18th of 2016 at
15 around 9:30 at night. APD officers were dispatched to
16 325 H Street in Anderson city. When they arrived, they
17 found the victim lying in the roadway next to a
18 vehicle. He had a gunshot wound to his head.

19 Detectives began to interview individuals who had
20 been there, and they, of course, identified the
21 defendant, Gerald Gadsden, as the shooter.

22 The shooter, Gerald Gadsden, took off running. He
23 ended up calling his bondsman and confessing to this
24 incident to the bondsman, and he was arrested a short
25 time later.

1 THE COURT: Okay. And just since you are new to
2 this, he was sent for a competency. He was found
3 incompetent but likely to restore. And he's been
4 restored, and we have an order to that effect.

5 MS. HUEY: Yes, sir. And he's currently serving
6 life without parole as a result of offenses from
7 Greenville County.

8 THE COURT: Okay. All right.

9 Again, I don't have to ask you whether you agree
10 with them, but do you have any questions for me now?

11 THE DEFENDANT: No.

12 THE COURT: Yes, sir.

13 MR. SENERIUS: Yes, your Honor, just to clear the
14 record, the competency evaluation and testing was all
15 done on the Greenville case. None of that has taken
16 place on the Anderson case.

17 THE COURT: But as his lawyer, do you have any
18 reason to believe that he may have lapsed back into
19 incompetency?

20 MR. SENERIUS: I do not.

21 THE COURT: Okay.

22 Mr. Gadsden, just, again between me and you
23 because you and I have had several conversations, what
24 are you taking?

25 THE DEFENDANT: At this point in time I was taken

1 off my medicine. But my doctor was supposed to put me
2 back on my medicine this month, my mental health
3 consult actually last month, but for me to be placed
4 back on my medicine. That's the issue.

5 THE COURT: What medicine do they have you on,
6 just generally?

7 THE DEFENDANT: Depakote, and I think it was
8 Haldol. It's basically the same thing.

9 THE COURT: And you're saying that you're not
10 getting that medicine now?

11 THE DEFENDANT: No, sir.

12 THE COURT: Okay.

13 MR. SENERIUS: Your Honor, if I might, when he was
14 discharged from Patrick B. Harris, at that point in
15 time he was taking Prolixin, Armentin, Benadryl twice a
16 day, Depakote, like he told you, and Terbutaline, I
17 think. I mean, I think that's how it's pronounced.

18 THE COURT: Okay. All right. The reason is I'm
19 writing down here that, as a part of your sentence,
20 that you shall receive all mental health medicine while
21 you're incarcerated. I mean, they make you feel
22 better, right?

23 THE DEFENDANT: Yes.

24 THE COURT: If, for some reason, you get down to
25 the Department of Corrections and they don't -- it's

1 pretty rare for me to write this down -- but I have
2 added that, "The defendant shall receive all mental
3 health medicine while incarcerated."

4 If they don't give that to you, you have a reason
5 to call the lawyer. Call Mr. Senerius, okay?

6 All right.

7 I have accepted the Alford plea. I do think that
8 Mr. Gadsden apparently seems to understand what's going
9 on, and we have had several long discussions about this
10 case.

11 So the sentence is -- I'll go with the
12 recommendation of 20 years, run it concurrent with his
13 current SCDC life sentence, give him credit for 1,309
14 days. And as I said, I have written "Defendant shall
15 receive all mental health medicine while incarcerated."
16 Okay?

17 Good luck to you, man.

18 THE DEFENDANT: All right.

19 MR. SENERIUS: Thank you, your Honor.

20 MS. HUEY: Thank you, Judge.

21 (WHEREUPON, proceedings concluded at 3:52 p.m.)

22 ***END OF REQUESTED TRANSCRIPT OF RECORD***
23
24
25

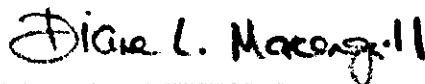
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina at the time of these proceedings, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 8th day of January 2020.

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

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

February 15, 2021



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

THE STATE OF SOUTH CAROLINA
In the Appellate Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

J. Cordell Maddox, Jr., Circuit Court Judge

Case No(s): 2016GS0401758

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JAN 24 2020

SC Court of Appeals

The State,

Respondent.

v.

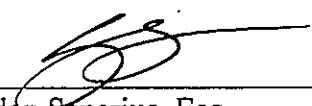
Gerald Akeem Gadsden,

Appellant.

NOTICE OF APPEAL

Gerald Akeem Gadsden appeals his conviction and sentence in this case. The sentence was imposed by the Honorable J. Cordell Maddox, Jr. on January 8, 2020. This appeal is being filed at the request of Mr. Gadsden.

Date: January 21, 2020


Gordon Senerius, Esq.
10th Circuit Public Defender
500 S. McDuffie St.
Anderson, SC 29624
Attorney for Appellant

Other Counsel of Record:
Catherine Huey, Esq.,
Attorney for Respondent

'20 JAN 21 PM2:58:30
Anderson, SC COC, CP/GS

**THE STATE OF SOUTH CAROLINA
In the Appellate Court**

**APPEAL FROM ANDERSON COUNTY
Court of General Sessions**

J. Cordell Maddox, Jr., Circuit Court Judge

Case No(s): 2016GS0401758

The State,

Respondent.

v.

Gerald Akeem Gadsden,

Appellant.

PROOF OF SERVICE

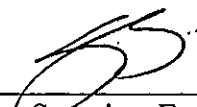
I certify that I have served the Notice of Appeal on the below listed respondents by depositing a copy of it in the United States Mail, postage prepaid, on January 21, 2020, addressed to:

Catherine Huey, Esq.
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P O Box 8002
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Alan Wilson, Esq.
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JAN 24 2020
SC Court of Appeals

Date: January 21, 2020



Gordon Senerius, Esq.
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500 S. McDuffie St.
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TENTH CIRCUIT PUBLIC DEFENDER OFFICE

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January 21, 2020

Via Regular Mail

The Honorable Jenny Abbott Kitching
Clerk, The S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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JAN 24 2020

SC Court of Appeals

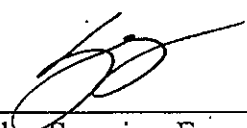
Re: State v. Gerald Akeem Gadsden
Case No(s): 2016GS0401758

Dear Ms. Kitching:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Anderson County Clerk of Court. Also enclosed is a copy of the indictment. These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.

Yours very truly,



Gordon Senerius, Esq.
10th Circuit Public Defender
500 S. McDuffie St.
Anderson, SC 29624
Attorney for Appellant

Enclosure

cc: Office of the Tenth Circuit Solicitor
Office of the Attorney General
Office of Appellate Defense





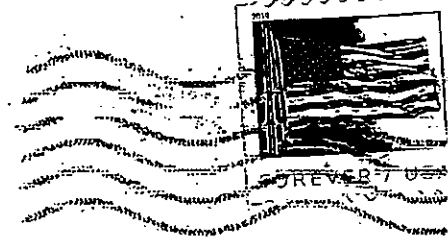
10th Circuit Public Defender

Anderson & Oconee Counties

500 S. McDuffie St.

Anderson, SC 29624

11 JAN 2020 4PM 34



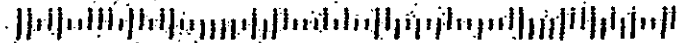
The Honorable Jenny Abbott Kitching
Clerk, The S.C. Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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JAN 24 2020

SC Court of Appeals

29211-162929





The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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January 28, 2020

Mr. Gordon Allan Senerius, Esquire
500 South McDuffie Street
Anderson SC 29624

Re: The State v. Gerald A. Gadsden
Appellate Case No. 2020-000118

Dear Counsel:

This Court has received your notice of appeal. Since this is an appeal from a guilty plea, nolo contendere plea, or plea pursuant to *Alford*, Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules requires you to provide "a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal." **Failure to make a sufficient showing may result in dismissal of this appeal.**

The explanation should be served and filed within ten (10) days of the date of this letter, or this appeal will be dismissed.

Please be advised the time limits for ordering the transcript are held in abeyance.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jay A. Kitef".

CLERK

cc: Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire
Catherine Townsend Huey, Esquire
Robert Michael Dudek, Esquire

THE STATE OF SOUTH CAROLINA
In the Appellate Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

J. Cordell Maddox, Jr., Circuit Court Judge

Case No(s).:

The State,

Respondent.

Gerald Akeem Gadsden,

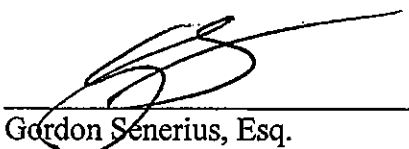
v.

Appellant.

AMENDED NOTICE OF APPEAL

Trial counsel for the Defendant/Appellant states that he is unaware of any issues to be reviewed by this Court. This appeal was filed at the Defendant's request, and, to satisfy appointed counsel's ethical obligation to his client under Rule 1.2 of the Annotated South Carolina's Rules of Professional Conduct.

Date: February 10, 2020



 Gordon Senerius, Esq.
 10th Circuit Public Defender
 500 S. McDuffie St.
 Anderson, SC 29624
 Attorney for Appellant

Other Counsel of Record:
 Catherine Huey, Esq.
 Attorney for Respondent

'20 FEB 10 PM 4:41:26
 Anderson, SC COC, CP/BS

RECEIVED
 FEB 13 2020
 SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Appellate Court**

**APPEAL FROM ANDERSON COUNTY
Court of General Sessions**

J. Cordell Maddox, Jr., Circuit Court Judge

Case No(s): 2016GS0401758

The State,

Respondent.

v.

Gerald Akeem Gadsden,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the below listed respondents by depositing a copy of it in the United States Mail, postage prepaid, on February 10, 2020, addressed to:

Catherine Huey, Esq.
PO Box 8002
Anderson, SC 29622

Alan Wilson, Esq.
Attorney General
P.O. Box 11549
Columbia, SC 29211

Date: February 10, 2020



Gordon Senerius, Esq.
10th Circuit Public Defender
500 S. McDuffie St.
Anderson, SC 29624
Attorney for Appellant

TENTH CIRCUIT PUBLIC DEFENDER OFFICE

Anderson and Oconee Counties

Anderson County Office
500 S. McDuffie Street
Anderson, SC 29624
Tel. 864.260.4048
Fax 864.260.4134

JENNIFER L. JOHNSON
Circuit Public Defender

Oconee County Office
415 S. Pine Street
Walhalla, SC 29691
Tel. 864.638.3133
Fax 864.638.0228

February 10, 2020

Via Regular Mail

The Honorable Jenny Abbott Kitching
Clerk, The S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
FEB 13 2020
SC Court of Appeals

Re: State v. Gerald Akeem Gadsden
Case No(s):

Dear Ms. Kitching:

Enclosed you will find the original Amended Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Anderson County Clerk of Court.

Thank you for your attention to this matter.

Yours very truly,


Gordon Senerius, Esq.
10th Circuit Public Defender
500 S. McDuffie St.
Anderson, SC 29624
Attorney for Appellant

Enclosure

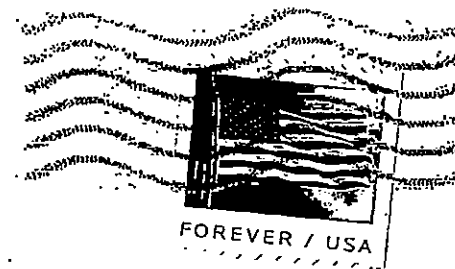
cc: Office of the Tenth Circuit Solicitor
Office of the Attorney General
Office of Appellate Defense



ANDERSON COUNTY PUBLIC DEFENDER
500 S. MCDUFFIE STREET
ANDERSON, SC 29624

GREENVILLE SC 296

11 FEB 2020 PM 4 1



RECEIVED

FEB 13 2020

The Honorable Jenny Abbott Kitching
Clerk, The S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

29211-162929





The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 18, 2020

Mr. Gordon Allan Senerius, Esquire
500 South Mcduffie Street
Anderson SC 29624

Re: The State v. Gerald A. Gadsden
Appellate Case No. 2020-000118

Dear Counsel:

This Court has received your explanation for appealing.

Please forward your explanation to your client, along with a statement that your client has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide your client with the Court's address:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Please send your letter to your client within ten (10) days, with a copy to this Court.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire
Catherine Townsend Huey, Esquire
Robert Michael Dudek, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 03, 2020

Mr. Gordon Allan Senerius, Esquire
500 South McDuffie Street
Anderson SC 29624

Re: The State v. Gerald A. Gadsden
Appellate Case No. 2020-000118

Dear Counsel:

This Court has received your explanation for appealing.

Please forward your explanation to your client, along with a statement that your client has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide your client with the Court's address:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Please send your letter to your client within ten (10) days, with a copy to this Court. **This is the Court's second attempt to cure this deficiency.**

Very truly yours,

V. Claire Allen

CLERK

cc: Alan McCrory Wilson, Esquire
William M. Blitch, Jr., Esquire
Catherine Townsend Huey, Esquire
Robert Michael Dudek, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 02, 2020

Mr. Gordon Allan Senerius, Esquire
500 South McDuffie Street
Anderson SC 29624

Re: The State v. Gerald A. Gadsden
Appellate Case No. 2020-000118

Dear Counsel:

This Court has received your explanation for appealing.

Please forward your explanation to your client, along with a statement that your client has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide your client with the Court's address:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Please send your letter to your client within ten (10) days, with a copy to this Court. This is the Court's final attempt to cure this deficiency. Failure to respond to the Court's correspondence will result in the dismissal of this appeal.

Very truly yours,

V. Claire Allen

CLERK

cc: Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire
Catherine Townsend Huey, Esquire
Robert Michael Dudek, Esquire

The South Carolina Court of Appeals

The State, Respondent,

v.

Gerald Akeem Gadsden, Appellant.

Appellate Case No. 2020-000118

ORDER

Counsel for the Appellant has failed to provide proof that the guilty plea explanation was forwarded to the Appellant as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR) and as directed by the Court's letters of March 18, 2020, June 3, 2020 and September 2, 2020. Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.

V. Claire Allen

CLERK

Columbia, South Carolina

cc:

Gerald Akeem Gadsden, 00327003

Alan McCrory Wilson, Esquire

William M. Blitch, Jr., Esquire

Catherine Townsend Huey, Esquire

Robert Michael Dudek, Esquire

Gordon Allan Senerius, Esquire

FILED
Oct 12 2020



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 09, 2020

The Honorable Richard A. Shirley
PO Box 8002
Anderson SC 29622-8002

REMITTITUR

Re: The State v. Gerald A. Gadsden
Lower Court Case No. 2016GS0401758
Appellate Case No. 2020-000118

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen

CLERK

Enclosure

cc: Gerald Akeem Gadsden, 00327003
Alan McCrory Wilson, Esquire
William M. Blitch, Jr., Esquire
Catherine Townsend Huey, Esquire
Robert Michael Dudek, Esquire
Gordon Allan Senerius, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF)

Gerald Akem Gadsden #327003)

2020CP04 02431

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

TRUE COPY

DEC 10 2020

Richard S. Kiley
ANDERSON CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in 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.

- Lee Correctional Inst.
1. Place of detention Anderson County Jail
 2. Name and location of Court which imposed sentence Anderson County Court house
 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) ~~2016 A0420700400~~
 - (b) 2016 A0420700400
 - (c) _____
 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 20 year, C.M.C 1/2 WOP
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
_____ *N/A*
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____ *N/A*
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____ *N/A*
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____ *N/A*
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: *Ineffective counsel do to not ~~represent~~ a psychological evaluation.*

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

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

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

N/A

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

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

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

(a) the specific nature thereof:

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

N/A

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

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

N/A

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

N/A

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

N/A

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

i. _____

ii. _____

iii. _____

iv. _____

N/A

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

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

N/A

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

i. _____

ii. _____

iii. _____

N/A

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

(a) _____

(b) _____

(c) _____

N/A

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

no

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

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

- (a) the name and address of each attorney who represented you:
 - i. _____
 - ii. _____ *N/A*
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____ *N/A*

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

Max For involuntary manslaughter

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

no

20 DEC 10 AM 11:01:06
 ANDERSON SC0000 CP705

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

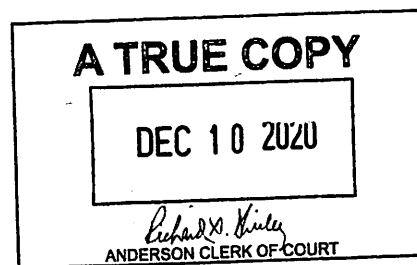
I, G. G. , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters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

Gerald A. Anderson

SWORN to and subscribed before me this 18
 day of Nov, 2020.

Delma Eastman (L.S.)
 Notary Public

My Commission Expires: 3/3/2024



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

I, L.G.16, 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:

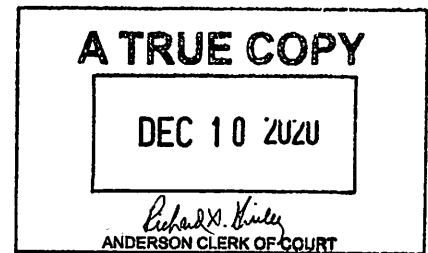
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Donald A. Richards
Applicant

SWORN or affirmed to and subscribed before me this
18 day of Nov., 2020.

Debra Eastman
Notary Public

My Commission Expires: 3/3/2024



20 DEC 10 AM 11:01:14
Anderson, SCCOC, CP/SS

23 FEB 21 AM 11:39:56
Anderson, SC CCC, CP/65

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Gerald Akeem Gadsden #327003)

Applicant,)

v.)

State of South Carolina,)

Respondent)

SUPPLEMENTAL
APPLICATION FOR
POST-CONVICTION RELIEF

2020-CP-04-2431

In addition to the issues raised in his original application for post-conviction relief the applicant would supplement his application filed on December 10, 2020, by also alleging ineffective assistance of counsel in that applicant instructed counsel to file an appeal in this matter. Counsel initiated the appeal but failed to take actions necessary to perfect the appeal thereby causing the South Carolina Court of Appeals to dismiss applicant's appeal.

RESPECTFULLY SUBMITTED,



Don A. Thompson (S.C. Bar # 5545)
Attorney for the Applicant
2131 Woodruff Road
Suite 2100, #292
Greenville, S.C. 29607

Greenville, S.C.
February 15, 2023

Don A. Thompson
Attorney at Law

2131 Woodruff Road
Suite 2100, #292
Greenville, S.C. 29607

Telephone: (864) 270-2831

Fax: (864) 248-0153

February 15, 2023

The Honorable C. Reena Thomason
Clerk of Court, Anderson County
Post Office Box 8002
Anderson, South Carolina 29622-8002

RE: Gerald Akeem Gadsden #327003 v. State of South Carolina
2020-CP-04-2431

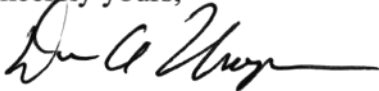
Dear Ms. Thomason:

Enclosed please find the original and a copy of applicant's Supplemental Application for Post-Conviction Relief in the above captioned case.

Please file the original in your office and return a clocked copy to me. I have enclosed a self-addressed, stamped envelope for your use.

Thank you for your assistance.

Sincerely yours,



Don A. Thompson
Attorney for the Applicant

cc: Taylor Z. Smith
Assistant Attorney General

23 FEB 21 AM 11:39:50
 Anderson, SC DCJ, CP/65

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	CASE NO.: 2020-CP-04-2431
Gerald Akeem Gadsden #327003	)	MOTION AND ORDER INFORMATION
Plaintiff,	)	FORM AND COVERSHEET
vs.	)	
	)	
State of South Carolina	)	
Defendant.	)	

Plaintiff's Attorney: Don A. Thompson, Bar No. 5545 Address: 2131 Woodruff Road, Suite 2100, #292 Greenville, S.C. 29607 Phone: 864-270-2831 Fax _____ E-mail: thompson_legal@aol.com Other: _____	Defendant's Attorney: Taylor Z. Smith, Bar No. _____ Address: Post Office Box 11549 Columbia, S.C. 29211 Phone: 803-734-0964 Fax _____ E-mail: TSmith@scag.gov Other: _____									
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)										
SECTION I: Hearing Information Nature of Motion: Supplemental Application for Post-Conviction Relief Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO										
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant February 15, 2023 Date submitted										
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) <table style="width: 100%; margin-top: 5px;"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> </tr> <tr> <td>☐ Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td>☐ Indigent Status ☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Sexually Violent Predator Act ☒ Post-Conviction Relief</td> </tr> <tr> <td>☐ Motion for Stay in Bankruptcy</td> </tr> <tr> <td>☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td>☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td>Name of Court Reporter: _____</td> </tr> <tr> <td>☐ Other: _____</td> </tr> </table>		☐ Rule to Show Cause in Child or Spousal Support	☐ Domestic Abuse or Abuse and Neglect	☐ Indigent Status ☐ State Agency v. Indigent Party	☐ Sexually Violent Predator Act ☒ Post-Conviction Relief	☐ Motion for Stay in Bankruptcy	☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)	☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions	Name of Court Reporter: _____	☐ Other: _____
☐ Rule to Show Cause in Child or Spousal Support										
☐ Domestic Abuse or Abuse and Neglect										
☐ Indigent Status ☐ State Agency v. Indigent Party										
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief										
☐ Motion for Stay in Bankruptcy										
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)										
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions										
Name of Court Reporter: _____										
☐ Other: _____										
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____									
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____										

21 JUL 26 PM 12:24:00
Anderson, SC CDC, CP/GS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gerald Akeem Gadsden, SCDC #327003,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2020-CP-04-2431

RETURN
(Counsel Appointed)

In response to the post-conviction relief (PCR) action commenced by Gerald Akeem Gadsden (Applicant) on December 10, 2020, the State makes this return:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. Applicant was arrested on April 19, 2016, following an investigation into the shooting death of Chance Tate, which occurred the day prior. During its September 2016, term the Anderson County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2016-GS-04-1758).

On January 8, 2020, Applicant appeared before the Honorable J. Cordell Maddox, Jr., and entered an *Alford*¹ plea to the lesser-included offense of voluntary manslaughter. The State dropped the weapons charge in exchange for Applicant's plea. Assistant Public Defender Gordon Senerius represented Applicant. Deputy Solicitor Catherine Huey and Assistant Solicitor Stan

¹ *North Carolina v. Alford*, 400 U.S. 25, 31 (1970).

Overby prosecuted the case.

The State recommended a twenty-year sentence to run concurrent to the life without parole (LWOP) sentence Applicant is serving on unrelated Greenville County charges. Following the State's recommendation, Judge Maddox sentenced Applicant to twenty years' imprisonment to run concurrent with the Greenville sentence.

Applicant filed a timely notice of appeal. The Court of Appeals then requested Counsel forward the guilty plea explanation to Applicant and inform him he had twenty days to inform the Court in writing of any arguable basis that there are issues preserved for appeal. Because Counsel failed to provide the Court with any indication that Applicant was served with the guilty plea explanation pursuant to Rule 203(d)(1)(B)(iv), SCACR, the Court dismissed the appeal. The case was remitted back to the circuit court on November 9, 2020.

II. FACTS

On April 18, 2016, at approximately 9:30 PM, officers from the Anderson Police Department were dispatched to 325 H. Street. (Plea Tr. 13). When they arrived, they found the victim lying in the roadway next to a vehicle with a gunshot wound to the head. (Plea Tr. 13). Individuals at the scene identified Applicant as the shooter. (Plea Tr. 13). At some point, Applicant took off running. He ended up calling his bondsman and confessing. (Plea Tr. 13). He was arrested a short time thereafter. (Plea Tr. 13).

II. CURRENT APPLICATION

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

"Ineffective counsel do[sic] to not requesting a psychological evaluation."

Applicant requests relief as follows:

“Max for involuntary manslaughter”²

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

III. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Plea Counsel, Generally

Applicant’s claim of ineffective assistance of counsel is without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations

² The relief Applicant seeks is not available on post-conviction relief—the only relief available would be a new trial on the original indictments. *See* S.C. Code Ann. § 17-27-20(b); *Singleton v. State*, 313 S.C. 75, 85–86, 437 S.E.2d 53, 59 (1993) (discussing section 17-27-20(b) and the appropriate relief in PCR cases); *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating that even under the assumption that all the allegations were true, the relief to be granted on PCR is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (“We now clarify the proper remedy is a new trial.”).

by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

As aforementioned, the applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of “were outside the wide range of competence” demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Id.* Significantly, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696.

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

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

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

B. Involuntary Guilty Plea

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant’s choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

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

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

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *Alford*, 400 U.S. at 31. It is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37.

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

plea”). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 458 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him).

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 137 S. Ct. at

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

C. Mental Health

To establish *Strickland* prejudice in the context of plea counsel’s failure to fully investigate the applicant’s mental capacity, the applicant “need only show a ‘reasonable probability’ that he was either insane at the time [the crime was committed] or incompetent at the time of the plea.” *Matthews v. State*, 358 S.C. 456, 459, 596 S.E.2d 49, 51 (2004) (alterations in original) (quoting *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)); *see id.* at 458–60, 596 S.E.2d 49, 50–51 (expanding the reasonable probability standard as the burden for proving both the deficiency of counsel and the prejudice prongs). As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues which undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. *Garren v. State*, 423 S.C. 1, 13–14, 813 S.E.2d 704, 711 (2018).

In South Carolina, insanity is an affirmative defense to prosecution if the accused “lacked

the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong” at the time the offense. S.C. Code Ann. § 17-24-10(A); *see State v. Lewis*, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997) (“[T]he key to insanity is ‘the power of the defendant to distinguish right from wrong in the act itself—to recognize the act complained of is either morally or legally wrong.’” (alterations in original) (citations omitted)). At the plea hearing, Applicant told the plea court he was “not in [his] right mind at the time when the incident occurred.” (Plea Tr. 6). The State submits Applicant cannot meet his burden because he has not presented any evidence suggesting he was insane under South Carolina law at the time of the shooting or that an insanity defense could have been developed. *Jeter*, 308 S.C. at 233–34, 417 S.E.2d at 596.

To the extent Applicant contends he was not competent to enter the plea, “[t]he test of competency to enter a plea is the same as required to stand trial”—the accused “must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him.” *Jeter*, 308 S.C. at 232, 417 S.E.2d at 596.

At the plea hearing, Counsel indicated Applicant’s competency was challenged in the Greenville case. (Plea Tr. 3–4, 14). He stated that Applicant was initially found “incompetent but restorable” and that his competency was restored prior to trial. (Plea Tr. 3–4, 14). Counsel further told the plea court he had no reason to believe Applicant had lapsed back into incompetency. (Plea Tr. 14). The Court further conducted an extensive colloquy with Applicant regarding his understanding of the plea proceedings. Accordingly, the State submits Applicant’s allegations regarding his competency to enter the plea are without merit.

D. Conclusion and Action Requested

For the above-reasons, Applicant cannot satisfy either requirement of *Hill*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of plea counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

IV. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

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

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

V. GENERAL DENIAL

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

[Conclusion and signature on following page]

VI. CONCLUSION

WHEREFORE, the State respectfully requests an evidentiary hearing be held on the claim of ineffective assistance of counsel.

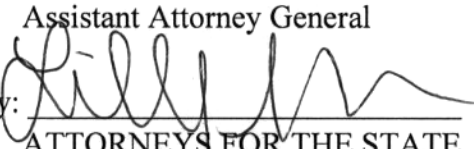
Respectfully submitted,

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'21 JUL 26 PM12:24:14
Anderson, SC COC, CP/GS

July 19, 2021

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

GERALD A. GADSDEN, #327003

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2020-CP-04-2431

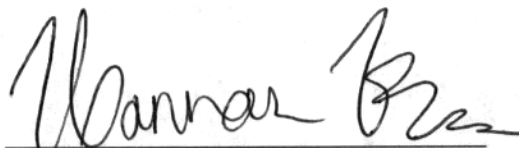
CERTIFICATE OF SERVICE BY MAIL

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

Don A. Thompson, Esquire
107 Smithwood Court
Simpsonville, SC 29681

DATED this 19th day of July, 2021.

'21 JUL 26 PM12:24:09
 Anderson, SC COC, CP/GS



Hannah M. Bradham, Legal Assistant
 For Respondent

State of South Carolina
County of Anderson

Court of Common Pleas

Gerald A. Gadsden)
)
 Plaintiff,)
 v.)
)
State of South Carolina)
)

 Defendant.)

Transcript of Record
2020-CP-04-02431

March 2, 2023
Anderson, South Carolina

B E F O R E:

The Honorable Perry H. Gravely, Judge.

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

Don A. Thompson, Esquire
Attorney for the Applicant

Taylor Smith, Esquire
Attorney for the State

Lisa Scott
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>EVD.</u>
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No Exhibits.

P R O C E E D I N G S

- - -

THE COURT: All right. What do we got here?

MR. SMITH: Your Honor, this is *Gadsden v. State*, Case No. 2020-CP-04-2431. Mr. Gadsden was arrested in 2016 after a shooting death of Chance Tate. And then in 2000 -- in September of that year, he was indicted for murder and possession of a weapon.

In January of 2020, he appeared before Judge Maddox and entered an Alford plea to voluntary manslaughter, the lesser included. And the State, as part of the deal, dropped the weapons offense.

He did -- his lawyer, Mr. Senerius, did file a timely notice of appeal, but the Court of Appeals dismissed the appeal because Mr. Senerius did not provide the Court with notice that he had sent his guilty plea explanation required under Rule 203 of the Appellate Court Rules to his client. And ---

THE COURT: Do you have -- do you have a packet on this?

MR. SMITH: I do. I apologize for not handing it up to Your Honor.

THE COURT: Thank you.

MR. SMITH: And Mr. Gadsden's pro se

1 application raises an issue about his -- the fact
2 that he was not evaluated psychologically in this
3 case. And the amendment raises that same issue and
4 adds that he did not knowingly voluntarily waive his
5 right to a direct appeal. And that's -- that's the
6 State's intention.

7 THE COURT: Okay. Mr. Thompson.

8 MR. THOMPSON: Thank you, Your Honor.

9 Mr. Taylor is correct. The issues in this case are
10 basically just two. The first being whether or not
11 he intelligently entered a guilty plea due to his
12 mental condition and then the fact that his
13 psychological examination was not provided at the
14 time. And, also, the issue dealing with the appeal
15 not being properly preserved.

16 THE COURT: All right. I'll be glad to hear
17 from you.

18 MR. THOMPSON: Mr. Gadsden, if you go to that
19 seat in that chair and you'll testify.

20 THE CLERK: Would you please come forward.

21 THE APPLICANT: (Complying.)

22 THE CLERK: If you're able to, please raise
23 your right hand.

24 THE APPLICANT: (Complying.)

25 THE CLERK: Do you swear or affirm the

1 testimony you're about to give shall be the truth,
2 the whole truth, and nothing but the truth?

3 THE APPLICANT: Yes.

4 THE CLERK: Thank you. Please take a seat
5 there at the witness stand.

6 THE APPLICANT: (Complying.)

7 MR. THOMPSON: May it please the Court, Your
8 Honor?

9 THE COURT: Yes. No. Let me stop you just
10 before you get to it. I'm looking at the return
11 here. So this is a concurrent to life without
12 parole?

13 MR. THOMPSON: In Greenville County. Yes, sir.

14 THE COURT: What's the status of that one?

15 MR. THOMPSON: A PCR on that one. I think it's
16 scheduled for next week.

17 THE COURT: Oh, okay. All right. So, I mean,
18 it kind of depends on that. Okay.

19 MR. THOMPSON: Yes, sir.

20 THE COURT: All right.

21 GERALD GADSDEN,
22 having been previously produced and first duly sworn
23 as a witness on behalf of the Applicant testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MR. THOMPSON:

2 Q. Mr. Gadsden, give us your full name, please?

3 A. (No response.)

4 Q. What's your full name?

5 A. Gerald Akeem Gadsden.

6 Q. Okay. And where are you being housed at? Are
7 you in the Department of Corrections now?

8 A. Yes, sir.

9 Q. And where at?

10 A. In the county correctional facility.

11 Q. Okay. What are you in the Department of
12 Corrections for? What were you convicted of or pled
13 guilty to?

14 A. Manslaughter.

15 Q. Now, you've also got convictions for Greenville
16 County; is that correct?

17 A. Yes, sir.

18 Q. And what was that conviction for?

19 A. Armed robbery, kidnapping, and conspiracy.

20 Q. Okay. What kind of sentence did you get in
21 Greenville County?

22 A. A life sentence.

23 Q. Okay. And what kind of sentence did you get on
24 the charge here in Anderson County?

25 A. Twenty years.

1 Q. Was the 20 years concurrent with the life
2 sentence?

3 A. Yes, sir.

4 Q. All right. Now, let's go back a little bit in
5 history. Have you ever had any mental problems?

6 A. Yes, sir.

7 Q. Have you ever been in an institution, a mental
8 health institution?

9 A. Yes.

10 Q. How many times?

11 A. If I'm not mistaken, more than seven.

12 Q. Okay. How old were you when you first started
13 having treatment in institutions?

14 A. Anywhere from probably like say 13.

15 Q. Okay. Now, when this event occurred, were you
16 on medication?

17 A. No, I was not.

18 Q. Okay. Were you arrested in Anderson County
19 first or Greenville County first?

20 A. I was arrested in Greenville County first.

21 Q. All right. Which county disposed of your
22 charges first, Greenville or Anderson?

23 A. Can you ask me that again?

24 Q. Okay. Which county did you go to court in
25 first? Which one sentenced you first?

1 A. Greenville County.

2 Q. Okay. Now, prior to going to court in
3 Greenville County, did you receive a competency
4 evaluation?

5 A. Yes.

6 Q. All right. Were you sent for a period of time
7 to the mental hospital to restore your competency?

8 A. No.

9 Q. So you -- you never went to the -- after they
10 started seeking competency, you never went to the
11 mental hospital?

12 A. To be evaluated?

13 Q. On the evaluations ---

14 A. No.

15 Q. --- were you there for a period of time?

16 A. No. Not during the trial or for trial -- not
17 during pretrial.

18 Q. Do you know what I'm talking about?

19 A. (No response.)

20 Q. Well, let me -- were you represented on this
21 Anderson charge by an attorney?

22 A. Yes.

23 Q. And who was that attorney?

24 A. Gordon, if I'm not mistaken.

25 MR. THOMPSON: May I approach the witness, Your

1 Honor?

2 THE COURT: Yes.

3 BY MR. THOMPSON:

4 Q. Do you remember Mr. Gordon Senerius, right?

5 A. Yes.

6 Q. In your plea in this case, do you remember him
7 telling the judge that you were found competent in
8 Greenville, but it was after they had restored your
9 competency?

10 A. I believe so. I'm not sure, but could be.

11 Q. Okay. When you came back to Greenville from
12 the Department of Mental Health from the evaluation,
13 how long were you in the Greenville Detention Center
14 before you went to court in Greenville?

15 A. Okay. I never -- I never was in Greenville
16 County before I left. I -- I actually bonded out of
17 Greenville County.

18 Q. Okay.

19 A. Yes.

20 Q. So when you came back from the mental health
21 evaluation, where did they house you at? Where were
22 you at?

23 A. Oh, okay. I was at MUSC before I went to trial
24 in Greenville. I went to MUSC ---

25 Q. Okay.

1 A. --- because I had a mental health breakdown at
2 MU -- at MUSC. I think I was around April the 10th
3 if I'm not mistaken.

4 Q. When you were released from MUSC, how long was
5 it before you went to court in Greenville?

6 A. I want to say about three months, two months,
7 three months.

8 Q. Okay. Were you on medication during that time?

9 A. The whole time?

10 Q. From the time you were reasoned until you went
11 to court.

12 A. No.

13 Q. Okay. What medication were you supposed to be
14 on?

15 A. Haldol. Yeah, haldol.

16 Q. Okay. Were you on Depakote instead of haldol?

17 A. No. Haldol and Depakote together.

18 Q. Oh, okay. All right. And that was a two- to
19 three-month period you say?

20 A. Yes. But I wasn't on it the whole time.

21 Q. You weren't on the medicine the whole time?

22 A. No. No, sir.

23 Q. Now, from the time you went to court in
24 Greenville until you came to court over here in
25 Anderson, how much time was between that?

1 A. Okay. Out of housing, I was housed at Anderson
2 County until I went to court in Greenville until my
3 trial date in Greenville.

4 Q. Okay. Well, my ---

5 A. So I went -- I went by -- I went without
6 medication -- without my mental health medication
7 for about maybe a month and a half, two months.

8 Q. Okay. Now, the haldol and Depakote are
9 antipsychotics; is that correct?

10 A. Yes, sir.

11 Q. And you had a problem with schizophrenia and
12 bipolar disorder most of your adult life?

13 A. Yes, sir.

14 Q. Let's get back to my question. You went to
15 court in Greenville, and you were sentenced in
16 Greenville?

17 A. Uh-huh.

18 Q. At some point in time after that, you came back
19 to court in Anderson for sentencing; is that
20 correct?

21 A. Yes.

22 Q. How much time was between those two sentences?

23 A. Three years ---

24 Q. Three years?

25 A. --- if I'm not mistaken.

1 THE COURT: Did you say three days?

2 THE APPLICANT: Three years.

3 THE COURT: Three years.

4 BY MR. THOMPSON:

5 Q. From the time you were sentenced in Greenville
6 until you were sentenced here was three years?

7 A. Yes. If I'm not mistaken, it's like
8 three years.

9 Q. Mr. Gadsden, are you on medication now?

10 A. Yes, sir.

11 Q. Have you taken it?

12 A. Yes.

13 Q. Okay. They're giving it to you regularly in
14 the Department of Corrections?

15 A. Yes.

16 Q. Okay. Now, when you came into court to plead
17 guilty here, Mr. Senerius was representing you,
18 right?

19 A. Yes.

20 Q. What did you think you were pleading guilty to?

21 A. Manslaughter.

22 Q. Well, did you think it was voluntary
23 manslaughter or involuntary manslaughter?

24 A. I understood that it was -- I understood that
25 it was manslaughter, but I was actually requesting

1 for involuntary manslaughter.

2 MR. THOMPSON: Did you not hear Judge Maddox
3 question of you -- and, Judge, I'm looking at page 9
4 starting about line 14. If I may approach?

5 THE COURT: Yes.

6 BY MR. THOMPSON:

7 Q. Could you read -- I'm going to read this and
8 you tell me if I'm reading it correctly. Starting
9 right here: "The Court: Are you guilty of
10 voluntary manslaughter?"

11 "The defendant:" That's you.

12 A. Yes.

13 Q. "No. But I'm willing to plead guilty. I will
14 say I'm guilty of involuntary." Do you remember
15 that?

16 A. Yes.

17 Q. Did you think you were pleading to involuntary
18 manslaughter?

19 A. Yes.

20 Q. Now, there was some discussion after that about
21 your competency to enter a plea, was there not?

22 A. Yes, sir.

23 Q. Okay. And the Court wound up changing your
24 plea from a straight plea to an Alford plea, did it
25 not?

1 A. I believe so.

2 MR. THOMPSON: May I have just a moment, Your
3 Honor?

4 I believe we're starting about page -- the top
5 of page 11, Your Honor, as to the Court's dealing
6 with the changing to an Alford plea.

7 THE COURT: Yeah.

8 BY MR. THOMPSON:

9 Q. Did you understand you were going to get a
10 20-year sentence?

11 A. No.

12 Q. Did you fully understand what you were pleading
13 to?

14 A. Eighty-five percent.

15 Q. Did you fully understand the consequences of
16 what was going to happen?

17 A. Probably 85 percent.

18 Q. Did you tell your attorney you had not been on
19 your medication?

20 A. Yes.

21 Q. Now, once you pled, did you ask your attorney
22 to file an appeal for you?

23 A. Yes.

24 Q. What grounds do you think you had for that
25 appeal?

1 A. Ineffective by not -- ineffective by me not
2 receiving an evaluation -- a mental health
3 evaluation.

4 Q. Okay. Now, you received a competency
5 evaluation in Greenville; is that correct?

6 A. Yes.

7 Q. Did you receive one for Anderson County?

8 A. No.

9 Q. Okay. Did you make your attorney aware of your
10 mental issues?

11 A. From my understanding, he knew.

12 Q. Well, the transcript speaks to that. Do you
13 know whether or not your attorney filed the appeal
14 for you?

15 A. Not -- not exactly. I got mail, but they said
16 he failed to fail -- to fill out certain paperwork.

17 Q. Did -- was it explained to you what needed to
18 take place for the appeal?

19 A. No.

20 Q. Okay. Did Mr. Senerius indicate to you that he
21 did file a notice of appeal?

22 A. He said he would.

23 Q. Okay. Do you know what transpired after that?

24 A. No, sir.

25 Q. Okay. You never received any -- any request

1 for information or a letter saying that you needed
2 to provide some information?

3 A. No, sir.

4 Q. And what is it you're asking the Court to do
5 here today?

6 A. If possible, if I could be retried or if I
7 could be resentenced to involuntary manslaughter.

8 Q. All right. And I've explained to you the Court
9 cannot resentence you to involuntary manslaughter
10 today, have I not?

11 A. Yes.

12 Q. But your only option today is the Court to
13 grant your PCR and start over?

14 A. Okay.

15 Q. Okay. Do you understand that?

16 A. Yes.

17 MR. THOMPSON: Thank you. Answer any questions
18 the State may have.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. SMITH:

22 Q. Mr. Gadsden, didn't both you and -- didn't you
23 tell Judge Maddox you were guilty during your guilty
24 plea hearing that you were not on medications?

25 A. Yes. If I'm not mistaken.

1 Q. Okay. And you and Mr. Senerius told Judge
2 Maddox about the fact that you had schizophrenia and
3 bipolar disorder?

4 A. Yes.

5 Q. Okay. And when Judge Maddox asked you did you
6 understand that you were pleading guilty to
7 voluntary manslaughter, didn't you tell him you
8 understood that?

9 A. Like 85 percent because I really wasn't -- I
10 really didn't want to plead to voluntary
11 manslaughter. I wanted to plead to involuntary
12 manslaughter ---

13 Q. Yeah, but you ---

14 A. --- but I was just pleading.

15 Q. You did plea to it, right?

16 A. Yes.

17 Q. Okay. And you understood that you told the
18 judge you understood that that's what you were
19 doing, right?

20 A. I believe so.

21 Q. Okay.

22 A. It's a possibility.

23 Q. Okay. And Mr. Thompson asked you about your
24 guilty plea hearing and you said that you felt like
25 you should plead to involuntary, right?

1 A. Yes.

2 Q. Okay. And then after that, didn't you tell
3 Judge Maddox that you understood that you were
4 pleading to -- that you weren't pleading to
5 involuntary. You were pleading to voluntary?

6 A. I'm not sure on that one.

7 Q. Okay. But you did know when you were pleading,
8 you were pleading to voluntary, right? You didn't
9 like it, but that's what you were doing? Is that
10 fair?

11 A. I believe so.

12 MR. SMITH: Okay. I have no more questions.
13 Thank you.

14 THE COURT: Anything else?

15 MR. THOMPSON: No, Your Honor.

16 THE COURT: Does anybody have the time line of
17 when the events happened in Greenville? When the
18 plea was -- when this plea, because I noticed in the
19 transcript there's a reference to -- you can step
20 down.

21 THE APPLICANT: (Complying.)

22 THE COURT: He referenced that he had just
23 gotten out of MUSC 72 hours before he committed this
24 offense. That's somewhere -- that's in the
25 transcript.

1 MR. THOMPSON: Yes, sir. That's in there.

2 THE COURT: He says, "I was released from MUSC
3 mental institution less than 72 hours before this
4 incident happened."

5 MR. THOMPSON: Yes, sir. My understanding in
6 conversation with Mr. Gadsden is -- and I'm just
7 getting this from talking to him because his
8 testimony on the stand today was different. But he
9 told me when we were talking about between the plea
10 in Greenville and the plea here in Anderson was
11 about maybe three days to a week. I didn't
12 differentiate. I did not independently check that.

13 THE COURT: Yeah, I think that may be around --
14 do you have any information on that? The reason it
15 may be relevant, it sounds like for the Greenville,
16 I mean, it's quoted in here that they say, "Hey, he
17 was not competent, but then he was restored." And,
18 evidently, that information was submitted in
19 connection with the Greenville matter, so, I mean, I
20 think that would be relevant to what we have here.

21 MR. SMITH: I don't know the answer to it, but
22 I can find out in about five minutes.

23 THE COURT: Okay.

24 MR. SMITH: It's in our -- we have it saved.

25 THE COURT: Well, maybe that's something you

1 can submit, you know -- do you have anything else
2 from -- anything else from the Applicant?

3 MR. THOMPSON: No, sir.

4 THE COURT: All right.

5 MR. THOMPSON: The Applicant rests.

6 THE COURT: Okay.

7 MR. SMITH: I'd call Mr. Senerius.

8 THE COURT: All right. Mr. Senerius, if you'll
9 come forward.

10 THE WITNESS: (Complying.)

11 GORDAN SENERIUS,
12 having been produced and first duly sworn as a
13 witness on behalf of the Defendant, then testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. SMITH:

17 Q. Mr. Senerius, when were you admitted to
18 practice law in South Carolina?

19 A. South Carolina, 1995 I think. I was at one
20 point in time licensed in three states.

21 Q. Okay. What were the three states?

22 A. Ohio, Michigan, and South Carolina.

23 Q. Okay. Can you give me a summary of your legal
24 experience?

25 A. I was admitted to practice law in Ohio in 1979.

1 I don't remember the exact date in Michigan. I've
2 been practicing ever since then, mostly private
3 practice.

4 And now I work for the Public Defender's
5 Office. I handle criminal cases predominantly.
6 Some civil cases, and unfortunately, some family
7 court cases.

8 Q. Okay. How did you come to be involved in
9 Mr. Gadsden's case here?

10 A. I believe I was appointed to represent him if I
11 remember correctly.

12 Q. Okay. Can you tell me about the facts of the
13 crime as you remember them?

14 A. Mr. Gadsden's case?

15 Q. Correct.

16 A. I can't. I have already -- I just know that it
17 was -- the charge was murder. They were going to
18 reduce it down to a manslaughter charge and run a
19 concurrent sentence. We -- that -- that's what
20 happened.

21 Q. Okay. Was it your understanding that he
22 already pled guilty in Greenville County? I mean,
23 he'd already been convicted in Greenville County by
24 that point?

25 A. Correct. He was in the -- had been sentenced

1 in Greenville and was in the Department of
2 Corrections.

3 Q. Okay. How many times did you meet with
4 Mr. Gadsden while you represented him?

5 A. You know, some of those files have been lost,
6 and so I know it's been a long time ago. I met with
7 him fairly frequently I think. I mean, I don't
8 recall him ever asking me to come see him and not
9 see him. So it would be my practice to see my
10 clients initially when I'm first appointed and then
11 at least every couple of three, four weeks after
12 that, unless it was something new in their case.
13 Unfortunately, we didn't have time to go over every
14 week to tell them there's nothing new.

15 Q. Okay. Do you remember discussing with
16 Mr. Gadsden any mental health issues he had?

17 A. Yeah, he informed me the -- his mental health
18 issues that he had and that he was in treatment.

19 Q. Okay. And those were the things you discussed
20 at the guilty plea hearing?

21 A. I'm sorry?

22 Q. And those were the conditions you discussed at
23 the guilty plea hearing; is that right?

24 A. Yes, sir.

25 Q. Okay. Did you have his mental competency

1 evaluated?

2 A. I did not.

3 Q. Okay. And tell me about that.

4 A. Well, I didn't because he didn't appear to
5 be -- he appeared to be competent to me. He was
6 taking his medication. He had been restored to
7 competency according to the Department of Mental
8 Health. I didn't think that there was -- he seemed
9 to understand everything I told him. He asked
10 pertinent questions. I didn't have any question of
11 his competency.

12 Q. Okay. And that mental health opinion, was that
13 related to his Greenville County case?

14 A. Correct.

15 Q. Okay. What did you do to look into that? Did
16 you review the order?

17 A. I believe I reviewed the orders from
18 Greenville -- in the Green -- excuse me -- in the
19 Greenville case. Yes.

20 Q. Okay. If you had doubted his competency, what
21 would you have done?

22 A. If I had any doubts as to his competency, I
23 would've requested an evaluation. I do that quite
24 frequently at that time. People at DMH get a little
25 tired of me once in a while.

1 Q. Okay. When you are speaking with a client,
2 what are the red flags you usually look for when
3 you're thinking, do I need have this client
4 evaluated?

5 A. We refer to it as the "thousand-mile stare."
6 Affect, whether or not they're -- they're engaging
7 with me. The questions that they ask. If they just
8 sit there and nod their head, nod their head, nod
9 their head. Say they never have any questions, and
10 I become a little curious at that point and start
11 looking into things.

12 Q. Okay. And you didn't notice any of those
13 behaviors with Mr. Gadsden?

14 A. Not at that time not that I recall.

15 Q. Okay. Do you -- you remember discussing with
16 him any sort of time line about how soon after being
17 released from mental institution it was that he
18 committed the crimes?

19 A. No. I do not recall that.

20 Q. Okay. Do you think that's because you didn't
21 discuss that or is it because you -- you don't
22 remember today?

23 A. I -- I just don't remember. I think this case
24 was a 2020 case. Almost 13 years ago. I don't
25 know. I've handled a number of cases since that

1 point in time.

2 Q. Okay. Did you explain to Mr. Gadsden that he
3 was pleading to voluntary manslaughter and not
4 involuntary?

5 A. We talked about that.

6 Q. Okay. Did he ---

7 A. And I believe -- I'm sorry. And I believe
8 Judge Maddox explained it to him, as well.

9 Q. Did he give you any reason to believe that he
10 did not understand that he was pleading to
11 voluntary?

12 A. No, sir.

13 Q. Okay.

14 A. Well, not until we got into court.

15 Q. Okay. So that's something that came up. Did
16 you discuss it with him there?

17 A. I did.

18 Q. Okay. And then did he appear to understand at
19 that point?

20 A. He did.

21 Q. Okay.

22 A. Let me put it this way, if I didn't think that
23 he understood, I would've stand -- stood him down
24 and not entered the plea that day.

25 Q. Okay. And looking back at it, you did provide

1 a guilty plea explanation to the Court of Appeals
2 under Rule 203. Do you remember that?

3 A. I do.

4 MR. SMITH: Okay. And I'd like to show it to
5 you. Your Honor, may I approach?

6 THE COURT: You may.

7 BY MR. SMITH:

8 Q. Do you agree I'm showing you the amended notice
9 of appeal that's dated February 10, 2020?

10 A. Correct.

11 Q. Okay. And does that contain your explanation
12 under Rule 203?

13 A. Correct.

14 Q. Okay. Do you know if you forwarded this to
15 Mr. Gadsden?

16 A. I don't know that I personally did. I'm sure
17 my paralegal did. I mean, that's standard practice.

18 Q. Okay. So if -- can you explain the discrepancy
19 if the Court of Appeals doesn't have a copy saying
20 you filed proof that you sent it to Mr. Gadsden?

21 A. No.

22 Q. Okay. Have you been able to see in your file
23 that there's anything in there indicating that it
24 was sent to him?

25 A. I have not. This was 13 years ago.

1 Q. Okay.

2 A. I've been through a lot of files in storage,
3 but I think it's quite probably been destroyed.

4 Q. Okay. Do you know one way or the other, or are
5 you assuming that?

6 A. I'm just assuming it was sent to him because
7 that's the standard practice. We sent copies of
8 everything to our clients, whether it's ---

9 THE COURT: Let me just say just to get back on
10 the right track here. This is 2020.

11 THE WITNESS: Correct.

12 THE COURT: Not 13 years ago. Three years ago.

13 THE WITNESS: Oh, I'm sorry. I'm sorry.

14 THE COURT: I just wanted to make sure.

15 MR. SMITH: It's been a long three years,
16 Judge.

17 THE COURT: I know. I have to agree with you
18 on that, but I just wanted to make sure we were ---

19 THE WITNESS: Yeah, I'm sorry. I'm not good at
20 math, Judge. That's why I'm a lawyer.

21 THE COURT: No. That's good. I just wanted to
22 make sure we were all on the same page there.

23 THE WITNESS: I'm sorry. Three years.

24 MR. SMITH: Okay. No more questions. Thank
25 you.

1 THE COURT: Mr. Thompson.

2 MR. THOMPSON: Thank you.

3 CROSS-EXAMINATION

4 BY MR. THOMPSON:

5 Q. Let's -- let's start with the appeal issue.

6 And I've known Mr. Senerius -- I was the Public
7 Defender for a number of years and I realize things
8 sometimes pile up. Do you recall a telephone
9 conversation with Lilly -- Lilly Meadows of the
10 Attorney General's Office in February of '21?

11 A. No. I'm sorry. I don't recall.

12 Q. Okay.

13 A. If you say I talked to her, I did.

14 Q. Pardon?

15 A. If you say I talked to her, then I did.

16 Q. Well, I'm going by the e-mail she sent to me.

17 A. Okay.

18 Q. In this e-mail, she indicates that you received
19 a letter -- you filed the notice of appeal, correct?

20 A. Correct.

21 Q. That you received the letter from the Court of
22 Appeals ---

23 A. Okay.

24 Q. --- asking for additional information because
25 of his guilty plea, correct?

1 A. Okay.

2 Q. All right.

3 A. I don't recall, but I'll take your word for it.

4 Q. Did you tell her that you found that letter
5 under some paperwork on your desk and forgot to send
6 it to Mr. Gadsden?

7 MR. SMITH: Your Honor, I'm not sure what
8 Mr. Thompson is reading from. I would like to ---

9 MR. THOMPSON: I'll show it to the State
10 Attorney.

11 MR. SMITH: (Reading.) Well, I'll say, Your
12 Honor, I think under the rules, to impeach
13 Mr. Senerius, Ms. Meadows would actually have to be
14 here. And it's a little strange situation because I
15 think she previously was counsel of record in this
16 case, but I'll stip -- I mean, I have no problem
17 admitting that she has an e-mail saying that that's
18 what Mr. Senerius told her.

19 THE COURT: Okay.

20 MR. SMITH: Because I think that that's just
21 in -- that's not something I want to hide.

22 THE COURT: Yeah. Okay.

23 MR. THOMPSON: And I don't have any further
24 questions. That was the point -- we got that point
25 out.

1 THE COURT: All right.

2 BY MR. THOMPSON:

3 Q. Well, I will ask this since I don't think I
4 followed up. Would you deny that that's what
5 happened?

6 A. I can neither deny nor confirm that it
7 happened. I don't recall talking ---

8 Q. Okay. Thank you.

9 A. You're welcome.

10 Q. Now, let's go back to your representation of
11 Mr. Gadsden. Do you recall when it started?

12 A. Specifically, no.

13 Q. Okay. Do you recall your representation of
14 him, he being sent for an evaluation from Greenville
15 County?

16 A. I recall that he had been sent. I don't recall
17 whether it was before or after it started. He had
18 been sent for an eval. He had been found not
19 competent. He'd been sent down to be restored and
20 come back.

21 Q. Okay. Now, was this before you started
22 representing him on the Anderson charge or during
23 that time?

24 A. I don't recall.

25 Q. Okay.

1 A. If you say -- tell me when it is -- tell me
2 when it is, I'll agree with you.

3 Q. Well, you -- do you recall the Court asking him
4 about if he was taking any medication?

5 A. No, sir.

6 Q. Do you remember what the response was?

7 A. I don't recall it specifically. Some
8 sentences ---

9 MR. THOMPSON: May I approach?

10 THE COURT: Yes.

11 THE WITNESS: --- I know the Court always asks.

12 BY MR. THOMPSON:

13 Q. I'm going to -- this is the transcript.

14 A. Okay.

15 Q. I'm on page 3, starting there with line 7.

16 A. Line 7. Thank you. Taking medication. Do you
17 want me to read it?

18 Q. Well, I was going to say, the Court's question
19 was, "Are you taking any kind med -- prescription
20 medication that they've given to you at all?" His
21 answer was, "Not at this point in time;" is that
22 correct?

23 A. That's what he said.

24 Q. And then he -- he starts telling the judge he
25 has schizophrenia, and you say he's also been

1 diagnosed bipolar?

2 A. Correct.

3 Q. Okay. Now, he indicated that he was not taking
4 medicine at that point in time, right?

5 A. That's what he told the Court. Correct.

6 Q. Do you know how long he had not been taking
7 medicine?

8 A. I do not.

9 Q. And I -- I believe -- maybe not. Do you know
10 how much time elapsed between his competency
11 evaluation with the Greenville case and his plea
12 here in Anderson?

13 A. No.

14 Q. Do you know whether or not he was on medication
15 during that time?

16 A. I assumed that he was. He was competent when I
17 was talking to him.

18 Q. Okay. You assumed he was, but did you check to
19 see if he was?

20 A. I'm not a psychologist or a psychiatrist. He
21 gave me no reason to believe that he didn't
22 understand what we were talking about.

23 Q. Did you ever have any reason to not just test
24 his competency, but to have his criminal
25 responsibility evaluated?

1 A. I'm sorry. Did I what?

2 Q. There's an evaluation for criminal
3 responsibility?

4 A. Correct.

5 Q. And an evaluation for competency?

6 A. Correct.

7 Q. Did you ever think to have criminal
8 responsibility evaluated?

9 A. I did not.

10 Q. Okay. Because didn't he tell the Court that he
11 had just been released from the mental institution
12 72 hours before this had occurred?

13 A. I'm sorry? What was the question? Did he ---

14 Q. Did he -- and I'll approach if I can. Page 6,
15 right at the top.

16 A. Okay. That's what he said.

17 Q. He informed the Court that he had just been
18 released from the mental institution, MUSC, 72 hours
19 before the incident occurred; is that correct?

20 A. Correct.

21 Q. But you didn't think to check about criminal
22 responsibility?

23 A. That was the first that I'd heard of it, the
24 time line of him just being released. I didn't
25 check for criminal responsibility because as I told

1 you, he appeared to be competent in understanding
2 what was going on.

3 Q. That was at that point in time?

4 A. Correct.

5 Q. Competent -- you believed he was competent at
6 that point in time?

7 A. Correct.

8 Q. But what about the point in time the incident
9 occurred?

10 A. I don't know what his competency was at that
11 point in time.

12 Q. Okay. Now, during the plea when the judge was
13 questioning him, the plea got changed from a
14 standard plea -- guilty plea to voluntary to an
15 Alford plea; is that correct?

16 A. Correct.

17 Q. Is that because he kept telling the judge he
18 wanted to plead to involuntary?

19 A. I assume so. I don't know. You'd have to ask
20 the judge.

21 Q. Well, whatever the transcript says, you
22 wouldn't disagree with that, would you?

23 A. I would not.

24 Q. Okay. And I may have asked this question.

25 Sorry if I'm beating a dead horse. Are you aware of

1 whether or not he was on medication at the time of
2 his plea?

3 A. I was under the impression that he was. I
4 think he said that he was not.

5 Q. I'm going to say, if I may approach again?

6 Page 14, the last line and the top of page 15.

7 A. (Reading.)

8 Q. So he did tell the Court that he was supposed
9 to be on medication, but he had not yet been put on
10 medication?

11 A. That's what the transcript says.

12 Q. And that was at the time of his plea?

13 A. Correct.

14 Q. And he was diagnosed with schizophrenia and
15 bipolar disorder?

16 A. Correct.

17 Q. And he was supposed to be on Depakote which is
18 an antipsychotic; is that correct?

19 A. I would assume so.

20 Q. Mr. Senerius, given what you've heard here
21 today, do you think you should've had him evaluated
22 for criminal responsibility and competency?

23 A. Well, hindsight's always 20/20, but at the
24 point in time he entered this plea, I did not have
25 any questions about his competency. Judge Maddox

1 obviously didn't have any concerns about his
2 competency, nor did the Solicitor. All three of
3 these, myself, the Solicitor, and the Court itself
4 sua sponte asked for an evaluation if they think the
5 individual is not competent at the time he's
6 entering his plea. Hindsight is 20/20? Sure. I'd
7 do a lot of things different sometimes. You always
8 can think of things that you should've done that
9 maybe it would've made a difference or not.

10 MR. THOMPSON: Thank you. I have no further
11 questions.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. SMITH:

15 Q. Mr. Senerius, some of these questions about
16 specifics about medication, how long you've been
17 taking them, are those things you think you would've
18 known at the time?

19 A. I would -- I would assume so. I don't know. I
20 can't remember three years ago.

21 Q. Okay. And the date -- you were asked about the
22 date of the evaluation in the Greenville County
23 case. If you reviewed it, is that something you
24 would've known at the time?

25 A. I would assume so. Yes, sir.

1 Q. Okay. When you talked with Mr. Gadsden about
2 the crime, what he was doing, his side of the story,
3 what did he tell you about that?

4 A. I don't recall specific comments that he made.
5 He didn't deny it. I didn't have any question about
6 him understanding what we were talking about. If I
7 would've had questions about his competency, I
8 would've asked for an evaluation. I do it quite
9 frequently.

10 Q. During your conversations with him about the
11 crime, did he make statements to you that indicated
12 that he may've had some kind of insanity defense or
13 didn't understand what he was doing at the time of
14 the crime?

15 A. I don't recall. I honestly don't. I would
16 assume that if he'd something like that, that I
17 would've investigated that aspect of it and
18 requested it, as well as a competency evaluation and
19 responsibility examination. I almost always ask for
20 those things.

21 Q. Okay. Is that your routine when you hear
22 statements that could go to criminal responsibility?

23 A. If -- as I said, I would've filed this motion
24 simultaneously if he had -- right now, we're
25 supposed to do competency first. And then if it

1 comes back competency, we can request a criminal
2 responsibility.

3 Q. Okay.

4 A. Normally, I file them both at the same time
5 back then.

6 Q. If you feel like you had reason to; is that
7 right?

8 A. I'm sorry?

9 Q. You filed them if you feel like you had reason
10 to?

11 A. Exactly.

12 Q. Do you have any reason to believe that you
13 deviated from that normal practice with respect to
14 Mr. Gadsden?

15 A. No.

16 Q. Okay. Do you know if there have been any notes
17 in the file, if it still exists, that would discuss
18 what Mr. Gadsden told you about his part of the
19 crimes?

20 A. That I'm not sure. I tend to not put certain
21 information in writing.

22 Q. Okay. Do you think that there could be notes
23 in there discussing whether you considered his
24 criminal responsibility at the time of the crimes?

25 A. I suppose there could be. I don't know.

1 Q. Okay. Was your understanding of Mr. Gadsden's
2 medications based on what he told you or some
3 independent review you had done of the medical
4 records?

5 A. I don't recall reviewing any medical records.

6 MR. SMITH: Okay. Your Honor, I'll just say
7 for the record that the State has looked it up. The
8 Greenville County conviction that was on the life
9 sentence was entered on June 9, 2016, according to
10 the sentencing sheet.

11 THE COURT: All right. So that would be three
12 years.

13 MR. SMITH: So, Your Honor, I don't have any
14 more questions for Mr. Senerius, and he's the only
15 witness I had. I have -- honestly, I think, you
16 know, I would rest at that point, but I would say I
17 think -- I don't know if Mr. Thompson has any reply.

18 MR. THOMPSON: I don't.

19 MR. SMITH: Okay. If we're going to argue, I
20 think that the application should be denied based on
21 what's before the Court today, but I'm also
22 wondering if there's something in the file, wherever
23 it may be, that would address this because obviously
24 Mr. Senerius doesn't remember all the discussions
25 they had.

1 THE COURT: Well, it doesn't sound like he
2 knows where his file is either. You can step down,
3 Mr. Senerius.

4 THE WITNESS: (Complying.)

5 MR. SMITH: Well, if it's with the Public
6 Defender's Office, that's something we can look into
7 about finding. Sometimes they keep notes in
8 storage.

9 THE COURT: Well, it looks like the evaluation,
10 I mean, I don't think that's going to be as relevant
11 as I thought. If he pled on June the 9, 2016, and
12 they had an evaluation before that plea.

13 MR. SMITH: I think that was the trial.

14 THE COURT: Okay. Trial. Then this was
15 taken -- this was done in January of '20. I'm not
16 sure that that report would be that relevant to this
17 matter.

18 MR. SMITH: Well, I think that it could be
19 relevant insofar as it was something additional for
20 Mr. Senerius to take into consideration when he's
21 deciding.

22 THE COURT: That's true. And here's something
23 too that would go -- let me make sure I understand
24 this for the appeal issue. And I'm not that
25 familiar with when you file an appeal on the plea.

1 Looking through the records, it appears the
2 rules require that you -- he files the appeal, which
3 he did. But then he had to file an amended one that
4 said, "I don't really have any grounds. I'm doing
5 this because my client asked me to do that." And
6 then the burden is on him at that time to send that
7 notice. His client has 20 days to come up with a
8 ground of appeal; is that correct?

9 MR. THOMPSON: Your Honor, I've done a number
10 of these through the Public Defender in Cherokee
11 County. What you do is, you file a notice of
12 appeal. You put in there that it was a guilty plea.
13 The Court of Appeals then sends back a request
14 asking you to send their letter to your client for
15 him to delineate what the issues are. And he has a
16 period of time in which to answer that.

17 THE COURT: And the issue on this is, there's
18 no evidence that Mr. Senerius ever sent that letter
19 to Mr. Gadsden.

20 MR. THOMPSON: That was what I was advised by
21 Mr. Gadsden.

22 THE COURT: And that was what that e-mail was.

23 MR. THOMPSON: Yes, sir.

24 THE COURT: He just -- it just got caught under
25 some paperwork.

1 MR. THOMPSON: He filed the notice of appeal.
2 Received the letter -- according to his notes. He
3 filed the notice of appeal. Received the letter
4 from the Court of Appeals, and then it got put under
5 the paperwork and never sent it to the client.

6 THE COURT: Well, then that actually does make
7 sense. Looks like they sent another letter. I
8 guess that was March the 18th. And the Court of
9 Appeals says, "Received your explanation. Please
10 forward your explanation to your client along with
11 this statement and you have 20 ---

12 MR. SMITH: And, Your Honor, I can -- I can
13 speak to that.

14 THE COURT: Yes.

15 MR. SMITH: You know, I think Mr. Senerius,
16 seemed like he doesn't have any personal knowledge
17 about whether that letter was sent. I think he said
18 he thought his paralegal might have, but he doesn't
19 have proof of that. And it seems, you know, he may
20 have indicated in the past that he thinks it didn't
21 get sent. So it sounds like he's not sure. Doesn't
22 have personal knowledge, but either way, proof
23 wasn't filed with the Court.

24 And I checked the letter from the Court of
25 Appeals to him about this, and Mr. Gadsden wasn't

1 copied with it, so it's not the kind of thing where
2 Mr. Gadsden had notice directly from the Court. So
3 I think that the State concedes that he didn't
4 knowingly, voluntarily waive his right to appeal. I
5 don't think that it sounds like it would go
6 anywhere, especially since it's a guilty plea
7 appeal.

8 THE COURT: But don't we still have to -- I
9 mean, isn't he entitled to a late appeal, at least
10 the opportunity to present anything?

11 MR. SMITH: That's what -- I think that --
12 because if the Court wanted him to have a chance to
13 say if he thought there was any issues in the case,
14 and Mr. Senerius said he did, and he wasn't given an
15 opportunity to put those before the Court, whatever
16 they may be. So I don't think he had his appeal, so
17 I think the State's position is he should be
18 entitled to do that again.

19 THE COURT: All right. And then -- all right.
20 And then we go that route, and then depending on
21 what happens with his other PCR. I mean, his other
22 PCR -- I mean, if he's denied his other PCR, then
23 this is moot anyway.

24 MR. THOMPSON: Yes, sir. And I do not
25 represent him on that.

1 THE COURT: Right. I understand that.

2 MR. SMITH: So -- and I'll say, I'm conceding
3 on that.

4 THE COURT: Right. I understand.

5 MR. SMITH: And as to the other issue, I don't
6 think he's met his burden of proving he wasn't
7 competent. The case law says that the defense
8 lawyer has the ability to reasonably rely on his own
9 perception. And I'll point out, not only did
10 Mr. Senerius do that, but Mr. Gadsden answers
11 intelligently Judge Maddox's questions. And at the
12 end of it, Judge Maddox says he thinks he's answered
13 the questions well, I think is an indication that
14 there's no issue about competency that was apparent.
15 And ---

16 THE COURT: Reading through -- reviewing the
17 transcript, there is a kind of ongoing discussion
18 that Mr. Gadsden is actively involved in, too.

19 MR. SMITH: I think you can be -- I mean, you
20 can be on or off medication and still be competent.
21 That is not a test for competency.

22 And then the issue of whether there was a
23 criminal responsibility problem, the only thing in
24 the record about that or put before the Court was
25 that Mr. Gadsden said the crime happened a few days

1 after getting out of the mental hospital.

2 THE COURT: Well, let me ask you this: If
3 we're going to give him a late appeal or at least an
4 opportunity, then can we really address the PCR
5 related to the -- since we actually have to wait
6 until that appeal is through.

7 MR. SMITH: We can because they're parallel.
8 They both go on appeal at the same time. So the way
9 it works is, any time there's an issue about whether
10 someone waived their right to appeal, it goes up and
11 there's two petitions that go before the Supreme
12 Court. One asking the Court to review the direct
13 appeal issue and one asking them to review the PCR
14 decision and they consider them simultaneously.

15 THE COURT: All right.

16 MR. SMITH: So I don't think he's met his
17 burden on the criminal responsibility or the ---

18 THE COURT: All right.

19 MR. SMITH: --- competency.

20 THE COURT: How we -- okay. How we -- tell me
21 what you've ---

22 MR. THOMPSON: Your Honor ---

23 THE COURT: --- established on the competency
24 issue.

25 MR. THOMPSON: Judge, I'm not going to go back

1 through the transcript, but I think Mr. Gadsden's
2 testified that he's been in and out of a mental
3 hospital several times during his lifetime. I
4 believe he said seven or eight. And there's no --
5 there's no question he was in a mental hospital,
6 according to the transcript, three days before the
7 incident happened and was released.

8 There's been testimony that the charges in
9 Greenville County, he was found not competent and
10 allowed to be restored. He was institutionalized
11 and was restored at that time. However, there's a
12 difference in time between the Greenville County and
13 the Anderson County.

14 Mr. Gadsden has testified that he is supposed
15 to be on Depakote and haldol, which are
16 antipsychotics. He testified he was not on. And I
17 think when you look at the transcript -- I'm
18 sorry -- that there was a question in there by the
19 judge. And I think you can interpret it one of two
20 ways.

21 THE COURT: This is Judge Maddox. There's at
22 least seven different ways.

23 MR. THOMPSON: That may be true too. On page 3
24 starting with line 7, "Are you taking any kind of
25 prescription medications they give you at all?" And

1 Mr. Gadsden's answer was, "Not at this point."

2 Now, that could be interpreted as, have they
3 given you prescription medication you're supposed to
4 take, or are you not getting the prescription
5 medication you're supposed to be taking? So I'm not
6 sure how that was interpreted and what that answer
7 was to whatever that question was, but Mr. Gadsden
8 just testified that he was not on his medication.
9 Supposed to be an antipsychotic.

10 You can look at the transcript. He's --
11 there's several places in there where I think
12 competency is raised. He says he wants to plead to
13 involuntary. He -- Judge Maddox actually changes --
14 I think kind of takes it on himself to change it
15 from a straight guilty plea to an Alford plea due to
16 that issue of him wanting to plead to involuntary.

17 I think that he has met his burden of proof.
18 There's nothing to review really that his competency
19 was checked, that he was on medication. In fact,
20 the testimony is he wasn't on medication. That's
21 all the Court heard. So whether or not this was a
22 free and voluntary plea, I think he has met his
23 burden of proof on that.

24 THE COURT: Again, whether it's like Mr. Smith
25 said, whether someone is on medication or not is not

1 necessarily indicative that they were not competent.

2 MR. THOMPSON: I agree with that.

3 THE COURT: I mean, I guess it may depend on --
4 well, I mean, in looking at the time line here, the
5 Greenville incident was January 2014. Then at some
6 point in there, he goes to get evaluated. This
7 incident was on April 18, 2016.

8 MR. THOMPSON: Yes, sir.

9 THE COURT: He says he got out three days
10 before, and then he was tried and convicted on June
11 the 9th, 2016, so at that point he was incarcerated,
12 and then does this plea in, what, January of '20.

13 MR. SMITH: Your Honor, I'd like -- I'd like to
14 request the chance to leave the record open for me
15 to see if there's anything, if the PD's office can
16 find the file or if there's anything in there about
17 these issues. I mean, just -- just cautionary for
18 the record.

19 To be frank with you, I still don't think based
20 on what we have today that he's met the burden
21 because he has to prove that some identifiable
22 mental health issue that undermines his competency.
23 You know, can't just be speculation. He has to
24 prove that he had the inability to distinguish
25 between right from wrong or that he wasn't able to

1 form his actions in accordance with the law.

2 THE COURT: Do you have any problem with me
3 leaving it open? That also gives you an opportunity
4 to find that order, that mental evaluation.

5 MR. THOMPSON: I'll see if I can do that. I
6 have no problem keeping it open.

7 THE COURT: All right. So we'll just hold the
8 whole thing open. And then -- I mean, I think we
9 all kind of -- you conceded that he's entitled to a
10 late appeal, and we just -- we'll keep the record
11 open as to any additional information the PD's
12 office and any additional information from, you
13 know, this report may say.

14 Well, here's another thing too is, the fact he
15 says he's not on medication, is that -- is that --
16 is that necessarily meaning he wasn't on medication?

17 MR. SMITH: Well, and I'll say one more thing
18 about the report too. I don't think that that's --
19 goes to the test of -- I think that what Your Honor
20 is going to have to decide is if Mr. Senerius came
21 to a -- if a reasonable conclusion about whether
22 that was required. I think the report is something
23 for him to rely on. I don't think it's dispositive
24 in and of itself because it's based off of his
25 observations.

1 THE COURT: That's true.

2 MR. THOMPSON: My response to that, Judge, is
3 when Greenville did their evaluation along about the
4 time this occurred, he was found not to be
5 competent. They hadn't restored him. And, you
6 know, I understand that had this report just come
7 out a day or two before he pled over here.

8 THE COURT: Well, again, I guess we're dealing
9 with everything here like competency at the time of
10 the incident, but also competency at the time of the
11 plea.

12 MR. THOMPSON: Yes, sir.

13 MR. SMITH: And I -- Your Honor, there's no
14 evidence before the Court that Mr. Gadsden didn't
15 understand right from wrong and could not conform
16 his actions. The only thing he said was he did the
17 crime some time after getting out of the mental
18 hospital. That -- that doesn't even come close
19 to ---

20 THE COURT: Yeah. I'll keep the record open,
21 and then y'all can present any -- any additional
22 evidence you feel appropriate, any comments along
23 with ---

24 MR. SMITH: Okay. And I'll check with the PD's
25 office. Is that what you have? And if I have any

1 problems getting it, I'll -- I'll notify Your Honor.

2 THE COURT: Yeah, if we need to kind of
3 reconvene, maybe we can do that. I'll retain
4 jurisdiction so maybe we can -- if we need to
5 reconvene, maybe we can do that by WebEx ---

6 MR. SMITH: Okay.

7 THE COURT: --- so that the criminality report
8 by WebEx if we need to.

9 MR. THOMPSON: Okay. I'll check and see if I
10 can get that.

11 MR. SMITH: Okay. Thank you.

12 MR. THOMPSON: Thank you, Judge.

13 THE COURT: Do I need to do a little -- do an
14 order to that effect?

15 MR. SMITH: Maybe a Form 4 just saying that
16 Your Honor is retaining jurisdiction ---

17 THE COURT: Okay.

18 MR. SMITH: --- for that.

19 (The proceedings concluded at 10:35 a.m.)

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

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 2nd day of March, 2023.

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

July 3, 2023

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

Mr. Gerald Gadsden ³²⁷⁰⁰
Kirkland Ct. / #1-249
4344 Broad River Rd.
Columbia, SC 29210

March 1, 2018

Gordon Senerius
Anderson County Office
301 Camron Road
Anderson, SC 29625

Mr. Senerius,

I am writing with the
purpose of explaining what I know
of the state of my mental capacity
before my incarceration.

While housed at MHC
I never fully received my medical
treatment or observation, I constantly
asked but was denied.

Less than 72 hours after
being released from MHC I was
charged with murder.



I am writing to see if I can
plead insanity because I wasn't
fully aware of my mental
condition during the act of
the crime.

There is also a evidence
breach which shows that there
were other shell casings from
another gun. So there were two (2)
shell casings on the scene of the
crime.

I need legal help in understanding
how to go forward with the process
of pleading insanity. I'm in a
hurry to attend court.

With Kind Regards,
Gerald Gadsden

Gerald Akeem Gladson #
 Kirkland Correctional Institution
 4344 Broad River Road
 Columbia, S.C. 29210

Gordon Senerius
 Tenth Circuit Public Defender Office
 Anderson County Office
 301 Camson Road
 Anderson, SC 29625

Re: Case Number: 16-20297

Dear Mr. Senerius

Please take notice of the possible defense stated herein on my behalf. If you have any comments or concerns please feel free to contact me at the address above.

Very truly,

Gerald Akeem Gladson
 Gerald Akeem Gladson,
 Defendant

23 APR 21 PM 12:21:18
 Anderson, SC CO



An accused's right to be represented by counsel is a fundamental component of our criminal justice system. Lawyers in criminal cases "are necessities, not luxuries. Their presence is essential because they are the means through which the other rights of the person on trial are secured. Without counsel, the right to a trial itself would be 'of little avail, as the Supreme Court has recognized repeatedly.' Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have."

The special value of the right to the assistance of counsel explains why "it has long been recognized that the right to counsel is the right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 759, 771, n.14 (1970). The text of the Sixth Amendment itself suggests as much. The Amendment requires not merely the provision of counsel to the accused, but "Assistance", which is to be "for his defense." Thus, "the core purpose of the counsel guarantee was to assure 'Assistance' at trial, when the accused was confronted with the intricacies of the law and the advocacy of the public prosecutor." United States v. Ash, 413 U.S. 300, 309 (1973). If no actual "Assistance" "for" the accused's "defense" is provided, then the constitutional guarantee has been violated. To hold otherwise

"could convert the appointment of counsel into a snare and nothing"

more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment. Avery v. Alabama, 368 U.S. 444, 446 (1940)

Thus, in McMann the Court indicated that the accused is entitled to "a reasonably competent attorney," U.S., at 770, whose advice is "within the range of competence demanded of attorneys in criminal cases." Id., at 771. In Cogler v. Sullivan, 446 U.S. 335 (1980), we held that the Supreme Court that is the Constitution guarantees an accused "adequate legal assistance." Id., at 834. And in Engle v. Isaac, 456 U.S. 107 (1982), the Court referred to the criminal defendant's constitutional guarantee of "a fair trial and a competent attorney." Id., at 134.

The substance of the Constitution's guarantee of the effective assistance of counsel is illuminated by reference to its underlying purpose. Truth, "Lord Eldon said," is best discovered by powerful statements on both sides of the question. This dictum describes the unique strength of our system of criminal justice. "The very promise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." Herring v. New York, 422 U.S. 863, 862 (1975).

It is that "very premise" that underlies and gives meaning to the Sixth Amendment. It "is meant to assure fairness in the adversary criminal process." United States v. Morrison, 449 U.S. 381, 384 (1981) Unless the accused receives the effective assistance of counsel, "a serious risk of injustice infects the trial itself." Cuyler v. Sullivan, 446 U.S., at 343.

Thus, the adversarial process protected by the Sixth Amendment requires that the accused have "counsel acting in the role of an advocate." Anders v. California, 386 U.S. 738, 743 (1967)

The right to the effective assistance of counsel is thus, the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. When a true adversarial criminal trial has been conducted—even if the defense counsel may have made demonstrable errors—the kind of testing envisioned by the Sixth Amendment has occurred. But the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated. As Judge Klyzanski has written: "While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators." United States ex rel. Williams v. Twomey, 510 F.2d 634, 640 (CA7, cert. denied sub nom Sielaff v. Williams, 423 U.S. 876 (1975)).

For the authorities stated above, the Defendant Gerald Allen Gadsden asserts that you assess the possible defense privileged below.

Statement of the Case

The present case revolves around the accusations of Defendant Gerald Allen Gadsden being charged with the offenses of Murder in violation of Section 16-3-10 and Possession of weapon during violent crime Section 16-23-0490 of the South Carolina Code of Laws. Case Number. 16-20297.

Possession of weapon during violent crime. Arrest warrant # 2016A0420700401 reads as follows:

That on April 18, 2016 in the city and county of Anderson, Gerald Allen Gadsden (Defendant) did knowingly and willfully possess and display what appeared to be a firearm during the commission of a violent crime of Murder (Warrant # 2016A0420700400). The Defendant was positively identified by witnesses on scene and through investigative sources as the person committing the said crime. This incident occurred at 335 H St, which is inside the city limits of Anderson SC. (16-20297).

Murder. Arrest Warrant # 2016A0420700400 reads as follows;

page 4

ROYAL CANADIAN MOUNTED POLICE Schedule January - June 2019

ENI Statutes

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17-24-10. Affirmative defense

(A) It is an affirmative defense to a Prosecution for a crime that, at the time of the commission of the act constituting the offense the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. (B.)

(B) The defendant has the burden of proving the defense of insanity by a preponderance of the evidence. (C.)

(C) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish the defense of insanity.

History: 1984 Act No. 396, 34; 1989 Act No. 323 § 1; 1989 Act No. 93, 31

** Elizabeth Ringold, NP

Roxanne Larouche, NP

**= Holidays

That on April 18, 2016 in the city and county of Anderson, SC Gerald Akem Gledson (Defendant) did, with malice and aforethought, cause the death of Chance Tate (Victim) by shooting Victim multiple times with a black in color handgun, killing the victim. Defendant was positively identified by witnesses on scene and through the investigative sources as the person committing the said crime. This incident occurred at 325 H St, which is inside the city limits of Anderson SC.

Both warrants are signed affiant. Carla Roberson.

Arguments Possible Defense

I. WHETHER DEFENDANT HAD CAPACITY TO UNDERSTAND AND CONTROL HIS CONDUCT AT THE TIME OF THE COMMISSION OF THE OFFENSE.

Defendant Gerald Akem Gledson compels trial attorney to move the court to determine by examination of psychiatrist not only his competency to stand trial, but in addition his mental capacity to commit the offense alleged under 18 U.S.C. § 4244.

18 U.S.C. § 4244 states:

Whenever after arrest and prior to the imposition of sentence or prior to the United States Attorney has reasonable cause

to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or property to assist in his own defense. He shall file a motion for a judicial determination of such mental competence of the accused, setting forth the ground for such belief with the trial court in which the trial court in which proceedings are pending. Upon such a motion or upon a similar motion in behalf of the accused or upon his own motion, the court shall cause the accused, whether or not previously admitted thereto, to be examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court.

Defendant contends although this is not an federal ~~case~~ the issues of question are still at hand.

- 1.) ^{is} ~~is~~ defendant competent to stand trial?
- 2) Did defendant lack criminal responsibility?

The question above can only be determined by evaluation of defendant by psychiatrist through motion by trial court.

In determining the sufficiency of a psychiatrist's findings, this Court has recognized that "Even claim that the defendant was not criminally responsible, unlike competence to stand trial is unconcerned with the defendant's understanding of his situation at the time of trial, but is directed entirely to his capacity to understand and control his conduct at the time of the commission of the offense." (Emphases supplied) United States v. Taylor, 437 F.2d 371, 375 (4th Cir. 1971).

In, United States v. Walker, 537 F.2d 1192 (1976).

The fact that Walker exhibited a sufficient present ability to understand the nature of the charges brought against him does not answer the entirely different question of whether he has the capacity to understand and control his conduct at the time of the commission of the offense. The one question may have little bearing upon the other, and defendant's who may not be held criminally responsible for their unlawful acts are clearly competent to stand trial.

This Court further recognized in Taylor that "unlike a determination of competence to stand trial, which focuses on a limited aspect of a defendant's present mental condition an inquiry in possible lack of criminal responsibility at the time of the offense involves a complex evaluation of

his total personality at a previous point in time. It requires that the expert have a substantial opportunity to observe the defendant and his mental processes. 437 F.2d at 378 (emphasis added).

Upon review of Medical Record, defendant Gerardo Alonzo Cordero has a very long and extensive history of suffering from mental illness that would be detrimental to ignore after examining the facts of this instant case. Dating back since 1971 Cordero has been involuntarily and voluntarily committed constantly to the Institute of Psychiatry for schizophrenia. As to date in present time Cordero is incarcerated in the South Carolina Department of Corrections in a mental health program receiving treatment for the illnesses of Schizophrenia Disorder and Antisocial personality disorder. Record shows that defendant received an evaluation was done on Cordero for competence to stand trial for the charges. He currently is serving time for. To this day Cordero claims no innocence upon those charges. The aforementioned illnesses above should be carefully reported and taken into consideration when viewing the totality of the current facts we have at this point. Because Cordero was suffering from mental illness on the street and released hours prior to the alleged crimes. He should be observed for mental capacity and competence. Upon that court order.

Thank you and Good Day

28 DEC 27 PM 4:27:27
Anderson, SC COC, CP/66

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

Gerald Akeem Gadsden, SCDC #327003,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2020-CP-04-2431

**ORDER GRANTING BELATED
APPELLATE REVIEW AND DENYING
ALL OTHER ALLEGATIONS**

This matter comes before this Court by way of post-conviction relief action commenced by Applicant Gerald Akeem Gadsden on December 10, 2020. Respondent, the State of South Carolina, made its Return on July 26, 2021, requesting an evidentiary hearing to resolve the claims as set forth in the application. On February 15, 2023, Applicant, through appointed counsel, Don A. Thompson, Esquire, filed a Supplemental Application asserting an additional allegation of ineffective assistance of counsel. An evidentiary hearing was convened on March 2, 2023, at the Anderson County Courthouse before the Honorable Perry H. Gravely. Applicant was present and was represented by Assistant Public Defender Don A. Thompson, Attorney. Assistant Attorney General Taylor Zane Smith represented the State. In support of these claims, Applicant testified on his own behalf at the hearing. Assistant Public Defender Gordon Allan Senerius, Esquire (Plea Counsel), also testified at the evidentiary hearing.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief, other than failure to perfect applicant's appeal as discussed herein, and, accordingly, denies and dismisses this action with prejudice.



PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. Applicant was arrested on April 19, 2016, following an investigation into the shooting death of Chance Tate, which occurred the day prior. During its September 2016, term the Anderson County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2016-GS-04-1758). On January 8, 2020, Applicant appeared before the Honorable J. Cordell Maddox, Jr., and entered an Alford¹ plea to the lesser-included offense of voluntary manslaughter.

The State dropped the weapons charge in exchange for Applicant's plea. Assistant Public Defender Gordon Allan Senerius represented Applicant. Tenth Circuit Deputy Solicitor Catherine Townsend Huey and Assistant Solicitor Stan Lee Overby, Jr., prosecuted the case. The State recommended a twenty-year sentence to run concurrent to Applicant's sentence of life without parole (LWOP) that Applicant is currently serving on an unrelated charge in Greenville County. Following the State's recommendation, Judge Maddox sentenced Applicant to twenty years' imprisonment to run concurrent with the Greenville sentence.

Applicant filed a timely notice of appeal. On March 10, 2020, the Court of Appeals requested Plea Counsel forward the guilty plea explanation to Applicant and inform him he had twenty days to notify the Court in writing of any arguable basis that there are issues preserved for appeal. Plea Counsel failed to provide the Court with any indication that Applicant was served with the guilty plea explanation pursuant to Rule 203(d)(1)(B)(iv), SCACR, and Applicant's appeal was dismissed. The case was remitted back to the circuit court on November 9, 2020.

¹ North Carolina v. Alford, 400 U.S. 25, 31 (1970).

FACTS GIVING RISE TO THE PLEA

The facts giving rise to Applicant's plea were articulated by Solicitor Huey at Applicant's plea hearing, as follows:

MS. HUEY: Thank you, Judge. This offense occurred on April 18th of 2016 at around 9:30 at night. APD officers were dispatched to 325 H Street in Anderson city. When they arrived, they found the victim lying in the roadway next to a vehicle. He had a gunshot wound to his head. Detectives began to interview individuals who had been there, and they, of course, identified the defendant, Gerald Gadsden, as the shooter. The shooter, Gerald Gadsden, took off running. He ended up calling his bondsman and confessing to this incident to the bondsman, and he was arrested a short time later.

(Plea Tr. p. 13, ll. 13-25).

CURRENT APPLICATION

In his original PCR application, Applicant alleged that he is being held in custody unlawfully based on the following (excerpted verbatim):

1. Ineffective Assistance of Counsel
 - a. "Ineffective counsel do to not requesting a psychological evaluation."

Applicant filed an amended application alleging he is being held in custody unlawfully on the following additional grounds (excerpted verbatim):

1. Ineffective Assistance of Counsel
 - b. "...[A]pplicant instructed counsel to file an appeal in this matter. Counsel initiated the appeal but failed to take actions necessary to perfect the appeal thereby causing the Sout Carolina Court of Appeals to dismiss [A]pplicant's appeal."

At the evidentiary hearing, Applicant raised two additional allegations: Plea Counsel was ineffective for failing to investigate whether Applicant was criminally responsible, and involuntary guilty plea due to mental condition.



Before this Court are Applicant's application for PCR, Applicant's amended PCR application, the Anderson County Clerk of Court general sessions records from the underlying conviction, the transcript from Applicant's plea hearing, Applicant's complete records from his appeal, Applicant's records from the South Carolina Department of Corrections, and the records of this PCR action.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief, except Applicant's allegation regarding Plea Counsel's failure to perfect his appeal. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

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



INEFFECTIVE ASSISTANCE OF PLEA COUNSEL, GENERALLY

Applicant alleged Plea Counsel provided ineffective assistance of counsel. The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must



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

This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

INVOLUNTARY GUILTY PLEA

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

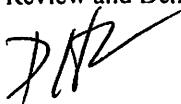


Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea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

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of Plea Counsel rendering his guilty plea involuntary and finds Applicant's plea was freely and voluntarily given. The specific claims are addressed below:

INITIAL FINDINGS BASED ON THE RECORD

This Court makes the following initial findings from the record: 1) Applicant was not on any medication at the time of his plea hearing, but had previously been on medication (Plea Tr. pp. 3, 14-15); 2) Applicant had been diagnosed with schizophrenia and bipolar (Plea Tr. p. 3); 3) Plea Counsel believed Applicant to be competent at the time of Applicant's plea (Plea Tr. pp. 3-4); 4) Applicant had previously been found not competent but restorable in the Greenville action, and Applicant's competency was restored (Plea Tr. p. 4); 5) Applicant understood he was pleading to voluntary manslaughter with a recommended sentence of twenty years to be served concurrent to his life sentence (Plea Tr. p. 4); 6) No one had threatened or forced Applicant into pleading guilty (Plea Tr. pp. 4, 5); 7) Applicant understood Judge Maddox could reject the recommendation and sentence Applicant to a maximum of thirty years for voluntary manslaughter (Plea Tr. p. 4); 8) Applicant waived his constitutional right to a jury, his right to remain silent, and his right to put up a defense (Plea Tr. pp. 4-5); 9) Applicant had enough time to speak with Plea Counsel prior



to his plea, and was satisfied with Plea Counsel's representation of him (Plea Tr. pp. 5, 8); 10) Applicant informed Judge Maddox he had been released 72 hours before the incident from MUSC mental institution and he was not in his "right mind" when he committed the crime (Plea Tr. p. 6); 11) Applicant waived a possible conflict of interest with Judge Maddox (Plea Tr. pp. 6-8); 12) Applicant informed the court he did not believe he was guilty of voluntary manslaughter (Plea Tr. p. 9); 13) Judge Maddox called a recess to allow Plea Counsel to speak with Applicant (Plea Tr. p. 9); 14) After the recess, Judge Maddox, Solicitor Overby, and Plea Counsel discussed the possibility of continuing Applicant's plea as an Alford plea for voluntary manslaughter, as Applicant had issue with his competency at the time of the incident, and another recess (Plea Tr. pp. 10-11); 15) After discussions, there was an hour long recess, in which Plea Counsel explained to Applicant what an Alford plea was (Plea Tr. pp. 11-12); 15) Applicant understood what an Alford plea was (Plea Tr. p. 12); 16) Plea Counsel informed Judge Maddox Applicant's competency evaluations were done during his Greenville case and no testing had been done in Anderson County, but Plea Counsel had no reason to believe Applicant had become incompetent since then (Plea Tr. p. 14); 17) Judge Maddox found Applicant appeared competent to plea and accepted Applicant's Alford plea (Plea Tr. p. 16).

ALLEGATIONS RAISED IN THE APPLICATION

Allegation: Plea Counsel was ineffective for failing to request Applicant undergo a psychological evaluation.

Applicant alleged Plea Counsel was ineffective for failing to request Applicant be psychologically evaluated to determine if he was competent at the time of his plea.

"Before a defendant may plead guilty, it must be established that the defendant is competent and that the defendant's decision to plead guilty is a knowing and voluntary one."

Garren v. State, 423 S.C. 1, 813 S.E.2d 704 (2018); See Sims v. State, 313 S.C. 420, 423-24, 438



S.E.2d 253, 254–55 (1993). A defendant is competent to plea if he has “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding-and whether he has a rational as well as factual understanding of the proceedings against him.” Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980), citing Dusky v. United States, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960). Counsel will not be found deficient where they reasonably relied on their perceptions of a defendant’s competency in determining if an evaluation was necessary. Garren v. State, 423 S.C. 1, 813 S.E.2d 704 (2018); Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992) (finding counsel acted reasonably in relying on his own perceptions of a defendant’s competency)). To prove prejudice from counsel’s failure, applicant must show there is a reasonable probability he would have been deemed incompetent at the time of his plea. Jeter, 308 S.C. at 233–34, 417 S.E.2d at 596.

On direct examination, Applicant testified he started receiving treatment for his mental illness at age thirteen and has been placed in a mental institution about seven times. (PCR Tr. p. 8). Applicant testified he was not on medication when he committed the crime, and he received a competency evaluation before going to court in Greenville. (PCR Tr. pp. 8-9). Applicant testified he took Depakote and Haldol for his schizophrenia and bipolar but went without his medication for almost two months, leading to his Greenville case. (PCR Tr. pp. 11-12). Applicant testified he was on medication at the evidentiary hearing and had been taking it regularly since his incarceration. (PCR Tr. p. 13). Applicant did not provide any additional testimony or evidence to show he was incompetent at the time of his plea.

On direct examination, Plea Counsel testified Applicant informed him of his mental health issues, but he did not have Applicant’s competency evaluated because Applicant appeared competent to him. (PCR Tr. pp. 23-24). Plea Counsel testified he would have requested an



evaluation of Applicant by the Department of Mental Health if he believed Applicant was not competent, and he has requested such evaluations before. (PCR Tr. p. 24). Plea Counsel testified if Applicant had failed to engage in discussions or ask questions it would have raised red flags concerning his competency, but Applicant seemed to understand everything Plea Counsel told him and asked pertinent questions. (PCR Tr. pp. 24-25). Plea Counsel testified that he would not have let Applicant enter a plea if he believed Applicant did not understand what was going on. (PCR Tr. p. 26).

On cross-examination, Plea Counsel testified he assumed Applicant was on medication at the time of his plea because he was competent when Plea Counsel spoke with Applicant. (PCR Tr. pp. 33, 36). Plea Counsel testified at the time of Applicant's plea he did not have any questions concerning Applicant's competency and Judge Maddox did not have concerns either. Also, Plea Counsel testified that at any time during the hearing, if Judge Maddox had concerns, he could have *sua sponte* ordered an evaluation of Applicant. (PCR Tr. pp. 36-37).

On re-direct, Plea Counsel testified he believed he would have known whether or not Applicant was taking his medication, but he could not recall. (PCR Tr. p. 37).

Respondent admitted two letters written by Applicant to Plea Counsel before Applicant's plea, wherein Applicant advised Plea Counsel about possible defenses he may have, including: Applicant's competency to stand trial and whether Applicant was criminally responsible. (Res. Ex. 1 and 2). Specifically, in the letter dated March 1, 2018, Applicant inquired if he could plead insanity as he, "Wasn't fully aware of [his] mental condition during the act of the crime." (Res. Ex. 1). Additionally, Applicant stated evidence existed that there were other shell casings at the scene of the crime. (Res. Ex. 1). In his second letter, Applicant essentially created a memorandum, citing case law, and argued he should be psychologically evaluated to determine his competency



to stand trial and whether he was criminally responsible. (Res. Ex. 2). Both of these letters were obtained from Plea Counsel's file of Applicant's case.

This Court finds based on the combination of Plea Counsel's persuasive testimony, the record, and Respondent's exhibits that Plea Counsel was not deficient for failing to request a competency evaluation on Applicant. Plea Counsel reasonably relied on Applicant's Greenville evaluation finding his competency had been restored and Plea Counsel's own perceptions of Applicant's mental state during the course of his representation. See Jeter, 308 S.C. 230, 417 S.E.2d 594 (Counsel was not ineffective for failing to request mental examination of defendant which might have formed basis of insanity defense or determination that defendant was not competent to stand trial; trial counsel reasonably relied on his own perceptions that defendant was not mentally deficient, particularly since counsel was familiar with defendant from previous representation and further family never raised their concerns regarding competency to defense attorney); Cf. Ramirez v. State, 419 S.C. 14, 795 S.E.2d 841 (2017) (Plea counsel's deficient performance in failing to request additional competency evaluation prejudiced defendant, and thus amounted to ineffective assistance of defendant who applied for post-conviction relief; even though there was some evidence to support conclusion that defendant was competent to stand trial, there was reasonable probability that defendant was incompetent at time of his plea, based on psychological examination report and counsel's interactions with defendant).

However, even if this Court found Plea Counsel deficient, Applicant could not show resulting prejudice from Plea Counsel's failure to request a psychological evaluation. Plea Counsel credibly testified at the evidentiary hearing that, based on his perceptions, Applicant was competent at the time of his plea. Plea Counsel testified he had fruitful discussions with Applicant, and Applicant asked pertinent questions. The record of the plea hearing supports Plea Counsel's



testimony, considering Applicant was responsive to the plea court's questioning and participated in discussions regarding the proceedings. Additionally, Respondent admitted two letters written by Applicant evidencing Applicant was aware of the charges against him and actively participated in his case. (Res. Ex. 1 and 2). Notably, Judge Maddox stated Applicant seemed to understand what was taking place during his plea, and there was an order before the plea court stating Applicant's competency had been restored. State v. Motts, 391 S.C. 635, 707 S.E.2d 804 (2011) (A presumption of continued competency arises from a prior finding of competency).

Furthermore, Applicant relied solely on his diagnosis of schizophrenia and bipolar disorder and the fact he was not taking his medication at the time of his plea, to support his contention he was incompetent at the time of his plea. Sellers v. State, 362 S.C. 182, 607 S.E.2d 82 (2005), abrogated by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) ("A witness's mental illness is not enough to rebut the presumption set forth in Rule 601, SCORE.")). Applicant has failed to present testimony or other evidence that would overcome the presumption he was competent at the time of his plea. Jeter, 308 S.C. at 232, 417 S.E.2d at 596 (In a PCR action, the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea); See Rule 71.2(e), SCRCP.

Therefore, this Court finds Plea Counsel was not deficient in failing to request Applicant undergo a psychological examination prior to his plea. Accordingly, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation: Plea Counsel was ineffective for failing to perfect Applicant's appeal, denying Applicant of his constitutional rights to appeal.

Applicant alleged he was denied his right to appeal because Plea Counsel failed to perfect his appeal.

"Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). "However, the standard for a guilty plea differs." Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). "Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Id.; See Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000). Where an applicant's appeal is dismissed due to counsel's failure to comply with the local rules, an applicant is entitled to a new appeal. Roe, 528 U.S. at 485, citing Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985).

On direct examination, Applicant testified he requested Plea Counsel file an appeal on his behalf on the grounds Plea Counsel was ineffective for failing to have Applicant undergo a mental health evaluation in Anderson County prior to his plea. (PCR Tr. pp. 15-16). Applicant testified he received mail informing him Plea Counsel failed to fill out certain paperwork, but he never received a letter or request that he needed to provide certain information. (PCR Tr. pp. 16-17).

On direct examination, Plea Counsel testified he provided a guilty plea explanation to the Court of Appeals as required under Rule 203. (PCR Tr. pp. 26-27). Plea Counsel testified he could not recall personally forwarding the guilty plea explanation to Applicant, but stated the

paralegal should have forwarded it to Applicant as it is the standard practice. (PCR Tr. p. 27). Plea Counsel testified he could not find anything in his file indicating a copy of the guilty plea explanation was forwarded to Applicant, and he is merely assuming it was sent to Applicant. (PCR Tr. pp. 27-28).

On cross-examination, Plea Counsel testified he did not recall his conversation with Assistant Attorney General Lilian Meadows in February 2021, where he informed her he found the letter he was supposed to send to Applicant under some paperwork on his desk and he had forgotten to send it to Applicant. (PCR Tr. pp. 29-30). At the conclusion of the hearing, Respondent conceded Applicant did not knowingly and voluntarily waive his rights to appeal.

Therefore, this Court finds Plea Counsel failed to comply with the rules, resulting in the dismissal of Applicant's appeal and denying Applicant his constitutional right to appeal. Accordingly, this Court finds Applicant is entitled to belated appellate review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), and relief by way of this allegation is **GRANTED**.

ALLEGATIONS RAISED DURING THE EVIDENTIARY HEARING

Allegation: Involuntary guilty plea due to mental condition.

Applicant alleged his plea was not given freely and voluntarily because he did not understand what he was pleading to because of his mental condition.

On direct examination, Applicant testified he understood he was pleading to voluntary manslaughter, but he requested to plead to involuntary manslaughter. (PCR Tr. pp. 13-14). Applicant then testified he believed he was testifying to involuntary manslaughter. (PCR Tr. p. 14). Applicant testified he did not understand he was pleading to a twenty-year sentence, did not fully understand what he was pleading to, and did not fully understand the consequences of his plea. (PCR Tr. p. 15). Applicant testified he told Plea Counsel he was not on his medication at



the time of his plea. (PCR Tr. p. 15). Applicant testified that Plea Counsel was aware of his mental health issues. (PCR Tr. p. 16).

On cross-examination, Applicant testified that he wanted to plead to involuntary manslaughter and not voluntary manslaughter, but he understood what he was pleading to. (PCR Tr. pp. 18-19).

As an initial matter, this Court finds Applicant understood the consequences of his plea and the charges against him, as evidenced by the record of Applicant's plea hearing. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)) (Statements made during a guilty plea should be considered conclusive unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements))). Notably, Applicant testified at the evidentiary hearing he understood he pled to voluntary manslaughter, but that he *requested* to plead to involuntary manslaughter; evidencing Applicant understood his plea proceedings. Additionally, this Court has found Applicant was competent at the time of his plea even though he was not taking his medication at the time, *supra*

Therefore, this Court finds Applicant's plea was freely, voluntarily, and intelligently given. Accordingly, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation: Plea Counsel was ineffective for failing to investigate and request psychological evaluation to determine if Applicant was criminally responsible.

Applicant alleged Plea Counsel was ineffective for failing to investigate whether Applicant was criminally responsible for shooting the victim, and Plea Counsel should have requested Applicant be psychologically evaluated to determine his criminal responsibility.

Strickland v. Washington makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."

466 U.S. 668, 691 (1984). “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, this duty is limited to a reasonable investigation. Id. at 331, 642 S.E.2d at 597.

Further, to prevail on a claim of ineffective assistance based on failure to investigate, a PCR applicant must ordinarily present some probative evidence that could have been discovered by a more thorough investigation. See Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court’s grant of relief where the applicant failed to “present any evidence of what counsel could have discovered or what other defenses he would have requested had counsel more fully prepared for the trial”); Lee v. State, 396 S.C. 314, 721 S.E.2d 442 (Ct. App. 2011) (“To show “prejudice within the context of counsel’s failure to fully investigate the petitioner’s mental capacity, ‘the [petitioner] need only show a reasonable probability that he was either insane at the time [the crime was committed] or incompetent at the time of the plea.’”)).

A person is insane if, due to mental disease or defect, he lacks the capacity: (1) to distinguish moral or legal right from moral or legal wrong, or (2) to recognize the particular act charged as morally or legally wrong. State v. Grimes, 292 S.C. 204, 205, 355 S.E.2d 538 (1987); S.C. Code § 17-24-10(A). The primary focus of the insanity defense is on the act charged. Grimes, 292 S.C. at 205, 355 S.E.2d at 539.

On direct examination, Applicant testified he was released from a mental institution, MUSC, 72 hours before committing the crime. (PCR Tr. p. 11). Applicant testified he was not on his medication from the time of his release to the date of his plea hearing. (PCR Tr. p. 11).

On direct examination, Plea Counsel testified he discussed Applicant's mental health issues, and the treatment Applicant was in. (PCR Tr. p. 23). Plea Counsel testified he does not recall discussing the timeline of events from the night of the incident, specifically when Applicant was released from MUSC to when the incident occurred. (PCR Tr. p. 25).

On cross-examination, Plea Counsel testified he did not check for criminal responsibility because Applicant appeared to be competent and understood what was going on. (PCR Tr. pp. 33-35). Plea Counsel testified he did not recall the specifics of Applicant's version of the events the night of the incident, but that Applicant did not deny he did it and he had no question about Applicant's competency. (PCR Tr. p. 38).

The facts of Applicant's case indicate the victim had a gunshot wound to the head, and upon investigation, detectives identified the shooter as Applicant. Applicant fled from the scene of the shooting and confessed that he shot the victim to his bondsman. Applicant was arrested a short time later. (Plea Tr. p. 13).

This Court finds Plea Counsel was not ineffective for failing to investigate Applicant's criminal responsibility and failing to request an evaluation to determine if Applicant was criminally responsible. Applicant failed to present probative evidence at the evidentiary hearing of what Plea Counsel could have discovered through a more thorough investigation. Applicant merely desires this Court to infer he was not criminally responsible because he was confined in a mental institution at MUSC days prior to the shooting. Notably, Applicant did not provide documentation regarding his confinement, why he was released, and any evaluations done while



he was at MUSC. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (“The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.”). Additionally, the testimony Applicant presented does not establish a reasonable probability Applicant was insane at the time of the incident. Moreover, the facts of Applicant’s case indicate he understood what he did was either morally or legally wrong, as Applicant fled the scene. State v. Poindexter, 314 S.C. 490, 431 S.E.2d 254 (1993) (Jury could deduce from lay testimony defendant fled state after murder and defendant appeared normal after murder that defendant was not insane, even where expert testimony favored findings defendant was insane)); See State v. Lewis, 328 S.C. 273, 494 S.E.2d 115 (1997); United States v. Jones, 601 F. App’x 297 (5th Cir. 2015) (District court did not err in rejecting robbery defendant’s insanity defense; witnesses testified that defendant fled from scene of his offenses, indicating consciousness of guilt, and defendant concealed evidence of his offenses)).

Therefore, Plea Counsel was not ineffective for failing to investigate Applicant’s criminal responsibility, and thus Plea Counsel was not ineffective for failing to request evaluation of Applicant’s criminal responsibility. Accordingly, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

[CONCLUSION AND SIGNATURE ON FOLLOWING PAGE]



CONCLUSION

Based on the evidence presented at the PCR hearing and a thorough review of the record before this Court, this Court finds Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief, except for Applicant's allegation regarding Plea Counsel's failure to perfect his appeal. Therefore, this application is denied and dismissed with prejudice, and Applicant's request for belated review is granted.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203 SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The applicant is granted a belated appellate review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).
2. The balance of the application for post-conviction relief be denied and dismissed with prejudice; and
3. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15th day of Dec., 2023.

'23 DEC 27 PM 4:27:55
Anderson, SCCDC, CP/GS

Pickens, South Carolina


HONORABLE PERRY H. GRAVELY
Presiding Circuit Court Judge
Tenth Judicial Circuit

WITNESSES

Anderson Police Dept.
Carla Roberson

ARREST WARRANT NUMBER

NIP PWDCRC - serving time
COUNT ONE 2016A0420700400 other
COUNT TWO 2016A0420700401
Catherine J. Huey 01.08.20

ACTION OF GRAND JURY

TRUE BILL

SEP 13 2016

Foreperson of Grand Jury
Date: *[Signature]*
Foreperson

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2016-GS-04- 01758

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS
SEP 13 2016, TERM

THE STATE

VS.

GERALD AKEEM GADSDEN

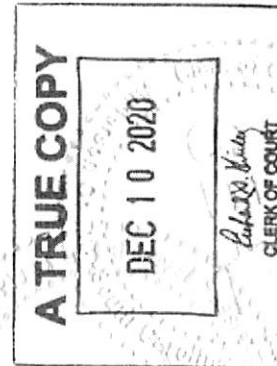
INDICTMENT FOR

COUNT ONE - MURDER

SC Code: § 16-03-0010
CDR Code: 0116

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

SC Code: § 16-23-0490
CDR Code: 0549



COMMITMENT
SEP 18 2020 - RT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on SEP 13 2016, the
Grand Jurors of Anderson County present upon their oath:

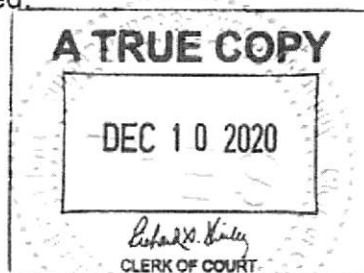
COUNT ONE - MURDER

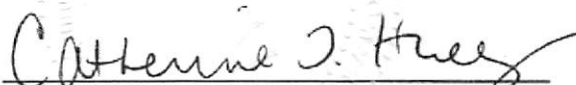
That Gerald Akeem Gadsden did in Anderson County, on or about on or about April 18, 2016, unlawfully and with malice aforethought, either express or implied, kill Chance Tate by means of by shooting the victim with a firearm, and the victim died as a proximate result thereof. All in violation of §16-3-10, *South Carolina Code of Laws* (1976, as amended).

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

The defendant, Gerald Akeem Gadsden, did, on or about on or about April 18, 2016, in Anderson County, South Carolina, while committing the crime of Murder, a crime of violence, have in his possession a firearm. All in violation of 16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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




CATHERINE T. HUEY
SR. CAREER PROSECUTOR

COUNTY OF ANDERSON
STATE VS.GERALD AKEEM GADSDEN

AKA:

Race: Black Sex: M Age: 29DOB: 1/1990 SS#: Address: Bay DrCity, State, Zip: Saint Stephen, SC 29479-3233DL# SID# INDICTMENT/CASE#: 2016GS0401758
AW: 2016A0420700400
Date of Offense: 04/18/2016
S.C. Code §: 16-03-0050
CDR Code #: 0217

SENTENCE SHEET

*CQL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Voluntary Manslaughter (30)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 1st or CSC w/minor 3rd)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:

Catherine T. Huey 68416
Catherine T. Huey, Deputy Solicitor SC Bar #Gerald A. Gadsden
Defendant20yrz. cnc.
8670
Attorney for Defendant SC Bar # LW01WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 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: Grant SCDC Life Sentence☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SC Department of Corrections 1,309 days (30)☐ 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: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (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) \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: Richard A. HileyCourt Reporter: D. Marcenillo

SCCA/217 (04/2018)

A TRUE COPY
Public Service Employment

DEC 10 2020

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

CLERK OF COURT

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: Defendant shall receive all medical health services which are needed☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: R. HileyJudge Code: #2131Sentence Date: 11/8/2020