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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Anderson County

Honorable Perry H. Gravely, Circuit Court Judge

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JACOB NATHANIEL LANCE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001225

---

APPENDIX

---

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STATE OF SOUTH CAROLINA	)	
	)	GENERAL SESSIONS COURT
COUNTY OF ANDERSON	)	
-----	)	

STATE OF SOUTH CAROLINA	)	
vs.	)	2016-GS-04-00860, 00861
JACOB NATHANIEL LANCE	)	00862, 00863
DEFENDANT	)	
-----	)	

**TRANSCRIPT OF RECORD**

STATE OF SOUTH CAROLINA	)	
vs.	)	2016-GS-04-00864, 00865
OSCAR ERNEST LANCE,	)	00866, 00867
DEFENDANT	)	
-----	)	

MARCH 14, 2018  
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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

LAUREN DAVIS PRICE, ESQUIRE  
TENTH ASSISTANT SOLICITOR

KURT TAVERNIER, ESQUIRE  
ATTORNEY FOR DEFENDANT/JACOB LANCE

GREGORY LEE COLE, JR., ESQUIRE  
ATTORNEY FOR DEFENDANT/OSCAR LANCE

VIVIAN CROSS,  
CIRCUIT COURT REPORTER

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**I N D E X**

GUILTY PLEA/SENTENCING . . . . . 3

1 \* \* \* MARCH 14, 2018 \* \* \*

2 -----  
3 **THE COURT:** All right.

4 **MS. PRICE:** Thank you, Your Honor, may it please  
5 the court. This is the State vs. Jacob Nathaniel  
6 Lance. He's pleading guilty today under indictment  
7 2016-0860, first degree burglary; 2016-0861 to third  
8 degree arson; 2016-0862 to the lesser included  
9 voluntary manslaughter; and 2016-0863 to another count  
10 of third degree arson.

11 Also before you today, sir, is Oscar Ernest  
12 Lance. He has already pled guilty. He pled guilty on  
13 February 23rd of 2017 before Judge Gravely. He is here  
14 for sentencing today. He will be sentenced on  
15 indictment 2016-0864, which was the lesser included  
16 voluntary manslaughter; 2016-0865 which is a count of  
17 first degree burglary; 2016-0866 which is a count of  
18 third degree arson; and 2016-0867 which is another  
19 count of third degree arson, sir.

20 Your Honor, other than a reduction in the charge  
21 of murder to voluntary manslaughter, there is no  
22 recommendation for sentencing from the State.

23 **THE CLERK:** If you'll please both raise your right  
24 hand.

25 JACOB NATHANIEL LANCE and OSCAR

1 ERNEST LANCE, having been first duly sworn, testified  
2 as follows:

3 **THE COURT:** Mr. Tavernier, Mr. Cole, I was handed  
4 a March 12, 2018 statement from the State that is  
5 apparently authored by Donna Miller; have you seen this  
6 statement?

7 **MR. TAVERNIER:** I have, Your Honor.

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

9 **THE COURT:** All right. And so I just need to get  
10 the colloquy with Jacob Lance; is that correct?

11 **MR. TAVERNIER:** That's correct, Your Honor.

12 **THE COURT:** All right. Mr. Lance, it says that  
13 you're 21 years old; is that correct?

14 **MR. JACOB LANCE:** Yes, sir.

15 **THE COURT:** Okay. I need you to speak up please,  
16 sir.

17 **MR. JACOB LANCE:** Yes, sir.

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

19 **MR. JACOB LANCE:** I graduated.

20 **THE COURT:** High school?

21 **MR. JACOB LANCE:** Yes, sir.

22 **THE COURT:** After you graduated high school, did  
23 you work anywhere?

24 **MR. JACOB LANCE:** I worked a couple of odd jobs.

25 **THE COURT:** Such as?

1           **MR. JACOB LANCE:** I worked at Havoline Express  
2 Lube in Clemson --

3           **THE COURT:** Sir?

4           **MR. JACOB LANCE:** I worked at Havoline Express  
5 Lube in Clemson.

6           **COURT REPORTER:** I didn't understand.

7           **THE COURT:** I don't understand.

8           **MR. JACOB LANCE:** Havoline Express Lube in  
9 Clemson.

10          **MR. TAVERNIER:** Havoline Oil Express.

11          **THE COURT:** Is that like a convenience store?

12          **MR. TAVERNIER:** It's a -- no, it's a quick lube  
13 change place.

14          **THE COURT:** Okay, sir. What else?

15          **MR. JACOB LANCE:** I also worked a couple of odd  
16 jobs with my brother doing heating and air, flooring.

17          **THE COURT:** Are you married?

18          **MR. JACOB LANCE:** No, sir.

19          **THE COURT:** Do you have any children?

20          **MR. JACOB LANCE:** Yes, sir. I got a two and a  
21 half year old little girl.

22          **THE COURT:** Does she -- where does she reside?

23          **MR. JACOB LANCE:** She's with her mother outside.

24          **THE COURT:** Okay. Have you ever lived in a  
25 household with this child?

1           **MR. JACOB LANCE:** Yes, sir.

2           **THE COURT:** All right, sir. You're pleading  
3 guilty to a number of serious charges?

4           **MR. JACOB LANCE:** Yes, sir.

5           **THE COURT:** First, you're pleading guilty to  
6 burglary first degree which is a minimum of 15 to life;  
7 third degree arson which is 15 or less; voluntary  
8 manslaughter which is up to 30; and also another charge  
9 of arson third degree which is 15 -- up to 15?

10          **MR. JACOB LANCE:** Yes, sir.

11          **THE COURT:** So you understand, I can sentence you  
12 up to life today?

13          **MR. JACOB LANCE:** Yes, sir.

14          **THE COURT:** Knowing that, do you still want to go  
15 forward with your plea?

16          **MR. JACOB LANCE:** Yes, sir. I would like to read  
17 off of a speech that I wrote if I could.

18          **THE COURT:** Say that again.

19          **MR. JACOB LANCE:** I would like to read off a  
20 speech that I -- if I could.

21          **MR. TAVERNIER:** He'd like to read -- Your Honor,  
22 he'd like to read something to the court but --

23          **THE COURT:** I'll give you an opportunity to say  
24 what you would like to, Mr. Lance, whenever the  
25 opportunity presents itself. Okay. So you understand,

1 Mr. Lance, going back to my question, I could sentence  
2 you to life today?

3 **MR. JACOB LANCE:** Yes, sir.

4 **THE COURT:** Knowing that, do you still want to go  
5 forward with your plea?

6 **MR. JACOB LANCE:** Yes, sir.

7 **THE COURT:** Are you under the influence of any  
8 medication, drugs, or alcohol today?

9 **MR. JACOB LANCE:** No, sir.

10 **THE COURT:** Mr. Tavernier, are you satisfied Mr.  
11 Lance is competent to plead guilty?

12 **MR. JACOB LANCE:** I am, Your Honor.

13 **THE COURT:** Mr. Lance, did anybody force, threaten  
14 or promise you anything to get you to plead guilty?

15 **MR. JACOB LANCE:** No, sir.

16 **THE COURT:** Are you pleading guilty of your own  
17 free will?

18 **MR. JACOB LANCE:** Yes, sir.

19 **THE COURT:** Do you understand that you have a  
20 right to a jury trial on these four charges?

21 **MR. JACOB LANCE:** Yes, sir, I do.

22 **THE COURT:** During that trial or trials, you would  
23 be presumed innocent and the State would have to prove  
24 each and every element of the charges against you by  
25 proof beyond a reasonable doubt; do you understand

1 that?

2 **MR. JACOB LANCE:** Yes, sir.

3 **THE COURT:** Do you understand that proof beyond a  
4 reasonable doubt is the highest burden of proof  
5 recognized in our law; do you understand that, sir?

6 **MR. JACOB LANCE:** Yes, sir.

7 **THE COURT:** Also you'd be presumed innocent  
8 throughout those charges, that would remain with you  
9 throughout the charges until the jury begins  
10 deliberations and until they find you guilty by proof  
11 beyond a reasonable doubt; do you understand that?

12 **MR. JACOB LANCE:** Yes, sir.

13 **THE COURT:** If you go forward with your plea  
14 today, Mr. Lance, you will give up your right to have a  
15 jury trial on all four of these charges; is that what  
16 you want to do?

17 **MR. JACOB LANCE:** Yes, sir.

18 **THE COURT:** Do you freely and voluntarily give up  
19 your right to a jury trial on all four of these charges  
20 in order to plead guilty to these charges?

21 **MR. JACOB LANCE:** Yes, sir.

22 **THE COURT:** Mr. Lance, if you were to exercise  
23 your right to have a jury trial on one or any or all  
24 these charges, during that trial you could exercise the  
25 following constitutional rights: First, you'd have a

1 right to confront and cross examine witnesses against  
2 you; you'd also have a right to present evidence in  
3 your own defense. You could subpoena people to court  
4 to testify on your behalf and you'd have a right under  
5 the 5th Amendment to the United States Constitution to  
6 remain silent or not to testify; have these rights been  
7 explained to you?

8 **MR. JACOB LANCE:** Yes, sir, they have.

9 **THE COURT:** Do you understand them?

10 **MR. JACOB LANCE:** Yes, sir.

11 **THE COURT:** Do you understand that if you were to  
12 go to trial and not testify, the trial judge would  
13 instruct the jury they could not consider your failure  
14 to testify whatsoever because the burden remains on the  
15 State of South Carolina to prove each and every element  
16 of the charges against you by proof beyond a reasonable  
17 doubt; do you understand that?

18 **MR. JACOB LANCE:** Yes, sir, I do.

19 **THE COURT:** And if you go forward with your plea  
20 today, just like with the jury trial, you'll give up  
21 the Constitutional rights I've just gone over with you  
22 and also your right to remain silent; do you understand  
23 that?

24 **MR. JACOB LANCE:** Yes, sir.

25 **THE COURT:** Is that what you want to do?

1           **MR. JACOB LANCE:** Yes, sir.

2           **THE COURT:** Mr. Lance, do you freely and  
3 voluntarily give up your Constitutional rights in order  
4 to plead guilty today?

5           **MR. JACOB LANCE:** Yes, sir, I do.

6           **THE COURT:** Are you pleading guilty because you  
7 are in fact guilty?

8           **MR. JACOB LANCE:** Yes, sir.

9           **THE COURT:** Under indictment 2016-860; are you  
10 guilty of burglary first degree?

11           **MR. JACOB LANCE:** Yes, sir.

12           **THE COURT:** Under indictment 2016-861, are you  
13 guilty of arson in the third degree?

14           **MR. JACOB LANCE:** Yes, sir.

15           **THE COURT:** Under indictment 2016-862, are you  
16 guilty of voluntary manslaughter?

17           **MR. JACOB LANCE:** Yes, sir.

18           **THE COURT:** Under indictment 2016-863, are you  
19 guilty of another charge of arson in the third degree?

20           **MR. JACOB LANCE:** Yes, sir.

21           **THE COURT:** Are you satisfied with the services of  
22 your attorney?

23           **MR. JACOB LANCE:** Yes, sir.

24           **THE COURT:** Has he reasonably done what you've  
25 asked him to do?

1           **MR. JACOB LANCE:** For the most part, yes, sir.

2           **THE COURT:** No, sir, you -- I didn't hear what you  
3 said. What did you say?

4           **MR. JACOB LANCE:** Yes, sir.

5           **THE COURT:** Let me ask you again: Has your  
6 attorney reasonably done what you've asked him to do?

7           **MR. JACOB LANCE:** Yes, sir.

8           **THE COURT:** As we stand here in court today, do  
9 you have any complaints about your representation  
10 whatsoever?

11           **MR. JACOB LANCE:** No, sir.

12           **THE COURT:** All right. Mr. Tavernier, have you  
13 gone over the elements of the various charges with your  
14 client, explained to him the minimum and maximum time  
15 he could get; explore whether or not he has any  
16 defenses to those charges as well as his Constitutional  
17 rights?

18           **MR. TAVERNIER:** I have, Your Honor.

19           **THE COURT:** Do you agree with his decision to  
20 plead guilty to all four charges?

21           **MR. TAVERNIER:** Very much so, Your Honor.

22           **THE COURT:** And is there substantial factual basis  
23 behind it?

24           **MR. TAVERNIER:** There is, Your Honor.

25           **THE COURT:** All right. Tell me about both

1 defendants, please.

2 **MS. PRICE:** Thank you, Your Honor, may it please  
3 the court. On November 13th of 2015, the defendants  
4 went to the victim's home. The victim in this case is  
5 Todd Cantlay. Once there, they struck the victim in  
6 the head with a baseball bat several times and stabbed  
7 him in the neck with a knife. And then postmortem,  
8 they set his body on fire. The defendants took --

9 **THE COURT:** After he was already dead?

10 **MS. PRICE:** After he was deceased, sir.

11 **THE COURT:** Okay.

12 **MS. PRICE:** The defendants took items from the  
13 home with them including two guitars, an Xbox 360, a  
14 television set, and a 22 caliber rifle.

15 The victim's 17 year old son Brooks Cantlay said  
16 he was upstairs at the time of this killing. He told  
17 law enforcement he heard three loud bangs but thought  
18 it was his father banging the TV remote on a table in  
19 the home which he sometimes did. Brooks said he woke  
20 up to the smell of smoke and discovered his father,  
21 doused him out with bowls of water and then dialed  
22 9-1-1.

23 When the Anderson County Sheriff's Office  
24 arrived, Brooks told them he believed that Jacob Lance  
25 might be responsible for the incident. He said that

1 Jacob was his drug dealer and that the victim, Todd,  
2 and Jacob had recently been texting each other and that  
3 his father was angry and had called Jacob complaining  
4 that the defendant was quote "shorting Brooks" by not  
5 giving him enough drugs for the money he was paying  
6 Jacob. Brooks told law enforcement that they would  
7 find texts on his phone between the two and phone  
8 calls, which they did.

9 After taking the victim's belongings from the  
10 house, the defendants also took the victim's car, which  
11 was a black BMW and they drove it to a wooded area  
12 where they attempted to burn it. At the time of this  
13 incident, Jacob was seeing the mother of one of his  
14 children, Alissa -- or his child, Alissa Martin. After  
15 the killing, he called her and told her he had killed a  
16 man, this victim, by hitting him with a baseball bat.  
17 And that his brother, Oscar, had stabbed the man in the  
18 neck. Then they had stolen items, including a car, and  
19 set the car on fire. Alissa Martin called law  
20 enforcement after hearing this.

21 Search warrants were executed at the homes of  
22 the defendants at 101 and 106 Saddle Trail. Both the  
23 defendants were apprehended at that time. This is all  
24 in a 24 hour period, sir.

25 In Jacob's vehicle, the two stolen guitars were

1 found. Behind Oscar's home, law enforcement found a  
2 bloody baseball bat and the missing 22 caliber rifle.  
3 In Oscar's home, they found the TV and Xbox. That Xbox  
4 had been hidden inside a recliner in the home where  
5 they had removed the cushion and put the fabric over  
6 top of it.

7 Both of the defendants, after being apprehended,  
8 gave statements to law enforcement. First Jacob gave a  
9 statement to law enforcement implicating his brother in  
10 the killing. Second Oscar gave a statement to law  
11 enforcement implicating Jacob as the killer.

12 Brooks told law enforcement -- Brooks being the  
13 son of the victim in this case -- told law enforcement  
14 that shortly before this incident, he had given his  
15 home address to a mutual acquaintance of his and Jacob  
16 Lance's.

17 **THE COURT:** Say that again, please.

18 **MS. PRICE:** Before this killing took place, the  
19 son of the victim told law enforcement -- well, the son  
20 of the victim had given his home address to a mutual  
21 acquaintance, and that is at least the belief of the  
22 son how they came about figuring out where the father  
23 --

24 **THE COURT:** Well, let me ask you this: I thought  
25 you said that based on the evidence of the State's

1 investigation, that these gentlemen were supposedly  
2 drug dealers?

3 **MS. PRICE:** Yes, sir. Yes, sir. I don't know --

4 **THE COURT:** And selling --

5 **MS. PRICE:** -- when they had the previous drug  
6 transaction --

7 **THE COURT:** I got you. Okay.

8 **MS. PRICE:** This is just what was recorded by -- I  
9 don't know if the Lance brothers ever had responded to  
10 this home address before.

11 **THE COURT:** Okay.

12 **MS. PRICE:** That's not in evidence that I have.  
13 Your Honor, Alissa Martin, who was the mother of  
14 Jacob's child, also told law enforcement she was aware  
15 of the threatening phone calls made by the victim to  
16 Jacob Lance before this incident.

17 **THE COURT:** That is the shorting on the drugs?

18 **MS. PRICE:** Yes, sir.

19 **THE COURT:** Okay. Allegedly.

20 **MS. PRICE:** Allegedly, yes, sir. The autopsy  
21 report in this case said the cause of death was blunt  
22 force trauma injury with resultant cerebral  
23 lacerations, contusions and diffused axonal injury.  
24 Law enforcement found the victim's vehicle. And when  
25 they discovered it, there was a burn rag in the gas

1 tank where the vehicle had been set on fire.

2 Your Honor, also at the scene, I want to mention  
3 that a steak knife was found next to the victim's body,  
4 along with a can of Zippo Lighter Fluid that had been  
5 punctured.

6 I passed out to -- those are the facts as the  
7 State would present them at trial, sir. I have  
8 additional things to present to the court at the  
9 appropriate time.

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

11 **MS. PRICE:** Your Honor, Jacob Lance has no prior  
12 record. Oscar has two driving under suspension  
13 charges, but otherwise no prior record. The victim in  
14 this case had some violent charges from Florida.  
15 There's evidence that he had a lengthier record than  
16 the two individuals in this case.

17 **THE COURT:** What kind of record was that?

18 **MS. PRICE:** Your Honor, he had an aggravated  
19 assault, reckless driving, criminal mischief, violation  
20 of a restraining order, and driving under the  
21 influence.

22 **THE COURT:** All right.

23 **MS. PRICE:** Oscar Lance, by way of Mr. Cole,  
24 reached out to the State after he was charged, and  
25 after he had given his first statement, and agreed to

1 cooperate with the State in trial against his brother  
2 and he pled guilty on February 23rd of last year.

3 After the deferred sentencing occurred, but  
4 before the State could place the charges against Mr.  
5 Jacob Lance on the letter, a letter surfaced that Jacob  
6 maintained was written by Oscar that took  
7 responsibility for the killing. The State, by way of  
8 Anderson County Sheriff's Office and the lead  
9 detective, Mitchell, had that letter taken to SLED for  
10 handwriting analysis. That is one of the reasons there  
11 is some delay in the case. And the handwriting  
12 analysis came back as inconclusive, not -- and the  
13 reason is that it was apparent that the letter had been  
14 traced over. And when they do a handwriting analysis,  
15 they have to have the actual writing. It can't be  
16 traced.

17 But in any event, Mr. Oscar Lance was prepared  
18 to cooperate against Jacob at trial. Jacob's attorney,  
19 Mr. Tavernier, was told about a month and a half ago  
20 that I intended to place this on our trial docket in  
21 either April or May, and we discussed today's  
22 agreement. And I told Mr. Tavernier that if he wanted  
23 to reach a resolution, I would not make a  
24 recommendation but I would allow him the same charge  
25 that I had allowed Mr. Oscar Lance based on the facts.

1           **THE COURT:** Well, let me ask you this: In the --  
2 in the victim's letter to the Court --

3           **MS. PRICE:** Yes, sir.

4           **THE COURT:** -- there's a statement in there that  
5 says we're not privy to the details of the crime.

6           **MS. PRICE:** Yes, sir.

7           **THE COURT:** And we were not consulted on the  
8 lessing of the charges in this case from murder to  
9 manslaughter?

10          **MS. PRICE:** Yes.

11          **THE COURT:** So originally the charges were murder  
12 obviously?

13          **MS. PRICE:** Yes, sir. Originally they were  
14 charged with murder. And as part of an incentive to  
15 plead, and as -- initially as a incentive to cooperate  
16 with the State, the reduction was made to voluntary  
17 manslaughter. But as Your Honor heard, there is  
18 evidence that there were threats made and no one other  
19 than these two defendants and the victim were present  
20 at the time the killing occurred.

21                 So taking those facts into account, the State  
22 believed that it was appropriate for a reduction to  
23 voluntary manslaughter for a plea today, especially in  
24 light of the fact that with the first degree burglary  
25 charge, both are still facing a life sentence.

1           **THE COURT:** All right. Does anyone from the  
2 victim's representatives here like to speak?

3           **MS. PRICE:** No, sir. No one is present but I -- I  
4 will put on the record that I passed out two letters,  
5 one from the sibling of the victim and another from one  
6 of the victim's sons, not the son who was present when  
7 this incident occurred. I also provided those  
8 statements to both defense attorneys prior to handing  
9 them to the court. And as to not being consulted about  
10 a charge reduction, the victim advocate spoke and we  
11 have it documented in writing that they were notified  
12 about the arrangements and said they had no questions.

13           **THE COURT:** All right. Thank you, ma'am. All  
14 right. Mr. Tavernier, I'll be glad to hear from you.

15           **MR. TAVERNIER:** Thank you, Your Honor, may it  
16 please the court. I've got a little bit of background  
17 on this -- on this case. I inherited this case from  
18 the previous attorney who had represented Mr. Lance for  
19 approximately a year and a half.

20           In the past year, I've had the opportunity to  
21 kind of take and bring Mr. Lance back to reality as to  
22 how the procedure would be held in -- in a trial. I  
23 think he received some bad advice from a couple of  
24 different sources as to how things would proceed. And  
25 based upon that, he had a different thought process as

1 to what he was going to be looking at regarding trial  
2 and his prospects as far as these charges.

3           Based upon that and realizing that he had --  
4 well, it took me a while to, number one, convince him  
5 that he had received some bad advice. And then number  
6 two, getting him to face the reality of -- of that to  
7 bring him around. And it was around that time, when he  
8 came to that realization, that I then approached Ms.  
9 Price. However, at that point, I learned that his  
10 brother had been the first one to the trough and that  
11 complicated matters a little bit regarding our  
12 negotiations.

13           As a consequence, I probably met with Jacob, oh,  
14 probably a dozen times. I've explored everything that  
15 I could possibly explore. We engage the services of  
16 Brad Baxter to track down some things. And  
17 unfortunately because of the lag in time that -- from  
18 the start to when we got involved and we were able to  
19 get things done, surveillance cameras and just -- you  
20 know, they ran the course because typically it's 30  
21 days to, you know, maybe a couple of months that  
22 they're saved. And some of those resources  
23 disappeared.

24           But suffice it to say, Mr. Lance -- Jacob  
25 finally came around, understanding what the realities

1 were. We put things together, not his biological  
2 father, but his father for all practical purposes, Mr.  
3 Day and I had numerous -- had a couple of  
4 conversations. I actually brought him down a couple of  
5 weeks ago and we met. We went over everything and  
6 determined the best course of action for Jacob was --  
7 was to plea. And after extensive negotiations, not to  
8 ambush Ms. Price or to set anything up, it was either  
9 at that particular point we were looking at roughly 30  
10 years, and we were trying to get away from that, and so  
11 at -- based upon everything -- all considerations, his  
12 lack of prior record, I asked for a stand up plea with  
13 the reduction, and Ms. Price gave it to me, and knowing  
14 that we're fully exposed to more and I have explained  
15 that to Jacob.

16 I've gone over all of the charges, that after  
17 today -- going through the plea, he has ten days in  
18 which to file a notice of intent to appeal if he's not  
19 satisfied. And I have explained things regarding the  
20 charges, the elements, the rudiments of a PCR. I've  
21 gone over all of that with him. And based upon our  
22 conversations, everything that -- I met with him was it  
23 Monday of last week -- Tuesday --

24 **MR. JACOB LANCE:** Thursday.

25 **MR. TAVERNIER:** Thursday of last week and we

1 signed the sentencing sheets and he's ready to roll.  
2 And as he stated earlier --

3 **THE COURT:** Well, let me stop you right quick.  
4 Mr. Lance, you heard what Mr. Tavernier just stated on  
5 the record?

6 **MR. JACOB LANCE:** Yes, sir, I did.

7 **THE COURT:** Do you have any disagreement with  
8 anything he said?

9 **MR. JACOB LANCE:** No, sir.

10 **THE COURT:** And you feel like he's done a complete  
11 and thorough investigation of this matter?

12 **MR. JACOB LANCE:** Yes, sir, I do.

13 **THE COURT:** All right, sir. Go ahead, Mr.  
14 Tavernier.

15 **MR. TAVERNIER:** And the -- probably the one thing  
16 that did come out through the course of my meetings  
17 with Jacob, immediately thereafter he had met up with a  
18 friend and he said he -- and his first question was, do  
19 you think God will forgive me for what I've done, that  
20 kind of thing. And then Jacob asked to be able to read  
21 something to the court and -- as he has already alluded  
22 to. And I ask that you take into consideration his  
23 lack of record. I'm not going to sit here and point  
24 fingers or throw darts at anybody, they were in it  
25 together and I'm going to leave it at that, Your Honor.

1           **THE COURT:** All right. Mr. Lance, would you like  
2 to read your statement now?

3           **MR. JACOB LANCE:** Yes, sir.

4           **THE COURT:** Okay. Speak slowly and articulate  
5 loudly so we can hear you, please.

6           **MR. JACOB LANCE:** Can you hear me?

7           **THE COURT:** Yes.

8           **MR. JACOB LANCE:** In order for someone to truly be  
9 forgiven --

10          **COURT REPORTER:** I can't understand him.

11          **THE COURT:** Hang on. Back up just a little.

12          **MR. JACOB LANCE:** In order -- can you hear me now?

13          **THE COURT:** Yes, sir.

14          **MR. JACOB LANCE:** In order for someone to truly be  
15 forgiven, they must truly be sorry and learn from their  
16 mistakes, any wrongdoings. I spent two and half years  
17 beating myself up to a certain extent. I know really  
18 life will never be the same for the victim and his  
19 family, nor will it be the same for my family. I  
20 cannot even begin to express just how sorry I am.  
21 There are no excuses for what happened. If I could  
22 take it all back, I would.

23                 There is a distinct difference in the way I  
24 think and respond now versus the time this all  
25 occurred. I was unable to fully process judgment,

1 impulse control or consequence appreciation. I made  
2 some bad choices in my life, Your Honor. I have to  
3 answer for this. And by my guilty plea, I throw myself  
4 on the mercy of the court, the victim's family and the  
5 State of South Carolina.

6 Your Honor, I would like to also state that I  
7 have a two and a half year old and I would love to get  
8 the opportunity to see her mature. I want to be a  
9 friend as well as a father to my daughter. Thank you,  
10 Your Honor. Sorry for what I have done and may God  
11 have mercy on us all.

12 **THE COURT:** Anything further?

13 **MR. TAVERNIER:** I think that pretty well covers  
14 it, Your Honor. Thank you.

15 **THE COURT:** Mr. Cole, tell me about Oscar Lance  
16 please. sir.

17 **MR. COLE:** Thank you, Your Honor. May it please  
18 the court. I would like to tell you, Your Honor, about  
19 my client, Oscar Lance. He has from the day that he  
20 got arrested for this charge, he told the police a  
21 story. The first day I met with him, he told me the  
22 story and it's been the same one throughout the entire  
23 time. He's been extremely remorseful since the day he  
24 was arrested, extremely remorseful since the first time  
25 I met with him over two years ago.

1           He -- he says that night what happened, he went  
2 with his brother. He's older than his brother. He  
3 knows he should have been a --

4           **THE COURT:** How much older is he than his brother?

5           **MR. COLE:** How old are you --

6           **MR. OSCAR LANCE:** Thirteen years.

7           **MR. COLE:** Thirteen years older, Your Honor. So  
8 he's older. He should have been a positive influence  
9 but he was not. He went in originally, the plan was --  
10 his understanding was to go and purchase drugs. He had  
11 a drug issue at that time, my client did.

12          **THE COURT:** I thought they were selling drugs?

13          **MR. COLE:** Your Honor, that -- that was -- I know  
14 that was the allegation, but my client's position was  
15 that he -- he didn't have any drugs to sell. He was  
16 wanting to purchase drugs. He was a drug user. As far  
17 as Mr. Jacob Lance and the other party, I think they  
18 did have some history of maybe selling back and forth,  
19 Your Honor.

20           My client didn't know exactly where they were  
21 going. He just -- he got in the car and went. He got  
22 there. It became apparent it was going to become a  
23 burglary and not a drug purchase. My client went along  
24 with that. He admitted to it from the beginning. He  
25 went along with the burglary and started stealing

1 things from this person's house.

2           The next thing he knows the -- he didn't think  
3 anybody was there at first, my client didn't. The next  
4 thing he knows he walks back into the house and Jacob  
5 Lance was attacking this -- the victim. My client  
6 thinks that he was probably -- he was unconscious,  
7 already dead at that point. My client, he was there.  
8 He should have done something to stop this, and that's  
9 why he took responsibility from the beginning, pled  
10 guilty.

11           He helped my client afterwards. He takes the  
12 responsibility for that. He helped my client cover it  
13 up and went and tried to -- I'm sorry -- he helped --  
14 he helped Jacob cover it up and -- and left, Your  
15 Honor. He -- he -- that's been his story from the  
16 beginning. He has cooperated from the beginning.

17           We went to the Solicitor. He pled guilty, I  
18 think it's been a year ago that he pled guilty to these  
19 same charges. He was prepared to testify. He loves  
20 his brother. He didn't -- it's not something he wanted  
21 to do, but he felt it was the right thing to do, to  
22 testify and tell the truth if he had to against his  
23 brother. And -- but he's taken full responsibility for  
24 his part in this action, Your Honor. I just wanted to  
25 tell my client's story because it's been the beginning

1 for sentencing purposes.

2 He has -- as the State said has no record  
3 really. He has a young child. He's not married. All  
4 his family lives in the Anderson area. He has deep  
5 roots, grew up in this community, and he understands  
6 that he has to pay -- face the punishment for these  
7 crimes. He understood it from the day that he got  
8 locked up.

9 He was so remorseful to the point he's had some  
10 mental health issues with suicidal attempts and  
11 depression while he's been in -- incarcerated and they  
12 think he's finally being treated for that and he's  
13 doing -- doing better with it. But he is -- I would  
14 ask Your Honor to consider all those things. I would  
15 ask Your Honor to consider the minimum sentence for him  
16 at 15 years and ask the court to give him credit for  
17 time served, which is 853 days. And, Your Honor, like  
18 I said, he is -- he is very remorseful, very sorry to  
19 the victims and he wishes he could go back and change  
20 that night. He understands what he did and he's  
21 prepared to face his punishment.

22 **MR. TAVERNIER:** Your Honor, may I respond?

23 **THE COURT:** Yes, sir. But we're not going to get  
24 into a swearing contest over here. Okay.

25 **MR. TAVERNIER:** I understand.

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

2           **MR. TAVERNIER:** I had cautioned Jacob about  
3 pointing fingers and casting dispersions and that we  
4 ought to take the high road.

5           **THE COURT:** And -- and --

6           **MR. TAVERNIER:** And I hope you will take that into  
7 consideration.

8           **THE COURT:** -- let me just say this to you, Mr.  
9 Tavernier, from what I'm hearing right now, they can  
10 point fingers all day long, the hand of one is the hand  
11 of all. As you well know, Ms. Price knows, and so does  
12 Mr. Cole, I think they're equally culpable about what  
13 they've done so it's not going to do you any good to  
14 point fingers or it's not going to do your client any  
15 good to point fingers. I think they're equally --

16           **MR. TAVERNIER:** I appreciate it.

17           **THE COURT:** -- as guilty as the other one is. How  
18 many days has your client been in jail?

19           **MS. PRICE:** Your Honor, they've both -- I'm sorry  
20 -- they were both in jail for 853 days.

21           **THE COURT:** They both eight-fifty-three?

22           **MS. PRICE:** Yes, sir. Eight hundred fifty-three.

23           **THE COURT:** Now, I didn't mean to cut you off, Mr.  
24 Tavernier.

25           **MR. TAVERNIER:** I understand, Your Honor. I

1 appreciate your position. Thank you.

2 **THE COURT:** Mr. Cole, just so the record is clear,  
3 have you advised Mr. Oscar Lance that he has ten days  
4 to appeal these sentences?

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

6 **THE COURT:** All right. Anything further from the  
7 defense, Mr. Tavernier?

8 **MR. TAVERNIER:** That's all, Your Honor.

9 **THE COURT:** Mr. Cole?

10 **MR. COLE:** No, Your Honor.

11 **THE COURT:** Ms. Price?

12 **MS. PRICE:** Only to say that the finger pointing  
13 started with the very first statements that they gave  
14 and has continued through today, sir. Thank you,  
15 judge.

16 **THE COURT:** All right. Thank you, ma'am. All  
17 right. Jacob Lance, under indictment 2016-860,  
18 burglary first degree, the sentence will be 30 years.  
19 Under indictment 2016-861, arson third, the sentence  
20 will be 15 years; all these will be concurrent. Under  
21 2016-862, manslaughter, the sentence will be 30 years.  
22 Under indictment 2016-863, arson third the sentence  
23 will be 15 years concurrent, credit for 853 days.

24 Oscar Lance, under indictment 2016-864,  
25 voluntary manslaughter, the sentence will be 15 --

1 excuse me -- 30 years, credit for 850 days -- all these  
2 will be concurrent. Under indictment 2016-867 arson  
3 third degree, the sentence will be 15 years concurrent,  
4 853 days credit; 2016-866 arson third degree, 15 years  
5 concurrent, 853 days credit. And under 2016-865  
6 burglary first degree, 30 years, 853 days credit  
7 concurrent. Good luck to both of you.

8 **MR. TAVERNIER:** Thank you, Your Honor.

9 **MR. COLE:** Thank you, Your Honor.

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(Whereupon, the hearing adjourned.)

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CERTIFICATE OF REPORTER

I, SHARON D. JONES, CERTIFIED COURT REPORTER,  
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 GENERAL  
SESSIONS COURT FOR ANDERSON COUNTY ON THE 14TH OF  
MARCH, 2018

I DO FURTHER CERTIFY THAT I AM NEITHER OF  
KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

9/16/2019

***Sharon D. Jones***

---

SHARON D. JONES,  
CERTIFIED COURT REPORTER  
MY COMMISSION EXPIRES 9.22.2024

THE STATE OF SOUTH CAROLINA  
In the Appellate Court

APPEAL FROM ANDERSON COUNTY  
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

RECEIVED  
MAR 30 2018  
SC Court of Appeals

Case No(s): 2015A0410101316; 2015A0410101318;  
2015A0410201272; 2015A0410201273

The State,

Respondent.

v.

Jacob Nathaniel Lance,

Appellant.

NOTICE OF APPEAL

Jacob Nathaniel Lance appeals his conviction and sentence in this case. The sentence was imposed by the Honorable R. Lawton McIntosh on March 14, 2018.

Date: March 27, 2018

*[Handwritten Signature]*  
Robert Joseph Oppermann #77943  
for Kurt Tavernier, Esq.  
Law Offices of Kurt Tavernier, PA  
110 East Benson St.  
Anderson, SC 29624  
Attorney for Appellant

Other Counsel of Record:  
Lauren Price, Esq., Assistant Solicitor  
Alan Wilson, Esq., Attorney General

A TRUE COPY  
MAR 27 2018  
*[Signature]*  
ANDERSON CLERK OF COURT

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

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

**R. Lawton McIntosh, Circuit Court Judge**

---

**Case No(s): 2015A0410101316; 2015A0410101318;**  
**2015A0410201272; 2015A0410201273**

The State,

Respondent.

v.

Jacob Nathaniel Lance,

Appellant.

---

**PROOF OF SERVICE**

---

I certify that I have served the Notice of Appeal on the below listed respondents by depositing a copy of it in the United States Mail, postage prepaid, on March 27, 2018, addressed to:


Lauren Price, Esq.  
Assistant Solicitor  
PO Box 8002  
Anderson, S.C. 29622

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

Date: March 27, 2018



**RECEIVED**  
MAR 30 2018  
SC Court of Appeals

  
Robert Joseph Oppermann, #77943

for Kurt Tavernier, Esq.  
Law Offices of Kurt Tavernier, PA  
110 East Benson St.  
Anderson, SC 29624  
Attorney for Appellant

# 10<sup>TH</sup> CIRCUIT PUBLIC DEFENDER OFFICE

Anderson County Office  
301 Camson Road  
Anderson, SC 29625  
Tel. 864.260.4048  
Fax 864.260.4134



Oconee County Office  
415 S. Pine Street  
Walhalla, SC 29691  
Tel. 864.638.3133  
Fax 864.638.3120

**JENNIFER L. JOHNSON**  
**CIRCUIT DEFENDER**

March 27, 2018

**RECEIVED**

MAR 30 2018

SC Court of Appeals

**Via Regular Mail**

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

**Re: State v. Jacob Nathaniel Lance**

Case No(s): **2015A0410101316; 2015A0410101318; 2015A0410201272;  
2015A0410201273**

Dear Ms. Gee:

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

Thank you for your attention to this matter.

Yours very truly,

*Robert Joseph Oppermann #77943*

for \_\_\_\_\_  
Kurt Tavernier, Esq.  
110 East Benson St.  
Anderson, SC 29624  
Attorney for Appellant

Enclosure

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

# The South Carolina Court of Appeals

The State, Respondent,

v.

Jacob Nathaniel Lance, Appellant.

Appellate Case No. 2018-000571

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## ORDER

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The appellant was sentenced on March 14, 2018. The proof of service for the notice of appeal shows service on March 27, 2018, which is more than ten days after sentencing. The appeal is dismissed due to the failure to timely serve the notice of appeal. *See State v. Devore*, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016) (noting Rule 203(b)(2), SCACR, requires service of the notice of appeal within ten days after imposition of the sentence); *id.* ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."). The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules.

Columbia, South Carolina

  
FOR THE COURT

cc:

Kurt Tavernier, Esquire

Robert Michael Dudek, Esquire

Lauren Davis Price, Esquire

John Benjamin Aplin, Esquire

Alan McCrory Wilson, Esquire

**FILED**

Apr. 15, 2018

**WITNESSES**

Anderson Co. Sheriff's Office  
Nathan M. Mitchell

**ARREST WARRANT NUMBER**

2015A0410101318

**ACTION OF GRAND JURY**

**TRUE BILL**

MAY 24 2016

Foreperson of Grand Jury  
Date:

*J. Jackson*  
Foreperson

**VERDICT**

Foreperson of Grand Jury  
Date:

DOCKET NO. 2016-GS-04-00860

**The State of South Carolina**

**County of Anderson**

**COURT OF GENERAL SESSIONS**

MAY 24 2016, TERM

**THE STATE**

**VS.**

**JACOB NATHANIEL LANCE**

**INDICTMENT FOR**

**BURGLARY, FIRST DEGREE**

SC Code: § 16-11-0311  
CDR Code: 0079

COMMITMENT

3/14/18-RT

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON


## INDICTMENT

At a Court of General Sessions, convened on MAY 24 2016, the  
Grand Jurors of Anderson County present upon their oath:

**BURGLARY, FIRST DEGREE**

The defendant, Jacob Nathaniel Lance, did on or about November 13, 2015, in Anderson County, South Carolina, willfully and unlawfully enter the dwelling of Todd Cantlay located at 314 Mcalister Dr., without consent and with the intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime: is armed with a deadly weapon or explosive; and/or causes physical injury to a person who is not a participant in the crime; and/or uses or threatens the use of a dangerous instrument; and/or displays what is or appears to be a knife, pistol, rifle, shotgun, machine gun, or other firearm; and/or the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; and/or the entering or remaining occurs in the nighttime. All in violation of 16-11-0311 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.

  
\_\_\_\_\_  
LAUREN D. PRICE  
ASSISTANT SOLICITOR

**WITNESSES**

Anderson Co. Sheriff's Office  
Nathan M. Mitchell

**ARREST WARRANT NUMBER**

2015A0410201272

**ACTION OF GRAND JURY**

<b>TRUE BILL</b>
<b>MAY 24 2016</b>
<i>[Signature]</i>
Foreperson

Foreperson of Grand Jury  
Date:

**VERDICT**

Foreperson of Grand Jury  
Date:

DOCKET NO. 2015-GS-04-00861

**The State of South Carolina**  
**County of Anderson**

**COURT OF GENERAL SESSIONS**

MAY 24 2016, TERM

**THE STATE**

**VS.**

**JACOB NATHANIEL LANCE**

COMMITMENT

3/14/18 DT

**INDICTMENT FOR**

**ARSON, THIRD DEGREE**

SC Code: § 16-11-0110(C)  
CDR Code: 3435

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON


## INDICTMENT

At a Court of General Sessions, convened on MAY 24 2016, the  
Grand Jurors of Anderson County present upon their oath:

**ARSON, THIRD DEGREE**

The defendant, Jacob Nathaniel Lance, did on or about November 13, 2015, in Anderson County, South Carolina, willfully and maliciously cause an explosion and/or set fire to and/or burn and/or cause to be burned and/or aids, counsels, or procures a burning that results in damage to 2000 BMW 740 IL, or any other property whether the property of himself or another, which resulted in bodily injury Todd Cantlay and/or damage to 2000 BMW 740 IL. All in violation of 16-11-0110(C) 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.

  
\_\_\_\_\_  
LAUREN D. PRICE  
ASSISTANT SOLICITOR

**WITNESSES**

Anderson Co. Sheriff's Office  
Nathan M. Mitchell

**ARREST WARRANT NUMBER**

2015A0410101316

**ACTION OF GRAND JURY**

<b>TRUE BILL</b>
<b>MAY 24 2016</b>
Foreperson of Grand Jury Date: <i>[Signature]</i> Foreperson

**VERDICT**

Foreperson of Grand Jury  
Date:

DOCKET NO. 2016-GS-04-00862

**The State of South Carolina**  
**County of Anderson**

**COURT OF GENERAL SESSIONS**

MAY 24 2016, TERM

THE STATE

VS.

JACOB NATHANIEL LANCE

COMMITMENT

3/14/18-PT

**INDICTMENT FOR**

**MURDER**

SC Code: § 16-03-0010  
CDR Code: 0116

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON


## INDICTMENT

At a Court of General Sessions, convened on MAY 24 2016, the  
Grand Jurors of Anderson County present upon their oath:

**MURDER**

That Jacob Nathaniel Lance did in Anderson County, on or about on or about November 13, 2015, unlawfully and with malice aforethought, either express or implied, kill [REDACTED] by means of striking him in the head with a blunt instrument and setting him on fire, and the victim died as a proximate result thereof. All in violation of §16-3-10, *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.



---

LAUREN D. PRICE  
ASSISTANT SOLICITOR

**WITNESSES**

Anderson Co. Sheriff's Office  
Nathan M. Mitchell

**ARREST WARRANT NUMBER**

2015A0410201273

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury  
Date: MAY 24 2016

*[Signature]*  
Foreperson

**VERDICT**

Foreperson of Grand Jury  
Date:

DOCKET NO. 2015-GS-04-00863

**The State of South Carolina  
County of Anderson**

**COURT OF GENERAL SESSIONS**

MAY 24 2016, TERM

**THE STATE**

**VS.**

**JACOB NATHANIEL LANCE**

COMMITMENT

3/14/18 - DT

**INDICTMENT FOR**

**ARSON, THIRD DEGREE**

SC Code: § 16-11-0110(C)  
CDR Code: 3435

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

## INDICTMENT

MAY 24 2016

At a Court of General Sessions, convened on \_\_\_\_\_, the  
Grand Jurors of Anderson County present upon their oath:

**ARSON, THIRD DEGREE**

The defendant, Jacob Nathaniel Lance, did on or about November 13, 2015, in Anderson County, South Carolina, willfully and maliciously cause an explosion and/or set fire to and/or burn and/or cause to be burned and/or aids, counsels, or procures a burning that results in damage to 314 Mcalister Drive, Pendleton SC, or any other property whether the property of himself or another, which resulted in bodily injury Todd Cantlay and/or damage to 314 Mcalister Drive, Pendleton SC. All in violation of 16-11-0110(C) 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.



---

LAUREN D. PRICE  
ASSISTANT SOLICITOR

FORM 5

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

Jacob Nathaniel Lince # 375653 )  
Full name and prison number (if any) of Applicant. )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

2019CP0400512

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lee Corr Inst

2. Name and location of Court which imposed sentence  
Anderson South Carolina

3. Name(s) of co-defendant(s) (if any) -  
Osborn Ernest Lince

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2016-GS-04-00860

(b) 2016-GS-04-00861

(c) 2016-GS-04-00862, 2016-GS-04-00863

Revised 3/2003

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

- (a) March 15 2018
- (b) 30 yrs @ 85%
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty
- (b) after a plea of not guilty n/a
- (c) after a plea of nolo contendere n/a

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

no

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

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

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) The trial lawyer fail to inform client
- (b) for plea agreement.

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

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

- (a) counsel was ineffective for failure to inform
- (b) client of plea agreements
- (c) client wish to Am

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

- (a) Client wish to amend Issue on further Dates!
- (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? \_\_\_\_\_
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? \_\_\_\_\_
- (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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) \_\_\_\_\_

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
County of ANDERSON )

VERIFICATION

I, Jacob Nathaniel Lance, 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.

Jacob Lance # 375653

SWORN to and subscribed before me this 21  
day of Feb, 2019.

Debra Eartrick (L.S.)  
Notary Public

My Commission Expires: 3/3/2020

19 MAR 14 PM 4:32:26  
Anderson, SC 29600 09/68

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

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

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

*Jacob*  
 Applicant

SWORN or affirmed to and subscribed before me this  
21 day of Feb, 2019.

*Debra Eastwood*  
 Notary Public

My Commission Expires: 3/3/2021

19 MAR 14 PM 03:19  
 Anderson, SC 0000 CP/65

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	IN THE TENTH JUDICIAL CIRCUIT
	)	
Jacob N. Lance, SCDC #375363,	)	Case No. 2019-CP-04-00512
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN AND MOTION FOR A MORE</b>
	)	<b>DEFINITE STATEMENT</b>
State of South Carolina,	)	<b>(COUNSEL APPOINTED)</b>
	)	
Respondent.	)	
	)	

In response to the post-conviction relief (PCR) filed by Jacob Nathaniel Lance (Applicant) on March 14, 2019, the State makes this return:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Anderson County Clerk of Court. During its May 2016 term, the Anderson County Grand Jury indicted Applicant for murder (2016-GS-04-862), first-degree burglary (2016-GS-04-860), and two counts of third-degree arson (2016-GS-04-861, -863). Kurt Tavernier, Esquire (Counsel) represented Applicant and Assistant Solicitor Lauren Davis Price, of the Tenth Circuit Solicitor’s Office, Prosecuted the case.

On March 14, 2018, Applicant appeared before the Honorable R. Lawton McIntosh and pleaded guilty to the lesser-included offense of voluntary manslaughter and as indicted to the remaining three charges without recommendation from the State as to sentencing. Judge McIntosh sentenced Applicant to concurrent sentences of fifteen years’ imprisonment for first-degree burglary, thirty years’ imprisonment for voluntary manslaughter, and fifteen years’ imprisonment for each third-degree arson charge.

Counsel subsequently filed a notice of appeal on Applicant's behalf; however, the notice of appeal was not filed within ten days after sentencing. By Order dated April 15, 2018, the South Carolina Court of Appeals dismissed the case for failure to timely serve the notice of appeal pursuant to Rule 203(b), SCACR. *State v. Lance* (S.C. Ct. App. filed August 10, 2018). The remittitur was returned to the circuit court on April 25, 2018. Applicant timely commenced this PCR action on March 14, 2019.

## **II. STATEMENT OF FACTS**

The underlying facts of the crime for which Applicant is incarcerated were articulated by the State during the plea proceeding as follows:

On November 13, 2015, the defendants went to the victim's home. The victim in this case is Todd Cantlay. Once there, they struck the victim in the head with a baseball bat several times and stabbed him in the neck with a knife. And then postmortem, they set his body on fire. The defendants then took items from the home with them including two guitars, an Xbox 360, a television set, and a 22 caliber rifle.

The victim's 17 year old son Brooks Cantlay said he was upstairs at the time of this killing. He told law enforcement he heard three loud bangs but thought it was his father banging the TV remote on a table in the home which he sometimes did. Brooks said he woke up to the smell of smoke and discovered his father, doused him out with bowls of water and then dialed 9-1-1.

When the Anderson County Sheriff's Office arrived, Brooks told them he believed that Jacob Lance might be responsible for the incident. He said that Jacob was his drug dealer and that the victim, Todd, and Jacob had recently been texting each other and that his father was angry and had called Jacob complaining that the defendant was quote "shorting Brooks" by not giving him enough drugs for the money he was paying Jacob. Brooks told law enforcement that they would find texts on his phone between the two and phone calls, which they did.

After taking the victim's belongings from the house, the defendants also took the victim's car, which was a black BMW and they drove it to a wooded area where they attempted to burn it. At the time of this incident, Jacob was seeing the mother of his child, Alissa Martin. After the killing, he called her and told her he had killed a man, this victim, by hitting him with a baseball bat and that his brother, Oscar, had stabbed the man in the neck. Then they had stolen items, including a car, and set the car on fire. Alissa Martin called law enforcement after hearing this.

Search warrants were executed at the homes of the defendants at 101 and 106 Saddle Trail. Both the defendants were apprehended at that time. This is all in a 24 hour period.

In Jacob's vehicle, the two stolen guitars were found. Behind Oscar's home, law enforcement found a bloody baseball bat and the missing 22 caliber rifle. In Oscar's home, they found the TV and Xbox. That Xbox had been hidden inside a recliner in the home where they had removed the cushion and put the fabric over top of it.

Both of the defendants, after being apprehended, gave statements to law enforcement. First Jacob gave a statement to law enforcement implicating his brother in the killing. Second Oscar gave a statement to law enforcement implicating Jacob as the killer.

Before this killing took place, the son of the victim told law enforcement he had given his home address to a mutual acquaintance, and that is at least the belief of the son how they came about figuring out where the father was.

Alissa Martin, who was the mother of Jacob's child, also told law enforcement she was aware of the threatening phone calls made by the victim to Jacob Lance before this incident.

The autopsy report in this case said the cause of death was blunt force trauma injury with resultant cerebral lacerations, contusions and diffused axonal injury. Law enforcement found the victim's vehicle. And when they discovered it, there was a burn rag in the gas tank where the vehicle had been set on fire. At the scene, a steak

knife was found next to the victim's body, along with a can of Zippo Lighter Fluid that had been punctured.

(Plea Tr. 12–16).

### **III. CURRENT APPLICATION**

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

1. “Counsel was ineffective for failure to inform client of plea agreement.”
2. “Client wish to amend issue on further dates!”

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

### **IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL**

The State submits Applicant’s allegation of ineffective assistance of counsel is without merit. However, it is impossible for the State to adequately respond to Applicant’s allegation because Applicant has completely failed to provide any specific facts to support such claim. The State requests Applicant, through counsel, provide specific claims and facts to support this vague allegation. *See* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to “specifically set forth the grounds upon which the application is based”); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCP (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRCP (“Counsel shall insure

that all available grounds for relief are included in the application and shall amend the application if necessary.”). Thus, the State moves to require Applicant to provide a more definite statement of his allegation of ineffective assistance of counsel pursuant to Rule 12(c), SCRCP.

#### **A. Ineffective Assistance of Plea Counsel, Generally**

The Sixth and Fourteenth Amendments to the United States Constitution guarantees Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); *State v. Pendergrass*, 270 S.C. 1, 4, 239 S.E.2d 750, 751 (1977). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366, 130 S. Ct. 1473,

1482, 176 L. Ed. 2d 284 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). 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.

*Strickland*, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." *Harrington*, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a

“strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify

reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart* extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel.” *Hill*, 474 U.S. 52; *cf. Padilla*, 559 U.S. at 373 (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. *Hill*, 474 U.S. 52.

Thus, the analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging

his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

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

Surmounting *Strickland's* high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. \_\_\_, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's

deficiencies. *Lee*, 582 U.S. \_\_\_, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. *Id.* Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Applicant contends his attorney was ineffective for “failure to inform client of plea agreement.” However, considering Applicant did plead guilty, Applicant failed to identify the terms of the alternate plea offer of which counsel allegedly did not inform him. Applicant further failed to show any resulting prejudice.

#### **B. Conclusion and Action Requested**

The State submits Applicant can satisfy neither requirement of the *Hill* test. However, as discussed above, it is impossible for the State to adequately respond to Applicant’s allegation of ineffective assistance of counsel because Applicant has failed to provide any specific facts to support his allegation. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983)

(providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court”). Thus, the State moves to require Applicant to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP.

**V. ANY FUTURE AMENDMENTS AND INVOCATION OF THE DISCOVERY PROCESS**

The State respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that the State may adequately prepare for an evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing*. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)-(b), SCRCP; *Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing.

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

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in

advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

#### **VI. GENERAL DENIAL**

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

#### **VII. CONCLUSION**

WHEREFORE, having made its return, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section IV. The State requests Applicant, through counsel, amend the application to provide the required specificity for his allegation of ineffective assistance of counsel. Until Applicant files an amended application, Applicant has not shown sufficient cause to warrant an evidentiary hearing on this application. The State respectfully requests this Court to only schedule a hearing after an amended application is so filed.

*[Signature on following page]*

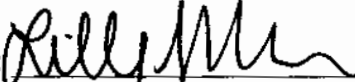
Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

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Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS  
Assistant Attorney General

By: 

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

November 7, 2019

STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON )	FOR THE TENTH JUDICIAL CIRCUIT
)  )	)
Jacob Lance, SCDC #375363 )	Case No.: 2019-CP-04-00512
)  )	)
Applicant, )	)
)  )	SUPPLEMENTAL APPLICATION FOR
v. )	POST-CONVICTION RELIEF
)  )	)
State of South Carolina, )	)
)  )	)
Respondent. )	)
_____ )	)

Applicant Jacob Lance, by and through his appointed counsel, responding to the State of South Carolina’s Return and Motion for a More Definite Statement, would show this Court as follows:

This matter is before the Court on Applicant Lance’s Application for Post-Conviction Relief. In his *pro se* application, Mr. Lance alleged as grounds for relief ineffective assistance of counsel for failure to inform client of plea agreement and expressed his intention to amend his application.

The State has moved for a more definite statement as to the issue of effectiveness of counsel. As the State recognizes, Mr. Lance is entitled to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 688 (1984); *Taylor v. State*, 404S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Therefore, Mr. Lance, in response to the State’s request for a more definite statement, hereby supplements his Application for Post-Conviction Relief regarding his claim of ineffective assistance of counsel:

- 1. Counsel was ineffective in failing to file a timely direct appeal.

It is clear from the plea transcript that Mr. Lance was advised by his attorney of the right to file an appeal. In fact, while discussing the efforts counsel went through to convince Mr.

Lance to enter the plea, counsel states, "I've gone over all of the charges, that after today - - going through the plea, he has ten days in which to file a notice of intent to appeal if he's not satisfied." (Transcript at 21.)

It is also clear that Mr. Lance wished to file an appeal, because counsel filed a Notice of Appeal for him. This Notice of Appeal was dismissed because it was not timely filed. (South Carolina Court of Appeals Order of Dismissal is attached.)

The right to appeal is a Constitutional right and was not waived by Mr. Lance. The late filing of the Notice of Appeal which resulted in the dismissal of the appeal falls below objective standards of "reasonableness under prevailing professional norms." *Cherry v. State*, 30 S.C. 115, 117-18, 334 S.E.2d 624, 625.

There are numerous cases that stand for the proposition that failure to file the appeal when requested is per se ineffective assistance and does not require that the defendant establish prejudice. *See, e.g.: Hodge v. United States*, 554 F.3d 372 (3rd Cir. 2009) (Failure to file a timely notice of appeal constitutes ineffective assistance of counsel); *Corral v. United States*, 498 F.3d 470 (7th Cir. 2007) (Trial counsel's unavailability during the ten day period after the guilty plea, which prevented the defendant from requesting that an appeal be filed, amounted to ineffective assistance of counsel); *United States v. Poindexter*, 492 F.3d 263 (4th Cir. 2007) (If a client unequivocally instructs his attorney to file a notice of appeal, it is ineffective assistance of counsel to fail to file an appeal, even if there was an appeal waiver in the plea agreement); *United States v. Shedrick*, 493 F.3d 292 (3rd Cir. 2007) (Failure to file an appeal, even in a case with an appeal waiver, is ineffective assistance of counsel if the defendant requests that an appeal be filed); *Frazer v. South Carolina*, 430 F.3d 696 (4th Cir. 2005) (Applying *Roe v. Flores-Ortega*, 528 U.S. 470 (2000), court held counsel was ineffective in failing to consult with the

defendant about his right to appeal his state court conviction); *Campusano v. United States*, 442 F.3d 770 (2d Cir. 2006) (Even if there is an appeal waiver, if the defendant requests that the attorney file an appeal, it is ineffective assistance of counsel to fail to file notice of appeal); *Gomez-Diaz v. United States*, 433 F.3d 788 (11th Cir. 2005) (Even though there was a waiver of appeal in the plea agreement, counsel was ineffective in failing to file an appeal as requested by the defendant. The trial court erred in holding that the defendant was required to show a non-frivolous appeal issue in order to prevail on his claim of ineffective assistance of counsel); *United States v. Sandoval-Lopez*, 409 F.3d 1193 (9th Cir. 2005) (Though there was an explicit appeal waiver in the plea agreement, the attorney's failure to file an appeal as requested by the defendant was ineffective assistance of counsel); *United States v. Peak*, 992 F.2d 39 (4th Cir. 1993) (An attorney's failure to file a notice of appeal is *per se* ineffective and there is no requirement that the defendant establish prejudice. The defendant does not need to establish that the appeal would raise meritorious grounds).

RESPECTFULLY SUBMITTED,



Linda Vallar Whisenhunt SC Bar #13028  
Linda Vallar Whisenhunt, LLC  
213 South Main Street  
Anderson, SC 29624  
(864)225-3125

Anderson, South Carolina

January 22, 2021

State of South Carolina  
County of Anderson

Court of Common Pleas

Jacob N. Lance )  
 )  
 Plaintiff, )  
 v. )  
 )  
 State of South Carolina )  
 )  
 Defendant. )

Transcript of Record  
2019-CP-04-00512

March 1, 2023  
Anderson, South Carolina

B E F O R E:

The Honorable Perry H. Gravely, Judge.

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

Linda V. Whisenhunt, Esquire  
Attorney for the Applicant

C. Whitney O'Kelly, Esquire  
Attorney for the State of SC

Lisa Scott  
Circuit Court Reporter

I N D E X

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1	State's - letter		X

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P R O C E E D I N G S

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2  
3 THE COURT: All right. I'll be glad to hear  
4 from you.

5 MS. O'KELLY: May it please the Court? My name  
6 is Whitney O'Kelly on behalf of the State of South  
7 Carolina. This case before us is Jacob Nathaniel  
8 Lance, 2019-CP-04-00512.

9 May 2016, Anderson Grand Jury indicted  
10 Applicant for murder, 2016-GS-04-862; first degree  
11 burglary, 2016-GS-04-860; and two counts of third  
12 degree arson, 2016-GS-04-861 and -863.

13 Attorney Kurt Tavernier represented Applicant.  
14 Assistant Solicitor Lauren Davis Price of the Tenth  
15 Circuit Solicitor's Office prosecuted the case.

16 March 14, 2018, Applicant appeared before  
17 Honorable Lawton McIntosh and pleaded guilty to the  
18 lesser included offense of voluntary manslaughter  
19 and as indicted to the remaining three charges  
20 without recommendation from the State as to  
21 sentencing.

22 Judge McIntosh sentenced Applicant to  
23 concurrent sentences of 15 years imprisonment for  
24 first degree burglary, 30 years imprisonment for  
25 voluntary manslaughter, and 15 years imprisonment

1 for each third degree arson charge as to the  
2 30 years.

3 Counsel subsequently filed a notice of appeal;  
4 however, the notice of appeal was not filed within  
5 ten days of sentencing, but order dated April 5th,  
6 2018. The South Carolina Court of Appeals dismissed  
7 the case for failure to timely serve the notice of  
8 appeal pursuant to Rule 203(b).

9 The remitter was returned to the circuit court  
10 on April 25, 2018. Applicant commenced this PCR  
11 action March 14, 2019. And the allegations in that  
12 application were that counsel was ineffective for  
13 failure to inform the client of plea agreement and  
14 the supplemental application alleged failure to file  
15 a timely notice of appeal. The State made its  
16 return on November 7, 2019.

17 And with that, I'll hand it over to  
18 Ms. Whisenhunt and just ask that she confirm that  
19 those are the only allegations that we'll be  
20 proceeding on today.

21 MS. WHISENHUNT: Yes, Your Honor. May it  
22 please the Court? Linda Whisenhunt. I was  
23 appointed to represent Mr. Lance on April 23, 2019.  
24 There was some delay in this case, obviously, due to  
25 Coronavirus. It reared its ugly head a couple of

1 times and limited his transport here and things like  
2 that, but we are prepared to go forward today.

3 I have met with my client for a total amount on  
4 six different occasions, so we are -- we are  
5 prepared. His allegations and his application, as  
6 counsel stated, do allege ineffective assistance of  
7 counsel, and failure to inform the plea agreement.  
8 I intend to call Mr. Lance and he can explain what  
9 he means by that. And my supplemental application  
10 deals with what I bring to the Court's attention,  
11 which is the failure to file -- to file a timely  
12 appeal.

13 THE COURT: Well, let me just make sure too  
14 that I'm sure you discussed with your client that it  
15 looked like that -- again, all I know is what she  
16 just advised that -- that it was reduced and he got  
17 a 30-year sentence, that the -- that if I granted  
18 what he's requested, that it would be retried on the  
19 murder and then, therefore, at that point it would  
20 be a minimum of 30 years up. So I'm sure he's aware  
21 that ---

22 MS. WHISENHUNT: He is.

23 THE COURT: --- he better be careful what he  
24 asks for, but because if I grant it, then it all  
25 starts back over and he's looking at a minimum of

1 30 years. So do you understand that, Mr. Lance?

2 THE APPLICANT: Yes, sir.

3 THE COURT: Okay. I'm making sure. All right.

4 MS. WHISENHUNT: Yes. We have discussed that  
5 at length and I also intend to question him about  
6 that on the record.

7 THE COURT: Okay. All right. I'll be glad to  
8 hear from you then.

9 MS. WHISENHUNT: I will call Mr. Lance to the  
10 stand, Your Honor.

11 (Applicant approached.)

12 JACOB LANCE,

13 having been produced and first duly sworn as a  
14 witness on behalf of the Applicant:

15 DIRECT EXAMINATION

16 BY MS. WHISENHUNT:

17 Q. Good morning, Mr. Lance.

18 A. Good morning.

19 Q. As we were discussing prior to the start of  
20 your testimony, have I explained to you the purpose  
21 of a post-conviction relief action?

22 A. Yes, ma'am.

23 Q. And do you understand that if you are  
24 successful in this hearing, you will not  
25 automatically be released?

1 A. Yes, ma'am.

2 Q. Do you understand that if you're successful,  
3 the guilty plea will simply be set aside and the  
4 prosecution will start over?

5 A. Yes, ma'am.

6 Q. And have I explained the risks of a PCR?

7 A. Yes, ma'am, you have.

8 Q. You may be able to negotiate a new plea deal.  
9 You do -- do you understand that?

10 A. Yes, ma'am.

11 Q. Do you also understand that you may be able to  
12 go to trial?

13 A. Yes, ma'am.

14 Q. But either way, you could get less time. Do  
15 you understand that?

16 A. Yes, ma'am.

17 Q. But you could also get more time?

18 A. Yes, ma'am.

19 Q. In fact, you'll be facing the charge of murder  
20 again. Do you understand that?

21 A. Yes, ma'am.

22 Q. Would -- and do you understand that you could  
23 get the death penalty, life, or the minimum of  
24 30 years on that murder?

25 A. Yes, ma'am.

1 Q. You would be facing your other charges as well,  
2 burglary first and two counts of arson in the third  
3 agree. Do you understand that?

4 A. Yes, ma'am.

5 Q. And that you could also receive the maximum  
6 sentences on those charges?

7 A. Yes, ma'am.

8 Q. And not only that, your charges could run  
9 consecutively rather than concurrently?

10 A. Yes, ma'am.

11 Q. Okay. Understanding those risks, do you still  
12 wish to go forward?

13 A. Yes, ma'am.

14 Q. All right. Was I appointed to represent you  
15 back in 2019?

16 A. Yes, ma'am, you were.

17 Q. And have you and I been communicating about  
18 your PCR since that time?

19 A. Yes, we have.

20 Q. Okay. And there's been some delays due to  
21 Coronavirus; isn't that correct?

22 A. A lot of them.

23 Q. Okay. Let's talk about your representation on  
24 the case from the beginning. Who was your first  
25 lawyer?

1 A. Hervery B. Young.

2 Q. Okay. Mr. Young?

3 A. Yes, ma'am.

4 Q. And was he appointed?

5 A. Yes, ma'am.

6 Q. About how many times did you meet with  
7 Mr. Young?

8 A. At least ten, maybe more.

9 Q. Okay. Do you remember about how long he  
10 represented you, over how much time he represented  
11 you? Was it a year or more?

12 A. A little over a year.

13 Q. Okay. And did he give you discovery during  
14 that period?

15 A. Yes, ma'am.

16 Q. Did you have the option -- did you have the  
17 opportunity to review that discovery?

18 A. Yes, ma'am, I did.

19 Q. Did he also give you his professional opinion  
20 about the case?

21 A. Yes, ma'am.

22 Q. Okay. Did you discuss any potential defenses?

23 A. We did.

24 Q. Okay. And at some point your lawyer changed;  
25 is that correct?

1 A. Yes, ma'am.

2 Q. And who did it change to?

3 A. Mr. Kurt Tavernier.

4 Q. Okay. Did you go over discovery with your new  
5 lawyer?

6 A. No, we didn't.

7 Q. Did Mr. Tavernier ever meet with you?

8 A. Yes.

9 Q. Okay. And when he meet with you, did he bring  
10 anyone with him?

11 A. Mr. Baxter.

12 Q. Okay. What did you ask Mr. Tavernier and  
13 Mr. Baxter specifically to do? Did you ask them  
14 specifically to do anything in terms of the  
15 investigation of your case and whether -- were they  
16 able to do that?

17 A. Yes. I did ask for two things.

18 Q. And what were those?

19 A. One was to follow-up on an alibi, and the  
20 second one was to get a tape from a gas station.

21 Q. Okay. Do you know whether they did either of  
22 those things?

23 A. He told me he did.

24 Q. Okay. And did you know whether they were able  
25 to get any alibi witnesses or any tape?

1 A. As far as I know, they didn't comply.

2 Q. Okay. What do you mean they didn't comply?

3 A. I don't think, if I remember correctly, they  
4 told him that they didn't want nothing to do with  
5 it.

6 Q. Okay. And the tape, was it available still?

7 A. No, ma'am. They said -- he told me that every  
8 30 days, they rerun the tapes.

9 Q. Okay. Did you talk about the difference  
10 between a plea and a trial with Mr. Tavernier?

11 A. We did.

12 Q. Okay. Did you weigh the pros and cons of a  
13 plea versus a trial?

14 A. He gave me his thoughts on it.

15 Q. Okay. Did you consider the possibility of a  
16 trial in your discussions with Mr. Tavernier?

17 A. I said several times I wanted to go to trial.

18 Q. Okay. And did you talk about the pleas  
19 specifically and the terms of that plea?

20 A. The plea specifically?

21 Q. Uh-huh.

22 A. Yes, we did.

23 Q. Okay. Did he convey to you any offers that  
24 were given by the State?

25 A. He showed me an e-mail. It was from Ms. Lauren

1 Price ---

2 Q. Okay.

3 A. --- if I remember correctly. And it had two  
4 plea deals on it. She told me I could take the 30  
5 mandatory with the murder, or she would drop it down  
6 to voluntary manslaughter with an open plea with  
7 zero to 30.

8 Q. Okay. Did you talk about the possibility of  
9 pleading with anyone else, either an attorney or  
10 your family?

11 A. Yes.

12 Q. And who was that?

13 A. My father.

14 Q. Okay. And what is his name?

15 A. John Day.

16 Q. And he's since passed away, correct?

17 A. Yes, ma'am, he did.

18 Q. Okay. And you say he was his father -- your  
19 father. Was he your biological father?

20 A. No, ma'am.

21 Q. But he was the father ---

22 A. The closest thing I had to one.

23 Q. Okay. After speaking with Mr. Tavernier and  
24 your father, how did you decide to proceed?

25 A. He lined up a visit to discuss with my dad

1           between -- amongst my dad, myself, Mr. Tavernier,  
2           and Mr. Baxter.

3           My dad came in and he showed my dad the -- the  
4           pictures of the victim, you know. And, you know,  
5           that kind of persuaded my dad to think one sided  
6           automatically because, you know, normal people, they  
7           don't see that every day. It's going to cause some  
8           type of feeling and emotion inside of them. I'm his  
9           son and he -- he's thinking, you know, he wants to  
10          see me out free again one day, you know. So it kind  
11          of persuaded my -- my dad to think one sided and,  
12          you know, I feel like it was kind of planned to go  
13          that way.

14          Q.     So you think they put pressure on your dad so  
15          he could put pressure on you?

16          A.     Yes, ma'am.

17          Q.     Okay. Do you wish you hadn't pled guilty?

18          A.     No, I don't.

19          Q.     Okay. Do you believe that Mr. Tavernier did  
20          not sufficiently counsel you regarding a plea?

21          A.     Well, I understood it was an open plea, but I  
22          was expecting to get, I mean, a better plea deal,  
23          like 15 or 20. That's the only ---

24          Q.     Why is that?

25          A.     Why is that? Because I felt I had no prior

1 record. I literally had no parking tickets. I'm  
2 19 years old. I'm a standup guy. I just felt like  
3 I would've got a better deal.

4 Q. So given the fact you were 19 years old with no  
5 prior record, you thought the sentence was too  
6 severe?

7 A. (No response.)

8 Q. Did you view it as excessive?

9 A. What do you mean?

10 Q. Did you -- did you view it as excessive, the  
11 sentence you received as excessive?

12 A. As far as me being incarcerated at 19 years  
13 old, I haven't even lived 30 years of my life, you  
14 know, so my daughter was 8 weeks old when I got  
15 incarcerated, so...

16 Q. Did you and Mr. ---

17 A. To me, that's a long haul.

18 Q. Did you and Mr. Tavernier discuss the  
19 possibility of filing a motion to reconsider  
20 sentence?

21 A. A motion to what?

22 Q. A motion to reconsider the sentence? Did you  
23 and Mr. Tavernier discuss the possibility?

24 A. No, we didn't.

25 Q. Okay. So to your knowledge, he did not file a

1 motion to reconsider sentence?

2 A. No, ma'am.

3 Q. Had you discussed filing an appeal with  
4 Mr. Tavernier?

5 A. Yes, I did.

6 Q. And did you communicate to Mr. Tavernier that  
7 you wanted him to file an appeal?

8 A. Yes, I did.

9 Q. Did you communicate that prior to the  
10 expiration of the ten days?

11 A. Yes, I did.

12 Q. And did he file that appeal for you in a timely  
13 manner?

14 A. No, ma'am, he didn't.

15 MS. WHISENHUNT: I have no further questions at  
16 this time, Your Honor.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION

19 BY MS. O'KELLY:

20 Q. Good morning.

21 A. Good morning.

22 Q. So I think you answered this before, but I just  
23 want to make sure. You are aware that before your  
24 plea agreement, you were facing not only one life  
25 sentence for murder but two life sentences for the

1 first-degree burglary?

2 A. Yes, ma'am. I realize that.

3 Q. And then you're aware that manslaughter in the  
4 state of South Carolina only holds a sentence of 2  
5 to 30 years, which is what you pled to?

6 A. Yes, ma'am.

7 Q. So if you are successful today in your PCR, you  
8 know that you will just start all over, all of your  
9 charges come back fully which means that you can  
10 possibly be convicted to two life sentences and up  
11 to 15 years each for your two third-degree arson  
12 charges?

13 A. Yes, ma'am. I understand that's possible.

14 Q. All right. And we're still going to proceed  
15 today?

16 A. Yes, ma'am.

17 Q. Okay. In your application, you stated that  
18 your attorney did not tell you about the plea  
19 agreement, right?

20 A. Say again?

21 Q. You said in your application that your attorney  
22 didn't tell you about the plea agreement?

23 A. As far as the open plea?

24 Q. As far as any offers or plea agreements that  
25 could possibly come from the State, any plea offers?

1 A. We discussed the two pleas that I just answered  
2 her question.

3 Q. Okay. So you ended up taking a plea agreement  
4 that you were informed of; is that correct? You  
5 took a plea?

6 A. I took a plea.

7 Q. All right. Great. And you said you met with  
8 your attorney and you spoke about your case?

9 A. We -- we have.

10 Q. All right. And so do you remember your plea  
11 hearing in front of Judge McIntosh?

12 A. Yes, ma'am, I do.

13 Q. And do you remember him telling you of your  
14 charges and what your sentences could be that day?

15 A. We discussed the plea deal. Yes.

16 Q. Okay. And no one forced you or threatened you  
17 or promised you anything to take that plea?

18 A. No one forced me to take nothing.

19 Q. Okay. And you knew that you had the right to  
20 go to a jury trial if you wanted to?

21 A. I said several times I wanted to do that.

22 Q. And knowing the evidence against you, why did  
23 you want to go to trial?

24 A. Because I'm not guilty.

25 Q. Okay. And so at the very end of your hearing,

1           you heard the State's evidence and you heard them  
2           say that you have ten days to appeal if you weren't  
3           satisfied?

4           A.     Yes, ma'am.

5           Q.     And did you ever talk to your attorney about  
6           wanting to appeal the guilty plea?

7           A.     Yes, I did.

8           Q.     Do you remember when you talked to him about  
9           it?

10          A.     After -- after we was in the courtroom.  Also,  
11          I was at Kirkland R&E, I got my family to contact  
12          him to tell him that too.

13          Q.     Okay.  So it was the same day that you -- it  
14          wasn't the same day that you took the plea in front  
15          of the judge and you swore to him that you were not  
16          interested in appealing?

17          A.     When did I swear I wasn't interested in  
18          appealing?

19          Q.     So during the plea proceedings, they ask you if  
20          you want to plead guilty.  There you will be saying  
21          that you're not trying to appeal what you're trying  
22          to do.

23                 MS. WHISENHUNT:  Your Honor, I would object.  I  
24          would just ask that counsel indicate where in the  
25          record that that -- that took place.  I know that it

1 was the standard questions, but I don't think that  
2 he waived his right to appeal in the plea.

3 MS. O'KELLY: I'm not saying that he waived his  
4 right to appeal. I'm just saying at that time, he  
5 wasn't saying that he wanted to appeal the thing  
6 that he was doing. And I think on page 21, the  
7 notice of appeal time, he said he understands that  
8 he could do that, but he doesn't want to. He wants  
9 to go forward with the guilty plea. He didn't  
10 address ---

11 MS. WHISENHUNT: Yeah, I can see -- yes.  
12 Referring to page 21, line 18, yes. He was given  
13 notice of the right of appeal, but -- and he -- I  
14 mean, it goes to stand that he did go forward with  
15 the plea.

16 MS. O'KELLY: Right.

17 THE COURT: All right.

18 BY MS. O'KELLY:

19 Q. Okay. So when exactly did you change your mind  
20 about wanting to appeal your plea?

21 A. As soon as I found out I could.

22 MS. O'KELLY: Okay. So then no further  
23 questions.

24 THE COURT: Redirect?

25 MS. WHISENHUNT: No redirect, Your Honor.

1 Thank you.

2 (Applicant excused.)

3 THE COURT: All right. Anything else from the  
4 Applicant?

5 MS. WHISENHUNT: Yes, Your Honor. We have  
6 spoken with Mr. Tavernier. We intend to call  
7 Mr. Tavernier and ask him a few questions just to  
8 supplement what our client has testified to -- my  
9 client has testified to, and I'm sure the State  
10 would also have questions for him.

11 THE COURT: All right. Mr. Tavernier.

12 (Witness approached.)

13 KURT TAVERNIER,  
14 having been produced and first duly sworn as a  
15 witness on behalf of the Applicant, then testified  
16 as follows:

17 DIRECT EXAMINATION

18 BY MS. WHISENHUNT:

19 Q. Good morning, Mr. Tavernier.

20 A. How are you doing?

21 Q. I just have a few questions for you, as I'm  
22 sure the State will have many more. How old was  
23 Mr. Lance when you represented him?

24 A. Nineteen, I believe, when we -- when we  
25 started.

1 Q. And is it fair to say he was ignorant of the  
2 law?

3 A. I won't say ignorant. I will say confused.

4 Q. Okay. And how many times did you meet with  
5 him?

6 A. According to my notes and those of  
7 Mr. Baxter's, I'm going to say six times.

8 Q. Okay. Did you go over discovery with him?

9 A. Some of the discovery, not all of it because a  
10 lot of it, we keep kind of -- after my initial  
11 meeting, we kind of honed in on various issues and  
12 that he had discussed with Mr. Young. And there was  
13 a lot of stuff that was, quite frankly, irrelevant  
14 at that time. He had given a statement. His  
15 brother had given a statement. His brother was  
16 prepared to testify against him. Things of that  
17 nature.

18 And so we started to hone in on -- because of  
19 the age of the case, we started to hone in on what  
20 was going to be necessary for trial or plea.

21 Q. Did you pursue alibi witnesses?

22 A. He gave me information that we were trying to  
23 arrange interviews with Alyssa Martin, who was his  
24 girlfriend, with her mother, Melanie Locklear.

25 There was a Cody, last name unknown, that we were

1           trying to locate. There was a Katy Blanding who he  
2           alleged was a -- an alibi witness that we finally  
3           did locate. And ---

4           Q. Did any of those witnesses that you're  
5           mentioning pan out to be useful in the defense of  
6           this case?

7           A. No. Quite frankly, to be perfectly honest,  
8           after speaking with Katy Blanding, we didn't take  
9           any statements from him because we were under  
10          reciprocal discovery requirement and that statement  
11          would not have benefited him at all.

12          Q. And -- and what about the issue of potential  
13          video camera? What came of that?

14          A. Mr. Baxter went to -- if you'll excuse me just  
15          a second. Okay. We were told that he had gone to  
16          High Volume and Rite Aid and during that time with  
17          Katy Blanding or -- and/or his brother who had -- he  
18          indicated at one time was driving. And we attempted  
19          to get videos from Stop-A-Minit, Glen -- Glen Raven  
20          Mills. Let's see. We reviewed those videos, but  
21          then he said there were videos from High Volume, and  
22          I want to say that's a gas station, and Rite Aid.  
23          Mr. Baxter went there. Talked with the manager and  
24          verified with the manager that those state -- those  
25          videos were no longer available. And I want to say

1           that I didn't -- I think it was November 13th. We  
2           were supposed to check the surveillance at High  
3           Volume video getting gas. Brother was driving the  
4           vehicle. He never told Hervery that. We located  
5           Katy Blanding. The videos were kept for 30 days and  
6           no longer available.

7           Q.    In light of that investigation you did, did you  
8           discuss the possibility of a trial with your client?

9           A.    Oh, definitely. I have notes reflecting that.

10          Q.    Okay. Was -- was trial an option?

11          A.    Yeah, it was an option. It wasn't -- wasn't a  
12          very good one in my opinion. His brother was going  
13          to testify. His brother Ernie or Oscar was -- had  
14          already pled guilty. Was awaiting sentencing based  
15          upon his cooperation.

16                His girlfriend could be called as a witness  
17          because he had told her he had done something really  
18          bad, that he had hit the victim in the head with the  
19          baseball bat three times. The coroner's report  
20          verified the victim had, in fact, died from blunt  
21          force trauma.

22                According to what Mr. Baxter found out from  
23          Bland -- Katy Blanding, that also indicated that he  
24          had made some type of admission to Mr. Blanding.  
25          That's why we didn't take a statement because that

1 also would have nailed ---

2 Q. So it's your advice that the plea was the best  
3 course of action?

4 A. Yes. And, you know, he would be doing life  
5 because the allegation or the statement that was --  
6 testimony that was going to be elicited from his  
7 brother was that he had hit the victim in the head  
8 with a baseball bat, sprayed him with lighter fluid,  
9 and set him on fire. And that would not have bode  
10 well in trial, not at all, even in Anderson County.

11 Q. Did you recommend him taking an open plea  
12 because you thought that there might be some  
13 leniency from the judge based on his age and his  
14 lack of prior record?

15 A. With the negotiation that we were looking at a  
16 cap of 30 years based upon the reduction in charge,  
17 yes. And ---

18 Q. Were you surprised that he got the whole  
19 30 years?

20 A. Not really considering the nature of the crime.  
21 I told him there was a possibility because of his  
22 age, but I felt that Judge McIntosh was probably  
23 going to feed them both out of the same spoon and  
24 they were going to get identical sentences.

25 Q. Which they did?

1 A. Then they -- that's what they -- that's what  
2 they did get. I did give -- I believe you have a  
3 copy.

4 Q. I do.

5 A. This is my CYA letter that I wrote to most of  
6 my serious clients indicating what his rights were,  
7 what his options were, what my discussions were with  
8 the nature of where we were going. And I gave that  
9 to him, to my recollection, I'm thinking it was the  
10 next to last meeting we had because -- just prior --  
11 and the reason I wrote that up was just prior to  
12 that meeting was when his -- he -- he stated ---

13 Q. Mr. Day?

14 A. Sonny Day. Sonny Day.

15 Q. Yeah, Mr. Day.

16 A. We met with him for a couple of hours out at  
17 the jail and went over everything from A to Z, and  
18 that was when he more or less indicated he was about  
19 ready to change his mind about trial and go from  
20 there.

21 I will let -- I will state that prior to that,  
22 he had been given -- he had produced a letter that  
23 was supposedly written by his brother and where his  
24 brother was accepting responsibility. That letter  
25 prompted a handwriting expert to come and that

1 handwriting expert took samples from ---

2 Q. And I think that was mentioned -- that's in  
3 the -- mentioned in the plea records ---

4 A. Yes.

5 Q. --- as well?

6 A. And it was verified that didn't come from his  
7 brother, but ---

8 Q. So that's not going to help him any?

9 A. No. It was verified that he very well may have  
10 been the author of that.

11 Q. So following -- let me jump to following the  
12 plea. Did you -- did you consider filing a motion  
13 to reconsider sentence or discuss that at all with  
14 your client?

15 A. No. Because I felt pretty good getting out of  
16 there without a concurrent sentence and not having  
17 anything consecutive.

18 Q. Okay. How about the appeal? Did you discuss  
19 filing a notice of appeal with your client?

20 A. In that letter I gave him, told him he had ten  
21 days. Judge also told him ten days. And, yes, I  
22 was notified, but I was out of the office when I got  
23 notified. It was like 4:55 or 5:00 in the evening,  
24 and I was already -- I was gone. I was out of the  
25 office and was not going to be back.



1 have recorded.

2 Q. And you did explain to him his charges, what  
3 murder was and the elements and his sentence?

4 A. Yes.

5 Q. As well as first degree burglary, what it was,  
6 and the elements, and third degree arson and what  
7 that means?

8 A. Yes.

9 Q. Okay. And, in fact, you explored everything  
10 that you possibly could explore in this case as you  
11 stated in the plea hearing?

12 A. Yes. We went over -- went over every option he  
13 had. I had discussed the previous trial strategy  
14 that Mr. Young had regarding the letter and a couple  
15 of other things. It went so far as he claimed he  
16 had been advised that because he was grossly  
17 intoxicated at the time of the statement, that it  
18 would not be admissible and told him that that was  
19 wrong.

20 Q. So did Mr. Lance ever tell you that he only  
21 wanted to go to trial and he wouldn't accept  
22 anything but going to trial because he was innocent?

23 A. Initially, that was his mindset because as I  
24 said, he had some, whether you call them  
25 preconceived notions or confusion regarding the law

1 and what he had been told.

2 Because according to what he had told me, he  
3 said he had that secret letter that he was going to  
4 spring on the pros -- prosecution at trial. And I  
5 told him, "You're under that reciprocal discovery  
6 requirement. And if he doesn't produce it, the  
7 judge is most likely not going to allow it to be  
8 entered into evidence."

9 So after the initial interview with him and  
10 going over those things and getting some of that  
11 mess straightened out, then it was, "How good a deal  
12 can you get me?"

13 Q. Right. Then the complete focus changed from  
14 only going to trial to now more focused on getting  
15 the plea and avoiding the life sentence?

16 A. We went over the evidence and discussed the  
17 options, one versus the other and whether one would  
18 be beneficial and one wouldn't.

19 Q. And did you tell him in your best legal advice  
20 that you believed that it was not a good idea to go  
21 to trial, or did you tell him that it was a good  
22 idea to go to trial?

23 A. By the time I had finished my second interview,  
24 I told him my -- my total opinion was it was not in  
25 his best interest because at that point I had

1 already spoken with Lee Cole who was representing  
2 the brother. I had been thoroughly through  
3 everything, knew what the brother was going to  
4 testify to, and that part of that agreement.

5 And, regardless, he had made his statement that  
6 he was there. He had the guitars in his possession.  
7 Various things you start -- I ran down the list I  
8 got and I said, "You have all of these against you  
9 and you have your word that you didn't do it and  
10 your brother's already pled. It's going to take a  
11 lot of credibility."

12 And I also explained to him the third thing was  
13 hand of one is hand of all. And I said, "You were  
14 there and you're going to go down regardless."

15 Q. So would you say that the State's evidence was  
16 overwhelming against your client?

17 A. Absolutely.

18 Q. And so your main focus was to negotiate the  
19 best plea that you could for Mr. Lance considering  
20 the circumstances?

21 A. Absolutely.

22 Q. And do you remember meeting with the  
23 solicitor's office and discussing possible plea  
24 negotiations for this case?

25 A. I would say Ms. Price and I had at least three

1 serious discussions after the option of doing a plea  
2 became a very viable -- or became very viable. And  
3 at that point, knew what Mr. Lance wanted. And  
4 that's why in that one letter I gave him, I said,  
5 "You know, we've had numerous discussions with her."  
6 Discussed what he -- you know, kind of what he  
7 wanted and what her position was going to be and  
8 told him, "Not going to be able to get where you  
9 want to be."

10 MS. O'KELLY: All right. At this time may I  
11 approach, Your Honor?

12 THE COURT: Sorry. What?

13 MS. O'KELLY: May I approach the witness, Your  
14 Honor?

15 THE COURT: Yes.

16 BY MS. O'KELLY:

17 Q. Mr. Tavernier, is this the letter, the  
18 communication between you and the Applicant?

19 A. Yes. Yes. That is the two pages that I gave  
20 him. That's an adaption of what I normally gave a  
21 lot of my clients without all the extra stuff, but I  
22 gave that to him. It was -- and I'm almost positive  
23 it was the next to last meeting when we -- when we  
24 met.

25 MS. O'KELLY: At this time I'd like to submit

1 this into evidence.

2 THE COURT: Okay. Any objection?

3 MS. WHISENHUNT: No objection.

4 MS. O'KELLY: Thank you.

5 (State's Exhibit No. 1 was received into  
6 evidence.)

7 BY MS. O'KELLY:

8 Q. So were there any offers made that I believe  
9 you outlined in this letter that you wouldn't mind  
10 telling us?

11 A. What I have outlined in the letters are the  
12 best option that we were given.

13 Q. And what were those offers that were made by  
14 the solicitor's office?

15 A. The offer was a cap of 30 years. Well, I was  
16 unable to get a cap of 30 years, but I felt pretty  
17 good when Ms. Price offered to reduce it from murder  
18 to voluntary manslaughter, that I didn't believe the  
19 judge was going to exceed 30 years on any of the  
20 other -- on any other charge that would be  
21 applicable.

22 So based upon that, I said, "All right. You're  
23 looking at probably a cap of 30 years, and the best  
24 thing we could hope for is to run everything  
25 concurrent rather than consecutive." And I felt

1           that he would be -- you're not penalized for going  
2           to trial, but you're rewarded for a plea aspect.  
3           And so based upon that, given his age, as I stated  
4           in here that he had expressed remorse, that there  
5           was a possibility of going less, but that -- that  
6           was as good as we were going to be able to do, and  
7           that he would get credit for the two-and-a-half  
8           years he had already served. So he was looking at  
9           getting out probably by the time he was 50. And  
10          that was probably the best we were looking at at  
11          that point.

12         Q.    And you also discussed some of those mitigating  
13         factors like the age and the prior record?

14         A.    Yes.

15         Q.    And you discussed that with your client?

16         A.    Pardon?

17         Q.    And you discussed those totalities what you  
18         just described with your client?

19         A.    Yes. And I also have them listed in -- in the  
20         letter I gave him.

21         Q.    And so -- and you also went over everything  
22         with Jacob and his father figure, Mr. Day, on  
23         numerous -- in numerous conversations before you  
24         decided the best course of action?

25         A.    Yes. As I said, we arranged for his -- for

1           Sonny Day to come down and we met out at the jail.  
2           And I know my time sheet had two hours.  
3           Mr. Baxter's had two and a half hours, so I know it  
4           was at least a two-hour meeting that we had at the  
5           jail going over everything.

6                     I'm not sure whether Mr. Baxter was inside with  
7           us, but we had met at a window. Mr. Lance and I  
8           were inside, and Mr. Day brought somebody else I  
9           believe with him. And we went over everything and  
10          discussed all the options and what was going to  
11          happen. Got down to the nitty gritty. I mean, just  
12          what was going to happen.

13                    And, yes, I had those pictures with me. I  
14          wanted everybody to see what's got -- what's the  
15          jury going to see. And if that swayed him, it  
16          swayed him, but that -- you know, I told him what  
17          the options were. And at that point, he made his --  
18          Mr. Day stated that he thought it was in his best  
19          interest to plea.

20          Q.     Okay. And there were no offers made that you  
21          withheld from your client?

22          A.     No. This is ---

23          Q.     Right.

24          A.     --- getting a -- once we got the murder off of  
25          the table and the re -- reduction of voluntary, we

1           went ahead. That was as good as we were going to  
2           get.

3           Q.     And then moving on to the next allegation. How  
4           often did you discuss the matter of appeal and those  
5           requirements with your client before, during, or  
6           after the plea?

7           A.     Usually, just twice. Like I said, I put it in  
8           the letter and Judge McIntosh advised him of it. I  
9           felt or I believed that based upon the nature of the  
10          plea and what Judge McIntosh covers that there's  
11          very little, if anything, that isn't uncovered and  
12          the fact that he no complaints and he was getting a  
13          heck of a deal. I really didn't contemplate doing  
14          an appeal because I didn't think or file a motion to  
15          reconsideration -- for reconsideration because I  
16          felt he had gotten a pretty good deal considering  
17          the circumstances of the case.

18                 And so I will admit, I was surprised when I got  
19          that last second request to file. But as I said,  
20          logistics for me trying to get it done were -- were  
21          not happening because I didn't have a secretary at  
22          that point.

23          Q.     At that final hour, did you generally believe  
24          the Applicant had waived his right to appeal because  
25          he thought, you know, there was a ten-day limit that

1 he understood?

2 A. All things considered, I -- whether you  
3 consider it waived, I didn't anticipate him filing  
4 an appeal.

5 Q. And do you think it fell within the  
6 reasonableness of your duty to submit in the time  
7 frame that you did after you got -- after ---

8 A. I got it done as quickly as I could. And, you  
9 know, Court didn't accept it. And, you know, I'm  
10 sorry for that, but the timing just wasn't -- just  
11 didn't work out.

12 Q. And then just to address. Under what  
13 circumstances do you normally file a motion to  
14 reconsider sentence?

15 A. If I think there are factors that the judge did  
16 not take into account or something that may have  
17 occurred. But under the circumstances with what  
18 Judge McIntosh had stated and he was very clear that  
19 he was going to feed both brothers out of the same  
20 spoon, I think were his words and he was going to  
21 treat them exactly the same, I didn't see any need  
22 to.

23 And I thought -- and, quite frankly, I thought  
24 it was -- since he was the most culpable of the two,  
25 according to putting all the evidence together, I

1 felt he got a pretty good deal.

2 Q. And just to touch on the previous testimony.  
3 You did get the tape from the gas station and you  
4 did follow-up with alibi witnesses?

5 A. Yes. Mr. Baxter is here and he can verify what  
6 the efforts he went through and what he had done in  
7 trying to track it down.

8 And what -- he did talk to Mr. Blanding and he  
9 did go to the gas stations. And because he was  
10 talking to Mr. Blanding, he called me on the phone  
11 and asked me whether he wanted me to take that --  
12 wanted him to take that statement based upon what  
13 Mr. Blanding was going to testify -- or would  
14 testify to, and I said probably not.

15 MS. O'KELLY: No further questions. Thank you.

16 MS. WHISENHUNT: No redirect, Your Honor.

17 THE COURT: All right. Thank you. You can  
18 step down.

19 (Witness excused.)

20 THE COURT: Anything else from the Applicant?

21 MS. WHISENHUNT: Nothing else from the  
22 Applicant, Your Honor.

23 THE COURT: All right. Anything else from the  
24 State?

25 MS. O'KELLY: The State would call Ms. Lauren

1 Price.

2 (Witness approached.)

3 LAUREN PRICE,

4 having been produced and first duly sworn as a  
5 witness on behalf of the State, then testified as  
6 follows:

7 DIRECT EXAMINATION

8 BY MS. O'KELLY:

9 Q. Good morning, Ms. Price.

10 A. Good morning.

11 Q. Just very briefly, did you work on this case?

12 A. I did. I was assigned to this case from its  
13 genesis in our office until the resolution by way of  
14 plea.

15 Q. And do you -- did you have any discussions with  
16 Mr. Tavernier?

17 A. We did. Mr. Tavernier and I discussed this  
18 case on multiple occasions and engaged in rigorous  
19 discussions about the viability of any plea offer.  
20 Initially, I was disinclined to make any offers in  
21 this case due to the absolute brutality of the  
22 facts. Certainly, Mr. Tavernier asked on multiple  
23 occasions what I could bring to the table. For a  
24 lengthy period of time, there was nothing I felt I  
25 could bring to the table.

1           We also had Oscar who-- Ernie/Oscar. Those are  
2 both names that he used which can be confusing. He  
3 and his attorney came to the table first and said,  
4 "What can we do here? We've made statements." Both  
5 of these individuals -- both brothers gave  
6 statements incriminating each other to law  
7 enforcement after their arrest, and Oscar was the  
8 first individual to say he wanted to cooperate.

9           Jacob, at no point in time for a very lengthy  
10 period of time, was interested in negotiating or  
11 discussing, but my impression from my discussions  
12 with for Mr. Tavernier that he went and met with  
13 Jacob and had discussions with him about the  
14 strength of the State's case and about how it was  
15 against his interest to go to trial due to the  
16 brutality of these events and the facts and what I  
17 would be presenting to the jury.

18           It was -- this is one of the strongest cases  
19 that I've ever had in terms of forensics, in terms  
20 of lay witness testimony, and otherwise. And,  
21 certainly, the letter that was -- we delayed trial.  
22 According to my notes, if you'll bear with me.  
23 Oscar plead guilty on February 23rd of 2017.  
24 Deferred his sentence. But then we had additional  
25 delay because of this purported letter that was

1 written by Oscar.

2 We sent it off for handwriting analysis by  
3 SLED, and, of course, they came back and said, "No.  
4 Oscar did not write this. This is an attempt by  
5 somebody to make it look like Jacob is not  
6 involved," but, in fact, this letter is a fake.

7 And trial at that time was set for May. We did  
8 have a trial date. And I believe Mr. Tavernier  
9 alluded to the fact that he -- he spoke with me  
10 about the best interest of his client and was there  
11 anything that I could do.

12 And I came to the conclusion because one of the  
13 victims -- well, he's not the victim in this case,  
14 but one of my witnesses was the son of the victim in  
15 this case who was a minor at the time this occurred.  
16 And out of consideration for that one person who was  
17 traumatized by these events, I told Mr. Tavernier  
18 and I told Mr. Cole that I would give them the same  
19 offer. And that I would reduce to voluntary  
20 manslaughter, but that I would not reduce the first  
21 degree burglary.

22 That did give their client an opportunity to  
23 have a broad range of sentencing in front of our  
24 judges. And so both of us presented what we thought  
25 was appropriate to Judge McIntosh and he fell on

1           that 30 years and then concurrent time, which I  
2           think was an extreme benefit to the defendant in  
3           light of all of the facts. And, quite frankly, law  
4           enforcement was not happy with me for opening that  
5           door.

6           I think it was a fair sentence ultimately based  
7           on avoidance of putting the young man through what  
8           he would've been put through. But, yes, all of that  
9           to say that -- I'm sort of giving you more than you  
10          asked for, but Mr. Tavernier and I discussed  
11          multiple times what I could do for his client and  
12          for a very lengthy period time I said, "I can't do  
13          anything for your client," but he continued to try  
14          to negotiate with me. And, ultimately, this is  
15          where we wound up. And it was the best he was going  
16          to do for his client with me at the helm.

17           THE COURT: Cross-examination?

18           MS. WHISENHUNT: I have no cross-examination,  
19           Your Honor.

20           THE COURT: I assumed you were finished.

21           MS. O'KELLY: Thank you, very much.

22           THE COURT: All right.

23           THE WITNESS: Thank you very much. Thank you,  
24           Judge Gravely.

25           (Witness excused.)

1 THE COURT: Anything else from the State?

2 MS. O'KELLY: No, Your Honor.

3 THE COURT: Anything else?

4 MS. WHISENHUNT: Nothing further.

5 THE COURT: I see absolutely no issue in this  
6 case whatsoever. I see no issue. I mean, it sounds  
7 like attorney did a stellar job in the fact that he  
8 got this deal at all. I find that there's  
9 absolutely nothing shown that will be an appeal --  
10 appealable issue. And to top it all off, Mr. Lance  
11 did more than just answer questions in his plea. He  
12 actually wrote a letter showing his remorse after  
13 the facts were read. So, I mean, I see absolutely  
14 no basis for a PCR, so I'm going to deny your  
15 application and dismiss it. Please prepare an order  
16 accordingly.

17 MS. O'KELLY: Thank you, Your Honor.

18 MS. WHISENHUNT: Thank you, Your Honor.

19 (At 10:51 a.m., proceedings concluded.)

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

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 1st day of March, 2023.

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

August 16, 2023

/s/Lisa Scott

*Lisa Scott*  
*Circuit Court Reporter*

RE: State v. Jacob Lance  
Case No(s):

Please be advised I have been assigned to represent you in the above referenced case(s). Please read this letter and review the attachments.

You have been charged with four criminal offenses. There are typically four (4) options available to you. If it is a first offense, you may be eligible for: 1. A conditional discharge (you enter a plea then do a short term of probation and if successful, your charge will be dismissed and expunged from you record) 2. Pre-trial Intervention (a program by which you do not enter any plea and if you successfully complete the counseling sessions, community service and possibly other conditions, your charge will be dismissed and expunged from your record) 3. Enter a guilty plea to the charge or possibly a lesser offense, or 4. Go to trial.

Based upon my assessment of what the State may show, in its case against you and my understanding of what is alleged to have occurred, I will determine whether any motion to dismiss, to suppress certain evidence or other motion may be appropriate. I do not want you to file any pro se motions or make any statements to anyone which may jeopardize your right to remain silent. If you wish to do so, please advise me and you may then represent yourself.

I will inform you of your options and what you may possibly be facing in a trial, plea negotiation and what the State may show. You may not like what I tell you but it will be what information is necessary for you to understand it is necessary to you in which to make an informed decision.

You are responsible to assist in the defense of your case(s). If you have witnesses that may be helpful in your defense, you are responsible for obtaining that individual(s) contact information, i.e. (name, address, phone number)

Stated below is an advisement of your rights as it pertains to your options

You are charged with a criminal offense and the potential sentence may carry a fine, incarceration, probation or a combination of all three

In a plea negotiation the State may recommend a sentence to the Judge

You will not be promised anything else to get you to plead guilty or assured you will receive a particular sentence

You are not being threatened or pressured to plead guilty

You under the influence of any medications, drugs or alcohol when discussing your case(s)

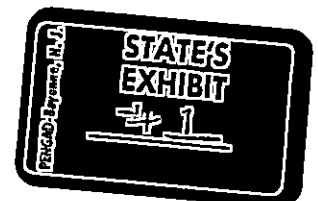
You are not aware of any physical, mental, emotional or nervous problem you may have that might affect your understanding of our discussions

You have the right to have my help at all stages of Court proceedings

If you plead guilty you give up your right to a jury trial

In a trial you would be presumed to be innocent

You do not have to prove you were innocent or that you were not guilty



In a trial you have the right to see and hear all witnesses called to testify against you and to confront, cross examine and question them, and confront all of the evidence

in a trial you have the right to take the witness stand and testify, or not to take the witness stand as you choose, and that you cannot be required to take the witness stand

In a trial you would have no burden of proof, and that the burden would instead be entirely on the State to prove you were guilty and you could only be found guilty if all 12 jurors agreed that the State had proven each and every element of the crime against you beyond a reasonable doubt

You may talk with me about each elements of each crime you are charged

If you plead NOT GUILTY and that if you do not take the witness stand, the jury (1) cannot take that as evidence against you and (2) the court would tell the jury that, like any citizen, you have the absolute right to remain silent, and that your silence cannot be held against you whatsoever

If you plead NOT GUILTY you have a right to use the subpoena power of the Court to make witnesses attend your trial and testify, whether they want to or not

If you plead GUILTY you will be found guilty without a trial and you will have given up all the rights mentioned above along with your right to present any defense(s), and your right to challenge or contest any of the evidence against you including any searches or seizures made by law enforcement, any statements you may have made, and any testing that was done or should have been done

You decide to plead guilty and believe it is in your best interests to do so, you are doing it of your own free will

In your particular case you are charged with Murder (30 years to life) Burglary 1<sup>st</sup> (15 years to life) Arson 3<sup>rd</sup> (up to 15 years) Potential sentence could be consecutive life sentences and 30 years consecutive to that. Not likely, but at trial, if convicted, would be more in the ballpark of around 30 year to 40 years. In a plea consideration would be given for acceptance of responsibility but still in the 30 year range. You have no prior record so you can testify at trial without substantial impeachment but your brother's testimony, Alyssa's, Kaden's potential testimony and your statement, collectively are too substantial. The jury will want someone to pay. Hand of one, hand of all nails you regardless of whether you participated. I can't raise one issue to exonerate you without opening a can of worms on something else.

In my opinion, I have shown you and you have seen potential evidence, i.e. pictures that may be entered. We can keep some but not all out. The letter may be iffy as to whether it is helpful. In any event if you will accept an open plea, as indicated, I can get the reduction on the murder charge to a voluntary manslaughter charge. (2 to 30 years) The Burglary 1<sup>st</sup> still carries (15 to life) the arsons carry (up to 15 years each)

I have had numerous discussions with Lauren Price. I am unable to get a cap of 30 years but I can get a stand up plea without a recommendation of 30 years leaving the option open for less than thirty as you wanted. I do not think the judge will give you more than thirty, your lack of record and pleading, the judge will take that into consideration, your letter expressing your remorse, I think you have a pretty good shot at doing no worse than 30. You will get credit for the 2 ½ years you have served. I must inform you that you will have 10 days, from the date of the plea, to file a notice of intent appeal.

22 MAY 15 AM 11:40:17  
ANDERSON SC COG 120158

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )  
 )  
Jacob N. Lance #375653, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE TENTH JUDICIAL CIRCUIT  
CASE NO. 2019-CP-04-00512

**ORDER GRANTING BELATED  
APPELLATE REVIEW PURSUANT TO  
WHITE V. STATE AND DISMISSING  
ALL OTHER ALLEGATIONS  
WITH PREJUDICE**

Presiding Judge: Hon. Perry H. Gravely  
Applicant's Attorney: Linda Vallar Whisenhunt, Esq.  
Respondent's Attorney: C. Whitney O'Kelly, Esq.  
Trial Counsel: Kurt Tavernier, Esq.  
Date of Hearing: March 1, 2023  
Court Reporter: Lisa Scott

This matter comes before this Court by way of Jacob N. Lance's (Applicant) application for Post-Conviction Relief (PCR) commenced on March 14, 2019. Respondent, the State of South Carolina, filed its Return and Motion for More Definite Statement on November 12, 2019, requesting an evidentiary hearing to resolve the claims set forth in the application.

On March 1, 2023, an evidentiary hearing was held at the Anderson County Courthouse before the Honorable Perry H. Gravely. Applicant was present and represented by Linda Vallar Whisenhunt, Esquire. Assistant Attorney General C. Whitney O'Kelly, represented Respondent. Applicant proceeded with the allegations within his original PCR application. In support of these claims, Applicant testified on his behalf and called Kurt Tavernier, Esquire, to testify. Respondent presented testimony from Assistant Solicitor Lauren Davis Price. At the conclusion of the hearing, this Court denied PCR.

**RECEIVED**

JUL 29 2024

S.C. SUPREME COURT

On March 24, 2023, a conference call was held with Respondent and Applicant's attorney, Ms. Whisenhunt. Applicant was not present on the conference call. By consent of the parties, Judge Gravely granted Applicant's request for a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974)

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to any form of relief, except for Plea Counsel's failure to timely file his direct appeal. Accordingly, this Court grants a belated appellate review pursuant to White and denies and dismisses all other allegations with prejudice.

#### **PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Anderson County Clerk of Court. During its May 2016 term, the Anderson County Grand Jury indicted Applicant for Murder (2016-GS-04-862), Burglary, First Degree (2016-GS-04-860), and two counts of Arson, Third Degree (2016-GS-04-861, -863). Kurt Tavernier, Esquire (Plea Counsel) represented Applicant. Assistant Solicitor Lauren Davis Price (Solicitor Price) of the Tenth Circuit Solicitor's Office prosecuted the case.

On March 14, 2018, Applicant appeared before the Honorable R. Lawton McIntosh and pled guilty to the lesser-included offense of Voluntary Manslaughter and as indicted to the remaining three charges without recommendation from the State as to sentencing. Judge McIntosh sentenced Applicant to concurrent sentences of fifteen (15) years imprisonment for Burglary, thirty (30) years imprisonment for Voluntary Manslaughter, and fifteen years (15) imprisonment for each count of Arson.

Applicant filed a timely Notice of Appeal on Applicant's behalf. By Order dated April 15, 2018, the South Carolina Court of Appeals dismissed the case for failure to timely serve the notice of appeal pursuant to Rule 203(b), SCACR. State v. Lance (S.C. Ct. App. filed August 10, 2018). The Remittitur was returned to the circuit court on April 25, 2018.

### FACTS GIVING RISE TO CONVICTION

The facts giving rise to Applicant's conviction were articulated by the State at Applicant's plea hearing as follows:

On November 13, 2015, the defendants went to the victim's home. The victim in this case is Todd Cantlay. Once there, they struck the victim in the head with a baseball bat several times and stabbed him in the neck with a knife. And then postmortem, they set his body on fire. The defendants then took items from the home with them including two guitars, an Xbox 360, a television set, and a 22 caliber rifle. The victim's 17 year old son Brooks Cantlay said he was upstairs at the time of this killing. He told law enforcement he heard three loud bangs but thought it was his father banging the TV remote on a table in the home which he sometimes did. Brooks said he woke up to the smell of smoke and discovered his father, doused him out with bowls of water and then dialed 9-1-1. When the Anderson County Sheriff's Office arrived, Brooks told them he believed that Jacob Lance might be responsible for the incident. He said that Jacob was his drug dealer and that the victim, Todd, and Jacob had recently been texting each other and that his father was angry and had called Jacob complaining that the defendant was quote "shorting Brooks" by not giving him enough drugs for the money he was paying Jacob. Brooks told law enforcement that they would find texts on his phone between the two and phone calls, which they did. After taking the victim's belongings from the house, the defendants also took the victim's car, which was a black BMW and they drove it to a wooded area where they attempted to burn it. At the time of this incident, Jacob was seeing the mother of his child, Alissa Martin. After the killing, he called her and told her he had killed a man, this victim, by hitting him with a baseball bat and that his brother, Oscar, had stabbed the man in the neck. Then they had stolen items, including a car, and set the car on fire. Alissa Martin

called law enforcement after hearing this. Search warrants were executed at the homes of the defendants at 101 and 106 Saddle Trail. Both the defendants were apprehended at that time. This is all in a 24 hour period. In Jacob's vehicle, the two stolen guitars were found. Behind Oscar's home, law enforcement found a bloody baseball bat and the missing 22 caliber rifle. In Oscar's home, they found the TV and Xbox. That Xbox had been hidden inside a recliner in the home where they had removed the cushion and put the fabric over top of it. Both of the defendants, after being apprehended, gave statements to law enforcement. First Jacob gave a statement to law enforcement implicating his brother in the killing. Second Oscar gave a statement to law enforcement implicating Jacob as the killer. Before this killing took place, the son of the victim told law enforcement he had given his home address to a mutual acquaintance, and that is at least the belief of the son how they came about figuring out where the father was. Alissa Martin, who was the mother of Jacob's child, also told law enforcement she was aware of the threatening phone calls made by the victim to Jacob Lance before this incident. The autopsy report in this case said the cause of death was blunt force trauma injury with resultant cerebral lacerations, contusions and diffused axonal injury. Law enforcement found the victim's vehicle. And when they discovered it, there was a burn rag in the gas tank where the vehicle had been set on fire. At the scene, a steak knife was found next to the victim's body, along with a can of Zippo Lighter Fluid that had been punctured.

(Plea Tr. pp. 12–16).

#### CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief filed on September 18, 2019, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
  - a. "Counsel was ineffective for failure to inform client of plea agreement."

Applicant requests relief in the form of a new trial and to vacate the convictions/sentences.

On January 22, 2021, Applicant filed a Supplemental Application in response to Respondent's Return and Motion for More Definite Statement, asserting the following additional allegations:

1. Ineffective Assistance of Counsel
  - b. "Counsel was ineffective for failing to file a timely direct appeal."

Before this Court are the Anderson County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from the South Carolina Department of Corrections, Applicant's guilty plea transcript, Applicant's appellate records, and the records of Applicant's current PCR action.

#### STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act<sup>1</sup> (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

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<sup>1</sup> S.C. Code Ann. §§ 17-27-10 to -160.

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

#### *INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY*

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117—18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge

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

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

This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999) (emphasis added).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

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

***INITIAL FINDINGS***

As a matter of general impression, this Court finds Plea Counsel's testimony at the evidentiary hearing **credible** and **persuasive**, where he presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation

of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, supra). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

From the record, this Court makes the following findings: 1. Applicant was duly sworn (Plea Tr. p. 4); 2. Applicant graduated from high school and had worked several jobs thereafter (Plea Tr. pp. 4–5); 3. Applicant indicated he understood the charges he was pleading to and the possible sentencing range for each charge (Plea Tr. p. 6); 4. Applicant understood he the plea judge could impose a life sentence, and knowing this, still wished to plead (Plea Tr. p. 6); 5. Applicant was not under the influence of any medication, drugs, or alcohol (Plea Tr. p. 7); 6. Plea Counsel was satisfied Applicant was competent to plead guilty (Plea Tr. p. 7); 7. Applicant was not coerced, threatened, or promised anything to get him to plead, and he pled of his own free will (Plea Tr. p. 7); 8. Applicant understood he had a right to a jury trial, the burden of proof at trial, and that he would be presumed innocent at trial, and knowing this, waived his rights (Plea Tr. pp. 7–8); 9. Applicant understood he had a right to cross-examine the witnesses against him at trial, present evidence in his own defense, testify, remain silent, and waived his constitutional rights in order to plead guilty (Plea Tr. pp. 8–10); 10. Applicant stated he pled guilty because he was, in fact, guilty (Plea Tr. p. 10); 11. Applicant was satisfied with his Plea Counsel's services, and Plea Counsel had reasonably done all he had asked him to do (Plea Tr. pp. 10–11); 12. Plea Counsel explained the elements of the charges, the minimum and maximum sentence Applicant faced, and the possible defenses Applicant had to those charges to Applicant prior to his plea (Plea Tr. pp. 11; 21); 13. Plea Counsel agreed with Applicant's decision to plea and stated there was a substantial factual

basis for the plea (Plea Tr. p. 11); 14. Plea Counsel represented Applicant approximately a year prior to his plea (Plea Tr. p. 19); 15. Plea Counsel met with Applicant about a dozen times prior to his plea (Plea Tr. p. 20); 16. Plea Counsel engaged in thorough investigations, engaging the services of Investigator Brad Baxter (Plea Tr. p. 20); 18. Plea Counsel engaged in extensive plea negotiations with the State, obtaining a stand-up plea with a reduction when Applicant faced thirty years (Plea Tr. p. 20); 19. Plea Counsel advised Applicant of his right to appeal, the time to appeal, and explained PCR (Plea Tr. p. 20); 20. Applicant agreed Plea Counsel's representations to the plea court concerning services rendered to Applicant throughout his representation and agreed Plea Counsel had conducted a complete investigation of his case (Plea Tr. p. 22); 21. Applicant made a statement expressing his remorse and guilt to the plea court (Plea Tr. pp. 23-24).

***INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS***

**Allegation 1a: Plea Counsel failed to inform Applicant of the plea agreement.**

Applicant alleges Plea Counsel was constitutionally ineffective for failing to advise Applicant concerning a plea agreement. This Court finds this allegation is without merit.

The United States Supreme Court has "long recognized that the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (citations omitted); see Hill v. Lockhart, 474 U.S. 52 (1985) (extending the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel). In the context of plea negotiations, an attorney's failure to communicate a formal plea offer to a criminal defendant falls below an objective standard of reasonableness under Strickland. Missouri v. Frye, 566 U.S. 134 (2012); Lafler v. Cooper, 566 U.S. 156 (2012); see Strickland, 466 U.S. at 688 (explaining that counsel has a duty "to consult with the defendant on important decisions and to keep the defendant informed of important developments

in the course of the prosecution." In Lafler and its companion case, Frye, the Court recognized that "the right to adequate assistance of counsel cannot be defined or enforced without taking account of the central role plea bargaining plays in securing convictions and determining sentences." Lafler, 566 U.S. at 170 (citing Frye, 566 U.S. at 143–44).

Thus, the critical question in Lafler was "how to apply Strickland's prejudice test where ineffective assistance results in a rejection of the plea offer and the defendant is convicted at the ensuing trial." Id. at 163. Unlike Hill, the ineffective advice in Lafler "led not to an offer's acceptance but to its rejection." Id. In other words, "[h]aving to stand trial, not choosing to waive it, is the prejudice alleged." Id. at 163–64; see id. at 169 (explaining that "the question is not the fairness or reliability of the trial but the fairness and regularity of the processes that preceded it, which caused the defendant to lose benefits he would have received in the ordinary course but for counsel's ineffective assistance").

The Court ultimately held that, to show prejudice, the defendant must demonstrate a reasonable probability that (1) he would have accepted the plea offer; (2) the prosecution would not have withdrawn the offer in light of intervening circumstances; (3) the court would have accepted its terms; and (4) the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. Lafler, 566 U.S. at 164; accord. Collins v. State, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018).

At the evidentiary hearing on direct examination, Applicant testified he discussed the pros and cons with Plea Counsel about going to trial, and he told Plea Counsel several times he wished to go to trial. (PCR Tr. p. 12). Applicant testified Plea Counsel discussed pleas and plea terms. Id. Applicant testified that Plea Counsel showed him an email from the solicitor with two plea deals, offering either a thirty-year mandatory minimum for murder or voluntary manslaughter with

an open plea with a possible sentence of zero to thirty. (PCR Tr. pp. 12–13). Applicant testified he discussed the possibility of pleading with his father, John Day (Day), as well. (PCR Tr. p. 13). Applicant testified he visited with Plea Counsel and his father, and after seeing the evidence, his father persuaded him to plea. (PCR Tr. pp. 13–14). Applicant testified he felt like Plea Counsel set up the meeting to pressure Applicant to plea. (PCR Tr. p. 14). Applicant testified he understood that he had an open plea but that he had expected to get a better deal of fifteen to twenty because he had no prior record. (PCR Tr. pp. 14–15).

On cross-examination, Applicant testified that he discussed the two pleas with Plea Counsel offered by the State. (PCR Tr. pp. 17–18). Applicant testified no one had forced him or coerced him to take the plea. (PCR Tr. p. 18). Applicant testified he said several times he wanted to go to trial, and he desired to go to trial because he was not guilty. Id.

On direct examination, Plea Counsel testified his notes reflect he discussed the possibility of going to trial with Applicant, and trial was an option but it was not a good option, in Plea Counsel's opinion. (PCR Tr. p. 24). Plea Counsel testified Applicant's brother and co-defendant had already pled and would have testified against him at trial, and Applicant's girlfriend could have testified concerning incriminating statements Applicant had made to her. (PCR Tr. pp. 24–25). Plea Counsel testified that, in his opinion, a plea was the best course of action for Applicant as he was facing life at trial. (PCR Tr. p. 25). Plea Counsel testified he recommended Applicant take an open plea because the judge could be more lenient based on his age and lack of a prior record. Id. Plea Counsel testified he was not surprised the plea judge sentenced him to thirty years. Id.

Plea Counsel referenced his CYA letter that he gives to his most serious clients, advising them of their rights and options, and evidences his discussions with his clients. (PCR Tr. p. 26). Plea Counsel testified he provided Applicant with a CYA after their meeting with Day. Id. Plea

Counsel testified he, Applicant, and Day met for a couple of hours and went over everything, and Applicant indicated during that meeting that he was ready to change his mind about going to trial. Id. Plea Counsel testified that prior to this meeting, Applicant provided him with a letter allegedly written by his brother wherein his brother accepted responsibility. Id. Plea Counsel testified he verified that this letter was not written by his brother but was likely authored by Applicant. (PCR Tr. pp. 26–27).

On cross-examination, Plea Counsel testified that after his initial interview with Applicant, Applicant asked him how good of a plea deal Plea Counsel could get him. (PCR Tr. p. 30). Plea Counsel testified that after he had finished his second interview with Applicant, he advised him it was not in his best interest to go to trial. (PCR Tr. pp. 30–31). Plea Counsel testified the evidence against Applicant was overwhelming, and his main focus was negotiating a favorable deal for Applicant. (PCR Tr. p. 31). Plea Counsel testified he had at least three discussions with the solicitor about a plea offer after it became a viable option and that Applicant wished to plea at that point. (PCR Tr. pp. 31–32). Plea Counsel testified he advised Applicant he would not be able to get him the deal Applicant wanted and what the options were. (PCR Tr. p. 32; State's Exhibit 1). Plea Counsel testified the offers made to Applicant were a cap of thirty years for murder or a reduction to voluntary manslaughter with a cap of thirty years. (PCR Tr. p. 33). Plea Counsel testified no offers were withheld from Applicant. (PCR tr. p. 35).

On direct examination, Solicitor Price testified that she and Plea Counsel engaged in rigorous discussions about the viability of a plea offer in Applicant's case. (PCR Tr. p. 39). Solicitor Price testified she was disinclined to make an offer because of the brutality of the facts. Id. Solicitor Price testified that she made an offer to Applicant in consideration of one of the witnesses, the minor son of the victim, who was traumatized by the events. (PCR Tr. p. 41).

This Court finds Plea Counsel was not deficient, and Applicant cannot show resulting prejudice from Plea Counsel's actions. Applicant's contention is not that Plea Counsel failed to communicate the State's plea offer to him but that he felt coerced in pleading and felt as if he should have received a better offer based on his lack of a prior record. However, Applicant also testified, and the record establishes, that Applicant was not coerced or forced to plea, and he pled of his own free will. Additionally, Plea Counsel **credibly** testified he advised Applicant of all the plea offers, the possible outcomes, and that Applicant desired to plead.

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

Moreover, this Court finds Applicant received a favorable plea offer considering the nature of the crime, the overwhelming evidence against him, and the sentence he was facing if he had proceeded to trial. Plea Counsel and Solicitor Price **credibly** testified that there was strong evidence against Applicant, including his own incriminating statements.

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

**Allegation 1b: Failure to timely file Applicant's appeal.**

Applicant alleged Plea Counsel was constitutionally ineffective for failing to file a timely direct appeal. This Court finds Applicant has met his burden in establishing Plea Counsel failed to timely file his direct appeal, and grants Applicant's request for belated appellate review pursuant to White, supra.

"Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). "However, the standard for a guilty plea differs." Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). "Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Id.; Roe, 528 U.S. 470 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995) ("bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief").

To show prejudice where applicant claims counsel was ineffective for failing to file or advise him of his direct appeal, applicant must show that, but for, counsel's deficient conduct, applicant would have appealed. Roe v. Flores-Ortega, 528 U.S. 470, 484 (2000); Cf. Peguero v. United States, 526 U.S. 23 (1999) (defendant not prejudiced by court's failure to advise him of his appeal rights, where he had full knowledge of his right to appeal and chose not to do so)).

At the evidentiary hearing on direct examination, Applicant testified he discussed filing an appeal with Plea Counsel and informed Plea Counsel that he desired to appeal. (PCR Tr. p. 16). Applicant testified he communicated his desire to appeal to Plea Counsel before the ten days to file his appeal had run. Id. Applicant testified Plea Counsel failed to timely file his appeal. Id.

On cross-examination, Applicant testified he recalled being advised of his right to appeal and the time to appeal at his plea hearing. (PCR Tr. pp. 18–19). Applicant testified he told Plea Counsel he desired to appeal after his plea hearing and had his family contact Plea Counsel about his desire to appeal, as well. (PCR Tr. p. 19). Applicant testified he decided to appeal once he was advised of his right to do so. (PCR Tr. p. 20).

On direct examination, Plea Counsel testified he was notified by Applicant that he desired to appeal, but he was out of the office when he received it. (PCR Tr. p. 27). Plea Counsel testified he filed the appeal once he was back in the office, but the timing did not allow him to accomplish it in a timely manner. (PCR Tr. p. 28).

On cross-examination, Plea Counsel testified he did not contemplate an appeal because he felt like Applicant received a favorable deal. (PCR Tr. p. 36). Plea Counsel testified he was surprised when he received a last second request from Applicant that he desired to appeal. (PCR Tr. p. 36).

This Court finds Trial Counsel failed to timely file Applicant's direct appeal, and therefore, Applicant was denied his right to appeal and is entitled to belated review pursuant to White. Applicant's and Plea Counsel's testimony was consistent in that Applicant requested Plea Counsel file an appeal of his guilty plea, but Plea Counsel failed to timely file the appeal. Accordingly, this allegation is **GRANTED**.

***ALLEGATIONS RAISED DURING THE EVIDENTIARY HEARING***

**Allegation:                    Failure to review discovery.**

At the evidentiary hearing on direct examination, Applicant testified he went over discovery with first attorney, Hervery B. Young, but Plea Counsel did not review discovery with him. (PCR Tr. pp. 10–11). Applicant testified Plea Counsel and Mr. Baxter, the

investigator, met with him prior to his plea. (PCR Tr. p. 11). Applicant testified he asked Plea Counsel to follow up on an alibi and get the tape recording from a gas station. Id. Applicant testified Plea Counsel told him he did the things he asked. Id. Applicant testified that as far as he knew, Plea Counsel told him they did not want anything to do "with it." Applicant testified that Plea Counsel informed him the tape recording was not available because the gas station re-runs the tapes every thirty days. (PCR Tr. p. 12).

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

On direct examination, Plea Counsel testified he reviewed some of the discovery with Applicant, but not all of it, as he had honed in on various issues after his initial meeting with Applicant. (PCR Tr. p. 22). Plea Counsel testified he and Mr. Baxter met with Applicant six times. Id. Plea Counsel testified Applicant gave him information on several witnesses, including Katy Blanding as an alibi witness, and he was able to locate her. (PCR Tr. pp. 22-23). Plea Counsel testified that after speaking with Katy Blanding, they did not take her

statement because it would not have benefited Applicant, and they were under a reciprocal discovery requirement. (PCR Tr. p. 23). Concerning the tape recordings from the gas station, Plea Counsel testified Mr. Baxter attempted to get video recordings from "Stop-A-Mint," "High Volume," and "Rite Aid." *Id.* Plea Counsel testified they spoke with the manager and verified that the videos were unavailable as they were only kept for thirty days. (PCR Tr. pp. 23–24).

This Court finds Plea Counsel was not deficient and Applicant failed to establish resulting prejudice from Plea Counsel's performance. As an initial matter, the record and Plea Counsel's **credible** testimony provide that he conducted a thorough investigation of Applicant's case and determined, based on those investigations, that it would be in Applicant's best interest to plead guilty. Specifically, Plea Counsel **credibly** testified the gas station recordings no longer existed, so he cannot be deficient for failing to investigate them further. Additionally, Plea Counsel **credibly** testified he investigated the alibi Applicant provided and determined her statement would only serve to damage Applicant's case. Notably, Applicant failed to present the testimony of the alleged alibi witness, thus Applicant has failed to meet his burden. *See Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992) (prejudice from trial counsel's failure to interview or call witnesses could not be shown where witnesses did not testify at PCR hearing); *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was not deficient by failing to call alibi witnesses when two witnesses who testified did not establish the alibi).

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

**Allegation: Failure to file a motion to reconsider the sentence.**

At the *evidentiary* hearing on direct examination, Applicant testified that Plea Counsel did not file a motion to reconsider his sentence, and he never discussed the possibility with Applicant. (PCR Tr. pp. 15–16).

On direct examination, Plea Counsel testified he did not consider a motion to reconsider the sentence because he felt that Applicant receiving a concurrent rather than consecutive sentence was a good outcome. (PCR Tr. p. 27).

On cross-examination, Plea Counsel testified that he would file a motion to reconsider if the judge failed to consider something that may have occurred. (PCR Tr. p. 37). Plea Counsel testified that under the plea judge had stated he would treat Applicant and his co-defendant, his brother, the same. *Id.* Plea Counsel testified that he believed Applicant received a favorable deal considering he was the most culpable. (PCR Tr. pp. 37–38).

This Court finds Plea Counsel was not deficient and Applicant failed to show resulting prejudice from his performance. Plea Counsel **credibly** testified he did not consider filing a motion to reconsider as Applicant had received a very favorable sentence, and he did not believe the plea judge had failed to take everything into consideration. This Court further finds Applicant has failed to meet his burden in proving that a motion to reconsider the sentence would have been successful. Based on the record before this Court, Applicant knowingly and intelligently entered his guilty plea with the knowledge of the maximum sentences the plea court could impose. Lastly, Plea Counsel has no control over sentencing, as that lies solely in the discretion of the sentencing judge.

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

**[CONCLUSION PAGE FOLLOWS]**

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**CONCLUSION**

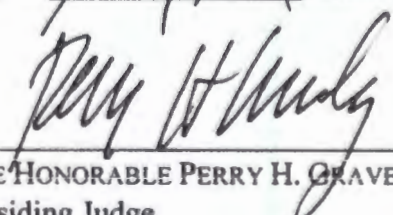
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED** and **DISMISSED WITH PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6<sup>th</sup> day of May, 2024, 2025.

  
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 THE HONORABLE PERRY H. GRAVELY  
 Presiding Judge  
 Tenth Judicial Circuit

Pickens, South Carolina