

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
James R. Barber, III, Circuit Court Judge

Case No. 2010-CP-40-0045

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S.C. Supreme Court

QUANDELLE J. WILSON, #337054,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI**

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 2008-GS-40-12137

The State of South Carolina,)
vs.)
Quandelle J. Wilson,) TRANSCRIPT OF RECORD
Defendant.)
_____)

September 21, 2009
Columbia, South Carolina

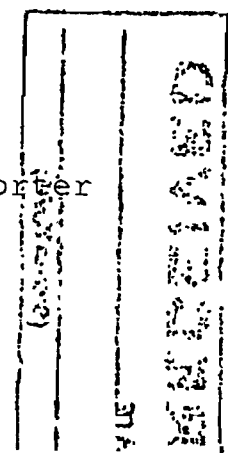
B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

A P P E A R A N C E S:
HEATHER S. WEISS, ESQUIRE
JOHN MEADORS, ESQUIRE
Attorneys for the State

NICOLE I. SINGELTARY, ESQUIRE
BRIAN R. SHEALEY, JR., ESQUIRE
Attorneys for the Defendant

Crystal Holmes
Official Court Reporter



E X H I B I T SNO. DESCRIPTIONI.D. EVD.

(REPORTER'S NOTE: NO EXHIBITS WERE INTRODUCED AT THE
HEARING.)

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(REPORTER'S NOTE: NO WITNESSES TESTIFIED AT THE
HEARING.)

1 Monday, September 21, 2009:

2 MS. WEISS: The State calls Quandelle Wilson.

3 (The Defendant, Quandelle Wilson, was first
4 duly sworn.)

5 THE COURT: Yes, ma'am.

6 MS. WEISS: May it please the Court, Your
7 Honor, thank you. Before you is Quandelle Wilson with
8 his attorneys, Nicole Singletary and Brian Shealey of
9 the Public Defender's office. He was originally charged
10 with murder, attempted armed robbery, conspiracy to
11 commit armed robbery and possession of a weapon during a
12 crime of violence. In exchange for his plea, after
13 extensive negotiations, the State has agreed to drop the
14 conspiracy, the attempted armed robbery and the
15 possession of a weapon and is allowing the Defendant to
16 plead to voluntary manslaughter for a negotiated
17 sentence of 20 to 30 years.

18 THE COURT: All right. Ms. Singletary, Mr.
19 Shealey, y'all represent Quandelle Wilson?

20 MS. SINGLETARY: We do, Your Honor.

21 MR. SHEALEY: Yes, sir.

22 THE COURT: Have y'all explained to Mr. Wilson
23 the charge contained in this indictment, the possible
24 punishment and his rights, including his constitutional
25 right to a jury trial?

1 MS. SINGLETARY: We have, Your Honor.

2 THE COURT: In your opinion, does Mr. Wilson
3 understand the charge, the punishment and his rights?

4 MS. SINGLETARY: He does, Your Honor.

5 THE COURT: How does he indicate to you two he
6 wishes to plead, guilty or not guilty?

7 MS. SINGLETARY: Guilty, Your Honor.

8 THE COURT: Do y'all agree with his decision to
9 do so?

10 MS. SINGLETARY: We do, Your Honor.

11 THE COURT: All right. From your investigation
12 of the facts and circumstances surrounding this case, do
13 you feel that the State could produce sufficient
14 evidence to convince a jury here in Richland County of
15 Mr. Wilson's guilt beyond a reasonable doubt, and if he
16 were to stand trial on this charge, his conviction would
17 be probable?

18 MS. SINGLETARY: Yes, Your Honor.

19 THE COURT: Now, has Mr. Wilson been ordered to
20 submit to a mental examination to determine his
21 competency to stand trial?

22 MS. SINGLETARY: No, Your Honor.

23 THE COURT: Any question in your mind, Ms.
24 Singletary or Mr. Shealey, that Mr. Wilson is in fact
25 competent to enter this guilty plea?

THE STATE V. QUANDELLE WILSON

1 MS. SINGLETARY: None, Your Honor.

2 MR. SHEALEY: No, sir.

3 THE COURT: All right. You are Quandelle
4 Wilson, is that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Wilson, before I can accept
7 your plea of guilty, it is necessary for me to make sure
8 that you're making this plea freely and voluntarily. To
9 do that, sir, I need to ask you a series of questions.
10 At any point during my questioning of you, if you do not
11 understand anything that I say or any words that I use,
12 please stop me. I will be more than happy to repeat or
13 explain anything I say, Mr. Wilson.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Additionally, I'll be more than
16 happy to stop this plea and allow you as much time as
17 you feel you may need to consult with your lawyers, Ms.
18 Singletary and Mr. Shealey.

19 Do you understand, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: How old are you, Mr. Wilson?

22 THE DEFENDANT: 23.

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

24 THE DEFENDANT: To 11th grade.

25 THE COURT: What kind of work do you do?

1 THE DEFENDANT: Janitorial, dishwasher.

2 THE COURT: Okay. Mr. Wilson, have you ever
3 been treated for the abuse of alcohol or drugs or for
4 mental illness?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you taken any medications,
7 drugs or alcohol in the past 24 hours?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you today aware of any
10 physical, nervous or emotional problem that might keep
11 you from understanding what you're doing?

12 THE DEFENDANT: No, sir.

13 THE COURT: You know what you're doing, Mr.
14 Wilson, is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You agree, Ms. Singletary and Mr.
17 Shealey, that Mr. Wilson knows, understands and
18 appreciates what he's doing here this afternoon?

19 MS. SINGLETARY: I do, Your Honor.

20 THE COURT: Now, Mr. Wilson, you heard your
21 lawyers tell me that they have explained to you the
22 charge contained in this indictment ---

23 THE DEFENDANT: Yes, sir.

24 THE COURT: --- the possible punishment and
25 your rights, including your constitutional right to a

1 jury trial, and that you understand these things, is
2 that correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Wilson, you're before me on
5 indictment number 2000 -- is this -- 2008-12137, The
6 State versus Quandelle Wilson. This is an indictment
7 for murder but you're here before me today to proffer a
8 plea, that is to actually plead guilty to voluntary
9 manslaughter.

10 Do you understand this charge, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: The indictment, Mr. Wilson, alleges
13 that you did here in Richland County on or about
14 November the 16th of 2007, kill one Dominic Bethea by
15 means of a gunshot wound and that said victim died as
16 the proximate result thereof. Murder would have been
17 with malice aforethought. This is in the heat of
18 passion as voluntary manslaughter is.

19 Now, do you understand this allegation?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: That you shot and killed
22 Mr. Bethea?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now this is what you want to plead
25 guilty to?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Realizing that by pleading guilty
3 to voluntary manslaughter, Mr. Wilson, that you could go
4 to jail for up to 30 years?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, I've been informed by the
7 Solicitor's office and apparently with the consent,
8 without anybody saying anything, of your lawyers, for a
9 negotiated sentence between 20 and 30 years.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, so you'll get between 20 and
13 30 years. I can't tell you what it's going to be yet.

14 But you understand this?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: In any event, Mr. Wilson, whatever
17 sentence that's imposed upon you, you've got to do 85
18 percent of it before you're eligible for parole.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: That doesn't mean you're going to
21 make parole, that's before you become eligible.

22 Do you understand that?

23 THE DEFENDANT: (Affirmative response.)

24 THE COURT: You understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Knowing that, that is you've got to
2 do 85 percent of between 20 and 30 years, whatever
3 sentence I impose upon you, before you're eligible for
4 parole, do you still wish to continue to plead guilty to
5 voluntary manslaughter?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, Mr. Wilson, when you plead
8 guilty, you have to give up certain rights, first of
9 all, your right to remain silent. Now this is your
10 right against self-incrimination, Mr. Wilson, this is
11 your right to say nothing at all. No one can compel you
12 to come into court to provide evidence or to testify
13 against yourself.

14 Do you understand this, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Secondly, Mr. Wilson, when you
17 plead guilty you have to give up your right to a jury
18 trial, that is your right for a jury here in Richland
19 County to decide whether or not you're guilty of this
20 charge beyond a reasonable doubt. A jury would base
21 this decision on whatever evidence the State would
22 introduce at trial against you and also on whatever
23 evidence you and your lawyers, that is Ms. Singletary
24 and Mr. Shealey, may wish to introduce.

25 Now, Mr. Wilson, I emphasize may wish to

1 introduce, sir, because in a trial you would be presumed
2 innocent, would not have to prove anything, and you
3 could not be convicted unless the State convinced all 12
4 jurors of your guilty beyond a reasonable doubt. The
5 jury's decision would have to be unanimous, all 12 would
6 have to agree that you were guilty of voluntary
7 manslaughter, or I guess if we went to trial, it would
8 be murder.

9 Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Thirdly, Mr. Wilson, when you plead
12 guilty, you give up your right to confront and be
13 confronted by the witnesses against you, that is your
14 right to see, hear and cross-examine any witnesses the
15 State may call to testify against you during the trial.

16 In addition, Mr. Wilson, by pleading guilty,
17 you give up your right to subpoena and call witnesses on
18 your own behalf, that is someone who may testify for
19 you.

20 Do you understand this, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, do you understand these rights
23 I just mentioned to you, Mr. Wilson?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand, sir, that when

1 you plead guilty, you have to give up these
2 constitutional rights?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, is that what you want to do?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You want to give up your
7 constitutional rights?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, you realize you will not
10 receive a jury trial on this charge of voluntary
11 manslaughter by pleading guilty to it?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, once again, you're pleading
14 guilty to voluntary manslaughter. It carries up to 30
15 years in the penitentiary. There's been a negotiated
16 range between 20 and 30 years. Whatever sentence I
17 impose upon you, you've got to do 85 percent of that
18 before you're eligible for parole.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You're giving up all your
21 constitutional rights.

22 Now, considering what I just said to you, Mr.
23 Wilson, I'll ask you once again. How do you wish to
24 plead to this charge, guilty or not guilty?

25 THE DEFENDANT: Guilty.

1 THE COURT: You realize, Mr. Wilson, that when
2 you plead guilty, you admit the truth of the allegation
3 contained in this indictment against you. That means
4 you shot and killed Dominic Bethea.

5 You understand that, don't you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I tell you that because you may
8 have some defenses to this charge, I don't know whether
9 you do or not, but you need to realize that by pleading
10 guilty here today, you give up any defenses you might
11 have.

12 Do you understand that, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Additionally, Mr. Wilson, I tell
15 you that because when you were arrested by the Columbia
16 Police Department, you may have given some type of
17 incriminating statement, that is made some admission or
18 confession about your guilt. You need to realize that
19 by pleading guilty here today, you waive your right to
20 later on challenge or contest, if you gave any
21 statements, whether or not they were taken or obtained
22 from you freely and voluntarily in accordance with your
23 constitutional rights.

24 Do you understand this?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, Mr. Wilson, I'll ask you once
2 again, did you commit this offense?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So once again, Mr. Wilson, you're
5 telling me you're pleading guilty to indictment 2008-
6 12137, voluntary manslaughter, because you did in fact,
7 here in Richland County on or about November the 16th of
8 2007, shoot and kill Dominic Bethea?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You're pleading guilty because you
11 shot him and he died, is that correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, you've mentioned the plea
14 negotiations already.

15 MS. WEISS: Yes, Your Honor.

16 THE COURT: Do they need to be restated for the
17 record at all?

18 MS. SINGLETARY: No ---

19 THE COURT: They dropped everything except for
20 the voluntary manslaughter in the negotiated range of
21 between 20 and 30 years. Does that cover everything?

22 MS. WEISS: Yes, Your Honor.

23 MS. SINGLETARY: Yes, sir.

24 MR. SHEALEY: (Affirmative response.)

25 THE COURT: All right. You understand that,

1 Mr. Wilson?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And you still wish to continue to
4 plead guilty, is that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, sir, has anyone promised you
7 anything or has anyone held out any hope of reward in
8 order to get you to plead guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: Has anyone threatened you or used
11 force to get you to plead guilty?

12 THE DEFENDANT: No, sir.

13 THE COURT: Has anyone used any pressure or
14 intimidation to cause you to plead guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you had enough time to make up
17 your mind as to whether or not you want to plead guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you pleading guilty of your own
20 free will and accord?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, Mr. Wilson, are you satisfied
23 with the manner in which your lawyers, Ms. Singletary
24 and Mr. Shealey, the way they have advised and
25 represented you on these charges?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, have you talked with them for
3 as long and for as often as you feel it necessary for
4 them to properly represent you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you need any more time to talk
7 to them?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you understood your talks with
10 them?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Wilson, has Mr. Singletary and
13 Mr. Shealey done everything for you you feel they should
14 do or could do on your behalf in advising and
15 representing you on this charge?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have they done anything you feel
18 they should not have done?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are you completely satisfied with
21 their services?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any complaints, Mr.
24 Wilson, against anyone at the Columbia Police
25 Department?

1 THE DEFENDANT: No, sir.

2 THE COURT: Any complaints against anyone
3 working here in the Solicitor's office.

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you understood my questions?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Is there anything you want to ask
8 me about what I just discussed with you, anything at
9 all?

10 THE DEFENDANT: No, sir.

11 THE COURT: Now, Mr. Wilson, you realize that
12 you have a right to appeal this guilty plea and whatever
13 sentence I may impose upon you. But, if you're going to
14 appeal, you need to file a notice of intent to appeal
15 within 10 days of today's date?

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Additionally, Mr. Wilson, once
19 you're in the Department of Corrections, it may not mean
20 much to you now but it could later on once you're there,
21 if you later on feel or find that you have some
22 complaints against the Columbia Police Department,
23 against Ms. Singletary or Mr. Shealey, or the
24 Solicitor's office or anybody else involved in your
25 case, you need to make those complaints known by filing

1 a post conviction relief application within one year of
2 today's date.

3 Do you understand that, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Very well. Solicitor, I'll be
6 happy to hear from you.

7 MS. WEISS: Thank you, Your Honor.

8 This incident occurred on or about
9 November 16th of 2007, just in the evening between 5:45
10 and 6:00. This happened at 6701, in the parking lot of
11 6701 Bailey Street which is in the City of Columbia of
12 Richland County.

13 The victim was Dominic Bethea. Here today for
14 him on his behalf is his mother, Ms. Bethea, his
15 brother, Tyco (phonetic) Bethea, and his fiancé, Felecia
16 Goodman (phonetic), also the mother of his children.

17 He came out there that ---

18 THE COURT: Ms. -- Dominic's children?

19 MS. WEISS: Dominic's children, yes, Your
20 Honor.

21 THE COURT: Okay, all right.

22 MS. WEISS: He came out there that night to
23 purchase a pound of marijuana from his connection, PT,
24 also known as Rodney Stewart who is a Co-Defendant
25 charged in this case. He had come out there to purchase

1 a pound of marijuana.

2 MR. MEADORS: Charged with attempted armed --
3 attempted robbery, not murder.

4 MS. WEISS: Right, the Co-Defendant as far as
5 the attempted armed robbery.

6 THE COURT: Okay. All right.

7 MS. WEISS: He had come out to purchase a pound
8 of marijuana and PT had set it up for him to buy it. He
9 told him to meet him out in front of 6701 which -- 6701
10 Bailey Street where he was. And, Your Honor, I'm going
11 to hand up -- this is just a picture ---

12 THE COURT: Sure.

13 MS. WEISS: --- of 6701 Bailey Street, and that
14 was the vehicle that he was in. He backed in. He came
15 in and rolled down his window to buy, just waiting on
16 somebody to come and bring him the marijuana.

17 THE COURT: You said this was the Colony House
18 Apartments?

19 MS. WEISS: This is the Colony Apartments.

20 THE COURT: Colony, okay.

21 MS. WEISS: Yes, Your Honor. He had rolled
22 down his window and was waiting on someone to come and
23 bring him the marijuana.

24 What was going on, unbeknownst to --
25 unbeknownst to him, over in another apartment another

1 parking lot away, the Defendant, Quandelle Wilson along
2 with PT and some others were talking, and PT was talking
3 about going to deliver the marijuana and Quandelle, also
4 known by Quarter (phonetic), said that he was just going
5 to go rob -- go rob the guy, go do a lick.

6 He then walked out, walked over to the parking
7 lot where he knew the victim would be waiting, walked up
8 to the car and presented his gun. It's the State's
9 belief at that point the victim looked at him, started
10 to roll up his window and put it in rev -- and put it in
11 drive. As you can see, he was pointed out. And when he
12 went to do so, the Defendant fired one shot into his
13 head and killed him instantly.

14 Your Honor, at this time I hand up just a
15 couple more pictures.

16 (Pause.)

17 THE COURT: All right.

18 MS. WEISS: That's just three more pictures,
19 Your Honor. He shot him one time in the head. As you
20 can see, the window is partially rolled up and actually
21 in his hand he was holding a phone. He -- if you had
22 time to look at the pictures, which we've done, he was
23 actually -- had just gotten a brand new phone and was
24 trying to figure out how to work some of the components
25 while he was waiting on someone to come and bring him

1 the drugs. He was shot one time in the head, it went
2 from one side, lodged in the other and he was killed
3 instantaneously.

4 The Defendant then ran from the scene. And as
5 the investigation continued, they got statements and it
6 came out that Quandelle Wilson or Quarter was the one
7 who had fired the shot, who had rob -- who was
8 attempting to rob him and fired the shot and killed him.

9 Approximately two days later, on November 18th,
10 the Defendant came in and gave a statement where he
11 admitted to shooting the victim, Dominic Bethea, in the
12 head.

13 MR. MEADORS: Judge, if I could follow up
14 briefly.

15 THE COURT: Yes, sir.

16 MR. MEADORS: As Ms. Weiss stated, there was a
17 deal allegedly for a pound of marijuana for roughly \$700
18 that Mr. Rodney Stewart had made with the victim,
19 Dominic Deterrio Bethea. He goes by Terrio (phonetic)
20 to the family.

21 I think the testimony would have been that
22 their -- they had had a -- Mr. Stewart had had a two or
23 three time relationship with the victim as far as
24 marijuana's concerned, not an extensive time period.
25 The evidence from Mr. Stewart and another individual was

1 that -- and, Judge, we've got phone records between the
2 victim, Mr. Bethea, and Mr. Stewart that day, several
3 times the victim calling -- the victim, Mr. Bethea,
4 calling Mr. Stewart. We've got three phone calls right
5 at the end. I think we actually got the call when the
6 shot was made, Judge. It's about 5:46, the last phone
7 call that actually says, PT, on the victim's phone,
8 where the victim's calling Mr. Stewart. And we don't
9 know, I was prepared to argue several things, that maybe
10 there's someone else coming to bring it, who knows. But
11 that phone was on for about a minute and 20 seconds. I
12 think that's when the fatal shot was fired.

13 Mr. Stewart and another witness were prepared
14 to testify that this Defendant, Mr. Wilson said, I'll go
15 take it. I'm just going to rob him. I'm just going to
16 rob him. That would have been their testimony.

17 Judge, he does go up. There's one shot through
18 the head as Ms. Weiss said. Afterwards, we had a couple
19 of witnesses prepared, through their initial statements,
20 that said that, I killed him. He came back and said, I
21 killed him. One of them's testimony, I believe, was
22 going to be he was just driving away. Somebody else
23 would have said, he was flinching.

24 But he clearly admitted to it beforehand. We
25 think the evidence was abundantly clear that he went

1 there to rob him.

2 Judge, I don't know if now is the right time
3 but these victims, if you would like to hear from them
4 at this point. They're prepared to. But of course,
5 this did happen in Richland County. Mr. Ace brought
6 this down. This is basically the -- point out the map.
7 This is the Colony, Your Honor, which is off of Beltline
8 Boulevard here in Richland County.

9 THE COURT: Yeah, okay.

10 MS. WEISS: This is Bailey Street that goes
11 through the Colony. The incident occurred right here
12 (indicating). This is Apartment 6701. The car was
13 parked approximately right here (indicating) and the
14 planning was going on in this apartment here
15 (indicating). And it's alleged by the State, we would
16 have argued that the Defendant walked out of this
17 apartment, walked around here (indicating), went up,
18 killed the victim and then ran back to the apartment
19 where he then admitted to several people in the
20 apartment ---

21 THE COURT: All right.

22 MR. MEADORS: It's the third parking lot to the
23 left as you go in. Again, the phone calls between Mr.
24 Stewart and the victim, Mr. Bethea, would have been
25 corroborating evidence for Mr. Stewart's part. There

1 was some allegation the Defendant, after he admitted to
2 these two officers that just came in, Your Honor, from
3 the Columbia Police Department, Investigator Reece
4 (phonetic) and Thomas as Your Honor knows, he came in
5 and told them, the Defendant did, yeah, I shot him, I
6 admitted to it. We had some prior bad blood and I just
7 happened to run into him as I went through the Colony
8 and he kind of flinched and I shot him.

9 I just don't think that's credible. I don't
10 think a jury would have found that credible. But I
11 understand that's part of what they're saying.

12 Judge, Ms. Bethea is Kathy Bethea, right here
13 waiving her hand at you. And, Your Honor, she can stand
14 up. I know she's from the Pee Dee, from Florence. I
15 know she wants to briefly address Your Honor.

16 THE COURT: All right. Let me do this first.
17 Let me accept the plea first.

18 MR. MEADORS: Okay.

19 THE COURT: Now, I'm going to give you a chance
20 to argue whatever you want to ---

21 MS. SINGLETARY: Uh-huh.

22 THE COURT: --- in mitigation, that sort of
23 thing. But essentially Dominic Bethea was shot and
24 killed by Mr. Wilson, we all agree to that.

25 THE DEFENDANT: (Affirmative response.)

1 MS. SINGLETARY: (Affirmative response.)

2 THE COURT: So, I find that there is a
3 substantial factual basis for your plea, Mr. Wilson. I
4 further your decision to plead guilty to be freely,
5 voluntarily, knowingly and intelligently made. That
6 you've had advice of competent counsels whom you
7 indicate to me you're completely satisfied with.

8 Therefore, I will accept this plea. Now, I
9 will be happy to hear from Ms. Bethea and any of the
10 victims and then I'll be happy to hear from you all.

11 MS. SINGLETARY: (Affirmative response.)

12 MR. MEADORS: It's Kathy Bethea, Your Honor.

13 THE COURT: Ms. Bethea. And I notice that she
14 walked with a walker or a cane or ---

15 MR. MEADORS: Would Your Honor mind if she
16 stays seated?

17 THE COURT: Yeah, that's fine, that's fine.
18 Yes, ma'am.

19 MS. BETHEA: Good afternoon, Your Honor.

20 THE COURT: Good afternoon, ma'am.

21 MS. BETHEA: I'm -- I call him Knock-knee
22 (phonetic) -- this was my baby.

23 THE COURT: Yes, ma'am.

24 MS. BETHEA: And I am just hurt. I need to
25 forgive him for killing my son. And it's hard. Not

1 only did he just murder him, he murdered me. I
2 discovered high blood pressure after my son got killed.
3 And a lot of -- I have a heart condition now. And I'm
4 on a lot of nerve medicines. I brought all of my
5 medicines so you can see it, what I'm taking, what I'm
6 going through the rest of my life.

7 He has his little kids that ask for their
8 daddy. And every day I relive my child, he was my baby
9 boy. I'm sorry but I need to forgive him because I want
10 God to forgive me. But it's hard. I have to live with
11 this every day. My baby's not here anymore and this is
12 something that I have to live with.

13 So in other words, he can't come back but I'm
14 the one who have life, I have life because they're no
15 more -- there's no more Thanksgiving and Christmas. And
16 when I see his kids, I can't do nothing but cry. His
17 oldest one said, my daddy will be back because he's
18 going to take me to school on Monday, because he used to
19 take his kids to school every day. It's just hard.

20 THE COURT: Ms. Bethea, I will tell you this.
21 My real home is Dillon County, I was born and raised
22 their. My mother was a Bethea. My best friend was
23 David Paul Bethea. So I know the name Bethea is from
24 the Pee Dee.

25 I wish there was some words I could say from

1 here that would comfort you somewhat. And I can say, I
2 understand, I do understand because my best friend,
3 David Paul Bethea, died of liver cancer about 12 years
4 ago. And I always thought we'd live to be old friends
5 together on the front porch watching our grandchildren
6 running around, but it didn't happen that way. And only
7 God knows why. And like I said, I wish there were some
8 words I could say to you other than, I understand your
9 grief.

10 MS. BETHEA: I know, I know.

11 THE COURT: I hope that God will help you
12 overcome the resentment that you should feel and do
13 feel, I'm sure, against Mr. Wilson. And I take all this
14 into account. You have my deepest sympathies and I can
15 understand how it is, I have three children myself, how
16 it is to lose a child. I haven't lost a child but I
17 have lost my parents. And sometimes, in a strange way,
18 they mean more to you after they're gone sometimes from
19 when they're here.

20 So, you have my deepest sympathies at your
21 loss. And I'll take everything you said to me into
22 account. I'll be as fair to you and the memory of your
23 son as I possibly can. And I'll be as fair to Mr.
24 Wilson as I possibly can.

25 MS. BETHEA: Thank you so much.

1 THE COURT: Thank you so much for your words.

2 MR. MEADORS: Your Honor, next is Tyco Bethea.

3 THE COURT: He was the brother.

4 MR. MEADORS: Yes, sir, his brother. There's
5 also another brother -- his brother, his name is James.
6 He's got another brother named James who couldn't be
7 here today. But I think he's speaking for James and
8 himself.

9 THE COURT: Yes, sir.

10 MR. BETHEA: How you doing, Your Honor? I know
11 you gotta do everything you gotta do but I could stay
12 and talk about my brother all day long. In 2003, I gave
13 my life to Christ and I left South Carolina. And in
14 '07, it's a coincidence, '07, November the 1st, I came
15 back to be with my brother. Just bought a house down
16 here and he never walked in my door -- I came back to be
17 with my family to get right and try to get life to be
18 for Christ as well. But the opportunity never -- will
19 be able to get again life, didn't have a chance to hug
20 him or do nothing, so I wouldn't seen him -- and I just
21 came back down south now to be with him and that's
22 something I can never deal with that.

23 But he's got three kids that I take care of
24 plus my four of my own. But it ain't nothing like
25 having my bother here again.

1 And I know the final decision is up to you. I
2 have to forgive this man because that's what God tell my
3 heart to do. I wish him to beat him up so he could
4 apologize but he murdered and I want the world to know I
5 love him and I forgive this man for that.

6 THE COURT: All right. Thank you, Mr. Bethea.
7 This is not an easy thing for anybody.

8 MR. MEADORS: Your Honor, I don't know who you
9 dated in high school but I know had a girl friend in
10 high school and we broke up. But this lady right here
11 started dating the victim in high school, I think in the
12 8th or 9th grade, and they continued on and became his
13 wife and she's now the mother of his three children, Ms.
14 Felecia Goodman.

15 MS. GOODMAN: I don't know if you can -- would
16 you prefer here because I don't want to talk over the
17 microphone. Can you hear me?

18 THE COURT: Any way you prefer, Ms. Goodman.

19 MS. GOODMAN: Okay, thank you. I don't know
20 this gentleman right here. But me and Terrio started
21 dating in high school. And ---

22 THE COURT: You went to Wilson High?

23 MS. GOODMAN: West Florence.

24 THE COURT: Okay, West Florence.

25 MS. GOODMAN: Yes, sir, West Florence. And me

1 -- I moved up there and then we continued going from
2 here.

3 The only thing I can say, that I just know that
4 we have three kids. I have an eight year old, a four
5 year old and a two year old. The two year old don't
6 know him at all because the prior incident happened when
7 he was two months. So I don't -- he don't know him at
8 all.

9 But the only thing I ask you to take into
10 consideration of my three kids because at the time he
11 was a young man, he probably did wrong -- all -- all of
12 us did wrong. None of us is, you know, good.

13 But all I ask is you take my three kids into
14 consideration. I don't know if he had kids but if he
15 do, his kids will come see him. I have to play mommy
16 and daddy to my kids, my three kids. You know, he could
17 have been young and do what he wanted to do but he
18 stayed there with me and made sure my kids were taken to
19 school, had a roof over their heads. And, you know, I
20 could be on -- not knocking anybody on DSS but I was
21 not, and we made sure to take care of our three kids
22 every day. And now I have to play kids -- and mommy and
23 daddy to my three -- all three of my kids.

24 So, I mean, there's nothing -- I mean, people
25 can say stuff but until you walk in my shoes and, you

1 know, see how I feel, there's nothing to replace,
2 there's nothing.

3 So I hope you just take into consideration of
4 my three kids, sir, when you do, you know.

5 THE COURT: I will consider it.

6 MS. GOODMAN: Thank you.

7 THE COURT: Thank you so very much.

8 MS. GOOWIN: All right.

9 MR. MEADORS: Your Honor, in conclusion --
10 Dominic Deterrio Bethea was 24 years old when he died in
11 the parking lot of Colony. He was playing with his
12 phone and one of those earpieces he was trying to
13 connect.

14 Judge, these cases aren't easy, Your Honor has
15 been around. And I mean that in the nicest sense as I
16 can say it. The victims and I have talked.
17 Investigator Thomas, Investigator Reece, I want to thank
18 them for their outstanding job in this case.

19 But we've all talked and met and it was a
20 struggle as I know it was for the Defense. You know,
21 initially, mom, who was up here, said I want the max.
22 And that's understandable. And the Defense knows that
23 we're going to ask for the max, I know they're going to
24 ask for the other. And they understand that too.

25 I think we've tried to get justice in getting

1 here, I hope we have. And hope Your Honor will find, as
2 we know you will, whatever you feel if appropriate in
3 the sentence. Certainly you won't hear any argument
4 from me and ---

5 THE COURT: Thank you so much, Mr. Meadors.

6 MR. MEADORS: Yes, sir.

7 THE COURT: All right, Ms. Singletary.

8 MS. SINGLETARY: Thank you, Your Honor. If it
9 pleases the Court.

10 When someone actually dies, I mean, it's never
11 an easy case for the Prosecutor or for the Defense, Your
12 Honor. I will tell you that as soon as my client
13 actually found out that the police was looking for him
14 for shooting Mr. Bethea, he turns himself in, Your
15 Honor. He turned himself in, sat down with Investigator
16 Reece, Investigator Thomas, and he told what happened on
17 that day. He told his side of the story.

18 Your Honor, as the State has previously said,
19 what they would actually seek to introduce at trial,
20 that's what we're going to tell you right now, Your
21 Honor. We mean no disrespect to the family, but in
22 situations like this, everybody in the justice system
23 has their part to play. And my part is to defend my
24 client, Your Honor. And just to start off, that's why we
25 are respectfully asking for the low end of the range,

1 Your Honor.

2 Your Honor, it would be our arguments at trial
3 that the State's witness, as they stated, Rodney
4 Stewart, who is known as PT, who actually set up this
5 deal, and according to the State, my client and Mr.
6 Bethea never talked to each other at all on that day.
7 The whole drug deal was set up between Mr. Stewart and
8 Mr. Bethea.

9 And so the State's theory is that my client
10 walks in and takes away this drug deal from Rodney
11 Stewart, PT. And Mr. Stewart says, yeah, even though I
12 went and paid 4 -- \$550 to get these drugs to sell to
13 Mr. Bethea, Mr. -- Mr. Wilson, you can come in and you
14 can rob Mr. Bethea. And at trial, we would adamantly
15 deny that my client at any point conspired with Mr.
16 Stewart to actually commit a robbery on Mr. Bethea, Your
17 Honor.

18 THE COURT: All right.

19 MS. SINGLETARY: Additionally, the State's
20 witness, Cedric -- Wilson Cedric Issac (phonetic), who
21 was there on that day, who gave a statement to police,
22 said that when Rodney Stewart was talking about robbing
23 Mr. Bethea, my client was nowhere around.

24 THE COURT: Well that's fine. That's fine and
25 I don't want to cut you off. But he's pleading to

1 voluntary manslaughter and not robbery or attempted
2 robbery.

3 MS. SINGLETARY: Well, Your Honor, because the
4 State went into the whole facts of ---

5 THE COURT: I understand.

6 MS. SINGLETARY: --- attempted robbery ---

7 THE COURT: But I'm sentencing him for
8 voluntary manslaughter, not attempted robbery, not
9 robbery, but for voluntary manslaughter.

10 MS. SINGLETARY: Your Honor, I understand that.

11 THE COURT: Okay.

12 MS. SINGLETARY: As it relates to the voluntary
13 manslaughter, Your Honor, back in November of 2006,
14 that's when my client formed a relationship with Mr.
15 Bethea.

16 THE COURT: All right.

17 MS. SINGLETARY: At that point, my client got
18 marijuana from Mr. Bethea and my client owed Mr. Bethea
19 -- Mr. Bethea \$900. At trial, what we would have been
20 asking the Court was -- is for a self-defense charge,
21 Your Honor.

22 In December of 2006, my client and Mr. Bethea
23 had a confrontation at the Gaz-Bah (phonetic) on Farrow
24 Road in which my client actually was beat up by Mr.
25 Bethea and received a black eye, Your Honor. At that

1 time, he told his girlfriend who would have testified,
2 about that interaction between him and Mr. Bethea.

3 Your Honor, about three months later, Mr.
4 Bethea, along with two of his other friends, saw Mr.
5 Wilson walking through the Colony and yet again, Mr.
6 Bethea and his friends jumped on Mr. Wilson.

7 Your Honor, then there's a third occurrence
8 which happened a month before the shooting in which it
9 would be our allegation that Mr. Bethea placed a gun in
10 my client's face and said, next time I see you, if you
11 don't have my money, I am going to kill you.

12 Your Honor, so at trial we would have asked for
13 a prior difficulty bad blood charge because of the
14 incidences that occurred between our client and Mr.
15 Bethea.

16 Also, Your Honor, we would have had -- asked
17 for a charge that our client could actually act on
18 appearance. That our client, even though a weapon was
19 not found, our client does not have to wait. It's
20 settled in South Carolina that he does not have to wait
21 for someone else to get the jump on him. That as long
22 as he reasonably believes that the person has a weapon,
23 that he can fire first, Your Honor. And when our client
24 came in to voluntarily turn himself in, gave a statement
25 to Investigator Thomas and Investigator Reece, he told

1 that story. He told the story about how many times he
2 had been beaten up. He told the story that, on this
3 night, on November 16th, 2007, in the dusk of dark, he
4 hears someone call him over. He goes to the actual car
5 and as soon as he makes it to the car, he realizes that
6 it's Dominic Bethea. And he says that he thinks that
7 Bethea is reaching for a gun, because just a month
8 previous, Mr. Bethea had put a gun in his face, so he
9 pulled his gun and he fired one shot, Your Honor. That
10 would be our argument, he fired one shot ---

11 THE COURT: All right.

12 MS. SINGLETARY: --- that went through
13 Mr. Bethea's ear, that made contact with Mr. Bethea on
14 his ear.

15 So, Your Honor, at trial that -- the bottom
16 line, we would be asking for self-defense, Your Honor,
17 because of the bad will and the fact that our client
18 could act on appearances.

19 Based on that, Your Honor -- and I'm going to
20 tell you that I've done extensive like meetings with Mr.
21 Wilson. I will tell you that Mr. Wilson, he accepts his
22 responsibility. He knows what he did was wrong. I
23 mean, he has always talked about like the family and
24 what Mr. Bethea's family is going through. And not just
25 Mr. Bethea's family but what he's going through.

1 Your Honor, earlier his six year old daughter
2 was here. And I looked at the family and I said, you
3 need to take her out. She does not need to be in here.
4 And just like their family is going through a whole lot,
5 Your Honor, two families have been destroyed. Because
6 prior to this incident, there's nothing in my client's
7 background that says that he is a violent person, Your
8 Honor, there's nothing. Like the Solicitor can go over
9 records but my client didn't have a record. And there
10 was additional stuff that, Your Honor, we were going to
11 try to bring out about the victim's past. And I'm not
12 going to go into that but it would have been certainly
13 relevant to why my client was able to actually act on
14 appearances that night.

15 Your Honor, he felt like he was in a do or die
16 situation, Your Honor, and that's why we're just
17 respectfully asking for the low range.

18 THE COURT: I understand.

19 MS. SINGLETARY: Your Honor, also here with him
20 today, and if you guys could please stand up, is his
21 grandmother. And they would like to address the Court
22 at the appropriate time. Also his mother and his two
23 brothers. His father is outside with Mr. Wilson's six
24 year old daughter. But I am going to let Mr. Shealey
25 address the Court and then the family at the appropriate

1 time, Your Honor.

2 THE COURT: All right, Mr. Shealey.

3 MR. SHEALEY: Your Honor, she touched on this
4 and I'm going to be really brief because you made it
5 pretty clear. But the contention of the armed robbery,
6 attempted armed robbery, any drug dealings, the Defense,
7 Mr. Wilson has always contested, as stated to
8 Investigator Reece and Thomas, came out and said what
9 happened and brought over, never would he ever admit to
10 any kind of drug dealings.

11 Your Honor, this -- this possibly could have
12 been resolved a whole lot sooner but for the fact that
13 PT tried to cover his bases when he realized what had
14 happened. The phone records would have shown PT and Mr.
15 Bethea conversing that day, PT set it up. PT,
16 Investigator Thomas says -- and Reece basically says,
17 you know, he bought a pound of weed for 550 from a guy
18 named Donnie (phonetic) and then all of a sudden he was
19 going to -- and set it up for a \$700 buy and all of
20 sudden he was going to -- all of a sudden he was going
21 to get it and give Mr. Wilson -- the middleman, he was
22 going to give a hundred dollar cut to Mr. Wilson is what
23 PT says, leaving \$50 profit for himself, which doesn't
24 make any sense. In fact, Investigator Reece has to stop
25 the interview seven times to call him a liar, said, be

1 truthful with us, son, be truthful with us.

2 That would have come out at trial, the
3 credibility of PT would have been, in our opinion,
4 severely attacked, Your Honor, and just goes to show
5 that he's not the man. That any attempt to arm rob, if
6 he was involved in the drug dealing at all, PT was
7 trying to remove himself from the situation but PT's got
8 that charge and he's going to have to deal with that,
9 Your Honor.

10 And that's all I have to say. I believe that
11 he came forward, he owned up to this from the very
12 beginning. But for the fact that PT and these other
13 guys had set up this drug deal that he had nothing to do
14 with, which it doesn't make any sense -- that PT
15 admitted that he knew that there were prior difficulties
16 between Mr. Wilson and the victim, it would make no
17 sense to insert this middleman just for this thing to go
18 bad. And for him to get a \$50 profit in this situation,
19 it makes no sense. And that would have come out, Your
20 Honor.

21 And I will be real brief but he's owning up to
22 what he perceived happened at the time. He's here
23 admitting his guilt on this charge, that he did kill
24 this man. But we do believe at trial we would have
25 gotten a self-defense charge and he had the right to act

1 on appearances based on his prior difficulties spanning
2 the year before that with the victim, Your Honor. And I
3 know ---

4 THE COURT: All right. Thank you, Mr. Shealey.
5 I will be happy to hear from you all if there's anything
6 you'd like to tell me. You need to identify yourself
7 for me first, please.

8 MR. GANTT: My name is Levon Gantt (phonetic)
9 and I'm Quandelle's older brother.

10 THE COURT: Yes, sir.

11 MR. GANTT: I'm the oldest of the three. I
12 would like to extend my deepest sympathy to the family.
13 Every since this incident happened, I have kept you all
14 in my prayers as much my brother. I realize that what
15 happened was not the right thing and was a situation
16 that just went wrong.

17 My brother is really not a violent person at
18 all. My brother has always been my first brother and my
19 first best friend. Every since we was younger, I always
20 tried my best for my brother, I always treated him in
21 the best -- as the best so we could grow old together
22 and always be a family together.

23 Every since my brother first had his first
24 child, I've always been there for my brother each time
25 as I am now to this day. And I know that my brother has

1 always been a good person, he's never been a bad person.
2 There's not a time that when I couldn't call my brother
3 and say, Quandelle, could you give me this, can you give
4 me that. My brother would give it to me and not ask a
5 question of why I needed it or ever ask for it in
6 return.

7 And I just ask that you just please just allow
8 my brother a second chance at life. I know what he did
9 was wrong and he know he was wrong. I can never take my
10 brother's wrong and make his wrong right. Because what
11 is right is right and what is wrong is wrong.

12 But I understand that you have a child, that
13 you have kids as well too that have to be raised, but I
14 just ask that you can forgive my brother so that he can
15 come home and help me raise his child.

16 That's all can say. And I just show my deepest
17 sympathy for you guys and I'm so sorry about you guys'
18 loss.

19 THE COURT: Thank you, sir.

20 Yes, ma'am.

21 MS. HOPKINS: My name is Cynthia Hopkins
22 (phonetic) and I'm Quandelle's mother.

23 First of all, I would just like to give my
24 deepest sympathy to you all because I know -- I mean,
25 I've lost someone that was close to me. It hasn't been,

1 you know, a brother or anything like that -- I mean, I
2 lost my sister but I can imagine how it is, you know,
3 losing someone that's very close to you. And I really
4 do hope and pray that you all do forgive my son because
5 I know that he has asked God to forgive him for what he
6 has done to you all.

7 And to be honest with you, Quandelle has never
8 been a violent person. There has been times that I
9 would raise my voice at him and he would cry. So
10 anything went down -- went down -- that went down with
11 this right here, he had to be scared, he would have
12 had to. He's not a very -- he's not violent at all, not
13 with family or anyone.

14 And I am really sorry for what -- what went
15 down, I am, for your family and for my family also. But
16 I really truly ask that you all forgive my son for what
17 went down.

18 THE COURT: All right. Thank you ma'am.

19 GRANDMOTHER: Your Honor, I'm kind of
20 speechless because I had aneurism in -- last October but
21 now I'm getting my speech back. I had a aneurism in my
22 brain.

23 But I do want to say that I raised Quandelle to
24 be a better person. I had no idea anything that would
25 have happened to him but I would like to apologize to

1 the family and to the mother. Oh, Lord, I'm so sorry
2 for you and the family. Because it means a lot when you
3 hurt somebody and to take their life from them. I hurt
4 so much. I lay in the bed thinking about it. I say, I
5 hope the Lord forgive him and that he -- they will
6 forgive him because the Lord knows that I have teached
7 him the best way. He's never been violent in anything,
8 anything, no fighting, no nothing. And that the Lord
9 have mercy on him, to you and the family. I pray that
10 you give him another chance in life but it all stands
11 where God will see him be a better person in life is to
12 go on -- thank you.

13 THE COURT: Thank you, ma'am.

14 MR. WILSON: How you doing, Your Honor?

15 THE COURT: Yes, sir. And you're?

16 MR. WILSON: My name is Max (phonetic) Wilson,
17 I'm Quandelle's father.

18 THE COURT: Yes, sir.

19 MR. WILSON: And I would just like to start off
20 first by saying to the victims that I am truly sorry for
21 their loss. Losing Quandelle is also a loss to us.
22 Like his grandmother said, we ain't never known him to
23 be violent in any way whatsoever. And for this to have
24 occurred shocked all of us, you know. And I just truly
25 ask that the Courts as well as the victim's family, that

1 they show as much compassion for my son as possible.

2 THE COURT: All right. Thank you, sir.

3 MR. WILSON: That's all I have to say.

4 THE COURT: Yes, ma'am.

5 MS. SINGLETARY: Your Honor, Mr. Wilson would
6 like to address the Court.

7 THE COURT: Yes, sir, Mr. Wilson.

8 THE DEFENDANT: All I want to say, I apologize
9 to the family for what I've done, the pain that I've
10 caused to them. I also want -- just the same as I
11 brought pain to my family. And I'm really truly
12 sincerely sorry for their loss and what I've done and I
13 really do apologize and pray and ask God to touch their
14 hearts to forgive me. Because I've also asked God to
15 forgive me for what I've done. And I pray every day and
16 every night for this family and their loss and his kids
17 and for my kids' loss because they've lost a father as
18 well and his kids have lost a father.

19 And I just ask that they -- I just ask that you
20 just forgive me for what I've done.

21 THE COURT: All right, sir.

22 Listen, it's easy to be an advocate. It's more
23 difficult to be a victim, it's more difficult to be a
24 Defendant, and sometimes it's difficult to be a judge.

25 And so you see what things like this lead to.

1 You've got the victims crying, you've got the Defendants
2 crying. It's a sad tragic loss for everybody involved.
3 I wish none of us had to be here. This is a tough
4 thing.

5 Yes, sir, Solicitor.

6 MR. MEADORS: With all due respect, I just went
7 back to Ms. Bethea as I always do. It's just not right
8 and I just respectfully to everybody, he's not claiming
9 self-defense here today. There was no evidence
10 whatsoever of prior bad blood between them except from
11 the Defendant, Judge. And only one witness said --
12 witness Cedric Issac, he was bothering me -- I talked to
13 him, I said tell me, when did you find out about this?
14 He said, well, the Defendant told me about it after the
15 shooting.

16 So, I don't know, he walked up to somebody who
17 he had a prior beef with -- and I just don't know.
18 There are two versions to everything ---

19 THE COURT: Let me help you out, Solicitor. I
20 said it's easy to be an advocate for or against
21 something. It's more difficult to be the Bethea family,
22 it's more difficult to be the Wilson family, it's
23 difficult for me and everybody involved. We've had two
24 losses here.

25 On indictment number 2008-12137, The State

1 versus Quandelle Wilson, indictment for voluntary
2 manslaughter, sentenced to 25 years.

3 Good luck to you, Mr. Wilson. This matter is
4 concluded.

5 MR. MEADORS: Thank you, Your Honor.

6 THE COURT: Thank you all so very much.

7 ---- END OF TRANSCRIPT OF RECORD ----
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1 CERTIFICATE OF REPORTER

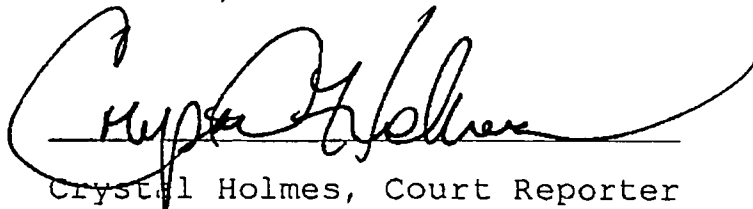
2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF RICHLAND)

5
6 I, Crystal Holmes, Official Court Reporter for
7 the Fifth Judicial Circuit of the State of South
8 Carolina, do hereby certify that the foregoing is a
9 true, accurate and Complete Transcript of Record of
10 the proceedings had and evidence introduced in the
11 guilty plea hearing of the captioned case, relative
12 to appeal, in the Court of General Sessions for
13 Richland County, South Carolina, on the 21st day of
14 September, 2009.

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

17
18 March 27, 2010

19
20 
21 Crystal Holmes, Court Reporter

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THE STATE V. QUANDELLE WILSON

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Honorable L. Casey Manning, Judge

Case No. 2008-GS-40-12137

The State,.....Respondent,

v.

Quandelle J. Wilson Appellant.

NOTICE OF APPEAL

Quandelle J. Wilson appeals his conviction and sentence in this case. The sentence was imposed by the Honorable L. Casey Manning on September 21, 2009.

2008-GS-40-12137 - Voluntary Manslaughter - 25 years

September 29, 2009

Deon O'Neil

Deon O'Neil
Signing for
Nicole Singletary
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592
Attorney for Appellant

Other Counsel of Record:
Deputy Solicitor John Meadors
Office of the Solicitor, Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street
Columbia, South Carolina 29201
Attorney for Respondent

RECEIVED

SEP 29 2009

SC Court of Appeals

JEANETTE W. McBRIDE
C.C.P. & G.S.

2009 SEP 29 PM 12:08

RICHLAND COUNTY
FILED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Honorable L. Casey Manning, Judge

Case No. 2008-GS-40-12137

The State,..... Respondent.

v.

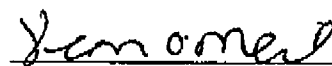
Quandelle J. Wilson,..... Appellant.

RICHLAND COUNTY
FILED
2009 SEP 29 PM 12:08
JEANETTE W. McBRIDE
C.C.P. & G.S.

STATEMENT OF BASIS FOR APPEAL FROM
GUILTY PLEA PURSUANT TO RULE 203(d)(1)(B)

Pursuant to South Carolina Appellate Court Rule 203(d)(1)(B), the Defendant was dissatisfied with his sentence and insisted on appealing. I am of the opinion that if the client insists on appealing, I am constrained to file an appeal. Weathers v. State, 319 S.C. 59, 459 SE 2d 838 (1995).

September 29, 2009



Deon O'Neil

Signing for

Nicole Singletary

Richland County Public Defender's Office

P.O. Box 192

Columbia, South Carolina 29202

(803) 765-2592

Attorney for Appellant

Other Counsel of Record:
Deputy Solicitor John Meadors
Office of the Solicitor, Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street
Columbia, South Carolina 29201
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Honorable L. Casey Manning, Judge

Case No. 2008-GS-40-12137

The State,.....Respondent,

v.

Quandelle J. Wilson.....Appellant.

PROOF OF SERVICE

I hereby certify that a true copy of the Notice of Intent to Appeal & the Statement of Basis for Appeal from Guilty Plea Pursuant to Rule 203(d)(1)(B) in the above-referenced case has been served upon opposing counsel by delivering same this date to their office at the Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center. 1701 Main Street, Columbia, South Carolina 29201.

September 29, 2009

Deon O'Neil

Deon O'Neil
Signing for
Nicole Singletary
Richland County Public Defender's Office
P.O. Box 192
Columbia, S.C. 29201
(803) 765-2592
Attorney for Appellant

Other Counsel of Record:
Deputy Solicitor John Meadors
Office of the Solicitor, Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street
Columbia, South Carolina 29201
Attorney for Respondent

RICHLAND COUNTY
FILED
2009 SEP 29 PM 12:08
JEANETTE W. McBRIDE
C.C.P. & G.S.



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OCT 08 2009

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The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

October 7, 2009

Nicole Latonya Singletary, Esquire
Richland County Public Defender's Ofc.
1701 Main St.
Columbia, SC 29201

Re: The State v. Wilson, Quandelle

Dear Ms. Singletary:

I have received your letter of September 29, 2009.

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

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

Please send your letter to your client within ten (10) days, **with a copy to this office**. Thank you very much.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. Barber", is written over the typed name.

CLERK

JFB/lb

cc: Chief Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Sally W. Elliott



RECEIVED

NOV 10 2009

The South Carolina Court of Appeals **ATTORNEY GENERAL'S OFFICE**

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
WWW.SCCOURTS.ORG

November 9, 2009

Quandelle Wilson #337054
Broad River Correctional
Institution
4460 Broad River Road
Columbia, SC 29210

Re: The State v. Wilson, Quandelle

Dear Mr. Wilson.

Enclosed is a copy of an Order of the Court regarding the above appeal. Please be advised the remittitur will be sent in accordance with the South Carolina Appellate Court Rules

Very truly yours,

V. Claire Allen, Deputy
CLERK

JFB/lb

cc: Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Sally W. Elliott
The Honorable Jeanette W. McBride

The South Carolina Court of Appeals

The State,

Respondent

v

Quandelle J. Wilson,

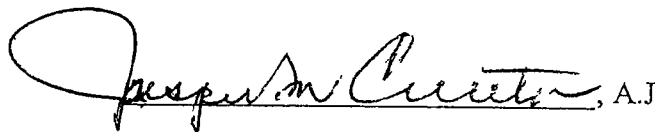
Appellant.

The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2008-GS-40-12137

ORDER

Appellant appeals his guilty plea and conviction imposed by Judge L. Casey Manning. Rule 203 (d)(B)(iv), SCACR, requires "a written explanation showing that there is an issue(s) which can be reviewed on appeal....including how the issue(s) was raised below and the ruling of the lower court on that issue(s)." After careful review, we find Appellant failed to show how any issue was preserved for our review. Therefore, due to Appellant's failure to establish any preserved issues for appellate review, the appeal is dismissed.

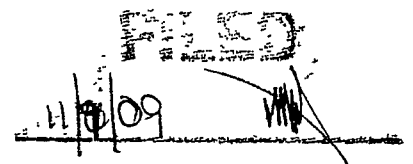
AND IT IS SO ORDERED.

A.J.

Columbia, South Carolin

11/9/2009

cc: Senior Appellate Defender Joseph L. Savitz, III
Quandelle Wilson #337054
Assistant Deputy Attorney General Sally W. Elliott
The Honorable Jeanette W. McBride

A handwritten date of 11/9/09 and some initials are present in the bottom right corner.

The South Carolina Court of Appeals

The State,

Respondent

v.

Quandelle J. Wilson,

Appellant.

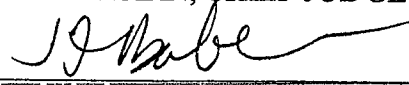
The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2008-GS-40-12137

REMITTITUR

No Petition for Reinstatement having been filed in the above matter since issuance of this Court's Order dated November 9, 2009,

IT IS SO ORDERED that the above appeal be and hereby is remitted to the Clerk of Court for Richland County.

KAYE G. HEARN, CHIEF JUDGE

BY 

Clerk

Columbia, South Carolina

12/1/2009

Original to: The Honorable Jeanette W. McBride

cc: Quandelle Wilson #337054
Senior Appellate Defender Joseph L. Savitz, III
Assistant Deputy Attorney General Salley W. Elliott
The Honorable Jeanette W. McBride

2010C P4000045

STATE OF SOUTH CAROLINA

County of RICHLAND

In the Court of Common Pleas

QUANDELLE J. WILSON #337054

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

vs.

STATE OF SOUTH CAROLINA

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF2010 JAN - 6 AM 8:04
JEANETTE W. McBRIDE
C.C.P. & G.S.RICHLAND COUNTY
FILEDINSTRUCTIONS — 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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Broad River Correctional Institution, 4460 Broad River Rd, Columbia S.C. 29210
2. Name and location of Court which imposed sentence Richland County Circuit Court, Columbia
S.C.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) D4621 G540712137 - Voluntary Manslaughter
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 9-21-09 - 25 years
 - (b) _____
 - (c) _____

5. Check whether a finding of guilt was made

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

yes

7. If you answered "yes" to (6), list

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. 11-9-2009

ii. _____

iii. _____

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

i. ORDER; pursuant to rule 203(d)(3)(iv), SCACR

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

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

(a) See Attachment

(b) _____

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See Attachment

(b) _____

(c) _____

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), 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. _____

(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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), 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. _____

15. If any ground set forth in (9) 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) N/A
- (b) _____
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Ms. Nicole Singletary
1701 Main Street, Post Office Box 192 Columbia, S.C. 29201
- ii. Mr. Joseph L. Savitz, III Senior Appellate Defender
P.O. Box 11589 Columbia, S.C. 29211
- iii. _____

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

- i. Plea and Sentencing
- ii. Appeal from guilty plea
- iii. _____

18. State clearly the relief you seek in filing this application.

Resentencing after vacation of involuntary plea, due to erroneous indictment

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

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland

I, Quandelle J. Wilson, 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.

Quandelle Wilson

SWORN to and subscribed before me this 30th
 day of December, 192009
Susan J. Johnson (L.S.)
 Notary Public

My Commission Expires

March 5, 2018

My Commission Expires: _____

RICHLAND COUNTY
 FILED
 2010 JAN -6 AM 8:05
 JEANELLE H. McBRIDE
 C.C.P. & G.S.

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

I, Quandelle J. Wilson, 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 therefor.

Quandelle Wilson
 Applicant

SWORN or affirmed to and subscribed before me this

30th day of December, 192009
Susan J. Johnson
 Notary Public

My Commission Expires

My Commission Expires March 5, 2018

(Attachment from Page 2, Line 9)

THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
IN THE COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Quandelle J. Wilson #337054) CASE NO. 2008-GS-40-12137
Applicant,)

vs.)

THE STATE)

Respondent.)

JEANETTE M. McBRIDE
C.C.P. & G.S.

2010 JAN -6 AM 8:04

RICHLAND COUNTY
FILED

NOW COMES THE ABOVE NAMED applicant, before this honorable court, in the above captioned matter specifically asserting claims of being held unlawfully by the State of South Carolina in violation of the laws and treatise of the United States Constitution and Art. 1, § 3 of the South Carolina Constitution, to wit: Ineffective Assistance of Counsel, and lack of jurisdiction for sentence under current indictment. Applicant, will show that he was denied due process of law and equal protections afforded him as a U.S. citizen.

Questions

(A) Was counsel at applicant's plea hearing ineffective for failing to motion for the admission of applicant's statement to arresting officer, explaining his position of why homicide took place involuntarily as it did, thus potentially having a

favorable bearing on how the court would dispose of case?

(B) Did said counsel's performance fall below the standards of professional norms expected of an attorney for not exercising due diligence with applicant, and his concerns of going forward with guilty plea, when facts of case warranted a decisively different legislative intent?

(C) Did said counsel's performance sustain it's low standards when there was a failure to hold the adversarial process to the highest possible standard advocated by the judicial process by neglecting to file and submit a motion to quash indictment for murder, when facts and evidence warranted an indictment for involuntary manslaughter?

(D) Did counsel's performance continue on the slippery slope of fundamental indifference when there was a failure to file motion to quash indictment of murder, because of it's defectiveness of not putting defendant on proper notice?

Procedural History

The applicant, Quandelle J. Wilson, is an inmate at the Broad River Correctional Institution (S.C.D.C.) Applicant was indicted for Murder, in Richland County. Applicant was represented by Nicole Singletary, who was appointed by the state. The honorable L. Casey Manning, circuit judge, presided at the plea hearing. The applicant pleaded guilty to voluntary manslaughter, and was sentenced to twenty five years. Counsel for applicant filed a timely notice of appeal from guilty plea, and on appeal, applicant, was represented by Joseph L. Savitz, III, Senior appellate defender, of the South Carolina Office of Appellate Defense. Counsel at plea hearing failed to raise issue of involuntary plea for review by the Court of Appeals, pursuant to Rule 203(d)(5)(iv), SCACR, which requires a "written explanation showing that there is an issue(s) which can be reviewed on appeal.... including how the issue(s) was raised below and the ruling of the lower court on that issue(s)." The court after careful review dismissed appeal, because of the failure to establish any preserve issues for appellate review. The appeal was dismissed on 11/9/2009.

As a result of the action by the Court of Appeals, applicant filed a timely application for post-conviction relief, and in the application, he asserts claims of being held in custody unlawfully by the "State of South Caro.

lina, in violation of the Laws and Treatise of the United States Constitution" and the Articles & Sections of the South Carolina Constitution, for the following reasons:

- (1) Ineffective assistance of counsel
- (2) Subject Matter Jurisdiction.
- (3) Violation of Due Process.

The issues and claims raised by the applicant, are proper before this court, under the South Carolina Post-Conviction Relief Act § 17-27-20, challenging the validity of his conviction and sentence. Stating that counsel at plea failed to perform with a normal degree of skilled knowledge, and professional judgment that is required of an attorney, who practices criminal law, pursuant to the standards brought forth in *Strickland v. Washington*, for failing to motion for a *Jackson v. Denno* hearing to determine the need for applicant's statement made to investigating officer, to be admitted into evidence because of the mitigating nature of information that factually underscored a correct charge of involuntary manslaughter.

In light of this factual neglect, applicant, asserts that his guilty plea was not knowing and intelligent and therefore involuntary for voluntary manslaughter.

In *United States v. Kibretti* 38 F.3d 523, 529 (10th Cir. 1994), aff'd — U.S. —, 116 S. Ct. 356, 133 L.Ed.2d 271 (1995). "The

longstanding test for determining the validity of a guilty plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant"

Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 364, 369, 78 L.Ed.2d 203 (1985) (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 1160, 1164, 27 L.Ed.2d 162 (1970)). A guilty plea entered upon the advice of counsel is invalid if the plea was coerced, Osborn v. Shittinger, 997 F.2d 1324, 1327 (10th Cir. 1993), or if the advice of the defendant's counsel was not within the range of competence demanded of attorneys in criminal cases, Hill v. Lockhart, 474 U.S. at 56, 106 S.Ct. at 369; McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449, 25 L.Ed.2d 163 (1970).

Appellant advances several reasons why his guilty plea was not voluntary: (1) Indictment was defective; (2) All facts of case was incomplete; and (3) Appellant's attorney rendered ineffective assistance for failing state issues for appeal, causing appeal to be dismissed.

Appellant asserts that in his statement to investigating officer who directed interrogation, the victim, who was sitting in his vehicle, appeared to reach down after applicant responded in the negative about a significant amount of money owed for drugs. (State v. Rash, 182 S.C. 42, 50, 188 S.E. 2d 435 (1936), Defendant need not wait until the assailant gets the drop on him in order to be entitled to use force in self-defense. Compare State v. Burriss, 334 S.C. 256, 513 S.E. 2d 104 (S.C. 1999), A person who shoots another can be acting

lawfully, even if he is in unlawful possession of a weapon if he was entitled to arm himself in self-defense at the time of the shooting. In light of this legality applicant must be allowed to withdraw his guilty plea.

Subject Matter Jurisdiction

(2) Applicant brings this claim before the Court, pursuant to the applicable Law and Doctrine, that Subject Matter Jurisdiction May Be Raised At Anytime and is not subject to statute of limitations or precluded on procedural grounds.

See *Slack v. State*, 429 S.E.2d 801 (S.C. 1993), *Browning v. State*, 465 S.E.2d 358 (1995)

The trial Court lacked Subject Matter Jurisdiction to accept applicant's plea for voluntary manslaughter. Applicant contends that he was never indicted by a grand jury for voluntary manslaughter. The issue regarding subject matter jurisdiction may be raised at any time, in any manner, before any court; or by the Court itself. *Langhorne v. Com.* 35 Va. App. 19, 542 S.E.2d 780, 782 (2001); *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). When a Court is without jurisdiction of subject matter, any action with respect to such case, other than dismissal, is absolutely void. *Eagle v. Global Associates*, 292 S.C. 354, 356 S.E.2d 417 (S.C. App. 1987); *Peake v. Peake*, 284 S.C. 591, 327 S.E.2d 375 (S.C. App. 1985).

Here a Court of General Sessions, convened on June 16, 2008, the Grand Jurors of Richland County true bill the indictment of Murder on July 18, 2008. But later through plea negotiations with prosecutors, pleaded guilty to voluntary manslaughter, a lesser included offense that excluded the element of malice, and aforethought, thus violating applicant's Fifth (5th) amendment right found in the United States Constitution. I quote in part; 'no person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury.' Applicant was never afforded his Constitutional right to be indicted for voluntary manslaughter. The South Carolina Supreme Court dealt with a similar issue in *State v. Beachum*, 342 S.E. 2d 597 (S.C. 1986). Beachum argued the court lacked subject matter jurisdiction to accept plea and convict him for voluntary manslaughter, when there was no indictment for manslaughter at the time of plea. The S.C. Supreme Court Agreed with Beachum and went on to comment; no person shall be held to answer for any crime unless presentment or indictment of a grand jury. South Carolina Constitution, Article 1, §11; S.C. Code Ann. §17-19-10 (1976). Presentment of a grand jury is a condition precedent to the trial of a crime except in certain minor offenses. *State v. Hann*, 196 S.C. 211, 12 S.E. 2d 720 (1940). Presentment during plea hearing did not remedy the lack of subject matter jurisdiction which existed at the commencement of plea hearing. Beachum's

kidnapping conviction and sentence was vacated. Applicant argues that he was never indicted by the grand jury and he as Beachum's, *supra*, sentence and conviction must be vacated.

The Court commented in *Russell v. United States*, 369 U.S. 749, 763-64, 82 S. Ct. 1038, 1047, 9 L. Ed. 2d 240 (1962), the Court stated, first, that to ensure the defendant's sixth (6th) Amendment right to know what he is charged with, the indictment must contain the elements of the offense intended to be charged and "sufficiently apprise the defendant of what he must be prepared to meet." *Russell, supra*. Second, to guarantee a defendant's Fifth (5th) Amendment protection against double jeopardy "the record must show with accuracy to what extent he may plead a former acquittal or conviction.

The applicant here plea was unknowingly involuntary because the indictment fail to include the essential elements of time and date of assault and the time and date of death.

The Court went on to comment in *Stirone v. United States*, 361 U.S. 212, 218, 80 S. Ct. 270, 273, 4 L. Ed. 2d 252 (1960). This fundamental protection "is designed as a means, not only of bringing to trial persons accused of public offenses upon just grounds, but also a means of protecting the citizen against unfounded accusation, whether it comes from the government, or be prompted by partisan passion or private enmity. No person shall be required . . . to answer for any

of the higher crimes unless... [The grand jury] shall declare... that there is good reason for his accusation and trial."

(Quoting *Ex Parte Bain*, 121 U.S. 1, 11, 7 S. Ct. 781, 786-787, 30 L. Ed. 849 (1887)). The Court has stressed that the indictment must be complete and definite in its charges, because to allow the prosecutor, or the Court to make a subsequent guess to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to the grand jury which indicted him. See also *Carter v. State*, 495 S.E.2d 773, 777 (1993), *Plante v. State*, 446 S.E.2d 437 (1994).

(3) Ineffective Assistance of Counsel.

Trial Counsel was ineffective for not filing a motion to have the defective indictment quashed. See *State v. Wilson*, 433 S.E.2d 864 (S.C. 1993), *State v. Watts*, 467 S.E.2d 272 (S.C. App. 1996), *State v. Rector*, 155 S.E. 385 (S.C. 1930).

(4) Due Process Violation

(A) Applicant, who contends that the failure of counsel to motion for his statement to be entered into evidence for the

purpose of mitigating mens rea and correctly be charged with involuntary manslaughter.

(B) Applicant further contends that counsel failed to file and submit motion to quash indictment for murder, when there was evidence within statement made to interrogating officer suppressed by prosecution.

(C) Finally applicant asserts fervently that indictment for murder, failed jurisdictional underpinning to be accepted by court, because it failed to include the essential element of the day and time of assault.

(D) Plea to voluntary manslaughter is null and void because it wasn't presented to the grand jury mandated by the Fifth amendment of the United States Constitution.

The aforementioned assertions are of an cumulative effect rising to an overwhelming violation of applicant's Due Process and Equal Protection found within the Fourteenth Amendment of the United States Constitution, and Art. 1, §3 of the South Carolina Constitution.

And for all reasons proffered, applicant's plea, and sentence must be withdrawn, and vacated and released from his unlawful custody.

This amendment to application for Post-Conviction Relief in form of a Memorandum of Law is proper under § 17-27-60 of the Uniform Post-Conviction Act, (with Rule 71.1, South Carolina Rules of Civil Procedure that governs the enforcement of the act

Applicant, therefore asserts a property and liberty interest in Rule 71.1(d), SCRPC of its mandated entitlements and due process protection of those entitlements guaranteed by S.C. Const. ART. I, §3 and the Fourteenth Amendment of the United States Constitution. . .

Applicant forever prays

Sincerely Submitted,

SL_____

Quandelle J. Wilson #337054

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 5th Judicial Circuit

Quandelle I. Wilson #337054) CASE NO. 2008-GS-40-12137
Applicant,)
v.) Certificate of Service
THE State)
Respondent.)

RICHLAND COUNTY
FILED
2010 JAN -6 AM 8:04
JEANETTE W. MCBRIDE
C.C.P. & G.S.

I, Quandelle I. Wilson, do hereby certify that a true copy of my amendment to the Post-Conviction-Relief Application, in the form of a Memorandum, Concerning the above referenced matter, has been served upon Ms. Jeanette W. McBride, Clerk of Court for Richland County, P.O. Box 2766 Columbia, S.C. 29202-2766 deposited in the United States Postal Service.

Quandelle I. Wilson #337054

SUBSCRIBED AND SWORN TO BEFORE ME 51/ Quandelle Wilson
this 30th of December, 2009
JANUARY 2010

Susan J. Johnson

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires
MY COMMISSION EXPIRES: March 5, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
WILSON Quandelle J -	)	2010CP4000045
# 00337054,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 6, 2010, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Nicole Singletary, Esquire. On September 21, 2009, the Applicant pled guilty and was sentenced by The Honorable L. Casey Manning. The Applicant had been indicted and/or pled guilty to the following: Murder - (2008-GS-40-12137).

¹

<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2010CP4000045&CourtType=G&CaseType=Civil&CourtAgency=40002>

State's Return - (2010CP4000045) – Applicant: WILSON Quandelle J
Page 1 of 6

<u>Offender Type</u>	Adult-straight Sentence
<u>Offense</u>	Voluntary Manslaughter
<u>Sentence Start Date</u>	11/18/2007
<u>Sentence Length</u>	25 YRS, 0 MOS, 0 DYS
<u>Admission Date</u>	09/24/2009
<u>Committing County</u>	Richland
<u>Location</u>	Broad River
<u>Projected Release Date</u>	02/10/2029
<u>Projected Parole Date</u>	Not Eligible
<u>Supervised Furlough Eligibility</u>	Not Eligible
<u>Sex Offender Registry</u>	No

2

Direct Appeal

The Applicant did not appeal his conviction and/or sentence .

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

² <https://sword.doc.state.sc.us/incarceratedInmateSearch/incarceratedInmateFaceSheet.do?id=00337054&youth=N&type=F>

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, H. Freeman Belser, Esquire regarding when the hearing should be set.³

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
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February 15, 2011

³ The current PCR Roster for the 5th Circuit is available at <http://www.scattorneygeneral.com/inside/pdf/5th.pdf>

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

WILSON Quandelle J -
00337054,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

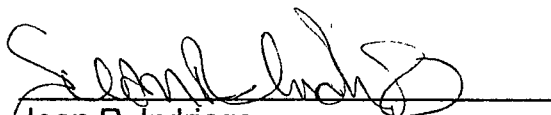
2010CP4000045

CERTIFICATE OF SERVICE

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 a letter in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

H. Freeman Belser
Post Office Box 96
Columbia, SC 29202

DATED February 15, 2011.


 Jean R. Indriago
 Legal Assistant

State of South Carolina

Court of Common Pleas

County of Richland

2010-CP-40-00045

Quandelle J. Wilson

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

The State of South Carolina

:

June 7, 2011

Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, III, Judge.

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

Jeremy A. Thompson, Esquire
Attorney for the Applicant

Brian Petrano, Esquire
Attorney for the State

Daphne D. Helms
Circuit Court Reporter

I N D E XWitnessQuandelle J. Wilson

Direct Examination by Mr. Thompson.....5

Cross-Examination by Mr. Petrano.....20

Nicole Singletary

Direct Examination by Mr. Thompson.....22

1 **Mr. Petrano:** May I approach with the packet, Your
2 Honor?

3 **The Court:** All right. What we got here?

4 **Mr. Petrano:** Thank you, Your Honor. May it please the
5 Court? This is Mr. Quandelle Wilson. I hope I'm saying that
6 correctly.

7 **Mr. Wilson:** (Nodded head up and down.)

8 **Mr. Petrano:** That's 2010-CP-40-00045. It's a Richland
9 County PCR filed on January 5th, 2010. Guilty plea in front
10 of Judge Manning on September 21st, 2009. He was represented
11 at that time by Ms. Nicole Singletary of the public
12 defender's office. For the record, she is here present.

13 He had been indicted by the July 2008 term of the
14 Richland County grand jury; that's 2008-GS-40-12137. He was
15 indicted for murder. He pled to voluntary manslaughter. It
16 was a negotiated 20 to 30-year sentence. He received
17 25 years. In exchange for the plea, three other charges were
18 dropped: A possession of a weapon, an attempted armed
19 robbery, and a common law conspiracy.

20 There was no direct appeal. There was an attempted
21 direct appeal. It's 203(d)(1)(b)(4). As Your Honor well
22 knows, it's when a direct appeal is basically summarily
23 dismissed for failing to state an issue in the notice of
24 appeal itself when that appeal is from a guilty plea. So,
25 yes, there was an appeal but not really. I hope I'm being

1 clear on that. I'll turn it over to Mr. Jeremy A. Thompson,
2 the applicant's current counsel of record. Thank you.

3 **Mr. Thompson:** Sorry. Making sure that wasn't Mr.
4 Johnson coming in the door. May it please the Court? For
5 the record, my name is Jeremy Thompson. I am the applicant's
6 current counsel of record. He alleges that he received
7 ineffective assistance of counsel both prior to, during, and
8 after his plea, in violation of his sixth and fourteenth
9 amendment rights within the United States Constitution as
10 well as corresponding provisions of the South Carolina
11 Constitution and that his plea of guilty was not knowingly,
12 voluntarily, and intelligently entered and as well as he
13 alleges that he received ineffective assistance of counsel on
14 his direct appeal. That goes towards that Rule 203 issue
15 that Mr. Petrano was bringing up.

16 Just by way of very brief background, Your Honor, my
17 client was charged with murder. He did plead guilty to
18 voluntary manslaughter. A number of other charges were
19 dismissed as part of the plea. Following the plea, my client
20 asked for a direct appeal. He -- and in accordance with Rule
21 203 of the South Carolina appellate court rules, Ms.
22 Singletary filed a notice of appeal, then said that she had
23 no reason to think that -- no arguable issues to present on
24 the direct appeal. My client presented his own pro se
25 response, and then the appeal was dismissed.

1 We are alleging that -- specifically that defense
2 counsel was ineffective for failing to advise the applicant
3 of the possibility of raising self-defense at trial if he
4 decided to go to trial on his murder charges as well as
5 failing to challenge the constitutionality of the Rule 203
6 provision of the South Carolina appellate court rules, and
7 I'll get into that a little bit later, and we would be asking
8 Your Honor for a new trial and a belated direct appeal. With
9 that in mind, Your Honor, I would call the applicant as his
10 own first witness.

11 Quandelle J. Wilson, after being duly sworn,
12 testified as follows:

13 **The Court:** If you'll tell us your full name, please,
14 sir.

15 **The Witness:** Quandelle Wilson.

16 Direct Examination

17 By Mr. Thompson:

18 Q. How are you doing this afternoon, Mr. Wilson?

19 A. All right.

20 Q. If you could, please speak up and speak clearly. The
21 nice lady sitting right next to you has to take down
22 everything you say, and the judge has to be able to
23 understand you in order to properly rule on your case. All
24 right?

25 A. Okay.

1 Q. If you have -- and you're going to need to speak a
2 little louder than that.

3 A. All right.

4 Q. If you have any -- you know, if I ask a question that's
5 confusing or something along those lines, just stop me. Ask
6 me to rephrase the question. I'll be happy to do so. All
7 right? What were you charged with here in Richland County?

8 A. Murder.

9 Q. Among other charges?

10 A. Yes, sir.

11 Q. And those were detailed by Mr. Petrano?

12 A. Yes.

13 Q. Who represented you on those charges?

14 A. Nicole Singletary.

15 Q. And where was she employed at the time of that?

16 A. The public defender's office.

17 Q. And obviously the Richland County public defender's
18 office?

19 A. Yes, sir.

20 Q. Were you in the jail---

21 A. Yes.

22 Q. ---the whole time while this case was pending?

23 A. Yes.

24 Q. How long was your case pending?

25 A. Twenty-three months.

1 Q. So right at two years. How many times over the course
2 of those two years would you say Ms. Singletary met with you?

3 A. Ten to twelve times.

4 Q. So a very decent number of times.

5 A. Uh-huh.

6 Q. When you met with your attorney, were you -- and, Your
7 Honor, this is going to sound kind of similar to the prior
8 case, but it's just a coincidence. Were you honest with your
9 attorney about what happened the night of the incident?

10 A. As in as far as why the shooting went down, yes, but
11 about the person who I shot, no.

12 Q. All right. Let's kind of explain that a little bit.
13 Who did you tell your attorney that you shot?

14 A. I told her I shot someone else.

15 Q. And who was the person who was shot in this case?

16 A. Dominique Bethea.

17 Q. And who did you tell her you shot?

18 A. I told her I shot another -- another guy whose name
19 starts with D.

20 Q. And is that all you told her?

21 A. Yes.

22 Q. That -- that you admitted to shooting D. but not the
23 victim in this case, Mr. Bethea.

24 A. Yes.

25 Q. Did you eventually come clean and tell her that you shot

1 Mr. Bethea?

2 A. Yes.

3 Q. How soon before your plea did that occur?

4 A. About two weeks.

5 Q. So for, say, about 22 and a half months you told her
6 that you had shot D., not Mr. Bethea.

7 A. Yes.

8 Q. And then you came clean and told her that you shot Mr.
9 Bethea.

10 A. Yes.

11 Q. Now, I want to talk a minute about the actual facts of
12 your case. How did you know Mr. Bethea?

13 A. I met Mr. Bethea at the Hot Spot on Farrow Road.

14 Q. And how long before the shooting occurred did this
15 meeting happen?

16 A. A year.

17 Q. Did you have regular interactions with Mr. Bethea?

18 A. Yeah, I was buying marijuana from him.

19 Q. Did there come a point where your relationship turned
20 sour?

21 A. Yeah.

22 Q. How did that happen?

23 A. I had lost my job and I needed some money so I could pay
24 my bills and things, and I asked Mr. Bethea to front me a
25 pound of marijuana.

1 Q. And what happened to that pound of marijuana?

2 A. Well, some things happened. I messed it up and I wasn't
3 able to pay him back the 900 that I was supposed to pay him
4 back.

5 Q. Was he angry with you about this?

6 A. Yes.

7 Q. Did you have any encounters with him that -- well, were
8 your encounters with him at that point friendly or
9 unfriendly?

10 A. Unfriendly.

11 Q. How were they unfriendly?

12 A. I was jumped by Mr. Bethea. I had a gun put in my face
13 by Mr. Bethea and my life was threatened by Mr. Bethea.

14 Q. And were these -- was that one time? Was that two
15 times? How many times was this?

16 A. Three times.

17 Q. And did he point a gun at you each time?

18 A. No, sir.

19 Q. So the first time you were jumped?

20 A. Yes.

21 Q. What happened the second time?

22 A. I was jumped again.

23 Q. And what happened the third time?

24 A. The third time I was jumped and threatened with a gun in
25 my face.

1 Q. And did he ever at any point in time, you know, threaten
2 to kill you?

3 A. Yes.

4 Q. And describe -- how did he -- how did he point the gun
5 at your face? I mean, was he standing next to you and
6 pointed the gun at you? How did he do it?

7 A. He put the gun in my face and told me that the next time
8 he see me if I didn't have his money he was going to kill me.

9 Q. When was the next time you saw Mr. Bethea?

10 A. Three weeks after he put the gun in my face.

11 Q. And was that the night or the day of this incident?

12 A. Uh-huh.

13 Q. What happened when you saw Mr. Bethea?

14 A. Well, I was coming from my house, going to the bootleg
15 to get some cigars, and somebody -- somebody was in the -- he
16 was parked in a parking lot across the street from my house
17 in a black car. Somebody had called my name from the black
18 car; I thought it was a friend of mine. When I got up on the
19 car, I noticed that it was Mr. Bethea. He asked me did I
20 have his money; I told him no. Before I could do anything
21 and get away, before I could do anything and get away, he had
22 done reached for what I thought was a gun and I fired.

23 Q. You thought he was going to get a gun and shoot you?

24 A. Uh-huh.

25 Q. So you---

1 **The Court:** You need to say yes or no.

2 **The Witness:** Oh, yes.

3 By Mr. Thompson:

4 Q. And so you fired at him.

5 A. Yes.

6 Q. To prevent him from firing at you first.

7 A. Yes.

8 Q. And other than -- now, you said -- you testified earlier
9 that, you know, kind of that you told Ms. Singletary the same
10 thing; it was just about D. That version of events, how was
11 that different from what you told Ms. Singletary to begin
12 with?

13 A. There wasn't no difference, just that I told her I
14 didn't shoot Dominique Bethea.

15 Q. Did you tell her that -- did you tell her that D. was
16 the individual you were having these problems with?

17 A. Yes.

18 Q. And that Mr. Bethea was the -- that you didn't have any
19 idea who Mr. Bethea was?

20 A. Yes.

21 Q. And you finally came clean and admitted that Mr. Bethea
22 was D.

23 A. Yes.

24 Q. So that's the only discrepancy.

25 A. Yes.

1 Q. Your story was the same all along. It was just that to
2 begin with you weren't charged with shooting this phantom D.
3 You were charged with shooting Mr. Bethea.

4 A. Yes.

5 Q. After you told defense counsel, Ms. Singletary, the --
6 that the -- that you actually shot Mr. Bethea, what did she
7 tell you in response about going to trial?

8 A. She said she knew at trial she can get a charge of
9 voluntary manslaughter.

10 Q. Did she mention anything about self-defense?

11 A. No.

12 Q. Did she act -- you know, did she give any kind of
13 indication that you could go to trial and be found not
14 guilty?

15 A. No.

16 Q. She just told you about voluntary manslaughter.

17 A. Yes.

18 Q. And was that what the State was offering as a guilty
19 plea?

20 A. Yes.

21 Q. Based on her advice, did you think that you might as
22 well -- well, I don't want to put words in your mouth, but
23 what did you think about the plea offer?

24 A. I thought, well, since she said that was the only thing
25 I can get at trial was voluntary manslaughter, why go through

1 all that when I'm -- they're giving me the plea for voluntary
2 manslaughter?

3 Q. Now, we've gone over this. You realize that your
4 attorney -- you had two attorneys at your plea; right?

5 A. Uh-huh.

6 Q. Who was your other attorney?

7 A. A Mr. Shealey.

8 Q. You realize that both -- I believe Ms. Singletary and
9 Shealey told the judge, told Judge Manning, during your plea
10 that they would be asking for self-defense for you at trial.
11 Do you understand that?

12 A. Uh-huh.

13 Q. You've read the transcript.

14 A. Yes.

15 Q. Do you remember that occurring?

16 A. No.

17 Q. What was going through your mind at the time of the
18 plea?

19 A. At the time of the plea I was emotionally -- I wasn't
20 even in my right state of mind at the time. I was very
21 emotional at what was going on, that I was fixing to catch a
22 25-year bid.

23 Q. And you didn't realize what they were saying at the time
24 about self-defense.

25 A. Yes.

1 Q. Had you realized that they were -- that they were
2 telling Judge Manning if we had gone to trial we would have
3 asked for self-defense, what would you have done?

4 A. Done my best to try and stop the plea hearing.

5 Q. And when was the first time you realized that those
6 statements had been made?

7 A. When I got my transcript.

8 Q. And what did you do after you get your transcript?

9 A. I contact you.

10 Q. Had defense counsel at any point in time before the
11 plea, you know, told you -- said the following words: At
12 trial we would be asking for self-defense?

13 A. No.

14 Q. Never said that.

15 A. No.

16 Q. Had you known that that was a possibility at trial, that
17 was their strategy at trial, would you have ever pleaded
18 guilty?

19 A. No, I wouldn't have pleaded guilty.

20 Q. Would you have taken your chances at trial?

21 A. Yes.

22 Q. With the murder charge.

23 A. Yes.

24 Q. To try and get self-defense.

25 A. Yes.

1 Q. As well as the armed -- attempted armed robberies and
2 the other charges.

3 A. I would have went to trial.

4 Q. Now, following your plea, did you ask your attorney to
5 file an appeal for you?

6 A. Yes.

7 Q. Did she file that appeal?

8 A. Yes.

9 Q. Did you get any documentation from her after the appeal
10 was filed?

11 A. No.

12 Q. You didn't get anything from her saying that you could
13 have an opportunity to respond?

14 A. Oh, yes. Yes.

15 Q. Describe that. What did you get from her?

16 A. I got a piece of -- I was at Kirkland institution. I
17 got a piece of letter in the mail saying that I had to write
18 a written -- a written -- write a letter to the plea hearing
19 office stating why did I want to appeal my conviction and
20 sentencing.

21 Q. And did you do so?

22 A. Yes.

23 Q. And what was the result of that? What happened to the
24 appeal?

25 A. Dismissed.

1 Q. Did you ever get -- did anybody from Appellate Defense
2 ever review your case?

3 A. I don't know.

4 Q. To the best of your knowledge?

5 A. To the best of my knowledge.

6 Q. You never got anything that said Division of Appellate
7 Defense on it.

8 A. Yes.

9 Q. Did you get paperwork from them?

10 A. Yes.

11 Q. What did that say?

12 A. I can't remember.

13 Q. But they didn't take your case.

14 A. Yeah.

15 Q. They didn't represent you on your appeal.

16 A. Yeah.

17 Q. Yes or no?

18 A. Yes.

19 Q. They did.

20 A. Yes, they did.

21 Q. They did? But you said your appeal was dismissed.

22 A. Yes, it was.

23 Q. How soon after you wrote your little statement did your
24 appeal get dismissed?

25 A. Six months to a year I got a -- I got a letter in the

1 mail when I got to Broad River.

2 Q. In your PCR application you say that it was dismissed
3 11/9/09.

4 A. Uh-huh.

5 Q. Is that correct?

6 A. Uh-huh.

7 Q. That's November of 2009.

8 A. Uh-huh.

9 Q. And your plea was September 21st, 2009.

10 **The Court:** You need to say yes or no. The court
11 reporter---

12 **The Witness:** Yes, sir.

13 **The Court:** ---may miss what you say when you go uh-huh.

14 **The Witness:** Okay.

15 By Mr. Thompson:

16 Q. Were all those uh-huhs affirmative responses?

17 A. Yes, sir.

18 Q. So that was about three months after your plea.

19 A. Yes.

20 Q. Okay. Did at any point in time you get something from
21 your attorney arguing that the rule that they were requiring
22 her to file and you to file this explanation under was
23 unconstitutional?

24 A. Yes.

25 Q. You got something from her that said that?

1 A. Oh, no.

2 Q. Okay. If that had been -- would you have wanted to
3 continue with your direct appeal?

4 A. Yes.

5 Q. And so if that were a viable challenge to the rule,
6 would you have wanted her to argue that?

7 A. Yes.

8 Q. To let your appeal go forward?

9 A. Yes.

10 Q. All right. Do you want Judge Barber to give you a
11 second chance and to go to trial and to argue self-defense?

12 A. Yes.

13 Q. And do you want Judge Barber to grant you that
14 opportunity at the appeal that you lost?

15 A. Yes.

16 Q. Do you understand that if you go to trial, you don't go
17 back to trial on voluntary manslaughter? You go back to
18 trial on murder.

19 A. Yes.

20 Q. Do you understand that? Do you understand that murder
21 carries a mandatory minimum sentence of 30 years?

22 A. Yes.

23 Q. That's day for day; that's not 85 percent. That's day
24 for day, no parole. You serve every day of it.

25 A. Yes.

1 Q. And it's not an insignificant amount, but if you had a
2 minimum sentence of 30 years on murder - you're doing 25 now
3 at 85 percent - that's going to add about seven or
4 eight years on to your sentence. Do you understand that?

5 A. Yes.

6 Q. And that it could go all the way up to life and you
7 would never get out.

8 A. Yes.

9 Q. There are other charges. Attempted armed robbery
10 carries 20 years?

11 **The Court:** It's conspiracy, attempted armed robbery.

12 **Mr. Petrano:** Conspiracy can be...

13 (Mr. Petrano and Mr. Thompson talk off the record.)

14 By Mr. Thompson:

15 Q. And you understand that attempted armed robbery carries
16 up to 20 years.

17 A. Yes.

18 Q. That you could be convicted of that as well.

19 A. Yes.

20 Q. As well as criminal conspiracy and weapons charges.

21 A. Yes.

22 Q. And that those carry time and you could get the, you
23 know, maximum sentences for those as well.

24 A. Yes.

25 Q. Understanding all that, you want to go forward with this

1 hearing.

2 A. Yes.

3 Q. You want to have the chance to go back to trial.

4 A. Yes.

5 Q. And argue self-defense.

6 A. Yes.

7 Q. All right. I think I have covered everything that we
8 talked about before the hearing to raise at this hearing, but
9 this is the one -- your one and only chance at a PCR. So if
10 there's anything else that you'd like to tell the judge, I'd
11 ask that you do it now. Do you have anything else?

12 A. No.

13 **Mr. Thompson:** Please answer any questions Mr. Petrano
14 might have for you.

15 Cross-Examination

16 By Mr. Petrano:

17 Q. What kind of weapon did you have?

18 A. Nine millimeter.

19 Q. What kind?

20 A. Nine millimeter.

21 Q. I mean, was it a Beretta? Glock?

22 A. I can't tell you all that.

23 Q. Okay.

24 A. I don't know.

25 Q. Did you have a permit for that?

1 A. No.

2 Q. Okay. How long until after you killed the victim in
3 self-defense did you call the police and tell them what
4 happened?

5 A. Two days.

6 Q. You told them it was self-defense? I killed him and it
7 was an accident? You told them all along; right?

8 A. Yeah.

9 Q. You said that right in your statement, didn't you?

10 A. Yeah.

11 Q. Now, isn't it true you first told your lawyer that you
12 were with your girlfriend and you weren't even there?

13 A. Yes.

14 Q. But that wasn't true, was it?

15 A. No.

16 **The Court:** Is that a no?

17 **The Witness:** No.

18 By Mr. Petrano:

19 Q. You owed him 900 bucks, according to your story?

20 A. Yes.

21 Q. That was for the pound of marijuana.

22 A. Yes.

23 Q. You said that he confronted you I think three times?

24 A. Yes.

25 Q. And he wanted his 900 bucks; right?

1 A. Yes.

2 Mr. Petrano: Nothing further.

3 The Court: Anything?

4 Mr. Thompson: No, Your Honor.

5 The Court: All right. Thank you. You may step down.

6 Mr. Thompson: Your Honor, the applicant would call
7 Nicole Singletary.

8 Nicole Singletary, after being duly sworn,
9 testified as follows:

10 The Court: Tell us your full name, please, ma'am.

11 The Witness: Nicole Singletary.

12 Direct Examination

13 By Mr. Thompson:

14 Q. Ms. Singletary, how are you doing this afternoon?

15 A. I'm fine. How are you?

16 Q. I'm doing well. At the time that -- well, let me
17 rephrase that. Do you recall your representation of the
18 applicant in this case?

19 A. I do.

20 Q. At the time that you represented him, were you with the
21 Richland County public defender's office?

22 A. Yes, I was at that time.

23 Q. Are you still with the public defender's office?

24 A. No, I'm not. I have my own law firm.

25 Q. Did you have a -- would you describe your relationship

1 with the applicant as good, bad, troubled, rocky?

2 A. I would say that -- I would say that it was good. There
3 were some times that he would send me some letters, and so
4 what I would do was go down to the jail and discuss any
5 issues that he may have had, and I do have a copy of all
6 correspondence from him and correspondence that I made to him
7 also.

8 Q. And I believe he testified that you met with him at the
9 jail about 10, 12, 15 times. Is that accurate?

10 A. I would say more like 20 times.

11 Q. More like 20 times?

12 A. Yes.

13 Q. So you and he had a lot of conversations about this.

14 A. Yes, we did.

15 Q. When you were representing him for I guess the majority
16 of the representation, was it his -- was it his story, I
17 guess, that he had shot D., not Mr. Bethea?

18 A. Well, initially his story was that he wasn't even there
19 at the time. He told me that his girlfriend -- I think her
20 name was Shaneka Jeffcoat or Shaneka Patterson or something
21 like that -- that he was actually at the hairdresser with
22 her. So I actually hired an investigator. We tried to track
23 down -- tried to get statements from his girlfriend, tried to
24 get statements from the hairdresser's location that he was
25 at, and it turned out to be a weak alibi.

1 So I went back to my client. Then shortly after that he
2 told me that he did not shot (sic) Dominique Bethea. He
3 actually shot Dion (phonetic) Grant. So what my investigator
4 did was she did an extensive search of the -- of an
5 individual named Dion Grant, and Mr. Wilson actually told us
6 like a particular colored car. We searched all the records
7 in D.M.V. for that particular car and if it actually belonged
8 to a Dion Grant. After that, then he admitted to the fact
9 that he did -- yeah, the third story was that he did shoot
10 Dominique Bethea, yes.

11 Q. And was that shortly before he was scheduled to go to
12 trial?

13 A. No, not at all.

14 Q. It was not?

15 A. No.

16 Q. How long -- how long before the trial did he come clean
17 about it?

18 A. Let me -- can I refer back to his letters to me---

19 Q. Sure.

20 A. ---to bring me... Okay. (The witness looks at
21 documents.) It looks like it was in 2008 when he admitted to
22 me that Mr. -- that he did shoot Dominique Bethea.

23 **Mr. Thompson:** May I approach the witness, Your Honor?

24 **The Court:** Sure.

25 **The Witness:** Yeah. I think it was, yeah, 2008 because

1 I'm looking at what I think that you're about to show to me
2 is a letter that I wrote to him on July the 20th of 2008
3 saying that we couldn't find a Dion Grant.

4 By Mr. Thompson:

5 Q. Actually, I'm about to hand you your case notes.

6 A. Okay. Okay.

7 Q. If you could read, what date is that right there?

8 A. It says September the 11th, 2009.

9 Q. And could you read that number 11 right there?

10 A. It says that he finally admits that the story about the
11 other D. was a lie. I see that in here, but I also see the
12 letters that he actually wrote me. I was going based off the
13 letters that Mr. Wilson wrote me.

14 Q. In any event, at some point in time he did eventually
15 come clean and tell you that his -- that shooting D. was a
16 lie?

17 A. Yes.

18 Q. That he actually shot Dominique Bethea.

19 A. Uh-huh.

20 Q. Did -- did you discuss his options at trial with him at
21 that point?

22 A. I did. I actually -- me and Mr. Wilson actually -- one
23 thing that I do when I get ready for trial -- if you see the
24 big box that I brought up here, this was actually -- this is
25 actually his trial box where all the witnesses -- I have

1 clean copies. I actually have all the information about his
2 case, and I actually have his actual direct examination
3 questions that me and him went over -- like, I mean, I
4 badgered him for like hours on end at the jail going back and
5 forth over self-defense and prior incidents. So that's in
6 here.

7 Q. And so you went over with him, you know, the fact that
8 he had had prior altercations with Mr. Bethea.

9 A. Yes.

10 Q. And did you advise him that such testimony could be used
11 to get a self-defense charge at trial?

12 A. Yes.

13 Q. And he understood that.

14 A. Yes, he did.

15 Q. The words self-defense, you know, were highlighted.
16 Those came out of your mouth.

17 A. Yes.

18 Q. Okay.

19 A. I mean, if you want to, I can actually show you an
20 example of the questions that I went over with him and me
21 writing notes based on what he told me when we were at the
22 jail.

23 Q. And did you obviously inform him that if you went to
24 trial that was going to be your argument: Self-defense?

25 A. Yes.

1 Q. Now, you say you're in private practice now. How
2 long -- how long were you working at the P.D.'s office?

3 A. Since August of 2005 all the way up until April of 2010.

4 Q. And at the -- while you were working at the public
5 defender's office, do you do your own appeals?

6 A. No, we don't.

7 Q. Do those go up to Appellate Defense?

8 A. Yes. What happens is our paralegals -- when our clients
9 tell us that they want us to appeal, what we do is we compile
10 everything and we get it to our paralegals. As a matter of
11 fact, I will say and I told someone earlier that like I'm
12 very anal and I keep almost everything. I actually still
13 have the note -- the post-it where I told my paralegal,
14 Larry, we need to appeal this case.

15 Q. And you did file the notice of appeal.

16 A. Yes.

17 Q. And did you get any response back from the Court of
18 Appeals?

19 A. I think I actually have that in this box also. I was
20 looking at it a few minutes ago.

21 Q. And what did that letter from the Court of Appeals ask
22 you to do?

23 A. All I needed to do was actually send information, if I'm
24 correct, to my client. I'm looking at the notice of appeal
25 that we filed right here. And what we did was we sent him

1 this, our filed copy and everything, and we basically told
2 him that what he needed to do -- because I could not find any
3 legal basis for a flaw in the actual guilty plea that -- I
4 had no legal reasoning. So he would have to actually respond
5 on his own because as an officer of the court I can't make up
6 a frivolous reason for an appeal.

7 Q. And that was in response to -- I know you might not be
8 -- that you might be familiar with the actual specific rule,
9 but that's Rule 203(d)(1)(b)(4) of the South Carolina
10 appellate court rules.

11 A. Uh-huh.

12 Q. That's where they're asking for your response.

13 A. Uh-huh.

14 Q. Did you---

15 **The Court:** Whoa. Whoa. Yes---

16 **The Witness:** Yes, sir. Yes. Sorry.

17 By Mr. Thompson:

18 Q. Did you at any point in time argue that that rule was
19 unconstitutional?

20 A. No, I did not because once we actually do the notice of
21 appeal, our job is actually done. There is nothing else that
22 I have to do from my standpoint as it relates to Mr. Wilson.
23 He's no longer my client at that point.

24 Q. But they're asking you to file a response.

25 A. No, they're not asking me to file a response. They're

1 actually asking him to file a response. All I have to do is
2 actually -- like I said, I actually filed it and the reason
3 that I gave was the defendant was dissatisfied with his
4 sentence and insisted on appealing. I said, "I am of the
5 opinion that the client insists on appealing. I am
6 constrained to file an appeal, Weathers v. State." And so
7 basically what they do after I actually send that off, they
8 actually -- I send this to him and then they actually send
9 him a letter saying, look, you have to respond back to us. I
10 don't have to respond. Once I file this notice of appeal,
11 I'm no longer representing the individual.

12 Q. So it's up to him to argue that it's unconstitutional.

13 A. Yes.

14 Q. You don't have any responsibility in that regard
15 whatsoever.

16 A. Not at all.

17 Q. Do you have the letter from the Court of Appeals up
18 there?

19 A. Beg the Court's indulgence, Your Honor.

20 **The Court:** Yes, ma'am.

21 **The Witness:** Let's see. I think this is my letter to
22 him. Okay. All right. All right. I think this is what
23 you're referring to dated October the 7th, 2009.

24 By Mr. Thompson:

25 Q. Can I take a look at that?

1 A. Yeah.

2 Q. Okay. In your notice of appeal to the Court of
3 Appeals---

4 A. Uh-huh.

5 Q. ---did you state that you had no arguable basis to file
6 the appeal?

7 A. Yes. That's what I read earlier.

8 Q. Okay. And did you at that point argue that it was
9 unconstitutional to force you to do that in order for his
10 appeal to go forward?

11 A. No, because at that time it wasn't my duty to argue
12 that.

13 Q. It's not your responsibility to argue that the appeal he
14 asked you to file should not be dismissed.

15 A. No, that's -- I mean, all I have to do is actually file
16 the notice of appeal. At that point it goes to Appellate
17 Defense. So I don't -- I don't have a due diligence or any
18 responsibility to actually argue that. He has to come up
19 with legal actual -- I guess a legal basis for it. I mean,
20 if you look at the letter that the South Carolina Court of
21 Appeals sent me, they told me, "Dear Ms. Singletary, I have
22 received your letter of September 29th, 2009. Please forward
23 your letter to your client along with a statement that he has
24 20 days from the date of your transmittal letter to inform
25 this court in writing of any arguable basis that there are

1 issues preserved for appeal." So that in itself right there
2 says from the South Carolina Court of Appeals -- it says my
3 only due diligence is to file the notice of appeal and then
4 once they send me this paperwork I, which I did in this case,
5 sent a letter to Mr. Wilson, as he testified to, saying I
6 filed your appeal. This is what you have to do in order for
7 your appeal to be preserved.

8 Q. Let me -- let me try and rephrase this a little bit.

9 How -- why did you put in the notice of appeal the
10 explanation that there were no issues of arguable merit?

11 A. Because there were none.

12 Q. But why? Why did you do it?

13 A. Because there were no legal arguments.

14 Q. No, no, no, but why? What rule caused you to do that?

15 A. I mean, the same rule that causes me to actually file
16 the notice of appeal---

17 Q. Okay.

18 A. ---for a guilty plea.

19 Q. Rule 203.

20 A. Yes.

21 Q. Right. Of the South Carolina appellate court rules.

22 Have you ever filed a notice of appeal from a guilty plea and
23 said there are arguable issues?

24 A. Let me see. If I -- if I remember correctly, there may
25 be one plea that I've actually done that to and it may -- it

1 escapes my mind, but I know that there's only -- there's been
2 one guilty plea that I thought that -- oh, yeah, I can't
3 remember the name but -- it escapes me, but the actual police
4 officer at the guilty plea was allowed to like say stuff that
5 I thought was outside the scope of the guilty plea and was
6 saying that my client was a gang member and he allegedly
7 committed all these other crimes, and I thought that that
8 prejudiced the plea and that was a violation of his
9 constitutional rights. So I do believe I did do that one
10 time prior to actually leaving the public defender's office.

11 Q. Okay. And so you're following Rule 203 which requires
12 you to file the explanation if you've got an issue of
13 arguable merit.

14 A. Uh-huh.

15 Q. That's what you did in that case.

16 A. Uh-huh.

17 Q. Have you ever considered instead of filing the
18 explanation because you're saying I don't have any -- I don't
19 have any -- you know, I don't have anything to do after I
20 file the notice of appeal.

21 A. Uh-huh.

22 Q. Have you ever considered when you're -- when you're
23 filing the notice of appeal arguing that the Rule 203, that
24 provision that requires you to file that explanation, is
25 unconstitutional?

1 A. No.

2 Q. And did you do that in this case?

3 **Mr. Petrano:** Your Honor, it's asked and answered.

4 **The Court:** She said she's never considered it. Never
5 is never.

6 **Mr. Thompson:** Beg the Court's indulgence. Nothing
7 further, Your Honor.

8 **The Court:** Anything, Mr. Petrano?

9 **Mr. Petrano:** No, Your Honor. Everything was covered.
10 Thank you.

11 **The Court:** All right. Thank you, ma'am. You may step
12 down.

13 **Mr. Petrano:** May this witness be excused if she wants
14 to?

15 **Mr. Thompson:** We have no objection.

16 **The Court:** Thank you, ma'am. You're free to leave.

17 **The Witness:** Thank you, Your Honor.

18 **The Court:** All right. Anything further?

19 **Mr. Thompson:** We have no further witnesses, just brief
20 argument, Your Honor.

21 **The Court:** Anything from the State?

22 **Mr. Petrano:** No. We submitted what we wanted in cross.

23 **The Court:** All right. What do you want to tell me?

24 **Mr. Thompson:** With regard to the argument on self-
25 defense, I recognize that this is a credibility dispute. My

1 client has testified that he was not advised about self-
2 defense prior to trial. I understand that Ms. Singletary's
3 testimony contradicts that, but he submits that his testimony
4 is sufficient to argue that defense counsel was ineffective
5 in this case for failing to advise him of self-defense.

6 Your Honor, the only thing I can argue in terms of
7 corroborating circumstances is that my client did -- it's not
8 in his PCR application. Self-defense, I don't believe, is in
9 his PCR application. That he did, after I sent him the
10 transcript, write me a letter saying I didn't know about
11 self-defense. You know, perhaps -- I'm not sure what
12 happened. Maybe there was a misunderstanding between him and
13 Ms. Singletary, but he has testified that he truly did not
14 know he could argue for self-defense prior to his plea and
15 even prior to his filing his PCR. So we would argue that
16 issue I guess as an amendment to the PCR, which I informed
17 Mr. Petrano prior to the hearing that we would be doing,
18 basically as an amendment to conform to the evidence.

19 With regard to the notice of appeal, Your Honor, I would
20 argue that Rule 203 - and I want to get the specific cite
21 right - (d)(1)(b)(4) is unconstitutional and that it is
22 defense counsel's responsibility to argue that it is
23 unconstitutional. Rule 203(d)(1)(b)(4) requires that defense
24 counsel provide an explanation to the Court when the notice
25 of appeal was filed that there are arguable issues of merit

1 on the appeal and that if she does not that they will require
2 the applicant to. I know this is not exactly in the rule,
3 but this is what ends up happening. They end up requiring
4 the applicant -- that's what she testified to. They end up
5 requiring the applicant or the defendant to provide his own
6 explanation to the Court. If his explanation is not
7 sufficient, the notice of appeal gets dismissed.

8 I would argue that that, Your Honor, is violative of the
9 14th amendment - I'll hand this case up - rights to due
10 process and equal protection. The case I just handed up,
11 Your Honor, is Halbert versus Michigan, 545 U.S. 605. It's a
12 2005 decision from the United States Supreme Court. In that
13 case the United States Supreme Court was presented with an
14 almost-on-all-fours provision of the Michigan -- from
15 Michigan in an appeal from Michigan. In that case the only
16 difference is, in my opinion, is that -- is that trial --
17 instead of requiring trial counsel to file an explanation,
18 they just require the applicant to file an explanation which
19 is exactly what happened in this case.

20 The United States Supreme Court held that
21 unconstitutional. It was the same procedure: File notice of
22 appeal. Ask to go forward. If you can't provide a
23 sufficient explanation after a guilty plea, they're going to
24 dismiss it, and the United States Supreme Court held that
25 that was unconstitutional, that you have to give them

1 appellate counsel. You have to give them the right to have a
2 transcript. You have to have the record before the Court.
3 It goes back to Anders versus California, Your Honor, where
4 the United States Supreme Court held that it was
5 unconstitutional for California to allow -- to have a
6 procedure in place which -- which allowed a pro se appellant
7 without the help of counsel and without the help of a record
8 to argue that his direct appeal should be -- you know, that
9 his case should be overturned on direct appeal. That's
10 insufficient.

11 You've got to have appellate counsel. You've got to
12 have a transcript. And if it's -- and I recognize that the
13 rule may serve valid interests to reduce appeals and reduce
14 the workload on courts and things of that nature, but that
15 doesn't prevent it from being unconstitutional. And we would
16 argue that it was defense counsel's responsibility to file
17 that argument at the time to preserve her client's appellate
18 rights because if she didn't do it, it's unfair to require
19 him to think of that argument and to make him do it, and
20 Appellate Defense sure isn't going to do it because they're
21 not going to get the case unless the appeal is allowed to go
22 forward. So we would ask Your Honor to hold that rule
23 unconstitutional and to allow my client to go forward with a
24 belated direct appeal.

25 **The Court:** All right.

1 **Mr. Thompson:** With all that in mind, we'd ask for a new
2 trial and a belated direct appeal.

3 **The Court:** All right. What do you want to tell me?

4 **Mr. Petrano:** As to the self-defense issue, it's not
5 just an issue of credibility with the applicant and counsel.
6 It's also in the plea transcript itself. So I submit that
7 that's an issue of credibility. He was aware that self-
8 defense would be an option.

9 **The Court:** All right.

10 **Mr. Petrano:** On to the constitutionality of South
11 Carolina appellate court Rule 203 (d) (1) (b) (4), my reply is
12 twofold. One, this is a PCR case. It's being presented as
13 ineffective assistance of counsel. The standard for
14 ineffective assistance of counsel - and this is Strickland
15 versus Washington - is whether counsel's performance deviated
16 from the professional norms. The professional norms being
17 interpreted for the purposes of Strickland have been applied
18 such that it's the local norms. So you don't apply what
19 happens in Arizona, for instance. It's what we do locally
20 here in our professional norms.

21 Our professional norms, Your Honor, I submit are to
22 comply with Rule 203(d) (1) (b) (4). There aren't lot of people
23 challenging 203(d) (1) (b) (4). So, like I mentioned, you
24 couldn't be deviating if you were not doing that. I hope
25 that makes sense.

1 As to the actual application of the constitutionality of
2 the 203(d)(1)(b)(4), I also reference Your Honor to 602(e)(4)
3 which I think is the key difference and is what Ms.
4 Singletary was alluding to when she was on the stand, and it
5 is the key difference with Halbert versus Michigan. The
6 applicant's counsel stated, and I believe correctly, that it
7 is almost on all fours with this scenario.

8 The missing part, however, is this 602(e)(4) and that's
9 that counsel does file the notice of appeal which was
10 different than the Michigan standard in Halbert. It was the
11 applicant that had to file his notice. Counsel filed the
12 notice. She submits as an officer of the court that
13 there's -- there's nothing non-frivolous. That is entirely
14 appropriate for effective representation as far as the sixth
15 amendment goes.

16 She can't just argue a frivolous thing. You've got to
17 get back to the actual theories of a guilty plea. Basically
18 a guilty plea is for all intents and purposes a settlement,
19 if you will. The State has brought the charges. The
20 respondent, being the defendant -- they got together.
21 They've agreed, in this case negotiations. It would be
22 inconsistent to then appeal and say that something was wrong.

23 Now, we have a catchall. We've got the safety valve of
24 203(d)(1)(b)(4) and 602(e)(4) in the sense that let's say you
25 get a judge who incorrectly sentences someone to 32 years for

1 an armed robbery. That's when you've got the safety valve
2 for the appeal to correct an actual error. To say I
3 shouldn't have pled, I got too much time, I should have got
4 less time, that kind of thing just basically - and I use the
5 phrase loosely - is just complaining. That's not a valid
6 reason to appeal a plea. 203(d)(1)(b)(4) and 602(e)---

7 **The Court:** I want to know what Mr. Thompson's position
8 is when a lawyer says: Look, I've looked at the record; I
9 see no basis for the appeal. All of a sudden the lawyer is
10 supposed to come up with something even though that lawyer
11 sees none or what's---

12 **Mr. Thompson:** No, Your Honor. To begin with, the
13 United States Supreme Court makes clear that trial counsel --
14 I don't want to say is worthless but that trial counsel's
15 opinion is not sufficient. I will quote here U.S. - what is
16 it - 545 U.S. 620.

17 **The Court:** I don't know whether that's their opinion or
18 not. They have examined it and they can't come up with a
19 reason. I mean, regardless of whether they're right or
20 wrong, if they can't come up with a reason, how are they
21 supposed to---

22 **Mr. Thompson:** And---

23 **The Court:** They then rely on the client to come up with
24 whatever reason that may be artfully stated or inartfully
25 stated, but that person has an opportunity to explain to the

1 Court what the basis for the appeal is. If there's some
2 rationale to what that is, then the appeal is permitted and
3 counsel is appointed and they proceed with it, but they're
4 not kicked out of court because they failed to appeal. The
5 notice of appeal was filed.

6 **Mr. Thompson:** And that again, Your Honor, is what the
7 procedure that was outlined in Michigan---

8 **The Court:** All right. Well, I'll have to read this. I
9 still -- I mean---

10 **Mr. Thompson:** Your Honor, essentially our argument---

11 **The Court:** In this case is it true that the client had
12 to file the notice of appeal?

13 **Mr. Thompson:** He had to file a request to leave and a
14 request for the appeal. However, the United States Supreme
15 Court has made clear time and time again that counsel is
16 needed. That was part of what happened with Halbert is that
17 counsel wasn't appointed.

18 **The Court:** Well, I'll have to look at it.

19 **Mr. Thompson:** But, again, the United States Supreme
20 Court has made clear time and time and time again beginning
21 with Douglas versus California, Anders versus California and
22 continuing to this Halbert case that it doesn't matter if
23 it's a guilty plea. It doesn't matter if it's a direct
24 appeal. That's part of the dissent issue in Halbert is that
25 this case deals with a guilty plea and that makes it

1 different and they lost. It does not matter---

2 **The Court:** I said I'd look at it.

3 **Mr. Thompson:** I'm sorry. I just want to make sure the
4 record is clear. You've got to have appellate counsel---

5 **The Court:** Mr. Thompson---

6 **Mr. Thompson:** ---and a transcript of record. I'm
7 sorry.

8 **The Court:** You need to stop. Okay. I'll be in touch.

9 **Mr. Petrano:** Thank you, Your Honor.

10 **Mr. Thompson:** Thank you.

11 (Whereupon, the proceedings were concluded. There were
12 no exhibits introduced.)

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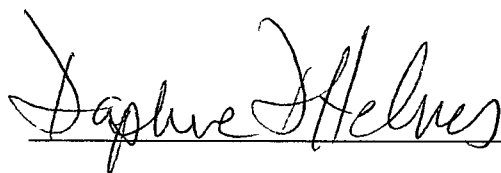
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I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 7th of June, 2011.

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

November 21, 2011

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Wilson, Quandelle J., #337054,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-40-00045

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2011 AUG 22 PM 3:04
JEANETTE W. MCBRIDE
C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 5, 2010. The Respondent made its Return on February 22, 2011. An evidentiary hearing into the matter was convened on June 7, 2011 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Jeremy A. Thompson, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Nicole Singletary, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently incarcerated at the South Carolina Department of Corrections ("SCDC") pursuant to order of commitment of the Clerk of Court for Richland County. He was indicted for murder during the July 2008 term of the Richland County Grand Jury. On

September 21, 2009, Applicant pled guilty to voluntary manslaughter. The Honorable L. Casey Manning sentenced Applicant to confinement for a period of twenty five (25) years.

The Applicant explained that he attempted to appeal his guilty plea and his appeal was dismissed on November 11, 2009.

In the PCR application 2010-CP-40-00045 the Applicant alleges ineffective assistance of counsel, specifically:

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

(a) See Attachment

(b) _____

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See Attachment

(b) _____

(c) _____

18. State clearly the relief you seek in filing this application.

Resentencing after vacation of involuntary plea due to erroneous indictment

NOW COMES THE ABOVE NAMED applicant, before this honorable court, in the above captioned matter specifically asserting claims of being held unlawfully by the State of South Carolina in violation of the laws and treatise of the United States Constitution and Art. 13 of the South Carolina Constitution, to wit: Ineffective Assistance of Counsel, and lack of jurisdiction for sentence under current indictment. Applicant, will show that he was denied due process of law and equal protections afforded him as a U.S. citizen.

Questions

(a) Was counsel at applicant's plea hearing ineffective for failing to motion for the admission of applicant's statement to arresting officer, explaining his position of why homicide took place involuntarily as it did, thus potentially having a

favorable bearing on how the court would dispose of case?

(B) Did said counsel's performance fall below the standards of professional norms expected of an attorney for not exercising due diligence with applicant, and his concerns of going forward with guilty plea, when facts of case warranted a decisively different legislative intent?

(C) Did said counsel's performance sustain it's low standards when there was a failure to hold the adversarial process to the highest possible standard advocated by the judicial process by neglecting to file and submit a motion to quash indictment for murder, when facts and evidence warranted an indictment for involuntary manslaughter?

(D) Did counsel's performance continue on the slippery slope of fundamental indifference when there was a failure to file motion to quash indictment of murder, because of it's defectiveness of not putting defendant on proper notice?

Procedural History

The applicant, Quaidette J. Wilson, is an inmate at the Broad River Correctional Institution (S.C.D.C.)

Applicant was indicted for Murder, in Richland County. Applicant was represented by Nicole Singletary, who was appointed by the state. The honorable L. Casey Manning, circuit judge, presided at the plea hearing. The applicant pleaded guilty to voluntary manslaughter, and was sentenced to twenty five years. Counsel for applicant filed a timely notice of appeal from guilty plea, and on appeal, applicant, was represented by Joseph L. Savitz, III, Senior appellate defender, of the South Carolina Office of Appellate Defense. Counsel at plea hearing failed to raise issue of involuntary plea for review by the Court of Appeals, pursuant to Rule 203(d)(5)(iv), SCACR, which requires a "written explanation showing that there is an issue(s) which can be reviewed on appeal. . . . Including how the issue(s) was raised below and the ruling of the lower court on that issue(s)." The court after careful review dismissed appeal, because of the failure to establish any preserve issues for appellate review. The appeal was dismissed on 11/9/2009.

As a result of the action by the Court of Appeals, applicant filed a timely application for post-conviction relief, and in the application, he asserts claims of being held in custody unlawfully by the State of South Caro-

lina, in violation of the Laws and Treatise of the United States Constitution, and the Articles & Sections of the South Carolina Constitution, for the following reasons:

- (1) Ineffective assistance of counsel
- (2) Subject Matter Jurisdiction.
- (3) Violation of Due Process.

The issues and claims raised by the applicant are proper before this court, under the South Carolina Post-Conviction Relief Act § 17-27-20, challenging the validity of his conviction and sentence. Stating that counsel at plea failed to perform with a normal degree of skilled knowledge, and professional judgment that is required of an attorney, who practices criminal law, pursuant to the standards brought forth in *Strickland v. Washington*, for failing to motion for a *Jackson v. Denno* hearing to determine the need for applicant's statement made to investigating officer, to be admitted into evidence because of the mitigating nature of information that factually underscored a correct charge of involuntary manslaughter.

In light of this factual defect, applicant asserts that his guilty plea was not knowing and intelligent and therefore involuntary for voluntary manslaughter.

In *United States v. Libretti* 38 F.3d 523, 529 (10th Cir. 1994), *aff'd* — U.S. —, 116 S. Ct. 354, 133 L.Ed.2d 271 (1995). "The

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longstanding test for determining the validity of a guilty plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant" *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 346, 369, 78 L.Ed.2d 266 (1985) (quoting *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S.Ct. 1487, 1494, 27 L.Ed.2d 162 (1970)). A guilty plea entered upon the advice of counsel is invalid if the plea was coerced, *Osborn v. Shillinger*, 997 F.2d 1324, 1327 (10th Cir. 1993), or if the advice of the defendant's counsel was not within the range of competence demanded of attorneys in criminal cases, *Hill v. Lockhart*, 474 U.S. at 56, 106 S.Ct. at 369; *McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1491, 1499, 25 L.Ed.2d 1463 (1970).

Appellant advances several reasons why his guilty plea was not voluntary: (1) Indictment was defective; (2) All facts of case was incomplete; and (3) Appellant's attorney rendered ineffective assistance for failing state issues for appeal, causing appeal to be dismissed.

Appellant asserts that in his statement to investigating officer who directed interrogation, the victim, who was sitting in his vehicle, appeared to reach down after applicant responded in the negative about a significant amount of money owed for drugs. (*State v. Rash*, 172 S.C. 42, 50, 172 S.E.2d 435 (1936)). Defendant need not wait until the assailant gets the drop on him in order to be entitled to use force in self-defense. Compare *State v. Burriss*, 334 S.C. 256, 513 S.E.2d 104 (S.C. 1999). A person who shoots another can be acting

(2)

lawfully, even if he is in unlawful possession of a weapon if he was entitled to arm himself in self-defense at the time of the shooting. In light of this legality applicant must be allowed to withdraw his guilty plea.

Subject Matter Jurisdiction

(a) Applicant brings this claim before the Court, pursuant to the applicable law and Doctrine, that Subject Matter Jurisdiction May Be Raised At Anytime and is not subject to statute of limitations or precluded on procedural grounds. See *Slack v. State*, 429 S.E.2d 301 (S.C. 1993), *Browning v. State*, 443 S.E.2d 358 (1995)

The trial Court lacked Subject Matter Jurisdiction to accept applicant's plea for voluntary manslaughter. Applicant contends that he was never indicted by a grand jury for voluntary manslaughter. The issue regarding subject matter jurisdiction may be raised at any time, in any manner, before any court; or by the Court itself. *Langhorne v. Com.* 35 Va. App. 19, 542 S.E.2d 780, 782 (2001); *Anderson v. Anderson*, 299 S.C. 110, 115, 342 S.E.2d 997, 900 (1989). When a Court is without jurisdiction of subject matter, any action with respect to such case, other than dismissal, is absolutely void. *Eagle v. Global Associates*, 292 S.C. 354, 356 S.E.2d 417 (S.C. App. 1987); *Peake v. Peake*, 284 S.C. 591, 327 S.E.2d 375 (S.C. App. 1985).

(6)

Here a Court of General Sessions, convened on June 16, 2003, the Grand Jurors of Richland County true bill the indictment of Murder of July 13, 2003. But later through plea negotiations with prosecutors, pleaded guilty to voluntary manslaughter, a lesser included offense that excluded the element of malice, and a forethought, thus violating applicant's Fifth (5th) amendment right found in the United States Constitution. I quote in part, 'no person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury.' Applicant was never afforded his Constitutional right to be indicted for voluntary manslaughter. The South Carolina Supreme Court dealt with a similar issue in *State v. Beachum*, 342 S.E.2d 591 (S.C. 1976). Beachum argued the court lacked subject matter jurisdiction to accept plea and convict him for voluntary manslaughter, when there was no indictment for manslaughter at the time of plea. The S.C. Supreme Court agreed with Beachum and went on to comment, no person shall be held to answer for any crime unless presentment or indictment of a grand jury. South Carolina Constitution, Article I, §11; S.C. Code Ann. §§19-10 (1976). Presentment of a grand jury is a condition precedent to the trial of a crime except in certain minor offenses. *State v. Hawn*, 196 S.C. 211, 12 S.E.2d 720 (1940). Presentment during plea hearing did not remedy the lack of subject matter jurisdiction which existed at the commencement of plea hearing. Beachum's

(7)

kidnapping conviction and sentence was vacated. Applicant argues that he was never indicted by the grand jury and he as Beachum's, supra, sentence and conviction must be vacated.

The Court commented in *Russell v. United States*, 369 U.S. 749, 763-69, 92 S. Ct 1038, 1041, 41 Ed. 2d 240 (1962), the Court stated, First, that to ensure the defendant's Sixth (6th) Amendment right to know what he is charged with, the indictment must contain the elements of the offense intended to be charged and "sufficiently apprise the defendant of what he must be prepared to meet," *Russell*, supra. Second, to guarantee a defendant's Fifth (5th) Amendment protection against double jeopardy "the record must show with accuracy to what extent he may plead a former acquittal or conviction.

The applicant here plea was unknowingly involuntary because the indictment fail to include the essential elements of time and date of assault and the time and date of death.

The Court went on to comment in *Stinson v. United States*, 361 U.S. 212, 218, 80 S. Ct 270, 273, 41 Ed. 2d 282 (1960). This fundamental protection "is designed as a means, not only of bringing to trial persons accused of public offenses upon just grounds, but also a means of protecting the citizen against unfounded accusation, whether it comes from the government, or be prompted by partisan passion or private enmity. No person shall be required . . . to answer for any

of the higher crimes unless; . . . [the grand jury] shall declare... that there is good reason for his accusation and trial." (quoting *Ex Parte Bain*, 121 U.S. 1, 11, 7 S. Ct. 781, 796-797, 30 L.Ed. 949 (1887)). The Court has stressed that the indictment must be complete and definite in its charges, because to allow the prosecutor, or the Court to make a subsequent guess to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to the grand jury which indicted him. See also *Carter v. State*, 495 S.E.2d 713, 717 (1993), *State v. State*, 446 S.E.2d 437 (1994).

(3) Ineffective Assistance of Counsel.

Trial Counsel was ineffective for not filing a motion to have the defective indictment quashed. See *State v. Wilson*, 433 S.E.2d 961 (S.C. 1993), *State v. Watts*, 467 S.E.2d 272 (S.C. App. 1996), *State v. Hector*, 155 S.E. 385 (S.C. 1930).

(4) Due Process Violation

(a) Applicant, who contends that the failure of counsel to motion for his statement to be entered into evidence for the

(9)

purpose of mitigating mens rea and correctly be charged with involuntary manslaughter.

(b) Applicant further contends that counsel failed to file and submit motion to quash indictment for murder, when there was evidence within statement made to interrogating officer suppressed by prosecution.

(c) Finally applicant asserts fervently that indictment for murder, failed jurisdictional underpinning to be accepted by court, because it failed to include the essential element of the day and time of as south

(d) Plea to voluntary manslaughter is null and void because it wasn't presented to the grand jury mandated by the Fifth Amendment of the United States Constitution.

The aforementioned assertions are of an cumulative effect rising to an overwhelming violation of applicant's Due Process and Equal Protection found within the Fourteenth Amendment of the United States Constitution, and Art. 1, 13 of the South Carolina Constitution.

And for all reasons proffered, applicant's plea, and sentence must be withdrawn, and vacated and released from his unlawful custody.

(10)

This amendment to application for Post-Conviction Relief in form of a Memorandum of Law is proper under § 17-27-40 of the Uniform Post-Conviction Act, (with Rule 71.1, South Carolina Rules of Civil Procedure that governs the enforcement of the Act

Applicant, therefore asserts a property and liberty interest in Rule 71.1(d), SCRPC of its mandated entitlements and due process protection of those entitlements guaranteed by S.C. Const. ART. 1, § 13 and the Fourteenth Amendment of the United States Constitution. . .

At the evidentiary hearing, Applicant proceeded for the most part, on the allegations stated in the application for post-conviction relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Applicant testified his case was pending for about two (2) years. The Applicant testified that he met with his plea counsel ten (10) to twelve (12) times and that he was not initially honest with plea counsel about the facts of the crime. Applicant explained that he shot a Mr. Bethea but instead told plea counsel that he shot someone else. Applicant testified that it was not until about two (2) weeks before plea that he finally told plea counsel the truth.

The Applicant testified that he met Mr. Bethea at the "hot spot" about a year prior to the shooting. The Applicant explained that he was buying drugs from Mr. Bathea because he had lost his job and had to pay some bills. He further explained that he asked Mr. Bethea to "front" him a pound of marijuana. The Applicant testified that he could not pay Mr. Bethea back the nine hundred (900) dollars he owed so Mr. Bethea threatened him on three (3) different occasions. The Applicant testified that he was "jumped" and a gun was put in his face and they threatened to kill him.

The Applicant testified he was going to boot-leg cigars and when he got to the black car he saw Mr. Bethea. Applicant explained that Mr. Bethea asked him if he had his money and reached for what Applicant thought was a gun, at which time the Applicant shot Mr. Bethea.

The Applicant testified that he lied to plea counsel all along about not knowing Mr. Bethea. Applicant testified that despite the transcript, he did not recall self-defense being an option if he went to trial. The Applicant testified that his appeal was dismissed because no issue was presented. The Applicant testified that he did not have a concealed weapon permit and the victim wanted his nine hundred (\$900) dollars.

Plea counsel testified that Applicant has a large file box and that she was with the public defender's office at the time she was representing him. Plea counsel testified that her relationship with the Applicant was good and that he would send her letters. She testified that they met about twenty (20) times.

Plea counsel testified that the Applicant's first story was that he was with his girlfriend at a beauty shop. Plea counsel testified that she got an investigator and that the first story was all fantasy. Plea counsel testified that she confronted the Applicant and he told her another story

about a car with another victim. Plea counsel testified that after the second-story Applicant finally told her the third story that the Applicant stated at the PCR hearing. Plea counsel testified that her case notes from September 11, 2009 say that the Applicant finally admits that his other story was a lie and that letters prior to that date say that he did not shoot the victim.

Plea counsel testified that they did discuss trial and that in her trial box she has the direct exam questions that she and the Applicant went over, including self defense. Plea counsel testified that the Applicant did know that self-defense would be the strategy at trial.

Plea counsel testified that the public defender's office does not handle their own appeals but they do file the notice of appeal. Plea counsel testified that she did get a reply from the Court of Appeals to forward information to the Applicant. Plea counsel explained that she could not find any legal basis and that she did not consider arguing that SCACR Rule 203(d)(1)(B)(iv), SCACR is unconstitutional. Plea counsel testified that she told the Court of Appeals that she had no arguable basis and that the plea appeals eventually get forwarded to the Office of Appellate Defense. Plea counsel testified that she did write notice of appeal reasons for a plea when the State went outside of the scope of the plea.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render

reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel’s performance.

This Court finds that the Applicant’s testimony at the PCR hearing is not credible. The Applicant’s claim of ineffective assistance of counsel because he did not discuss a self-defense trial strategy with plea counsel is without merit and is directly refuted by plea counsel’s testimony at the PCR hearing and by the transcript of record. Plea counsel testified that she not only discussed a self-defense strategy with the Applicant but that she actually went over direct examination questions, including self-defense, with the Applicant. Further, plea counsel mentions the self-defense strategy three (3) times at the plea hearing. See Plea transcript p. 33, ll. 19 - 20 (“At trial, what we would have been asking the Court was - - is for a self-defense charge”); p. 35, ll. 15 – 16 (“the bottom line, we would be asking for self-defense.”); p. 38, ll. 24 – 25 (“we do believe at trial we would have gotten a self-defense charge”). Additionally, at the plea hearing the Applicant stated that he understood that by pleading, he was giving up any defenses he may have (Plea transcript p. 12, l. 13), and that he is completely satisfied with plea counsel’s services. (Plea transcript p. 15, l. 22). This Court finds that the extensive guilty plea record speaks for itself as to the competency of counsel. When an ineffectiveness claim is presented the defendant must show that counsel’s representation was deficient. Deficient representation amounts to conduct that is not objectively reasonable under the circumstances. Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052 (1984). In addition, the Applicant must show that the outcome of his proceeding was prejudiced and it is reasonably probable that the outcome would have been different had counsel’s performance not been deficient.

Strickland, 466 U.S. at 694. This Court finds that the Applicant's attorney demonstrated a normal degree of skill, knowledge and professional judgment that is expected of an attorney who practices criminal law. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, *supra*; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Regarding the issue of the notice of appeal, this Court finds that the Applicant has not met his burden of proof to demonstrate that he was denied the effective assistance of counsel. The Applicant relied on Halbert v. Michigan, 545 U.S. 605 (2005) in his criticism of our State appellate procedures for guilty pleas. This Court does not share the Applicant's interpretation of Halbert as applicable to our procedures because we do afford indigent defendants with appointed counsel for the purposes of their notice of appeal following a guilty plea. *See also*, Rule 602(e)(3) & (4), SCACR. This Court is not going to extend the analysis into a historical review of guilty pleas as a form of settlement and the nuances of appealing guilty pleas in general. For the purposes of this case, the Applicant has not demonstrated any deficient performance by plea counsel. Plea counsel explained that she filed the notice of appeal because it was requested by her client, but that when asked she had no good faith reason to satisfy the specifics of Rule 203(d)(1)(B)(iv), SCACR. To rule in favor of the Applicant would be to find that appointed guilty plea attorneys should on the one hand negotiate a favorable plea deal for their clients, then once the plea deal is approved by the plea Court, they should then file a notice of appeal (if asked to do so) and incorporate frivolous reasons to support the notice. In the alternative, to rule in favor of the Applicant would require this Court to find that Rule 203(d)(1)(B)(iv), SCACR is unconstitutional because it requires some sort of underlying rational to support the appeal of an agreed upon plea deal, i.e. a settlement. This Court is not at all convinced that such an argument

has merit. The public policy reasons for Rule 203(d)(1)(B)(iv), SCACR are obvious. If there are actual errors, rather than just a complaint as to the amount of time received within a given range, then the rule exists and fully satisfies the Applicant's right to effective representation. Similarly, PCR exists to remedy any errors had counsel been deficient for failing to articulate a legitimate Rule 203(d)(1)(B)(iv), SCACR reason if one had actually existed in this case. This Court takes judicial notice that our appellate Courts render opinions (both published and unpublished) related to guilty pleas, so judicial review exists for pleas if warranted.

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, supra, for evaluating claims of ineffective assistance of counsel applies to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. This Court finds that the Applicant has not met the burden of proof with respect to the prejudice requirement.

The Applicant's allegation that plea counsel was ineffective for failing to preserve the issue for appeal is without merit. Plea counsel testified at the PCR hearing that she did file the notice of appeal on behalf of the Applicant but that she did not know of any legal basis for the appeal. She further testified that the Office of Appellate Defense handles appeals beyond that point. This Court finds that plea counsel was diligent in her representation of Applicant and that she performed within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). Accordingly, Applicant's allegation is dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

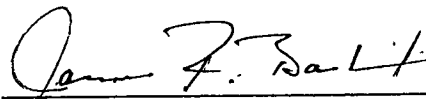
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (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 if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

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 Respondent.

AND IT IS SO ORDERED this 17 day of August, 2011.



The Honorable James R. Barber, III
Presiding Judge
Fifth Judicial Circuit

_____, South Carolina.

W/IN 07138750

✓(S) Inv. A. Thomas - CPD

ARREST WARRANT NUMBER

K291471

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUL 1 8 2008

VERDICT

Foreperson of Petit Jury

Date:

DO IT NO. 2007-42134

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JULY TERM 2008

52

THE STATE
VS.

QUANDELLE WILSON

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

Class FEL/EXM(V)

After being fully advised as to n.,
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

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

Voluntary Manslaughter

X Quandelle Wilson
Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATEVS.
Quandelle WilsonAKA. Quandelle WilsonRace Black Sex Male Age 23DOB: 11/16/2007 #:Address: 1000 S. Main St.City, State, Zip: Columbia, SC 29203DL# 1A116 SID# 0116In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Voluntary ManslaughterIn violation of § 16-3-50 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 Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST.

Heather S. Weiss Quandelle Wilson Nicole J. Peltas
Solicitor Twenty-Five Defendant Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Juvenile Offender Act not to exceed _____ years

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

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

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☐ 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 the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ sent by SCDPPPS _____

Recipient: _____

*Fine:	\$	_____
\$14-1-206 (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	\$ _____
\$35.13 (Public Def/Prob)	\$500	\$ _____
\$73.3, 1B TP (Law Enforce Funding)	\$25	\$ _____
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$ _____
\$50-21-114(BUI Breath Test Fee)	\$50	\$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	\$	\$ _____
\$90.11 TP (SCCJA Surcharge)	\$5	\$ _____
TOTAL	\$	\$ _____

Jeannette W. McBride
Clerk of Court/ Deputy ClerkCourt Reporter: ChelmerCERTIFIED TRUE COPY
OF ORIGINAL FILEDJeannette W. McBride
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-40-12137A/N# K291471Date of Offense: 11/16/2007S.C. Code §: 16-3-10CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSIn violation of § 16-3-50 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 Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.Heather S. Weiss Quandelle Wilson Nicole J. Peltas
Solicitor Twenty-Five Defendant Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Juvenile Offender Act not to exceed _____ years

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

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

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☐ 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 the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

p.m.s. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

Case No. 2010-CP-40-0045

RECEIVED
AUG 20 2012
S.C. Supreme Court

QUANDELLE J. WILSON, #337054,

PETITIONER,

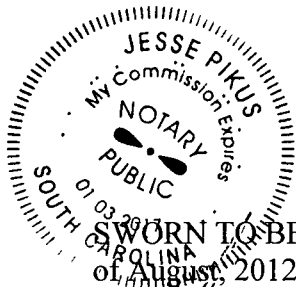
v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Appendix in the above-entitled case has been served upon opposing counsel, Robert Corney, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by hand-delivery, this 20th day of August, 2012.




JEREMY A. THOMPSON
ATTORNEY FOR THE PETITIONER

SWORN TO BEFORE me this 20th day
of August, 2012.

(L.S.)

Notary Public for South Carolina

My Commission Expires: 1/3/17