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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable R. Scott Sprouse, Circuit Court Judge

TYQUEZ GYTRELL BRISBANE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000626

APPENDIX

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INDICTMENT105

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
-VS-)
)
TYQUEZ GYTRELL BRISBANE,)
)
DEFENDANT.)
_____)

2021-GS-23-01451

TRANSCRIPT OF RECORD

DECEMBER 6, 2022
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEX KINLAW, JR.

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

ATTORNEY FOR PLAINTIFF:

JENNA H. McLEOD, ASST. SOL.

ATTORNEY FOR DEFENDANT:

RYAN L. BEASLEY, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No exhibits were presented to the court reporter to be marked during this hearing)

1 **MADAM CLERK:** Your Honor, this is case number 2021-GS-23-
2 1451, the State versus Tyquez Brisbane, indicted for murder
3 and possession of a weapon during the commission of a violent
4 crime, pleading to voluntary manslaughter. And it's a true
5 bill.

6 Please raise your right hand. Do you swear to tell the
7 truth, the whole truth and nothing but the truth so help you
8 God?

9 **MR. BRISBANE:** Yes, ma'am.

10 **MADAM CLERK:** Thank you.

11 **THE COURT:** All right. Mr. Brisbane, I need you to speak
12 into that microphone so I can hear you as well as the court
13 reporter. Your full name is Tyquez, T-y-q-u-e-z, Gytrell
14 Brisbane, is that right?

15 **MR. BRISBANE:** Yes, Your Honor.

16 **THE COURT:** You are 19 years of age?

17 **MR. BRISBANE:** Twenty years of age.

18 **THE COURT:** You're 20 now? All right.

19 Are you married?

20 **MR. BRISBANE:** No, sir.

21 **THE COURT:** Do you have children?

22 **MR. BRISBANE:** No, sir.

23 **THE COURT:** How far did you go in school?

24 **MR. BRISBANE:** High school.

25 **THE COURT:** Graduated?

1 **MR. BRISBANE:** No, sir.

2 **THE COURT:** What grade level?

3 **MR. BRISBANE:** Tenth.

4 **THE COURT:** All right. And you understand why you're
5 here?

6 **MR. BRISBANE:** Yes, Your Honor.

7 **THE COURT:** All right. Mr. Ryan Beasley is your
8 attorney?

9 **MR. BRISBANE:** Yes, Your Honor.

10 **THE COURT:** You satisfied with his services?

11 **MR. BRISBANE:** Yes, Your Honor.

12 **THE COURT:** You have any complaints to make against your
13 lawyer, the solicitor's office or anybody?

14 **MR. BRISBANE:** No, Your Honor.

15 **THE COURT:** All right. I have an indictment in front of
16 me that ends in 1451 that charges you with voluntary
17 manslaughter. This indictment alleges that this incident
18 alleged in this offense occurred in Greenville County on the
19 21st day of May of 2020 involving the victim Andre Dunbar. Do
20 you recall that?

21 **MR. BRISBANE:** Yes, Your Honor.

22 **THE COURT:** All right. And this is a 30 year sentence?

23 **MS. McLEOD:** Yes, Your Honor.

24 **THE COURT:** You understand I can give you up to 30 years
25 on this particular offense?

1 **MR. BRISBANE:** Yes, Your Honor.

2 **THE COURT:** Understanding that, you still want to plead
3 guilty to it?

4 **MR. BRISBANE:** Yes, Your Honor.

5 **THE COURT:** Are you under the influence of anything at
6 all that may impact your judgment?

7 **MR. BRISBANE:** No, Your Honor.

8 **THE COURT:** You're clear-minded and you understand what
9 you are doing?

10 **MR. BRISBANE:** Yes, Your Honor.

11 **THE COURT:** All right. Did you tell your lawyer, Mr.
12 Beasley, everything you know about this case?

13 **MR. BRISBANE:** Yes, Your Honor.

14 **THE COURT:** Did you have a good discussion with him?

15 **MR. BRISBANE:** Yes, Your Honor.

16 **THE COURT:** All right. Did he go over the potential
17 penalties with you?

18 **MR. BRISBANE:** Yes, Your Honor.

19 **THE COURT:** Did he go over the elements of what the State
20 would have to prove if this matter went to trial?

21 **MR. BRISBANE:** Yes, Your Honor.

22 **THE COURT:** All right. Did he also have a discussion
23 with you, the fact that once you come before the Court and
24 enter a knowing and intelligent decision to plead guilty, you
25 give up certain constitutional protections? Let me tell you

1 ---

2 **MR. BRISBANE:** Yes, Your Honor.

3 **THE COURT:** --- what they are. You give up your right to
4 a trial. You're not afforded an opportunity to have a trial
5 once you plead guilty. You understand that?

6 **MR. BRISBANE:** Yes, Your Honor.

7 **THE COURT:** You give up your right to remain silent. You
8 understand that?

9 **MR. BRISBANE:** Yes, Your Honor.

10 **THE COURT:** Thirdly, you give up your right to confront
11 any witnesses that the State may have against you as it
12 relates to this indictment. You understand ---

13 **MR. BRISBANE:** Yes, Your Honor.

14 **THE COURT:** Lastly, you give up your right to assert any
15 defenses that you may have as it relates to this indictment.
16 So any defenses that you may have, you no longer have them
17 when you decide to plead guilty. You understand that?

18 **MR. BRISBANE:** Yes, Your Honor.

19 **THE COURT:** Okay. Do you understand all of my questions?

20 **MR. BRISBANE:** Yes, Your Honor.

21 **THE COURT:** All right. So your decision to waive those
22 constitutional protections, is that your decision?

23 **MR. BRISBANE:** Yes, Your Honor.

24 **THE COURT:** And do you want to move forward with this
25 guilty plea?

1 **MR. BRISBANE:** Yes, Your Honor.

2 **THE COURT:** All right. The solicitor -- Madam Solicitor
3 is going to tell me about the facts of the case, your prior
4 record and whether or not there's a recommendation or might
5 not be a recommendation. But if there was one, I don't have
6 to follow that. I can do what I think is appropriate. Do you
7 understand that?

8 **MR. BRISBANE:** Yes, Your Honor.

9 **THE COURT:** All right. Do you have any questions about
10 anything I just asked you?

11 **MR. BRISBANE:** No, Your Honor.

12 **THE COURT:** And do you understand that you have ten days
13 to appeal any guilty plea?

14 **MR. BRISBANE:** Yes, Your Honor.

15 **THE COURT:** All right. And you don't need any additional
16 time to speak with your lawyer, Mr. Beasley?

17 **MR. BRISBANE:** No, Your Honor.

18 **THE COURT:** All right.

19 **MS. McLEOD:** Your Honor, I wasn't sure if you wanted to
20 go over the fact that it's violent and most serious with him.

21 **THE COURT:** Yes. The indictment, Mr. Brisbane, indicates
22 that this is a violent and most serious offense. You
23 understand that?

24 **MR. BRISBANE:** Yes, Your Honor.

25 **THE COURT:** Did you discuss the ramifications of this

1 with your lawyer, Mr. Beasley?

2 **MR. BRISBANE:** Yes, Your Honor.

3 **THE COURT:** And you've understood the discussions with
4 him about the seriousness of this?

5 **MR. BRISBANE:** Yes, Your Honor.

6 **THE COURT:** All right. Do you have any questions of him
7 or me about any of that?

8 **MR. BRISBANE:** No, Your Honor.

9 **THE COURT:** Okay.

10 All right. Go ahead.

11 **MS. McLEOD:** Thank you, Your Honor. May it please the
12 Court? Jenna Hendricks McLeod on behalf of the State.

13 This defendant has 738 days in jail. On May 21st, 2020
14 officers responded to a primary and secondary incident
15 location due to a homicide in Greenville County. The
16 defendant and victim had made contact via text message about
17 the victim purchasing a gun from the defendant.

18 The defendant and the victim, Andre Dunbar, arranged a
19 meeting at the primary incident location in Greenville County.
20 The defendant arrived in a white truck. The victim and his
21 cousin, the witness in this case, arrived in the victim's
22 white Hyundai with the victim driving.

23 The defendant got into the backseat of the car and they
24 began to argue about the price of the gun when the victim
25 refused to give the defendant the money. The defendant got

1 out of the car and fired two shots at the victim striking him
2 through the seat in his back.

3 The victim hit the gas and sped across Augusta Road to
4 the secondary location where he crashed through two fences.
5 The victim died nearly immediately from his wounds.

6 This defendant has no prior record. This is a straight-
7 up plea, but the State is asking for the maximum 30 sentence
8 based -- 30 year sentence based on the heinous nature of the
9 crime.

10 And we do have victims present that would like to speak
11 at the appropriate time. We have the victim and witness who
12 was in the car, Alex Young, his mother and then our deceased
13 victim Andre Dunbar's mother, who's Consuelo Dunbar.

14 **THE COURT:** Question; The gun that was used, was that the
15 gun that was going to be purchased or was that the gun
16 belonging to the defendant?

17 **MS. McLEOD:** I'm not positive, Your Honor.

18 **MR. BEASLEY:** I can -- it was the gun that belonged to
19 the defendant. That was not the gun that was going to be
20 purchased.

21 **THE COURT:** That was not the gun to be ---

22 **MR. BEASLEY:** Correct.

23 **THE COURT:** Okay. All right.

24 Okay. You want to -- I'll be glad to hear from them now.
25 Who you want to -- who you want to go first?

1 **MS. McLEOD:** Okay.

2 **MS. DUNBAR:** Your Honor, my name is ---

3 **THE COURT:** And anybody that's going to speak, do me a
4 favor, what I need you to do is I'm going to swear you in, but
5 I need you to speak loud enough so that the court reporter can
6 hear you. If you don't speak loud enough, I'm going to have
7 to put you in front of the microphone. So -- all right.

8 So, ma'am, what's your name?

9 **MS. DUNBAR:** Consuelo Dunbar.

10 **THE COURT:** You've got to spell that first name for me.

11 **MS. DUNBAR:** C-o-n-s-u-e-l-o.

12 **THE COURT:** All right. Dunbar?

13 **MS. DUNBAR:** Yes.

14 **THE COURT:** Ms. Dunbar, would you raise your right hand
15 for me, if you would? You swear or affirm the testimony
16 you'll render in this proceeding to be the truth?

17 **MS. DUNBAR:** Yes, sir.

18 **THE COURT:** All right. Go ahead.

19 **MS. DUNBAR:** Your Honor, my name is Consuelo Dunbar. I
20 am the mother of Andre Dunbar, II. I will be speaking on
21 behalf of our entire family.

22 Tyquez Brisbane took everything from us on May 21st,
23 2020. We are still numb and in disbelief. We still expect
24 our son, Andre Dunbar, to walk through our front door, but
25 that won't ever happen because of this defendant.

1 This defendant stole the chance of us ever seeing our son
2 get married, have children, grow into the man we knew he would
3 be. We can't get anymore hugs, kisses or converse with him.
4 We will never have any grandchildren or great grandchildren
5 because of this defendant. We just exist in this world, not
6 living.

7 Andre, II, was a hardworking, outgoing person that loves
8 sports, loves to laugh, have fun, enjoy life and spend time
9 with his girlfriend. He loved his family. My son was the
10 type of person that if you was in need, he would give you the
11 shirt off his back. Anyone that came in contact with him,
12 whether it be young or old, always said that he was very
13 respectful and well mannered.

14 This pain is unbearable. When the defendant murdered my
15 son, my only child, it felt like he snatched my soul. And at
16 that very moment I felt like I died. This is our new norm.

17 Me and my husband have to take medication just to get up
18 in the morning and just to go to bed at night. We cry almost
19 every day. We will never be the same. We rely on the
20 memories of our son because he was abruptly taken from us.

21 This defendant risked the life of my nephew, Savion Alex
22 Young, who was in the car with my son when my son was shot in
23 his back twice and killed. Tyquez Brisbane took my son's life
24 and ran off. He didn't turn himself in.

25 He went out partying the whole Memorial Day weekend like

1 he was celebrating something while we was home making funeral
2 arrangements and grieving over the loss of my son. This
3 defendant made a Facebook Live on social media showing where
4 he was driving and bragging about robbing, killing and
5 stealing for over 46 minutes. This defendant's own mother
6 wrote a statement saying how he was very disrespectful and had
7 behavior issues.

8 This defendant gave my son, my only child, an unexpected
9 life sentence by murdering him. I feel he deserves the same,
10 life in prison or the maximum 30 years as he has taken our son
11 from our lives permanently. He changed our lives forever.
12 This pain cuts so deep that I wouldn't wish this on any
13 parent. Thank you, Your Honor.

14 **THE COURT:** All right. Anyone else? Is that ---

15 **MS. McLEOD:** I believe Alex Young's going to speak, he
16 was the witness who was with the victim, and his mother also
17 are going to speak briefly.

18 **THE COURT:** All right. Mr. Young, where are you?

19 **MR. YOUNG:** Right here.

20 **THE COURT:** All right. Looks like you're soft-spoken. I
21 may need to put you in front of the microphone. See that
22 microphone on the table right there? Ms. Johnson, if you
23 could -- just come as close to it as you can.

24 Raise your right hand. You swear the testimony you'll
25 render be the truth?

1 **MR. YOUNG:** Yes, sir.

2 **THE COURT:** All right. You can sit down. What's your
3 name?

4 **MR. YOUNG:** Savion Young.

5 **THE COURT:** Savion Young? Would you spell your first
6 name for me?

7 **MR. YOUNG:** S-a-v, as in Venus, ---

8 **THE COURT:** S-a-v what?

9 **MR. YOUNG:** I-o-n.

10 **THE COURT:** S-a-v-i-o-n?

11 **MR. YOUNG:** I-o-n.

12 **THE COURT:** Okay. Young, right?

13 **MR. YOUNG:** Yes, sir.

14 **THE COURT:** All right. Go ahead. You swear to tell the
15 truth?

16 **MR. YOUNG:** Yes, sir.

17 **THE COURT:** All right. Go ahead.

18 **MR. YOUNG:** I just wanted to say you ain't had to do
19 that, man. The only thing we tried to do was get you out the
20 car. My little cousin said, no, he didn't want no more. You
21 ain't had no reason to -- to do what you did. We already
22 trying to get on through. That's all I got to say. You ain't
23 -- you ain't had to do what you had to do. That's all I got
24 to say.

25 **THE COURT:** All right. Thank you, Mr. Young.

1 Anyone else?

2 **MS. McLEOD:** I believe his mother would like to speak.

3 **THE COURT:** Your name, ma'am?

4 **MS. YOUNG:** My name is Shukana Young.

5 **THE COURT:** Okay. Spell your first name for me, too.

6 **MS. YOUNG:** S-h-u-k-a-n-a.

7 **THE COURT:** Young?

8 **MS. YOUNG:** Yes.

9 **THE COURT:** All right. Raise your right hand. You swear
10 to tell the truth?

11 **MS. YOUNG:** Yes.

12 **THE COURT:** All right. And I think you speak loud enough
13 on your own. So I think I can hear you. Go ahead.

14 **MS. YOUNG:** Okay. All right. So good afternoon. I am
15 the mother of Savion. My son was in the car on the evening of
16 May 21st, 2020.

17 And I want -- I just want to express this afternoon that
18 Mr. Brisbane did not only take the life of my nephew, who was
19 like a son, because our sons are so close, as sisters, we're
20 very close, but he also took the soul of my son's laugh. My
21 son has an epic laugh.

22 Mr. Brisbane, he has done damage to our family that we
23 cannot reconcile. The Bible states that the youth will be
24 weaker, but wiser. And I feel like this has happened too
25 often in Mr. Brisbane's life the more I learn about him.

1 Mr. Brisbane has been wise enough to manipulate his
2 status as a minor to abuse -- to abuse the system and make
3 some of the weakest and most destructive decisions ever. And
4 these types of decisions can demean the morals of justice in
5 our society. There are not enough descriptive words to
6 epitomize the stain of the pain and heartbreak that this has
7 brought to our family.

8 Our family is full of hardworking and educated people.
9 Please take this into consideration when you're deciding the
10 future of this young man paying his restitution for taking my
11 nephew's life and my son's epic smile. He snatched the soul
12 of my son's smile. And thank you so much, Your Honor, for
13 listening to me as I express my feelings.

14 **THE COURT:** All right. Thank you, ma'am.

15 **MS. McLEOD:** Your Honor, I believe there's one more
16 person who would like to speak briefly, if that's okay.

17 **THE COURT:** All right. Is this Mr. Alex Young?

18 **MR. MACK:** No. Quantel Mack.

19 **THE COURT:** Quantel Mack.

20 **MS. YOUNG:** It's Savion Alex Young. Savion's middle name
21 is Alex. We call him Alex Young.

22 **THE COURT:** Oh, I got you. Okay.

23 All right. Mr. Mack, would you spell your first name for
24 me?

25 **MR. MACK:** Quantel, Q-u-a-n-t-e-l.

1 **THE COURT:** Okay. I think you speak loud enough.

2 Raise your right hand for me. You swear the testimony
3 you'll render today will be the truth?

4 **MR. MACK:** Yes, sir.

5 **THE COURT:** All right. Go ahead.

6 **MR. MACK:** I just wanted to state from a young age, Andre
7 Dunbar, my first cousin, kind of took him on as he was young.
8 I'm the oldest grandson. I'm 31. So with that, I mean, he
9 pretty much looked up to what I had going on and where I was
10 going. And I took pride in that.

11 I really wanted to show him, you know, a great life and
12 different things. So I graduated from North Greenville
13 University where I played football. He would come to my games
14 and, you know, just wanting to live a life like that.

15 I moved -- once I graduated, I moved. I came back, and I
16 accepted a role here. He wanted to move to Greenville. So I
17 live with just knowing that I'm the reason he's even in
18 Greenville.

19 I brought him up here for a job. He stayed with me and
20 his girlfriend on and off from time to time. And with that,
21 you know, I kind of feel not necessarily responsible, but I
22 brought him up here to really live a better life.

23 He had a lot of great things. We always talked. He had
24 a lot of things he wanted to do going forward. He was young.
25 And he was -- he was content with doing that.

1 I just want to say, man, you know, it could have
2 definitely went differently. You didn't have to do what you
3 had to do. People make decisions all the time. I mean, at
4 the end of the day, you got to live with the -- you've got to
5 live with the consequences that come with decisions. And we
6 have to live with my cousin never coming back.

7 He will never be back here. I'll never be able to talk
8 to him again, play the game, talk about life goals, him buying
9 a house or different things. You took that away from us. So
10 I feel like things should definitely be taken away from you
11 and give you time to think about what you did.

12 Appreciate it, Your Honor.

13 **THE COURT:** All right. Thank you. Anybody else?

14 **MS. McLEOD:** I think that's it, Your Honor.

15 **THE COURT:** All right. Anything else from the State?

16 **MS. McLEOD:** Nothing further from the State.

17 **THE COURT:** All right. Mr. Brisbane, you heard the facts
18 as outlined for the Court by the State. Do you agree with
19 those facts?

20 **MR. BRISBANE:** Yes, Your Honor.

21 **THE COURT:** All right. I'll go ahead and accept your
22 plea as being freely and voluntarily given. And you indicated
23 on the record that you were satisfied with the advice and
24 counsel of your lawyer, Mr. Beasley.

25 Mr. Beasley, what do you want to tell me?

1 **MR. BEASLEY:** Thank you, Your Honor.

2 Your Honor, obviously this is a terrible situation. And
3 it's never fun to be up here in these situations whether
4 you're a victim or a ---

5 **THE COURT:** You want to put the ---

6 **MR. BEASLEY:** --- defendant.

7 **THE COURT:** --- microphone in front of you?

8 **MR. BEASLEY:** And, you know, I think it's helpful to
9 understand how Tyquez got here. He was only 17 when this
10 occurred. He was born in Charleston. Grew up in Hollywood,
11 South Carolina.

12 From all accounts, lived a normal life until he was about
13 ten years old. He actually came home from school and
14 complained of a headache. And they gave -- so his parents
15 gave him some Tylenol. And he got up the next day and his
16 head was still hurting, and they gave him some more Tylenol.

17 He ended up going to the ER with a high fever. His skin
18 was blistering all over. He had a temperature of like 105.
19 He was in a coma for like 30 days, put in ICU, became totally
20 blind.

21 And I've never heard of this. This is all -- I've been
22 learning about it over the past couple of years, but it's
23 called Stevens-Johnson Syndrome, STS [sic]. So he was
24 basically completely blind in both of his eyes. He's got
25 scarring all over his face and body from the painful blisters.

1 He has trouble opening his eyes completely and has sensitivity
2 to the light. He lost large patches of his hair as well.
3 After being released from the hospital at age ten, you know,
4 he obviously experienced great difficulties in school as any
5 kid that age would. At age 11 he spent over six months at the
6 South Carolina School for Deaf and Blind. Later he regained
7 some vision in one of his eyes, which allowed him to go to
8 public school.

9 And, Judge, I knew you spent a lot of time on the family
10 court bench. You can imagine being blind and dealing with all
11 of these difficulties. Tyquez got bullied very, very much.
12 It was relentless once he went to public school. The kids
13 teased him for the way he looked. They called him burned boy
14 or blind boy.

15 He withdrew from public school and was home schooled from
16 2015 to 2019. They actually had a teacher that visited him
17 three times a week during that time. As a result of these
18 health issues, and the teasing and the bullying, Tyquez became
19 depressed and socially withdrawn as any kid would.

20 These health issues and resulting psychological issues
21 were obviously at a very vulnerable age. And as any preteen
22 or early adolescence stage, at any -- at an early adolescent
23 stage of life it's difficult under the best of circumstances
24 much less what he was dealing with.

25 Your Honor, and obviously after hearing that, it's no

1 surprise during that time that he was admitted to MUSC
2 inpatient psych ward on two separate occasions, in 2016 and
3 2017 and was prescribed various medications during that time.
4 He was diagnosed with ADHD and PTSD. Records reflect he would
5 not leave his bedroom and wore a sweatshirt over his head the
6 entire time he was admitted. He was involved at that time in
7 the Star Program, which is the Stabilization Assessment and
8 Reintegration Program at MUSC.

9 We actually had him evaluated by Dr. Maddox when I
10 learned of a lot of this. She concluded that Tyquez at the
11 time of the offense was not taking his medication, which, you
12 know, as a result he was suffering from the PTSD and chronic
13 depression. But he was not taking his medicine, which
14 resulted in poor judgment and impulsivity [sic]. And, Your
15 Honor, again, he was 17 years old at the time.

16 As a result of the allergic reaction to Tylenol -- and
17 they -- and he did have a lawsuit. And there was litigation,
18 I think, years and years ago, Your Honor.

19 But he still suffers severe nose bleeds. The skin inside
20 his ears peels. And he has to go to an ENT doctor on a
21 regular basis to have his ears cleaned out. His eyes actually
22 bleed, Your Honor, without proper glasses and too much light.

23 And, Your Honor, and we all know that he's going to go to
24 jail today. One thing I would ask the Court to do -- and I
25 hand delivered a sentence memorandum with some -- with the

1 psychological evaluation along with some of the medical
2 records. I handed that to the solicitor's office and to the
3 Court today. I would ask that maybe that be part of the
4 record just so when he is sentenced the jail can make sure
5 he's getting the proper treatment while he's in jail.

6 Something else to his detriment, Judge. He cooperated in
7 this case. He -- as most kids or most defendants, the first
8 interview he refused to talk. The next day without a lawyer
9 he sat down with law enforcement and told them the whole
10 story. And it doesn't -- it doesn't vary much from the report
11 that was given by Mr. Young, and according to the report that
12 the State has supplied me and from law enforcement and Mr.
13 Young.

14 The victim in this case, I believe, was around 22 years
15 old. And he was a convicted felon, which was why he couldn't
16 purchase a gun and he was trying to purchase a gun from the
17 streets.

18 Apparently he had texted with Tyquez. And they were
19 texting back and forth. And, you know, ironically, Tyquez in
20 the text messages was even asking him can he legally buy a
21 gun? Is he over 18? Because he can't sell him a gun if he
22 can't legally buy a gun, which, you know, that surprised me
23 that being in the text messages.

24 According to his cousin in these police reports, the
25 cousin and the victim were arguing prior to Tyquez, and as

1 Tyquez got into the back of the vehicle, because the victim
2 decided he was not going to pay for the gun no matter what
3 according to the police reports. His cousin called him a
4 gang-banger. His cousin called him -- said that they were
5 there to -- that he thought they were there to pick up drugs.

6 And according to Tyquez -- and I'm going to say all this.
7 This -- there's no issue in this case as far as what he's
8 pleading to, and he's guilty. But I wanted you to understand
9 here he is 17, can barely see, and he's sitting in the
10 backseat of a car and this guy's saying he's not going to pay
11 him for this gun.

12 And so, apparently, the victim grabbed Tyquez's risk.
13 Tyquez dropped the gun. He didn't get the gun, Judge. And
14 this is all -- nobody had a gun except Tyquez. He dropped the
15 gun in the backseat. He dropped his phone in the backseat,
16 and he jumped out of the car. The car took off. He shot
17 twice in the backseat of a car. He ran so fast, Judge, he
18 left his shoes at the scene.

19 And I'm not -- and I'm saying all this because those are
20 the facts of the case. And he's 17, can barely see. But he
21 -- what he did was wrong. And I can tell you he's sorry. And
22 he's guilty of what he's pleading to.

23 He never attempted to rob the victim. He never -- that
24 was never his intention. And I can tell you the victim was
25 found with almost four thousand dollars (\$4,000.00) in cash,

1 eighty-nine (89) grams of marijuana, baggies and scales all at
2 the scene.

3 Your Honor, this is a tough case. And Tyquez has been
4 through a lot. And he made a huge mistake. And it not only
5 changed his life, but it changed the Dunbars' life. And I'll
6 say myself I'm very sorry to that family.

7 Any sentence he gets, Your Honor, is more time than he's
8 ever served his entire life. His family is here. His dad,
9 Leroy, drove up from Charleston today. He's sitting over here
10 on the front row. His mom, Lackecia Brown, is here. And I
11 think his uncle is here as well. I don't know if they want to
12 speak or address the Court. I believe it was 738 days in
13 jail.

14 Your Honor, one thing I would like to ask. He was
15 actually on HIP for 187 days, but he did not violate HIP. He
16 was picked up on a charge down in Charleston, which put him
17 back in jail. And we decided not to revisit HIP even though
18 the charge happened prior to this incident. So I'm asking for
19 the 738 days plus the 187 days credit, which is 925 days, if
20 that makes sense.

21 And I'll ask if they want to say anything.

22 (Pause)

23 **MR. BEASLEY:** Your Honor, his uncle would like to address
24 the Court.

25 **THE COURT:** All right. Sir, what's your name?

1 **MR. SINGLETON:** Londell Singleton.

2 **THE COURT:** Raise your right hand. You swear or affirm
3 the testimony you'll render be the truth?

4 **MR. SINGLETON:** Yes, sir.

5 **THE COURT:** All right. Go ahead.

6 **MR. SINGLETON:** Actually, I just want to tell the family,
7 I am very sorry for your loss. I'm -- I don't know how it
8 feels to lose a child. So I can't tell you what -- I'm just
9 saying I'm sorry. My condolences go out to you guys. I'm not
10 justifying what my nephew did. I was not there. I'm just
11 saying to you guys I am sorry. That's all I'm saying.

12 **THE COURT:** All right.

13 **MR. SINGLETON:** From my family to you guys, I'm sorry.

14 **THE COURT:** All right. Ma'am, what's your name?

15 **MS. BROWN:** I'm his mama.

16 **THE COURT:** What's your name?

17 **MS. BROWN:** Lackecia Brown.

18 **THE COURT:** Spell your first name for me.

19 **MS. BROWN:** L-a-c-k-e-c-i-a.

20 **THE COURT:** All right. You swear to tell the truth?

21 **MS. BROWN:** Yes, sir.

22 **THE COURT:** All right. What do you want to tell me?

23 **MS. BROWN:** I wasn't going to speak at all, but, again, I
24 extend my condolences to the family. I understand everybody's
25 upset. I'm upset. But you've got to understand, these kids

1 did what they did, and there's consequences behind those
2 things. We can't keep running to try to protect these kids.

3 I'm sorry he lost his life. I'm sorry he took his life.
4 I can't do anything about it. I'm just his mom. I did all I
5 can do. I can't do no more.

6 So, again, I'm sorry. I apologize. I know you guys
7 don't accept it, and I don't blame you, but it's okay. All
8 you can do now is pray about it. Let God take the wheel.
9 That's all we can do. Because that's what I'm about to do.
10 I've done what I've done. I can't do anymore.

11 And, again, I apologize. If you accept it, that's fine.
12 If not, lay it on God's shoulder. Go to the alter and pray
13 about it.

14 We can't go no further than this. We can't bring him
15 back. No matter if he get 30 years, 60 years, he gets out, he
16 still is not coming back. And I apologize for that. I can't
17 give him back because if I could, I would.

18 **MR. SINGLETON:** Thank you.

19 **THE COURT:** Go ahead.

20 **MR. SINGLETON:** I said thank you.

21 **THE COURT:** Thank you. All right.

22 Anything else, Mr. Beasley?

23 **MR. BEASLEY:** No, Your Honor.

24 **THE COURT:** Mr. Brisbane, anything you want to say?

25 **MR. BRISBANE:** Yes. I do want to apologize to the

1 family, too. I'm deeply sorry for what happened.

2 **THE COURT:** All right.

3 Mr. Beasley, I've got the information that you gave me.
4 And I had the opportunity to review it. And I'll be more than
5 happy to make it a part of the record, this record, this case.

6 I do have a question that I need to ask. In the report
7 it states that -- or in your memorandum. It's not in the
8 report, it's the memorandum you prepared. It said the
9 defendant is very remorseful for a loss of life in this case.

10 And my question is -- and I heard, I think it might have
11 been his mother during her rendition, and I'm just going to
12 repeat what she said and direct the question to you or Mr.
13 Brisbane more specifically. She said that there was something
14 on the Internet in which Mr. Brisbane was celebrating or
15 something to that effect she said.

16 My question to Mr. Brisbane, to you, sir, after this
17 occurred did you go on the Internet and do what this mother
18 said that you did?

19 **MR. BRISBANE:** No, I did not.

20 **THE COURT:** You didn't go on the Internet at all?

21 **MR. BRISBANE:** I went to the Internet, but it wasn't
22 because of that.

23 **THE COURT:** Why -- what did you go on the Internet for?

24 **MR. BRISBANE:** I went to the Internet -- I can't remember
25 what exactly it was, but it wasn't because of that.

1 **THE COURT:** Did you mention this victim in your Internet?

2 **MR. BRISBANE:** I think I did.

3 **THE COURT:** Why?

4 **MR. BRISBANE:** Because I said I did something terribly
5 wrong, but I didn't never get into details or nothing.

6 **THE COURT:** Your lawyer said that you didn't -- you
7 weren't taking your medications. Why not?

8 **MR. BRISBANE:** Because at the time when I left Charleston
9 I never got assigned to a mental health nothing for me to take
10 meds and my meds was stopped. And they never did put me back
11 on any kind of medication for me to take after I left
12 Charleston County.

13 **THE COURT:** So you were waiting for somebody to contact
14 you?

15 **MR. BRISBANE:** We was supposed -- we was going to there
16 -- I was waiting for Charleston County to transfer my mental
17 health records to Greenville County so I can go see a mental
18 health and get my meds started back.

19 **THE COURT:** And when was that?

20 **MR. BRISBANE:** That was when I first moved in Greer.
21 That's -- I'll say February 2020.

22 **THE COURT:** All right. So for two years, well over two
23 years you've made no efforts to get your medication back?

24 **MR. BRISBANE:** Yes, I did, Your Honor.

25 **MR. BEASLEY:** I think the incident happened in -- in May

1 of 2020, right?

2 **MS. McLEOD:** Yes.

3 **MR. BEASLEY:** So it was only a few months, Judge. He's
4 been on his meds since he's been in the jail.

5 **THE COURT:** You know, I echo the sentiments of, I think,
6 your mom that this is just -- this is a tragic situation for
7 both sides, both sides. You're 17 or 17 at the time this
8 occurred and the victim was also a very young man. And
9 nothing gave you the right to do what you did. And it's sad
10 because, I think, Madam Solicitor, you said he has no prior
11 record?

12 **MS. McLEOD:** He does not. I think they alluded to --
13 he's got a pending burg, first, that was before this charge.

14 **THE COURT:** Right.

15 Just a sad situation, Mr. Brisbane. But I've read the
16 report that your lawyer provided me. And I've heard from both
17 sides in this case. And I'm still not convinced that at that
18 moment that you could not have altered your decision to do
19 what you did.

20 And you made a decision to go on the Internet and do
21 something. You're not being candid with me what you did, what
22 you said. You made that decision, but you didn't make that
23 decision on this particular day.

24 On indictment ending in 1451, State versus Tyquez Gytrell
25 Bisbane [sic], the sentence of the Court is that he be

1 committed to the South Carolina Department of Corrections for
2 a period of 30 years. Seven hundred and thirty-eight (738)
3 days of jail time credit is given to you. Good luck, sir.

4 (Hearing Ended at 4:08 pm)

5 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 6th day of December 2022.

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

May 11, 2023

s/Susan W. Hudgins

Circuit Court Reporter, Retired

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Tyquez Gytrell Brisbane, #00389730)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2023-CP-23- 02296

APPLICATION FOR

POST-CONVICTION RELIEF

2023 APR 19 PM 3:24
Paul McKenna, Clerk of Court

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Turbeville Correctional Institution
2. Name and location of Court which imposed sentence Thirteenth Judicial Circuit, Greenville County, SC
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) Voluntary manslaughter (#2021GS²³3201451)
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 30 years imprisonment, credit for time served - December 6, 2022

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal dismissed upon the failure to provide a sufficient explanation pursuant to Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Order dismissing appeal - February 23, 2023, Remittitur issued March 13, 2023
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) Pursuant to Strickland v. Washington, Plea Counsel's deficient and prejudicial performance deprived Applicant of his right to the effective assistance of counsel guaranteed by the Sixth Amendment, in violation of due process pursuant to the Fourteenth Amendment.

(b) _____

(c) _____

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

(a) Plea Counsel failed to adequately review discovery with Applicant and advise him accordingly. Plea Counsel failed to explain the nature of the charges as well as the consequences or implications that would result from the imposition of his plea and sentence. Plea Counsel also failed to adequately explain any plea offer's terms and the relative advantages and disadvantages of pleading guilty as opposed to proceeding to trial. Similarly, Plea Counsel failed to sufficiently advise the Applicant on the trial rights waived by way of his guilty plea, specifically the waiver of the defendant's right to present a defense to the charges, submit evidence in support thereof, call supporting witnesses to testify etc.

Plea Counsel failed to adequately investigate the facts of the case, potential defenses, and legal theories available to Applicant prior to advising him to plead guilty. See e.g., Edwards v. State 392 S.C. 449, 456, 710 S.E.2d 60, 63 (2011). Plea Counsel likewise failed to investigate several viable dispositive pre-motions, trial strategies, and defenses available to Applicant. Plea Counsel likewise failed to undertake reasonable measures to engage in plea negotiation and bargaining opportunities with the State on this basis. Plea Counsel's errors and omissions directly impacted Applicant's decision-making on whether to plead guilty or proceed to trial and also rendered his guilty plea not knowingly, intelligently, or voluntarily entered.

But for Plea Counsel's errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.

In the alternative, Plea Counsel was ineffective for failing to adequately present an argument for mitigation purposes at sentencing.

(b) -

(c) _____

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

- (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (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. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____

- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) This PCR action is the Applicant's first opportunity to raise the ineffective assistance of counsel claims herein, which are cognizable for relief under the PCR Act.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
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. Ryan L. Beasley, Esq.

Ryan L. Beasley, Attorney at Law, PA

416 East North Street

Greenville, SC 29601

(864) 679-7777

rlb@ryanbeasleylaw.com

ii. Morgan Cleary Shankle, Esq.

305 East North Street

Suite 123

Greenville, SC 29601

(864) 467-8386

mcleary@greenvillecounty.org

iii. _____

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

i. through plea, sentencing, and appeal

ii. Substituted as counsel on July 23, 2020

iii. _____

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

New trial or in the alternative, resentencing

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

No

STATE OF SOUTH CAROLINA)
)
County of Greenville)

VERIFICATION

I, Tyquez Gytrell Brisbane, 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.

W. Th...

SWORN to and subscribed before me this 17
day of April, 2023

Risa Cherry (L.S.)
Notary Public

My Commission Expires: 4-22-29

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)
)
 Tyquez Gytrell Brisbane #389730,)
)
 Applicant,)
)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE 13TH JUDICIAL CIRCUIT

Case No.: 2023-CP-23-2296

RETURN

The State (“Respondent”), making its Return to the application for Post-Conviction Relief filed on May 8, 2023, would respectfully show this Court:

I. Procedural History

Tyquez Gytrell Brisbane (“Applicant”) is presently detained in Turbeville Correctional Institution. During the July 2021 term, the Greenville County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of violent crime. True Bill date was July 7, 2021. Applicant was represented by Ryan L. Beasley, Esquire. Assistant Solicitor Jenna H. McLeod, Esquire of the Thirteenth Circuit prosecuted the case.

On December 6, 2022, Applicant pled guilty to voluntary manslaughter and was sentenced to the maximum sentence of thirty (30) years by the Honorable Alex Kinlaw. At the time of the plea hearing, Applicant had spent 738 days in jail. Judge Kinlaw applied applicants 738 days of jail credit to his sentence. Applicant filed a timely direct appeal. Applicant’s appeal was dismissed on February 23, 2023, due to failure to provide explanation pursuant to Rule 203 of the South Carolina Appellate Court Rules. The Remittitur was sent down on March 13, 2023. Applicant filed his application for post-conviction relief on May 8, 2023.

II. Facts of the Crime as Presented at the Plea Hearing

On May 21, 2020, Officers responded to a primary and secondary incident location due to a homicide in Greenville County. Applicant and victim, Andre Dunbar, orchestrated a meeting via text message for the victim to purchase a gun from Applicant. The Applicant and victim arrived at the primary incident location. Applicant got into the back seat of the victim's vehicle, and they began arguing about the purchase price of the gun. The victim's cousin was also present in the vehicle. The victim refused to give Applicant any money to purchase the gun. Applicant exited the vehicle and fired two shots at the victim striking him through the seat in his back. Subsequently, the victim proceeded to speed across Augusta Road to the secondary incident location where he crashed through two fences. The victim died nearly immediately from his injuries.

On the record, Applicant does not dispute these facts as presented to him and admits that he did shoot the victim causing his injuries.

III. Allegations Raised and Relief Sought

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

(1) Plea counsel was ineffective in the following regards:

- a. "Plea counsel failed to adequately review discovery with Applicant and advise him accordingly."
- b. "Plea counsel failed to explain the nature of the charges as well as the consequences or implications that would result from the imposition of his plea sentence."
- c. "Plea counsel failed to adequately explain any plea offer's terms and the relative advantages and disadvantages of pleading guilty as opposed to proceeding to trial."
- d. "Plea counsel failed to sufficiently advise Applicant of trial rights waived by way of his guilty plea, specifically of the waiver of the defendant's right to present a defense to the charges, submit evidence in support thereof, call supporting witnesses to testify, etc."

- e. “Plea counsel failed to adequately investigate the facts of the case, potential defenses and legal theories available to applicant prior to advising him to plea guilty”

Applicant asserts that plea counsel’s errors and omissions directly impacted his decision to enter a guilty plea, rendering his guilty plea unlawful as he did not enter it knowingly, intelligently, or voluntarily. Applicant also asserts in the alternative, that plea counsel was ineffective during the sentencing stage and failed to present an argument for mitigation purposes at his sentencing. As requested relief, Applicant requests “new trial or in the alternative, resentencing.”

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

IV. Response to Allegation of Ineffective Assistance of Counsel

Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, an applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting

Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Id.*

“It is beyond dispute that a guilty plea must be both knowing and voluntary.” *Parke v. Raley*, 506 U.S. 20, 29, 113 S.Ct. 517 (1992). It is also clear the record should reflect that voluntary choice. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709 (1969) (“a guilty plea should only be accepted where the record evidence ‘an affirmative showing that it was intelligent and voluntary.’”). “Where, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice ‘was within the range of competence demanded of attorneys in *Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441 (1970)).

Indeed, “[a] defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial.” *Kolle v. State*, 386 S.C. 578, 588, 690 S.E.2d 73, 78 (2010) (quoting *Rolen v. State*, 384 criminal cases.’” *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366 (1985) (quoting *McMann v. S.C.* 409, 413, 683 S.E.2d 471, 474 (2009)); *Burket v. Angelone*, 208 F.3d 172, 189 (4th Cir.

2000) (same). This is the *Strickland* test as applied in the guilty plea context. As the general test sets out, to be entitled to relief on a claim of ineffective assistance, an applicant must show that reasonable probability exists that but for counsel's error, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052 (1984). Notably, statements made during a guilty plea should be considered true: "... accuracy and truth of an accused's statements at ... his guilty plea ... are 'conclusively' established by that proceeding unless and until he makes some reasonable allegation why this should not be so." *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by *United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985); *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (same).

The record here supports that the plea was a voluntary choice among alternatives as guided by counsel against which Applicant had no complaints at the time of the plea. The plea hearing transcript evidencing Applicant's sufficient knowledge and agreement to the guilty plea reads as follows:

THE COURT: You satisfied with his [Mr. Beasley] services?

MR. BRISBANE: Yes, Your Honor

(Trans. of Rec. Pg. 4, Line 10-11).

THE COURT: You understand I can give you up to 30 years on this particular offense?

MR. BRISBANE: Yes, Your Honor.

THE COURT: Understanding that, you still want to plead guilty to it?

MR. BRISBANE: Yes, Your Honor.

THE COURT: Are you under the influence of anything at all that may impact your judgment?

MR. BRISBANE: No, Your Honor.

THE COURT: You're clear-minded and you understand what you are doing?

MR. BRISBANE: Yes, Your Honor.

THE COURT: All right. Did you tell your lawyer, Mr. Beasley, everything you know about this case?

MR. BRISBANE: Yes, Your Honor.

THE COURT: Did you have a good discussion with him?

MR. BRISBANE: Yes, Your Honor.

THE COURT: All right. Did he go over the potential penalties with you?

MR. BRISBANE: Yes, Your Honor.

THE COURT: Did he go over the elements of what the State would have to prove if this matter went to trial?

MR. BRISBANE: Yes, Your Honor.

THE COURT: All right. Did he also have a discussion with you, the fact that once you come before the Court and enter a knowing and intelligent decision to plead guilty, you give up certain constitutional protections? Let me tell you---

MR. BRISBANE: Yes, Your Honor.

THE COURT: --- what they are. You give up your right to a trial. You're not afforded an opportunity to have a trial once you plead guilty. You understand that?

MR. BRISBANE: Yes, Your Honor.

THE COURT: You give up your right to remain silent. You understand that?

MR. BRISBANE: Yes, Your Honor.

THE COURT: Thirdly, you give up your right to confront any witnesses that the State may have against you as it relates to this indictment. You understand ---

MR. BRISBANE: Yes, Your Honor.

THE COURT: Lastly, you give up your right to assert any defenses that you may have as it relates to this indictment. So any defenses that you may have, you no longer have them when you decide to plead guilty. You understand that?

MR. BRISBANE: Yes, Your Honor.

THE COURT: Okay. Do you understand all of my questions?

MR. BRISBANE: Yes, Your Honor.

THE COURT: All right. So your decision to waive those constitutional protections, is that your decision?

MR. BRISBANE: Yes, Your Honor.

THE COURT: And do you want to move forward with this guilty plea?

MR. BRISBANE: Yes, Your Honor.

MS. McLEOD: Your Honor, I wasn't sure if you wanted to go over the fact that it's violent and most serious with him.

THE COURT: Yes. The indictment, Mr. Brisbane, indicates that this is a violent and most serious offense. You understand that?

MR. BRISBANE: Yes, Your Honor.

THE COURT: Did you discuss the ramifications of this with you lawyer, Mr. Beasley?

MR. BRISBANE: Yes, Your Honor.

THE COURT: And you've understood the discussions with him about the seriousness of this?

MR. BRISBANE: Yes, Your Honor.

THE COURT: All right. Do you have any questions of him or me about any of that?

MR. BRISBANE: No, Your Honor.

(Trans. of Rec. Pg. 4-8).

THE COURT: All right. Mr. Brisbane, you heard the facts as outlined for the Court by the State. Do you agree with those facts?

MR. BRISBANE: Yes, Your Honor.

THE COURT: All right. I'll go ahead and accept your plea as being freely and voluntarily given. And you indicated on the record that you were satisfied with the advice and counsel of your lawyer, Mr. Beasley.

(Trans. of Rec. Pg. 17 Line 17-24).

It is apparent Applicant raised no objection to his plea agreement at the time of the hearing. Applicant stated he was satisfied with his counsel's representation and understood the weight of the charges against him. Applicant's allegations fail to show that counsel's allegations were not within the range of competence demanded by criminal defense counsel.

- a. **“Plea counsel failed to adequately review discovery with Applicant and advise him accordingly.”**

Applicant has failed to provide any sufficient explanation to this allegation. Counsel presented Applicant's struggles with his mental and physical health and offered legal theory regarding Applicant's decision-making at the time of the subject shooting. Based on the circumstances of the crime, Applicant failed to provide any specific complaints about counsel's defenses or sentence mitigation tactics and failed to voice his complaint at the time of entering his guilty plea when asked about counsel's adequacy of representation.

- b. **“Plea counsel failed to explain the nature of the charges as well as the consequences or implications that would result from the imposition of his plea sentence.”**

Applicant was explicitly asked by the Court if he understood that a plea of guilty to the subject charge can carry a maximum sentence of thirty (30) years. Applicant stated he understood the weight of that charge and did not voice any further concern.

- c. **“Plea counsel failed to adequately explain any plea offer's terms and the relative advantages and disadvantages of pleading guilty as opposed to proceeding to trial.”**

Applicant was informed by the Court of the waiver of all constitutional rights afforded to him and voiced no objection to the implications and consequences of entering a guilty plea to the subject charge. Applicant has not specifically presented evidence of counsel's ineffective representation and there is no evidence to allude to counsel failing to represent Applicant according to the standards set forth in *Strickland*.

- d. **“Plea counsel failed to sufficiently advise Applicant of trial rights waived by way of his guilty plea, specifically of the waiver of the defendant’s right to present a defense to the charges, submit evidence in support thereof, call supporting witnesses to testify, etc.”**

The transcript of record shows the Court explicitly advising Applicant of the implications and consequences of entering a guilty plea. Applicant had opportunity to inquire about the consequences of a guilty plea and ask questions regarding sentencing. Applicant stated that he understood and was aware of the weight of consequence associated with a guilty plea of voluntary manslaughter.

- e. **“Plea counsel failed to adequately investigate the facts of the case, potential defenses and legal theories available to applicant prior to advising him to plead guilty.”**

As evidenced by the transcript of record, Applicant’s attorney clearly was aware of Applicant’s lengthy history of issues with his mental and physical health. (Trans. of Rec. Pg. 18-23). Counsel presented those facts in a light most favorable to Applicant at the hearing and clearly discussed with Applicant his mental and physical health history. There is no sufficient complaint for Applicant to assert regarding Counsel’s advisement of a guilty plea. The State has a witness who is able to testify to the Applicant’s identity, amongst other evidence, to present a case for jurors to convict Applicant beyond a reasonable doubt. Applicant cannot prove counsel’s advisement was not within the range of competence demanded of attorneys in criminal cases.

Further, Applicant alleges his counsel failed to mitigate his sentencing. As evidenced in the transcript, Applicant’s counsel zealously advocated for a lesser sentencing by citing Applicant’s lengthy issues with mental and physical health. (Trans. of Rec. Pg. 18-23). Additionally, Applicant was indicted for murder and possession of a weapon during a violent crime, and ultimately his charges were reduced to voluntary manslaughter. Judge Kinlaw exercised judicial discretion sentencing Applicant to the maximum thirty (30) years for voluntary manslaughter, noting that she believes Applicant could have altered his decision to shoot the victim. (Trans. of Rec. Pg. 28 Line 17-19).

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test for either of the ineffective assistance of counsel allegations. Based on the record, the general

allegation should be summarily dismissed. *Sharper, supra*, (hearing warranted only where “specific instances of ineffective assistance ... not conclusively refuted by the record”). Applicant failed to establish sufficient evidence to support his allegations that he did not enter the plea agreement, knowingly, intelligently, or voluntarily. The transcript of record blatantly disproves Applicant’s allegations and shows that he understood the weight of the charges against him, the consequences of a guilty plea, and the sufficient advocacy of his counsel.

V. Any Future Amendments

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, SCRCF. *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*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

VI. Response to All Other Allegations

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

WHEREFORE, having made its Return, Respondent requests that this matter be scheduled for an evidentiary hearing on the issue of ineffective assistance of counsel, at which

time the Respondent may still move for summary dismissal if an adequate amendment is not properly offered. Pursuant to S.C. Code Ann § 17-27-70, the allegation of breach of plea agreement should be summarily dismissed without the necessity of the hearing based on the existing record.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

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Senior Assistant Deputy Attorney General

By: 
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August 30, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Tyquez Gytrell Brisbane, #389730,)

C/A No.2023-CP-23-2296

)
Applicant,)

)
v.)

AFFIDVAIT OF SERVICE


)
State of South Carolina,)

)
Respondent.)

1. I am counsel for 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 by depositing same in the United States mail, postage prepaid:

William G. Yarborough, III, Esquire
308 W. Stone Avenue
Greenville, South Carolina 29609

DATED this 30th day of August, 2023.


Melody J. Brown By. WJM
Senior Assistant Deputy Attorney General

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE) 2023-CP-23-02296
)
)
)
 TYQUEZ GYTRELL BRISBANE)
) APPLICANT)
) vs.) TRANSCRIPT OF RECORD
)
 THE STATE OF SOUTH CAROLINA)
) RESPONDENT)

January 17, 2024
 Greenville, South Carolina

B E F O R E:

THE HONORABLE R. SCOTT SPROUSE, Judge.

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

WILLIAM YARBOROUGH, ESQ.
 Attorney for the Applicant

JOE MAYE, ESQ.
 Attorney for the Respondent

APRIL HERRON
 Official Court Reporter

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There were no exhibits.

1 THE COURT: Okay, it's 2:00, let's go on the
2 record, call the next case.

3 MR. MAYE: Yes, Your Honor, may it please the
4 Court?

5 THE COURT: Yes, sir.

6 MR. MAYE: Next PCR matter on the docket is
7 Tyquez --

8 Is it Brisbane or Brisbane?

9 MR. BISBANE: Brisbane.

10 MR. MAYE: Brisbane. Tyquez Brisbane vs. State
11 of South Carolina. It is 2023-CP-23-2296. The
12 application was filed on May 8th, 2023, the return
13 was served August 30th of 2023. Just briefly, Your
14 Honor, on the procedural history of Mr. Brisbane, who
15 was the killer of the victim Andre Dunbar, following
16 a failed gun sale with the victim. He was charged
17 with voluntary manslaughter and pled guilty on
18 December 6th of 2022. He attempted to appeal but his
19 appeal was dismissed for lack of sufficient
20 explanation pursuant to Rule 203. It is
21 anticipated -- this is anticipated to be a full
22 evidentiary hearing following that guilty plea. With
23 that, I'll turn it over to Mr. Yarborough.

24 THE COURT: Mr. Yarborough.

25 MR. YARBOROUGH: Thank you, Your Honor. If The

TYQUEZ BRISBANE-DIRECT BY MR. YARBOROUGH

1 Court please, I call Mr. Brisbane to the stand.

2 THE CLERK: Mr. Brisbane, please place your left
3 hand on the Bible, raise your right hand.

4 TYQUEZ BRISBANE, after being duly
5 sworn(,) testified as follows:{F}

6 THE CLERK: Thank you, you may be seated. State
7 your name for the record.

8 THE WITNESS: Tyquez Brisbane.

9 DIRECT EXAMINATION

10 BY MR. YARBOROUGH:

11 Q Mr. Brisbane, where are you presently
12 incarcerated?

13 A Turbeville Correctional Institution.

14 Q And how much time are you doing?

15 A Thirty years.

16 Q And who was your lawyer?

17 A Ryan Beasley.

18 Q Okay. And Mr. Beasley's in the courtroom back
19 there?

20 A (The witness nods.)

21 Q And he represented you throughout the process of
22 this case?

23 A Yes, sir.

24 Q And did you cooperate with the police and give
25 them a statement about what happened?

TYQUEZ BRISBANE-DIRECT BY MR. YARBOROUGH

1 A Yes.

2 Q Okay. I tell you what, before we get there,
3 tell The Court a little bit about why you got on those
4 glasses and what's going on with your health and all of
5 the above just so.

6 A I had a allergic reaction to Tylenol when I was
7 younger that I have a rare disorder syndrome, it's called
8 Stevens-John Syndrome and I'm blind out one of my eyes.
9 So I got to wear my glasses to help with sunlight, it's
10 very sensitive.

11 Q Okay. And are you presently being treated for
12 that now?

13 A Yes.

14 Q Okay. And have you taken your medicine?

15 A I'm supposed to they not supply me with my
16 medicine.

17 Q Okay. Well, let me ask you this, does the
18 medicine allow you to think clearly?

19 A Yes.

20 Q Okay. Are you thinking clearly today?

21 A Yep.

22 Q Okay. So you're fine, you don't need it to
23 think?

24 A Yep, I'm clear headed.

25 Q All right. Can you tell The Court a little bit

TYQUEZ BRISBANE-DIRECT BY MR. YARBOROUGH

1 about Mr. Beasley's representation of you?

2 A Well, really, he misinformed me as self-defense
3 type of claim, he misinformed me that I don't have a
4 chance against self-defense because of what happened but.

5 Q Okay. Well, I'll ask Mr. Beasley about that in
6 a little bit but tell The Court a little bit about what
7 would -- would you have liked to have gone to trial in
8 this case?

9 A Yes, sir.

10 Q Okay. And what were you going to plead?

11 A Self-defense.

12 Q Okay. Now, tell The Court a little bit about
13 what you recall about the night of the shooting.

14 A I recall when I got in the vehicle to make the
15 transaction, the victim and cousin started arguing. And
16 as I was trying to exit the vehicle, the cousin turned
17 around and after I got out the car, then I saw her reach
18 for something. So I panicked and I shot.

19 Q Okay. And I think that at some point
20 Mr. Beasley told you that you probably could not plead
21 involuntary manslaughter because you were selling a gun;
22 is that right?

23 A Yes.

24 Q Did you -- did you check with the victim to make
25 sure that he was of age?

TYQUEZ BRISBANE-DIRECT BY MR. YARBOROUGH

1 A Yes, sir.

2 Q To buy the gun?

3 A Yes, sir.

4 Q You told Mr. Beasley that?

5 A Yes, sir.

6 Q Okay. And there was somebody else present, who
7 was that that was present at the time of the shooting?

8 A That was the victim's cousin.

9 Q Okay. And was the victim and his cousin
10 arguing, at that time?

11 A Yes, sir.

12 Q Okay. So tell The Court a little bit about what
13 was going on in the car.

14 A Well, I got in I ask, you know, see money. Then
15 that's when the cousin started arguing and shouting at the
16 victim. Then they had a whole argument and I was just
17 done with it. I just wanted to get out the car and go
18 about my business.

19 Q Okay. And so did -- did you -- after you
20 shot -- I mean, before you shot, did you think they were
21 getting ready to shoot you?

22 A Yes, sir.

23 Q Okay. And did you see somebody reach for
24 something?

25 A The passenger, yes, sir.

TYQUEZ BRISBANE-DIRECT BY MR. YARBOROUGH

1 Q Okay. Did you believe, at that point, that it
2 was a gun?

3 A Yes, sir.

4 Q Okay. And did you tell Mr. Beasley that?

5 A Yes, sir.

6 Q Okay. And did you tell him you wanted to
7 develop a self-defense claim?

8 A Yes, sir.

9 Q Okay. And did you look at your discovery and
10 stuff while you were doing that?

11 A At the time, I had my motion but he never went
12 through them with me thoroughly.

13 Q Okay. And so you didn't understand everything
14 in the motion?

15 A No, sir, not everything.

16 Q But since then you've been through it all and
17 you wish that you would have argued for self-defense; is
18 that right?

19 A Yes, sir.

20 Q Okay. And did he discuss self-defense with you?

21 A Just saying that I wouldn't have a chance with
22 self-defense.

23 Q Okay. Did y'all talk about the trajectory of
24 the bullets?

25 A No, sir.

TYQUEZ BRISBANE-DIRECT BY MR. YARBOROUGH

1 Q Okay. Was the -- was the gunshot from outside
2 the car?

3 A Yes, sir, yes, sir.

4 Q Okay. But there was some discursion in the
5 discovery that it went through the door or the -- what did
6 it go through in the car, the bullet?

7 A The seat.

8 Q The seat cushion?

9 A Seat cushion.

10 Q Okay. How did that happen?

11 A I guess by shot.

12 Q Okay. But you were outside the car--

13 A Outside the vehicle.

14 Q -- when you shot it. And It went through the
15 cushion. Was the door not shut, at that point?

16 A The door was in the process of shutting.

17 Q Okay. And that was because you had slammed it
18 trying to get away?

19 A For the run, yep.

20 Q Okay. And did you tell Mr. Beasley all of that?

21 A Yes, sir.

22 Q Okay. And so, at some point, you'd been in jail
23 for a couple of years, I guess, in between that and house
24 arrest; did y'all come a day that you were supposed to go
25 to trial? Is that what was happening or what was going

TYQUEZ BRISBANE-DIRECT BY MR. YARBOROUGH

1 on?

2 A When I got off house arrest?

3 Q Yeah.

4 A I got rearrested for a violation.

5 Q Okay. And so then you went to jail?

6 A Uh-huh.

7 Q Okay. And, at some point, did you -- did you
8 get -- were you taken to Charleston? Were you in

9 Charleston?

10 A No.

11 Q No? I thought -- you didn't have a charge in
12 Charleston?

13 A I had a charge from Charleston, an old charge
14 from Charleston. That's why -- that's how I violated.

15 Q Okay.

16 A And rearrested me.

17 Q All right. Okay. So when you went to -- when
18 Mr. Beasley came to see you in jail at the Greenville
19 County Detention Center, did y'all discuss how much time
20 you were looking at?

21 A Just on the plea deal.

22 Q Okay. And what was that plea deal?

23 A Two to 30.

24 Q Okay. So did -- you understood it was two to 30
25 or did you think it was going to be less than that?

TYQUEZ BRISBANE-DIRECT BY MR. YARBOROUGH

1 A My understanding is that it was two to 30 but 30
2 would just be overboard, just not going to happen. I was
3 probably going to get less.

4 Q Okay. And how old were you, at that time?

5 A I was 17.

6 Q Seventeen?

7 A Yep.

8 Q Okay. When the accident happened, how old were
9 you when the plea took place?

10 A The plea, I was 18 years old.

11 Q Okay. And so you went in front of Judge Kinlaw;
12 is that right?

13 A Yes, sir.

14 Q Okay. When you went in front of Judge Kinlaw,
15 how much time did you think you were going to receive that
16 day?

17 A No more than 20.

18 Q Okay. Did you want to plead guilty?

19 A No.

20 Q Okay. Well, did you tell Mr. Ryan --
21 Mr. Beasley that you didn't want to plead guilty that day?

22 A I told him that I just want to do self-defense
23 but since he claimed that that wasn't the right option to
24 do, I just went with him.

25 Q Okay. And then, I guess about halfway through

TYQUEZ BRISBANE-DIRECT BY MR. YARBOROUGH

1 the sentencing hearing, did they start talking about some
2 video or?

3 A Yes, sir.

4 Q Okay. Did you know anything about that?

5 A No, sir. Not until afterwards, I read my motion
6 after that.

7 Q Okay. You didn't know anything about it until
8 after you read your motion?

9 A Yes, sir.

10 Q And did you think that hurt you?

11 A Yes, sir.

12 Q Okay. And was the information that was
13 presented to The Judge about you making a video and
14 celebrating this shooting, was not true; is that correct?

15 A It was not true.

16 Q Okay. And the first time either that you ever
17 heard of it was that day and as far as you know that was
18 the first time Mr. Beasley heard of it; is that right?

19 A Yep, yes, sir.

20 Q Okay. And the information that was provided to
21 The Court about that video was not correct; is that right?

22 A No, sir.

23 Q Okay. Now, I know that -- that there was -- was
24 The Court made aware of all your health issues that you
25 were going through?

TYQUEZ BRISBANE-DIRECT BY MR. YARBOROUGH

1 A Yes, sir.

2 Q Okay. And did you want Mr. Beasley to explain
3 that more than what was done on the record, in this case?

4 A No, sir.

5 Q You didn't need that anymore, you thought he did
6 good job at that?

7 A Yes, sir.

8 Q Okay. And what you have is -- and what you had,
9 at the time, is called Stevens-Johnson Syndrome; is that
10 right?

11 A Yes, sir.

12 Q Okay.

13 Just a second please, Your Honor.

14 Did you talk to Mr. Beasley about the gun
15 going off? Was it -- did you think it was going to fire
16 at that point, do you know?

17 A No, sir.

18 Q No. It surprised you it went off that way?

19 A Yes, sir.

20 Q Okay. And had you ever used that firearm
21 before?

22 A No, sir.

23 Q Okay. And did you know a lot about firearms?

24 A No, sir.

25 Q And did you feel like the guy that was in the

TYQUEZ BRISBANE-DIRECT BY MR. YARBOROUGH

1 car with you became aggressive with you first?

2 A Yes, sir.

3 Q And did you feel like that would have helped
4 your case for self-defense?

5 A Yes, sir.

6 Q Okay. And did you want The Court to know about
7 that?

8 A Yes, sir.

9 Q Okay. And did feel -- did you feel like your
10 health contributed to the fact that you fired or
11 mishandled the gun?

12 A Yes, sir.

13 Q And do you wish that would have been presented
14 more to The Court?

15 A Yes, sir.

16 Q And none of that could have been done through a
17 guilty plea, it should have all been done through a trial
18 in self-defense?

19 A Yes, sir.

20 Q And you understand the consequences of going
21 through a PCR; right?

22 A Yes, sir.

23 Q Okay. And you, especially, would like to have a
24 chance to have explained to The Judge this question about
25 this video; right?

TYQUEZ BRISBANE-CROSS BY MR. MAYE

1 A Yes, sir.

2 Q Is there anything else that you wish Mr. Beasley
3 would have done that I haven't brought to The Court's
4 attention today?

5 A No, sir.

6 Q Okay.

7 Thank you, answer any questions they have.

8 THE COURT: All right, cross-examination.

9 MR. MAYE: Your Honor, do you have preference
10 whether I'm at the podium or the desk?

11 THE COURT: I'll leave that up to y'all.

12 MR. MAYE: I'll just stay here.

13 CROSS-EXAMINATION

14 BY MR. MAYE:

15 Q Mr. Brisbane, do you recall your guilty plea
16 hearing?

17 A Yes, sir.

18 Q Do you recall being sworn to give truthful
19 testimony?

20 A Yes, sir.

21 Q When you began. And did you give truthful
22 testimony at that hearing?

23 A No, sir.

24 Q So you lied to The Court? Is that your
25 testimony?

TYQUEZ BRISBANE-CROSS BY MR. MAYE

1 A Yes, sir.

2 Q Any argument for why you should be found
3 truthful today as opposed to previously?

4 A Because I'm telling the truth.

5 Q Do you recall The Judge asking you a series of
6 questions during the hearing?

7 A Yes, sir.

8 Q Or during the guilty plea hearing. Do you
9 recall telling The Court that you were satisfied with your
10 attorney's services?

11 A Yes, sir.

12 Q If that wasn't true, why did you tell The Court
13 that?

14 A Because, at the time, I was just going along
15 with his little thing, I was going to get a lesser time
16 since he know more about the law than I do.

17 Q Okay. So your decision was to seek a plea in
18 hopes of getting a lesser sentence rather than risk trial?

19 A Yes, sir.

20 Q Okay. Did you also tell The Court that you
21 didn't have any complaints against your attorney?

22 A Yes, sir.

23 Q But you're saying now that wasn't truthful
24 either?

25 A Yes, sir.

TYQUEZ BRISBANE-CROSS BY MR. MAYE

1 Q Did you confirm for The Court your indictment
2 was for voluntary manslaughter of Andre Dunbar?

3 A Repeat that.

4 Q Certainly. Did you confirm to The Court that
5 you understood your indictment to be for voluntary
6 manslaughter of Andre Dunbar?

7 A Yes, sir.

8 Q The victim. Okay. Did you recall The Court
9 confirming that you were subject to a potential 30 year
10 sentence?

11 A Yes, sir.

12 Q So you knew during that hearing that you could
13 get 30 years?

14 A Yes, sir.

15 Q Okay. Do you recall confirming to The Court
16 that were clear minded, not under the influence of any
17 drugs --

18 A Yes, sir --

19 Q -- or medications? Do you recall confirming
20 with The Court that you told your attorney everything you
21 knew about the case and that you had a good discussion
22 with him prior to your entering the plea?

23 A Yes, sir.

24 Q And your testimony today is that wasn't truthful
25 either?

TYQUEZ BRISBANE-CROSS BY MR. MAYE

1 A (The witness shook his head.)

2 Q Do you recall confirming for The Court that your
3 attorney reviewed the potential penalties of your charges
4 with you before you plead?

5 A No, sir.

6 Q You don't recall that?

7 A I don't.

8 Q Do you want to take a look at the record or if I
9 assert to you that that is in the record, would you
10 dispute it?

11 A Sure.

12 Q You don't dispute that?

13 A Yeah.

14 Q Taking place. Okay. Do you recall confirming
15 that counsel -- all right, so you're not disputing that
16 counsel told you about the potential penalties of your
17 charges? Do you recall confirming that counsel reviewed
18 the elements of your charges with you in advance of your
19 plea?

20 A Like self-defense and all of that?

21 Q The elements of the charges of everything The
22 State has to prove to convict you of voluntary
23 manslaughter?

24 A Yes, sir.

25 Q Counsel went over that with you?

TYQUEZ BRISBANE-CROSS BY MR. MAYE

1 A (The witness nods.)

2 Q Do you recall confirming with your attorney that
3 he reviewed your Constitutional rights prior to entering
4 the guilty plea?

5 A Yes, sir.

6 Q So your attorney went over your right to a jury
7 trial, your right to remain silent, your right to call
8 witnesses and present self-defense? All of that was
9 discussed with you?

10 A Yes, sir.

11 Q Okay. And do you recall The Court also going
12 over those specific rights with you, again, during the
13 hearing?

14 A Yes, sir.

15 Q So after all of that and after being informed of
16 all that, you still chose to proceed with your guilty plea
17 before The Court?

18 A Yes, sir.

19 Q Okay. Do you recall that The Court told you
20 that your indictment was for a violent and most serious
21 offense?

22 A Yes, sir.

23 Q Do you recall The Court -- telling The Court
24 that your attorney also told you of those distinctions for
25 your charge?

TYQUEZ BRISBANE-CROSS BY MR. MAYE

1 A Yes, sir.

2 Q Okay. You've testified that you think you had a
3 self-defense argument to this case, do you recall The
4 State offering the recitation of facts for the crime
5 during the hearing?

6 A No, sir.

7 Q Would you dispute that that happened and is in
8 the transcript?

9 A I don't recall.

10 Q Okay. Would you like to see it or just accept
11 that that is in the transcript?

12 A I'd like to see it.

13 Q Certainly.

14 Your Honor, may I approach?

15 THE COURT: Yes, sir.

16 MR. MAYE: Your Honor, for the record, I'm on
17 Pages 8 through 10. Then, I believe on 17 a little
18 later.

19 BY MR. MAYE:

20 Q Are you able to read okay?

21 A Uh-huh.

22 Q Okay. Start right here.

23 A Right here?

24 Q Yeah. And it goes on just so you fully read it.
25 Now, if you will flip to Page 17 for me.

TYQUEZ BRISBANE-CROSS BY MR. MAYE

1 A (The witness complies.)

2 Q And on start at Line 17. Go to Line 20. So
3 having reviewed your transcript, do you now recall that
4 The State set forth the recitation of facts for your case?

5 A Yes, sir.

6 Q And do you recall that you testified to The
7 Court that you accepted and agreed with those facts as
8 presented?

9 A Yes, sir.

10 Q Is there anything in the statement of facts from
11 The State that you just read that suggested there's any
12 basis for self-defense?

13 A (The witness shook his head.)

14 THE COURT: Is that a answer?

15 BY MR. MAYE:

16 Q Yeah, I need you to give a verbal--

17 A No, sir.

18 Q So you didn't see anything that indicated a
19 defense of self-defense?

20 A No, sir.

21 Q Do you recall that The State indicated to The
22 Court that this was a straight-up plea?

23 A Yes, sir, yes, sir, yes, sir.

24 Q And that they were seeking the 30 maximum?

25 A Yes, sir.

TYQUEZ BRISBANE-CROSS BY MR. MAYE

1 Q And after hearing all of that, you still
2 proceeded to continue with your guilty plea?

3 A Yes, sir.

4 Q In the hopes that you would get a lesser
5 sentence?

6 A Yes, sir.

7 Q Do you recall Mr. Beasley presenting a case on
8 your behalf, discussing your childhood and the many
9 difficulties that you had had growing up, in an effort to
10 mitigate the sentence that you might receive?

11 A Yes, sir.

12 Q Okay. Did you think he did a good job with
13 that?

14 A Yes, sir.

15 Q Did you, yourself, apologize for the crime and
16 express remorseful?

17 A Yes, sir.

18 Q And are you here because you want less than 30
19 years?

20 A I'm here because I should have gone for
21 self-defense.

22 Q In retrospect? In retrospect you should have
23 gone for a trial?

24 A Yes, sir.

25 Q Instead of going to plea?

TYQUEZ BRISBANE-CROSS BY MR. MAYE

1 A Yes, sir.

2 MR. MAYE: One moment, Your Honor.

3 BY MR. MAYE:

4 Q It was your decision to plead, you were not
5 forced to do so or insisted upon by anyone; correct?

6 A Yes, sir.

7 Q Could you repeat that?

8 A Yes, sir.

9 Q You were not forced?

10 A (The witness shook his head.)

11 THE COURT: Need to say yes or no.

12 THE WITNESS: No, sir, I wasn't forced, no.

13 MR. MAYE: Thank you.

14 Thank you, Your Honor.

15 THE COURT: I can see you but the court reporter
16 has to take down what you say, if you're just shaking
17 or nodding your head, she can't get that.

18 THE WITNESS: Okay.

19 BY MR. MAYE:

20 Q Were you promised any particular sentence by
21 anyone in advance of the plea hearing?

22 A I was promised I wouldn't get over 30, like, the
23 max.

24 Q You wouldn't get over 30 years but you were not
25 guaranteed you're only going to get 12, you're only going

TYQUEZ BRISBANE-REDIRECT BY MR. YARBOROUGH

1 to get 15, you're--

2 A I wun't [verbatim] guaranteed no certain amount
3 of time.

4 Q Okay. And your testimony on direct was that you
5 didn't want to plead guilty but you still did in hopes
6 that you got a lesser sentence?

7 A Yes, sir.

8 MR. MAYE: That's all I have, Your Honor.

9 THE COURT: Redirect?

10 MR. YARBOROUGH: Yes, sir, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. YARBOROUGH:

13 Q You believed, at the time you were entering the
14 guilty plea, that you should have been going for
15 self-defense; right? That's what you wanted to do but you
16 relied on Mr. Beasley's advice; is that right?

17 A Yes, sir.

18 Q Okay. And so when you say you should have gone
19 for it, what you mean is you should have done what you
20 thought you should do; is that what you're saying?

21 A Yes, sir.

22 Q And today you still think that's right?

23 A Yes, sir.

24 Q Because although you're extremely sorry for what
25 happened, you just don't feel like you're guilty of

TYQUEZ BRISBANE-REDIRECT BY MR. YARBOROUGH

1 manslaughter; right?

2 A Yes, sir.

3 Q And you always felt that way?

4 A Yes, sir, I always felt that way.

5 Q Right. And you shared that with Mr. Beasley and
6 the other people that worked in the office?

7 A Yes, sir.

8 Q And they told you, at the time, that
9 manslaughter would be very difficult because of selling
10 the gun; right?

11 A Yes, sir.

12 Q At that point, did you know that one of the
13 tapes -- or one of the texts that you sent said that you
14 wanted to make sure that it was okay to sell the gun
15 because the person was 18 years or older; right?

16 A Yes, sir.

17 Q Okay. Because you had checked to make sure it
18 was fine to sell the gun; right?

19 A Yes, sir.

20 Q So you didn't, at the time, did not believe you
21 were committing a crime by selling that gun; right?

22 A Yes, sir.

23 Q And would you have fired your gun if they had
24 not moved like they were going to fire their gun?

25 A Would I have fired my gun if I knew -- no, sir.

TYQUEZ BRISBANE-REDIRECT BY MR. YARBOROUGH

1 Q Okay. And now that you've had a chance to go
2 through the discovery in your case and everything that's
3 involved with it, you believe that you should have asked
4 for a trial in self-defense, right?

5 A Yes, sir.

6 Q And the only reason you did that was because
7 Mr. Beasley advised you not to; right?

8 A Yes, sir.

9 Q Okay. And during the sentencing you wish that
10 someone would have explained to The Judge that you weren't
11 doing some kind of celebratory video about having fired
12 the shots; right?

13 A Yes, sir.

14 Q And, in fact, that video was done several days
15 before the killing; right?

16 A Yes, sir.

17 Q Okay. And you think that changed Judge Kinlaw's
18 mind or, at least, it seemed to to you, as a person
19 watching what happened, that the sentence was greater?

20 A Yes, sir.

21 MR. YARBOROUGH: Okay, thank you. No further
22 questions.

23 THE COURT: Thank you, you can step down.

24 Call your next witness.

25 MR. YARBOROUGH: Your Honor, we don't have

RYAN BEASLEY-DIRECT BY MR. MAYE

1 another witness. We rely on his testimony and the
2 testimony that's in the record.

3 THE COURT: Okay.

4 MR. YARBOROUGH: I think it outlines the
5 self-defense argument.

6 THE COURT: All right, Applicant rests.
7 State, call your first witness.

8 MR. MAYE: The State would call Ryan Beasley.

9 THE CLERK: Mr. Beasley.

10 MR. BEASLEY: Hey.

11 THE CLERK: Hey. Place your left hand on the
12 Bible, raise your right hand.

13 RYAN BEASLEY, after being duly sworn{,}testified
14 as follows:{F}

15 THE CLERK: Thank you, you may be seated.

16 Please state your full name for the record.

17 THE WITNESS: Ryan Lewis Beasley.

18 DIRECT EXAMINATION

19 BY MR. MAYE:

20 Q Good afternoon, Mr. Beasley.

21 A Good afternoon.

22 Q Were you initial counsel on Mr. Brisbane's case?

23 A I believe so.

24 Q Okay.

25 A You mean, like, maybe he had a public defender

RYAN BEASLEY-DIRECT BY MR. MAYE

1 before?

2 Q Yes.

3 A He may have, initially. But it was brief, I
4 think.

5 Q Briefly. Do you recall when you were -- and you
6 were hired as private counsel, do you recall when?

7 A I don't recall the dates, no.

8 Q From the time that you were hired as counsel to
9 the time that you helped him enter his guilty plea, did
10 you feel you had sufficient time to prepare, to review?

11 A Yes.

12 Q Okay. Did you request Rule 5 discovery, Brady
13 discovery?

14 A Yes.

15 Q Did you fully review all of that discovery with
16 Mr. Brisbane?

17 A Yes.

18 Q Can you estimate how many times you would have
19 met with him in advance of the plea?

20 A I do not recall how many. I know it was a bunch
21 of times.

22 Q Okay. Could you estimate how long those
23 meetings would usually last?

24 A It just depend on, you know, whether we were
25 going through his discovery or going through, you know,

RYAN BEASLEY-DIRECT BY MR. MAYE

1 different things that might be going on with the case. It
2 just varied.

3 Q Okay. Once you had the discovery and discussed
4 what your client did, what was your opinion of the case?

5 A My opinion was to try to, obviously, get a
6 sentence as low as possible. And I thought the best way
7 to do that -- because the solicitor's office was unwilling
8 to reduce the charge for a while. But then they finally
9 agreed to let Tyquez plead to manslaughter and then with a
10 straight-up plea, then we could argue for whatever
11 sentence we thought was appropriate. And we thought that
12 by presenting, you know, the mitigation, in the case,
13 which the facts of the case, it wasn't a self-defense case
14 but I thought if we presented those facts and his medical
15 history and we even got a psych evaluation done and
16 presented all of that. We even did a sentencing
17 memorandum for The Judge. We thought we could get a
18 fairly good sentence based on all that.

19 And really, you know, when I finished
20 talking, I thought he was probably going to give Tyquez 15
21 years. But the victim's family spoke afterwards and
22 started talking about some video that I wasn't aware of.
23 And The State didn't present any kind of video in their
24 facts of the case or anything about it. So, obviously, we
25 were all caught offguard with that and I couldn't dispute

RYAN BEASLEY-DIRECT BY MR. MAYE

1 the video. And I think, from what I recall, I think The
2 Judge even asked Tyquez about that video during the plea.
3 But that definitely caused the sentence to be as severe as
4 it was, in my opinion.

5 Q In your opinion?

6 A Yes.

7 Q Any way to confirm that? Just gut feeling?

8 A No, just my 20 plus years of doing criminal law.
9 I thought that changed the whole way the case was going.

10 Q But The Court did not exceed the sentencing
11 parameters for the charge?

12 A No, he did not.

13 Q Going back to self-defense, what was your
14 opinion of that defense, was it?

15 A Well, the main problem that I saw -- because
16 this was on video, the incident. And Tyquez had gotten
17 out of the vehicle before firing. Which he had gotten out
18 of the dangerous part of the situation. And he fired into
19 the back of the seat, through, like, the headrest, that
20 hit the victim. And they found no guns at the scene as
21 well.

22 Q So, essentially, you were concerned with the
23 last element of self-defense due to the plea?

24 A Correct.

25 Q Is that still your opinion of the case today?

RYAN BEASLEY-DIRECT BY MR. MAYE

1 A Yes.

2 Q And you advised him that under that -- with that
3 in mind, what was your advice to him in the handling of
4 this case?

5 A I thought we would lose that argument. And he
6 could very well have been convicted of murder, at that
7 point.

8 Q So he was facing a original murder charge?

9 A Yes.

10 Q From the getgo, from handling your client's
11 case, was he amenable to accepting a plea?

12 A Yes.

13 Q It wasn't something he was adamantly against?

14 A No, he thought that was the best way to handle
15 the case.

16 Q In the process of meeting and advising your
17 client, did you go over the charges with him and the
18 elements for those charges?

19 A Yes, sir.

20 Q Did he understand those?

21 A He did.

22 Q Any moment where you felt like he might not have
23 understood?

24 A No.

25 Q Did you explain the minimum/maximum sentences he

RYAN BEASLEY-DIRECT BY MR. MAYE

1 might receive?

2 A I did.

3 Q No misunderstanding there either?

4 A No.

5 Q Did you review his various Constitutional rights
6 that have to be waived to plead guilty?

7 A I did.

8 Q And no misunderstandings?

9 A No misunderstandings.

10 Q Did you go over the various categories, the
11 nonviolent, the violent, the serious, most serious,
12 parole, things of that matter with him?

13 A We did.

14 Q Okay. Do you do these things with every one of
15 your criminal defendants in advance of a plea?

16 A I do.

17 Q Okay. And no reason to think this was any
18 different?

19 A No reason to think it was any different.

20 Q Nothing that you saw was missing from any
21 discovery responses, nothing came out?

22 A No.

23 MR. MAYE: Court's indulgence for just a moment,
24 Your Honor?

25

RYAN BEASLEY-CROSS BY MR. YARBOROUGH

1 BY MR. MAYE:

2 Q In advising your client, was it clear to your
3 client that it was his choice to make whether to accept
4 the plea or not?

5 A Yes.

6 Q No instances where he felt he was being forced
7 or doing something he didn't want to do?

8 A No.

9 Q Did you, at any point, promise him any
10 particular sentence?

11 A No.

12 MR. MAYE: Your Honor, I believe that's all I
13 have.

14 THE COURT: All right, Mr. Yarborough.

15 MR. YARBOROUGH: If The Court please, Your
16 Honor.

17 CROSS-EXAMINATION

18 BY MR. YARBOROUGH:

19 Q Mr. Beasley, in looking at the case overall, you
20 looked at the potential self-defense; right?

21 A I did.

22 Q And, in fact, in your guilty plea colloquy, you
23 talk a lot about the self-defense issues; right?

24 A We -- we -- I think I even -- I mean, I haven't
25 looked at the transcript but the -- I recall telling The

RYAN BEASLEY-CROSS BY MR. YARBOROUGH

1 Judge why it wasn't -- why we agreed it wasn't
2 self-defense because the video showed Tyquez clearly
3 outside of the car.

4 Q Right. And the door shutting. I mean, it was
5 self-defense is always one of those hard things to try.

6 A Yeah.

7 Q But that made your decision; right?

8 A Yes.

9 Q But you were letting Judge Kinlaw, who we both
10 know, know about how it was a close call and you made it,
11 you looked at it; right?

12 A Right.

13 Q And you were doing that in mitigation?

14 A Correct.

15 Q Okay. And, also, in mitigation you had done a
16 very extensive pretrial presentation that you had given to
17 The Judge about his health issues and you had, actually,
18 gotten a Psychologist Maddox to look and do a report and
19 all that and given that to The Judge as well; right?

20 A Correct. I wanted The Judge to be as prepared
21 as possible and have anything in advance. So, you know,
22 to let him know it was a unique situation and there was a
23 lot of factors at play for Tyquez to justify a lesser
24 sentence than most individuals in those situations.

25 Q All right. And, at that point, you felt like

RYAN BEASLEY-CROSS BY MR. YARBOROUGH

1 you were right there?

2 A Right, I did.

3 Q Yeah. And then, all of a sudden, someone starts
4 talking about a video that you don't know anything about;
5 right?

6 A I did not. I was not aware of the video.

7 Q But The State hadn't turned it over to you?

8 A Not that I recall, no. I mean, The State never
9 ever brought up any video.

10 Q Right, they didn't bring it up either. And, in
11 fact, Mr. Brisbane said that that wasn't correct; right?
12 He told The Judge that if he didn't tell you that. I know
13 The Judge asked.

14 A I cannot remember exactly what he said. I'm
15 sure it's in the transcript but I know The Judge was
16 asking him about it.

17 Q Right. I mean, in the transcript, I think--

18 One second, Your Honor, I'm sorry.

19 On Page 26, I think.

20 May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 BY MR. YARBOROUGH:

23 Q You see he asked Mr. Brisbane about it and he
24 denies it, at that point, too; right?

25 A So looks like The Judge asked him, he says --

RYAN BEASLEY-CROSS BY MR. YARBOROUGH

1 The Court says, Why did you go -- What did you go on the
2 internet for?

3 And Mr. Brisbane said, I went to the
4 internet, I can't remember what exactly it was but it
5 wasn't because of that.

6 And then The Court said, Did you mention
7 this victim in your internet?

8 And Mr. Brisbane says, I think I did.

9 And The Court says, Why?

10 And Mr. Brisbane said, Because I said I did
11 something terribly wrong but I didn't never get into
12 details or nothing.

13 Q All right. In the colloquy that had been
14 presented earlier than that, it made it sound as if he had
15 done something wrong; right? So he denied it?

16 A Sort of. I would say that's debatable.

17 Q Well, I mean, he denied saying anything that --
18 that was controversial or that was meant to hurt the
19 victim's family; right?

20 A Yeah, maybe, I don't know.

21 Q But it surprised you?

22 A Yes, I was -- yes, that was -- that threw a
23 wrench into my detail that day for sure.

24 Q Right. And in that wrench, that's -- you think
25 that was what hurt your presentation for?

RYAN BEASLEY-REDIRECT BY MR. MAYE

1 A I think it did, very much.

2 Q And, you know, to this day we don't know exactly
3 what that was or what they were talking about?

4 A No. And, you know, it was -- it was one of
5 those situations, you know, the victims were allowed to
6 talk in court and you don't know what they're going to
7 say.

8 Q Right.

9 A And it's hard to refute something I didn't know
10 anything about.

11 Q Right.

12 A So.

13 MR. YARBOROUGH: I don't have any further
14 questions, thank you.

15 MR. MAYE: Just a brief reply, Your Honor?

16 THE COURT: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MR. MAYE:

19 Q Mr. Beasley, in conducting the plea, The Court's
20 allowed to make credibility findings and judge the remorse
21 that's showed by the defendant?

22 A Correct.

23 MR. MAYE: May I approach, Your Honor?

24 THE COURT: Yes, sir.

25

RYAN BEASLEY-REDIRECT BY MR. MAYE

1 BY MR. MAYE:

2 Q Mr. Beasley, this is Page 28 of the transcript
3 record, does that appear what took place in the second
4 half of that page?

5 A It appears to be the case.

6 Q And under the circumstances, was there anything
7 really you felt you could have done differently once that
8 was discussed and addressed and over with?

9 A You know, you always beat yourself up after a
10 case and, you know, I started wondering if I should have
11 objected to the victim saying that. But that wouldn't
12 have been appropriate either. So I didn't know what I
13 could have done differently. But no, there's nothing
14 else.

15 MR. MAYE: That's all I have, Your Honor. Thank
16 you.

17 THE COURT: Okay.

18 MR. YARBOROUGH: The State rests.

19 THE COURT: All right, thank you, Mr. Beasley.

20 THE WITNESS: Thank you.

21 THE COURT: You can step down.

22 Any reply testimony?

23 MR. YARBOROUGH: No, sir, Your Honor.

24 THE COURT: All right.

25 MR. YARBOROUGH: One thing, just real quick,

1 Your Honor. Can I put him up for one question?

2 THE COURT: Yes, sir, I'll allow you to call a
3 reply witness.

4 Mr. Brisbane, you're still under oath.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. YARBOROUGH:

7 Q Just briefly, Mr. Brisbane, did you make any
8 video that was negative about the victim in this case at
9 all?

10 A No, sir.

11 Q Okay. Did you understand what they were asking
12 you, at the time?

13 A No, sir.

14 Q Did your counsel ever talk to you about it?

15 A Not the video, no, sir.

16 Q To your knowledge he didn't know about it
17 either; right?

18 A No, sir.

19 MR. YARBOROUGH: Okay, thank you, nothing
20 further.

21 THE COURT: Anything response?

22 MR. MAYE: Nothing in response.

23 THE COURT: Okay, summation, The State go first,
24 I'll give Mr. Yarborough the last word.

25 CLOSING STATEMENT

1 MR. MAYE: Thank you, Your Honor. Very simply
2 Your Honor, an applicant is only permitted to attack
3 the guilty plea by demonstrating that the plea was
4 not voluntary -- voluntarily and intelligently
5 entered. Boykin vs. Alabama and Lockhart vs. Hill
6 control or Hill vs. Lockhart control. And the only
7 way to undo a guilty plea is The Defendant has to
8 show that he was not properly informed of his
9 potential sentence, the elements of his charges and
10 the Constitutional rights that he has to waive to
11 enter the plea.

12 Quite simply, The Applicant has not met that
13 burden in any form based on the testimony here today.
14 And there's certainly been no demonstration of any
15 deficient performance of counsel. And no
16 demonstration of prejudice. He quite simply has
17 testified he went the route of accepting a plea in
18 hopes of getting a lesser sentence, rather than
19 risking what he had been advised was not a winning
20 defense argument. And it just didn't play out that
21 way for him. And in retrospect he wants a lesser
22 sentence but that is not the Strickland standard.
23 And for that reason we would ask The Court to deny
24 relief.

25 THE COURT: Thank you.

1 Mr. Yarborough.

2 CLOSING STATEMENT

3 MR. YARBOROUGH: Briefly, Your Honor. I believe
4 that Mr. Beasley and The Applicant discussed him
5 going forward with a guilty plea based on the fact
6 that he would be able to discuss his health issues
7 and be able to discuss the involuntariness of what
8 happened with the potential that it was self-defense.
9 And I think all that happened and they were going
10 along well and Mr. Beasley had made a very good
11 presentation that would hopefully going to be a good
12 outcome for him.

13 And then the victim blurted this out and neither
14 party knew anything about it. The only person in the
15 room that could have stopped it, at that point, would
16 have been Mr. Beasley. And, at that point, it -- you
17 know, The Court relied on information in sentencing
18 that was either not been turned over in discovery or
19 was not true or not pertinent to what had happened.
20 And based on that, I think that that was ineffective
21 assistance of counsel by not stopping at that point.
22 And we urge The Court to grant him a new trial based
23 on that.

24 THE COURT: Thank you, Mr. Yarborough.

25 All right. Well, I want to read through the

1 transcript of what's been submitted today, so I'll
2 take this under advisement. I'll have my law clerk
3 send you a decision.

4 MR. YARBOROUGH: Thank you, Your Honor.

5 MR. MAYE: Thank you, Your Honor.

6 THE COURT: Thank you, Counsel.

7 (WHEREUPON, the proceedings were concluded.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 17TH day of January, 2024.

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

August 14, 2024

APRIL P. HERRON, Court Reporter

Solicitor Jenna H. McLeod, Esq. of the Thirteenth Circuit prosecuted the case.

On December 6, 2022, Applicant pled guilty to voluntary manslaughter and was sentenced to the maximum sentence of thirty (30) years by the Honorable Alex Kinlaw. At the time of the plea hearing, Applicant had spent 738 days in jail. Judge Kinlaw applied 738 days of as credit for time served.

Applicant filed a timely direct appeal. Applicant's appeal was dismissed on February 23, 2023, due to failure to provide explanation pursuant to Rule 203 of the South Carolina Appellate Court Rules. The Remittitur was issued on March 13, 2023. Applicant filed his application for post-conviction relief on May 8, 2023.

Claims Raised

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

(1) Plea counsel was ineffective in the following regards:

- a. "Plea counsel failed to adequately review discovery with Applicant and advise him accordingly."
- b. "Plea counsel failed to explain the nature of the charges as well as the consequences or implications that would result from the imposition of his plea sentence."
- c. "Plea counsel failed to adequately explain any plea offer's terms and the relative advantages and disadvantages of pleading guilty as opposed to proceeding to trial."
- d. "Plea counsel failed to sufficiently advise Applicant of trial rights waived by way of his guilty plea, specifically of the waiver of the defendant's right to present a defense to the charges, submit evidence in support thereof, call supporting witnesses to testify, etc."
- e. "Plea counsel failed to adequately investigate the facts of the case, potential defenses and legal theories available to applicant prior to advising him to plea guilty."

Applicant asserts that plea counsel's errors and omissions directly impacted his decision to enter

a guilty plea, rendering his guilty plea unlawful as he did not enter it knowingly, intelligently, or voluntarily. Applicant also asserts in the alternative, that plea counsel was ineffective during the sentencing stage and failed to present an argument for mitigation purposes at his sentencing. As requested relief, Applicant requests a “new trial or in the alternative, resentencing.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

Relevant Law

The two-part *Strickland v. Washington*¹ test applies to challenges to guilty pleas based on ineffective assistance of counsel. *Hill v. Lockhart*, 474 U.S. 58, 106 S. Ct. 370, 88 L. Ed. 2d 203 (1985). In the context of guilty pleas, the first half of the *Strickland* test is nothing more than a restatement of the standard of attorney competence. *Id.* The second, or “prejudice,” requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. *Id.* In other words, in order to satisfy the “prejudice” requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Id.* Thus, an applicant must show both error and prejudice to receive relief in a PCR proceeding. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001) (citing *Scott v. State*, 334 S.C. 248, 513 S.E.2d 100 (1999)). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. *Suber v. State*, 371 S.C. 554, 640 S.E.2d 884 (2007) (citing *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

¹ 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Applicant testified on his own behalf at the evidentiary hearing and Respondent called plea counsel, Ryan Beasley Esq., to give testimony regarding his representation of Applicant. After considering the record, arguments presented by counsel, and the controlling case law, this Court finds that Applicant failed to meet his burden of proof.

General Summary of Relevant Facts from Trial

On May 21, 2020, Officers responded to a primary and secondary incident location due to a homicide in Greenville County. Applicant and victim, Andre Dunbar, orchestrated a meeting via text message for the victim to purchase a gun from Applicant. The Applicant and victim arrived at the primary incident location. Applicant got into the back seat of the victim's vehicle, and they began arguing about the purchase price of the gun. The victim's cousin was also present in the vehicle. The victim refused to give Applicant any money to purchase the gun. Applicant exited the vehicle and fired two shots at the victim striking him through the seat in his back. Subsequently, the victim proceeded to speed across Augusta Road to the secondary incident location where he crashed through two fences. The victim died nearly immediately from his injuries. (GP. Tr. 8-9).

Ineffective Assistance of Plea Counsel Claims

Plea Counsel failed to Review Discovery and Advise Accordingly

As to Applicant's claim that plea counsel "failed to adequately review discovery with him and advise him accordingly," after considering the testimony at the evidentiary hearing and the record before the Court, this Court finds that Applicant has failed to establish that plea counsel acted deficiently and has additionally failed to show prejudice as a result.

Applicant testified that plea counsel misinformed him that he had no chance of prevailing on self-defense theory at trial. Applicant testified that he believed plea counsel did not go

through his case thoroughly and that he would have wanted to proceed to trial if plea counsel had not misinformed him of his chances.

Plea counsel testified that he reviewed the discovery with Applicant and met with Applicant numerous times prior to entering his guilty plea. He testified that after he reviewed the discovery, he advised Applicant that he believed he would lose a self-defense claim at trial and be convicted of murder. He further testified that he believed Applicant should enter a straight up plea to manslaughter and attempt to mitigate his sentence by discussing facts regarding Applicant's health. Plea counsel testified that he did not believe Applicant had a sufficient claim for self-defense, as there was no gun found at the scene with the victim and additional evidence that would contradict their self-defense theory.

This Court finds plea counsel's testimony to be credible, and that plea counsel adequately reviewed discovery and advised Applicant appropriately considering the circumstances and evidence regarding his case. Applicant has not shown that plea counsel's advice was not within the range of competence demanded of attorneys in criminal cases." *Bennett v. State*, 371 S.C. 203, 638 S.E.2d 675 (2006). Further, satisfying the prejudice prong, "ordinarily requires more than simply a defendant's assertion that but for counsel's deficient purpose he would have pled [guilty] but would have gone to trial. *Stalk v. State*, 383 S.C. 559, 681 S.E.2d 592 (2009). Therefore, Applicant has failed to meet his burden regarding this claim.

*Plea Counsel Failed to Explain the Nature of the
Charges, Consequences, and Implications of a Guilty Plea*

As to Applicant's claim that plea counsel "failed to explain the nature of the charges as well as the consequences or implications that would result from the imposition of his plea sentence," this Court finds that Applicant has failed to establish his burden of plea counsel deficiency and resulting prejudice.

Applicant testified that plea counsel told him he could serve a sentence of two (2) to thirty (30) years for manslaughter but that thirty (30) years would be overboard and unlikely to happen. Applicant testified that he plead guilty because plea counsel told him that was his best option. Applicant testified that had plea counsel not misinformed him, he would have proceeded to trial and asserted a self-defense claim.

Plea counsel testified that he reviewed the elements and charges along with the minimum and maximum sentencing parameters with Applicant when discussing Applicant's case with him. He testified that it was clear that Applicant wanted to enter a guilty plea in fear of being convicted of murder at trial. He also testified that he did not promise Applicant a particular sentence but discussed using Applicant's health as a mitigating factor for his sentence. Further, the record shows that the Court colloquy informed Applicant of the consequences of the imposition of his guilty plea.

The Court: You understand I can give you up to 30 years on this offense?

Mr. Brisbane: Yes, Your Honor.
(GP. Tr. at 5).

Upon cross examination, Applicant testified that he was not forced to plead guilty but that he wants a reduced sentenced. A guilty plea entered because of *belief* that judge will impose certain sentence is not involuntary. *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (fact that defendant "hoped" and "expected" to get reduced sentence does not render plea invalid); *Harres v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984) (fact that defendant "thought" judge would give lighter sentence not ground for relief). Further, satisfying the prejudice prong, "ordinarily requires more than simply a defendant's assertion that but for counsel's deficient purpose he would have pled [guilty] but would have gone to trial. *Stalk v. State*, 383 S.C. 559, 681 S.E.2d 592 (2009). Therefore, this Court finds that Applicant has not established deficiency, nor has he

demonstrated more than mere assertion that he would have proceeded to trial if not for counsel's deficiency.

*Plea Counsel Failed to Explain
Advantages and Disadvantages of Pleading Guilty*

As to Applicant's claim that plea counsel "failed to adequately explain any plea offer's terms and the relative advantages and disadvantages of pleading guilty as opposed to proceeding to trial," this Court finds that plea counsel credibly testified as to advising and informing Applicant of advantages and disadvantages of entering a guilty plea instead of proceeding to a jury trial.

Applicant testified that he believes plea counsel misinformed him on his chances for a self-defense claim at trial. Applicant testified that he would have gone to trial and asserted a self-defense claim had plea counsel not misadvised him. Applicant testified as to the circumstances of the case, confirming that he exited the vehicle and shot the victim from the outside of the vehicle during the sale of a gun. Applicant testified that he did not think the firearm would discharge when he shot it.

Plea counsel testified that considering the facts of the case, he did not believe Applicant's claim of self-defense would succeed at trial. He noted that no guns were found at the scene and there was no evidence to support a self-defense claim. Plea counsel testified that he discussed a self-defense claim with Applicant and the risk that he would be convicted of murder. He testified that he advised Applicant that he should plead straight up to voluntary manslaughter and use his health as a mitigating factor for sentencing. Plea counsel testified that he informed Applicant of the sentencing range for voluntary manslaughter but did not promise a particular sentence.

Again, mere assertion of proceeding to trial rather than pleading guilty does not establish counsel deficiency, and Applicant has not shown that plea counsel's advice was not within the

range of competence demanded of attorneys in criminal cases.” *Bennett v. State*, 371 S.C. 203, 638 S.E.2d 675 (2006). Therefore, this Court finds plea counsel’s testimony to be credible, and that Applicant has failed to show that plea counsel did not adequately inform him about the advantages and disadvantages of pleading guilty and foregoing a trial.

Plea Counsel Failed to Advise of Waiver of Constitutional Rights

As to Applicant’s claim that plea counsel “failed to sufficiently advise Applicant of trial rights waived by way of his guilty plea, specifically of the waiver of the defendant’s right to present a defense to the charges, submit evidence in support thereof, call supporting witnesses to testify, etc.,” this Court finds that Applicant has not satisfied his burden of proof and has failed to prove deficiency of plea counsel’s representation.

At the evidentiary hearing, plea counsel testified that he discussed Applicant’s constitutional right to proceed with a jury trial. The Court also discussed those rights at the guilty plea hearing. He further testified that Applicant wanted to go forward with his plea to voluntary manslaughter and forego a trial due to the risks. The record shows that the Court discussed Applicant’s constitutional rights and that Applicant understood that he was waiving those rights. “A defendant’s knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant’s counsel, or both.” *Dalton v. State*, 376 S.C. 130, 654 S.E.2d 870 (Ct. App. 2007) (citing *Pittman v. State*, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999)). Here, the record reflects the colloquy of Applicant’s waiver of constitutional rights between the Court and Applicant.

The Court: Did he go over the elements of what the State would have to prove if this matter went to trial?

Mr. Brisbane: Yes, Your Honor.

The Court: All right. Did he also have discussion with you, the fact that once you come before the Court and enter a knowing and intelligent decision to plea guilty, you give up certain constitutional protections?

Mr. Brisbane: Yes, Your Honor.

The Court: You give up your right to a trial, You're not afforded an opportunity to have a trial once you plead guilty. You understand that?

Mr. Brisbane: Yes, Your Honor.

The Court: You give up your right to remain silent. You understand that?

Mr. Brisbane: Yes, Your Honor.

The Court: Thirdly, you give up your right to confront any witnesses that the State may have against you as it related to this indictment. You understand –

Mr. Brisbane: Yes, Your Honor.

The Court: Lastly, you give up your right to assert any defenses that you may have as it relates to this indictment. So any defenses that you may have, you no longer have them when you decide to plead guilty. You understand that?

Mr. Brisbane: Yes, Your Honor.

The Court: Do you understand all my questions?

Mr. Brisbane: Yes, Your Honor.

The Court: All right. So your decision to waive those constitutional protections, is that your decision?

Mr. Brisbane: Yes, Your Honor.

(GP Tr. 5-6).

Further, Applicant testified that plea counsel reviewed his constitutional rights with him and that the Court also discussed the rights he was waiving by pleading guilty. Applicant testified that he still chose to proceed. This Court finds that plea counsel credibly testified that he informed Applicant of his constitutional rights, and that the record demonstrates that the Court

also conveyed the rights Applicant surrendered by entering a guilty plea. *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (holding that even if trial counsel gave inaccurate advice, the Court's colloquy with the defendant can cure the misconception). Therefore Applicant, has failed to meet his burden proving plea counsel's deficiency regarding this claim.

Plea Counsel Failed to Adequately Investigate

As to Applicant's claim that plea counsel "failed to adequately investigate the facts of the case, potential defenses and legal theories available to applicant prior to advising him to plead guilty," this Court finds that Applicant has not met his burden of proof.

Applicant and plea counsel testified that they discussed a self-defense theory. Plea counsel testified that he advised Applicant to plead guilty to voluntary manslaughter, because there was not sufficient evidence to confidently pursue a self-defense claim. Additionally, plea counsel testified that he discussed with Applicant that he believed his health issues would mitigate his sentencing and plea counsel testified that Applicant wanted a plea. Applicant testified that he felt plea counsel did a good job explaining his health issues and how those health issues contributed to the shooting. Plea counsel testified that he was unaware of the cell phone video that was discussed at Applicant's sentencing, and that he felt Applicant would not have received the maximum had that not been discussed.

Based on the circumstances and facts of this case, this Court finds that plea counsel provided the Court with an extensive history of childhood circumstances and health concerns to mitigate Applicant's sentencing. (GP. Tr. 18-23). It is apparent that plea counsel investigated the facts of the case, as well as provided the Court with information regarding Applicant's unique health circumstances. Further, plea counsel testified that he considered a self-defense theory as

well as an involuntary manslaughter plea but concluded that pleading guilty to voluntary manslaughter and mitigating the sentencing was the most beneficial option for Applicant.

Therefore, this Court finds that Applicant has failed to meet his burden of proof. Applicant has not established deficiency of plea counsel, and even if he could, he has failed to show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.


CONCLUSION

For the above stated reasons, this Court finds that Applicant failed to carry his burden of proof. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. Applicant's application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED this 28 day of March, 2024.



R. SCOTT SPROUSE
Presiding Judge

ATTORNEY GENERAL'S OFFICE

RECEIVED 5/29/24

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN END
 HAVE COPIES MADE
 ROUTE TO _____
 ORDER: _____ TRANSCRIPT
 PEN RECORDS CLERK RECORDS
 OTHER: _____

WITNESSES

Brett E Boggs

Greenville Police Department

5/25/2020

BEB

ARREST WARRANT NUMBER

2020A2320601711 and 2020A2320601712

ACTION OF GRAND JURY

TRUE BILL

[Signature]

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2021-GS-23-

JEH

001451

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2021

July

THE STATE

vs.

TYQUEZ GYTRELL BRISBANE

Indictment for

0116/0549

**MURDER
AND POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

VIOLATION § 16-03-0010 and §16-23-0490

FILED

MAR 23 2021

Clerk of Court
Greenville County

**ENTERED
ACCT.** *BM*

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER AND POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

JUL 06 2021

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

COUNT ONE - MURDER

That TYQUEZ GYTRELL BRISBANE did in Greenville County, on or about the 21st day of May, 2020, unlawfully and with malice aforethought kill ANDRE DUNBAR by means of shooting him, and that ANDRE DUNBAR died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

COUNT II – POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That TYQUEZ GYTRELL BRISBANE did in Greenville County, on or about the 21st day of May, 2020, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Murder. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 75182