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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable R. Lawton McIntosh, Circuit Court Judge

MARSHALL DEPREE LEE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-002149

APPENDIX

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHEROKEE

IN THE GENERAL SESSIONS
7th JUDICIAL CIRCUIT

3
4 STATE OF SOUTH CAROLINA,
5 Plaintiff,

6 vs. CASE NO. 2022-GS-11-0619

7 MARSHALL DEPREE LEE,
8 Defendant.

9
10 HEARING BEFORE: HONORABLE R. KEITH KELLY

11 DATE: October 17, 2022

12 TIME: 10:25 AM

13 LOCATION: Cherokee County Courthouse
14 125 E. Floyd Baker Blvd
15 Gaffney, SC 29340

16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:

20 ATTORNEYS FOR THE PLAINTIFF
21 ADRIENNE BARRY, ESQ.

22 ATTORNEYS FOR THE DEFENDANT
23 MICHAEL A. BERRY, ESQ.

24
25

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2024 APR 15 A 11:15
BRANDY W. HOBBE

1 THE CLERK: Mr. Lee, please raise your right hand.

2 MARSHALL DEPREE LEE

3 being first duly sworn, testified as follows:

4 THE CLERK: You may lower your hand. I'll ask you
5 to speak up so the judge and court reporter can hear you.

6 THE COURT: Solicitor, you want to call the case
7 for us.

8 MS. BARRY: Yes, sir. Thank you, Your Honor. May
9 it please The Court.

10 Before you is Marshall Depree Lee, on a two-count
11 indictment. That is indictment 2020-GS-11-619. Count 1 is for
12 murder. Count 2 is for a possession during -- possession of a
13 weapon during the commission of a violent crime.

14 Your Honor, he is pleading as indicted to murder
15 with a negotiated sentence of 30 years, to run concurrent. And
16 on the possession of a weapon during the commission of a
17 violent crime, he is pleading guilty to a negotiated sentence
18 of five years to run concurrent as well.

19 Your Honor, he is represented by Mr. Berry. Your
20 Honor, all of the victim's family is present via Webex. Some
21 wish to address Your Honor at the appropriate time.

22 Your Honor, others have provided me with victim
23 impact statements that I have made note to Mr. Berry as well as
24 turned into Your Honor.

25 THE COURT: Sir, you are Mr. Marshall -- is it

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1 Depree?

2 MR. LEE: Yes, sir.

3 THE COURT: Marshall Depree Lee. You're in
4 custody. Have you taken any medication or any substance that
5 would interfere with your ability to think clearly?

6 MR. LEE: No, sir.

7 THE COURT: You know what you're doing here today?

8 MR. LEE: Yes, sir.

9 THE COURT: And he's been sworn, madam clerk?

10 THE CLERK: Yes, sir.

11 THE COURT: Mr. Lee, the Government says in the
12 indictment 2020-GS-11-0619, that you did, in Count 1, that you
13 did in Cherokee County, South Carolina between the dates of
14 September 23rd and 26th of 2019, feloniously, willfully, and
15 with malice aforethought killed Jamie -- is it Buser?

16 MS. BARRY: Buser, Your Honor.

17 THE COURT: By shooting the victim and that the
18 victim died as a proximate result thereof. In violation of
19 South Carolina law.

20 Count 2 alleges that you did in the same county and
21 state and same date possess a firearm during the commission of
22 a violent crime as defined by state law, that being murder, in
23 violation of South Carolina law.

24 The Grand Jury considered the matter and returned a
25 true-billed indictment.

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1 As to Count 1, on the murder, it's my understanding
2 that you are offering to plea as indicted. It is violent by
3 definition. It is most serious by definition. It carries from
4 30 years up to life without possibility of parole.

5 You and your lawyer and the Government have
6 negotiated a 30-year sentence to run concurrent with Count 2.
7 Is that your understanding?

8 MR. LEE: Yes, sir.

9 THE COURT: Count 2, about the possession of a
10 weapon, you're pleading as indicted. It's non-violent by
11 definition. It carries with it five years. You, your lawyer,
12 and the Government negotiated a five-year concurrent sentence.
13 Is that your understanding?

14 MR. LEE: Yes, sir.

15 THE COURT: Sir, you have a right to a trial by
16 jury, and that's why I'm here this week. I'm assigned here for
17 jury trial. We have a jury coming in tomorrow morning. Your
18 case is first up.

19 Do you want a trial tomorrow morning beginning at
20 9:00 a.m.?

21 MR. LEE: No, sir.

22 THE COURT: You have a right to call any witness to
23 this witness stand to testify for you that you choose, and the
24 right to confront through cross-examination by your lawyer any
25 witness who would testify against you. Do you waive and give

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1 up that right?

2 MR. LEE: Yes, sir.

3 THE COURT: I'm going to ask you to speak a little
4 louder. She has to capture your voice.

5 Sir, you have the right under the United States
6 Constitution to remain silent and also the same right under the
7 state Constitution to remain silent. Do you waive and give up
8 that right?

9 MR. LEE: Yes, sir.

10 THE COURT: Understanding your rights and having
11 waived them, how do you plea to Count 1, that being murder?

12 MR. LEE: Guilty.

13 THE COURT: How do you plea to Count 2, that being
14 the weapon?

15 MR. LEE: Guilty.

16 THE COURT: Do you plea guilty freely?

17 MR. LEE: Yes, sir.

18 THE COURT: Intelligently?

19 MR. LEE: Yes, sir.

20 THE COURT: Voluntarily?

21 MR. LEE: Yes, sir.

22 THE COURT: Did any person, family member, friend,
23 lawyer, any person pressure you, threaten you, force you in any
24 way to enter these pleas?

25 MR. LEE: No, sir.

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1 THE COURT: Is it truly your decision to do so?

2 MR. LEE: Yes, sir.

3 THE COURT: Did your lawyer explain the elements of
4 these criminal offenses?

5 MR. LEE: Yes, sir.

6 THE COURT: Did your lawyer also explain to you
7 that the burden remains on the Government to prove your guilt
8 beyond a reasonable doubt?

9 MR. LEE: Yes, sir.

10 THE COURT: Did your lawyer share discovery
11 materials with you?

12 MR. LEE: Yes, sir.

13 THE COURT: Did he answer all of your questions?

14 MR. LEE: Yes, sir.

15 THE COURT: Did you understand the answers to your
16 questions?

17 MR. LEE: Yes, sir.

18 THE COURT: Do you need any more time to talk to
19 Mr. Berry?

20 MR. LEE: No, sir.

21 THE COURT: Has he done everything he can to help
22 you?

23 MR. LEE: Yes, sir.

24 THE COURT: Would it be true that you are satisfied
25 with his legal representation of you?

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1 MR. LEE: Yes, sir.

2 THE COURT: Do you have any complaints about your
3 lawyer?

4 MR. LEE: No, sir.

5 THE COURT: Please listen to the Solicitor.

6 MS. BARRY: Thank you, Your Honor. Your Honor,
7 this began on September 24, 2019 when Jamie was reported
8 missing to the Charlotte-Mecklenberg Police Department by one
9 of her friends. They phoned the police department and stated
10 that Jamie was going to Charlotte. She worked as an escort,
11 and she was going to Charlotte to work. And they had not heard
12 from her when she was supposed to be in contact.

13 Law enforcement also spoke with Jamie's family, and
14 they also stated that they had not received contact from Jamie
15 after the morning of the 24th.

16 So the investigation began in Charlotte. They were
17 provided identifying information, and they were able to
18 determine that Jamie checked into a hotel in Charlotte. She
19 had made it there. They were able to track her credit card
20 transactions. She had been to restaurants in the area. And
21 they were actually able to find her car on a tag reader.

22 So they knew that she had made it to Charlotte when
23 she said she was going to be there. When they went to the
24 hotel, she had not checked out. The hotel had taken her items
25 out of her hotel room and packed them into a storage unit.

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1 They were able to get an exigent circumstances
2 warrant for one of her cell phones. When they got that, they
3 were able to determine that the last phone calls and the last
4 text messages that Jamie had sent had been to a Marshall Lee.
5 And they were able to ping her phone and show that she had
6 actually made it to Mr. Lee's residence.

7 Your Honor, that has been marked as State's Exhibit
8 1. Mr. Berry has been provided that in discovery. I believe
9 that is without objection.

10 And on that map, Your Honor, what it shows is her
11 phone comes to the address of [REDACTED] Union Highway, which is the
12 address of Mr. Lee. It actually makes it to the front door.
13 At some point the phone turns off between 10:00 and 11:00. It
14 remains off for about an hour-and-a-half.

15 They're able to determine that Jamie has made it to
16 Charlotte, and then she has made it to [REDACTED] Union Highway,
17 located here in Cherokee County. They're able to determine
18 that is Marshall Lee's residence.

19 They're able to look at the phone number to just
20 verify that it is Mr. Lee and it is. And they notify officers
21 with the Gaffney Police Department that there is information
22 that Jamie may have had contact with Mr. Lee.

23 Gaffney then goes to Mr. Lee's residence, and they
24 speak with him. He states that he was supposed to meet her but
25 she never showed. They noted that Mr. Lee was extremely

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1 nervous when he was speaking with them. Something didn't feel
2 right to them.

3 So they notified the Sheriff's Office here in
4 Cherokee County and let them know what they had been told by
5 law enforcement in Charlotte and what they had observed. And
6 Cherokee County gets a search warrant for Mr. Lee's property
7 based off of that information.

8 When they go there, Mr. Lee is at that location.
9 They actually go on September the 26th of 2019. Mr. Lee is at
10 that residence with his wife and his two children. The two
11 children are told to leave. And law enforcement notices when
12 they round the house that something is dead. So they know that
13 something is out in a gully behind Mr. Lee's residence.

14 They actually go into the woods and are able to
15 ultimately find a body laying under an artificial Christmas
16 tree and a layer of insulation, Your Honor.

17 And what I have done, I have marked State's
18 Exhibits 2, 3 and 4. And this is where they ultimately find
19 Jamie's body. That has also been shared with Mr. Berry in
20 discovery. I believe that is without objection.

21 What they do is they removed the Christmas tree.
22 They take pictures throughout the uncovering. And what they
23 ultimately find is the body of Jamie. It was extremely
24 decomposed at that time. The coroner arrives. They take her
25 and an autopsy is performed on her.

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1 And what the autopsy reveals, she is shot one time
2 in the stomach. There's an exit wound in her right lower back.
3 And then she is shot twice in the head, Your Honor. Both of
4 those bullets or fragments were found lodged in her head during
5 the autopsy.

6 When they find Jamie, Mr. Lee is in one of the
7 detective's cars at the time. He maintains that she never
8 showed. And then it becomes: Well, she said that she was
9 here, she texted me. And when I looked out the window, she
10 wasn't there. And then it becomes: I don't remember what
11 happened.

12 So Mr. Lee gives several statements throughout this
13 investigation. And it begins with: He never saw her, she
14 never arrived. And then it becomes: She arrived but then she
15 left.

16 And the ultimate statement or the next statement is
17 that she arrived, and after she arrived he blacked out. And
18 when he came to, he had a gun laying next to him. There were
19 dogs barking in his backyard. And he went to see what the dogs
20 were barking at. He saw a trail of blood. He followed that
21 trail of blood, and there was her body. And he covered it up
22 with the insulation and the Christmas tree.

23 And the last statement that Mr. Lee gives is a
24 statement where she showed up. She stated that she had a flat
25 tire. He went out there to help her with the flat tire, and

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1 there was a man with her. He doesn't know in his statement if
2 he came with her or if she picked him up on the road somewhere.

3 When he is helping change the tire, he states that
4 the man attempted to rob him. He runs to his house. The man
5 chases him, and he is able to get into his house, get his
6 wife's .22 pistol.

7 When he comes outside, the man is attempting to
8 come on to the porch. When he sees Mr. Lee with the gun, he
9 runs around the house and goes into the woods but Jamie is
10 still there in the front yard. He states she attempted to grab
11 him. He threw her off and shot her. And he goes into the
12 woods. And when he can't find the man, he comes back to Jamie.
13 She's still alive, and he shoots her twice more.

14 In preparing this case, we received photographs
15 from the hotel where Jamie's clothing was. There's no clothing
16 belonging to a man. There's no items belonging to a man in
17 those belongings. We have phone records for Jamie. There's no
18 conversation between her and a man that would indicate that
19 someone was coming with her.

20 So we don't actually know what happened on the
21 23rd, Your Honor, between Mr. Lee and Jamie. We do know that
22 he shot her, and she is dead.

23 So based off of all of that, Your Honor, he was
24 charged with her murder and the possession of a weapon during
25 the commission of a violent crime.

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1 Throughout this process, Your Honor, I have spoken
2 with her mother and her sister. They are actually on Webex
3 now. We talked about the 30 years negotiated sentence. They
4 were ultimately in agreement with that. They wanted to see
5 justice for their sister and their daughter. That is provided
6 in all of their victim impact statements.

7 I do know that Becky Beaudry wishes to speak as
8 well as Saskia Volkert. I told them that they could address
9 you at the appropriate time, Your Honor. That is the State's
10 case against Mr. Lee.

11 THE COURT: Mr. Lee, did you hear what the State
12 said?

13 MR. LEE: Yes, sir.

14 THE COURT: Is that true?

15 MR. LEE: Yes, sir.

16 THE COURT: Court accepts both pleas being freely,
17 intelligently, voluntarily given with sound advice of an
18 excellent lawyer whom This Court is familiar. Mr. Berry.

19 MR. BERRY: Thank you so much. Good morning.
20 These cases are difficult and it has been. I represented
21 Mr. Lee since I came back to Cherokee in August of 2020. He
22 was previously represented in our office by Mr. Whelchel before
23 his retirement.

24 Your Honor, Mr. Whelchel, upon getting the case and
25 meeting with Mr. Lee, felt it necessary to have Mr. Lee

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1 evaluated for a mental health issue that may have been going on
2 at the time that this occurred. Mr. Lee was being treated for
3 major depressive disorder and was on numerous medications. So
4 Mr. Whelchel did, in fact, have a mental health evaluation
5 completed. That was done in April of 2020.

6 We received the report back from the Department of
7 Mental Health in May of 2020 wherein Mr. Lee was found
8 competent. I marked that evaluation report as Defendant's
9 Exhibit 1, and I'd like to have that moved into the record of
10 this case for your consideration.

11 Your Honor, in preparation for the case as well,
12 along those same lines, I reached out to a pharmacologist to
13 consult with them on all of the medications that Mr. Lee was
14 being prescribed. We had long conversations about the many
15 medications that he was taking and how they made him feel.

16 But after consultation with two separate
17 pharmacologists, I just don't believe that there would've been
18 any road there for us to go down as far as the defense.

19 So I've shared that with Mr. Lee. And that's why
20 he's made the decision to do what he's doing today, which I do
21 ultimately agree with.

22 Your Honor, his prior record really consists of a
23 domestic violence back in the early 2000. Beyond that he has
24 nothing else.

25 I don't understand this crime. And I can tell you

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1 that, in our conversations, he has been very contrite, very
2 apologetic for what's happened here. I know he'll probably
3 share that with The Court and with Ms. Buser's family at the
4 appropriate time.

5 Your Honor, we're simply asking that you honor the
6 negotiated sentence in this case. Again, I've explained to
7 Mr. Lee the consequences of this plea, the classification
8 surrounding this plea; also, the fact that murder is a
9 day-for-day offense. Whatever sentence he receives, he will
10 have to serve day-for-day.

11 He has been in jail since his arrest, credit of
12 1,118 days as of today towards both charges. Your Honor, he
13 will be right at 73 years old when he is released from the
14 Department of Corrections. We've had to have long
15 conversations about, you know, life expectancy in the
16 Department of Corrections is not that good. There is some hope
17 for him.

18 And, hopefully, he is able to rehabilitate and pay
19 his price for this heinous crime he's committed. He is
20 accepting responsibility for that. We just ask that you honor
21 the negotiated sentence.

22 THE COURT: Before I move any further, any
23 objection to any of the exhibits by State or defense?

24 MS. BARRY: Nothing from the State, Your Honor.

25 MR. BERRY: Nothing from the defense, Your Honor.

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1 THE COURT: They are in the record.

2 (STATE EXH. 1, Photograph, was marked for
3 identification and received into evidence.)

4 (STATE EXH. 2, Photograph, was marked for
5 identification and received into evidence.)

6 (STATE EXH. 3, Photograph, was marked for
7 identification and received into evidence.)

8 (STATE EXH. 4, Photograph, was marked for
9 identification and received into evidence.)

10 (STATE EXH. 5, Letters from friends and family, was
11 marked for identification and received into evidence.)

12 (DFT. EXH. 1, Forensic Evaluation, was marked for
13 identification and received into evidence.)

14 THE COURT: Mr. Lee, you're not required to, but
15 I'm happy to hear from you if you would like to speak.

16 MR. LEE: I just wanted to, everyone to, especially
17 my family, tell them I'm sorry for all the years and Jamie's
18 family. I'm deeply sorry for their loss and what I put them
19 through. Hopefully one day they can find it in their heart to
20 forgive me.

21 I'm really not a bad person, Your Honor. Made a
22 bad mistake. I'm going to have to pay for it.

23 THE COURT: Thank you, Mr. Lee. Anything from the
24 defense?

25 MR. BERRY: No, Your Honor. The only other thing I

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1 would add, he does have family members here. Obviously he's
2 still family. They still care for him deeply. They
3 understand. They understand he has to pay the price. They
4 have been most gracious throughout all of this.

5 THE COURT: Solicitor, anyone here or do I need to
6 go to Webex?

7 MS. BARRY: Your Honor, there is someone physically
8 present. They will all be on Webex.

9 THE COURT: Becky Beaudry, are you with me?

10 MS. BEAUDRY: Yes.

11 THE COURT: Ma'am, do you have a way to turn on
12 your video?

13 At the bottom it should say stop or start video.

14 MS. BEAUDRY: Is it now on?

15 THE COURT: Yes, ma'am, it's on now. You have the
16 microphone. You have the floor.

17 MS. BEAUDRY: My name is Becky. I am Jamie's
18 little sister. This has been a difficult situation. It has
19 also taken a long time. I'm trying to keep it --

20 THE COURT: Ma'am, can you speak a little slower,
21 please. You're breaking up.

22 MS. BEAUDRY: Me and my sister talked every day.
23 There was phone calls, text messages or just a Snapchat
24 picture. I was five months pregnant when her life was taken,
25 and she went missing.

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1 I was at my doctor's appointment for an ultrasound
2 to see the gender of my baby. She was just as excited for this
3 day as I was. After my appointment I sent her a text message:
4 It's a boy. I waited for a response all day as I knew she was
5 so excited to have another nephew.

6 I began to feel uneasy about her after five hours
7 had gone by, I hadn't heard from her. It wasn't like her not
8 to respond, especially when she knew that I had the appointment
9 that day. I know she was looking forward to that message to
10 find out.

11 When she was reported missing, I drove hours to her
12 apartment, hoping to find any clues, which I did. By the third
13 day I packed up my car and began to drive to South Carolina.
14 By the time I got to Ohio, I got a call from the detective. He
15 said they found remains and believed to be hers. The worse
16 news I ever received.

17 And not only was I carrying a child, my brother was
18 also expecting a baby girl soon. My sister treated all of her
19 nieces and nephews as if they were her own children. She was
20 an amazing artist for her nieces and nephews. Now, since she
21 has passed, four nephews and four nieces she will never hear
22 from again. It saddens me that all of my kids and brother's
23 kids will grow up without their aunt. And they will never have
24 the joy of meeting her or making friends with her.

25 I think about my sister often. What happened on

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1 that day I just don't understand why he would do something like
2 this. She doesn't deserve this. She had a whole life ahead of
3 her. She hadn't even started a family yet, which was something
4 she wanted so badly. Me and my sister planned together. And I
5 think if she was still alive today she would realize her goals.

6 Jamie was a fun and loving person, smiling, always
7 in a good mood. Her laugh was very distinct. If you didn't
8 know she was around, you would know that she was nearby. She
9 had a goofy sense of humor. And anyone if they needed help,
10 she was there. Her heart was always in the right place for her
11 family. She had a big heart.

12 The heartache that is with us, it hurts. It's like
13 one of those things you have and you would never think it could
14 happen. It's like being stuck in a nightmare. Losing a love
15 one through murder is like no other. It is a pain that fills
16 your heart that is indescribable. What happened to my sister
17 could've not happened had he chose to reach out. It was a
18 decision on his own.

19 Now she's gone, and I will never see her again.
20 What he did was inhumane and evil. He took a very special
21 person from all the people who love her. Me and my family ask
22 him to serve, so we could begin to heal. That is it.

23 THE COURT: Thank you, ma'am.

24 Solicitor, is there anyone else?

25 MS. BARRY: I believe Saskia Volkert also wished to

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1 address Your Honor.

2 MS. VOLKERT: I'm turning on the video.

3 THE COURT: Is it Volkert?

4 MS. VOLKERT: Yes.

5 THE COURT: Ma'am, you have the microphone. If you
6 will be kind enough to speak a little slow than usual so we
7 won't broke up.

8 MS. VOLKERT: Okay. My name is Saskia Volkert.
9 I'm 30 years old. And I would like to tell you who Jamie was.
10 She was more than just a friend to me, she was part of my
11 family. She was the sister I never had. She was an aunt to my
12 children. Another daughter to my mom as well.

13 Jamie was the type of friend that comes along once
14 in a lifetime. She was always there when I needed her the
15 most. She pushed me constantly to better myself. Jamie also
16 helped me through the darkest times in my life, showing how
17 amazing life could be. She was there whenever I needed her.

18 We stayed in touch via phone calls and video after
19 I moved out of the country. She helped me emotionally through
20 my miscarriage and was there during the pregnancy of my
21 daughter and afterwards.

22 Jamie caught my daughter's first steps during one
23 of our video chats. She was looking so forward to meeting her.
24 She never got the chance. She was my rock in life. Jamie also
25 wanted to be a mom, she would've been an amazing one. I wish

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1 she could've had a chance. She loved her family more than
2 anything in the world. She was looking forward to the birth of
3 her nephew and niece but never got the chance to meet them.

4 We also knew that we would be friends for the rest
5 of our lives. We talked about what we would do together when
6 we were old and planned our future accordingly.

7 On April of 2020, I was supposed to get married.
8 Jamie was supposed to be my maid of honor. I don't know how
9 I'm supposed to get married without my best friend. All those
10 future plans are gone. She was an important person for a lot
11 of people. We all loved her so much. No amount of grief
12 counseling takes the fact that my best friend is gone.

13 I will never understand why this happened to her.
14 I would give anything to have her back in my life. Her job did
15 not define who she was. She was an amazing, happy, loving,
16 honest person, did not deserve this end to her life. Thank
17 you.

18 THE COURT: Thank you. Solicitor, anyone else?

19 MS. BARRY: I don't believe anyone else wishes to
20 address you, Your Honor.

21 THE COURT: Thank you.

22 Anything further from the State?

23 MS. BARRY: Nothing further from the State, Your
24 Honor.

25 THE COURT: Anything further from the defense?

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1 MR. BERRY: No, Your Honor.

2 THE COURT: 2020-GS-11-0619, as to the murder,
3 negotiated 30 years, concurrent, credit for 1,118 days.

4 As to Count 2, that would be the weapon, negotiated
5 five years, concurrent, credit for time.

6 Very best of luck to you, Mr. Lee.

7 MS. BARRY: Thank you, Your Honor.

8 MR. BERRY: Thank you, Your Honor.

9 (The hearing was concluded at 10:53 a.m.)

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CERTIFICATE OF REPORTER

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I, Lora McDaniel, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 27th day of September, 2023 at Spartanburg, Spartanburg County, South Carolina.



Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2024 APR 15 A (11:16)
BRANDY W. NOBEE

FORM 5

23CP-110505

STATE OF SOUTH CAROLINA)
County of Cherokee)
Marshall Depree Lee 389231)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
JUL 21 A 11:20
BRANDY W. MCBERN

v.

APPLICATION FOR

State of South Carolina

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 Allendale C.T.

2. Name and location of Court which imposed sentence Cherokee County

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2020-GS-11-619
 - (b) 2020-GS-11-619(A)

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) MURDER 30 years CONCURRENT
 - (b) GUN 5 years CONCURRENT
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty yes
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) Was told by my Lawyer Mr. Berry there was no need to.
 - (b) _____

- (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) answer on additional paper
 - (b) _____
 - (c) _____

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

- (a) Victim came to my home with a male friend
- (b) Victim had a flat tire
- (c) I changed tire (more on additional paper)

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
 - i. _____
 - 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?

NO

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) Lawyer Mr. Berry failed to do so
- (b) _____
- (c) _____

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

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

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. Michael A. Berry Bar# 80210
202 Petty St.
 - ii. Gaffney S.C. 29340
 - 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:
Murder charge dropped down and less
time.

20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)
County of Cherokee)

VERIFICATION

I, Marshall Depree Lee, 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.

Marshall Depree Lee

SWORN to and subscribed before me this 17th
day of July, 2023.

Ashley Vanacore (L.S.)
Notary Public

My Commission Expires: 9/09/32



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

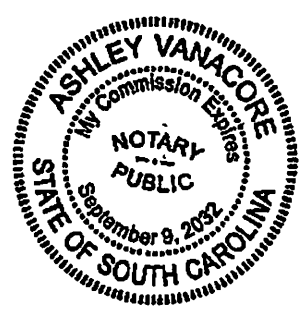
I, Marshall Degee Lee, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (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.

Marshall Degee Lee
Applicant

SWORN or affirmed to and subscribed before me this
17 day of July, 2023
Ashley Vanacore
Notary Public

My Commission Expires: 9/9/32



23CP-110505

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CHEROKEE COUNTY, S.C.

10. I told my Public Defender Mr. Whelchel not long after I was arrested that there was a drink in the victims car from QT store. Mr. Whelchel left the Cherokee County Public Defenders office a few months later.

I was given a new Public Defender Mr. Berry. I told him the same thing.

I was told that there is really know way to pin point what QT the victim stoped at. But if the law can pin point the victims phone at my address why couldn't they do the same with what QT she stoped at. And the video from that store could prove without a doubt that there was in fact a male subject was with the victim. Also why was there know finger prints done where I said the male subject touched the victims car as well touched my truck?

That is two big factors that could Prove I was acting in self defence.

11. a. Victim came to my home with a male
- b. The victim had a flat tire
- c. The male and I changed the tire
- d. The male and I got into a fight
- e. The male threw a pipe at me near the back of my home
- f. Victim came at me from behind me.
- g. I shot at same time as victim grabbed me. Victim was thrown in between me and male subject and she got shot by accident.
- h. Yes I got scared and did not know what to do and tried to cover it all up.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2023 JUL 21 A 11:21
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Marshall Depree Lee, #389231,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
)

) CASE NO. 2023-CP-11-505
)
)

RETURN
(Counsel Appointed)

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2024 APR 15 A 11: 14
BRAND W. MOBLE

In response to Marshall D. Lee's (Applicant) application for post-conviction relief (PCR) commenced on July 21, 2023, Respondent, the State of South Carolina, makes the following Return:¹

PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections (SCDC). During its June 2020 term, the Cherokee County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2023-GS-11-0619). Applicant was represented by Michael Anthony Berry, Esquire. Deputy Solicitor Adrienne Elizabeth Barry of the Seventh Circuit Solicitor's Office prosecuted the case.

¹ Respondent's return was due to be filed within sixty days of receipt of Applicant's instant post-conviction relief application. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

On October 17, 2022, Applicant appeared before the Honorable R. Keith Kelly and pled guilty as indicted to murder and possession of a weapon during the commission of a violent crime (2023-GS-11-0619). Judge Kelley sentenced Applicant to a negotiated sentence of 30 years' imprisonment on the murder charge and a term of five years' imprisonment for the possession of a weapon during the commission of a violent crime (2023-GS-11-0619), to run concurrently.

Applicant did not appeal his convictions or sentences.

FACTS PRESENTED AT THE GUILTY PLEA

The facts were taken from the guilty plea transcript as articulated by the State:

Your Honor, this began on September 24, 2019, when Jamie was reported missing to the Charlotte-Mecklenberg Police Department by one of her friends. They phoned the police department and stated that Jamie was going to Charlotte. She worked as an escort, and she was going to Charlotte to work. And they had not heard from her when she was supposed to be in contact. Law enforcement also spoke with Jamie's family, and they also stated that they had not received contact from Jamie after the morning of the 24th. So the investigation began in Charlotte. They were provided identifying information, and they were able to determine that Jamie checked into a hotel in Charlotte. She had made it there. They were able to track her credit card transactions. She had been to restaurants in the area. And they were actually able to find her car on a tag reader. So they knew that she had made it to Charlotte when she said she was going to be there. When they went to the hotel, she had not checked out. The hotel had taken her items out of her hotel room and packed them into a storage unit. They were able to get an exigent circumstances warrant for one of her cell phones. When they got that, they were able to determine that the last phone calls and the last text messages that Jamie had sent had been to a Marshall Lee. And they were able to ping her phone and show that she had actually made it to Mr. Lee's residence. Your Honor, that has been marked as State's Exhibit 1. Mr. Berry has been provided that in discovery. I believe that is without objection. And on that map, Your Honor, what it shows is her phone comes to the address of [REDACTED] Union Highway, which is the address of Mr. Lee. It actually makes it to the front door. At some point the phone turns off between 10:00 and 11:00. It remains off for about an

hour-and-a-half. They're able to determine that Jamie has made it to Charlotte, and then she has made it to [REDACTED] Union Highway, located here in Cherokee County. They're able to determine that is Marshall Lee's residence. They're able to look at the phone number to just verify that it is Mr. Lee and it is. And they notify officers with the Gaffney Police Department that there is information that Jamie may have had contact with Mr. Lee. Gaffney then goes to Mr. Lee's residence, and they speak with him. He states that he was supposed to meet her but she never showed. They noted that Mr. Lee was extremely nervous when he was speaking with them. Something didn't feel right to them. So they notified the Sheriff's Office here in Cherokee County and let them know what they had been told by law enforcement in Charlotte and what they had observed. And Cherokee County gets a search warrant for Mr. Lee's property based off of that information. When they go there, Mr. Lee is at that location. They actually go on September the 26th of 2019. Mr. Lee is at that residence with his wife and his two children. The two children are told to leave. And law enforcement notices when they round the house that something is dead. So they know that something is out in a gully behind Mr. Lee's residence. They actually go into the woods and are able to ultimately find a body laying under an artificial Christmas tree and a layer of insulation, Your Honor. And what I have done, I have marked State's Exhibits 2, 3 and 4. And this is where they ultimately find Jamie's body. That has also been shared with Mr. Berry in discovery. I believe that is without objection. What they do is they removed the Christmas tree. They take pictures throughout the uncovering. And what they ultimately find is the body of Jamie. It was extremely decomposed at that time. The coroner arrives. They take her and an autopsy is performed on her. And what the autopsy reveals, she is shot one time in the stomach. There's an exit wound in her right lower back. And then she is shot twice in the head, Your Honor. Both of those bullets or fragments were found lodged in her head during the autopsy. When they find Jamie, Mr. Lee is in one of the detective's cars at the time. He maintains that she never showed. And then it becomes: Well, she said that she was here; she texted me. And when I looked out the window, she wasn't there. And then it becomes: I don't remember what happened. So Mr. Lee gives several statements throughout this investigation. And it begins with: He never saw her, she never arrived. And then it becomes: She arrived but then she left. And the ultimate statement or the next statement is that she arrived, and after she arrived he blacked out. And when he came to, he had a gun laying next to him. There were dogs barking in his backyard. And he went to see what the dogs were barking at. He saw a trail of blood. He followed that trail of blood, and there was her body. And he

covered it up with the insulation and the Christmas tree. And the last statement that Mr. Lee gives is a statement where she showed up. She stated that she had a flat tire. He went out there to help her with the flat tire, and there was a man with her. He doesn't know in his statement if he came with her or if she picked him up on the road somewhere. When he is helping change the tire, he states that the man attempted to rob him. He runs to his house. The man chases him, and he is able to get into his house, get his wife's .22 pistol. When he comes outside, the man is attempting to come on to the porch. When he sees Mr. Lee with the gun, he runs around the house and goes into the woods but Jamie is still there in the front yard. He states she attempted to grab him. He threw her off and shot her. And he goes into the woods. And when he can't find the man, he comes back to Jamie. She's still alive, and he shoots her twice more. In preparing this case, we received photographs from the hotel where Jamie's clothing was. There's no clothing belonging to a man. There's no items belonging to a man in those belongings. We have phone records for Jamie. There's no conversation between her and a man that would indicate that someone was coming with her. So we don't actually know what happened on the 23rd, Your Honor, between Mr. Lee and Jamie. We do know that he shot her, and she is dead.

(Plea Tr. pp. 7 - 11).

CURRENT APPLICATION

On July 21, 2023, Applicant timely filed this application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following:

1. Ineffective Assistance of Counsel.
 - a. Failure to Investigate.²
 - i. "I told my public defender Mr. Whechel not long after I was arrested that there was a drink cup in the victims (*sic*) car from QT store. Mr. Whechel left the Cherokee County Public Defenders office a few month (*sic*) later. I was given a new Public Defender Mr. Berry. I told him the same thing. I was told that there really know (*sic*) way to pin point what QT the victim stopped at. But if the law can pin point the victims (*sic*) phone at

² Applicant sets forth his allegations in a memorandum attached to his application for post-conviction relief. The State construes these allegations to be a claim that Plea Counsel was ineffective for failing to investigate the facts and circumstances surrounding the crime for which he was charged.

my address why couldn't they do the same with what QT she stopped at. And the video from that store could prove without a doubt (*sic*) that there was in fact a male subject was (*sic*) with the victim, also why was there know (*sic*) finger pints done where I said the male subject touched the victims (*sic*) car as well touched (*sic*) my truck? That is two big factors that could prove I was acting in self defense."

1. "victim came to my home with a male friend."
2. "victim had a flat tire"
3. "I changed tire (more on additional paper)"
"[t]he male and I changed the tire"
4. "The male and I got into a fight"
5. "The male thoug (*sic*) a pip (*sic*) at me near the back of my home"
6. "victim came at me from behind me"
7. "I shot at same time as victim grabed (*sic*) me. Victim was trough (*sic*) in between me and male subject and she got shot by accident"
8. "Yes, I got scared and did not know what to do and tried to cover it all up."

Applicant requests relief in the form of having his "murder charge dropped down and less time."

Attached to this return and incorporated by reference are the Cherokee County Clerk of Court records regarding the subject's conviction and sentence; Applicant's plea transcript, Applicant's records from the SCDC; and the records of the current PCR action. The State reserves the right to amend this return upon receiving any relevant materials.

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assist[ance] by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668, 685 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an assertion 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. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice due to counsel's deficient performance. Id. at 687–88; Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

As aforementioned, the applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that "in light of all the circumstances, the identified acts or omissions [complained of] were outside the wide range of" competence demanded of attorneys in criminal cases. Strickland, 466 U.S. at 690. To

prove prejudice, the applicant must establish that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Id. However, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696.

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 burden of rebutting this presumption 'rests squarely on the defendant,' and "[i]t should go without saying that the absence of evidence cannot overcome [i]t." Dunn v. Reeves, 594 U.S. 731, 739 (2021) (alteration in original) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). In fact, "even if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if '[t]he record does not reveal' that counsel took an approach that *no competent lawyer would have chosen*." Id. (alteration in original) (emphasis added) (quoting Titlow, 571 U.S. at 23–24). 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; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding").

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart, 474 U.S. 52 (1985) extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation"

for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the 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, the 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. Judges must "look to contemporaneous evidence to substantiate a defendant's expressed preferences." Lee, 582 U.S. at 369. 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 v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Surmounting the Strickland 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. at 368-369 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. at 369. 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).

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." Strickland, 466 U.S. 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 grounds of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

In the present case, Applicant has asserted allegations that Plea Counsel failed to investigate the facts and circumstances of his case, which Respondent construes as a claim of ineffective assistance of counsel. Because this allegation likely raises questions of fact not conclusively refuted by the record, the State requests an evidentiary hearing to fully resolve the issues. Accordingly, Respondent requests an evidentiary hearing to resolve this issue fully.

Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

RESPONSE TO ALLEGATION PLEA COUNSEL FAILED TO INVESTIGATE

Applicant alleges Plea Counsel was ineffective for failing to investigate the crime prior to advising Applicant to plead guilty. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

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) (abrogated on

other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)) (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)).

Here, Applicant has asserted that Plea Counsel was ineffective for failing to investigate. Specifically, Applicant avers Plea Counsel should have further investigated a cup from the “QT store,” that was allegedly within Victim’s car and the potential existence of a male suspect’s fingerprints at the crime-scene. In defense of his allegation Applicant sets forth a list of his version of the events that transpired on the night of Victim’s murder. Applicant contends this list supports his allegation that, had Plea Counsel done more to investigate the potential existence of a video from the “QT store” and fingerprints at the crime-scene, Applicant could have proved he was acting in self-defense when he murdered Victim.

Applicant pled guilty as indicted to murder and possession of a weapon during the commission of a violent crime, and in doing so unequivocally admitted to being the perpetrator of these actions. The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. (Plea Tr. p. 12). During his plea hearing, Applicant agreed the facts of his case, as presented by the state, were true. (Plea Tr. p. 12). Applicant again admits his guilt for the actions resulting in his charges in allegations 11(g) and 11(h) of his application for post-conviction relief. However, in allegation

11(g) Applicant tells a different version of events than those who's truth he affirmed during his plea hearing.

Applicant alleges in allegation 11(g) of his application for post-conviction relief that he "shot at the same time as" Victim grabbed him, placing Victim in between himself and the male subject allegedly at the scene. Applicant contends this sequence of events resulted in Victim being shot accidentally. Conversely, during Applicant's plea hearing the State established the final version of events Applicant presented to Investigating Officers as follows:

[T]he last statement that Mr. Lee gives is a statement where [Victim] showed up. She stated that she had a flat tire. He went out there to help her with the flat tire, and there was a man with her. He doesn't know in his statement if he came with her or if she picked him up on the road somewhere. When he is helping change the tire, he states that the man attempted to rob him. He runs to his house. The man chases him, and he is able to get into his house, get his wife's .22 pistol. When he comes outside, the man is attempting to come on to the porch. **When he sees Mr. Lee with the gun, he runs around the house and goes into the woods but [Victim] is still there in the front yard. He states she attempted to grab him. He threw her off and shot her. And he goes into the woods. And when he can't find the man, he comes back to [Victim]. She's still alive, and he shoots her twice more.**

(Plea Tr. pp. 10-11) (emphasis added). In the facts presented by the State at the plea hearing, which Applicant himself confirmed to be the true version of events, it is established that the male subject who was allegedly with Victim during the course of these events had already fled into the woods when Applicant shot Victim. Further it is established that Applicant shot Victim intentionally.

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons

why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

Additionally, Applicant has not established any way in which he was prejudiced by Plea Counsel's alleged failure to investigate. To show prejudice in the context of a guilty plea, a PCR applicant must show that he would not have pled guilty but for counsel's errors and "must convince the court that such a decision would have been rational under the circumstances." United States v. Fugit, 703 F.3d 248, 260 (4th Cir. 2012) (internal quotation marks omitted) cert denied, 134 S.Ct. 999 (2014) citing Padilla v. Kentucky, 559 U.S. 356, 372 (2009).

Here, Applicant alleges, had Plea Counsel further investigated evidence that potentially existed, Applicant could have proved without a doubt that there was a male subject with Victim at the crime scene.³ Applicant contends this could have proved he was acting in self-defense in murdering Victim. Notably, Applicant entered his guilty plea the day before he was set to go to trial, waiving his right to present any defenses he may have had the opportunity to present there. However, for the purpose of analyzing whether it would have been rational under the circumstances for Applicant to go to trial presenting the evidence that allegedly existed instead of entering into this guilty plea, Respondent construes this allegation to be that Plea Counsel was ineffective for waiving Applicant's right to an immunity hearing under S.C. Code Ann. §§ 16-11-440(C) and 16-11-450.

³ The State presented that they discovered no evidence of the existence of a male suspect during their investigation at Applicant's plea hearing. "In preparing this case, we received photographs from the hotel where Jamie's clothing was. There's no clothing belonging to a man. There's no items belonging to a man in those belongings. We have phone records for Jamie. There's no conversation between her and a man that would indicate that someone was coming with her." (Plea Tr. p. 11).

The "Protection of Persons and Property Act" (the Act) provides that "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force." S.C. Code Ann. § 16-11-450. The Act further provides, in part, that:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C). "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard[.] "State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (citing State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011)).

Where a defendant seeks treatment under § 16-11-440(C), it is not enough for a defendant to establish that he was "not engaged in an unlawful activity" and was in a "place where he has a right to be." Rather, "[c]onsistent with the Castle Doctrine and the text of the Act, *a valid case of self-defense must exist*, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity" save the duty to retreat. Id., 406 S.C. at 371, 752 S.E.2d at 266 (emphasis added). Notwithstanding the Act or other provisions of law, in order to establish self-defense, the defendant must show (1) he was without fault in bringing on the difficulty; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief; and (4) he had no other

probable means of avoiding the danger. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997).

That a defendant was engaged in unlawful activity at the time of the incident does not in-and-of-itself defeat a claim for immunity. Rather, where a defendant was engaged in unlawful activity at the time of the incident, the trial court must consider whether the unlawful activity was the proximate cause of the incident. A person who is otherwise acting lawfully is not deprived of the right to self-defense by merely incidental illegality. State v. Glenn, 429 S.C. 108, 120-21, 838 S.E.2d 491, 497-98 (2019) (citing State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994)).

Respondent submits, even construing the facts presented during Applicant's plea hearing in the light most favorable to Applicant, he can not establish that a valid case of self defense existed. The second element required to establish self defense is an actual belief that the individual is in imminent danger of losing his life or sustaining serious bodily injury. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). Victim's autopsy revealed that she was shot one time in the stomach and twice in the head. (Plea Tr. p. 10). During Applicant's plea hearing the version of facts accepted by both Applicant and the court as the truth established "[Applicant] states [Victim] attempted to grab him. He threw her off and shot her. And he goes into the woods. And when he can't find the man, **he comes back to [Victim]. She's still alive, and he shoots her twice more.**" (Plea Tr. pp. 10-11) (emphasis added). Therefore, it is clear that Applicant was not in any imminent danger of losing his life or sustaining serious bodily injury at the time that he killed Victim.

While Respondent maintains the record refutes this allegation, Respondent requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 265, 305

S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

RESPONSE TO APPLICANT'S REQUESTED RELIEF

In his prayer for relief, Applicant requests the Court have his "murder charge dropped down and less time." This relief is not part of the relief available in a post-conviction relief action. If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on *all* of the original indictments. Gilstrap v. State, 252 S.C. 625, 168 S.E.2d 88 (1969); see also Grant v. MacDougall, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964) (relief of absolute release not available). Where an applicant seeks only relief to which he or she is not entitled, "it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance, be entitled to." Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968). For these reasons, if the application is not otherwise amended before the evidentiary hearing to reflect a desire for appropriate relief, Respondent would respectfully request this Court engage in a thorough colloquy with Applicant to apprise her of the relief available in a PCR. If, at the evidentiary hearing, Applicant indicates no desire for appropriate relief but a desire to proceed, Respondent will then move to dismiss the Application.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the

last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. Id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

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

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 against the State.

CONCLUSION AND ACTION REQUESTED

Respondent submits Applicant cannot satisfy the requirements of Strickland. However, the record likely does not refute or disprove all of Applicant's allegations. Therefore, Respondent requests an evidentiary hearing to resolve the issues fully. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application

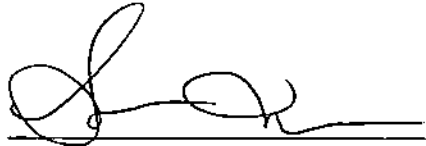
"alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

SHAYLA J. FLORES
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

April 11, 2024

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2024 APR 15 A 11:15
BRANDY W. HCBEE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Marshall Depree Lee, #389231)
)
 Applicant,)
)
 vs)
)
 State of South Carolina,)
)
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS

2023-CP-11-505

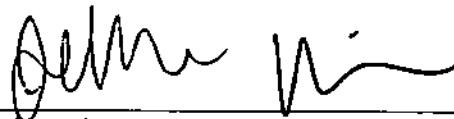
CERTIFICATE OF SERVICE BY MAIL

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2024 APR 15 A 11:15
 BRANDY W. HOBEE

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

Rodney Wade Richey, Esquire
Richey & Richey, PA
33 Market Point Dr, Greenville, SC 29607
Post Office Box 10916
Greenville, SC 29603-0916

DATED this 11th day of April 2024.



 Jordan Hickman, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE)	
)	
Marshall Depree Lee,)	Case No: 2023-CP-11-505
S.C.D.C. No: 361541)	
)	
Applicant,)	
)	AMENDMENTS TO PCR APPLICATIONS
vs.)	
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
<hr/>)

The Applicant through his undersigned attorney amends his Application for Post-Conviction relief. The Application was filed on July 21, 2023. The Applicant amends the Application as follows:

1. Trial Counsel was ineffective for failure to investigate the charges and facts of the case.
2. Trial Counsel was ineffective for not properly communicating with him about his case.
3. Trial Counsel was ineffective for not presenting a self-defense defense in his case.
4. Trial Counsel was ineffective for not moving to suppress statements that the Applicant gave to law enforcement.
5. Trial Counsel was ineffective for inducing the Applicant to plead guilty under the threat of a life sentence.
6. Trial Counsel was ineffective for not presenting a defense of accident.

Wherefore, the Applicant amends his Post Conviction Relief application as stated above.

Respectfully submitted,

____s/Rodney Richey_____
 Rodney Richey
 Richey and Richey, P.A.
 Post Office Box 10916
 Greenville, SC 29603
 (864) 467-0503
 Attorney for the Applicant

Dated: August 19, 2024

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) COURT OF COMMON PLEAS NONJURY

3
4 MARSHALL D. LEE,) TRANSCRIPT
5 APPLICANT,) OF
6 vs.) RECORD
7 STATE OF SOUTH CAROLINA,) 2023-CP-11-505
8 RESPONDENT.)

9
10 September 3rd, 2024

11
12 B E F O R E:

13 THE HONORABLE R. LAWTON McINTOSH, Judge.
14

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

16 RODNEY W. RICHEY
17 ESQ.
Attorney for the Applicant

18 SHAYLA J. FLORES
19 ASSISTANT ATTORNEY GENERAL
20 Attorney for the State

21
22
23 Pamela E. Green
24 Circuit Court Reporter
25

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I N D E X

WITNESSES

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P R O C E E D I N G S

THE COURT: All right.

MS. FLORES: May it please the Court?

THE COURT: Yes, ma'am.

MS. FLORES: Shayla Flores on behalf of the State of South Carolina.

This is the post-conviction relief matter of Marshall D. Lee versus the State. Case Number 2023-CP-11-00505 out of Cherokee County.

During it's June, 2020 term, the Cherokee County Grand Jury indicted applicant for murder and possession of a weapon during the commission of a violent crime, 2023-GS-11-0619. Applicant was represented by Michael Anthony Berry and Deputy Solicitor Adrienne Elizabeth Barry of the Seventh Circuit Solicitor's Office prosecuted the case.

On October 17th, 2022, applicant appeared before the Honorable Keith Kelly and pled guilty as indicted. Judge Kelly sentenced app -- applicant to a negotiated sentence of 30 years imprisonment on the murder charge and a term of five years imprisonment for the possession of a weapon during the commission of a violent crime to run concurrently. Applicant did not con -- did not appeal his convictions or sentences.

1 Applicant timely commenced this PCR action on
2 July 21st of 2023 raising multiple allegations of
3 ineffective assistance of counsel. Applicant additionally
4 raised a number of new allegations in an amended
5 application that was received by respondent on
6 August 26th, 2024. Applicant requests relief in the form
7 of having his murder charge dropped down and less time.

8 Before this Court are the Cherokee County Clerk of
9 Court records regarding subject convictions and sentences,
10 applicant's records from SCDC, and applicant's plea
11 transcript and the records of the current PCR action.

12 At this time we would ask Mr. Richey to state for the
13 record which allegations applicant intends on moving
14 forward with, Your Honor, and also, if time allows, the
15 State would request that you en -- ensure that applicant's
16 understanding of the relief that is available to him.

17 MR. RICHEY: I'll judge -- judge, we filed an amended
18 application which is dated August 19th, 2024, and those
19 set forth our allegations on this amended application. I
20 don't know if the Court has that but we amended it.

21 THE COURT: Okay. Mr. Lee?

22 MR. LEE: Yes, sir.

23 THE COURT: All right. Let me ask you this, Mr.
24 Richey.

25 Have you gone over with Mr. Lee the relief that he

1 could get in this case?

2 MR. RICHEY: Yes, sir, and I would just tell the
3 Court that, as it stands, he will be 76 when he gets out.
4 And so I mean we -- he's gon' go forward. It'll be --
5 he'll be a 76 year old man and there's no withdrawal here.

6 THE COURT: All right. But just so the record's
7 clear, Mr. Lee, you were sentenced by Judge Kelly to the
8 minimum for murder.

9 MR. LEE: Yes, sir.

10 THE COURT: And you -- the five was run
11 consecutive -- concurrently with that. So, you got the
12 minimum sentence for murder and the weapons charge you
13 could possibly get. But if you go back and you were
14 granted relief, you're looking at a possibility of life
15 with -- that you would get without possibility of parole
16 served day for day.

17 You understand that?

18 MR. LEE: Yes, sir.

19 THE COURT: Knowing that, you still want to go
20 forward with your application today?

21 MR. LEE: Yes, sir.

22 THE COURT: Very good.

23 All right.

24 MR. RICHEY: Okay. we'll call Mr. Lee.

25 THE COURT: Place your left-hand on the Bible and

1 raise your right-hand as best you can.

2 MR. LEE: I can't raise my hand.

3 THE COURT: That's fine.

4 MARSHALL LEE, being first duly
5 sworn, testified as follows:

6 THE COURT: All right. If you would, Mr. Lee, state
7 your full name for the record and spell your last name.

8 THE WITNESS: My name's Marshall Depree Lee. L-E-E.

9 DIRECT EXAMINATION

10 BY MR. RICHEY:

11 Q. Mr. Lee, are you currently in the Department of
12 Corrections?

13 A. Yes, sir.

14 Q. And, and what are you in there for?

15 Are you -- what charge were you -- are you in there
16 for?

17 A. Murder and possession of a weapon during a violent
18 crime.

19 Q. And in what county did these charges occur?

20 A. Cherokee County.

21 Q. And, and, just briefly, you were alleged to have
22 killed a woman in this case.

23 Is that correct --

24 A. Yes, sir.

25 Q. -- that, that came to your house at some point?

Marshall Lee - Direct examination
By Mr. Richey

1 A. Yes, sir.

2 Q. And, and it's your position that she did not come
3 alone correct, correct?

4 A. Correct.

5 Q. And, and was she with someone?

6 A. Yes, sir.

7 Q. And who was that?

8 A. She just said the first name was Alan. That's all I
9 know.

10 Q. Okay. And, and during the course of her getting
11 there, tell me kind of what happened briefly.

12 A. Well, I met her online and we scheduled a -- for her
13 to come down and she -- it was about close to time she was
14 suppose to come. I text her where she was at and she --
15 something like that. I can't remember exact words. It's
16 been over five years.

17 But she was about 15 minutes late. But she said that
18 she had a flat tire when she come up on the porch and I
19 said yeah, I could help you change it. So, I started
20 helping her change the tire and that's when the guy that
21 was with her attacked me from behind.

22 Q. Uh-huh. (Affirmative).

23 And when he attacked, attacked you from behind, where
24 did -- where was the young lady at?

25 A. I do not know the exact location.

1 Q. Okay.

2 A. I was changing the tire. As soon as I got done, I
3 let the jack down. That's when he grabbed me. Me and him
4 got down on the ground and was wrestling.

5 Q. And the gun ultimately fired, correct?

6 A. Yes, sir.

7 Q. And, and, and the young lady was killed, correct?

8 A. Yes, sir.

9 Q. Okay. And, and, at that point, was it your position
10 you were defending yourself?

11 A. Yes, sir.

12 Q. Okay. Now, who represented you on the charges?

13 A. Michael Berry.

14 Q. Okay. And you believe that his, his representation
15 was ineffective, correct?

16 A. Correct.

17 Q. Because, under the scenario that you have laid out,
18 you, you do not believe he investigated the facts and
19 circumstances of your case --

20 A. Correct.

21 Q. -- right?

22 A. Yes.

23 Q. And why do you believe that?

24 A. Cause they never -- my first lawyer was whelchel,
25 which he retired halfway through my sentencing, and I got

60 Marshall Lee - Direct examination
By Mr. Richey

1 Berry. well, I told whelchel all about the cup and bar
2 that was threw at me and none of that was in the discovery
3 where it'd been fingerprinted or pursued or anything.

4 Q. Okay. And you believed that your attorney should of
5 got that stuff and had it tested?

6 A. Correct.

7 Q. And did y'all discuss that?

8 A. Yes, I discussed it with whelchel. Brought it up to
9 him and, when he retired, and --.

10 Q. Did you tell Mr. Berry?

11 A. Berry come -- yes, I, I did tell him.

12 Q. And, and did you talk to Mr. Berry about a
13 self-defense defense?

14 A. Yes, they said and pretty well in South Carolina
15 there's no self-defense unless it's inside my threshold.

16 Q. Okay. So, he told you that the self-defense law
17 didn't exist or -- say that again.

18 A. He said it didn't apply unless it was inside my
19 threshold---

20 Q. Okay.

21 A. ---inside the house, which this happened outside of
22 the house.

23 Q. Okay. And, and, in this particular case, you allege
24 that this guy jumped you or something?

25 A. Yes.

1 Q. Okay. And you have given statements to the police at
2 this time, right, about what happened?

3 A. Yes.

4 Q. You talked to the police about what happened, right?

5 A. Yes. Yes. The detectives, yes.

6 Q. Okay. And, and did you and your lawyer discuss,
7 discuss with you about having those statements suppressed
8 or anything, the ones that was negative against you?

9 You got to answer yes or no.

10 A. N---

11 Q. Did y'all talk about your statements?

12 A. Oh, yeah, yeah. We talked about it, yes, sir.

13 Q. And did, did you -- did he tell you that you could
14 have a hearing and to try to suppress any of those
15 statements that were not good for you or not favorable to
16 you?

17 A. I never done any kind of hearing like that, no.

18 Q. Okay. And, and you talked about -- another thing in
19 terms of defense, it's your position this wasn't an
20 intentional shooting, correct?

21 A. Correct.

22 Q. That it was -- it could of been perceived from your
23 position as being an accident?

24 A. Correct.

25 Q. Okay. Did you talk to your lawyer about that?

62 Marshall Lee - Direct examination
By Mr. Richey

1 A. Yes.

2 Q. You did?

3 A. Yes.

4 Q. And, and what did he -- what did he say about it
5 being an accident?

6 A. That -- kept bringing up the fact they couldn't prove
7 that there was another guy there and, and saying my story
8 wasn't adding up. So --.

9 Q. And did you want to go to trial on this case?

10 A. Yes, I was going to trial and it was the Friday
11 before I started trying is when they told me, if I didn't
12 take the 30, I was gon' get life.

13 Q. Did---

14 A. Anything -- he couldn't beat the charge.

15 Q. Okay. And so did the Court ask you a series of
16 questions in here about whether you were satisfied with
17 your lawyer and this is what you want to do?

18 You explained to the Court that that's what you
19 wanted to do, correct?

20 A. Yes.

21 Q. And, and why'd you do that if you didn't want to do
22 it?

23 A. At the time, I, I didn't -- I ain't never been in
24 trouble --

25 Q. No.

1 A. -- and I didn't know what to do and he told me, he
2 said just answer the questions yes, yes, yes and whatever.
3 That's what I done.

4 Q. And, and so is it your position that these, these
5 answers to these questions, they were not your answers I
6 mean cause you answered---

7 MS. FLORES: Objection, Your Honor. Leading.

8 Q. ---the question?

9 Okay. Were -- I'll rephrase it.

10 THE COURT: Okay.

11 Q. The answers that you gave, were those your answers?

12 A. Yes, they were my answers.

13 Q. Okay. And, and when you said the answer -- you said
14 the Court about your plea being voluntary and all that,
15 was that your answer?

16 A. Yes.

17 Q. Okay. And so were you forced or coerced in to do
18 this guilty plea?

19 A. Yes.

20 Q. Okay. And, and how were you coerced to do it?

21 A. They say if I didn't take the 30 I was gon' get life.

22 Q. Okay. And you, and you understand today we -- we're
23 kind of in the same predicament a little bit?

24 A. Yes.

25 Q. Right?

64 Marshall Lee - Direct examination
By Mr. Richey

1 A. Yes. Yes.

2 Q. That, if we win, we could get long -- so kind of the
3 same predicament?

4 A. Yes, sir.

5 Q. And your position today is different, correct?

6 A. Yes.

7 Q. Now why is it different?

8 A. I ain't gon' -- they ain't nobody in my family live
9 to see 70 years old. I, I ain't got nothing to lose.

10 Q. Okay.

11 A. I -- after I done research on my tablet, I don't
12 think I should of got the murder trial. I did not -- it
13 wasn't no before thought of I was wanting to harm this
14 girl.

15 Q. So, you're, you're saying that, under the elements of
16 murder, that there was no premeditation?

17 A. No, I---

18 Q. Is that what you're saying?

19 A. No, sir.

20 Q. Okay. It's -- or what was it?

21 Something spur the thing that happened?

22 A. Yeah, I -- it's -- I met her online and I met a lot
23 of people online, all right, and I've never had any
24 problem with anyone until she come with that guy and that
25 guy got me from behind when I changed that tire.

1 Q. Okay. And did, did you and the lawyer discuss this
2 guy?

3 Did y'all discuss that?

4 A. Yeah, he said he couldn't prove that the guy was
5 there.

6 Q. And that's where the cup comes in, isn't it?

7 A. Yeah, that cup and the metal bar that he threw at me
8 which was part of the fence post.

9 Q. Were -- when the police came, and this case is being
10 investigated, did -- were you on the property, in jail, or
11 where were you?

12 A. I was on the property.

13 Q. Okay. Okay. And did you know where this stuff was
14 at the time---

15 A. Uh.

16 Q. ---the stuff that---

17 A. Yes.

18 Q. You did?

19 A. Yes.

20 Q. Did you tell your lawyer that?

21 A. I didn't see a lawyer for probably two or three
22 months after I got locked up.

23 Q. Okay.

24 A. Well, yes, I did tell him where it was at at the
25 time.

66 Marshall Lee - Direct examination
By Mr. Richey

1 Q. Okay. Okay. Did you have anyone living in the house

2 --

3 A. Yes.

4 Q. -- after you were locked up?

5 A. Yes.

6 Q. And who was that?

7 A. My wife and kids.

8 Q. Okay. And did your wife know the stuff existed?

9 A. Yes, she did and my oldest son did.

10 Q. Did you direct them to your lawyer for him to --?

11 A. Yeah, I wrote my lawyer and told him.

12 Q. Okay. And do you believe he just refused to do it or

13 I mean --?

14 A. Yeah.

15 Q. Okay. All right. Thank you.

16 A. All right.

17 Q. Answer any questions the attorney general will have

18 for you.

19 CROSS-EXAMINATION

20 BY MS. FLORES:

21 Q. Good afternoon, Mr. Lee.

22 About how many times would you say your attorney met

23 with you?

24 A. I let -- met with Welchel once and, Berry, I want to

25 say twice, maybe three times.

1 Q. And do you recall telling the Court that, that your
2 attorney explained all of the elements of these crimes to
3 you?

4 A. What do you mean elements?

5 Q. Everything that the State had against you and what
6 the State had to prove to get a conviction against you.

7 A. Yes.

8 Q. And do you recall telling the Court that your
9 attorney shared discovery materials with you?

10 A. Yeah, I didn't get a discovery till probably after
11 about two years in. Maybe two and half years in.

12 Q. Okay. And that was prior to entering your guilty
13 plea---

14 A. Yes.

15 Q. ---correct?

16 A. Yes.

17 Q. Do you retire -- recall telling the Court that you
18 didn't need any additional time to speak with your
19 attorney at your plea hearing?

20 A. No, I didn't.

21 Q. Do you recall telling the Court that your attorney
22 had done everything possible to help you at your plea
23 hearing?

24 A. Yes, I did say -- told the Court that.

25 MS. FLORES: Beg the Court's indulgence, Your Honor?

1 Did you attempt to appeal your convictions or
2 sentences?

3 A. No.

4 Q. Did you tell your attorney that you wanted to appeal
5 your convictions---

6 A. No.

7 Q. ---or sentences?

8 Do you recall telling that Court that no one coerced
9 you when you were entering your, your guilty plea of your
10 own volition?

11 A. I can not remember. But I don't think so.

12 Q. Okay. Did you bring up any of the issues that you
13 alleged now with the Court at your plea hearing?

14 A. Yes, I brought them up. The -- most of it was to
15 whelchel that, that I brought up. Me and him went down --
16 he wrote down step by step everything that happened.

17 Q. Okay. And how about the judge at your plea hearing?
18 Did you tell them?

19 A. No.

20 Q. Okay. And why not?

21 A. I, I done agreed to the 30. I didn't, I didn't know
22 what to -- I didn't know I should.

23 MS. FLORES: Beg the Court's indulgence, Your Honor.

24 (Pause.)

25 MS. FLORES: No further questions, Your Honor.

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 BY MR. RICHEY:

4 Q. Mr. -- so you agreed to this -- that -- you agreed to
5 this negotiated 30 years, right?

6 A. Yes, sir.

7 Q. Okay. And did you and your lawyer discuss that?

8 A. Yes.

9 Q. And did you know the ramifications of it, that you
10 have to do it day for day?

11 A. Yes.

12 Q. Okay. Thank you.

13 THE COURT: Thank you, sir. You may step down.
14 we'd call Mr. Michael Berry.

15 MR. RICHEY: Sir?

16 I'm sorry. Excuse me.

17 THE COURT: Oh, yeah.

18 Raise your right-hand.

19 MICHAEL BERRY, being first duly
20 sworn, testified as follows:

21 THE COURT: Thank you.

22 would you please take a seat and state your full name
23 and spell your last name?

24 THE WITNESS: Michael Anthony Berry. B-E-R-R-Y.

25 THE COURT: Thank you, sir.

70 Michael Berry - Direct examination
By Mr. Richey

1 DIRECT EXAMINATION

2 BY MR. RICHEY:

3 Q. Sir, are you -- you -- Mr. Berry.

4 Is that correct?

5 A. That's correct.

6 Q. And, Mr. Berry, what -- did you represent Mr. Lee?

7 A. I did.

8 Q. And did you represent him on the charges that we've
9 been talking about today, the murder and the weapons
10 charge?

11 A. I was not the original attorney that was appointed to
12 represent Mr. Lee. Mr. Welchel, as has been referenced,
13 was appointed back in September of 2019. I actually left
14 the Public Defender's Office for a period of time,
15 returned back in August of 2020 upon Mr. Welchel's
16 retirement. And so I assumed all of his cases.

17 Q. Did, did you have the opportunity to review the case
18 file and the evidence prior to this guilty plea?

19 A. I did.

20 Q. And did, did you discuss -- did you have any
21 discussions with Mr. Lee?

22 A. Mr. Lee and I met probably more than 10 times
23 according to the review of my file.

24 Q. Okay. And when you talked to him, did, did y'all
25 talk about self-defense?

1 A. We absolutely did.

2 Q. And was it, was it -- and you heard the testimony
3 from Mr. Lee that that -- that he believed there was no
4 self-defense in South Carolina unless you were in your
5 home or something.

6 A. That, that would of been erroneous advice if I had
7 given that and I deny that that's what I told him.

8 We did talk about self-defense. Mr. Lee, upon his
9 arrest, gave several different accounts of what happened.
10 The, the first account was that he just blacked out and
11 didn't know what happened and then it evolved from there
12 that he was attacked and the stories -- I believe there
13 were three or four different iterations of the story by
14 the time it was all said and done and investigators, you
15 know, typed their final report.

16 Q. Did, did he allege that he was defending himself?

17 A. He did tell me that, yes, and, you know, I don't know
18 exactly what did happen. I, I do believe that there's
19 some credit that there probably was someone else that came
20 down with this female that was arranging to see Mr. Lee.

21 But given the various stories and, and the final
22 iteration of the story and, if I can, was that Mr. Lee
23 actually had to go back in the house to retrieve the
24 firearm. He came back outside, chased the male into the
25 woodline, and this was after he had shot the female. She

1 was laying on the ground. Chased the male into the
2 woodline.

3 He came back out after he couldn't find the male and
4 the female was laying on the ground shot and screaming at
5 him. And, in his last statement to police, he said he
6 raised the gun and shot her two additional times while she
7 was laying on the ground.

8 Q. Okay. And, and in terms of the statements that he
9 gave to law enforcement, would he have a right to have a
10 suppression hearing on those statements?

11 A. Absolutely. We discussed that too because it was
12 raised to Mr. Welchel and then, when I took over the
13 case, I looked back at his notes and I talked with Mr. Lee
14 about that. Mr. Welchel actually felt it appropriate to
15 have him evaluated.

16 So, he was sent to the Department of Mental Health,
17 was evaluated for mental competency. He was found to be
18 competent.

19 Upon my review of the case, we started talking about
20 the prescription meds that he was taking. I reached out
21 to Doctor David Eagerton, who is a, a forensic
22 toxicologist, to kind of advise me on the effects of the
23 medications and any interactions that those would of had,
24 whether or not they would have interacted in a negative
25 way, and he, he kind of gave me the opinion that, you

1 know, the, the medications that he would prescribe were
2 being prescribed in a legitimate way for, you know,
3 legitimate medical purposes.

4 Q. When -- in terms of trying the case, were you, were
5 you able to try the case, prepared?

6 were you able to go forward to jury trial?

7 A. I, I was ready to try the case. The propriety of
8 actually trying the case I think was not good just because
9 of the, the evidence against us. It was a hard decision
10 for Mr. Lee and we had long conversations about that.

11 But, yes, we were prepared to go forward at trial.

12 Q. And the presence of a life sentence -- well, was that
13 the inducement to get him to plead guilty or was it just
14 here's the case, it's not gon' go your way?

15 A. I, I think that I probably did advise Mr. Lee, you
16 know, based on my experience, recent verdicts and
17 historical sentences that we had seen after guilty
18 verdicts on murder cases that, you know, I believe that he
19 would receive a life sentence. Certainly that's, you
20 know, my experience.

21 And so that's gonna be in my advice to him. And, you
22 know, 30 years at 47 years old is nothing to shake a stick
23 at by any means. But it's not life.

24 Q. And, and this transcript outlines questions that were
25 asked by the judge to Mr. Lee.

74 Michael Berry - Direct examination
By Mr. Richey

1 Did you in any way tell him how to answer these
2 questions?

3 A. I, I would never tell a client how to answer
4 questions.

5 Q. And was these answers, from your understanding, his
6 answers?

7 A. They would of been.

8 Q. And, and from your understanding, he wanted to go to
9 trial up to a certain point in this case, right?

10 A. We were talking up until, as he said, the, the Friday
11 before and he, he made that decision.

12 MR. RICHEY: Okay. One moment, Your Honor, please.

13 (Pause.)

14 MR. RICHEY: Answer any questions the attorney
15 general has for you.

16 CROSS-EXAMINATION

17 BY MS. FLORES:

18 Q. Good afternoon.

19 So, how long have you been practicing law?

20 A. Thirteen years this week.

21 Q. Congratulations.

22 About how much of that has been in criminal law?

23 A. All 13 years.

24 Q. And were you appointed or retained in this case?

25 A. I've always been with the Public Defender's Office.

1 So, it would of been appointed.

2 Q. Okay. And about how long before entering this guilty
3 plea were you appointed?

4 A. So, again, I would of started representing Mr. Lee in
5 August of 2020 and we entered the guilty plea on
6 October 17th of 2022.

7 Q. And did you review all the discovery in this case
8 with applicant?

9 A. Everything that I had in my possession, yes.

10 Q. And during your meetings with the applicant, did he
11 seem to have a good understanding of everything that you
12 reviewed with him?

13 A. We, we discussed the case and he was very active and
14 involved in it. I, I sent him case law as I do with
15 clients who raise issues to me so that they can have an
16 understanding of where I'm coming from before I meet with
17 them and go over it.

18 So, I gave him case law. We discussed that and --
19 but we would of discussed any questions he had as well.

20 Q. Okay. And did your client ever indicate to you that
21 he wanted to go to trial or plead guilty?

22 A. We were a trial all throughout my representation
23 though. I think the hope was that the charge would be
24 reduced to a voluntary and we did offer that to the
25 prosecutor. I offered that quite early on after I got the

1 case. Tried to obtain that for Mr. Lee over the two years
2 that I did represent him and we were not able to get them
3 to reduce the charge.

4 Q. In your opinion, do you think the State had a strong
5 case against the applicant?

6 A. Absolutely.

7 Q. Do you recall -- what is your recollection of the
8 State's evidence in their case that they were forming?

9 A. Well, they did have cellphone evidence. They had
10 messaging from an online website wherein Mr. Lee and the
11 victim had been chatting for several weeks leading up to
12 the, the date of the incident where they had arranged this
13 particular day for them to meet up.

14 She was going to travel down from -- I, I believe she
15 was staying in a hotel in South Park in Charlotte and she
16 was going to travel down to Gaffney to Mr. Lee's residence
17 and they were going to meet. That, that occurred. The,
18 the incident happened.

19 Afterwards, Mr. Lee, as he kind of alluded to, his
20 oldest son -- he actually had moved the, the victim's car
21 from his property and took it to a, a -- another property.
22 And so there was some concealment there that they were
23 gonna be able to show. And, again, the, the statements,
24 the varying statements, that Mr. Lee gave.

25 Q. And did you in any way coerce or threaten Mr. Lee

1 into taking this plea?

2 A. No.

3 Q. Did you in any way advise him that he should only
4 answer yes to the judge's questions?

5 A. No.

6 Q. And did you see any reason to have a second
7 competency evaluation conducted?

8 A. No.

9 Q. Did, did applicant ever inform you that he wished to
10 appeal his convictions or sentences?

11 A. He did not.

12 Q. And did you review applicant's constitutional rights
13 with him and the ones that he would be forebearing in
14 entering his guilty plea?

15 A. I would have, yes.

16 Q. And do you stand by your representation of the
17 applicant?

18 A. Yes.

19 MS. FLORES: No further questions, Your Honor.

20 MR. RICHEY: No questions.

21 THE COURT: May this witness be excused?

22 MS. FLORES: Yes, Your Honor.

23 MR. RICHEY: No objection.

24 THE COURT: Thank you, sir.

25 THE WITNESS: Thank you, judge.

1 THE COURT: All right. Any other witnesses, Mr.---

2 MR. RICHEY: No other witnesses, Your Honor.

3 MS. FLORES: No further witnesses, Your Honor.

4 THE COURT: All right. Thank you.

5 You want to make any closing statements or you just
6 want to do it on the merits?

7 MR. RICHEY: Do it on the merits, Your Honor.

8 MS. FLORES: On the merits, Your Honor.

9 THE COURT: I'll give you a decision once I've read
10 through this.

11 Thank you very much.

12 MS. FLORES: Thank you, Your Honor.

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14 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

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3 I, Pamela E. Green, Official Court Reporter for the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate and complete Transcript of
6 Record of the proceedings had and evidence introduced in
7 the trial of the captioned case, relative to appeal, in
8 the Court of Common Pleas Nonjury for Cherokee County,
9 South Carolina, on the 3rd day of September, 2024.

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

12
13
14
15 February 12th, 2025
16
17
18

19 _____
20 PAMELA E. GREEN, Court Reporter
21
22
23
24
25

any constitutional violations or deprivations entitling him to any form of relief. Accordingly, this Court denies relief and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Cherokee County Clerk of Court. During its June 2020 term, the Cherokee County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2023-GS-11-0619). Applicant was represented by Michael Anthony Berry, Esquire. Deputy Solicitor Adrienne Elizabeth Barry of the Seventh Circuit Solicitor's Office prosecuted the case.

On October 17, 2022, Applicant appeared before the Honorable R. Keith Kelly and pled guilty as indicted. Judge Kelley sentenced Applicant to a negotiated sentence of 30 years' imprisonment on the murder charge and a term of five years' imprisonment for the possession of a weapon during the commission of a violent crime, to run concurrently.

Applicant did not appeal his convictions or sentences.

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:

Your Honor, this began on September 24, 2019, when Jamie was reported missing to the Charlotte-Mecklenberg Police Department by one of her friends. They phoned the police department and stated that Jamie was going to Charlotte. She worked as an escort, and she was going to Charlotte to work. And they had not heard from her when she was supposed to be in contact. Law enforcement also spoke with Jamie's family, and they also stated that they had not received contact from Jamie after the morning of the 24th. So the investigation began in Charlotte. They were provided identifying information, and they were able to determine that Jamie checked into a hotel in Charlotte. She had made it there. They were able to track her credit card transactions. She had been to restaurants in the

area. And they were actually able to find her car on a tag reader. So they knew that she had made it to Charlotte when she said she was going to be there. When they went to the hotel, she had not checked out. The hotel had taken her items out of her hotel room and packed them into a storage unit. They were able to get an exigent circumstances warrant for one of her cell phones. When they got that, they were able to determine that the last phone calls and the last text messages that Jamie had sent had been to a Marshall Lee. And they were able to ping her phone and show that she had actually made it to Mr. Lee's residence. Your Honor, that has been marked as State's Exhibit 1. Mr. Berry has been provided that in discovery. I believe that is without objection. And on that map, Your Honor, what it shows is her phone comes to the address of [REDACTED] Union Highway, which is the address of Mr. Lee. It actually makes it to the front door. At some point the phone turns off between 10:00 and 11:00. It remains off for about an hour-and-a-half. They're able to determine that Jamie has made it to Charlotte, and then she has made it to [REDACTED] Union Highway, located here in Cherokee County. They're able to determine that is Marshall Lee's residence. They're able to look at the phone number to just verify that it is Mr. Lee and it is. And they notify officers with the Gaffney Police Department that there is information that Jamie may have had contact with Mr. Lee. Gaffney then goes to Mr. Lee's residence, and they speak with him. He states that he was supposed to meet her but she never showed. They noted that Mr. Lee was extremely nervous when he was speaking with them. Something didn't feel right to them. So they notified the Sheriff's Office here in Cherokee County and let them know what they had been told by law enforcement in Charlotte and what they had observed. And Cherokee County gets a search warrant for Mr. Lee's property based off of that information. When they go there, Mr. Lee is at that location. They actually go on September the 26th of 2019. Mr. Lee is at that residence with his wife and his two children. The two children are told to leave. And law enforcement notices when they round the house that something is dead. So they know that something is out in a gully behind Mr. Lee's residence. They actually go into the woods and are able to ultimately find a body laying under an artificial Christmas tree and a layer of insulation, Your Honor. And what I have done, I have marked State's Exhibits 2, 3 and 4. And this is where they ultimately find Jamie's body. That has also been shared with Mr. Berry in discovery. I believe that is without objection. What they do is they removed the Christmas tree. They take pictures throughout the uncovering. And what they ultimately find is the body of Jamie. It was extremely decomposed at that time. The coroner arrives. They take her and an autopsy is performed on her. And what the autopsy reveals, she is shot one time in the stomach. There's an exit wound

in her right lower back. And then she is shot twice in the head, Your Honor. Both of those bullets or fragments were found lodged in her head during the autopsy. When they find Jamie, Mr. Lee is in one of the detective's cars at the time. He maintains that she never showed. And then it becomes: Well, she said that she was here, she texted me. And when I looked out the window, she wasn't there. And then it becomes: I don't remember what happened. So Mr. Lee gives several statements throughout this investigation. And it begins with: He never saw her, she never arrived. And then it becomes: She arrived but then she left. And the ultimate statement or the next statement is that she arrived, and after she arrived he blacked out. And when he came to, he had a gun laying next to him. There were dogs barking in his backyard. And he went to see what the dogs were barking at. He saw a trail of blood. He followed that trail of blood, and there was her body. And he covered it up with the insulation and the Christmas tree. And the last statement that Mr. Lee gives is a statement where she showed up. She stated that she had a flat tire. He went out there to help her with the flat tire, and there was a man with her. He doesn't know in his statement if he came with her or if she picked him up on the road somewhere. When he is helping change the tire, he states that the man attempted to rob him. He runs to his house. The man chases him, and he is able to get into his house, get his wife's .22 pistol. When he comes outside, the man is attempting to come on to the porch. When he sees Mr. Lee with the gun, he runs around the house and goes into the woods but Jamie is still there in the front yard. He states she attempted to grab him. He threw her off and shot her. And he goes into the woods. And when he can't find the man, he comes back to Jamie. She's still alive, and he shoots her twice more. In preparing this case, we received photographs from the hotel where Jamie's clothing was. There's no clothing belonging to a man. There's no items belonging to a man in those belongings. We have phone records for Jamie. There's no conversation between her and a man that would indicate that someone was coming with her. So we don't actually know what happened on the 23rd, Your Honor, between Mr. Lee and Jamie. We do know that he shot her, and she is dead.

(Plea Tr. pp. 7 - 11).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief filed on July 21, 2023, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.

- a. Failure to Investigate.¹
- i. "I told my public defender Mr. Whechel not long after I was arrested that there was a drink cup in the victims (*sic*) car from QT store. Mr. Whechel left the Cherokee County Public Defenders office a few month (*sic*) later. I was given a new Public Defender Mr. Berry. I told him the same thing. I was told that there really know (*sic*) way to pin point what QT the victim stopped at. But if the law can pin point the victims (*sic*) phone at my address why couldn't they do the same with what QT she stopped at. And the video from that store could prove without a doubt (*sic*) that there was in fact a male subject was (*sic*) with the victim, also why was there know (*sic*) finger pints done where I said the male subject touched the victims (*sic*) car as well touched (*sic*) my truck? That is two big factors that could prove I was acting in self defense."
 1. "victim came to my home with a male friend."
 2. "victim had a flat tire"
 3. "I changed tire (more on additional paper)" "[t]he male and I changed the tire"
 4. "The male and I got into a fight"
 5. "The male thoug (*sic*) a pip (*sic*) at me near the back of my home"
 6. "victim came at me from behind me"
 7. "I shot at same time as victim grabed (*sic*) me. Victim was trough (*sic*) in between me and male subject and she got shot by accident"
 8. "Yes, I got scared and did not know what to do and tried to cover it all up."

Applicant raised the following additional allegations in an amended application received by Respondent on August 26, 2024:

1. Trial Counsel was ineffective for failure to investigate the charges and facts of the case.
2. Trial Counsel was ineffective for not properly communicating with him about his case.
3. Trial Counsel was ineffective for not presenting a self-defense in his case.

¹ Applicant sets forth his allegations in a memorandum attached to his application for post-conviction relief. Respondent construes these allegations to be a claim that Plea Counsel was ineffective for failing to investigate the facts and circumstances surrounding the crime for which he was charged.

4. Trial Counsel was ineffective for not moving to suppress statements that the Applicant gave law enforcement.
5. Trial Counsel was ineffective for inducing the Applicant to plead guilty under the threat of a life sentence.
6. Trial Counsel was ineffective for not presenting a defense of accident.

Applicant requests relief in the form of having his "murder charge dropped down and less time."

Before this Court is the Cherokee 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, and the records of Applicant's current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (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).

² 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).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117—18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[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 was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCF (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 finds Applicant's testimony at the evidentiary hearing generally **not credible and not persuasive**. 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, 104 S.Ct. 2052; 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 understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 2-12); 2. Applicant clearly indicated he was satisfied with his attorneys (Plea Tr. pp. 6-7); 3. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 4-5); 4. Applicant indicated he had enough time with his attorneys (Plea Tr. p. 6); 5. Applicant indicated his attorneys answered all of his questions, and he had no more questions for them (Plea Tr. p. 6); 6. Applicant indicated no promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. pp. 5-6); 7. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 3); 8. Applicant understood the range of sentencing (Plea Tr. pp. 3-4); 9. Applicant did not disagree with the facts surrounding the State's case against him, and apologized (Plea Tr. pp. 12-15); 10. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 12).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation 1: Plea Counsel Failed to Investigate

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate the charges and facts surrounding the case. Specifically, Plea Counsel should have investigated a cup that was allegedly in the victim's car from "the QT store;" and the fingerprints that allegedly existed on his and the victim's cars. This Court finds these allegations are without merit.

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011); see id. at 457, 710 S.E.2d at 64–65 ("While our case law does provide that defense counsel must, at a minimum, interview potential witnesses, a strict adherence to that rule loses sight of the controlling standard for counsel's duty to investigate: reasonableness. Indeed, it would be an absurdity to require criminal defense lawyers to interview *every* potential witness when they can articulate reasonable grounds not to. When counsel makes such a reasonable decision, he will have fulfilled the duty he owes to his client.").

"In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691; cf. Green v. French, 143 F.3d 865, 892 (4th Cir. 1998) ("Although counsel should conduct a reasonable investigation into potential defenses, Strickland does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client."), abrogated on other grounds by Williams v. Taylor, 529 U.S. 362 (2000).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. See Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited

to reasonable investigation."). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690–91; see id. ("In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

Based on the record before this Court and Plea Counsel's **credible** testimony, this Court finds that Plea Counsel's investigation was reasonable. See Taylor, 404 S.C. at 364, 745 S.E.2d at 104 (citing Wiggins v. Smith, 539 U.S. 510, 522–23 (2003)). This Court will not credit Applicant's present claim that he would have gone to trial absent Plea Counsel's alleged failure to investigate, as Applicant has failed to present evidence of any discoverable matters or defenses Plea Counsel would have discovered had he been more prepared. This Court further finds Applicant has offered little more than mere speculation, and speculation does not meet Applicant's burden. Therefore, the Court finds Applicant failed to adequately show that he would have opted to go to trial but for Plea Counsel's lack of investigation.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's investigation, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea.

Accordingly, this Court finds Plea Counsel's representation of Applicant was not deficient, and he performed a reasonable investigation. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation 2: Plea Counsel Failed to Properly Communicate.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to properly communicate with him about his case. This Court finds this allegation is without merit.

The voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel; the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

At Applicant's plea hearing, the following colloquy between Applicant and the plea court occurred:

- Q: You know what you're doing here today?
A: Yes, sir.
Q: And he's been sworn, madam clerk?
A: (The Clerk) Yes, sir.

Q: Mr. Lee, the Government says in the indictment 2020-GS-11-0619, that you did, in Count 1, that you did in Cherokee County, South Carolina between the dates of September 23rd and 26th of 2019, feloniously, willfully, and with malice aforethought killed Jamie -- is it Buser? [...] By shooting the victim and that the victim died as a proximate result thereof. In violation of South Carolina law. Count 2 alleges that you did in the same county and state and same date possess a firearm during the commission of a violent crime as defined by state law, that being murder, in violation of South Carolina law. The Grand Jury considered the matter and returned a true-billed indictment. As to Count 1, on the murder, it's my understanding that you are offering to plea as indicted. It is violent by definition. It is most serious by definition. It carries from 30 years up to life without possibility of parole. You and your lawyer and the Government have negotiated a 30-year sentence to run concurrent with Count 2. Is that your understanding?

A: Yes, sir.

Q: Count 2, about the possession of a weapon, you're pleading as indicted. It's non-violent by definition. It carries with it five years. You, your lawyer, and the Government negotiated a five-year concurrent sentence. Is that your understanding?

A: Yes, sir.

Q: Sir, you have a right to a trial by jury, and that's why I'm here this week. I'm assigned here for jury trial. We have a jury coming in tomorrow morning. Your case is first up. Do you want a trial tomorrow morning beginning at 9:00 a.m.?

A: No, sir.

(Plea Tr. pp. 3-4).

At the evidentiary hearing on direct examination, Applicant testified he met with Plea Counsel approximately three times. Applicant testified Plea Counsel did not supply him with a copy of his discovery until two years into their relationship. Applicant testified that Plea Counsel did explain what the State would have to prove if he went to trial. Applicant testified that he discussed the statements he gave to law enforcement with Plea Counsel prior to entering his guilty plea. Applicant testified that he discussed his negotiated thirty-year day for day sentence with Plea Counsel.

On direct examination, Plea Counsel credibly testified he met with Applicant more than ten times. Plea Counsel credibly testified that he discussed a defense of self-defense with Applicant. Plea Counsel credibly testified to his denial of Applicant's allegation that he erroneously advised Applicant regarding self-defense. Plea Counsel credibly testified that it was hard to try Applicant's case due to the amount of evidence the State had against him. Plea Counsel credibly testified that he advised Applicant that pleading guilty was in his best interest, based upon his experiences and previous historical verdicts. Plea Counsel credibly testified that it was likely that Applicant could have been sentenced to life had he proceeded to trial.

On cross examination, Plea Counsel credibly testified that he has been practicing criminal law for thirteen years. Plea Counsel credibly testified that he was appointed to represent Applicant in August of 2020. Plea Counsel credibly testified that he and Applicant discussed his case, and that Applicant was active and involved in those discussions. Plea Counsel credibly testified that he was unable to get the Solicitor to reduce Applicant's charges. Plea Counsel credibly testified that the State had a strong case against Applicant including: cellphone evidence; messages between Applicant and the victim from an online messaging site; evidence that the victim was traveling from a hotel in Charlotte, NC; evidence that Applicant met with the victim; evidence that Applicant's son moved the victim's car from Applicant's property after the commission of the crime; and the various statements that Applicant gave to law enforcement.

This Court finds the combination of the record and Plea Counsel's credible testimony at the evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin. See Boykin supra. Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's alleged erroneous advice. The plea transcript reflects that Applicant entered his

plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Plea Counsel's **credible** testimony indicates he met with Applicant several times and thoroughly informed Applicant of his charges, the elements of the crimes, and potential trial strategy of self-defense. Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Moreover, to whatever extent Applicant was not entirely satisfied with the amount of time spent in consultation with Plea Counsel, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea. This Court further finds Applicant has failed to meet his burden of showing Plea Counsel was constitutionally ineffective for failing to meet with Applicant a sufficient number of times. See Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte); Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) ("Brevity of time spent in consultation, without more, does not establish that counsel was ineffective.").

Furthermore, this Court finds Applicant has failed to meet his burden of showing Plea Counsel was constitutionally ineffective for failing to explain the strengths of the State's case, for failing to explain the elements of murder, and for failing to discuss a trial strategy. Plea Counsel **credibly** testified that he and his team thoroughly explained what the State had stacked against him, the elements of murder, and their potential trial strategies.

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 3: Plea Counsel Failed to Present Defense of Self-Defense.

Applicant alleges Plea Counsel provided constitutionally ineffective assistance of counsel where he failed to present a defense of self-defense.

At the evidentiary hearing on direct examination, Applicant testified that after doing

research on his tablet while incarcerated, he did not believe the facts of his case aligned with a murder charge. Applicant testified that he met the victim online, as he had done with other individuals prior. Applicant testified that he had never had issues with anyone, until the victim arrived at his home accompanied by another man. Applicant testified that the shooting was an accident. Applicant testified that on the night of the shooting, he was changing victim's tire when a man attacked him.

Applicant testified that Plea Counsel informed him that he could not prove another man was there. Applicant testified that he informed Plea Counsel about a bar that was thrown at him and about a cup that was allegedly in the victim's car. Applicant testified to his belief that Plea Counsel should have had the scene tested for fingerprints to prove the existence of a man at the scene.

At the evidentiary hearing, Plea Counsel **credibly** testified that he discussed a defense of self-defense with Applicant. Plea Counsel **credibly** testified to his denial of Applicant's allegation that he erroneously advised Applicant regarding self-defense. Plea Counsel **credibly** testified that Applicant gave multiple versions of the events including some that referenced self-defense. Plea Counsel **credibly** testified to his understanding of Applicant's primary version of events was that Applicant shot the victim, then chased the man who was allegedly with the victim on the scene before returning to the victim's body where he shot her two additional times while she was lying on the ground.

Further, Plea Counsel **credibly** testified that the State had a strong case against Applicant including: cellphone evidence; messages between Applicant and the victim from an online messaging site; evidence that the victim was traveling from a hotel in Charlotte, NC; evidence that Applicant met with the victim; evidence that Applicant's son moved the victim's car from

Applicant's property after the commission of the crime; and the various statements that Applicant gave to law enforcement. Plea Counsel **credibly** testified that he was unable to get the Solicitor to reduce Applicant's charges.

This Court finds Plea Counsel's representation with regard to this allegation was not deficient. This Court finds the record is without any evidence that Applicant's charge of murder was not an appropriate charge. The record provides Applicant gave at least four versions of events of the incident to law enforcement. At a minimum, this Court finds that Applicant is **not credible**. In one of Applicant's iterations on the events during the incident, the victim and a male showed up at his home with a flat tire. As Applicant assisted in changing the tire, the male attempted to rob him. Allegedly, Applicant ran to his home with the man chasing him. Applicant then retrieved a .22 caliber pistol and exited his home as the male was attempting to come on to the porch. The male saw the gun and fled to the woods.

Applicant allegedly then searched in the woods but could not find the male assailant. The victim was in the front yard. Applicant alleges that when he returned she attempted to grab him and he threw her down and shot her. Applicant alleges he went back to the woods in search of the male thereafter. When he could not find the male, he returned to the victim and shot her twice more in the head. The victim was subsequently found buried under debris in the woods close to Applicant's home. Applicant alleges, under this version of events, that had Plea Counsel further investigated evidence that potentially existed, Applicant could have proved without a doubt that there was a male subject with the victim at the crime scene.³ Applicant contends this could have

³ The State presented that they discovered no evidence of the existence of a male suspect during their investigation at Applicant's plea hearing. "In preparing this case, we received photographs from the hotel where Jamie's clothing was. There's no clothing belonging to a man. There's no items belonging to a man in those belongings. We have phone records for Jamie. There's no

proved he was acting in self-defense in murdering the victim.

This Court construes this allegation to be that Plea Counsel was ineffective for waiving Applicant's right to an immunity hearing under S.C. Code Ann. §§ 16-11-440(C) and 16-11-450. The "Protection of Persons and Property Act" (the Act) provides that "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force." S.C. Code Ann. § 16-11-450. The Act further provides, in part, that:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C). "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard[.] "State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (citing State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011)).

Where a defendant seeks treatment under § 16-11-440(C), it is not enough for a defendant to establish that he was "not engaged in an unlawful activity" and was in a "place where he has a right to be." Rather, "[c]onsistent with the Castle Doctrine and the text of the Act, *a valid case of self-defense must exist*, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity" save the duty to retreat. Id., 406 S.C. at 371, 752 S.E.2d at 266 (emphasis added). Notwithstanding the Act or other provisions of law, in order to establish self-defense, the defendant must show (1) he was without fault in bringing

conversation between her and a man that would indicate that someone was coming with her." (Plea Tr. p. 11).

on the difficulty; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief; and (4) he had no other probable means of avoiding the danger. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997).

That a defendant was engaged in unlawful activity at the time of the incident does not in and of itself defeat a claim for immunity. Rather, where a defendant was engaged in unlawful activity at the time of the incident, the trial court must consider whether the unlawful activity was the proximate cause of the incident. A person who is otherwise acting lawfully is not deprived of the right to self-defense by merely incidental illegality. State v. Glenn, 429 S.C. 108, 120-21, 838 S.E.2d 491, 497-98 (2019) (citing State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994)).

Even construing the facts presented in the light most favorable to Applicant, the facts are not sufficient to warrant the issue of self-defense being considered. The second element required to establish self-defense is an actual belief that the individual is in imminent danger of losing his life or sustaining serious bodily injury. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). Victim's autopsy revealed that she was shot one time in the stomach and twice in the head. (Plea Tr. p. 10). During Applicant's plea hearing, the version of facts accepted by both Applicant and the court as the truth established "[Applicant] states [Victim] attempted to grab him. He threw her off and shot her. And he goes into the woods. And when he can't find the man, **he comes back to [Victim]. She's still alive, and he shoots her twice more.**" (Plea Tr. pp. 10-11) (emphasis added). Therefore, it is clear that Applicant was not in any imminent danger of losing his life or sustaining serious bodily injury at the time that he killed Victim.

Accordingly, in addition to finding Applicant's testimony **not credible**, this Court further

finds that Applicant has failed to establish facts sufficient to warrant the issue of self-defense being considered. This Court finds Plea Counsel's representation of Applicant was not deficient, nor did Applicant demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation 4: Plea Counsel Failed to Suppress Applicant's Statements to Law Enforcement.

Applicant alleges Plea Counsel provided constitutionally ineffective assistance of counsel because he failed to move to suppress Applicant's statements to law enforcement. This Court finds this allegation is without merit.

In his amended application, Applicant raised the allegation that Plea Counsel was ineffective in his representation, where he did not motion to suppress the various statements that Applicant gave to law enforcement. Notably, Applicant entered his guilty plea the day before he was set to go to trial, waiving his right to present any defenses he may have had the opportunity to present there. Irrespective of that fact, Applicant provided no further evidence to support his claim during his evidentiary hearing.

This Court finds Plea Counsel's representation with regard to this allegation was not deficient. This Court finds the record is without any evidence that Applicant's statements could have been suppressed had Applicant wished to proceed to trial or that Applicant would have proceeded to trial but for Plea Counsel's alleged failure. The record reflects that Applicant pled freely, knowingly, intelligently, and voluntarily. Applicant admitted he discussed his charges with Plea Counsel (Plea Tr. pp. 6-7). Applicant testified that he understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 4-5). Applicant admitted that he had enough time with his attorneys (Plea Tr. p. 6). Applicant indicated his attorneys answered all of his questions, and he had no more questions for them (Plea Tr. p. 6). Applicant acknowledged no

promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. pp. 5-6). Applicant testified that he was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 3). Applicant understood the range of sentencing (Plea Tr. pp. 3-4). Applicant agreed with the facts surrounding the State's case against him and apologized (Plea Tr. pp. 12-15). Applicant informed the court that he did not wish to proceed to a jury trial as he was scheduled to do the following day (Plea Tr. p. 4). Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 12).

Applicant has failed to establish any prejudice from the alleged failure to communicate with him the prospects of suppressing his statements to law enforcement. Specifically, he has failed to substantiate the claim that he would have proceeded to trial but for Plea Counsel's alleged failure. Applicant has failed to show how the motion would have been successful and has also failed to support his argument with any corroborating evidence. Thus, any assertion of prejudice is not objectively reasonable. *See Fugit*, 703 F.3d at 260 (4th Cir. 2012) (internal quotation marks omitted) cert denied, 134 S.Ct. 999 (2014) citing *Padilla v. Kentucky*, 559 U.S. 356, 372 (2009). ("The challenger's subjective preferences, therefore, are not dispositive; what matters is whether proceeding to trial would have been objectively reasonable in light of all of the facts." *Fugit*, at 260).

Accordingly, this Court finds Plea Counsel's representation of Applicant was not deficient, nor did Applicant demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation 5: Involuntary Guilty Plea.

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntarily rendered. Specifically, Applicant alleges Plea Counsel coerced his guilty plea by informing him that he would receive a sentence of thirty-years' imprisonment if he proceeded to trial.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the

analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

As an initial matter, this Court finds the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. This Court further finds Applicant was fully aware of the minimum and maximum sentencing ranges on all charges that he pleaded guilty to. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel told him he would receive a thirty-year sentence if he proceeded to trial. Applicant testified that Plea Counsel told him how to answer the court's questions at his guilty plea hearing. This Court finds Applicant's testimony on this matter **not credible**.

Plea Counsel **credibly** testified that he discussed Applicant's negotiated thirty-year day for day sentence with him. Plea Counsel **credibly** testified that he would never tell a client how to answer questions at their plea hearing, and that Applicant's answers were his own. Plea Counsel **credibly** testified that he reviewed discovery with Applicant. Plea Counsel **credibly** testified to discussing the case with Applicant, and that Applicant was active and involved in those discussions. Plea Counsel **credibly** testified that he reviewed Applicant's constitutional rights with

him. Plea Counsel **credibly** testified that he did not coerce or threaten Applicant to induce his guilty plea.

This Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993).

Furthermore, this Court finds the combination of the record and Plea Counsel's **credible** testimony at the evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin v. Alabama, 395 U.S. 238 (1969) and Roddy v. State, 339 S.C. 29 (2000). Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Notably, Applicant did not allege any facts tending to prove he was prevented from informing the plea court of any of the issues he now alleges against Plea Counsel. In fact, the record refutes Applicant's allegations. Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and

voluntarily pled guilty.

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 6: Plea Counsel Failed to Present Defense of Accident.

Applicant alleges Plea Counsel provided constitutionally ineffective assistance of counsel because he failed to present a defense of accident. This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified that after doing research on his tablet while incarcerated, he did not believe the facts of his case aligned with a murder charge. Applicant testified that he met the victim online, as he had done with other individuals prior. Applicant testified that he had never had issues with anyone, until the victim arrived at his home accompanied by another man. Applicant testified that the shooting was an accident. Applicant testified that on the night of the shooting, he was changing victim's tire when a man attacked him.

Applicant testified that Plea Counsel informed him that he could not prove another man was there. Applicant testified that he informed Plea Counsel about a bar that was thrown at him and about a cup that was allegedly in the victim's car. Applicant testified to his belief that Plea Counsel should have had the scene tested for fingerprints to prove the existence of a man at the scene.

At the evidentiary hearing, Plea Counsel **credibly** testified that he discussed a defense of self-defense with Applicant. Plea Counsel **credibly** testified to his denial of Applicant's allegation that he erroneously advised Applicant regarding self-defense. Plea Counsel **credibly** testified that Applicant gave multiple versions of the events including some that referenced self-defense. Plea

Counsel **credibly** testified to his understanding of Applicant's primary version of events was that Applicant shot the victim, then chased the man who was allegedly with the victim on the scene before returning to the victim's body where he shot her two additional times while she was lying on the ground.

Further, Plea Counsel **credibly** testified that the State had a strong case against Applicant including: cellphone evidence; messages between Applicant and the victim from an online messaging site; evidence that the victim was traveling from a hotel in Charlotte, NC; evidence that Applicant met with the victim; evidence that Applicant's son moved the victim's car from Applicant's property after the commission of the crime; and the various statements that Applicant gave to law enforcement. Plea Counsel **credibly** testified that he was unable to get the Solicitor to reduce Applicant's charges.

This Court finds Plea Counsel's representation with regard to this allegation was not deficient. This Court finds the record is without any evidence that Applicant's charge of murder was not an appropriate charge. The record provides Applicant gave at least four versions of events of the incident to law enforcement. At a minimum, this Court finds that Applicant is **not credible**. In one of Applicant's iterations on the events during the incident, the victim and a male showed up at his home with a flat tire. As Applicant assisted in changing the tire, the male attempted to rob him. Allegedly, Applicant ran to his home with the man chasing him. Applicant then retrieved a .22 caliber pistol and exited his home as the male was attempting to come on to the porch. The male saw the gun and fled to the woods.

Applicant allegedly then searched in the woods but could not find the male assailant. The victim was in the front yard. Applicant alleges that when he returned she attempted to grab him and he threw her down and shot her. Applicant alleges he went back to the woods in search of the

male thereafter. When he could not find the male, he returned to the victim and shot her twice more in the head. The victim was subsequently found buried under debris in the woods close to Applicant's home. Applicant alleges, under this version of events, that had Plea Counsel further investigated evidence that potentially existed, Applicant could have proved that he accidentally murdered the victim.

However, the record makes clear that Applicant acted intentionally in taking the victim's life. Accordingly, in addition to finding Applicant's testimony **not credible**, this Court further finds that Applicant has failed to establish facts sufficient to warrant the issue of a defense of "accident" being considered. This Court finds Plea Counsel's representation of Applicant was not deficient, nor did Applicant demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation 7: Plea Counsel Failed to File an Appeal.

Applicant alleges that he was denied the right to a direct appeal of his plea and sentence. This Court finds this allegation is without merit.

Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a trial, a different standard applies to a guilty plea:

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.

Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to

think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 596, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, "White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served."⁴ Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

At the evidentiary hearing, Applicant testified that he did not tell Plea Counsel that he wished to appeal his convictions or sentences. Plea Counsel corroborated Applicant's testimony and **credibly** testified that Applicant did not request that he file an appeal.

The Court finds Applicant has not met his burden of proving that he requested an appeal by a preponderance of the evidence. See Rule 71.1(e), SCRPC. Because Applicant has not shown that he actually requested an appeal, Plea Counsel was not ineffective for failing to file one. See Kinard v. State, 418 S.C. 478, 481, 795 S.E.2d 15, 16 (2016).

⁴ White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Furthermore, based upon the record before this Court and testimony presented at the evidentiary hearing, this Court finds Applicant has failed to show extraordinary circumstances existed that would have warranted an appeal. 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]

CONCLUSION

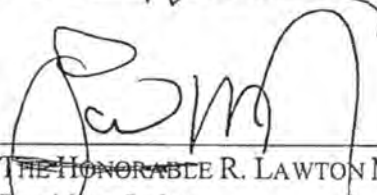
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

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.

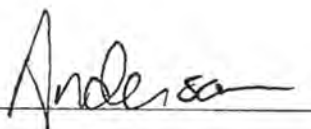
IT IS THEREFORE ORDERED:

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 22 day of November, 2024.



 THE HONORABLE R. LAWTON MCINTOSH
 Presiding Judge
 Seventh Judicial Circuit


 _____, South Carolina

FILED IN OFFICE OF
 CLERK OF COURT
 GERRARD COUNTY, S.C.
 2024 DEC -2 A 8:06
 GRANDY W. MOBLEE

WITNESSES
K. J. Sibley
Cherokee County Sheriff's Office

ARREST WARRANT NUMBER
2019A1110101132 - Count One
2019A1110101133 - Count Two

ACTION OF GRAND JURY
TRUE BILL

[Signature]
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 23 CS-17-00619

The State of South Carolina
County of Cherokee
Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

June 4, 2020 TERM

THE STATE

vs.

MARSHALL DEPREE LEE

Indictment for

MURDER (COUNT ONE) AND
POSSESSION
OF WEAPON DURING COMMISSION OF A
VIOLENT CRIME (COUNT TWO)

SC Code: 16-03-0010, 0020; 16-23-490
CDR CODE: 116; 0549
CLASS: FEL-EXM; FEL/F

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2020 JUN -4 AM 11:29

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on June 4, 2020, the
 Grand Jurors of Cherokee County present upon their oath:

COUNT ONE-MURDER

That Marshall Depree Lee did in Cherokee County between September 23, 2019 and September 26, 2019, feloniously, willfully, and with malice aforethought, kill one Jamie Buser, by shooting the victim, and that the victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

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

That Marshall Depree Lee did in Cherokee County between September 23, 2019 and September 26, 2019, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: MURDER, in violation of Code §16-23-490, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


 ASSISTANT SOLICITOR

4

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

STATE

VS.

Marshall Degee Lee

AKA: _____

DL#* _____

SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020-GS-11 - 619

AW#: 2019A1110101132

Date of Offense: 8/23-26/2019

S.C. Code §: 16-3-10

CDR Code #: 116

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Murder (30 years - LIFE) NEG: 30 years concurrent

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Shirley Bandy Solicitor SC Bar # 10671 Marshall Degee Lee Defendant Michael A. Berry Attorney for Defendant SC Bar # 80210

WHEREFORE, the Defendant is committed to the State Department of Correction County Detention Center,

for a determinate term of 30 days/months/years/Time Served Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

1118 days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Marshall Depree Lee INDICTMENT/CASE#: 2020 -GS- 11 - 619

SPECIAL CONDITIONS:

- PTUP after _____ months/years
 And Other Terms Listed Below:
- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
 - Attend Voc. Rehab. Or Job Corp No Contact with Victim Domestic Violence Intervention Program
 - Mental Health Counseling May serve W/E beginning: _____
 - Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____ days/hours
 - Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
 - Other: _____

- RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	_____	\$ _____
§14-1-206 (Assessments 107.5%)				\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)			<u>\$100</u>	\$ _____
§14-1-211 (A)(2)(DUI Surcharge)			\$100	\$ _____
§56-5-2995 (DUI Assessment)			\$12	\$ _____
§56-1-286 (DUI Breath Test)			\$25	\$ _____
§14-1-212 (Law Enforce. Funding)			<u>\$25</u>	\$ _____
§14-1-213 (Drug Court Surcharge)			\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)			\$41	\$ _____
§50-21-114 (BUI Breath Test Fee)			\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)			\$40/ea	\$ _____
3% to County (if paid in installments)			TBD	\$ <u>3.75</u>
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees			\$500	\$ _____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund			TBD	\$ _____
		TOTAL		<u>\$128.75</u>

Clerk of Court/Deputy Clerk: Brandy W. McBee
 Court Reporter: Lora McDaniel

Presiding Judge: S. Keith Kelly
 Judge Code: 2105
 Sentence Date: October 17, 2022

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

STATE

VS.

Marshall Depree Lee

AKA:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020-GS-11 - 618(A)

AW#: 2019A1110101133

Date of Offense: 9/23-28/2019

S.C. Code §: 16-23-490

CDR Code #: 649

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death (5 years) NEG: 5 years concurrent

In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Adrian Berry 101671 Marshall Depree Lee Michael A. Berry 80210
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #
Michael A. Berry

WHEREFORE, the Defendant is committed to the State Department of Correction County Detention Center,

for a determinate term of 5 days/months/years/Time Served Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

1118 days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 It is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Marshall Depree Lee INDICTMENT/CASE#: 2020 -GS- 11 - 619(A)

SPECIAL CONDITIONS:

- PTUP after _____ months/years
 And Other Terms Listed Below:
- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
- Attend Voc, Rehab. Or Job Corp No Contact with Victim Domestic Violence Intervention Program
- Mental Health Counseling May serve WE beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____ days/hours
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-136.
- Other: _____

- RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	_____	\$ _____
§14-1-206 (Assessments 107.5%)				\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)				<u>\$100</u> \$ _____
§14-1-211 (A)(2)(DUI Surcharge)				\$100 \$ _____
§56-5-2985 (DUI Assessment)				\$12 \$ _____
§56-1-286 (DUI Breath Test)				\$25 \$ _____
§14-1-212 (Law Enforce. Funding)				<u>\$25</u> \$ _____
§14-1-213 (Drug Court Surcharge)				\$150 \$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)				\$41 \$ _____
§50-21-114 (BUI Breath Test Fee)				\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)				\$40/ea \$ _____
3% to County (if paid in installments)				TBD \$ <u>3.75</u>
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees				\$500 \$ _____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund				TBD \$ _____
				TOTAL \$ <u>128.75</u>

Clerk of Court/Deputy Clerk: Brandi W. McBee
 Court Reporter: Lara McDaniel

Presiding Judge: R. Keith Kelly
 Judge Code: 2105
 Sentence Date: October 17, 2022