

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable Perry H. Gravely, Circuit Court Judge

DONALD MARTIN, III,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000131

APPENDIX

KATHRINE H. HUDGINS
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

D. RUSSELL BARLOW II
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

ATTORNEYS FOR RESPONDENT

RECEIVED

Jun 19 2025

S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) GENERAL SESSIONS
3 COUNTY OF GREENVILLE) OF THE SEVENTH
4) JUDICIAL CIRCUIT
5)
6)
7)
8)
9)
10)

11 THE STATE OF SOUTH CAROLINA,

12 Plaintiff,

13 vs.

14 DONALD MARTIN, III,

15 Defendant.
16 -----

17 October 13, 2022
18 Gaffney, South Carolina
19 (Via webex)
20

21 B E F O R E:

22 HONORABLE R. KEITH KELLY, Judge.
23

24 A P P E A R A N C E S

25 JOEL A. KOZAK, ASSISTANT ATTORNEY GENERAL
For Plaintiff

JACQUELINE A. MOSS, ESQUIRE
For Defendant

Julie A. Cendroski,
Court Reporter III
Seventh Judicial Circuit

I N D E X

WITNESSPAGE

ANNOUNCEMENT OF CASE

By Mr. Kozak

4

PLEA QUALIFICATION

By The Court

5

STATEMENT OF FACTS

By Mr. Kozak

9

COURT ACCEPTS THE PLEA

12

SENTENCING DEFERRED

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CERTIFICATE OF REPORTER

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EXHIBITS

MARKED ENTERED

NO EXHIBITS PROFFERED

1 THE STATE OF SOUTH CAROLINA VS DONALD MARTIN, III

2 (The following proceedings were done via Webex.)

3 THE COURT: Solicitor, do you want to call the
4 case for me, put it on the record? And today's date is
5 the 13th day of October, 2022, and it is 2:05 p.m.
6 We're live on Webex.

7 MR. KOZAK: Yes, sir. Standing before the Court
8 is Donald Martin, III. He is represented by Jackie
9 Moss. He's before you on indictment 2022-GS-11-0506.
10 This is a true billed indictment for murder. He's
11 pleading to the lesser included offense of voluntary
12 manslaughter without negotiation or a recommendation.

13 Pursuant to this plea, two other indictments.
14 2022-GS-11-0504 and 0505 for possession of a weapon
15 during a violent crime and discharging a firearm into a
16 dwelling will be dismissed, Your Honor.

17 THE COURT: Madam Clerk, will you swear him,
18 please?

19 THE CLERK: Yes, Your Honor. Will you please
20 raise your right hand? (Complies.) Do you solemnly
21 swear the information you give to this Court to be the
22 truth, the whole truth, and nothing but the truth so
23 help you God?

24 THE DEFENDANT: Yes, ma'am.

25 THE CLERK: Okay. You may lower your hand. I'm

1 gonna ask that you speak up just a little bit louder so
2 the judge will be able to hear you, okay, and your
3 attorney. Thank you.

4 THE COURT: Sir, you are Donald Martin, III?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Martin, do you agree to do this
7 plea by video?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you agree for your lawyer to
10 appear by video?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Martin, this is what's known as
13 an electronic signature. Do you adopt that as your
14 signature?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And does the State agree to the
17 video?

18 MR. KOZAK: Yes, sir.

19 THE COURT: And does defense counsel agree?

20 MS. MOSS: Yes, Your Honor.

21 THE COURT: Okay. Mr. Martin, the government
22 says in the indictment, 2022-GS-11-0506, that you did,
23 in Cherokee County, South Carolina, on/or about August
24 20 of 2017, willfully, felonously, and intentionally
25 kill the victim, that being KB, with malice

1 aforethought, either expressed or implied, by means of
2 firing a gun and striking the victim in the head as she
3 was inside a dwelling located in Cherokee County, South
4 Carolina, and that the victim did die as a proximate
5 result thereof in violation of South Carolina law.

6 That matter was sent to the grand jury and a true
7 billed indictment was returned. It is my understanding
8 that you are offering to enter a plea to voluntary
9 manslaughter. That carries not more than 30 years. It
10 is violent and it is most serious, and it is a lesser
11 included offense from the crime that is charged. Is
12 that your understanding?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Martin, you are entitled to a
15 trial by jury, and I am assigned and I am the resident
16 judge, and I'm assigned to be in Cherokee County Monday
17 morning and we can pick a jury. Do you want a trial by
18 jury?

19 THE DEFENDANT: No, sir.

20 THE COURT: You have the right to call any
21 witness you choose to testify on your behalf. Do you
22 waive that right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You have the right to confront
25 through cross-examination by your lawyer any witness who

1 would testify against you. Do you waive that right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Sir, you have the right to remain
4 silent under the state constitution and the federal
5 government's constitution. Do you also waive that
6 right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. How do you offer to plead to
9 voluntary manslaughter, guilty or not guilty?

10 MS. MOSS: Your Honor, if I may interrupt. I
11 didn't bring this to your attention. This is a no
12 contest plea under *North Carolina versus Alford*.

13 THE COURT: Okay, thank you. All right, sir. Do
14 you, in fact, enter a plea under *North Carolina versus*
15 *Alford*?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you do so freely, intelligently,
18 and voluntarily?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I don't know anything about this
21 case, but if the Attorney General calls his witnesses,
22 isn't it true there is a substantial likelihood you
23 would be convicted?

24 THE DEFENDANT: Could you say that again for me,
25 sir?

1 THE COURT: I sure can, sir. Isn't it true -- I
2 don't know the facts of this case, but isn't it true
3 that if the Attorney General calls all the witnesses
4 that he has, isn't it true that there is a substantial
5 likelihood that you would be convicted?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. And isn't it also true that
8 you are receiving a beneficial result? You are
9 receiving a benefit by being allowed to plead under the
10 Alford case?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. Is it your decision and your
13 decision alone to enter this plea under Alford?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: How about your lawyer, did she
16 pressure you in any way to enter this plea?

17 THE DEFENDANT: No, sir.

18 THE COURT: Okay. Did she answer all of your
19 questions?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And did she explain to you the burden
22 always remains on the Government to prove your guilt
23 beyond a reasonable doubt?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. And did she also explain to

1 you the elements of the offense known as voluntary
2 manslaughter?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has she done everything she can to
5 help you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Are you satisfied with her services?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any complaints to make
10 against her?

11 THE DEFENDANT: No, sir.

12 THE COURT: Okay. Please listen to the Attorney
13 General. I'll come back and ask you a couple more
14 questions in a few moments.

15 Mr. Kozak, you have the floor.

16 MR. KOZAK: Thank you, Your Honor. On August 20,
17 2017, at around midnight, the defendant, Donald Martin,
18 III, who is also known as Scrawny and 730, was taken to
19 802 West Buford Street, Apartment B in Cherokee County
20 by a co-defendant. Once the defendant arrived at the
21 location, he exited his co-defendant's vehicle and fired
22 at least 15 times into the apartment, which bullet holes
23 covering the entire exterior of the apartment.
24 Eight-year-old **Child Victim** was staying with her uncle
25 that night and was inside the apartment, sitting on the

1 couch with her two cousins watching her iPad, while her
2 cousins played a video game.

3 When the shots came through the downstairs
4 windows striking [Child Victim] in the head. Her uncle came
5 downstairs after the gunshots had stopped and
6 immediately dialed 911. The initial responding officer
7 arrived and attempted to deliver medical aid, putting
8 Kamryn in a recovered position on the floor while she
9 continued to shallowly breathe. She was transported to
10 the hospital, and as she was waiting to be airlifted,
11 she succumbed to her injuries.

12 After shooting into the apartment, the defendant
13 got back into the co-defendant's car with the gun
14 pointing at them. Told them to take him back to the
15 house and said I have three bullets left. The
16 co-defendant described the gun as a handgun with an
17 extended magazine. The defendant has many photos on
18 social media holding this exact type of gun, what
19 appears to be a glock with an extended clip.

20 The 15 casings that were recovered in the parking
21 lot of the crime scene were submitted to SLED and were
22 all consistent to have been fired by the same firearm
23 with a firing pin that would have been consistent with a
24 glock.

25 Through the investigation, a witness was

1 interviewed and informed law enforcement that this
2 shooting was over some unpaid drug money by a resident
3 of the apartment. The defendant did not know anyone in
4 the apartment, but was sent by Isaac Bridges, Jr., also
5 known as Ike and Mulla (phonetic). Bridges was on house
6 arrest at the time and was owed money by someone in the
7 house.

8 Testimony would have shown that Bridges and the
9 defendant were both members of the suicide squad, which
10 is a gang out of Spartanburg. The same witness was also
11 a former member of the suicide squad, who through a
12 statement to law enforcement said that the defendant had
13 been kicked out of suicide squad following the shooting
14 and the defendant was bragging about how he now had a
15 body on him.

16 The witness further told law enforcement that the
17 defendant got tattoos on his face following the
18 shooting. One is a tattoo on his right temple that says
19 no regrets, that according to this witness, the
20 defendant would point to when talking about the shooting
21 that killed Kamryn.

22 Another tattoo on his left temple that has a
23 type glock handgun with an extended clip, which was
24 consistent with the murder weapon that was used in this
25 incident, Your Honor.

1 The defendant does not have any prior record,
2 other than an assault and battery third from the
3 juvenile, that he was on probation for at the time of
4 this shooting, Your Honor.

5 THE COURT: Sir, did you hear what the Attorney
6 General told me?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Could he establish those facts at
9 trial?

10 THE DEFENDANT: Would you say that again, sir?

11 THE COURT: Yes, sir. Do you believe he could
12 establish those facts at trial? The reason why I'm
13 asking it this way is you're not -- you're pleading
14 under Alford not guilty. You're not pleading guilty,
15 you're pleading under Alford, so I'm not gonna ask you
16 if all of that is true. I normally would do that. So
17 I'm just asking you, do you believe he could establish
18 those facts at trial?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And if he did, do you believe that
21 you would be convicted?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. The Court accepts your guilty
24 -- not guilty. The Court accepts your plea under, under
25 Alford, North Carolina versus Alford. Now we're here

1 for the plea only today, as I understand, right?

2 MR. KOZAK: Yes, sir.

3 THE COURT: Okay. Ms. Moss?

4 MS. MOSS: That's correct, Your Honor.

5 THE COURT: Okay. I'm gonna save mitigation and
6 so forth. Sir, I'm gonna let your lawyer talk next
7 Monday in open court. We're gonna be in open court on
8 Monday, and she'll be talking about your background and
9 some good things that you've done, I'm certain, before
10 we go to sentencing, okay?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. Anything further from the
13 State?

14 MR. KOZAK: No, sir, Your Honor.

15 THE COURT: All right. Ms. Moss, anything?

16 MS. MOSS: No, Your Honor.

17 THE COURT: Okay. I look forward to seeing
18 everybody Monday. I think we're set for nine; is that
19 right? Okay. My law clerk says we're set for 9 a.m. on
20 Monday.

21 MR. KOZAK: Thank you.

22 THE CLERK: That's correct, Judge.

23 THE COURT: Okay, very good. All right.

24 Everybody have a good weekend. Thank you.

25 MS. MOSS: Thank you.

1 (Hearing concluded at 3:27 p.m.)

2

3

4 --- THIS ENDS REQUESTED TRANSCRIPT ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the court of GENERAL SESSIONS for Cherokee County, South Carolina, on the 13th day of October, 2022.

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

s/o Julie A Cendroski

Julie A. Cendroski
Circuit Court Reporter III
Seventh Judicial Circuit

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHEROKEE

IN THE COMMON PLEAS
11th JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,
4
5 Plaintiff,

6 vs.

CASE NO. 2023-CP-11-00085

7 DONALD MARTIN, III,
8 Defendant.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2023 MAY -5 A 11:01
BRANDY W. MCBEE

9
10 HEARING BEFORE: HONORABLE R. KEITH KELLY

11 DATE: October 17, 2022

12 TIME: 10:54 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 JOEL KOZAK, Assistant Attorney General

22 ATTORNEYS FOR THE DEFENDANT
23 JACQUELINE MOSS, ESQ.
24
25

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 THE CLERK: Sir, you are Donald Martin?

2 THE DEFENDANT: Yes, ma'am.

3 THE CLERK: Please raise your right hand.

4 DONALD MARTIN, III

5 being first duly sworn, testified as follows:

6 THE CLERK: You need to make sure you speak up.

7 Your voice is coming out soft, so the court reporter and the
8 Judge can hear you; okay?

9 MR. MARTIN: Yes, ma'am.

10 THE COURT: Mr. Attorney General, you want to call
11 the case.

12 MR. KOZAK: Yes, sir, Your Honor. Your Honor,
13 we're back before you on indictment 2022-GS-11-0506. This was
14 a true-billed indictment for murder that was pled to the lesser
15 included offense of voluntary manslaughter, Your Honor.

16 You heard the State's case on Thursday of last
17 week. But we're here for mitigation and sentencing, Your
18 Honor. And at the appropriate time, the State does have four
19 people who would like to address The Court. It is the victim's
20 mom, dad, there's a sister, and I believe the victim's best
21 friend, Your Honor.

22 Also, as we just got the mitigation package from
23 Ms. Moss, and the only objection we have, Your Honor, is to
24 these photos being part of the record. We didn't put any
25 photos of the victim in, in this case. I don't know if that's

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1 appropriate for there to be photos of the Defendant, Your
2 Honor.

3 THE COURT: Defense want to be heard on that?

4 MS. MOSS: Yes, Your Honor. The photos can be
5 authenticated. Your Honor can look at those and demonstrate
6 they are my client. I don't see the reason for an objection to
7 the photographs being entered. Mr. Kozak had an opportunity to
8 present the photos in any packet as part of this litigation.

9 THE COURT: I'm going to allow the photos over the
10 objection of the State. Go ahead, sir.

11 Let's go ahead and put on the record the plea was
12 taken last week. I have that with me, 2022-GS-11-0506. This
13 plea was taken on 13th October of 2022, different court
14 reporter. I want to make sure we have that on the record
15 should that become an issue. It was taken last week as a plea
16 only under North Carolina versus Alford.

17 Mr. Attorney General.

18 Ma'am, if you would tell me your name, please.
19 This lady is recording, and so you'll have to speak loud enough
20 for her to capture your voice.

21 MS. CALLIHAN: I'm Marla Fischer Callihan, and I'm
22 14 years old. When LaMya was taken from us, I was almost eight
23 at the time. I've been waiting a long time for justice for my
24 friend. I want you to know that LaMya was the best kind of
25 friend. She was one of my first real friends in elementary

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 school. So sweet, so funny, and so caring.

2 If she thought you were upset, she was always the
3 first person to ask what's wrong. LaMya loved participating in
4 all the school activities even though I didn't like them at
5 all.

6 Our teachers always said you never saw LaMya
7 without Marla. She was very special. And I love her, and I
8 still miss her. I don't like speaking in front of people very
9 much, but I came here today to ask you to give LaMya the
10 justice she deserved.

11 THE COURT: Thank you for your comments, ma'am.

12 Ma'am, if you would tell me who you are and please
13 speak up so that my court reporter can capture your voice.

14 MS. HARRIS: Okay.

15 THE COURT: Thank you.

16 MS. HARRIS: My name is Keleiyah Harris, and I am
17 the victim's sister.

18 THE COURT: Ma'am, do you need some water?

19 MS. HARRIS: I remember the first day Uncle Mont
20 brought you home. I was alone for ten years up until this
21 point. Suddenly I had a sister that brought me so much. From
22 that day forward, being your big sister was my pride and joy.

23 On August 20, 2017, you were taken away from me in
24 a worldwind, and it left me with so much confusion, anger, and
25 hate. It has been a long five years without seeing your



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1 to ride a bike. LaMya, an eight-year-old little girl, had
2 dreams of becoming a nurse to help people. At the time, Doc
3 McStuffins and Musical.ly, which is now TikTok, and Reborn
4 dolls became popular at that time.

5 She also watched and made numerous videos to create
6 content or commentary. She had a heart for people. She loved
7 her family, her friends with every fiber of her being. She
8 loved to play outside, jump on the trampoline. She loved to
9 ride her hover board and ride bikes with her dad and her friend
10 Nyana in the neighborhood.

11 She was set to enter third grade at Boiling Springs
12 Elementary School in Cleveland County, North Carolina. I
13 actually went to school, hoping that her desk and the
14 information packet would be prepared and waiting for her. But
15 sadly they had already heard the news. It was then that I
16 learned how the existence of life can fade so quickly.

17 However, that elementary school, they was
18 phenomenal with support, Kamryn B. Foundation Scholarships.
19 They used the monies that families had collected and they gave
20 a fund to a high school senior with plans of becoming a nurse
21 just as she wanted to be.

22 They also crafted a bench, the high school welding
23 students, and they placed it at her elementary school to honor
24 her.

25 She loved school, her teachers, her friends and

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1 most importantly learning. I remember that same year I was
2 newly employed as an exceptional children's teacher, which is
3 also special education teacher. Her Nanna, which is here
4 today, had gifted her with a special lamp. It was a solar
5 plant lamp. Being a new teacher, I didn't have much to put in
6 my classroom. So I asked her: Do you mind if I can take this
7 and place it. She said sure. Always giving and loving.

8 She was free hearted. She was just the perfect
9 child. I eventually was able to return to work to place those
10 items. And the students, they knew and they respected how much
11 it meant to me.

12 Sadly, LaMya was robbed of returning to meet her
13 new teacher and friends that year. You see, LaMya, she didn't
14 have extended or a sudden illness. She didn't have strife or a
15 beef with people in the streets. LaMya was inside her home, a
16 place where you should feel safe. She was sitting on the
17 couch, playing a game on her phone. She had just returned from
18 the skating rink.

19 Murder was the cause of death. After recovering 15
20 rounds, a single gunshot wound to the neck killed her. The
21 Defendant should've been attending school and the accomplice to
22 the crime went an entire school year while playing sports, each
23 knowingly withholding information about a murder. They went on
24 with their lives as if nothing happened while ours changed.

25 However, it was apparent because every news and

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1 media provided coverage as our family was interviewed numerous
2 times. I'd like to thank the active chief at the time, Chief
3 Skinner, Sheriff Steve Mueller, the Gaffney and Spartanburg
4 Police Department because they each worked diligently with our
5 family to solve the case.

6 August 20, 2017, five years, one month, 27 days ago
7 was the most horrific journey of my life. There's no title for
8 a bereaved parent, only the fact that you miss your child.
9 Every single day. And you pray for an afterlife, to see your
10 loved ones again.

11 The weekends were like most during the summer. She
12 spent time with her cousins in Ceracil (phonetic) lake, they
13 took turns between our house and their uncle's house. LaMya
14 enjoyed doing things that children love to do. We entrusted
15 her well-being with them. Her cousins were closely around her
16 age as her siblings are nine, 11, and 13 years old.

17 LaMya was excited that weekend. And I still have
18 the pictures that she took on her phone at the skating rink.
19 She was happy in those final moments, just as you see her in
20 the pictures.

21 At 1:00 my cell phone rang. I answered the screen
22 from her aunt, Shayna Montgomery, that's here today, that LaMya
23 had been shot. I awakened her dad and my son to tell them what
24 happened. I also contacted her sister, who spoke earlier. We
25 rushed to Gaffney. I prayed every second of the way.

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1 We were eventually escorted by Sheriff Mueller to
2 go to the emergency department. I'll never forget the look on
3 the receptionist's face as I told her my daughter had been
4 shot.

5 We were eventually permitted to go to the room.
6 There were several attendants, nurses, doctors, staff caring
7 for LaMya. She lay motionless in a pool of blood. I asked:
8 Why aren't you giving her blood? No one spoke. Medical alarms
9 went off. Assistants kept pulling sheets from underneath her
10 body soaked with blood. We was asked to leave the room.

11 We returned to the lobby. We were asked to go to
12 Greenville Children's Hospital, only to be called back a few
13 moments later. We were called to another waiting room and
14 notified: Your daughter didn't make it. I'm sorry, she's
15 gone.

16 The funeral was held on the first day she would've
17 began school. I sat on the front pew glaring at my daughter's
18 lifeless body; my baby girl in a casket; once a vibrant,
19 loving, sensitive, and affectionate little girl was gone.

20 Today she has two parents that are now married.
21 She knew of the plans and didn't get to be a part of them. Her
22 three siblings are now adults. They each have children. Her
23 brother, a senior at the time of her murder, he did finish high
24 school.

25 LaMya, hope that you are proud of us because we are

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1 trying. I do know no amount of time will suffice, replace or
2 be sufficient to honor your beautiful life, a life taken
3 abruptly by a murderer throughout the five years of court
4 proceedings and bond hearings has never shown remorse or
5 uttered words of forgiveness. Supporters of the Defendant are
6 people we have never encountered a day in our lives saying
7 crude and hurtful things to my family as if LaMya caused her
8 own death. To have these same individuals support a freedom
9 party while the Defendant engaged in recorded conversations to
10 speak of knocking other people off that could affect the case.
11 A murderer that had no guilt, a murderer that had no guilt in
12 potentially killing or injuring four other people in the home,
13 two others which were children. You hadn't known hurt until
14 you deal with this.

15 LaMya, we're here. I wholeheartedly believe she
16 would insist the maximum sentence allowed with no time served
17 as justice. And as the voice for LaMya I plead with The Court
18 that this is given the utmost consideration when determining a
19 sentence.

20 LaMya did not deserve to die. No child or human
21 being deserves to die at the hands of an individual that cannot
22 give or breathe the breath of life. No one should have to live
23 in fear of recidivism of a murderer placed back within the
24 community to create these senseless crimes on other innocent
25 people. Please give my daughter justice.'

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1 Thank you for your time, your attention, and your
2 consideration to be the voice of my daughter.

3 Rest in peace, Baby Girl. I will always love you.

4 THE COURT: I'm very sorry for your loss. Thank
5 you for your comments.

6 MR. BRADLEY: My name is Lamont Bradley. I'm
7 Kamryn B.'s father. It's hard to prepare yourself to speak on your
8 daughter's behalf after she was taken away from us too soon for
9 something so senseless.

10 I know everybody thinks they have the best child in
11 the world. But when I say my daughter is special, I'm not just
12 saying it because -- I'm saying it because it's true. My
13 daughter is not violent at all. She would give her last just
14 to make sure the next person is all right.

15 She taught me a lot of things in life. A few
16 important things she taught me was how to love myself and the
17 people around me. She also taught me how to be more
18 considerate of others. All that changed in one night, after a
19 coward pulled a coward act. And our lives were changed
20 forever.

21 I'll never forgive him, I'll never forgive him for
22 what he done. I believe in an eye for an eye. I would rather
23 see him dead just like my daughter. The sister says he can't
24 get life, so I'm upset with that. But I pray the Judge see and
25 gives our family -- I mean, excuse me. He can't get life but

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 he gave us a lifetime sentence without seeing my daughter
2 anymore.

3 At least I pray that the Judge give him the maximum
4 time available, which I feel is not really enough. And my
5 family and I will continue to hope that God give him his real
6 punishment.

7 THE COURT: Thank you for your comments, sir. I'm
8 sorry for your loss.

9 MR. KOZAK: Nothing further from the State, Your
10 Honor.

11 MS. MOSS: May it please The Court, Your Honor. To
12 the best friend, to the sister, to the mother and the father,
13 we express sympathy in your grief. We are sincerely sorry for
14 your loss.

15 This has been a very difficult situation, and I am
16 charged with the task of mitigating on behalf of Donald Martin,
17 III.

18 Donald was in Cherokee County, South Carolina on
19 the date of this occurrence. He was 15 years old. It was --
20 his actions were directed by an 18-year-old. An 18-year-old
21 was the driver of the vehicle. And he has accepted
22 responsibility for what has occurred. We cannot change what
23 has happened. I wish that I could.

24 I strongly believe that everybody needs a
25 foundation in order for success. In our many meetings with

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 Mr. Martin, it took a while for him to open up and show us
2 exactly who he was. I understood and respected some of that
3 through my co-counsel because she kept reminding me that, at
4 the time of his arrest, he was a 15-year-old kid. And that is
5 the place that I had to start.

6 He's now 20. He's been in jail for 1,684 days;
7 four years and seven months and nine days. He was 15 when he
8 went in. When he went in, he had that mentality that he has
9 now. He's now 20. And some of these things he just doesn't
10 understand because he was a child, directed by adults. That
11 doesn't excuse the behavior. That does not change the
12 behavior. I just need The Court to understand that he was 15.

13 His mother would've been here today but she had
14 knee replacement surgery so she couldn't come up the stairs to
15 get here. She couldn't come. She provided a statement.

16 During his jail time, a project called the Delancey
17 Street Foundation sought out Mr. Martin from Charleston and
18 talked to him about a rehabilitative program that is an
19 in-placement requirement that he could attend. And he was
20 excited about that. We talked about it as an option for him to
21 be able to be released because every time, of course, when I
22 spoke with him, he wanted to know: How can I get out, when can
23 I get out, what is going to happen to me?

24 It's important that I note, Your Honor, that during
25 the time from the time that Mr. Martin was arrested, up through

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 today, he had five attorneys. He had three or four Public
2 Defenders, one private attorney that his family hired. It
3 wasn't until this year, a little bit this year that he actually
4 reviewed the evidence and got the information. No disrespect
5 to anyone else in this profession. He actually was able to
6 look at everything, carefully analyze everything and understand
7 what he was facing.

8 Prior to that time he had snippets of conversations
9 with different people basically indicating, you know, you need
10 to go ahead and plead guilty. I wanted him to understand
11 exactly the evidence that he was facing because I wanted him to
12 understand before he made a decision in this case. And that is
13 why we're on the trial docket when we came before Your Honor
14 for a bond hearing. That is why we're on a trial docket
15 because we needed to get that necessary evidence in order to
16 make intelligent decisions about his plans.

17 After we spent hours talking to Mr. Martin, he
18 reviewed that information and evidence. He made the conscious
19 decision, as a 20-year-old, who was arrested as a 15-year-old,
20 to make the decision that he made this Friday.

21 Your Honor, additionally, I need to direct your
22 attention to the psychological report. I'm not going to go
23 through it in any detail. I think the factors are very
24 important for The Court to be aware of. This information was
25 provided to us in discovery, so Mr. Kozak has a copy of it.

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 On page 4, it specifically states that the
2 psychologist said that the fire that the family had that
3 destroyed all of their belongings in 2009 was impactful upon
4 this child because they lost everything. They had to move them
5 to a house, specifically, the basement of a house with his
6 grandmother.

7 He was in a virtual learning program. Page 5. In
8 the ninth grade he never adjusted to virtual learning. He was
9 never able to grasp the tendency from virtual learning. It
10 wasn't successful to him. He has not had any opportunities to
11 improve, increase, or change his educational status. He's
12 stuck on a ninth grade status, Your Honor.

13 On page 5 as well, when he was 15 years old, in
14 Spartanburg County, and he was raised in an area that is known
15 for gunshot violence. As a matter of fact, he was afraid to be
16 in that area because of the regular gunshot violence. He was
17 in a vehicle that was shot up, Your Honor. That made him so
18 afraid he told the psychologist that he didn't want to be in a
19 car for the most part except for anyone but his mother.

20 That brings us to the point of the fateful night
21 this incident occurred. It's not just an incident. I'm not
22 minimizing it, because it was a horrible tragedy.

23 On that day he was 15. One of the things that the
24 mother said hit home with me. That foundation, he should have
25 been at home. He should have been with a parent. He should

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 have been preparing for school. He should've had the
2 opportunity to be in a county that he lived in, in a safe place
3 in his house. Instead, he was on the streets being guided by
4 an 18-year-old doing something horrible he was directed to do.

5 Your Honor, I sympathize as well with Mr. Martin,
6 and I have told him about this as well. If you'll indulge me
7 just for a little bit longer. I was 13. When I was 13, I lost
8 my mother. When I looked at this case, I talked to my client.
9 And I said, but for the grace of God and guidance and
10 foundation, I could have taken the same path that Mr. Martin
11 took. Without that guidance and that direction and that
12 foundation that my parents had set, and my father picking up
13 that torch and helping me through and helping me to understand
14 what I could and couldn't do, what was right, what was wrong
15 and giving me that guidance, so when I was in high school, I
16 was not in another county being directed by two 18-year-olds.
17 I was at home studying or working an after-school job. Because
18 of that I had a chance.

19 I would submit to Your Honor he didn't have a
20 chance at 15 because he was out on the streets of Gaffney doing
21 things he didn't -- he had control over but he was a child.

22 Finally, Your Honor, on page 6, I found this
23 concerning as well. He says that he started using marijuana at
24 age 10. At age 14 he was using it on a regular basis.

25 The psychologist concluded that being attacked,

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 being teased, having personal items stolen, losing everything
2 in a fire, witnessing others being physically assaulted --
3 that's on page 8 -- living in an environment where he regularly
4 heard gunshots caused him to suffer from post-traumatic stress
5 disorder. Never been treated. Including the trauma associated
6 with him living in a dysfunctional family and not feeling
7 loved.

8 Your Honor, I submit today, we ask you to please
9 consider several factors. One, my client is remorseful. And
10 we would like for him to have the opportunity, if it's just a
11 part of his sentence, to be able to participate in the Delancey
12 Street Project. He has expressed an interest in construction.
13 They will guide him in a direction and they will supervise.

14 We're asking that he have his sentence mitigated,
15 Your Honor, so he'll have an opportunity to become a productive
16 citizen. That's all from me, Your Honor.

17 He does have some people who would like to speak on
18 his behalf at the appropriate time.

19 THE COURT: Yes, ma'am. Ms. Moss, I'll be happy to
20 hear from them.

21 Sir, tell me who you are, please.

22 MR. FEHL: My name is Atticus Fehl. Thank you for
23 allowing me to share today. I currently serve as the district
24 executive for the YMCA Greater Spartanburg. I worked for the
25 YMCA Spartanburg for 17 years. In fact, I began working at the

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 YMCA when I was 15, which was the same age as Donald Martin
2 when he was arrested in this case.

3 There are many kids being raised in the world
4 today. As parents, family members, and friends, we are
5 responsible for these young people. Individually, each person
6 is ultimately responsible for his or her actions before God.

7 God did not create us to hate one another. He
8 certainly did not create us to do wrong. The choices that we
9 make lead us down different paths. The older we get, the
10 stronger these repercussions of our decisions will become.

11 Many times at the YMCA I've had to call down kids,
12 how they're behaving. I've learned that most of this comes
13 from difficulties they're having at home or school.

14 I met Donald Martin at the YMCA in Spartanburg. He
15 and his two older brothers and sisters were there almost every
16 day. When Donald Martin was younger, we used to call him
17 Squirmmy. Squirmmy was the kind of kid you wanted around the
18 YMCA.

19 When I first met him, he was around five years old.
20 He was fun. He was full of energy. He jumped right in, played
21 basketball with older kids or showed younger kids how to
22 dribble the ball.

23 As Squirmmy got older, a lot of this would change.
24 Everyone who knew Squirmmy, he was the young person who stopped
25 by and talk to you at the desk instead of just quickly walking

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 by.

2 Ms. Amanda Henderson is an example of someone who
3 stopped Squirmmy as he got older and talked to him about what
4 he was up to. She always encouraged him and so many others to
5 do what was right. It is important talking to these young
6 people. We need to encourage them and give them guidance. We
7 need to genuinely care about them and not be fake with them.
8 Need to ask them how they're doing each time we see them
9 because they're going through a lot.

10 Although Squirmmy did not have a lot of positive
11 male role models, his mother always worked very hard to make
12 things the best that she could for her and her children. I've
13 always tried to encourage Squirmmy in a positive direction.
14 The difference in his life, unlike many others that we serve,
15 he didn't start with the same guidance or opportunities.

16 As a community, we must all focus, focus on raising
17 the youth, who do not have others to look out for them and
18 guide them. Following something that is wrong does not make it
19 right. Continuing to do wrong becomes a habit.

20 Spartanburg youth have great potential. They also
21 have potential for extreme negativity, leading many of them
22 into destruction. Bad habits make these bad choices easier and
23 easier to make. Some of these choices are irreversible.

24 I once followed something that was right and good
25 and better to help improve people. We all have a chance to do

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 what is right and helps us to improve and also helps those
2 around us. At the time that Squirmmy was arrested for this
3 case, there were other incidents.

4 In fact, about a month before this incident,
5 Squirmmy and his mom came and sat in front of me with a
6 volunteer application so Squirmmy could start helping out with
7 community programs. He really wanted to start down a positive
8 path. We were in the midst of processing that application when
9 he was arrested for this crime.

10 I'm in no way stating he is blameless on these
11 charges, but I do believe if we work with him we can help him
12 to get to a good path. I also believe being in prison will not
13 help him do anything positive with his life. I believe that
14 when we show compassion and grace, it enables the receiver to
15 change and give them a chance to do better.

16 Your Honor and members here, I've been praying for
17 you for the last several months. And Squirmmy, I've been
18 praying for you. Regardless of the outcome, your life will
19 turn out well. And I'll always wish you the best. Thank you
20 all for your time today.

21 THE COURT: Thank you for your comments and your
22 prayers.

23 Counsel.

24 MS. MOSS: I believe there's at least one maybe two
25 that would like to speak.

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 THE COURT: Sir, tell me your name, please.

2 MR. WILKES: My name is Jarrell Wilkes. I'm
3 Donald's first cousin.

4 THE COURT: Will you spell your last name.

5 MR. WILKES: Wilkes, W-I-L-K-E-S.

6 THE COURT: Thank you. Yes, sir.

7 MR. WILKES: Today is a very sad, emotional, and
8 heartbreaking day for many of us. I first want to share my
9 condolence with the family. I don't know how it feels to lose
10 a child. I have lost a loved one, a brother, a cousin, a
11 father all in one. So I would like to say its in close
12 proximity that I have the awareness of what it may feel like to
13 lose a child.

14 I can't help but notice that you asked the last
15 individual: Was he aware of the things that he was saying?
16 Was he aware of his plea? And it made me realize -- one day I
17 was in a store. And there was a guy, he was standing outside
18 the store. His clothes wasn't the best of clothes. He was
19 just standing out in front of the store. He wasn't asking
20 anyone for any money. You could hear the people coming in and
21 out the store: He's a bum. He's asking for money.

22 And he hasn't asked not one individual for
23 anything. When I was coming out the store, I seen him go to
24 his car. He was actually doing some kind of, I guess, video
25 for TikTok or whatever the case may be.

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 But the moral to the story is that this guy was
2 being judged just off the clothes that he was wearing and just
3 standing in front of the store. I feel like Donald is in the
4 same position. He's being perceived just by his appearance,
5 and he's been judged by people who hasn't even spoken to him,
6 who hasn't had a five-second conversation with him.

7 And I feel like, you know, he may be forced to do
8 things that he doesn't have accountability for, that he isn't
9 aware of. I hate that all of this did happen. I hate that it
10 happened and nothing can be taken back. No life can be brought
11 back. And he isn't the person that he may be perceived of just
12 off his image.

13 We all have those times where we're entwined with
14 the wrong crowd, the wrong individual is taking a hold of our
15 lives. And some of us, just ask myself, we are lucky enough to
16 make it out. We make it out unscathed. I've actually talked
17 to Donald and, you know. I don't know all that I can say so
18 I'm treading lightly, so I hope you can just bear with me.

19 I've had conversations with Donald, and he said
20 that, you know: If I keep sitting here, I'll never get out.
21 So I feel like he's being pressured to accept something that's
22 not in his best interest. So I just ask that you can look at
23 everything that has been brought to you, all tangible evidence
24 and just make the best decision because the way I see it, it
25 will be two lives gone. At least with one, there can be

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 redemption. That's all I have to say.

2 THE COURT: Thank you, sir.

3 MR. WILKES: No problem.

4 MS. MOSS: I believe those were all the people
5 speaking on his behalf. I think that's it.

6 THE COURT: Sir, you have an opportunity to speak.
7 You are not required to do so. You are welcome to do so if you
8 would like to make any comment. If you need to talk to your
9 lawyer about that, please do.

10 MR. MARTIN: I had wrote you a letter, but my
11 lawyer said that -- I wanted to be able to give it to you. So
12 I want to start off by saying at the bond hearings, I never had
13 the chance to speak. I want to say I'm sorry for the victim's
14 family's loss, and my heart goes out to them.

15 And my letter, I've been locked up since I was 15.
16 Ain't no resources here. Nothing to help me. I'm just asking
17 that when you make a decision, to take everything into
18 consideration. And, again, I'm sorry for y'all's loss, and my
19 heart goes out to the victim's family.

20 THE COURT: Thank you. Anything?

21 MS. MOSS: Nothing further, Your Honor.

22 (A pause transpired).

23 THE COURT: Mr. Martin, there are no winners today.
24 Only losers. Do you understand? I do hope you appreciate the
25 very fine job that your lawyer has done for you in this case.

STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

1 2022-GS-11-0506, you are confined to the Department
2 of Corrections for a period of 25 years. I will give you
3 credit for any time you're entitled. Very best of luck to you,
4 Mr. Martin.

5 (The hearing was concluded at 11:34 a.m.)
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STATE OF SOUTH CAROLINA vs. DONALD MARTIN, III

CERTIFICATE OF REPORTER

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 24th day of March, 2023 at Spartanburg, Spartanburg
County, South Carolina.



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

WITNESSES

Blair Dennis, Gaffney Police Dept.

*Blair Dennis*DOCKET NO. 2022-GS-11- *00506*

The State of South Carolina

County of Cherokee

COURT OF GENERAL SESSIONS

May 9 TERM 2022

ARREST WARRANT NUMBER

2019A1120200383

ACTION OF GRAND JURY

Cathy Horn
Foreperson of Grand Jury
Date: *5-9-22*

VERDICT

TRUE BILL
TRUE BILLForeperson of Petit Jury
Date:After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2022 MAY 29 AM 10:58
BRANDY W. MCREE

THE STATE

vs.

Donald Martin III

DEFENDANT

Indictment for

Murder

SC Code: 16-03-0010; 16-03-0020

CDR Code: 0116

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT

At a Court of General Sessions, convened on May 9, 2022, the
Grand Jurors of Cherokee County present upon their oath:

MURDER

That Donald Martin III did in Cherokee County, on or about August 20, 2017, willfully, feloniously, and intentionally kill the victim, [REDACTED] [REDACTED] with malice aforethought, either express or implied, by means of firing a gun and striking the victim in the head as she was inside the dwelling located at [REDACTED] Gaffney, South Carolina, and the victim did die as a proximate result thereof, in violation of Section 16-03-0010, S.C. Code of Laws, 1976, as amended.

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


ALAN WILSON (JAK)
SOUTH CAROLINA ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

STATE

VS.

Donald Martin III

AKA:

Race: Male Sex: Black Age: 20

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Spartanburg, SC 29306

DL#: [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2022-GS-11-0506

AW#: 2019A1120200383

Date of Offense: August 20, 2017

S.C. Code §: 16-03-0010

CDR Code #: 0116

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: Voluntary Manslaughter (Not more than 30 years)

In violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

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

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

The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. [REDACTED] (def.'s initials)

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

ATTEST:

S/Joel Kozak
Solicitor

100865
SC Bar #

S/Donald Martin III
Defendant

S/Jacqueline Moss
Attorney for Defendant

14096
SC Bar #

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

for a determinate term of 25 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.
1648 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. Donald Martin IIIINDICTMENT/CASE#: 2022 -GS- 11 - 0506

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: _____

*Fines:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	\$ _____
§14-1-208 (Assessments 107.5%)			\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)		\$100	\$ _____
§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)		\$25	\$ _____
§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	\$ _____
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees		\$500	\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD	\$ _____
		TOTAL	\$ _____

Clerk of Court/Deputy Clerk: Brandy W. McBeal
Court Reporter: Wm McDanielPresiding Judge: R. Keith Kelly
Judge Code: 165
Sentence Date: 17 October 2022

SCCA1217 (07/2021)

plea only:
R. Keith Kelly
2165
13 October 2022

23 CP-110085

FORM 5

STATE OF SOUTH CAROLINA)

County of Cherokee County)Donald Martin III)

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

State v. Martin)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

CLERK OF COURT
CHEROKEE COUNTY, S.C.
2023 FEB -9 AM 11:52
CHEROKEE COUNTY, S.C.

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 Tiger River Correctional Institution
2. Name and location of Court which imposed sentence Cherokee County
Gaffney SC 29342
3. Name(s) of co-defendant(s) (if any) Leyson Hughey
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) N/A
(b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 17 2022, 25 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) requesting PCR now
- (b) My Lawyer did not Appeal my case

(c) but I told him to.

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

(a) Ineffective assistance of counsel
 (b) Prosecutorial Misconduct
 (c) Due process violations and obstruction of justice

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

(a) Misled by these members sworn in by the bar
 (b) intentionally kept ^{ignorant} by these parties
 (c) not presenting all truths for or against me

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. N/A
 ii. _____
 iii. _____
 iv. _____

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

i. N/A
 ii. _____
 iii. _____
 iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- 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. N/A
- ii. _____
- iii. _____

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

- i. N/A
- 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) just got convicted
 (b) _____
 (c) _____

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

(a) your arraignment and plea? yes
 (b) your trial, if any? N/A
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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. Jacqueline Moss, 207 magnolia street
Suite 102 Spartanburg SC 29306
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Timothy ray juvenile waiver hearing
Richard welcher juvenile Bond hearing
 ii. Mattheu craft as Bond hearing
Dale caper
 iii. Bill Bean Bond hearing
Jacqueline moss Sentencing court

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

Vacate the Sentence And Conviction. And I'm
release from the Custody of Respondent

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

No

STATE OF SOUTH CAROLINA)

County of Cherokee County)

VERIFICATION

I, Donald Martin III, 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.

Donald Martin III

SWORN to and subscribed before me this 3rd
 day of Feb, 23.

[Signature] (L.S.)
 Notary Public

My Commission Expires: 4/14/26

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

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

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

Donald Martin III
Applicant

SWORN or affirmed to and subscribed before me this

3rd day of Feb, 23.

[Signature]
Notary Public

My Commission Expires: 4/14/24

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

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

Donald Martin III, #389230,

Case No.: 2023-CP-11-0085

Applicant,

v.

) RETURN, PARTIAL MOTION TO
) DISMISS AND MOTION
) FOR MORE DEFINITE STATEMENT
)

State of South Carolina,

Respondent.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
MAY -5 A 11:00
BRANDY W. MOORE

In response to the application for post-conviction relief filed by Donald Martin III, (Applicant) on February 9, 2023, Respondent, the State of South Carolina, making its return would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently incarcerated in the South Carolina Department of Corrections. Applicant was indicted by the Cherokee County Grand Jury at its May 2022 term for murder (2022-GS-11-00506). Applicant was represented by Jacqueline Moss, Esquire, and the State was represented by Assistant Attorney General Joel Kozak, Esquire. On October 17, 2022, Applicant appeared before the Honorable Keith Kelly for mitigating and sentencing purposes¹.

Judge Kelly sentenced Applicant to a term of imprisonment of twenty-five years. Applicant received credit for his time served. Applicant did not appeal his conviction or sentence.

II. FACTUAL HISTORY

On or about August 20, 2017, Victim, **Kamryn B. [REDACTED]**, was shot by means of firing a gun striking her in the head while she was inside the dwelling located at 802 W. Buford St., and Victim

¹ On October 13, 2022, Applicant entered a guilty plea under *Alford* for the lesser included offense of voluntary manslaughter. *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970).

died as a proximate result thereof. Victim was sitting on the couch playing a game on her phone after returning from a skating rink (Tr. 7).

III. CURRENT ACTION BEFORE THE COURT

In his *pro se* application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons (excerpts verbatim):

1. "Ineffective Assistance of Counsel"
 - a. "Misled by these members sworn in by the bar".
2. "Prosecutorial Misconduct".
 - a. "intentionally kept ignorant by these parties".
3. "Due Process violations and obstruction of justice".
 - a. "not presenting all truths for or against me".

Attached to and incorporated herein are the Cherokee County Clerk of Court records regarding the subject conviction, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, and the post-conviction relief application. Respondent reserves the right to amend this return upon receipt of any relevant materials.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this

prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625:

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Strickland*, 466 U.S. at 691. Thus, "[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). Moreover, a decision by counsel not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions...." *Strickland*, 466 U.S. at 691. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690; *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart* extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. 474 U.S. 52 (1985); *cf. Padilla*, 559 U.S. at 373 (recognizing 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 counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59. 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. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372.

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post

hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.* 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 plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test. Applicant provides no information regarding how he was "misled by members sworn to the bar". The plea transcripts reflect adequate representation of counsel and full disclosure to Applicant of the proceeding and the charge against him. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983) (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").

V. RESPONSE AND MOTION TO DISMISS PROSECUTORIAL MISCONDUCT

Applicant also asserts that he is entitled to post-conviction relief based on a claim of prosecutorial misconduct. Specifically, Applicant claims that he was "kept ignorant by these parties". Courts have recognized that prosecutors have many powers within the criminal justice system. Included in this, is "discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain." *State v. Langford*, 400 S.C. 421, 435 n. 6, 735 S.E.2d 471, 479 n. 6 (2012). Additionally, prosecutors can use "punishment of the offender" as a proper motivation behind their behaviors and punitive

motivations do not render otherwise lawful activity unlawful. *State v. Blakely*, 402 S.C. 650, 658, 742 S.E.2d 29, 33 (2013) (citing *State v. Fletcher*, 322 S.C. 256, 260, 471 S.E.2d 702, 704 (Ct.App.1996)).

However, a conviction will be reversed if the applicant can show prosecutorial vindictiveness, in that “the prosecutor acted with genuine animus toward the defendant” and “the defendant would not have been prosecuted but for that animus.” *State v. Odon*, 412 S.C. 253, 263, 772 S.E.2d 149, 154 (2015) (quoting *United States v. Wilson*, 262 F.3d 305, 314 (2001)) (quotations omitted). Otherwise, a “prosecutor’s charging decision is presumptively lawful.” *Id.* at 263-64 (quoting *United States v. Goodwin*, 457 U.S. 368, 384 n. 19 (2015)). The case in which an applicant can overcome the presumptive validity of the prosecutor’s actions is rare. *Id.* at 264 (quoting *Goodwin*, 457 U.S. at 384 n. 19).

Prosecutorial misconduct is most commonly found within the confines of a *Brady*² violation. *Brady* violations occur if four conditions are met: “the evidence was favorable to the accused”, “it was in the possession of or known to the prosecution”, “it was suppressed by the prosecution”, and “it was material to guilt or punishment.” *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Whether a *Brady* violation is material and, thus, sufficient to warrant relief, is contingent on where there is a “reasonable probability that, but for the government’s failure to disclose *Brady* evidence, the defendant would have refused to plead guilty and gone to trial.” *Id.* at 325. Further, whether a mistrial is warranted remains contingent on ““(1) the cumulative effect of such misconduct; (2) the strength of the properly admitted evidence of the defendant’s guilt; and (3) the curative actions taken by the court.”” *State v. Inman*, 395 S.C. 539,

² *Brady v. Maryland*, 373 U.S. 83 (1963).

565, 720 S.E.2d 31, 45 (2011) (quoting *United States v. Anwar*, 428 F.3d 1102, 1112 (8th Cir. 2005)).

Here, Applicant has not alleged a claim of vindictiveness nor any *Brady* violation. The State moves for summary dismissal of these claims of prosecutorial misconduct pursuant to § 17-27-70, as there is no evidence presented of prosecutorial misdoings and the record refutes that any miscarriage of justice was done on the part of the Solicitor's Office, because there is no genuine issue of material fact which would necessitate an evidentiary hearing these allegations should be dismissed as a matter of law.

VI. MOTION FOR MORE DEFINITE STATEMENT FOR "DUE PROCESS VIOLATION"

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth sufficient facts to "support each ground" or to explain with any specificity the facts upon which his claim is based, particularly with respect to counsel's alleged ineffective assistance due to "due Process violations and obstruction of justice". The Uniform Post-Conviction Procedure Act requires Applicant to "*specifically* set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (emphasis added). Respondent seeks for a more definite statement as Applicant has not provided sufficient information regarding alleged violation of due process, obstruction of justice, or "truths for or against me" not presented.

Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI. ANY FUTURE AMENDMENT AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, 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, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII. RESPONSE TO ANY AND ALL OTHER ALLEGATIONS

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

VIII. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court grant its motion for a more definite statement and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

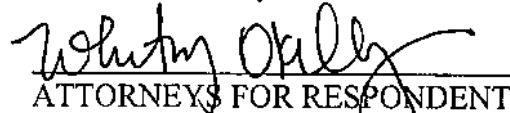
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

WHITNEY O'KELLY
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29212

April 3, 2023

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Donald Martin, III #389230

Applicant,

vs

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS

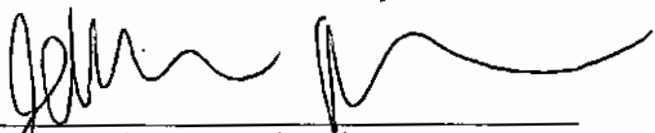
2023-CP-11-0085

CERTIFICATE OF SERVICE BY MAIL

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

Mr. Rodney W. Richey, Esquire.
Richey & Richey, PA
P.O. Box 10916
Greenville, SC 29603-0916

DATED this 3rd day of May 2023.



 Jordan Hickman, Legal Assistant
 For Respondent

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2023 MAY -5 A 11:00
 BRANDY W. MCBEE

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2023-CP-11-00085
COUNTY OF CHEROKEE	)	
	)	
	)	
	)	
	)	
DONALD MARTIN, III,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

November 19, 2024
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE

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

RODNEY W. RICHEY, ESQ.
Attorney for the Applicant

SHAYLA J. FLORES, ESQ.
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

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(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
	There were no exhibits introduced.		

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 10:10 AM.)

THE COURT: All right. Be glad to hear from you.

MS. FLORES: May it please the Court. Shayla Flores on behalf of the State of South Carolina.

This is the postconviction relief matter of Donald Martin, III vs. the State, Case Number 2023-CP-11-00085 out of Cherokee County.

During the May 2022 term, the Cherokee County grand jury indicted applicant for murder, 2022-GS-11-00506. Applicant was represented by Jacqueline Moss and the State was represented by Assistant Attorney General Joel Kozak.

On October 13th of 2022, applicant entered a guilty plea under Alford for the lesser included offense of voluntary manslaughter. On October 17th of 2022, applicant appeared before the Honorable R. Keith Kelly for mitigating incidency purposes. Judge Kelly sentenced applicant to a term of imprisonment of 25 years. Applicant did not appeal his convictions or sentences.

The applicant timely commenced this PCR action on February 9th of 2023 raising the following allegations: ineffective assistance of counsel, prosecutorial misconduct and due process violations and obstruction of justice. Applicant requests relief in the form of this

1 court vacating the sentence and conviction and releasing
2 him from the State's custody.

3 Before this court are the Cherokee County clerk of
4 court records, the plea transcript, applicant's records
5 from the South Carolina Department of Corrections and the
6 current PCR application.

7 At this time, we would move for Mr. Richey to state
8 for the record which allegations he intends to move
9 forward on.

10 THE COURT: Yes, Mr. Richey?

11 MR. RICHEY: Thank you, Your Honor. I represent
12 Mr. Martin, and Mr. Martin has asked me to ask this court
13 to relieve me as his attorney.

14 Judge, there is a way in which Mr. Martin can, I
15 believe, have a successful case, but at this point, he's
16 not -- we're not able to do that. And so he has
17 requested I ask this court for him to have new counsel in
18 the case. I'm not opposed to being relieved as his
19 attorney, but I do believe that there's a critical
20 witness in this case to help him. I don't know if he
21 wants new counsel, but I have discussed with him the
22 importance of this witness.

23 THE COURT: Well, I mean, this is a plea that took
24 place. So, I mean, isn't the standard here to determine
25 whether the plea was voluntarily made?

1 MR. RICHEY: Yes, Your Honor. And in this case, I'd
2 say the Court -- I've had cases granted on the fact that
3 Mr. Martin has an alibi to the date that this incident --
4 he has a witness that he tells me that can testify at the
5 time this incident occurred that he was in another place.
6 And in terms of PCR, ineffective assistance of counsel if
7 the counsel refused -- the counsel didn't call this alibi
8 witness, investigate the alibi witness or anything of
9 that nature, that's ineffective assistance of counsel.
10 And he ---

11 THE COURT: Well, isn't, though, then the relief --
12 in the event that he's able to establish that he told
13 this attorney that and then this attorney didn't do
14 anything, then the relief at that time is to send it
15 back. But this is not the opportunity to retry the case
16 and show that he has an alibi.

17 MR. RICHEY: Your Honor, well, it gets to the point
18 whether the lawyer was ineffective for not investigating
19 this potential alibi witness and you would have to
20 establish that that witness was credible and that he
21 could provide that information. And then trial counsel
22 has the duty to investigate that defense.

23 THE COURT: Well, do we know if he did or didn't? I
24 mean, I think that has to be the threshold question
25 before we can even go down that road.

1 MR. RICHEY: Yes, Your Honor. And I will say that
2 at the time of this incident, Mr. Martin was 15,
3 extremely young defendant. And in talking with him, I
4 don't know if he was ever -- I mean, he could have been,
5 but I don't know if he's advised that, hey, this is the
6 defense in the case. So we have to go to first step to
7 say was he advised it of his defenses in the case, and if
8 he wasn't, then he has this alibi witness that he could
9 call to help him in his case.

10 THE COURT: Mr. Martin, anything you want to say?

11 DEFENDANT MARTIN: I want to say that I agree with
12 what my attorney is saying right now at the moment, and
13 if I have time to get in contact with this witness, then
14 that could be placed on the table.

15 THE COURT: Well, and I think before we get to
16 there, I mean, I want to hear what -- you know, what
17 investigation that the attorney did. So I'm going to
18 deny your motion.

19 Do you want to take a few minutes to get ready or
20 are you ready to proceed?

21 MR. RICHEY: Well, can I get a few moments with him?

22 THE COURT: Yeah. Get a few moments.

23 (Pause in proceedings.)

24 MR. RICHEY: Your Honor, at this time, we call
25

1 Mr. Martin.

2 THE COURT: Mr. Martin, if you'll come on up.

3 Yes?

4 DIRECT EXAMINATION

5 BY MR. RICHEY:

6 Q Would you state your name, please.

7 A Donald Martin, III.

8 Q And, Mr. Martin, are you in the Department of
9 Corrections?

10 A Yes, sir.

11 Q And what charges are you in there for?

12 A Voluntary manslaughter.

13 Q Okay. And what sentence did you receive?

14 A 25.

15 Q Okay. And how old were you when this alleged
16 incident occurred?

17 A 15.

18 Q Okay. And did you start out in Family Court?

19 A Yes, sir.

20 Q Okay. And did Jacqueline Moss, did she represent
21 you at this guilty plea?

22 A Yes, sir.

23 Q Do you see her in the courtroom?

24 A I'm not sure.

25 Q This young lady right here.

1 A I can't really see.

2 MR. RICHEY: Hold your hand up.

3 THE WITNESS: Yes, sir.

4 BY MR. RICHEY:

5 Q Okay. All right. And did you talk to her about
6 your case?

7 A I mean, she did come to see me. I only seen her
8 like ---

9 THE COURT: Is there a way to turn this mic up a
10 little bit? Speak up.

11 (Pause in proceedings for technical issues.)

12 BY MR. RICHEY:

13 Q Okay. And this incident was alleged some person got
14 out of a car and started shooting, correct? Is that your
15 understanding of what happened? That's just the
16 understanding that -- we're not saying you did that, but
17 that's your understanding of what happened, correct?

18 A Yes, sir.

19 Q Okay. And at the time this occurred, were you
20 involved in this in any way?

21 A No, sir.

22 Q And so you had no responsibility for what happened
23 to this child.

24 A No, sir.

25 Q None, correct?

1 A None. Zero.

2 Q Okay. And over the five-year period it took you to
3 get to court and get it all resolved, you had numerous
4 lawyers, correct?

5 A Yes, sir.

6 Q And you talked -- at some point, you talked to these
7 lawyers. Maybe not as much as you wanted to, but you
8 talked to them, correct?

9 A Yes, sir.

10 Q And you talked to them about your case and your
11 responsibility, correct?

12 A Yes, sir.

13 MS. FLORES: Sorry, Your Honor. I just wanted to
14 make sure we did swear him in, didn't we?

15 THE COURT: Oh, you know, we did not. Without the
16 clerk, it's hard.

17 All right. Will you raise your right hand?

18 WHEREUPON,

19 DONALD MARTIN, III

20 After having been duly sworn, testified as follows:

21 THE COURT: State your full name for the record.

22 THE WITNESS: Donald Martin, III.

23 THE COURT: All right. And everything you've stated
24 up to this point has been truthful?

25 THE WITNESS: Yes, sir.

1 THE COURT: All right. Go ahead.

2 MR. RICHEY: Thank you, Your Honor.

3 BY MR. RICHEY:

4 Q And going back to -- in various ways, may limit it
5 some, you actually talked to them about your case, right?

6 A Yes, sir.

7 Q And did you tell these folks that you were innocent
8 of this charge?

9 A Yes, sir.

10 Q And what was your basis of being innocent of the
11 charge?

12 A I was not there. I was somewhere else.

13 Q Okay. And you told all these lawyers that.

14 A Yes, sir.

15 Q And where did you tell them you were at?

16 A In Orangeburg.

17 Q Okay. And who were you with?

18 A I was with a brother and a few friends.

19 Q Okay. And when you told them that, did any of these
20 lawyers, Ms. Moss included, did any of them investigate
21 or determine whether that was, in fact, the truth?

22 A No, sir.

23 Q Okay. And did you ask them to do that?

24 A Yes, sir.

25 Q Okay. And you believe that that was a defense in

1 your case.

2 A Yes, sir.

3 Q Okay. And did the lawyers discuss with you this as
4 a possible defense?

5 A No, sir.

6 Q They didn't ever tell you if you wasn't there,
7 that's a defense.

8 A No, sir.

9 Q Okay. And you pled guilty in this case, correct?

10 A I think I took the Alford plea.

11 Q Yeah. You pled under Alford, that the State could
12 prove their case, correct?

13 A Yes, sir.

14 Q And so you maintain your innocence, correct?

15 A Yes, sir.

16 Q You've never said to this date that you actually did
17 this, correct?

18 A Correct.

19 Q Okay. And so in doing this Alford plea, the lawyers
20 -- you didn't discuss -- did you discuss defenses with
21 your lawyer like, hey, self-defense? I'm throwing that
22 out. You're now alleging that, but ---

23 A No, sir.

24 Q Nothing.

25 A I never -- I mean, what do you mean by defense?

1 Q Okay. Well, let me ask you this way. When you
2 discussed with your lawyers, they did tell you you could
3 make a defense to the case, correct?

4 A No, sir.

5 Q So they just told you to plead to the case.

6 A Yes.

7 Q No defenses, nothing.

8 A No, sir. My plea was zero to 30. A thousand times
9 with each attorney I had, no attorney ever came to me to
10 help me or any type of way. It was the plea is zero to
11 30.

12 Q And at this time, you were -- how old are you now?

13 A I'm 22 years old now.

14 Q And when all this was hot and heavy and happening,
15 how old were you during this process?

16 A 16, 17, 18, 19. I had different lawyers the whole
17 time.

18 Q And at 15, did you have an understanding of what was
19 going on?

20 A No, sir. I only know -- at 15 and still now, I
21 don't really have a full understanding what's going on.
22 I've been in jail. I grew up in jail. I only know what
23 my attorney tell me to do or the COs or, you know,
24 inmates.

25 Q Okay. And so you've never been told that you can

1 bring a defense in your case.

2 A No, sir.

3 Q Okay. And in your discussions with these lawyers,
4 Ms. Moss in particular, what did they discuss with you
5 about the case in terms of defending it?

6 A When I seen Ms. Moss, I had -- I only seen Ms. Moss
7 twice since her being my attorney, maybe three times.

8 Q Uh-huh.

9 A But when I did see her, I never received the full
10 motion of discovery. It was just like, you know, showing
11 me certain little things.

12 Q Bits and pieces.

13 A Bits and pieces, you know. I never received a full
14 motion of discovery on my own until I came to SCDC.

15 I wrote and had them write it -- well, send it to
16 me. At first they told me that they couldn't send it to
17 me, to have my people come get it off a flash drive. And
18 I was like how am I going to get this? So I wrote the
19 letter back to the judge, and I guess the judge sent it
20 to her and made her send it to me. And that's when I
21 received my discovery. I still don't think it's the full
22 discovery, but I received a discovery.

23 And when I seen Ms. Moss, I went to court May the
24 11th for a bond hearing, and the judge realized that I
25 had been in jail sitting in the county so long that he

1 said if y'all don't have him in court by October 17th,
2 I'm immediately granting him leave. Ms. Moss didn't come
3 see me until October the 9th. All the way from that time
4 I never discussed the case with her or none of that until
5 October 9th. When she came to see me, it was the plea
6 was zero to 30.

7 Q And let me ask you about your witnesses. Did you
8 know these folks?

9 A Yes, I do.

10 Q And do you believe that you can have them give some
11 type of statement, deposition to the Court?

12 A Yes, sir. If I can get in contact with all them,
13 yes, I can. They will come.

14 Q And when you say "all them," what ---

15 A I mean, I was at a college so it's like three, four,
16 five people that can witness me here.

17 Q Okay. And you're pretty confident that you can get
18 those folks.

19 A Yes, sir.

20 Q And do you believe that at the time of your case,
21 that those people were available to Ms. Moss?

22 A They could have been.

23 Q Okay. Could have been. If she wanted to call to
24 get ahold of them, could she have done it?

25 A Yes, sir.

1 Q Okay. And that's your brother, right?

2 A Yes, sir.

3 Q Do y'all have the same mom and dad or ---

4 A Yes, sir.

5 Q Okay. So this is a -- and I'm going to use the
6 phrase y'all got the same both parents, right?

7 A Not both. One.

8 Q Okay. You've got the same mom?

9 A Yes, sir.

10 Q Okay. And how old is he?

11 A 24.

12 Q Okay. And so at the time that y'all went down
13 there, he was about 17, 18, right?

14 A Yes, sir.

15 Q And he was able to drive?

16 A I think one of his friends was driving.

17 Q One of what?

18 A One of his friends was driving.

19 Q So y'all had a way to get down there.

20 A Yes, sir.

21 Q Okay. And how long did y'all stay down there?

22 A For about a week.

23 Q About a week?

24 A Yes, sir.

25 Q Okay. And where did y'all stay?

1 A On campus.

2 Q Okay. Y'all just going from room to room?

3 A Yes, sir. Well, we stayed at one room, but, you
4 know, we go to different campus. They have little
5 gatherings and stuff.

6 Q Okay. So y'all are going down there to the parties.

7 A Yes, sir.

8 Q Okay. And your brother could testify to that,
9 right?

10 A Yes, sir.

11 Q Okay. And you said there was other people. Who
12 were the other people again?

13 A Other college students on campus.

14 Q Were these strangers or were these people from --
15 let me ask you this. Where are you from?

16 A I'm from Spartanburg, South Carolina.

17 Q Okay. You're from Spartanburg.

18 Is any of those people in Orangeburg, were they from
19 Spartanburg ---

20 A Yes, sir.

21 Q --- or they're just people y'all randomly met?

22 A No. They were from -- some of them was from
23 Spartanburg.

24 Q And do you know what high school any of them
25 attended?

1 A Spartanburg High School.

2 Q Spartan High?

3 A Yes, sir.

4 Q Okay. And so you don't have any doubt in your mind
5 that these people could have been located and found.

6 A Yes. They could have been located and found.

7 MR. RICHEY: Okay. Thank you. Answer the questions
8 the attorney general has for you.

9 CROSS EXAMINATION

10 BY MS. FLORES:

11 Q Good morning, Mr. Martin. How are you doing today?

12 A I'm doing fine. How are you?

13 Q Good. Thank you.

14 So you're here today alleging ineffective assistance
15 of plea counsel, correct?

16 A Yes, ma'am.

17 Q And do you understand the relief that this court can
18 grant you?

19 A Not -- not really.

20 MS. FLORES: Your Honor, the State would request
21 that we question the applicant on the relief that we can
22 grant him.

23 THE COURT: All right. Mr. Martin, basically, in a
24 PCR, the Court would have a couple of options. One is
25 they can -- you know, if I find that you don't meet your

1 burden, then everything stays the way it is. In the
2 event that I find that you have met your burden, then the
3 case would be sent back for either a retrial or a plea.
4 Okay. And you wouldn't be released or anything. It
5 would go -- you'd start -- it would be like starting
6 over, going back to the beginning and either having a
7 trial or working out some plea.

8 And the other option is, as I kind of discussed with
9 counsel beforehand, if it looks like there's something
10 that needs to go further, then we can proceed along those
11 lines. But that's -- you know, this is not -- I'm not --
12 and that's kind of why I denied your motion before is
13 it's not up to me to determine whether you are innocent
14 or guilty. Mine is to see if your plea that you gave was
15 voluntary and knowingly given. So that's kind of what
16 the issue is before us.

17 THE WITNESS: All right.

18 BY MS. FLORES:

19 Q So do you understand the relief that you can get if
20 you're granted relief in PCR?

21 A Yes, ma'am.

22 Q Okay. And do you understand that, at that time, all
23 the indictments that were originally against you will
24 come back?

25 A Yes, ma'am.

1 Q So you know the maximum exposure that you face if
2 you were to go to square one and face a new trial?

3 A No, ma'am. Could you tell me?

4 Q Absolutely. Yes.

5 So you were charged with murder, so you would be
6 facing the murder charge again.

7 A Okay.

8 Q And that's 30 years to life without parole; do you
9 understand that?

10 A Yes, ma'am.

11 Q So I know you mentioned it earlier. About how many
12 times did you meet with plea counsel?

13 A You said plea counsel?

14 Q Yes. Your attorney. Sorry.

15 A Like two to three times.

16 Q And during those meetings, what did the two of you
17 discuss?

18 A I mean, when I say "meet," actually, my attorney,
19 Ms. Moss, she came and seen me through -- the jail I was
20 in, it's like visitation through glass. She came to see
21 me and let me know that my mother was thinking about
22 hiring her and she will possibly be my attorney. That
23 was the first time I saw her.

24 The second time, I didn't necessarily get to see
25 her. I was on a computer screen and they was in the

1 courtroom doing a bond hearing.

2 The third time I saw Ms. Moss was at my sentence.
3 And that was that.

4 Now, I did see her daughter one time when I had
5 kidney stones. I don't know if she was actually
6 representing me or helping, but I seen her one time. We
7 never discussed nothing legal. I discussed with Ms. Moss
8 on October the 9th, I seen her then, and in the courtroom
9 in a holding cell, you know, on the day when I got
10 sentenced.

11 Q And when you saw her, did you guys discuss all the
12 elements and charges against you?

13 A No, ma'am. We discussed for me to speak with
14 respect, say yes, sir and no, sir, be remorseful and --
15 you know. And what else did we speak about? She did
16 tell me that I was getting an Alford plea. I mean,
17 that's about it.

18 Q I know you mentioned that your attorney told you
19 that you would be getting an Alford plea. Did you guys
20 discuss going to trial?

21 A Yes. I said I wanted to go to trial. And Ms. Moss
22 told me that, you know, if you go in trial, you can't
23 back out, and, you know, I don't feel like going through
24 all this paperwork and stuff like that. The AG and me
25 has been talking, and we already came to an agreement.

1 He agreed to be most lenient and I think you should take
2 the Alford plea. Not everybody gets a chance to get the
3 Alford plea. The judge don't always accept it.

4 I really don't know what an Alford plea is. I'm
5 just telling you what I was told.

6 Q And I know you just stated that you don't really
7 know what an Alford plea is. Did you ever discuss that
8 with your attorney?

9 A I mean, I discussed -- the day that I accepted the
10 Alford plea on the computer, I feel like partially, like
11 she told me what it was because I kept telling her that
12 I'm innocent. And she was like you know they're not
13 budging. I don't know what to mitigate or whatever.
14 They're not budging. I think it's just best you take the
15 Alford plea. And I guess saying like I'm still innocent,
16 but I feel like y'all are going to do what y'all do
17 anyway, so I'm just going to plea, I think. That's what
18 I was told.

19 Q And did you have an opportunity -- I know you
20 touched on it a little bit earlier. Did you have an
21 opportunity to review the discovery in your case prior to
22 your plea?

23 A Not really. It's always partial. It's just like,
24 hey, look at this statement here, or it says this here.
25 The statement that was against me was never really about

1 my case. I was told that I was going to be profiled
2 anyway off of what people are saying. So it was never --
3 like the whole time that I was in the county fighting the
4 case, it was never about my case with no attorney I had,
5 not even just Ms. Moss. It was never about my case.

6 Q And could you elaborate on that a little bit for me?
7 If it wasn't about your case, what was it about?

8 A I mean, it's like a guy made a statement. The
9 people went to go see him on some charges that he was
10 facing in Greenville County Detention Center. And when
11 they went to see him, they just asked him questions about
12 people in the area where we're from. And they asked him
13 about me. And he just got to telling them all type of
14 lies about me. And when he did that, I guess he gave
15 them some type of lead for them to pick at, and they
16 went. And that's how this came about.

17 But that's what they focused on the most when they
18 talked to me, what this guy's saying. But he's not just
19 talking about me. It's 124 pages. He's talking about
20 the whole city. He's talking about everybody, like he's
21 discussing everybody's name. So ---

22 Q And the 124 page statement, was that given to you by
23 your attorney?

24 A Yes, ma'am. I received it in SCDC.

25 Q Do you feel that you understood your actions at the

1 time of entering the plea?

2 A I can't say that I did.

3 Q Are the witnesses that you mentioned earlier, did
4 you present your attorney with a list of individuals who
5 you'd like?

6 A No, ma'am, I didn't.

7 Q Did you discuss those individuals with your
8 attorney?

9 A Not necessarily. I just told her like I've been in
10 Orangeburg with my brother, you know, on a college
11 campus. I mean, I didn't really go into discussing
12 individuals. They didn't try further even to look into
13 it to see about it or nothing.

14 Q And are any of those individuals here today?

15 A No, ma'am.

16 Q Okay.

17 A This was a -- it was a pop-up to me.

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

19 THE COURT: Any redirect? I'm sorry.

20 MS. FLORES: Sorry.

21 No further questions, Your Honor.

22 THE COURT: All right. Redirect?

23 REDIRECT EXAMINATION

24 BY MR. RICHEY:

25 Q Mr. Martin, you're 100 percent positive you told

1 your lawyer about being in Charleston?

2 A Yes, sir.

3 Q Okay. Now ---

4 A You say -- can you say that again?

5 Q You are 100 percent positive you told your lawyer,

6 Ms. Moss, Ms. Hinkley [phonetic], that you were in

7 Charleston?

8 A No. I told them Orangeburg.

9 Q I'm sorry. Orangeburg. Orangeburg. I'm sorry.

10 You're sure you told them?

11 A Yes.

12 MR. RICHEY: Okay. Thank you. No other questions.

13 THE COURT: All right. Thank you. You may step

14 down. Thank you, Mr. Martin.

15 MR. RICHEY: We call Jacqueline Moss.

16 THE COURT: Good morning. All right. would you

17 raise your right hand?

18 WHEREUPON,

19 JACQUELINE MOSS

20 After having been duly sworn, testified as follows:

21 THE COURT: State your name for the record.

22 THE WITNESS: Jacqueline Moss.

23 DIRECT EXAMINATION

24 BY MR. RICHEY:

25 Q Ms. Moss where are you employed?

1 A I am the municipal judge at the City of Spartanburg.

2 Q Okay. And did you practice law in Spartanburg
3 County?

4 A Yes.

5 Q Okay. And what date did you start practicing law?
6 Do you know? Well, let me go back to this. At the time
7 that you represented Mr. Martin, were you in the private
8 practice of law?

9 A I was.

10 Q Okay. And when you represented him, were you doing
11 criminal law as part of your practice?

12 A Yes.

13 Q Okay. And prior to representing Mr. Martin, did you
14 have any other employment?

15 A Yes. I've worked other places, yes. Is that what
16 you ---

17 Q Huh?

18 A I worked other places. Is that what the question
19 was?

20 Q Yeah. Did you work any other places in the legal
21 community prior to representing him?

22 A Yes. I worked at the solicitor's office for about
23 eight years, the Spartanburg County solicitor's office,
24 and I was also a part-time public defender for the public
25 defender's office, yes.

1 Q And do you feel at the time that you represented him
2 that you had enough experience and competency to
3 represent him in this case?

4 A Yes.

5 Q Okay. And you were in the courtroom during
6 Mr. Martin's testimony, correct?

7 A Yes.

8 Q And I'll ask you, as a criminal defense lawyer, you
9 would agree that it's the lawyer's responsibility to
10 investigate the case for the client to some degree?

11 A Absolutely, yes.

12 Q Okay. And you heard Mr. Martin say, at the time of
13 this case, he was in Orangeburg. Did he disclose that to
14 you?

15 A He did not.

16 Q He never told you he was in Orangeburg.

17 A He did not.

18 Q Did he ever tell you that he was not at the scene of
19 this incident?

20 A He did not.

21 Q Okay. So he never said I wasn't there, I've got --
22 at all?

23 A He did not.

24 In his defense, he had about five attorneys over the
25 course of his case. I was the last attorney. I was

1 hired in 2021. He pled guilty in 2022. And so he may
2 have told one of the other five attorneys about that
3 defense. But he did not tell me about that defense.

4 Q When you sat down -- and you had discussions with
5 him; is that correct?

6 A Yes.

7 Q And in those discussions, and y'all talked about the
8 discovery and all the stuff, correct?

9 A Correct.

10 Q And y'all talked about the incident, how it happened
11 through the discovery.

12 A Yes.

13 Q Did you discuss with him his side of what happened?

14 A I did discuss his version of the events. And we
15 talked -- we went through the discovery extensively. We
16 had to get special permission to bring in a laptop
17 because a good bit of the discovery was digital. So we
18 went through the discovery. We talked about defenses.
19 We talked about the case.

20 Q And so in talking about his involvement, did he ever
21 say I was involved with this or did he say I was
22 completely innocent?

23 A He never said he was completely innocent. And as to
24 the question, he never said he was completely innocent.
25 He had a lot of questions about it and he had a lot of

1 questions about the discovery.

2 Q Okay. Then at any point, did he say he was involved
3 in this incident?

4 A I'm not sure of an exact answer to your question.
5 What I can say is that he asked a lot of questions about
6 the State's burden of proving his involvement in the --
7 in the incident.

8 Q So he never said to you -- he never said to you,
9 Ms. Moss, I was out there, I was involved in some kind of
10 way?

11 A He described events leading up to the situation, but
12 he never said -- I'm not sure. I know he gave me
13 specific factual information about the shooting and about
14 the allegations, if that answers your questions.

15 Q Yeah. But he did at all times maintain that he was
16 innocent of the charge, correct?

17 A No.

18 Q He didn't?

19 A No.

20 Q Did he plead under Alford?

21 A He did.

22 Q And under Alford, he is saying that I am not guilty
23 of the charge but I believe there's a substantial factual
24 basis. Is that your understanding of what this Alford
25 thing is?

1 A Yes.

2 Q Okay. So he went in the courtroom and told the
3 judge I'm not innocent [sic], but I think, looking at the
4 discovery, talking to Ms. Moss that my probability of
5 getting convicted is higher enough than I want it to be,
6 that I don't want to go through with it. I want to
7 accept the offer, correct?

8 A Yes.

9 Q And so he did maintain his innocence. And you
10 didn't have any problem with him doing that, correct?

11 A Correct.

12 Q And you felt like that was in his best interest.

13 A Yes.

14 Q Okay. If he -- I'm making assumptions. If he had
15 an alibi witness that could come to court and testify for
16 him, would that have been an important thing in his case?

17 A Yes. Because, of course, you know I would have had
18 to notice the State that there was an alibi witness. And
19 I would have also needed to speak with that witness, to
20 talk to the witness about the alibi.

21 At the plea hearing, the witnesses, the information
22 that he provided to me and his family provided to me, we
23 were able to get all of those witnesses there that we
24 would have the correct information for to mitigate to
25 testify on his behalf.

1 Q And so those witnesses you said were mitigation
2 witnesses?

3 A That's correct.

4 Q Okay. None of those were fact witnesses?

5 A No. Everybody that he gave me contact information
6 for I investigated, and I contacted those people and
7 spoke with those people. So I never received any
8 information regarding a witness who was in Orangeburg.

9 Q And lastly, you've got a lot of experience in
10 criminal law from both sides of the table, correct?

11 A Yes.

12 Q And based off your experience and your knowledge
13 about it, if the client has a witness who says he wasn't
14 there, that will be critical evidence in this case,
15 correct?

16 A Definitely. It would have -- it would have been a
17 defense. It was an -- it would have been an absolute
18 defense to the allegations against him.

19 MR. RICHEY: Thank you, ma'am. Answer any questions
20 the attorney general has.

21 CROSS EXAMINATION

22 BY MS. FLORES:

23 Q Good afternoon, Ms. Moss.

24 So about how long have you been practicing law?

25 A About 30 years.

1 Q And how much of that has been in criminal law?

2 A About 30 years.

3 Q And I think you touched on this earlier. You were
4 retained to represent the applicant, correct?

5 A Yes.

6 Q And about roughly how long before he entered his
7 plea were you retained in this case?

8 A It was less than a year. I was retained in late
9 2021 and he pled guilty in October of 2022.

10 Q And during that time, did you receive all the
11 discovery pursuant to Rule 5 and Brady?

12 A We did. We received it over in portions because
13 sometimes the discs wouldn't work or the -- so we were --
14 we would review that information with him as we got it.
15 Uh-huh.

16 Q And so I know you mentioned during your direct
17 examination that applicant had five other attorneys on
18 his case before you got to it. Did you have the
19 opportunity to speak with those attorneys or review any
20 of their documents?

21 A I got some information, some paper information from
22 one of the attorneys, and I spoke with one of the
23 attorneys about the case. The other attorneys didn't
24 have much to offer. But I did contact them to try to get
25 some gauge of what was going on.

1 Q And could you give us just a brief overview of the
2 State's evidence in this case to the best of your
3 recollection? I know it's been a minute.

4 A There was some witness information. There were
5 witness statements that corroborated the witness --
6 witnesses saying that they knew that Mr. Martin was
7 there. There was photographic evidence. That's what I
8 recall. It was -- it's a big file.

9 Q And based on all the evidence you reviewed, were you
10 able to craft a strategy in this case?

11 A We talked about defenses. We talked about -- so the
12 answer is no, we were not. No.

13 Q And did you discuss all of that with the applicant?

14 A I did. I went several times. He was in the
15 Cherokee County jail.

16 I did go initially to meet him and talk to him to
17 let him know his mother was considering hiring me and I
18 wanted to know if we were a good fit for this case. We
19 talked at that point.

20 And he is correct when he testified we were behind a
21 glass when we spoke. But all of the subsequent visits
22 were in a small visitation room which was exactly across
23 from I would say where the officers kiosk was located so
24 that they could see us. And they gave us ample time.

25 So we would come -- when I say "we," my daughter and

1 I. My daughter is also an attorney, and she's younger,
2 of course. And so I felt that she -- she would be able
3 to connect with Mr. Martin.

4 So they would talk about the information in detail,
5 and we would talk about the information and go through
6 the discovery. As we received it, we would go to Gaffney
7 and talk to him about the case up through the time of the
8 plea.

9 He indicated that he wanted a trial. I told him
10 that's what I was hired for, that's what we would be
11 pursuing.

12 We had the same plea offer along that line. I had a
13 duty to provide that information to him. I also had a
14 duty to provide to him what he was facing. He knew what
15 he was going through.

16 Former Justice Beatty had what we use, a guilty plea
17 affidavit. It's several pages. It explains exactly what
18 a defendant is facing and what their rights are. And I
19 went through that very specifically with him so that he
20 can understand what would be occurring and what he was
21 facing. So we went through that prior to the plea. And
22 he indicated to me that he wanted to plead guilty.

23 He also testified that Judge Keith Kelly indicated
24 that if we had some evidence issues through the case and
25 he said this case will be tried in October. And so he

1 knew it was his trial date when we went to court, and he
2 made the decision to enter a plea.

3 I had no reason to tell him you're required to plead
4 guilty. I felt that he had some representation that
5 might have been a little questionable along the way, and
6 that's why I was stepping in to try to get -- make sure
7 that he knew what he was doing before he did it.

8 Q And I know you mentioned that, during the initial
9 meeting, you informed applicant that his mother had
10 called to retain you. Did you have regular communication
11 with his family?

12 A Yes. I spoke with Mr. Martin's mother at least
13 every other week, sometimes every week. We would talk
14 about the case. We would talk about the defenses to the
15 case and the fact that when she hired me, she said we
16 just want him to get a deal. And I explained to her that
17 he wanted a trial. So we were going to review the
18 evidence, we were going to review any defenses that he
19 had. And we never came up with any of that that would be
20 viable at trial.

21 Q And during any of those communications, did his
22 mother mention anything about another child that was with
23 him at the time of this incident?

24 A No.

25 Q And I know you touched on it, but when did the

1 discussions about pleading in this case first start
2 arising?

3 A So I don't believe that there was ever a meeting
4 that I had with Mr. Martin that we didn't discuss the
5 options because I wanted him to know exactly what he was
6 facing and what his choices were. The reason for that is
7 he was young when it happened and he was in jail from 15
8 up through the time that I met him, and so I wanted to be
9 clear what his options were. And I very carefully went
10 through each indictment and explained to him what he was
11 facing for each indictment. So he -- he had that
12 information.

13 Q And during your conversations, did it seem like he
14 had a good understanding of all of those things that you
15 were discussing?

16 A I believe that he did because he asked specific
17 questions about the information that we were providing.
18 He had specific questions about what the witnesses
19 alleged throughout the process. He had specific
20 information about the codefendant and what the
21 codefendant said and what they would testify to. And so
22 I believe he understood.

23 Q And just one more. Do you stand by the
24 representation and still believe that pleading was in his
25 best -- was his best option at that time?

1 A I do. I believe that he -- I know that he was
2 facing just on one charge 30 years to life. In addition,
3 he was facing several other potential sentences on top of
4 that.

5 And I believe that the plea was -- is in his best
6 interest. I believe the outcome, while it was stiff, was
7 in his best interest because he could have gotten life.

8 Now, do I feel horrible that he is so young and that
9 he has this long sentence? Absolutely, I do. But I
10 believe when you look at the totality of the
11 circumstances, it could have been a life sentence. And
12 so that is what I explained to him, and I believe that's
13 why he pled under Alford because he knew that he could
14 face life in prison.

15 MS. FLORES: Thank you.

16 No further questions, Your Honor.

17 THE COURT: Any redirect?

18 MR. RICHEY: Yes. Yes, sir.

19 REDIRECT EXAMINATION

20 BY MR. RICHEY:

21 Q Mr. Martin, at the time this incident occurred, he
22 was 15, correct?

23 A Correct.

24 Q So there was some issue whether he could get a life
25 sentence at that age, correct?

1 A Correct.

2 Q Okay. And so in theory, he might not have been
3 facing life at that age, correct?

4 MS. FLORES: Objection, Your Honor. Speculation.

5 THE COURT: That's fine. I'll let him ask it.

6 BY MR. RICHEY:

7 Q It's a legal question. At that age, at 15, wasn't
8 that part of the reason for reducing the charge to
9 manslaughter and making it cleaner? I'll just say that
10 to you.

11 A His -- his -- one of his former defense attorneys
12 waived -- he waived the hearing from Family Court which
13 put the case in General Sessions Court. So when I came
14 on the case, it was indicted for the General Sessions
15 offenses. So that was not mitigation in the plea. And
16 so no. That -- that wasn't even a part of it.

17 Q And so -- last question. He wanted to go to trial
18 at some point, correct?

19 A He -- he said -- yeah. Throughout -- he said he
20 wanted to go to trial up through the time that he's
21 decided that he wanted to accept the plea offer.

22 MR. RICHEY: One moment, Your Honor.

23 Thank you. No other questions.

24 THE COURT: Thank you. You may step down.

25 MR. RICHEY: We have no other witnesses at this

1 time.

2 MS. FLORES: The State has no further witnesses,
3 Your Honor.

4 THE COURT: All right. I'll be glad to hear from
5 counsel then.

6 MR. RICHEY: Your Honor, at this stage of the case,
7 we'd ask the Court to consider at this point any order I
8 assume would take -- the Court will give the State
9 30 days to prepare that order. What my client and what
10 we're requesting the Court to allow us to do is, during
11 that 30-day period, that we be able to depose or get a
12 statement from these alibi witnesses and present that to
13 the Court.

14 THE COURT: Well, you can have a hundred alibi
15 witnesses. That doesn't change the fact that he did a
16 plea, and based on if I accept the testimony of the
17 attorney, if he didn't tell him, then that's not even
18 something for me to even consider, is it?

19 MR. RICHEY: Well, Your Honor, the testimony that
20 was given by Mr. Martin was that he told them that. And
21 I think the Court would then have to assess whether these
22 witnesses were credible, that they knew about the
23 situation. And then the Court can make an assessment
24 about whether these witnesses were credible and been
25 beneficial to his case. Then ---

1 THE COURT: No. At this point, don't I need to
2 decide whether -- I've got to decide whether he told her
3 about these alibi witnesses. And if I find that -- if I
4 believe Ms. Moss and say he didn't, then I don't even
5 need to consider the alibi witnesses, I mean, regardless
6 of how credible they may come across.

7 MR. RICHEY: Your Honor, I think the Court has to
8 consider the evidence of the witness because if the Court
9 receives something from this witness saying I'm adamant
10 that this gentleman was not there and that this was -- I
11 think the Court would have to consider that witness in
12 light of all the testimony. It's whether it's reasonable
13 to believe that this witness was not involved in the case
14 or that it's reasonable to believe. And I just say the
15 Court would have to consider the evidence of the witness.

16 THE COURT: Well, in this case, and I disagree with
17 your representation about Alford. Alford is not saying
18 I'm not guilty. Alford is saying I'm not pleading guilty
19 but believe the State can prove me guilty. And that's
20 what he did in this case. And that happens a lot of
21 times if somebody may have a defense and they don't want
22 to roll the dice on it. So then they kind of go back at
23 this time.

24 Also, in reviewing his application for a PCR which
25 was done in February of 2023, there's no mention of an

1 alibi witness or failing to go interview any witnesses
2 there. And until I think the eve of this hearing, that
3 was never even brought up.

4 MR. RICHEY: Your Honor, in discussing the case with
5 him, I mean, I discussed the issues in the cases --
6 issues with him in the case and determined that that was
7 a viable issue for him.

8 What I will say to the Court is that if he's got a
9 legitimate witness out there and he's 15 years old, then
10 it's just -- it's going to be my position that that
11 evidence be brought before the Court in some form. Now,
12 I still have to go get the evidence. I still have to
13 make sure I can get it. But if I can, I would.

14 And I'll say to the Court, I'd much rather do it on
15 the front side than the back side. Well, by the front
16 side and back side is if the Court issues an order -- and
17 I discussed this with Mr. Martin. If the Court issues an
18 order, he then has the right to do it through a motion to
19 reconsider so that evidence -- and I would just ask the
20 Court to consider because they're going to get some time
21 to prepare the order. If the Court is inclined to rule
22 against us, they're going to get some time to prepare
23 that order. We're just asking during that time if we can
24 supplement and provide that or we can just do it on the
25 back side after the order if the Court is inclined to

1 rule against us.

2 Thank you, Your Honor.

3 THE COURT: Yes. State?

4 MS. FLORES: Your Honor, we would just ask that --
5 my apologies. Your Honor, we would just ask that this
6 application be denied. It's the State's position that
7 applicant has failed to present the witnesses that he
8 contends would have provided an alibi statement or any
9 evidence of what their statements would have been as is
10 his burden under Strickland. We would just ask that you
11 dismiss this application and deny it based upon his
12 failure to prove his burden.

13 THE COURT: All right. I'm going to take a look at
14 this and I'll let y'all know what I come up with.

15 MR. RICHEY: Thank you, Your Honor.

16 MS. FLORES: Thank you, Your Honor.

17 (WHEREUPON, proceedings concluded at 11:11 AM.)
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25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF CHEROKEE)

5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Cherokee County, South Carolina, on the
14 19th day of November, 2024.

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

17
18 December 18, 2024

19
20
21 Cheryl A. Smith

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Donald Martin III, #389230,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2023–CP–11-0085
)

**ORDER OF DISMISSAL
WITH PREJUDICE**

FILED IN THE OFFICE
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2025 JAN -7 PM 12:07
BRADY W. MOBBE
CHEROKEE COUNTY, SC

Presiding Judge: Hon. Perry H. Gravely
Applicant's Attorney: Rodney W. Richey, Esq.
Respondent's Attorney: Shayla J. Flores, Esq.
Plea Counsel: Jacqueline A. Moss, Esq.
Date of Hearing: November 19, 2024

This matter comes before the Court by way of Donald Martin III's (Applicant) application for post-conviction relief (PCR) filed on February 9, 2023. Respondent, the State of South Carolina, filed its Return and Partial Motion to Dismiss, and Motion for a More Definite Statement on or around May 5, 2023.

On November 19, 2024, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable Perry H. Gravely. Assistant Attorney General Shayla Joan Flores, represented Respondent. Applicant was present and represented by Rodney W. Richey, Esquire (PCR Counsel). At the hearing, Applicant's counsel advised that Applicant requested a continuance to obtain substitute counsel and subpoena witnesses for his hearing to prove his alibi defense. First, the Court finds that the PCR hearing was not an opportunity to present defenses when he pled guilty and the issue before the Court was whether he advised his attorney of this alibi defense. Further, the Applicant did not present any basis for continuing the case or removing Mr.

Richey as counsel. Therefore, Applicant's Motion to Relieve Counsel and for a continuance was denied and the case proceeded on the merits.

Applicant, through counsel, stated for the record which allegations he intended to proceed on. In support of these claims, Applicant testified on his own behalf, and presented testimony from Jacqueline A. Moss, Esq. (Plea Counsel).

Following a thorough review of the record, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently incarcerated according to an order of commitment of the Cherokee County Clerk of Court. During its May 2022 term the Cherokee County Grand Jury indicted Applicant for murder (2022-GS-11-00506). Jaqueline A. Moss, Esq. represented Applicant. Assistant Attorney General Joel A. Kozak prosecuted the case.

On October 13, 2022, Applicant appeared before the Honorable R. Keith Kelly and pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970), to the lesser included offense of voluntary manslaughter. On October 17, 2022, Applicant appeared before the Honorable R. Keith Kelly for mitigating and sentencing purposes. Judge Kelly sentenced Applicant to twenty-five years' imprisonment for voluntary manslaughter.

Applicant did not appeal his conviction or sentence.

FACTS GIVING RISE TO THE CONVICTION

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

Thank you, Your Honor. On August 20, 2017, at around midnight, the defendant, Donald Martin, III, who is also known as Scrawny and 730, was taken to 802 West Buford Street, Apartment B in Cherokee County by a co-defendant. Once the defendant arrived at the location, he exited his co-defendant's vehicle and fired at least 15 times into the apartment, which bullet holes covering the entire exterior of the apartment. Eight-year-old Kamryn B. was staying with her uncle that night and was inside the apartment, sitting on the couch with her two cousins watching her iPad, while her cousins played a video game. When the shots came through the downstairs windows striking Kamryn in the head. Her uncle came downstairs after the gunshots had stopped and immediately dialed 911. The initial responding officer arrived and attempted to deliver medical aid, putting Kamryn in a recovered position on the floor while she continued to shallowly breathe. She was transported to the hospital, and as she was waiting to be airlifted, she succumbed to her injuries. After shooting into the apartment, the defendant got back into the co-defendant's car with the gun pointing at them. Told them to take him back to the house and said I have three bullets left. The co-defendant described the gun as a handgun with an extended magazine. The defendant has many photos on social media holding this exact type of gun, what appears to be a glock with an extended clip. The 15 casings that were recovered in the parking lot of the crime scene were submitted to SLED and were all consistent to have been fired by the same firearm with a firing pin that would have been consistent with a glock. Through the investigation, a witness was interviewed and informed law enforcement that this shooting was over some unpaid drug money by a resident of the apartment. The defendant did not know anyone in the apartment, but was sent by Isaac Bridges, Jr., also known as Ike and Mulla (phonetic). Bridges was on house arrest at the time and was owed money by someone in the house. Testimony would have shown that Bridges and the defendant were both members of the suicide squad, which is a gang out of Spartanburg. The same witness was also a former member of the suicide squad, who through a statement to law enforcement said that the defendant had been kicked out of suicide squad following the shooting and the defendant was bragging about how he now had a body on him. The witness further told law enforcement that the defendant got tattoos on his face following the shooting. One is a tattoo on his right temple that says no regrets, that according to this witness, the defendant would point to when talking about the shooting that killed Kamryn. Another tattoo on his left temple that has a type glock handgun with an extended clip, which was

consistent with the murder weapon that was used in this incident, Your Honor. The defendant does not have any prior record, other than an assault and battery third from the juvenile, that he was on probation for at the time of this shooting, Your Honor.

(Plea Tr. pp. 9, l. 16 – 12, l. 4).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief filed February 9, 2023, Applicant claimed he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. Misled by these members sworn in by the bar.
2. Prosecutorial Misconduct
 - a. Intentionally kept ignorant by these parties.
3. Due Process Violations and Obstruction of Justice.
 - a. Not presenting all truths against me.

On November 19, 2024, at the evidentiary hearing Applicant, through PCR Counsel, informed this Court that he would be proceeding on the following additional allegations:

1. Ineffective Assistance of Counsel
 - a. Failure to investigate potential alibi witness. (PCR Tr. pp. 4, l. 18- 6, l. 14).
 - b. Failure to discuss potential defenses with Applicant. (PCR Tr. pp. 11, l. 19 – 12, l. 11).
 - c. Failure to provide and review discovery with Applicant. (PCR Tr. pp. 13, l. 9 – 14, l. 6).

Applicant requests relief in the form of this Court vacating his sentence and conviction and releasing him from the State's custody.

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

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹ (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).

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

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d

¹ S.C. Code Ann. §§ 17-27-10 to -160.

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 decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 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. 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), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a

preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

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

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

This Court makes the following findings from the record: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 5, l. 21-6, l. 13); 2. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 6, l. 14-7, l. 7); 3. Applicant clearly indicated he was satisfied with Plea Counsel's services and

that he had no complaints to make against her (Plea Tr. p. 9, ll. 7-11); 4. Applicant indicated Plea Counsel answered all of his questions (Plea Tr. p. 8, ll. 18-20); 5. Applicant indicated Plea Counsel explained to him the Government's burden of proof and the elements of the offense known as voluntary manslaughter (Plea Tr. pp. 8, l. 21-9, l. 3); 6. Applicant indicated Plea Counsel did everything that she could to help him (Plea Tr. p. 9, ll. 4-6); 7. Applicant indicated his guilty plea was made freely, intelligently, and voluntarily (Plea Tr. p. 7, ll. 17-19); 8. Applicant indicated it was his decision alone to plead guilty (Plea Tr. p. 8, ll. 12-14). 9. Applicant indicated he was in no way pressured to enter his guilty plea by Plea Counsel (Plea Tr. p. 8, ll. 15-17); 10. Applicant agreed that there was a substantial likelihood that he would be convicted if the State called all of the witnesses that they were prepared to present (Plea Tr. pp. 7, l. 20-8, l. 6); 11. Applicant indicated his belief that the State could establish the facts as recited at trial and that if they did he would be convicted (Plea Tr. p. 12, ll. 5-22); 12. Applicant was aware that he received a benefit by being allowed to plead under Alford (Plea Tr. p. 8, ll. 7-11).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS

Allegation 1: Plea Counsel Mislead Applicant.
Allegation 1: Plea Counsel Failed to Discuss Potential Defenses with Applicant.

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant alleges Plea Counsel failed to discuss potential defenses with him in order to persuade him to enter his guilty plea pursuant to Alford. This Court finds these allegations are without merit.

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

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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.

Guilty Plea Proceedings

The following colloquy occurred between Applicant and the plea court:

The Court: Mr. Martin, you are entitled to a trial by jury, and I am assigned and I am the resident judge, and I'm assigned to be in Cherokee County Monday morning and we can pick a jury. Do you want a trial by jury?

[Applicant]: No, sir.

The Court: You have the right to call any witness you choose to testify on your behalf. Do you waive that right?

[Applicant]: Yes, sir.

The Court: You have the right to confront through cross-examination by your lawyer any witness who would testify against you. Do you waive that right?

[Applicant]: Yes, sir.

The Court: Okay. How do you offer to plead to voluntary manslaughter, guilty or not guilty?

[Plea Counsel]: Your Honor, if I may interrupt. I didn't bring this to your attention. This is a no contest plea under North Carolina versus Alford.

The Court: Okay, thank you. All right, sir. Do you, in fact, enter a plea under North Carolina versus Alford?

[Applicant]: Yes, sir.

The Court: Do you do so freely, intelligently, and voluntarily?

[Applicant]: Yes, sir.

The Court: I don't know anything about this case, but if the Attorney General calls his witnesses, isn't it true there is a substantial likelihood you would be convicted?

....

[Applicant]: Yes, sir.

The Court: Okay. And isn't it also true that you are receiving a beneficial result? You are receiving a benefit by being allowed to plead under the Alford case?

[Applicant]: Yes, sir.

The Court: Okay. Is it your decision and your decision alone to enter this plea under Alford?

[Applicant]: Yes, sir.

The Court: How about your lawyer, did she pressure you in any way to enter this plea?

[Applicant]: No, sir.

The Court: Okay. Did she answer all of your questions?

[Applicant]: Yes, sir.

The Court: And did she explain to you the burden always remains on the Government to prove your guilt beyond a reasonable doubt?

[Applicant]: Yes, sir.

The Court: Okay. And did she also explain to you the elements of the offense known as voluntary manslaughter?

[Applicant]: Yes, sir.

The Court: Has she done everything she can to help you?

[Applicant]: Yes, sir.

The Court: Are you satisfied with her services?

[Applicant]: Yes, sir.

The Court: Do you have any complaints to make against her?

[Applicant]: No, sir.

(Plea Tr. pp. 6, l. 14–9, l. 11).

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PCR Evidentiary Hearing

At the evidentiary hearing, Applicant testified that he had numerous lawyers over the five-year period he awaited trial. (PCR Tr. p. 9, ll. 2-5). Applicant testified that he maintained his innocence in pleading guilty pursuant to Alford. (PCR Tr. p. 11, ll. 9-18). Applicant testified that none of his attorneys informed him that he had a viable defense in case, and all advised him to plead guilty. (PCR Tr. p. 12, ll. 1-6). Applicant testified that he was offered to plead guilty to a sentencing range of zero to thirty years with each attorney who represented him. (PCR Tr. p. 12, ll. 7-11).

Applicant testified that he informed Plea Counsel that he wished to proceed to trial. (PCR Tr. p. 20, ll. 18- 21). Applicant testified that Plea Counsel informed him that should he decide to proceed to trial, he would be unable to back out of his decision. (PCR Tr p. 20, ll. 21-23). Applicant testified that Plea Counsel further informed him that she did not “feel like going through all [the] paperwork” involved in a trial. (PCR Tr. p. 20, ll. 23-24). Applicant testified that Plea Counsel then informed him that she had been in communication with the Assistant Attorney General and was able to come to the agreement that, should Applicant plead guilty pursuant to Alford, he would agree to be lenient. (PCR Tr. pp. 20, l. 18- 21, l. 2). Applicant testified that Plea Counsel informed him of her belief that pleading guilty pursuant to Alford was in his best interest. (PCR Tr. p. 21, ll. 1-3).

Applicant testified that he and Plea Counsel partially discussed what it means to enter a plea pursuant to Alford on the day that he accepted the plea. (PCR Tr. p. 21, ll. 6-12). Applicant testified that during this discussion he informed Plea Counsel that he was innocent and Plea Counsel informed him of her continued belief that entering the Alford plea was in his best interest. (PCR Tr p. 21, ll. 6-18). Applicant testified to his understanding of the definition of pleading

pursuant to Alford being “saying like I’m still innocent, but I feel like y’all are going to do what y’all are going to do anyway, so I’m just going to plea.” (PCR Tr. p. 21, ll. 15-18).

During the evidentiary hearing, Plea Counsel testified that she was retained to represent Applicant in late 2021 prior to his guilty plea in October of 2022. (PCR Tr. p. 31, ll. 3-9). Plea Counsel testified that Applicant never informed her that he was completely innocent of the charges against him. (PCR Tr. pp. 27, l. 20-28, l. 19). Plea Counsel testified that Applicant described to her events leading up to the crime, and gave her specific factual information about the shooting and about the allegations against him. (PCR Tr. pp. 27, l. 20-28, l. 19). Plea Counsel testified that Applicant did not maintain that he was innocent of the charges against him at all times during her representation of him. (PCR Tr. pp. 27, l. 20-28, l. 19). When asked whether Applicant was stating that he was not guilty of the charges against him but believed that the State had a substantial factual basis to prove the charges against him by pleading pursuant to Alford, Plea Counsel answered in the affirmative. (PCR Tr. pp. 28, l. 22-29, l. 1).

When asked whether Applicant was maintaining his innocence by doing so and whether she had an issue with him doing that, Plea Counsel testified that he was and she did not. (PCR Tr. p. 29, ll. 2-11). When asked whether she felt as though those actions were in Applicant’s best interest, Plea Counsel answered in the affirmative. (PCR Tr. p. 29, ll. 12-13).

Plea Counsel testified that she received all discovery pursuant to Rule 5 and Brady and would review that information with Applicant as she received it. (PCR Tr. p. 31, ll. 10-15). Plea Counsel testified that she spoke with and received paper information from one of Applicant’s prior attorneys, and did contact the other prior attorneys, but they did not have much to offer. (PCR Tr. p. 31, ll. 16-25). Plea Counsel testified that she and Applicant discussed potential defenses but were unable to craft a viable defense strategy in his case. (PCR Tr. p. 32, ll. 1-12). Plea Counsel

testified that Applicant informed her he wanted to proceed to trial, and she informed her that this was what she was hired for and what they would be pursuing. (PCR Tr. p. 33, ll. 9-11). Plea Counsel testified that Applicant had been given the same plea offer throughout her representation and she had a duty to provide that information to him. (PCR Tr. p. 33, ll. 12-13). Plea Counsel testified that she also had a duty to provide him with the information about the charges he was facing. (PCR Tr. p. 33, ll. 13-14). Plea Counsel testified that Applicant knew the situation he was in regarding the charges against him. (PCR Tr. p. 33, ll. 14-15).

Plea Counsel testified that prior to Applicant pleading guilty, she reviewed with Applicant a guilty plea affidavit that was several pages long and explained exactly what a defendant is facing and what their rights are. (PCR Tr. p. 31, ll. 16-22). Plea Counsel testified that she went through that affidavit with him very specifically so that he could understand what would be occurring and what he was facing in pleading guilty. (PCR Tr. p. 31, ll. 16-22). Plea Counsel testified that following their conversation Applicant indicated to her that he wished to plead guilty. (PCR Tr. p. 31, ll. 16-22). Plea Counsel testified that Applicant knew his trial date when he went to court and made the decision to plead guilty. (PCR Tr. pp. 33, l. 23-34, l. 2). Plea Counsel testified that she had no reason to tell Applicant that he was required to plead guilty and stepped in to represent him to make sure that he knew what he was doing before he pled guilty. (PCR Tr. p. 34, ll. 3-7).

Plea Counsel testified to her belief that she discussed with Applicant all of his options regarding pleading guilty or proceeding to trial at every meeting between the two, as she wanted Applicant to know what he was facing and the choices he had. (PCR Tr. p. 35, ll. 3-12). Plea Counsel testified that, due to Applicant's age, she wanted to ensure that she was clear regarding what his options were, so she very carefully went through each indictment and explained to him what he was facing for each indictment. (PCR Tr. p. 35, ll. 6-12). Plea Counsel testified to her

belief that Applicant had a good understanding of their discussions because he had specific questions about allegations made by the witnesses and codefendant and what the codefendant would testify to. (PCR Tr. p. 35, ll. 13-22). Plea Counsel testified that she stood by her representation and continued to believe that pleading guilty was in his best interest. (PCR Tr. pp. 35, l. 23 – 36, l. 4). Plea Counsel testified to her belief that, when looking at the totality of the circumstances, Applicant could have been sentenced to life. (PCR Tr. p. 36, ll. 5-11). Plea Counsel testified that she explained this to him and believes that his knowledge that he could face life in prison is why he pled guilty pursuant to Alford. (PCR Tr. p. 36, ll. 9-14).

Findings

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)).

Furthermore, 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). 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).

Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty. This Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Accordingly, this allegation must be **DENIED** and **DISMISSED**.

Allegation 2: Plea Counsel Failed to Present All Truths Against Applicant.

Allegation 2: Plea Counsel Failed to Investigate and Present Potential Alibi Witnesses.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate potential alibi witnesses. (PCR Tr. pp. 4, l. 18- 6, l. 14). Specifically, Applicant avers that Plea Counsel was ineffective for failing to investigate the testimony of his brother with whom he

contends he was with at the time the crime was committed. (PCR Tr. pp. 14, l. 7- 17, l. 6). This Court finds this allegation is 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.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Additionally, 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 alleged that Plea Counsel was ineffective for failing to interview potential alibi witnesses during her representation of Applicant. To establish counsel was ineffective for failing to present an alibi defense, Applicant must first present evidence of an alibi defense in accordance with the rules of evidence at an evidentiary hearing. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995).

Guilty Plea Proceedings

The following colloquy occurred between Applicant and the plea court:

The Court: Mr. Martin, you are entitled to a trial by jury, and I am assigned and I am the resident judge, and I'm assigned to be in Cherokee County Monday morning and we can pick a jury. Do you want a trial by jury?

[Applicant]: No, sir.

The Court: You have the right to call any witness you choose to testify on your behalf. Do you waive that right?

[Applicant]: Yes, sir.

The Court: You have the right to confront through cross-examination by your lawyer any witness who would testify against you. Do you waive that right?

[Applicant]: Yes, sir.

(Plea Tr. pp. 6, l. 14– 7, l. 2).

PCR Evidentiary Hearing

At the evidentiary hearing, PCR Counsel informed this Court that Applicant alleged he has an alibi for the date and time that the murder was committed, and he informed PCR Counsel that he has a witness who would testify to that effect. (PCR Tr. p. 5, ll. 3-5). Applicant testified that he had numerous lawyers over the five- year period he awaited trial. (PCR Tr. p. 9, ll. 2-5). Applicant testified that he maintained his innocence in pleading guilty pursuant to Alford. (PCR Tr. p. 11, ll. 9-18). Applicant testified that his contention that he was innocent of the charges for which he was convicted was based on him not being present at the scene of the murder during its commission. (PCR Tr. p. 10, ll. 10-12). Applicant testified that he informed each of his prior attorneys that he was with his brother and a few friends in Orangeburg at the time that the murder was committed. (PCR Tr. p. 10, ll. 13-18). Applicant testified that he and three to five other individuals were at a college at the time the crime was committed, and that all of those individuals would have been able to testify to his presence there. (PCR Tr. p. 14, ll. 10-16). Applicant testified that he knew all of the individuals and that, if he could get into contact with all of them, they would all be willing to testify on his behalf. (PCR Tr. p. 14, ll. 7-13). Applicant testified to his belief that all of the witnesses were available to Plea Counsel at the time of his case. (PCR Tr. p. 14, ll. 20-22). Applicant testified that, had Plea Counsel wished to contact them, she would have been able to do so. (PCR Tr. p. 14, ll. 23-25). Applicant testified that neither Plea Counsel or any of his previous attorneys ever investigated whether his alleged alibi was true, despite him asking them to do so. (PCR Tr. p. 10, ll. 19-24).

Applicant testified that his half-brother was one of the individuals who would have testified on his behalf as an alibi witness. (PCR Tr. p. 15, ll. 1-9). Applicant testified that he and his half-brother share a mother. (PCR Tr. p. 15, ll. 1-9). Applicant testified that his brother was

approximately seventeen to eighteen years old at the time of the crime. (PCR Tr. p. 15, ll. 12-14). Applicant testified to his belief that one of his brother's friends drove them to Orangeburg where they stayed for about a week. (PCR Tr. p. 15, ll. 15-24). Applicant testified that he and his brother stayed in a room on campus but would attend parties at different campuses. (PCR Tr. pp. 15, l. 25-16, l. 7). Applicant testified that his half-brother's testimony would support his version of events. (PCR Tr. p. 16, ll. 8-10). Applicant testified that the other individuals who would testify as alibi witnesses on his behalf were college students on campus. (PCR Tr p. 16, ll. 11-13). Applicant testified that some of the individuals were from Spartanburg and attended Spartanburg High School. (PCR Tr. pp. 16, l. 14-17, l. 3). Applicant testified that he had no doubt these individuals could have been located and found. (PCR Tr. p. 17, ll. 4-6).

Applicant testified to his belief that his alleged alibi was a defense in his case. (PCR Tr. pp. 10, l. 25-11, l. 2). Applicant testified that none of his attorneys informed him that he had a viable defense in case, and all advised him to plead guilty. (PCR Tr. p. 12, ll. 1-6). Applicant testified that, at the time of his PCR Hearing, he has never confessed to committing the crimes for which he was convicted. (PCR Tr. p. 11, ll. 14-18). Applicant testified that when he discussed this information with Plea Counsel as well as his prior attorneys, no one ever informed him that he could craft a defense from that information. (PCR Tr. p. 12, ll. 1-4). Applicant testified that his attorneys all told him to plead guilty to the charges against him. (PCR Tr. p. 12, ll. 5-11). Applicant testified that he was offered to plead guilty to a sentencing range of zero to thirty years with each attorney who represented him. (PCR Tr. p. 12, ll. 7-11).

Applicant testified that he did not present Plea Counsel with a list of individuals whom he wished to testify on his behalf as alibi witnesses. (PCR Tr. p. 23, ll. 3-6). Applicant testified that he did not necessarily discuss the witnesses with Plea Counsel but informed her that he had been

in Orangeburg with his brother on a college campus at the time the crime was committed, but did not discuss individuals with her. (PCR Tr. p. 23, ll. 7-12). Applicant testified that Plea Counsel did not try to investigate further into his statements after that conversation. (PCR Tr. p. 23, ll. 12-13). Applicant testified that none of the individuals whom he referenced were present at the evidentiary hearing. (PCR Tr. p. 23, ll. 14-15). Applicant testified that he was one hundred percent positive that he informed Plea Counsel that he had been in Orangeburg at the time of the crime. (PCR Tr. pp. 23, l. 25 – 24, l. 11).

During the evidentiary hearing, Plea Counsel testified that she was retained to represent Applicant in late 2021 prior to his guilty plea in October of 2022. (PCR Tr. p. 31, ll. 3-9). When asked whether, as a criminal defense lawyer, she would agree that it is the lawyer's responsibility to investigate the case for the client to some degree, Plea Counsel answered in the affirmative. (PCR Tr. p. 26, ll. 8-11). Plea Counsel testified that Applicant never told her that he was in Orangeburg at the time of the shooting. (PCR Tr. p. 26, ll. 12-17). Plea Counsel testified that he never informed her that he was not at the crime scene at the time of the shooting. (PCR Tr. p. 26, ll. 18-23). Plea Counsel testified that Applicant had approximately five attorneys represent him prior to her being retained on his case, so he may have informed one of his prior attorneys of this potential defense, but did not inform her about it. (PCR Tr. pp. 26, l. 21-27, l. 6).

Plea Counsel testified that Applicant never informed her that he was completely innocent of the charges against him. (PCR Tr. pp. 27, l. 20-28, l. 19). Plea Counsel testified that Applicant described to her events leading up to the crime and gave her specific factual information about the shooting and about the allegations against him. (PCR Tr. pp. 27, l. 20-28, l. 19). Plea Counsel testified that Applicant did not maintain that he was innocent of the charges against him at all times during her representation of him. (PCR Tr. pp. 27, l. 20-28, l. 19). When asked whether Applicant

was stating that he was not guilty of the charges against him but believed that the State had a substantial factual basis to prove the charges against him by pleading guilty pursuant to Alford, Plea Counsel answered in the affirmative. (PCR Tr. pp. 28, l. 22-29, l. 1).

When asked whether Applicant was maintaining his innocence by doing so and whether she had an issue with him doing that, Plea Counsel testified that he was and she did not. (PCR Tr. p. 29, ll. 2-11). When asked whether she felt as though those actions were in Applicant's best interest, Plea Counsel answered in the affirmative. (PCR Tr. p. 29, ll. 12-13). Plea Counsel testified that if Applicant had an alibi witness that could come to court and testify on his behalf, that would have been important to his case, as she would need to speak with that witness regarding the alibi and give notice to the State that there was an alibi. (PCR Tr. p. 29, ll. 14-20). Plea Counsel testified that she was able to ensure that every witness that Applicant or his family provided her the information for was present and able to present mitigation testimony on his behalf at the plea hearing. (PCR Tr. p. 29, ll. 21-25). Plea Counsel testified that all of the witnesses she presented at the plea hearing were mitigation witnesses. (PCR Tr. p. 30, ll. 1-3). Plea Counsel testified that she investigated, contacted, and spoke with every individual whom she was given the contact information for, and never received any information regarding a witness who was in Orangeburg. (PCR Tr. p. 30, ll. 4-8). Plea Counsel testified that, based on her experience, if her client had a witnesses to state that he was not present at the crime scene that would have been critical evidence as it would have served as an absolute defense to the allegations against him. (PCR Tr. p. 30, ll. 12-18).

Plea Counsel testified that she received all discovery pursuant to Rule 5 and Brady and would review that information with Applicant as she received it. (PCR Tr. p. 31, ll. 10-15). Plea Counsel testified that she spoke with and received paper information from one of Applicant's prior

attorneys, and did contact the other prior attorneys, but they did not have much to offer. (PCR Tr. p. 31, ll. 16-25). Plea Counsel testified that she had a duty to provide him with the information about the charges he was facing. (PCR Tr. p. 33, ll. 13-14). Plea Counsel testified that Applicant knew the situation he was in regarding the charges against him. (PCR Tr. p. 33, ll. 14-15).

Plea Counsel testified that prior to Applicant pleading guilty, she reviewed with Applicant a guilty plea affidavit that was several pages long and explained exactly what a defendant is facing and what their rights are. (PCR Tr. p. 31, ll. 16-22). Plea Counsel testified that she went through that affidavit with him very specifically so that he could understand what would be occurring and what he was facing in pleading guilty. (PCR Tr. p. 31, ll. 16-22). Plea Counsel testified that following their conversation Applicant indicated to her that he wished to plead guilty. (PCR Tr. p. 31, ll. 16-22). Plea Counsel testified that Applicant knew his trial date when he went to court and made the decision to plead guilty. (PCR Tr. pp. 33, l. 23-34, l. 2). Plea Counsel testified that she had no reason to tell Applicant that he was required to plead guilty and stepped in to represent him to make sure that he knew what he was doing before he pled guilty. (PCR Tr. p. 34, ll. 3-7).

Plea Counsel testified that she had regular communication with Applicant's family, during her representation of Applicant. (PCR Tr. p. 34, ll. 8-12). Plea Counsel testified that she spoke with Applicant's mother at least every other week and sometimes every week. (PCR Tr. p. 34, ll. 12-13). Plea Counsel testified she would discuss the case with Applicant's Mother during these calls, including defenses to the case. (PCR Tr. p. 34, ll. 13-15). Plea Counsel testified that she and Applicant never came up with any defenses that would have been viable at trial. (PCR TR. p. 34, ll. 8-20). Plea Counsel testified that Applicant's mother never informed her during any of their conversations that she had another child that had been with Applicant at the time that the crime was committed. (PCR Tr. p. 34, ll. 21-24).

Plea Counsel testified to her belief that she discussed with Applicant all of his options regarding pleading guilty or proceeding to trial at every meeting between the two, as she wanted Applicant to know what he was facing and the choices he had. (PCR Tr. p. 35, ll. 3-12). Plea Counsel testified that, due to Applicant's age, she wanted to ensure that she was clear regarding what his options were, so she very carefully went through each indictment and explained to him what he was facing for each indictment. (PCR Tr. p. 35, ll. 6-12). Plea Counsel testified to her belief that Applicant had a good understanding of their discussions because he had specific questions about allegations made by the witnesses and codefendant and what the codefendant would testify to. (PCR Tr. p. 35, ll. 13-22). Plea Counsel testified that she stood by her representation and continued to believe that pleading guilty was in his best interest. (PCR Tr. pp. 35, l. 23 – 36, l. 4). Plea Counsel testified to her belief that, when looking at the totality of the circumstances, Applicant could have been sentenced to life. (PCR Tr. p. 36, ll. 5-11). Plea Counsel testified that she explained this to him and believes that his knowledge that he could face life in prison is why he pled guilty pursuant to Alford. (PCR Tr. p. 36, ll. 9-14).

Findings

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 she 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 she performed a reasonable investigation. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation 3: Plea Counsel Failed to Provide and Review Discovery with Applicant.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to provide and review discovery with Applicant. Specifically, Applicant alleges Plea Counsel was ineffective for failing to provide him with his full discovery until he had already been convicted of the charges for which he is currently incarcerated and for failing to review discovery with him until October 9, 2022. (PCR Tr. pp. 13, l. 9-14, l. 6). This Court disagrees and finds this allegation to be without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Likewise, in order to prevail on a claim that counsel did not review discovery with applicant, the applicant must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Id.

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 insufficient to support a relief grant. 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)).

PCR Evidentiary Hearing

At the evidentiary hearing, Applicant testified that he never received his discovery materials in full from Plea Counsel during the course of her representation. (PCR Tr. p. 13, ll. 9-14). Applicant testified that Plea Counsel exclusively reviewed “bits and pieces” of the discovery in his case with him. (PCR Tr. p. 13, ll. 9-14). Applicant testified that he did not really have an opportunity to review his discovery prior to his Alford plea. (PCR Tr p. 21, ll. 19-23). Applicant testified he was only allowed to partially review the discovery materials. (PCR Tr. p. 21, ll. 19-23). Applicant testified that Plea Counsel did not come to visit him until October 9, 2022, and that the two did not discuss Applicant’s case until that visit. (PCR Tr. pp. 13, l. 23- 14, l. 6). Applicant testified that the case against him was based on a one hundred and twenty-four page statement made by an individual facing other charges. (PCR Tr. pp. 21, l. 25- 22, l. 21). Applicant testified that he received the referenced statement from his attorney while he was incarcerated in SCDC. (PCR Tr. p. 22, ll. 22-24).

During the evidentiary hearing, Plea Counsel testified that she was retained to represent Applicant in late 2021 prior to his guilty plea in October of 2022. (PCR Tr. p. 31, ll. 3-9). Plea Counsel testified that she received all discovery pursuant to Rule 5 and Brady and would review that information with Applicant as she received it. (PCR Tr. p. 31, ll. 10-15). Plea Counsel testified that she spoke with and received paper information from one of Applicant’s prior attorneys, and

did contact the other prior attorneys, but they did not have much to offer. (PCR Tr. p. 31, ll. 16-25). Plea Counsel testified that she and Applicant discussed Applicant's version of the events through the discovery. (PCR Tr. p. 27, ll. 4-9). Plea Counsel testified that she and Applicant went through the discovery extensively. (PCR Tr. p. 27, ll. 13-15). Plea Counsel testified that she had to get special permission to bring a laptop in during her visits with Applicant as a good bit of the discovery was digital. (PCR Tr. p. 27, ll. 15-18). Plea Counsel testified that Applicant described to her events leading up to the crime and gave her specific factual information about the shooting and about the allegations against him. (PCR Tr. pp. 27, l. 20-28, l. 19).

Plea Counsel testified that Applicant did not maintain that he was innocent of the charges against him at all times during her representation of him. (PCR Tr. pp. 27, l. 20-28, l. 19). When asked whether Applicant was stating that he was not guilty of the charges against him but believed that the State had a substantial factual basis to prove the charges against him by pleading pursuant to Alford, Plea Counsel answered in the affirmative. (PCR Tr. pp. 28, l. 22-29, l. 1). When asked whether Applicant was maintaining his innocence by doing so and whether she had an issue with him doing that, Plea Counsel testified that he was and she did not. (PCR Tr. p. 29, ll. 2-11). When asked whether she felt as though those actions were in Applicant's best interest, Plea Counsel answered in the affirmative. (PCR Tr. p. 29, ll. 12-13).

Plea Counsel testified that Applicant informed her he wanted to proceed to trial, and she informed him that this was what she was hired for and what they would be pursuing. (PCR Tr. p. 33, ll. 9-11). Plea Counsel testified that Applicant had been given the same plea offer throughout her representation and she had a duty to provide that information to him. (PCR Tr. p. 33, ll. 12-13). Plea Counsel testified that she also had a duty to provide him with the information about the charges he was facing. (PCR Tr. p. 33, ll. 13-14). Plea Counsel testified that Applicant knew the

situation he was in regarding the charges against him. (PCR Tr. p. 33, ll. 14-15). Plea Counsel testified that The State's evidence in Applicant's case included witness statements that corroborated witnesses who stated that they knew Applicant had been present at the crime scene. (PCR Tr. p. 32, ll. 1-7).

Plea Counsel testified that she had regular communication with Applicant's family, during her representation of Applicant. (PCR Tr. p. 34, ll. 8-12). Plea Counsel testified that she spoke with Applicant's mother at least every other week and sometimes every week. (PCR Tr. p. 34, ll. 12-13). Plea Counsel testified she would discuss the case with Applicant's Mother during these calls, including defenses to the case. (PCR Tr. p. 34, ll. 13-15). Plea Counsel testified that she and Applicant never came up with any defenses that would have been viable at trial. (PCR TR. p. 34, ll. 8-20). Plea Counsel testified that, at the time Applicant's mother hired her to represent Applicant, Applicant's mother informed her of her desire for Plea Counsel to obtain a plea deal for Applicant. (PCR Tr. p. 32, ll. 14-16).

Plea Counsel testified to her belief that she discussed with Applicant all of his options regarding pleading guilty or proceeding to trial at every meeting between the two, as she wanted Applicant to know what he was facing and the choices he had. (PCR Tr. p. 35, ll. 3-12). Plea Counsel testified that, due to Applicant's age, she wanted to ensure that she was clear regarding what his options were, so she very carefully went through each indictment and explained to him what he was facing for each indictment. (PCR Tr. p. 35, ll. 6-12). Plea Counsel testified to her belief that Applicant had a good understanding of their discussions because he had specific questions about allegations made by the witnesses and codefendant and what the codefendant would testify to. (PCR Tr. p. 35, ll. 13-22). Plea Counsel testified that she stood by her representation and continued to believe that pleading guilty was in his best interest. (PCR Tr. pp.

35, l. 23 – 36, l. 4). Plea Counsel testified to her belief that, when looking at the totality of the circumstances, Applicant could have been sentenced to life. (PCR Tr. p. 36, ll. 5-11). Plea Counsel testified that she explained this to him and believes that his knowledge that he could face life in prison is why he pled guilty pursuant to Alford. (PCR Tr. p. 36, ll. 9-14).

Findings

This Court finds the combination of the record, and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. See Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) 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 to review discovery and investigate the charges, 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. (Plea Tr. p. 78, ll. 11-24). 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 4: Prosecutorial Misconduct.

Applicant also asserts that he is entitled to post-conviction relief based on a claim of prosecutorial misconduct. Specifically, Applicant alleges he was “intentionally kept ignorant by these parties.” This Court finds this allegation is without merit.

Prosecutors have many powers within the criminal justice system. Included in those powers is the “discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain.” State v. Langford, 400 S.C. 421, 435 n. 6, 735 S.E.2d 471, 479 n. 6 (2012). In recognition of the severity of the consequences these powers carry “the United States Supreme Court has fashioned certain rules as a protection against vindictive action in response to a criminal defendant's exercise of a statutory or constitutional right.” State v. Fletcher, 322 S.C. at 260, 471 S.E.2d at 704. “It is a due process violation to punish a person for exercising a protected statutory or constitutional right.” Id. at 259, 471 S.E.2d at 704; see also United States v. Wilson, 262 F.3d 305, 314 (4th Cir.2001) (stating if a prosecutor “responds to a defendant's successful exercise of his right to appeal by bringing a more serious charge against him, he acts unconstitutionally”); United States v. Lanoue, 137 F.3d 656, 664–65 (1st Cir.1998) (stating that such retaliatory conduct amounts to vindictive prosecution and “violates a defendant's Fifth Amendment right to due process”).

In a post-conviction relief action, the applicant bears the burden of proving actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). “A claim of prosecutorial vindictiveness turns on the facts of each case.” State v. Odom, 412 S.C. 253, 263, 772 S.E.2d 149, 154 (2015) (citing People v. Hall, 311 Ill.App.3d 905, 244 Ill.Dec. 617, 726 N.E.2d 213, 220 (2000)). Only “certain limited circumstances pose a realistic likelihood of

vindictiveness by a prosecutor” and, therefore, warrant the application of a presumption of vindictiveness. Fletcher, at 260, 471 S.E.2d at 704 (internal quotation marks omitted). “The inquiry ... is not focused solely on the presence or absence of actual vindictive motive, but includes whether the action taken, which exposes the accused to an increased punishment, poses such a reasonable likelihood of vindictiveness as to require a presumption of vindictiveness.” Id. at 260–61, 471 S.E.2d at 704 (internal quotation marks omitted).

In order to establish a presumption of prosecutorial vindictiveness, Applicant must show a reasonable likelihood that retaliation was a motive behind the solicitor’s actions. See Patrick v. State, 349 S.C. 203, 562 S.E.2d 609 (2002) (holding a presumption of prosecutorial vindictiveness applied because the facts presented a reasonable likelihood that the solicitor brought the additional charges in retaliation for Patrick’s exercise of his right to appeal.); Fletcher, 322 S.C. at 262, 471 S.E.2d at 705 (holding Fletcher was “required to prove actual prosecutorial vindictiveness.”). Otherwise, a “prosecutor’s charging decision is presumptively lawful.” Odon, 412 S.C. 253, 263, 772 S.E.2d 149, 154 (2015) (quoting United States v. Goodwin, 457 U.S. 368, 384 n. 19 (2015)).

“To demonstrate actual vindictiveness, a defendant must show that the government harbored ‘vindictive animus’ and that the superseding indictment was brought ‘solely to punish’ him.” Id., (citing United States v. Bell, 523 Fed.Appx. 956, 959 (4th Cir.2013)). “In other words, to prove a claim of actual vindictiveness, a defendant must show, through objective evidence, that (1) the prosecutor acted with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but for that animus.” Id. (internal citations omitted): see also United States v. Sanders, 211 F.3d 711, 716–17 (2d Cir.2000) (“To establish an actual vindictive motive, a defendant must prove objectively that the prosecutor’s charging decision or the resultant indictments were a direct and unjustifiable penalty, that resulted solely from the defendant’s

exercise of a protected legal right.” (internal citations and quotation marks omitted)).

The case in which an applicant can overcome the presumptive validity of the prosecutor’s actions is rare. Id., at 264 (quoting Goodwin, 457 U.S. at 384 n. 19). However, a conviction will be reversed if the applicant can show prosecutorial vindictiveness, in that the prosecutor acted with genuine animus toward the defendant and the defendant would not have been prosecuted but for that animus.

Findings

Here, Applicant has not alleged a claim of vindictiveness nor any Brady violation. Further, Applicant has failed to present any evidence of prosecutorial misdoings, and the record refutes that any miscarriage of justice was done on the part of the Attorney General’s Office. This Court finds Applicant has failed show that the government harbored ‘vindictive animus’ and that the superseding indictment was brought ‘solely to punish’ him.” Odon, 412 S.C. 253, 263, 772 S.E.2d 149, 154 (2015). Moreover, to whatever extent Applicant was not entirely satisfied with the actions of the State, 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 Alford plea.

Accordingly, this Court finds Applicant has failed to establish any prosecutorial misconduct by Assistant Attorney General Joel Kozak tor any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

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

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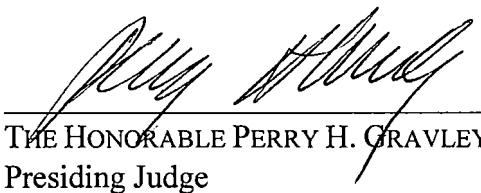
application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

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 2nd day of Jan, 2025, 2024.


 THE HONORABLE PERRY H. GRAVLEY
 Presiding Judge
 Seventh Judicial Circuit

Pickens, South Carolina

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