

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Clifton Newman, Circuit Court Judge

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S.C. Supreme Court

TREMON DOCTOR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000479

A P P E N D I X

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Michelle J. Childs, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TREMONT L. DOCTOR,

APPELLANT

RECORD ON APPEAL

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ORIGINAL

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 07-GS-40-9659,
9662 & 9663

The State of South Carolina)
vs.) TRANSCRIPT OF RECORD
(Guilty Pleas)
Tremon L. Doctor,)
Defendant.)

March 31, 2008
Columbia, South Carolina

BEFORE:

THE HONORABLE J. MICHELLE CHILDS, JUDGE

APPEARANCES:

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EDEN HENDRICK, ASSISTANT SOLICITOR
Attorneys for the State

MEGAN LEE, DEPUTY PUBLIC DEFENDER
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Monday, March 31, 2008

MS. CAMPBELL: Tremon Doctor.

THE CLERK: Please raise your right hand.

Tremon L. Doctor, having been first duly sworn,
pleads guilty as follows:

MS. CAMPBELL: May it please the Court?

THE COURT: Yes.

MS. CAMPBELL: Your Honor, this is Mr. Tremon
Doctor. He's pleading guilty here today. He is
represented by Megan Lee of the Public Defender's
Office and Micah Leddy.

THE COURT: Okay. And, Mr. Doctor.

MR. DOCTOR: Yes, ma'am.

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

MR. DOCTOR: No, ma'am.

THE COURT: And have you ever been evaluated for
your mental health?

MR. DOCTOR: No, ma'am.

THE COURT: Okay. I'm going to allow the State
to present the case and then tell us about factually
what is in support of the case as well, and then I
will advise you of your rights and allow you to have
presentations by yourself or your counsel. Okay.

MS. CAMPBELL: May it please the Court, Your

1 Honor. As to the voluntary manslaughter charge, I
2 believe Ms. Hendrick is going to address the armed
3 robbery charges. This happened back on July the 23rd
4 of 2005 at where the defendant,
5 near the defendant's house in this matter, Your
6 Honor, the victim in the case actually lived down the
7 street, Mr. Brian Anthony Washington, Your Honor.
8 They kind of lived on opposite ends of
9 Street.

10 On the date in question, according to eye
11 witnesses and other information we were able to get,
12 the victim in the case was going down the street. He
13 was approached by Mr. Doctor. There was some kind of
14 some words. Apparently the victim owed Mr. Doctor
15 some money or Mr. Doctor thought he owed him some
16 money. And at that point they did get into an
17 altercation at which point Mr. Doctor picked up a
18 shovel, hit him once in the leg and then once on the
19 head.

20 It is in dispute whether or not the victim
21 actually at that point went down. There is some
22 information that he may have been able to walk back
23 up the street to the place, to his parents' house,
24 Your Honor; or he may have been taken there anyway.
25 Ultimately, about 36 hours later the victim was

1 found. He had died while on the front porch of his
2 mother's house. He was found.

3 The Coroner's Office was called in. At that
4 point they did do an autopsy. And experts would have
5 testified that the victim died as a result of blunt
6 force trauma to the head which would have been
7 consistent with what the witnesses had seen earlier
8 as far as what Mr. Doctor had done to him.

9 And, Your Honor, at the appropriate time, his
10 prior record. And I do have the victims, want to
11 address I think after you accept the plea.

12 **THE COURT:** Okay.

13 **MS. HENDRICK:** Your Honor, as to the carjacking
14 and armed robbery, this did occur on October 22nd,
15 2006, late in the evening or early morning hours of
16 that at H&J's pub on Hard Scrabble Road in Richland
17 County. There were three girls out for the night.
18 They are the victims in this case. Two of the girls
19 went into the pub to have some drinks and play pool.
20 One of the victims remained sitting in the car.

21 This is kind of like a gas station type place.
22 It's a gas station and a pub inside. The one victim
23 that sat in the car, these two co-defendants pulled
24 up next to her kind of in the pump next to her and
25 saw her there. They approached her, asked -- one of

1 the victims -- co-defendants; excuse me -- got out of
2 the car, approached the victim, asked her for a
3 lighter. She gave him a lighter, then came to return
4 the lighter. When he returned the lighter he
5 actually pulled a gun on her and told her to drive
6 the car; he would kill her.

7 She then drove the car for about 20 feet and
8 managed to escape out of that and started running and
9 screaming, telling everyone what had happened. This
10 is actually the co-defendant who did this actually.
11 This defendant was actually in the van waiting on him
12 to do this and was able to drive the van behind the
13 car that they carjacked and was able to follow him.

14 As soon as the victim jumped out of the car, his
15 co-defendant jumped in the driver's seat and they
16 sped off through the parking lot. They eventually
17 followed each other and wrecked the stolen car in a
18 neighborhood nearby. The police were actually
19 notified that the car had been located.

20 They got the victims in the car, were driving
21 through that neighborhood to I.D. the stolen car when
22 the victims actually saw the van driving by and were
23 able to tell the police that that was the van that
24 they saw. At that point the police got the girls out
25 of the car, and they pursued on a chase throughout

1 the neighborhood of the van. The van eventually
2 wrecked. At this point I do believe the co-defendant
3 was driving. He was in the passenger's seat. They
4 both exited the vehicle and ran. The K-9 unit was
5 called out and they were eventually found in a ditch.

6 **THE COURT:** Okay. All right. Okay. And at
7 this time then, Mr. Tremon Doctor, do you agree with
8 those facts as indicated by the State?

9 **MS. LEE:** Judge, I believe substantially we
10 agree. There are a couple of facts he would like me
11 to distinguish. First, as to Mr. Brian Washington,
12 it is Mr. Doctor's position that it was actually
13 Brian that came into his front yard. Is that right?

14 **MR. DOCTOR:** (Nods head affirmatively).

15 **MS. LEE:** And he absolutely disputes that he
16 then carried Mr. Washington to his house afterwards.
17 And I think that's substantiated by eye witness
18 accounts in this case, that Mr. Washington actually
19 walked himself back to his house and to his front
20 porch. But absolutely we agree with the two strikes
21 to Mr. Washington.

22 As to the second case, the armed robbery, Mr.
23 Doctor would distinguish that actually the girls were
24 speaking to Mr. Goins. I believe what this was was
25 some sort of a drug transaction that the girls had

1 set up in the parking lot. And he would like me to
2 distinguish that.

3 Other than that, Your Honor, we agree with the
4 facts as stated by the solicitor.

5 **THE COURT:** Okay. So he is indicating on the
6 armed robbery/carjacking that the girls set up a drug
7 transaction. But then does he agree that there was a
8 gun pulled on the girls and they were asked to drive
9 away and that a chase ensued and --

10 **MS. LEE:** Yes, Your Honor; by Mr. Goins. It was
11 hand of one, hand of all on his part. But we do
12 agree that Mr. Goins was involved on that.

13 **THE COURT:** And that Mr. Doctor was out on bond
14 apparently when the second charge.

15 **MS. LEE:** At the time of this; yes, Your Honor.

16 **THE COURT:** All right. With those amendments by
17 your attorney, Mr. Doctor, how do you wish to plead
18 with respect to the charge of murder which is now
19 going to be pled as voluntary manslaughter, as well
20 as carjacking and armed robbery?

21 **MR. DOCTOR:** Guilty.

22 **THE COURT:** And do you understand that by
23 pleading guilty to these offenses that you are giving
24 up all of your Constitutional rights?

25 **MR. DOCTOR:** Yes, ma'am.

1 **THE COURT:** And that would include your right to
2 a jury trial?

3 **MR. DOCTOR:** Yes, ma'am.

4 **THE COURT:** And at that jury trial you could
5 challenge any of the evidence as presented by the
6 State as well as the testimony of other witnesses,
7 and then I'll also allow your attorneys to present
8 defenses testimony and other evidence on your behalf?

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

10 **THE COURT:** You understand you also give up your
11 right to remain silent as well as to be presumed
12 innocent until proven guilty?

13 **MR. DOCTOR:** Yes, ma'am.

14 **THE COURT:** And do you understand that at a
15 trial, and even at pre-trial, your attorneys could
16 actually challenge any of the evidence by trying to
17 suppress any of the statements or suppress any
18 evidence which they deem was illegally obtained?
19 You're aware of that?

20 **MR. DOCTOR:** Yes, ma'am.

21 **THE COURT:** Okay. But would give up that right.
22 Do you understand that the State has a high burden of
23 proof which is beyond a reasonable doubt at trial,
24 and that they would have to prove these cases and
25 convince 12 jurors and have a unanimous verdict in

1 order to actually have you convicted?

2 MR. DOCTOR: Yes, ma'am.

3 THE COURT: All right. And then at a trial you
4 have a right against self-incrimination. So the
5 State could not require you to testify against
6 yourself to prove their case. You're aware of that?

7 MR. DOCTOR: Yes, ma'am.

8 THE COURT: And that even if you chose to
9 present a defense, you don't have to testify in
10 defense of yourself. And the jury would have to be
11 instructed that it is your right to not testify
12 against a trial, one, because the State has the
13 burden of proof; but even, secondly, you still have
14 the right against self-incrimination. You understand
15 that?

16 MR. DOCTOR: Yes, ma'am.

17 THE COURT: And then even knowing all of these
18 rights that you would have including any particular
19 Constitutional rights I have not mentioned, are you
20 aware that you would give up all of these rights with
21 respect to a plea of guilty today?

22 MR. DOCTOR: Yes, ma'am.

23 THE COURT: Has anyone threatened you or forced
24 you in any way to plead guilty today?

25 MR. DOCTOR: No, ma'am.

1 THE COURT: Are you doing so of your own free
2 will?

3 MR. DOCTOR: Yes, ma'am.

4 THE COURT: And on a voluntary basis?

5 MR. DOCTOR: Yes, ma'am.

6 THE COURT: Do you feel like you have had enough
7 time to speak with your attorneys with respect to
8 understanding these particular offenses, your
9 Constitutional rights, as well as what you'd be
10 facing at trial?

11 MR. DOCTOR: Yes, ma'am.

12 THE COURT: And do you believe you've had enough
13 time to ask them questions to make sure that you
14 understood everything with respect to your decision
15 to either plead guilty or go to trial?

16 MR. DOCTOR: Yes, ma'am.

17 THE COURT: Do you need any additional time with
18 them now?

19 MR. DOCTOR: No, ma'am.

20 THE COURT: Okay. And with respect to these
21 pleas as well, for your voluntary manslaughter, as
22 has been indicated by them, you are -- and the armed
23 robbery as well, that these are considered most
24 serious offenses?

25 MR. DOCTOR: Yes, ma'am.

1 **THE COURT:** Okay. And you understand that's a
2 strike against you?

3 **MR. DOCTOR:** Yes, ma'am.

4 **THE COURT:** Okay. And that to the extent that
5 you got any additional most serious offenses or other
6 serious offenses, depending on the combination and
7 the categories, you could be facing life without
8 parole?

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

10 **THE COURT:** And that if the State were to bring
11 any such later case against you and you were actually
12 convicted, then that would be a mandatory sentence.
13 It couldn't be discretionary by the judge. You could
14 actually be in that category where that is the only
15 sentence the judge could pass upon you. Do you
16 understand that?

17 **MR. DOCTOR:** Yes, ma'am.

18 **THE COURT:** Do you still wish to plead guilty
19 knowing that that's a consequence of the plea?

20 **MR. DOCTOR:** Yes, ma'am.

21 **THE COURT:** Do you understand also that you are
22 pleading with respect to felonies?

23 **MR. DOCTOR:** Yes, ma'am.

24 **THE COURT:** Okay. And what is your age?

25 **MR. DOCTOR:** Twenty-nine (29).

1 THE COURT: Okay. All right. And then with
2 respect to certain of these offenses probation is not
3 an option. Do you understand that?

4 MR. DOCTOR: Yes, ma'am.

5 THE COURT: Okay. And have you had enough time
6 to discuss this case in detail with your attorneys?

7 MR. DOCTOR: Yes, ma'am.

8 THE COURT: Okay. And to the extent that you
9 need any additional time with them, the Court will be
10 happy to allow to you do that. Okay?

11 MR. DOCTOR: Okay.

12 THE COURT: After the questions that I have
13 asked you, have you understood my questions of you?

14 MR. DOCTOR: Yes, ma'am.

15 THE COURT: And so, can the Court assume that
16 with respect to all the questions that I've asked you
17 that you've understood them and those have been your
18 responses?

19 MR. DOCTOR: Yes, ma'am.

20 THE COURT: So no one else has suggested any
21 answers to you for the questions that I'm asking you?

22 MR. DOCTOR: No, ma'am.

23 THE COURT: Okay. And has anyone threatened
24 you, forced you in any way to plead guilty today?

25 MR. DOCTOR: No, ma'am.

1 **THE COURT:** You're doing so freely and
2 voluntarily?

3 **MR. DOCTOR:** Yes, ma'am.

4 **THE COURT:** And have you in your plea or
5 throughout this proceeding had any complaints against
6 any of the arresting officers, Solicitor's Office,
7 any governmental agency?

8 **MR. DOCTOR:** No, ma'am.

9 **THE COURT:** Okay. All right. The Court will
10 accept your plea. And I'll hear further from the
11 solicitor with respect to the victims or any other
12 information you'd like to provide the Court.

13 **MS. CAMPBELL:** Yes, Your Honor. I would just
14 put that this is a negotiated plea with the range of
15 between 20 and 30 in your discretion run concurrent
16 on all charges.

17 **THE COURT:** Okay. And then let me know how long
18 he has been incarcerated.

19 **MS. LEE:** He's been incarcerated since
20 October 22nd, 2006, which would be one year, 160
21 days.

22 **THE COURT:** Okay. And I'm happy to hear from
23 the victims.

24 **MS. CAMPBELL:** Your Honor, this is Mr.
25 Washington's mother that is standing next to me.

1 Just say your name for the Court.

2 MS. WASHINGTON: Rosanya Free Washington, Your
3 Honor.

4 THE COURT: Okay.

5 MS. WASHINGTON: Yes. I just wanted to say to
6 the Court that all I want is for Mr. Doctor to
7 receive the punishment that fits the crime. And my
8 son's life was taken. And they were friends. My
9 husband used to take him to work. You know, it's not
10 like we were strangers.

11 And I just want to let you know that my son
12 didn't deserve to die. And if he didn't take him
13 down there, one of the boys up the street made it
14 known that asked the question: Where is Brian? Have
15 you seen Brian? So that would indicate to me that,
16 you know, somebody knew something had happened to
17 him. And that's the only thing I wanted to say.

18 He was hit in the head. And I don't know what
19 kind of adrenaline might have been flowing with
20 anybody that's hit in the back of the head. You
21 know, you might think you can climb a mountain. I
22 don't know that. But he knew he was hurt and he did
23 not try to help him. The only thing I want him to do
24 is have fair treatment. Thank you.

25 THE COURT: Okay.

1 **MS. CAMPBELL:** Your Honor, I think the other
2 family members -- there are other family members and
3 friends here in the courtroom, Your Honor. I'd point
4 them out up on the second tier. They are here in
5 support of the Washingtons. We did speak to the
6 victims in the armed robbery case, Your Honor. None
7 of them -- they understood the negotiations in this
8 case and they were in agreement and none of them will
9 be present or wanted to be present.

10 Your Honor, as far as his prior record goes, in
11 1997, a driving under suspension conviction,
12 possession of stolen vehicle conviction; in 1999, a
13 forgery; in June of 2000, possession of crack
14 cocaine. Beg the Court's indulgence. And other than
15 trafficking offenses, that would be the extent of his
16 prior record that I'm aware of.

17 **THE COURT:** Okay.

18 **MS. CAMPBELL:** Did you want to say anything?

19 **MS. HENDRICK:** No, Your Honor.

20 **THE COURT:** All right. And, Mr. Doctor, do you
21 agree with that prior record?

22 **MR. DOCTOR:** Yes, ma'am.

23 **THE COURT:** Okay. And then I'm happy to hear
24 from your attorneys in mitigation.

25 **MS. LEE:** Thank you very much, Your Honor.

1 Judge, I'd like to address the two incidents one at a
2 time, if I may.

3 THE COURT: Sure.

4 MS. LEE: Obviously the death of Brian
5 Washington is extremely tragic; and especially so, as
6 the mother of the victim points out, because they
7 knew each other. And from my understanding they knew
8 each other pretty much all of Tremon's life. I
9 understand from Tremon that Brian would sometimes
10 help out at his house, would help him with his dogs,
11 taking care of them. They watched games together,
12 that they were close.

13 I think the reduction to voluntary is especially
14 appropriate because this does smack very much of a
15 heat of passion argument. This was not a beating in
16 the sense of the word that progressed over a long
17 time. This was two strikes, one to the leg and one
18 to the head. And eye witnesses say that they saw Mr.
19 Washington get up and walk to his house, to the porch
20 where he lived.

21 And I think that's important for the Court to
22 consider because I think it very much speaks to Mr.
23 Doctor's intent at that time, to watch and see that
24 Mr. Washington was able to get up and not to follow
25 him, not to continue through with a further assault.

1 Mr. Washington did stay on that porch for 36
2 hours without anyone calling medical attention for
3 him, whether it was Mr. Doctor or his family. And I
4 think that is among the most tragic thing of this
5 case and of his death.

6 It was also clear from the postmortem that he
7 was high on cocaine and had been drinking alcohol at
8 the time of his death. I don't think anybody can put
9 together what happened to Mr. Washington in those
10 last 36 hours of his life, but I think it is clear
11 from the discovery in this case that Mr. Doctor was
12 not around in those last 36 hours. And I think that
13 does speak to his intent and that this was not a
14 murder, that this is appropriate as a voluntary
15 manslaughter, Your Honor.

16 Obviously we understand that the Court is going
17 to have concerns that Mr. Doctor had the privilege of
18 being out on bond on the case regarding Mr.
19 Washington when the second incident occurred. And
20 that's why I'd really like to address that, the
21 incidents which occurred outside of H&J's, the
22 Chasers Pub as its also called.

23 Your Honor, I'd say it's undisputed that Mr.
24 Doctor was the least culpable in this incident; not
25 the one with the gun, not the one who threatened

1 anyone. He didn't touch a hair on the heads of any
2 of three girls who were involved in this incident.
3 It's clear from discovery that something more was
4 going on here than I think law enforcement was told.
5 The three girls had \$700 in cash on them. There is
6 evidence later of Purple Haze being sold from their
7 car, which is a mixture of marijuana and cocaine; and
8 facts that the primary victim, Loren Stuckey, later
9 pled guilty to trafficking cocaine. And I think that
10 puts a lot of context as to what was going on outside
11 that club at 4 in the morning.

12 But, Your Honor, that's certainly not to speak
13 poorly of the victims. Obviously they did not
14 deserve to be treated in this manner. But I do think
15 it's important for the Court to place this into
16 context.

17 Mr. Doctor's role was minimal compared to his
18 co-defendant's, Keith Goins. Mr. Goins is the one
19 with the gun. Mr. Goins is the one who threatened
20 Tia Johnson and took off with the car. It's clear
21 that Mr. Doctor's only role in all of this was to
22 provide transportation for Mr. Goins. But knowing of
23 this plan is what I think creates this as a hand of
24 one, hand of all situation, and that is the theory he
25 is pleading under.

1 Your Honor, he understands he had a duty to make
2 better choices and associate with different people
3 when he was on bond for something as serious as he
4 was at the time. And he understands that that was
5 the biggest mistake he could have made in the
6 precarious situation he was in at that time.

7 So really he spent the last year and 160 days I
8 think soul searching, Your Honor, and trying to
9 figure out why he was going down the path that he
10 was.

11 Mr. Doctor is very unusual as far as having
12 these series of charges and the way he behaves at
13 jail. In the almost two years he's been down at
14 Alvin S. Glenn, he's never been in an S.H.U. which is
15 the high security dorm where you get put for
16 fighting. Whenever I go down to see him I always
17 interrupt his Bible study group. He goes to church
18 every Sunday.

19 I think he's been doing everything he can to
20 change the choices he makes. Because even in jail we
21 all know you can still make bad choices and associate
22 with bad people. Tremon isn't doing that. He is
23 changing his life in the only way that he can down at
24 the jail.

25 Your Honor, briefly, as to Mr. Doctor himself,

1 he is 29, as he told you. He has but one daughter
2 who is eight years old and lives here in Columbia.
3 His mom died when he was nine, and his father has
4 been in and out of Department of Corrections his
5 whole life. In fact, his father is there now. So I
6 think it's fair to say he ever had much of a
7 childhood or much of an upbringing.

8 He was raised by an aunt who had her own
9 children to care for but I think cared for him as
10 best she can, as best she could under those
11 circumstances. She very much wanted to be here
12 today, but she had outpatient surgery today and could
13 not make it.

14 When I asked her if there was anything she
15 wanted me to share with the Court about Tremon, she
16 said to just tell you that he was wonderful to have
17 around the house because he can fix anything. He'd
18 fix her car. He'd fix light sockets when something
19 would go wrong with the wiring. He was just very
20 handy around the house and always willing to do it.
21 And, in fact, he kept a job for some time at Crosby
22 Brick Work working as a brick mason.

23 Judge, as to his prior record, I'd say that he's
24 never been charged a violent offense before. This is
25 out of character for him. And I think that's why he

1 has been soul searching because so quickly his life
2 delved into a path that he'd never taken before.

3 Your Honor, we'd ask you to consider his lack of
4 violent priors on his record. We'd ask you to
5 consider the mitigating factors around these two,
6 while serious incidents; I think that they must be
7 placed into context. Judge, you have a range before
8 you from 20 to 30. We're asking you to consider the
9 20.

10 He would come out on community supervision. And
11 hopefully, that would give the family and the other
12 victims some peace of mind that he would have to be
13 under the supervision of the State, and if not, he'd
14 go right back to prison. Mr. Doctor understands
15 that. He'd also come out understanding that he has a
16 most serious conviction on his record. And if he
17 starts making the same choices again, he'll be
18 getting life without parole. And we've had extensive
19 conversations about that, Your Honor. Respectfully,
20 we're asking you to consider an active sentence of 20
21 years, Your Honor.

22 **THE COURT:** All right. State?

23 **MS. CAMPBELL:** Your Honor, we think that because
24 of the serious nature of all these crimes and that he
25 was actively involved in all of them that perhaps the

1 minimum would not -- the 20 would not be as
2 appropriate as something, say, a higher number. And
3 I think the family feels like that would be
4 appropriate.

5 **THE COURT:** Okay. Anything further? Anything
6 from you, Mr. Doctor?

7 **MR. DOCTOR:** Yes. I'd just like to apologize to
8 the neighbors for all the pain that I caused them.
9 And that's just about it. If I could take it back,
10 then I would.

11 **THE COURT:** Okay. All right. Thank you. Mr.
12 Doctor, you still wish to plead guilty to each of
13 these offenses?

14 **MR. DOCTOR:** Yes, ma'am.

15 **THE COURT:** You would have ten days to appeal
16 the guilty plea. The Court does accept your plea. I
17 find that there is a substantial factual basis in
18 which to do so. You've also indicated to the Court
19 that you've pled guilty freely and voluntarily. Is
20 that still your decision?

21 **MR. DOCTOR:** Yes, ma'am.

22 **THE COURT:** And that without any threat or force
23 or coercion of any sort. Is that still your
24 decision?

25 **MR. DOCTOR:** Yes, ma'am.

1 **THE COURT:** Okay. Are you satisfied with your
2 attorneys?

3 **MR. DOCTOR:** Yes, ma'am.

4 **THE COURT:** And do you feel like they have
5 adequately again explained to you the nature of this
6 offense, your maximum possible punishment as well as
7 your Constitutional rights?

8 **MR. DOCTOR:** Yes, ma'am.

9 **THE COURT:** Okay. And are there any questions
10 that you have of this Court or of your attorneys at
11 this time?

12 **MR. DOCTOR:** No, ma'am.

13 **THE COURT:** Okay. And have you understood your
14 attorneys' conversations with you?

15 **MR. DOCTOR:** Yes, ma'am.

16 **THE COURT:** Okay. You would have up to one year
17 to challenge your attorneys' representation of you
18 under a post conviction relief application. Do you
19 understand that right as I've now given it to you?

20 **MR. DOCTOR:** Yes, ma'am.

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

22 (Pause)

23 **THE COURT:** All right. I have heard the pleas
24 of both parties. And, Mr. Doctor, with respect to
25 the case itself, whether there was an altercation or

1 not, you've got a victim who is now a decedent. And
2 there is some dispute perhaps as to what happened in
3 those last few hours; but in any regard, when someone
4 gets hit on the head in that regard, apparently in
5 this case there may have been a slow bleed or
6 something of that nature, but no one can really
7 account for those last few moments. But the
8 intensity of it was obviously enough to then kill the
9 person.

10 The Court is very concerned about the actions
11 afterward, that if you're out on bond for what was
12 potentially a murder charge now pled down to
13 voluntary manslaughter that you would be around
14 persons who would actually engage in this type of
15 conduct. Whether you were the getaway car, so to
16 speak, or what have you, there is indication at least
17 that you're not disputing that your co-defendants
18 would have had a gun.

19 And then of course whatever acts they commit on
20 the hand of one, hand of all, then with their escape;
21 you know, just the whole setup of everything occurred
22 after the fact, that indicates that you're
23 responsible from the beginning to the end and how all
24 of those actions are carried out. And those are
25 serious offenses which carry another most serious

1. offense with respect to your armed robbery charge.
2. Do you understand that? And that charge alone would
3. have been a minimum sentence of ten years. Do you
4. understand that?

5. MR. DOCTOR: Yes, ma'am.

6. THE COURT: Okay. With respect to these pleas,
7. since the State does not oppose the concurrent time,
8. the Court will go with that. You'll also get your
9. credit since October 2nd, 2006. So for the offense
10. of carjacking, you'll be sentenced to the State
11. Department of Corrections for five years. For the
12. armed robbery, you're sentenced to the State
13. Department of Corrections for ten years. And then
14. for the voluntary manslaughter, sentenced to the
15. State Department of Corrections for 25 years. Good
16. luck to you, sir.

17. MS. CAMPBELL: Thank you, Your Honor.

18. MS. HENDRICK: Thank you, Your Honor.

19. MS. LEE: Thank you.

20. (Whereupon, the proceedings are concluded)

21.

22.

23.

24.

25.

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, 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 the proceedings had and evidence introduced in the guilty pleas of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 31st day of March, 2008.

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

May 28, 2008

Jenny H. Williams

Jenny H. Williams, Court Reporter

DOCKET NO. 2007-GS-40-9659

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2007

42

THE STATE
vs.

TREMAN DOCTOR

WITNESSES

(S) DARRELL TUCKER - RCSD

ARREST WARRANT NUMBER

1-979436

ACTION OF GRAND JURY

TRUE BILL

FEB 14 2007

Session of Grand Jury

VERDICT

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF RICHLAND)

At a Court of General Sessions, convened on February 14, 2007, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Treman Doctor did in Richland County on or about October 22, 2006, commit robbery by feloniously taking from the person or presence of Tia Johnson by means of force or intimidation goods or monies of Tia Johnson, such goods or monies describes as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

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

Warren B. Giese

WARREN B. GIESE, SOLICITOR

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

Defendant

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

Defendant

Witness:

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

DOCKET NO. 2007-GS-40-9663

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2007

42

THE STATE
vs.

TREMAN DOCTOR

Indictment for

CONSPIRACY TO COMMIT
KIDNAPPING

SC Code: 16-3-920

CDR Code: 017

Class FEL-A

WITNESSES

(19) DARRELL TUCKER - RCSD

ARREST WARRANT NUMBER

1-978436

ACTION OF GRAND JURY

TRUE BILL

FEB 14 2007

Leah S. [Signature]
Representative of Grand Jury
Date:

VERDICT

Representative of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on February 14, 2007, the Grand Jurors of Richland County present upon their oath:

CONSPIRACY TO COMMIT KIDNAPPING

That Treman Doctor did in Richland County, on or about October 22, 2006, unlawfully enter into an agreement and/or conspiracy with Keith Goins to violate the provisions of Section 16-3-910, and the defendant did an overt act towards carrying out such unlawful agreement and/or conspiracy, to wit: defendant had an agreement with Keith Goins to kidnap Tia Johnson and did enter the victim's vehicle while she was operating the vehicle and order her to drive away while armed with a weapon. All in violation of §16-3-920 Code of Laws of South Carolina, (1976, as amended).

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

Warren B. Giese
 WARREN B. GIESE, SOLICITOR

WITNESSES

DARRELL TUCKER - RCSD

I, hereby waive presentment
to the Grand Jury.

Defendant

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

Defendant

Witness:

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

THE STATE

vs.

TREMAN DOCTOR

REST WARRANT NUMBER

1-979437

ACTION OF GRAND JURY
True Bill

FEB 14 2007

2 of Grand Jury

VERDICT

Indictment for

CARJACKING

SC Code: 16-3-1075(B)(1)

CDR Code: 2599

Class: FEL/C

1 of Petit Jury

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2007

42

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

CARJACKING

At a Court of General Sessions, convened on February 14, 2007, the Grand Jurors of Richland County present upon their oath:

THAT TREMAN DOCTOR DID IN RICHLAND COUNTY ON OR ABOUT OCTOBER 22, 2006, TAKE OR ATTEMPT TO TAKE, A MOTOR VEHICLE FROM THE VICTIM, TIA JOHNSON, BY FORCE AND VIOLENCE OR BY INTIMIDATION, WHILE THE PERSON, TIA JOHNSON, WAS OPERATING THE VEHICLE, OR WHILE THE PERSON WAS IN THE VEHICLE, TO WIT: A 2002 NISSAN ALTIMA, IN VIOLATION OF S.C. CODE SECTION 16-3-1075(B)(1).

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

DOCKET NO. 2005-GS-40-8122

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2005

42

THE STATE
vs.

TREMON DOCTOR

WITNESSES

(S) Travis Holdorf, RCSD

ARREST WARRANT NUMBER

1915407

ACTION OF GRAND JURY

TRUE BILL

Sanchari Phengyo
Foreperson of Grand Jury

Date: 2007 JUL 15 SEP 14 2005

VERDICT

Foreperson of Petit Jury
Date:

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

Defendant

X *Tremon D. Doctor*
I hereby appear in my own proper person and plead guilty to the within indictment or to

Voluntary Manslaughter

X *Tremon D. Doctor*
Defendant

Witness:

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

Indictment for

MURDER

SC Code: 16-3-10
CDR Code: 0116
Class FEL/EXM(V)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

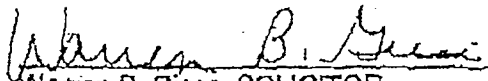
INDICTMENT

At a Court of General Sessions, convened on September 14, 2005, the Grand Jurors of Richland County present upon their oath:

MURDER

That TREMON DOCTOR did in Richland County on or about July 23, 2005, feloniously, willfully and with malice aforethought, kill one Brian Washington by means of hitting victim in head, back and leg and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10.

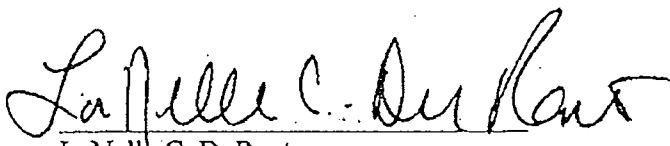
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Warren B. Giese, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 15th, 2008

A handwritten signature in black ink, reading "LaNelle C. DuRant". The signature is fluid and cursive, with the first name "LaNelle" and last name "DuRant" clearly distinguishable.

LaNelle C. DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

2010C P4007502

In the Court of Common Pleas

STATE OF SOUTH CAROLINA)

County of Richland)Tremon Lessor Darter 280808)

Full name and prison number, if any, of applicant.)

v.)

The State of S. Carolina)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

2010 OCT 26 AM 9:38
 JEANNETTE W. LECERIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 Broad River Correctional Institution
2. Name and location of Court which imposed sentence Richland County
Judicial Center, General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a)	<u>2005-GS-408122</u>	<u>Voluntary Manslaughter</u>
(b)	<u>2007-GS-409659</u>	<u>Armed Robbery</u>
(c)	<u>2007-GS-409662</u>	<u>Carjacking</u>
4. The date upon which sentence was imposed and the terms of the sentence:

(a)	<u>March 31, 2008</u>	<u>25 yrs.</u>
(b)	<u>March 31, 2008</u>	<u>10 yrs.</u>
(c)	<u>March 31, 2008</u>	<u>5 yrs.</u>

5. Check whether a finding of guilty was made

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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 Supreme Court

ii. _____

iii. _____

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

i. Appeal Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. November 23, 2009

ii. _____

iii. _____

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

i. _____

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) Ineffective assistance of counsel

(b) Unintelligent and Involuntary guilty plea

(c) Due Process violation, Brady violation

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

(a) Continued

(b) Continued

(c) Continued

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-conviction 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. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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. _____
- ii. _____
- iii. _____

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

- i. _____
- 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) _____
- (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? NO
- (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 application with respect to this conviction, which you filed? NO

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. Richland County Public Defender's Office (Megan Lee, Micah Leddy)
- ii. S.C. Commission on Indigent Defense (LaNelle C. Durant)
- iii. _____

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

- i. Guilty Plea and Sentencing
- ii. Direct Appeal
- iii. _____

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

Vacate and dismiss convictions and sentences;
Set aside and correct convictions and sentences

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

NO

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

VERIFICATION

I, Tremor Levor Doctor #280808, 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.

Tremor L. Doctor

Sworn to and subscribed before me:

This 27 day of Oct, 2010

Susan J. Johnson L.S.

Notary Public for South Carolina

My Commission Expires _____ My Commission Expires
March 5, 2018

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

I, Tremor Levor Doctor #280808, 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 or 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 proceeding or give security therefor.

Tremor L. Doctor
Applicant

Sworn to and subscribed before me:

This 18th day of October, 2010

Susan J. Johnson L.S.

Notary Public for South Carolina

My Commission Expires: _____ My Commission Expires
March 5, 2018

- 9.) A) Ineffective assistance of Counsel
 B) Unintelligent and Involuntary guilty plea
 C) Due Process violations, Brady violations

10.) A-2) Applicants right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina Law was violated; Counsel ineffective for advising applicant he would get life without the possibility of Parole if applicant proceeded to Trial, which forced applicant into a guilty plea. Counsel stated that she could not win at trial on warrant numbers:

I-979436, I-979437, and I-979438, because she could not explain why applicant was caught in vehicle which contained paperwork that belonged to the victims. Co-defendant (Keith Gomis), clearly stated on the night in question and several other statements that he went back to where crime took place and picked applicant up, and that applicant took no part in crime. Based on Counsel's erroneous advice applicant pled guilty.

10.) A-2) Counsel Ineffective in Murder case for failing to request charges on Involuntary Manslaughter. Counsel's conduct was deficient because applicant's

statement as well as statement's from the State's key witness supported the Involuntary Manslaughter.

10.) A-3) Counsel Ineffective for failing to have Preliminary hearing, not knowing ahead of time when trial was scheduled, failing to adequately investigate all evidence, and failing to interview witnesses; Counsel came to applicant Thursday, March 27, 2008, and stated that trial was to start Monday, March 31, 2008. Counsel did not try to prepare for the task at hand. Counsel asked applicant did he know whether or not if the victims was still around, and did applicant think that victims was going to show up for trial; Therefore Counsel could not have interviewed them.

10.) B-1) Guilty Plea was not voluntarily and intelligently given; Due Process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self incrimination, the right to trial by jury, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. 2d 274 (1969). In State v. Patterson, 278 S.C. 319, 295 S.E. 2d 264 (1982), the Court held that the record must clearly establish.

a waiver of these three constitutional rights for the waiver to be valid under the due process clause. Further, the Court in State v. Armstrong, 263 S.C. 594, 211 S.E. 2d 889 (1975), required Judges give the defendant adequate warning of the consequences of the plea in every case "which" should include an explanation of the defendant's waiver of constitutional rights and a realistic picture of all sentencing possibilities. The record in this case indicates the trial court failed to adequately advise appellant of his constitutional rights so that he could waive those rights knowingly, and intelligently. A valid waiver of the defendant's constitutional rights cannot be presumed from a silent record. The record must show with certainty that the plea is an intentional relinquishment or abandonment of a known right or privilege. State v. Patterson, 278 S.C. 319, 295 S.E. 2d 264, 265 (1982) citing Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. 2d 274 (1969). The Judge advised appellant of these rights in a cursory manner that failed to convey the importance of these rights. Thus the plea was not voluntarily and intelligently given because the full consequences of the plea was not explained.

10) B.2.) Guilty plea was not voluntarily and intelligently given; Counsel stated that she could not win trial and if applicant was to go through with trial he would be given life without parole.

March 31, 2008, after being told this, applicant asked Counsel to get him in front of Judge for relieve of counsel. Counsel then got upset and left. Head of Public Defender's office (Douglas Strickland) came down and was also told by applicant about being relieved of counsel. Douglas Strickland, stated that the Judge might not allow applicant to be relieved of counsel because it was the day that trial was to start. Counsel then came back stating that the Judge (Childs) would not allow applicant to be relieved of counsel and that applicant had one of two choices; Start trial and risk getting life sentence or take the plea; so applicant was forced to take the plea.

- 10.) c.) Forensic evidence was not fully provided nor were all witness interviews provided by the prosecution in violation of Brady and my Due Process.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

DOCTOR Tremon L -
00280808,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2010CP4007502

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 26, 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 Micah Leddy, Esquire. On March 31, 2008, the Applicant pled guilty and was sentenced by The Honorable J. Michelle

1

<http://www4.rcgov.us/publicindex/PCaseDetails.aspx?County=40+&Casenum=2010CP4007502&CourtType=G&CaseType=Civil&CourtAgency=40002>

State's Return - (2010CP4007502) - Applicant: DOCTOR Tremon L

Page 1 of 6

Childs. The Applicant had been indicted and/or pled guilty to the following:

Murder/VM, Armed Robbery, Carjacking - (2007-GS-40-9662;9659).²

<u>Offender Type</u>	Adult-straight Sentence
<u>Offense</u>	Voluntary Manslaughter
<u>Sentence Start Date</u>	10/22/2006
<u>Sentence Length</u>	25 YRS; 0 MOS, 0 DYS
<u>Admission Date</u>	04/03/2008
<u>Committing County</u>	Richland
<u>Location</u>	Broad River
<u>Projected Release Date</u>	01/15/2028
<u>Projected Parole Date</u>	Not Eligible
<u>Supervised Furlough Eligibility</u>	Not Eligible
<u>Sex Offender Registry</u>	No

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.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective

² <https://sword.doc.state.sc.us/incarceratedInmateSearch/incarceratedInmateFaceSheet.do?id=00280808&youth=N&type=F>

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

51
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, Mark Taylor Arden, 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: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
bpetrano@scag.gov

February 4, 2011

³ The current PCR Roster for the 5th Circuit is available at <http://www.scattorneygeneral.com/inside/pdf/5th.pdf>
State's Return - (2010CP4007502) – Applicant: DOCTOR Tremon L
Page 6 of 6

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

DOCTOR Tremon L -
00280808,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

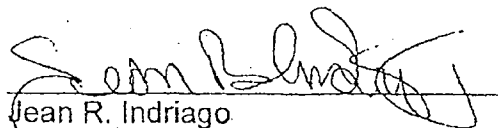
2010CP4007502

CERTIFICATE OF SERVICE

28. I am an employee of the Respondent in the above-captioned action.
29. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
30. 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:

Mark Taylor Arden
1510 Calhoun Street
Columbia, SC 29201

DATED February 4, 2011.


Jean R. Indriago
Legal Assistant

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

COURT OF COMMON PLEAS

TREMON L. DOCTOR)
PETITIONER,)

v.)

TRANSCRIPT OF RECORD
10-CP-40-07502

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

February 14, 2012
Columbia, South Carolina

B E F O R E :

THE HONORABLE CLIFTON B. NEWMAN, JR., JUDGE

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

CHARLES T. BROOKS, III, ESQ.
Attorney for the Petitioner

ROB D. CORNEY, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter
Typed for Elizabeth Harris

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(There were no exhibits submitted.)

1 MR. CORNEY: May it please the Court, Your
2 Honor.

3 THE COURT: Yes, sir.

4 MR. CORNEY: Your Honor, this is Tremon
5 Doctor -- and I don't know if I'm pronouncing that
6 first name correctly but -- it's docket number
7 2010-CP-40-7502. Mr. Doctor was true bill indicted
8 at the September 2005 term of the Richland County
9 grand jury for murder and at the February 2007 term
10 for armed robbery and carjacking. Mr. Doctor pled
11 guilty March 31st, 2008 before the Honorable J.
12 Michelle Childs to armed robbery, carjacking, and
13 the lesser included voluntary manslaughter. Mr.
14 Doctor was sentenced to ten years for the armed
15 robbery charge, five years for the car jacking
16 charge, and twenty-five years for the voluntary
17 manslaughter charge, all to run concurrently. That
18 twenty-five years of the voluntary manslaughter was
19 pursuant to negotiated term between twenty and
20 thirty years.

21 He filed a notice of appeal and the appeal
22 was perfected. Anders brief was submitted on his
23 behalf, and the Court of Appeals dismissed that
24 appeal on November 23rd, 2009. Remittitur was sent
25 December 9th, 2009, and he filed a timely PCR

PW - T. DOCTOR - DIRECT

1 application thereafter on October 26, 2010.
2 Mr. Micah Leddy is here in the courtroom today. He
3 was co-counsel at the plea, and Mr. Doctor is
4 represented by Charles Brooks.

5 THE COURT: All right, Mr. Brooks.

6 MR. BROOKS: Judge, we're ready to
7 proceed. We will call Mr. Doctor to the stand.

8 THE COURT: All right, Mr. Doctor.

9 WHEREUPON,

10 **TREMON LAVAR (ph) DOCTOR,**
11 having been duly sworn by the Clerk of Court,
12 testified as follows:

13 THE CLERK OF COURT: Please state your
14 full name for the record please.

15 THE WITNESS: My name is Tremon Lavar
16 Doctor. On August 2nd, 2005, I was arrested for the
17 alleged murder of Brown Washington.

18 MR. BROOKS: Mr. Doctor, hold on a second,
19 we're gonna get to that. Let me ask you a couple of
20 background questions first.

21 **DIRECT EXAMINATION**

22 BY MR. BROOKS:

23 Q Now Mr. Doctor?

24 A Yes, sir.

25 Q You brought this post-conviction relief

PW - T. DOCTOR - DIRECT

1 application; is that correct?

2 A Yes, sir.

3 Q You are asking the Court to give you a new trial;
4 is that correct?

5 A Yes.

6 Q And you and I discussed that. You understand
7 what a new trial is and what that could mean and
8 that's the only remedy you can get on PCR?

9 A Yes, sir.

10 Q And you told me it's still your desire to go
11 forward; is that correct?

12 A Yes, sir.

13 Q Okay. Now you ended up pleading guilty to this;
14 is that correct?

15 A Yes, sir.

16 Q And you felt like it was not voluntary; is that
17 correct?

18 A Yes, sir.

19 Q And you indicated that you wanted to -- you had a
20 statement prepared you wanted to read to the court;
21 is that correct?

22 A Yes, sir.

23 Q Can you go ahead and do that now?

24 A All right. On August 2nd, 2005, I was arrested
25 for the alleged murder of Brown Washington.

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1 Fourteen months later I was arrested for carjacking,
2 kidnapping, armed robbery. Public defender Megan
3 Lee was assigned as my counsel after my initial
4 attorney Stasia Owens left the Public Defender's
5 Office to pursue employment with the Richland County
6 Solicitor's Office. From October 22, 2006 until
7 March 31st, 2008, I was detained in the Alvin S.
8 Glenn Detention Center. During this time Ms. Lee
9 came to see me once when she was assigned to me and
10 finally four days before my trial date. Two other
11 times I was able to stop her for brief conversation
12 when she was at detention center for other reasons.
13 These conversations only led to her informing me
14 that she didn't have her file and couldn't discuss
15 my case. On numerous occasions I corresponded with
16 Ms. Lee by way of the public defender request form
17 provided by the detention center. I used these
18 forms to keep Ms. Lee informed of my thoughts,
19 possible defenses, strategy, and evidence that will
20 aid me at trial. During my stay at the detention
21 center private investigator Ms. Patty Rickbourne
22 came to visit me to ascertain information about my
23 pending cases. This meeting lasted approximately 15
24 minutes. I never heard from her again, nor was I
25 ever informed of her finding regarding the pending

PW - T. DOCTOR - DIRECT

1 charges against me. Therefore, I was never informed
2 of what relative information she could have gathered
3 that could have assisted me in my defense against my
4 pending charges.

5 Throughout my detention I tried on several
6 occasions to assist my attorney for possible
7 conducive outcomes to my charges. On Thursday
8 March 27th, 2008, Ms. Lee along with Micha Leddy
9 came to Alvin S. Glenn Detention Center to see me
10 and discuss the armed robbery, carjacking charges
11 pending against me. They indicated that trial was
12 set for Monday, March 31st, 2008. They then proceed
13 to question me about the alleged victims in these
14 charges asking me whether or not they would show up
15 for trial. This meeting lasted about ten minutes.
16 They left me with the impression that I'll be
17 proceeding to trial Monday, March 31st, for armed
18 robbery, carjacking, and kidnapping charges. Once I
19 arrived at Richland County Courthouse on March 31st,
20 2008, I was prepared to go to trial. While waiting
21 in the holding area I was brought to the attorney/
22 client visiting room to speak with Ms. Lee and
23 Mr. Leddy. At that time Ms. Lee informed me that
24 she could not win a trial and that a plea was in my
25 best interest. I was adamant about proceeding to

PW - T. DOCTOR - DIRECT

1 trial and even requested that she relieve herself as
2 counsel. At that point she got upset and left out
3 and moments later head of public defender Douglas
4 Strickler came down and he advised me the judge
5 probably wouldn't do it because I waited till the
6 day of trial. Okay, he left. Ms. Lee returned and
7 said the judge, Ms. Childs, would not allow me to be
8 relieved of counsel and the best thing for me to do
9 was to go with the plea 'cause I was looking at life
10 without parole and I had some serious charges.

11 Ms. Lee went on to explain that she
12 couldn't give a good enough explanation for why I
13 was in the van with the alleged perpetrator of the
14 charges I was facing and that I was going to be
15 found guilty on the theory of hands of one, hands of
16 all; therefore, a plea was in my best interest.
17 Under the threat of a life sentence and not fully
18 understanding the hands theory I pled guilty to all
19 charges against me. Had I known at the time that
20 Ms. Lee had misadvised me about the life sentence
21 because the State had not given me notice to speak a
22 life sentence for the armed robbery, carjacking
23 charges, and that I have could have requested a mere
24 presence charge be given to the jury at trial and I
25 would have never had pled guilty.

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1 The evidence that the State had against me
2 only proved that I was present where a crime was
3 committed, not that I was a participant in the
4 actual crime. I have some warrants and statements
5 from the co-defendant stating that I never took part
6 in this crime. That's what he wrote to the court.

7 Q That was Keith Goins (ph)?

8 A Keith Goins.

9 MR. CORNEY: Your Honor, I don't know if
10 Mr. Leddy or any other certain part of the file is
11 something they ever saw. It's hearsay based on that
12 Keith Goins, he's not here today to testify to the
13 authenticity or that he ever even wrote this. But
14 as far as his counsel, plea counsel had seen this
15 prior to the reasonableness on how they reacted
16 based on this, I don't know that they've even seen
17 this. It might be more appropriate to see whether
18 Mr. Leddy saw this or not before examining.

19 THE WITNESS: Okay, well, I have his
20 statement here then.

21 MR. BROOKS: Hold on, hold on.

22 May I approach the witness for a second.

23 THE COURT: All right, I think Mr. -- is
24 your objection that Mr. Leddy hadn't seen it or ---

25 MR. CORNEY: Well, Your Honor, I mean,

PW - T. DOCTOR - DIRECT

1 it's hearsay on its face so I don't think it can go
2 to prove the truth of the matter asserted in the
3 document. If Mr. Leddy had seen it as far as his
4 trial preparation then it can go to how he acted
5 based on the information contained in there. I
6 don't know that he's even seen it.

7 THE COURT: At a PCR hearing might
8 consider sworn testimony or letters, affidavits,
9 statements, or only testimony that a witness or
10 matters within the record itself? Is there ---

11 MR. CORNEY: Your Honor, I mean, obviously
12 you're gonna take the record in consideration, his
13 testimony. Sworn affidavits, I don't know if that's
14 a sworn affidavit. I guess I didn't ---

15 THE COURT: I don't know what it is, but
16 the matter if you review that or not review that at
17 a PCR hearing because you have the ability to
18 cross-examine the witness.

19 MR. CORNEY: Well, I believe, I mean, I'll
20 have the opportunity to cross-examine him on it.
21 Yeah, I mean, I'll have no opportunity to
22 cross-examine that witness on that statement, and I
23 think that statement is testimonial evidence from a
24 witness that's not here.

25 MR. BROOKS: I think what would probably

FW - T. DOCTOR - DIRECT

1 be better, Judge, is Mr. Leddy takes the stand I can
2 obviously use this to determine whether or not he's
3 actually seen it.

4 MR. CORNEY: If Mr. Leddy says he's seen
5 it then I have no issue with it coming in for his
6 reasonableness based on what he read.

7 THE COURT: All right.

8 MR. CORNEY: Thank you.

9 THE COURT: Objection sustained.

10 THE WITNESS: Okay. So I have, I have the
11 statement on the night that we got arrested from
12 Keith Goins stating I had nothing to do with the
13 incident.

14 BY MR. BROOKS:

15 Q Did you understand what the judge was talking
16 about?

17 A What's that?

18 Q The issue is whether or not your trial lawyer/
19 plea lawyer, in this case Mr. Leddy, whether or not
20 he had seen this?

21 A Okay.

22 Q When he takes the stand it'd be more appropriate
23 to ask him questions as to whether or not he saw
24 this as a part of his representation of you?

25 A Okay.

FW - T. DOCTOR - DIRECT

1 Q I want to make sure you understand.

2 A Okay.

3 Q All right?

4 A All right.

5 Q Okay.

6 A Now -- well, all those statements and stuff, they
7 show I had nothing to do with this crime that was
8 committed that day. Now he had nothing to gain by
9 exonerating me and had given a statement placing
10 another person as his coconspirator or whatever.
11 His statement four months later clearly shows that I
12 had nothing to do with the alleged robbery and
13 carjacking; yet, my attorney misadvised me to plead
14 under the hands of one doctrine knowing that law
15 enforcement officers had already issued warrants
16 against the actual co-defendant. And had my
17 attorney explained to me a principal second is one
18 who is present at the scene aiding or abetting the
19 principal first and that under this accomplice
20 liability theory a person must personally commit the
21 crime or be present at the scene of the crime and
22 intentionally or through a common design aid, abet,
23 or assist in the commission of that crime through
24 some overt act. To be liable as an aider or abettor
25 the participant must be chargeable with the

PW - T. DOCTOR - DIRECT

1 knowledge of the principal's criminal conduct. Mere
2 presence at the scene is not sufficient to establish
3 guilt as an aider or abettor.

4 I would never have pled guilty but
5 insisted on going to trial and have the State prove
6 its case against me. I could have even raised third
7 party guilt because Mr. Monroe had been charged as
8 the co-defendant that conspired with Keith Goins to
9 commit this crime and Keith Goins implicated him the
10 night of the crimes in his statement to law
11 enforcement officers. Further, there was no
12 evidence that confirmed I was the driver who
13 followed Keith Goins after he committed this crime.
14 There were statements that place me in the van prior
15 to the crime but nothing that states I'm the driver
16 once they left. Yet, there are statements that
17 place me at the crime scene during and after the
18 crime is committed. Keith Goins states he came back
19 to the crime scene and picked me up and so I had --
20 I feel I had a defense against the charges and even
21 if the trial court would have denied me the
22 opportunity to raise these defenses I would have
23 still insisted on going to trial had my attorney
24 properly advised me that I had a ready defense and
25 would have never pled guilty.

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8 as the co-defendant that conspired with Keith Goins
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11 enforcement officers. Further, there was no
12 evidence that confirmed I was the driver who
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18 crime is committed. Keith Goins states he came back
19 to the crime scene and picked me up and so I had --
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21 if the trial court would have denied me the
22 opportunity to raise these defenses I would have
23 still insisted on going to trial had my attorney
24 properly advised me that I had a ready defense and
25 would have never pled guilty.

PW - T. DOCTOR - DIRECT

1 Now on August 1st, 2005 a warrant was
2 issued for my arrest for the murder of Brown
3 Washington. At no time during my detention did
4 Ms. Lee discuss the elements or evidence that
5 pertained to my murder charge with me. After having
6 access to legal material and law library books I
7 found that I had a self-defense claim in the murder
8 charge. First, I was not the one who brought on the
9 difficulty. Mr. Washington came to my residence
10 drunk, aggressive, using profane language. I asked
11 Mr. Washington to leave the premises several times
12 before he attacked me with a beer bottle in his
13 hand. There were several factors that I could have
14 considered in determining I was in apparent danger
15 such as Mr. Washington's alcohol and drug use, his
16 size, age, and weight compared to mine, the
17 appearance of the threat he was going to do bodily
18 harm to me.

19 There is evidence throughout the
20 investigation by law enforcement agents that suggest
21 that this is a self-defense case. Several witnesses
22 place Mr. Washington in possession of the beer
23 bottle throughout the incident. Now I have
24 statements from my -- from someone who was there and
25 from the State's witness. These statements, one

PW - T. DOCTOR - DIRECT

1 from Sherry Arthur who was there and one from Gary

2 Monroe (ph) ---

3 Q She's the state ---

4 A ---and my statement as well.

5 Q These are the statements that relates to the
6 murder case; is that right?

7 A Yes.

8 Q Okay. They also represented you on that as well;
9 is that correct?

10 A Yes.

11 Q Now Mr. Doctor, we talked about this downstairs?

12 A Uh-huh.

13 Q Knowing what you know now you would have gone to
14 trial; is that correct?

15 A Of course.

16 Q On both charges?

17 A On both charges.

18 Q And you feel confidently that if you had gone to
19 trial you would have been acquitted on both charges?

20 A That I had enough evidence to be acquitted on all
21 charges against me.

22 Q Okay. And you feel like your lawyers misadvised
23 you?

24 A Misadvised me, didn't investigate none of the
25 evidence that was right there that they had. They

PW - T. DOCTOR - DIRECT

1 had access to all this evidence.

2 Q And that ---

3 A Never looked at it once.

4 Q And that's what caused you to plead guilty; is
5 that correct?

6 A That's right.

7 Q All right. Is there anything else?

8 A Okay. Now like I said, Mr. Washington was a
9 known drug alcohol user. He was older, taller, and
10 outweighed me, and he was the aggressor even after I
11 repeatedly told him to leave my premises. He pushed
12 me stating what he would do with the bottle and
13 charged me again. Before I -- when he pushed me the
14 second time it was like all in one instant grabbing
15 it, grabbing the stick and defending myself. So, I
16 mean I was just solely defending myself against his
17 aggressive advance; but at no time did Ms. Lee
18 confer with me about the possibility of the
19 self-defense, nor the castle doctrine that had been
20 passed during this time that would have made me
21 immune to prosecution to this charge.

22 Further, it is not conclusive that I was
23 the cause of Mr. Washington's death. There's 36
24 hours missing time that Mr. Washington could have
25 sustained injury that caused his death. He was seen

PW - T. DOCTOR - DIRECT

1 alive by other people up to eight hours before he
2 was discovered dead. The State contends that
3 Mr. Washington died as a result of blunt force
4 trauma to the head was causing epidural hematoma;
5 yet, epidural bleeding can grow until they reach
6 their peak size six to eight hours post-injury.
7 Therefore, Mr. Washington would have been exhibiting
8 symptoms and died well before Monday when he was
9 found if I was the cause of his death.

10 Mr. Washington was known to get drunk and
11 fall, and the coroner stated the injury could have
12 been caused by a fall. Richland County forensic
13 unit removed a piece of the railing from the front
14 porch area where Mr. Washington was found. This
15 lumber could have indicated where Mr. Washington
16 fell and hit his head proving that I was not the
17 cause but was accidental due to Mr. Washington being
18 high and drunk. I tried on several occasions to
19 assist in my defense against these charges yet
20 Ms. Lee did not provide me with any assistance in
21 formulating a defense. She only presented the
22 option of a plea while I wanted to go to trial. Had
23 Ms. Lee had informed me of what constituted
24 self-defense, explained the castle doctrine, or even
25 explained what the state alleged the cause of

PW - T. DOCTOR - CROSS

1 Mr. Washington's death was, I would have insisted
2 ongoing to trial and would have never pled guilty.

3 Q All right, Mr. Doctor, answer any questions the
4 attorney general has.

5 **CROSS-EXAMINATION**

6 BY MR. CORNEY:

7 Q Mr. Doctor, I will be real brief again. The
8 solicitor during this plea, when they put the facts
9 on the record did they ever allege that you had a
10 gun in your hand, that you ever actually set foot in
11 the car during the carjacking, did they?

12 A No.

13 Q So they were never saying that you were, you
14 know, the one that held this gun up, that you ever,
15 ever even got in the car, ever did anything in that
16 regard, right?

17 A No.

18 Q Okay. And that was something that your attorney
19 put on the record at your plea, that that's not why
20 you were pleading guilty, not because you were the
21 actual person who took that action, right?

22 A Yeah, she said I was pleading under the hands of
23 one, hands of all theory.

24 Q And you've used that word a couple of times so
25 far in your testimony this morning so obviously

PW - T. DOCTOR - CROSS

1 that's something you've heard before, the hand of
2 one is the hand of all?

3 A Not until she told me that's what I'll be
4 pleading under. She told me whatever crime that he
5 commits, while I'm around I'm guilty of that crime
6 too.

7 Q She told you that leading up to your plea?

8 A Yes. Yes, sir.

9 Q So that was your understanding why you were
10 pleading guilty because you were there when it
11 happened, and therefore, you were guilty by
12 association ---

13 A Yeah.

14 Q ---by being there and being a part of that?
15 Okay. You pled down on the murder charge to
16 voluntary manslaughter charge?

17 A Uh-huh.

18 Q Okay. And that was for a negotiated sentence
19 between 20 and 30 years?

20 A I think so, yes. Yes, sir.

21 Q Okay. So it was your understanding entering that
22 plea that you were going to get at least 20 years on
23 a voluntary manslaughter charge once you entered the
24 plea?

25 A Yes, sir.

PW - T. DOCTOR - CROSS

1 Q All right. So you knew that full well going into
2 the plea, 20 years is at least what you were going
3 to get?

4 A Yes, sir.

5 Q You ended up getting 25 years on that, right?

6 A Yeah, yes, sir.

7 Q All right. And I mean, the plea judge made it
8 pretty clear to you that if you entered this plea
9 you were going to give up your right to go to trial,
10 right?

11 A Yes.

12 Q But I don't know if you have a copy of the
13 transcript there in front of you; but on page 8
14 halfway doing the court goes through, you know, you
15 have the right to a trial, your attorneys can
16 challenge any of the evidence being brought against
17 you, you can try to suppress statements, you can put
18 up your own evidence. You said you didn't want to
19 do any of that, right?

20 A Okay now, as far as that go, when she came back
21 down to the bottom to the attorney/client visit,
22 visiting room downstairs when she was going over the
23 questions that the judge was going to ask me, she
24 asked me all the questions and if I didn't answer
25 the way she wanted to she said that the plea was not

PW - T. DOCTOR - CROSS

1 going to be accepted and that I was still going to
2 be facing the life sentence.

3 Q Oh.

4 A So basically it was a coaching on how to answer
5 those questions.

6 Q So Ms. Lee told you how to answer those
7 questions?

8 A That's right.

9 Q So on page 12 the Court said so, no one suggested
10 answers to you for the questions I'm asking you, and
11 you said no, ma'am.

12 A That okay.

13 Q At that point in time I guess you were lying to
14 the judge at that time?

15 A That was in there too.

16 Q So you were just going along with whatever
17 Ms. Lee told you to say?

18 A That's right.

19 Q Ms. Lee is not doing any time in the Department
20 of Corrections as a result of this plea, is she?

21 A No, sir.

22 Q So it was your time, your life on the line, you
23 went there and just said what Ms. Lee told you to?

24 A If she's my attorney and I can't be relieved of
25 counsel and I'm going to trial with her when she's

PW - T. DOCTOR - CROSS

1 already stating that she can't win trial, what am I
2 supposed to do?

3 Q Okay. Well, I guess you're supposed to go and
4 lie to the judge and tell him no, nobody suggested
5 those answers to you, when in fact, she had. That's
6 what your testimony is today, right?

7 A Yes, sir, that's what it say.

8 Q You were under oath that day when you entered
9 that plea, right?

10 A Yes.

11 MR. CORNEY: That's all the questions I
12 have, Your Honor.

13 THE COURT: Thank you. Anything further,
14 Mr. Brooks?

15 MR. BROOKS: No other questions, Judge.

16 THE COURT: All right, thank you, sir.
17 You may step down.

18 MR. BROOKS: We call Mr. Leddy to the
19 stand.

20 WHEREUPON,

21 **THOMAS MICAH LEDDY,**

22 having been duly sworn by the Clerk of Court,
23 testified as follows:

24 THE CLERK OF COURT: Please take the
25 stand. State your name for the record please, sir.

PW - M. LEDDY - DIRECT

1 THE WITNESS: My name is Thomas Micah
2 Leddy.

3 MR. BROOKS: May I approach the witness,
4 Judge?

5 THE COURT: Sure.

6 **DIRECT EXAMINATION**

7 BY MR. BROOKS:

8 Q Mr. Leddy, I'm gonna hand you some statements.
9 As you know, Mr. Doctor had two sets of cases, one
10 for the murder that resulted in voluntary
11 manslaughter, another one an armed robbery and
12 carjacking. I'm gonna hand you those statements.
13 It looks like there was discovery material?

14 A Okay, so most of this looks like stuff that we
15 would have gotten from the Sheriff's Department.

16 Q DOES it look like stuff you've seen before?

17 A Well, the format and everything is the same, but
18 I can't tell you that I remember seeing this
19 statement from Mr. Goins. But if it was filed the
20 20th of February of '07 then I would have to think
21 we would have had it in our file but I don't
22 remember. I can't tell you whether I've seen this
23 or not. The statements, I can tell you anything
24 that was in the file I would have read. But I can't
25 tell you if I've seen them or not; but like I said,

PW - M. LEDDY - DIRECT

1 as it was filed with the clerk of Court I would
2 imagine that we had it in the file and I would have
3 read it but I can't tell you that I personally would
4 have read it.

5 Q All right. So but as a matter of your
6 representation as a public defender you would have
7 gotten discovery; is that correct?

8 A Yes.

9 Q And after your brief look at them today it looks
10 like stuff you would have received during discovery;
11 is that correct?

12 A Yeah.

13 Q Can you -- you were representing him on both sets
14 of cases; is that correct?

15 A Megan Lee was the lead attorney and she -- I had
16 only been an attorney for four months or so I think,
17 five months maybe. I think I was sworn in November
18 of 2007 so she asked me to be second chair. It was
19 a kind of practice in the Public Defender's Office
20 you had two attorneys when you went to trial, and
21 Mr. Doctor had indicated he wanted go to trial so
22 we-- she asked me to be second chair attorney and so
23 I started working with her on the case. I don't
24 remember exactly when it was, but it would have been
25 shortly after I got to the Public Defender's Office

PW - M. LEDDY - DIRECT

1 and Ms. Lee of course lives in England now so that's
2 why she's not here today.but. Yeah, so I was
3 working with Megan Lee but she was the lead
4 attorney, the more experienced attorney on the case.

5 Q Do you -- can you briefly summarize what the
6 State's case was against him on the murder case for
7 the victim being Mr. Washington?

8 A What -- I only remember from reading the plea and
9 listening to Mr. Doctor and only a little bit from
10 my own memory, but I think that he had had a
11 disagreement with Mr. Washington about something and
12 hit him with a shovel and then Mr. Washington was
13 found sometime later and the cause of death was
14 blunt force trauma to the head, which would have
15 been consistent with being hit in the head with a
16 shovel. And so that's as far as I remember about
17 the murder.

18 Q What about the armed robbery, carjacking?

19 A Armed robbery and carjacking we actually went up
20 to the -- I remember going to whatever the name of
21 this terrible club was up on -- I think it's off
22 Percival or on Percival Road. It's sort of a half
23 gas station, half nightclub, and with a pool table.
24 And we traced Tremon's path from that club to where
25 he took somebody or rode with somebody after the

PW - M. LEDDY - DIRECT

1 robbery and just to, so we would know first hand how
2 far it was and how plausible his story would be and
3 I just remember not -- thinking that it was very
4 plausible and that, you know, the main concern to me
5 would be that they would try him on something that's
6 a most serious strike and then try him for the
7 murder then even if the jury comes back voluntary
8 then he's getting mandatory life. So that's how he
9 would have ended up that's why we were advising him
10 about life without to real he had been served notice
11 he wouldn't have been served notice then but he
12 would have served notice then after we lost the arm
13 robbery carjacking trial I think was most likely
14 gonna happen so all those discussions were about
15 that.

16 Q What was briefly can you summarize what the
17 state's case was on the armed robbery, carjacking?

18 A I don't remember exactly how it all went but
19 basically he was either the driver or helped the
20 driver after the robbery in the club and picked him
21 up from somewhere or drove him somewhere so that he
22 would have been, you know, aiding in the commission
23 of the offense so. But I don't remember exactly how
24 it all went. It was somewhat convoluted as to how
25 it all, you know, happened. I think it may have

PW - M. LEDDY - DIRECT

1 been a drug deal that somebody reneged on, I don't
2 know.

3 Q What -- were you present during the conversations
4 with Ms. Lee and Mr. Doctor about trial versus going
5 taking a plea?

6 A Not all of them because I think a lot of that had
7 taken place before I'd been asked to be on the armed
8 robbery case, but that -- right before the weekend
9 when we knew we were going to be going to trial was
10 because, you know, sometimes you have to really try
11 and talk somebody down from wherever they are when
12 they're thinking that this case is so impossible for
13 the State to prove when it doesn't look impossible
14 to me at all for them to prove it. I think it's
15 most likely going to be lost. So yeah, I was
16 present for that.

17 Q She did advise him to go ahead and take the plea?

18 A Yeah, we both did.

19 Q And for those reasons you just highlighted here?

20 A Yes.

21 Q Okay. Because of the armed robbery -- I want to
22 make sure I'm correct. Basically you guys felt that
23 the State had a strong case on the armed robbery and
24 carjacking?

25 A Yes.

PW - M. LEDDY - CROSS

1 Q And you felt that if he got convicted to that ten
2 they could go back on the murder case and even if
3 they'd gotten voluntary manslaughter that he would
4 have been serving life in jail?

5 A Right.

6 Q And did you guys explain that to him?

7 A Yeah.

8 Q And but he was still wanting to go to trial; is
9 that correct?

10 A Yeah, I mean, we had talked to him for a long
11 time. But I thought that that was our -- what we
12 were tasked to do, was to try and talk him into
13 doing it because, I mean, I think it would have been
14 life without parole otherwise.

15 MR. BROOKS: Beg the Court's indulgence
16 Your Honor.

17 THE COURT: All right.

18 MR. BROOKS: No other questions, Judge.

19 **CROSS-EXAMINATION**

20 **BY MR. CORNEY:**

21 Q Now Mr. Leddy, you recall whether or not
22 Mr. Doctor was out on bond for the murder charge
23 when the second set of charges occurred?

24 A I believe he was.

25 Q All right. And I think I heard you a minute ago;

PW - M. LEDDY - CROSS

1 I just want to make sure. You said you were privy
2 to some of the conversations between Ms. Lee and
3 Mr. Doctor leading up to the plea?

4 A Yes.

5 Q Okay. And during those meeting and those
6 discussions do you recall reviewing Mr. Doctor's
7 version of the facts and how these charges came
8 about?

9 A We would have been talking what we were gonna if
10 we went to trial, what our strategy was going to be
11 and why we didn't think it was very likely to
12 succeed.

13 Q Had you ever recalled Mr. Doctor affirming one
14 way or the other saying he did or didn't commit
15 this, or have an altercation with the murder victim
16 in the case?

17 A I don't remember -- I don't think that we really
18 talked a whole lot about the facts of the murder
19 case when I was involved because I was involved to
20 go to trial on the armed robbery.

21 Q And during the course of your discussions did you
22 ever have any concern with his ability to understand
23 you, his capacity, or anything like that?

24 A No.

25 Q Do you recall any State's witnesses that were

FW - M. LEDDY - CROSS

1 supposed to testify at trial that would have been
2 called at trial?

3 A I don't remember their names.

4 Q Any of those witnesses that gave statements,
5 their statements would have been part of the
6 discovery you reviewed?

7 A I hope so.

8 Q Do you recall whether you ever looked into a mere
9 presence, aiding and abetting jury charge or defense
10 if you were to proceed at trial on the carjacking
11 charge?

12 A I'm sure we would have asked for that.

13 Q And that would have been a strategy you took up
14 once the trial started to take place?

15 A Right.

16 Q What about a self-defense on the murder charge?
17 I know you said that the murder charge was gonna be
18 a little down the road, but as you started to
19 prepare that was that something you looked into?

20 A It would have been. I mean, any time that you
21 have an argument you would argue self-defense.

22 Q And I want to talk about the plea negotiations
23 just very briefly. What do you recall from your
24 plea negotiations with the State?

25 A Well, only that we did end up with a range

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1 between 20 and 30 and, you know, that's basically it
2 and it was right before trial so. That's all I
3 remember.

4 Q Okay. Now as a general practice any of those
5 plea offers that you gave, you will rely to your
6 client and review with him?

7 A Yeah.

8 Q Do you recall his stance was on accepting that
9 plea when you relayed the information to him?

10 A Well, he wasn't very excited about the prospect
11 of going to prison for at least 20 years; but after
12 some discussion we were able to get him to come to
13 the conclusion that was better than never getting
14 out of jail.

15 Q I think you said you advised him -- you and Ms.
16 Lee both advised him that you thought the plea was
17 advantageous for him?

18 A It was.

19 Q As a general matter have you ever coerced or
20 threatened or in any way pressured someone to take a
21 plea offer?

22 A I don't threaten him or pressure him, but I try
23 and make them, you, know see the reality of their
24 situation.

25 Q Okay. Ultimately, it was Mr. Doctor's decision

1 to accept the plea offer?

2 A It was. We were more than happy to go to trial.
3 It just wouldn't have been in the best interest of
4 Mr. Doctor.

5 MR. CORNEY: That's all the questions I
6 have, Your Honor.

7 THE COURT: Yes, sir.

8 MR. BROOKS: No other questions, Judge.

9 THE COURT: Mr. Leddy.

10 THE WITNESS: Yeah, yes, sir.

11 THE COURT: With this carjacking, armed
12 robbery case, what were the facts of that case
13 again?

14 THE WITNESS: From the best of my
15 recollection, Judge, it was involved -- it happened
16 at a club up on Percival Road. I don't remember the
17 name of the club, but it's sort of a gas station.
18 And he was either a driver of a car that left with
19 the assailant or picked up the assailant in a car in
20 a neighborhood nearby there. I remember going to a
21 residential area near there. And it was two -- I
22 believe it was a couple of girls that were supposed
23 to be getting drugs, or somehow drugs were involved.
24 But I don't remember it in very much detail at all.

25 THE COURT: And at some point there's some

1 kind of police chase?

2 THE WITNESS: I think that there was in
3 that there was a dog involved and somebody got taken
4 down by a police dog. I think so.

5 THE COURT: Mr. Doctor's testimony is that
6 he was merely present and that he didn't commit the
7 carjacking or armed robbery and that no one
8 explained to him this mere presence as a possible
9 charge defense and that no one explained to him this
10 theory of hands of one is the hands of all. What do
11 you know about that?

12 THE WITNESS: Well, I think that it would
13 have been our strategy to try and convince the jury
14 he was merely present but.

15 THE COURT: Well, not what your strategy
16 would be to the jury but what did you discuss with
17 him, if anything, about that being a defense of the
18 charge or a relevant theory of law?

19 THE WITNESS: Well, I don't remember
20 exactly the conversation that we had; however, I
21 remember -- I mean, what I would told him is if the
22 jury believes that then you would be found not
23 guilty, but I don't think that they're gonna believe
24 your version of the story.

25 THE COURT: Are you talking based on your

1 recollection or are you just guessing that that's
2 what you must have said?

3 THE WITNESS: No, I remember our
4 conversations telling him I don't think that you'll,
5 that your version of the story is going to be one
6 that's believed but ---

7 THE COURT: What was his version of the
8 story?

9 THE WITNESS: That he didn't have
10 anything -- that he was in either in the car as it
11 got away or when he picked up the assailant later
12 but that he wasn't aiding the guy, didn't know about
13 the robbery. I mean, that's what I remember, but I
14 mean...

15 THE COURT: And you all discussed with him
16 that will be an issue in the case and would argue
17 that that could be a defense to the charges?

18 THE WITNESS: That's right.

19 THE COURT: Right. At this pointing you
20 said you had been sworn in as a lawyer about two
21 weeks, three weeks, three months?

22 THE WITNESS: No, I think it had been a
23 couple of months. I was very -- it may have been --
24 it would have been probably my first trial in
25 general sessions court.

1 THE COURT: So you're here testifying
2 today and then the lawyer who is primarily
3 responsible is no longer practicing law in the
4 United States?

5 THE WITNESS: That's right. She practices
6 in England.

7 THE COURT: So what did you review to
8 prepare for testimony here today?

9 THE WITNESS: The transcript from the plea
10 colloquy. I got contacted by the Public Defender's
11 Office to ask if I had the file, and Teresa
12 Christian, and I said, no, I don't have the file.
13 And so because normally Teresa would pull it and
14 have it available, but it wasn't available so.

15 THE COURT: So you didn't have a file to
16 review and the Public Defender's Office doesn't have
17 one either?

18 THE WITNESS: That's correct. That's my
19 understanding.

20 THE COURT: Now with regard to the
21 manslaughter charge, looking at the sentencing sheet
22 he got ten years for the robbery, five years for
23 carjacking, and 25 years for voluntary manslaughter?

24 THE WITNESS: Yes, sir.

25 THE COURT: But you said you all didn't

1 talk much about the manslaughter charge?

2 THE WITNESS: I was not prepped to go to
3 trial on it the way I was on the -- would have been
4 armed robbery because we weren't yet going to trial.
5 Really, I mean, I knew Megan very well. She's a
6 very good friend of mine and, you know, it ---

7 THE COURT: Which case were you being
8 called for trial?

9 THE WITNESS: The armed robbery.

10 THE COURT: So not that you -- I'm not so
11 concerned about you not being prepped for trial
12 because it wasn't called for trial; but with regard
13 to the voluntariness of the plea to this offense,
14 the voluntariness of what do you know about it?

15 THE WITNESS: As far as whether or not it
16 was a voluntary plea?

17 THE COURT: Voluntariness of it as well as
18 him being aware of his options and various defenses
19 he could raise to it and all that.

20 THE WITNESS: Well, I don't remember if I
21 actually talked to him about self-defense myself or
22 if Megan did that. I'm sure she would have talked
23 to him about it, but I don't remember having that
24 conversation. The conversation that I would have
25 been -- what I would have been focused on is if you

1 lose this trial, in your best case scenario even if
2 you get found guilty of voluntary which in a case of
3 if it's self-defense charge is not uncommon, you're
4 still gonna end up with life, and that's what I was
5 concerned with.

6 THE COURT: So as far as this
7 post-conviction relief is concerned if it's my
8 decision to grant him PCR on the manslaughter and
9 deny it on the armed robbery, if he's convicted of
10 manslaughter in a re-trial he can get life without
11 parole?

12 THE WITNESS: He'd be eligible for it.

13 THE COURT: Eligible for a sentence of
14 based on that being a second most serious offense?

15 THE WITNESS: That's right.

16 MR. CORNEY: And Your Honor, I think
17 there's some -- I'm sorry to interrupt you. I think
18 there'd be some question from at least from the
19 State as to whether or not PCR can be granted on
20 individual charges from a whole plea that was
21 entered all on the same day at the same time. It
22 was a package deal so. Picking and choosing which
23 ones to grant PCR on, that will be something I have
24 to look into. I know it's come up before, just to
25 bring that to your attention.

1 MR. BROOKS: Judge, from my client's
2 perspective he'd rather have the whole thing on
3 appeal.

4 THE COURT: Well, I understand that. It's
5 not his choice.

6 MR. BROOKS: I just wanted to let the
7 Court know.

8 THE COURT: I understand. All right, Mr.
9 Leddy, you're carrying the water for you and Ms. Lee
10 since she's not here so on this question whether or
11 not this was a free and voluntary plea by the
12 defendant being aware of all the defenses he could
13 have raised at trial. Of course, the judge
14 explained all of that to him, but he's saying that
15 he was apparently before the judge, regardless of
16 the fact he was under oath sworn to tell the truth
17 and here they're talking to the judge he was
18 apparently a zombie, he was just regurgitating
19 everything that you all prompted him to say. Is
20 that true?

21 THE WITNESS: No, Your Honor.

22 THE COURT: And why you say that?

23 THE WITNESS: I mean, I don't put words in
24 my client's mouth to tell a judge. I tell them they
25 have to answer the judge truthfully.

1 THE COURT: All right. Any other
2 questions next to my questions?

3 MR. BROOKS: No, Your Honor.

4 MR. CORNEY: None from the State, Your
5 Honor.

6 THE COURT: Thank you, sir.

7 THE WITNESS: Thank you, Your Honor.

8 MR. BROOKS: Judge, that is the
9 applicant's case.

10 THE COURT: Very good.

11 MR. CORNEY: No witnesses from the State.

12 THE COURT: All right, thank you all. I
13 think I what to ask Mr. Doctor a question or two.

14 MR. BROOKS: You want me to call him?

15 THE COURT: He can stay right there.

16 **E X A M I N A T I O N**

17 **BY THE COURT:**

18 Q Mr. Doctor, about this hand of one and not having
19 any discussion at all with your lawyers and learning
20 all this after you got to prison and started reading
21 law books and all, are you — what are you claiming,
22 that you didn't discuss any possible defenses during
23 all the time the lawyers were representing you?

24 A They never discussed the defense with me at all.

25 Q What did y'all talk about?

1 A Nothing. Basically just asking me, like I said,
2 when they came March 27th they asked me whether the
3 victim was going to show up for court or not. And
4 I'm like, and ---

5 Q Of course you really wasn't -- you knew it wasn't
6 coming up on the murder case. You're not talking
7 about that case?

8 A Naw.

9 Q Okay. Which victim are you talking about?

10 A The victims in armed robbery.

11 Q The girls?

12 A Yeah, I mean, this is March 27 when they came to
13 see me. This is when trial was set for March 31st
14 so this is all they talked about.

15 Q What are you claiming to be your defense of that
16 case with the robbery of the girls?

17 A Mere presence.

18 Q I mean, what happened? The -- how did ---

19 A What he saying is, he said something about
20 following -- I was inside the club the whole time.

21 Q All right.

22 A So I didn't follow anybody, you know what I mean.
23 The statements really, really, really say it all.

24 Q Well, they -- I'm just reading the transcript,
25 that they got you all out of a ditch in the end.

1 A Uh-huh.

2 Q Did they get you out of a ditch?

3 A Yeah, this is -- I mean, I'm out on bond. A man
4 out on bond, yeah, I'm gonna run. I've out on bond
5 on serious charges. Anything liable to get me --

6 Q You say you're in a club but you ended up in a
7 police chase in a ditch --

8 A Yeah, after --

9 Q ---following a carjacking and robbery.

10 A After he came back to the club and picked me up,
11 yeah. We was headed home.

12 Q All right.

13 A Yeah. Police got behind us.

14 MR. BROOKS: I think from my conversation
15 with my client, I think what happened is he's at the
16 club; and the guy does the carjacking and armed
17 robbery, gets away, comes back and picks him up to
18 go home and then all of a sudden the police are
19 behind him and then they get into this chase. And
20 he says he doesn't know what's going on, you know,
21 so then they run off into the ditch and that's where
22 he's apprehended. So what he's saying is, and what
23 he's indicated to me, is that he wasn't a
24 participant in the armed robbery and the carjacking.
25 I just wanted to clarify.

1 BY THE COURT:

2 Q Here you're just catching a ride home with, from
3 a club with someone, then how are you gonna come
4 into court and plead guilty to it?

5 A Like I said, she said ---

6 Q I mean, you were ---

7 A ---the hands of one hands of all theory. If he
8 committed a crime when we was together I was guilty
9 of it.

10 Q Now you think you can convince a fifth grade
11 person to accept something like that?

12 A All I can do is ---

13 Q If you don't know anything about a crime, you
14 weren't there, you just catching a ride home from
15 someone and all of a sudden the police says that you
16 were part of a carjacking and a robbery of somebody
17 who was with drugs or whatever it was, and you know
18 nothing about it, and your lawyer is gonna tell you
19 to plead guilty to it?

20 A I don't know that day, what was on their mind or
21 what was going on but ---

22 Q Oh, I'm trying to figure out what's on your mind.

23 A Like ---

24 Q You the one who's got to do the time. You're the
25 one who came -- you told the judge that you're

1 guilty.

2 A Like I say, me being ignorant to the law then I
3 knew nothing of the hands of one hands of all
4 theory.

5 Q Well, at that point ---

6 A I knew nothing about it so.

7 Q At that moment in time what kind of prior record
8 had you had?

9 A What kind of prior record?

10 Q Yeah, at that time.

11 A Just the pending murder charges and ---

12 Q Were you on probation, parole, any other ---

13 A No, I was not.

14 Q Ever been in court for other things?

15 A Yeah, I mean.

16 Q Well, that's what I'm talking about. I
17 understand you weren't ignorant about what's going
18 on. That wasn't your first ---

19 A As to that aspect of the law.

20 Q Well, that wasn't your first time in court. I
21 mean, you -- how many times did you ---

22 A See, the difference between that, when I went to
23 court before on prior charges I was guilty so it
24 wasn't no hands of one hands of all. I never needed
25 to look into that.

1 Q All right.

2 MR. CORNEY: And Your Honor, I'm sure you
3 looked at the transcript. I know it's not too long
4 by looking at the Solicitor's statements and the
5 Defense attorney's statements; but it's just not
6 consistent with what was said at this, at the plea
7 hearing at all. I mean, at the time it was supposed
8 to be a drug deal and there was two cars involved
9 and he followed one car. And now it's that he
10 stayed there, no car went, and came back and picked
11 him up. Well, these victims of the carjacking had
12 seen what happened, and I think their statements and
13 their potential testimony if they showed up was that
14 they were going to say that he was in the second car
15 that followed the car out of the parking lot. I
16 just don't think the facts in the plea transcript as
17 set forth by the Solicitor and then essentially
18 agreed to by the Defense attorney prove in any way
19 are in line of what he's saying at this point in
20 time as to how everything happened.

21 And I know it's very difficult because
22 Ms. Lee isn't here to testify as to what exactly
23 they discussed; but I mean, they talk about the hand
24 of one is the hand of all on page 7. So yes, Your
25 Honor, by Mr. Goins it was the hand of one had of

1 all in his court, we do agree he was involved on
2 that. I mean, I just think based on her statements
3 from the transcript it's clear they discussed this.
4 This was something that was discussed during the
5 preparation for the trial. He knew about all of
6 prior to it so I would just urge that the record be,
7 you know, looked at kind of in conjunction with what
8 he's saying at this point in time.

9 THE COURT: Ms. Lee said it was hand of
10 one hand of all on his part, but we do agree that
11 Mr. Goins was involved in that and ---

12 MR. CORNEY: And on page 17 and 18 is
13 where Ms. Lee kind of goes into their version of the
14 facts, and it's talking about how it was a drug deal
15 and they were doing a drug deal in the parking with
16 these victims before they carjacked them and that
17 they didn't contest that Mr. Doctor was -- served as
18 the get-away car in this situation. Now it's just
19 this guy stole the car came back and picked him up
20 from the club later. It's just not -- nothing is
21 adding up at this point, Your Honor.

22 THE COURT: All right, Mr. Brooks.

23 MR. BROOKS: Judge, the hand of one hand
24 of all is probably the most misinterpreted theories
25 involving criminal law; and that's something that

1 really needs to be explained, should have been
2 explained to Mr. Doctor in a sense that there has to
3 be some conjunction of minds, if you're gonna do
4 this and I'm gonna do that as a part of this overall
5 dealing we're doing. And what Mr. Doctor is saying
6 is that, you know, that they just say hand of one
7 hand of all. I mean, he doesn't know what that
8 means. And as he's indicated, he only pled to it
9 before to things that he personally individually did
10 where there pretty much wasn't any co-defendants
11 involved. So on this particular situation they just
12 says hand of one is the hand of all, they really
13 didn't explain that to him. And obviously if that
14 was explained to him as the way we've done it here
15 today and what he has read in books, he's saying
16 hey, I wasn't involved, I didn't tell Keith to go do
17 this, this, and that, I was unaware of it other than
18 he picked me up and all of a sudden we getting
19 chased by the police. Now obviously if his version
20 of the facts were presented and that's what the
21 jury would have thought, then that would not have
22 been the hand of one hand of all. So I just notice
23 that when the attorney general was talking about the
24 hand of one hand of all, a lot of times that's a
25 very convoluted and very, a lot of times overlooked,

1 misstated theory that a lot of times we avoid, just
2 kind of make mistakes on.

3 THE COURT: I understand. And of course,
4 I'm further struggling with whether I have enough
5 information to even make a decision as to who's
6 right and who's wrong on this PCR without Ms. Lee
7 being here. I'm going based on Mr. Leddy's
8 recollection and acknowledging that he's very
9 agreeing at the time of this participation. I mean,
10 Mr. Doctor's testimony pretty much has been all as
11 what Ms. Lee didn't do. He didn't even mention
12 Mr. Leddy as if he wasn't even a factor in it at
13 all, and his PCR is against Ms. Lee and she's in
14 England. And so she might have explained all this
15 to him and said, well, it takes more than you just
16 being present, you got to be an active participant
17 in a crime, you have to have some kind of
18 understanding that y'all gonna do a crime, more than
19 just being present but being some active involvement
20 to be convicted as a principal, a participant.

21 MR. BROOKS: But Judge, we respectfully
22 still ask the Court in light of that still grant Mr.
23 Doctor's post-conviction relief.

24 THE COURT: All right. What else you got
25 to say, Mr. Doctor, if anything?

1 THE PETITIONER: Nothing. That's it,
2 Your Honor.

3 THE COURT: All right, Mr. Corney. They
4 want a PCR, what do you say about it?

5 MR. CORNEY: Well, I think that -- I know
6 not having Ms. Lee here has obviously made it very
7 difficult. It's come down to a credibility issue
8 from the applicant on the stand who readily admitted
9 he lied at his plea hearing, or alleges he lied the
10 entire time to the judge and the robe so I think
11 that's very telling of the credibility issue first
12 of all as to whether he was explained this hand of
13 one is hand of all.

14 In addition to that, he waived his right
15 to challenge this. This wasn't even set -- the
16 murder wasn't even set for trial yet, the carjacking
17 was, but he knew he was waiving his right to
18 challenge any of this. And the judge very clearly
19 goes over and says, you know, you're waiving your
20 right to any defenses, to put any evidence up in
21 your behalf, anything along those lines and he
22 clearly waives it and says I'm ready to take the
23 benefits of this plea bargain. It was advantageous
24 for him to avoid life without parole, which as
25 Mr. Leddy got up there and testified, was very

1 likely based if he was convicted of the carjacking
2 crime that he would be doing life without parole
3 which he took the benefit of the bargain in this
4 plea situation and voluntarily waived any defenses
5 he may have as a result of that. If Ms. Lee's
6 testimony is gonna be the thing that determines it,
7 we can leave the record open and try to get a
8 affidavit or something from her. Up until this
9 point my understanding it has been pretty difficult
10 to get her involved in the stuff. I know Mr. Leddy
11 after speaking with him this morning said that he's
12 pretty good friends with her. Maybe we can try to
13 track her down and have something submitted on her
14 behalf, but I still think it's ---

15 THE COURT: Mr. Brooks said he can't
16 cross-examine an affidavit.

17 MR. CORNEY: That's -- well, that's -- I
18 thought I heard him say that.

19 MR. BROOKS: You took the words right out
20 of my mouth, Judge.

21 MR. CORNEY: But if we needed to get
22 her -- to reconvene the matter and do phone
23 testimony, anything we can do but, I still don't
24 think -- and it's his burden to carry, and I don't
25 think his testimony ---

1 THE COURT: Well, we can't -- we don't
2 have Ms. Lee, they can't find the file. I mean,
3 there could be some things in her file that shows we
4 reviewed this, here's some law that I handed him on
5 hand of one, hand of all.

6 MR. BROOKS: Well Judge, that was what --
7 if you recall my client testifying that Mr. Goings
8 had given several statements saying that he was not
9 involved, that he being Mr. Doctor was not involved
10 in the carjacking.

11 MR. CORNEY: But I don't think those
12 statements have been entered or can be entered at
13 this point in time. Mr. Leddy said he doesn't
14 remember whether he'd seen them or not so I don't
15 think what's in those statements can even be
16 considered by this Court.

17 MR. BROOKS: But even though Your Honor
18 ruled that we couldn't enter into those statements
19 we asked Mr. Leddy, and if you recall we asked --
20 Mr. Doctor testified that Mr. Goins said in the
21 statement that has come into the record.

22 MR. CORNEY: That's still hearsay. That's
23 still his out-of-court statement and not here to
24 testify to the authenticity of it.

25 THE COURT: Well, we'll leave the record

1 of this open and we'll see if we can find Ms. Lee
2 wherever she is, and then we'll -- and if we can do
3 it this afternoon while Mr. Doctor is here we can
4 talk to her and let her give some testimony over the
5 phone.

6 MR. CORNEY: I don't know what their time
7 difference is over there. You want to hit her first
8 thing in the morning but we'll see if we can do
9 that.

10 UNIDENTIFIED: It's about five hours.

11 THE COURT: Five hours. That's a good
12 time to find her. It's about 6:00 in the morning.
13 She should be home by then.

14 MR. BROOKS: 6:00 in the evening, Judge.

15 THE COURT: Oh, 6 in the afternoon.

16 UNIDENTIFIED: No, it's 4:00, Judge.

17 THE COURT: 4 in the afternoon.

18 UNIDENTIFIED: Yes, sir, they're about
19 four, five hours ahead.

20 THE COURT: Four in the afternoon. See if
21 you can find her and let's see what happens.

22 MR. CORNEY: Thank you, Your Honor.

23 THE COURT: We'll leave this open for her.

24 MR. BROOKS: Judge, you want me to wait
25 and see if we can find her?

1 THE COURT: Yes. We'll see whether we --
2 whether I can gather anymore information before I
3 can make any decision.

4 MR. CORNEY: What number would you like
5 her to call Your Honor?

6 THE COURT: Well, she can call -- yeah,
7 we'll give you Nicole's cell number and then we'll
8 put him on the -- he'll come and get it. We'll put
9 it on the speaker and see what we can find out.
10 That's all for the time being.

11 (Break was taken.)

12 THE COURT: We're back on the record on
13 Mr. Doctor's case. Mr. Leddy is no longer here.
14 Have you talked with him, Mr. Solicitor, Mr.
15 Attorney General?

16 MR. CORNEY: Yes, sir, Your Honor. It's
17 my understanding he emailed Ms. Lee. I gave her the
18 number that we were told to give her to call down to
19 I guess your chambers, and we haven't gotten a call
20 yet and I think that's as far as we can go with
21 this. I don't know any, have any independent
22 knowledge of how else to get in touch with her so we
23 were hoping Mr. Leddy could pull us through and it
24 doesn't look like that's gonna happen now today.

25 THE COURT: And you've never been able to

1 get in touch with her regarding any cases she's
2 done?

3 MR. CORNEY: Your Honor, I -- to be
4 completely, you know, full disclosure with the
5 Court, I did make an effort to get in touch with her
6 before this issue hasn't arisen before. The
7 attorney general, the assistant attorney general
8 before me that handled PCRs in this circuit, has run
9 into it, told me pretty much I think he said he's
10 emailed with her, never spoken with her on the phone
11 and never had phone testimony from her in any PCRs
12 before this.

13 THE COURT: All right.. Mr. Brooks, what
14 you say?

15 MR. BROOKS: Judge, based on the testimony
16 presented it'd be obvious my client be granted his
17 post-conviction relief.

18 THE COURT: Well, we have two issues. I
19 mean, one, whether or not he should be granted a
20 post-conviction relief as relates to his contention
21 of lack of advice. He had two charges, more than
22 two but two separate indictments I guess, or several
23 indictments. We also have the second question as to
24 whether or not PCR can be granted as to one offense
25 and not the other. And ---

1 MR. BROOKS: Our position on that, Judge,
2 is I think that it's all a part of the plea. I
3 think that it has to be -- I don't think the
4 Court -- my position, I don't think the Court can
5 take one out of the other. It would have to be the
6 entire plea set aside or not set aside.

7 THE COURT: Well, but if, you know, he's
8 charged with two different things. If his claim is
9 that he was unaware of the meaning of the hands of
10 one, hands of all, or -- of course that's with
11 regard to the robbery, carjacking. But then on the
12 other one he was uninformed about his right to claim
13 self-defense with the guy with the shovel who died
14 subsequently, maybe he fails on one and prevails on
15 the other. Of course, it doesn't help him if he
16 comes back with a second trial facing life without a
17 possibility parole as opposed to what he now has.

18 MR. BROOKS: I explained the process to
19 him, Judge, and he still wants to have his
20 post-conviction relief granted. The fact that if he
21 is granted a new trial he'd go back and he would
22 potentially could face life.

23 MR. CORNEY: Your Honor, I think this is
24 an issue we had come before Judge Cothran in the
25 third circuit before. And we -- our position is

1 that he can't -- and I apologize for phrasing it
2 that way but that PCR can't be granted for one
3 charge when there was plea deal all done together to
4 dispose of multiple charges. You can't separate out
5 one charge from that plea deal and say the plea deal
6 stands for certain ones while it doesn't stand for
7 others. The benefit of the bargain was for him to
8 avoid this IWOP sentence that could have been coming
9 up line. And so to pull out one part of that and
10 let him go back would defeat the whole benefit of
11 the bargain that he took as part of his plea deal.
12 It was as Mr. Leddy got up there and said, the main
13 concern was this IWOP issue so to combine all those
14 as one where he would plea and not have this
15 possibility of two most serious strikes was the big
16 concern.

17 THE COURT: Judge Cothran and I came up
18 through the trenches together. I think we both
19 started at the Third Circuit Solicitor's Office the
20 same year and worked as 17 years together. Whatever
21 his decisions are they're very influential with me,
22 but they don't carry the weight of an appellate
23 court.

24 MR. CORNEY: Yes, sir.

25 THE COURT: So it seems as if somewhere

1 over this vast country someone would have raised the
2 issue and some court would have said you can't do it
3 or you can do it. This is sort of the same issue as
4 we had from yesterday as to whether I can remand it
5 for Judge Manning to reconsider a sentence or
6 something.

7 MR. CORNEY: Yes, sir. I didn't mean to
8 say that as a controlling or anything. I just, I've
9 had a little bit of familiarity --

10 THE COURT: I'd like some answers as far
11 as the prevailing authorities and so. Of course I
12 haven't decided any of the issues; I'm gonna take
13 them under advisement. And certainly I would love
14 to have the benefit of specific information from the
15 witnesses. Of course, Mr. Doctor has all kinds of
16 specific testimony; but from the other side, from
17 Mr. Leddy, you know, some vague recollection on what
18 I would have done but then I didn't do anything
19 regarding the murder charge because we weren't
20 preparing that one for trial and we couldn't find
21 the public defender's file, we can't find the public
22 defender, I was just out of law school a few weeks,
23 just gotten the bar for a few weeks. You know, to
24 preserve the integrity of the process I need to have
25 something solid to go on in making a PCR decision.

1 MR. CORNEY: I understand that, Your
2 Honor.

3 THE COURT: If Mr. Doctor's case gets
4 thrown out and without anyone having to present
5 anything of substance to contest his allegations
6 then the process becomes meaningless so we want --
7 we don't want that so. I'll take it under
8 advisement and then we'll -- I'll review all this
9 meticulously that I have to review, anything else
10 that anyone else wants to submit.

11
12
13 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
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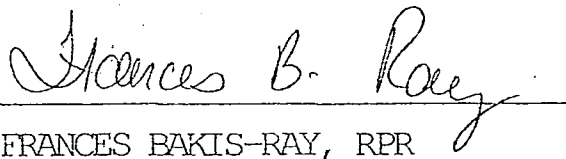
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding was transcribed for Elizabeth Harris through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings to the best of my ability.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 27th day of May, 2013.


FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tremon Doctor, #280808,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-07502

ORDER OF DISMISSAL

JEANETTE W. HARRIS
C.C. & G.S.

2013 MAR -4 PM 2:07

RICHLAND COUNTY
FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed October 26, 2010. An evidentiary hearing into the matter was convened on Tuesday, February 14, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, Charles T. Brooks, III, Esquire. Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former plea co-counsel, Micah Leddy, Esquire. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the September 2005 term of the Richland County Grand Jury for Murder and at the February 2007 term for Armed Robbery and Carjacking (2005-GS-40-08122; 2007-GS-40-09659, -09662). On March 31, 2008, Applicant appeared before the Honorable J. Michelle Childs, where he pled guilty to Armed Robbery,

Carjacking and the lesser included Voluntary Manslaughter as part of a negotiated plea deal for a sentencing range between twenty (20) and thirty (30) years imprisonment. Judge Childs accepted the plea negotiations, sentencing Applicant to ten (10) years imprisonment for Armed Robbery, five (5) years for Carjacking and twenty-five (25) years for Voluntary Manslaughter. All sentences were ordered to run concurrently.

Applicant did not file a direct appeal.

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

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
 - (b) Unintelligent and involuntary guilty plea
 - (c) Due Process violation, Brady violation

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).

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).

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.

Involuntary Guilty Plea

Applicant contends his guilty plea was entered unintelligently and involuntarily as a result of counsel's ineffective representation.

Applicant testified he believes he was not informed about relevant information on his case by counsel, and said he entered the plea because counsel advised him she could not win the case at trial. Applicant stated he was "adamant" with counsel that he wanted a trial, but counsel advised him to plead guilty because there was enough evidence to find him guilty of the charges under the "hand of one is the hand of all" theory of accomplice liability. He noted he would have

liked to request a mere presence jury instruction at trial or to have argued third party guilt to a jury, and said he thought the appropriate charge brought against him should have been aiding and abetting. Applicant contended he had defenses to all of the charges which he wanted to present at trial, including a self-defense argument against the murder charge. According to Applicant's PCR testimony, he was merely acting in self-defense against victim when victim approached him aggressively while intoxicated. Applicant went on to say victim was an abuser of drugs/alcohol and was much larger than him, so he struck victim to defend himself. Applicant stated counsel failed to conduct a proper investigation into the facts and alleged counsel never discussed the possibility of a self-defense theory to be used at trial.

On cross-examination, Applicant stated he answered the questions at his plea hearing as he did only because counsel advised him to answer them in that manner. Further, Applicant alleged he lied to Judge Childs while under oath at the plea hearing when he stated the answers given during the hearing were his own and had not been suggested by anyone else.

Micah Leddy (hereafter "Leddy") testified he served as second-chair counsel in the matter to Assistant Public Defender Megan Lee (referred to herein as "counsel"), who was not present at the PCR hearing as she has since relocated overseas to England. Leddy noted he helped prepare the case for trial and would have been privy to the discovery materials when they were received. Leddy noted the state's theory on the murder charge was that Applicant struck victim with a shovel after a disagreement, from which victim died as a result of blunt force trauma to the head. He noted Applicant's rendition of facts leading to the Carjacking charge were not plausible, and he stated Applicant had served as the driver for that crime.

Leddy said he remembered that he and counsel were very worried about Applicant being convicted of the Armed Robbery first, then being tried separately on the Murder charge as they arose from wholly separate and distinct incidents occurring more than a year apart. In fact, Leddy said, Applicant was out on bond for the Murder charge when the Carjacking and Armed Robbery occurred. Leddy noted that by separating the prosecution of the crimes into two trials, Applicant could receive a life without parole sentence ("LWOP") under the two/three strike law¹ even if the jury returned a verdict for a lesser offense such as voluntary or involuntary manslaughter. Leddy noted this was a *real* concern as the state had "a strong case" against Applicant for the Armed Robbery and only needed to convince the jury of a crime classified as "most serious" at the Murder trial to subject Applicant to LWOP.

On cross-examination, Leddy testified he recalled discussing strategy with Applicant and counsel prior to the plea, and noted they certainly would have investigated potential defenses available to Applicant such as self-defense and mere presence had Applicant decided he wanted to go to trial. However, Leddy said, Applicant made the voluntary decision to enter the plea without coercion or threats from himself or counsel. Leddy also noted he had seen the discovery file and would have been aware of all witness statements in discussing the matter with Applicant. He said he never had any concerns with Applicant's ability to comprehend their discussions about the case and couldn't specifically recall whether Applicant openly admitted his guilt to he and counsel during their meetings. Leddy testified he and counsel were not yet fully prepared for trial on the murder charge at the time Applicant decided to plea as that matter was not yet on the trial docket, but there would have been further investigation and preparation done had Applicant said he wanted to go to trial. Leddy finished by stating he was "sure [Lee] would have talked to [Applicant] about self-defense" as a possible theory of defense at trial, and plainly explained

¹ Referencing S.C. Code § 17-25-45.

neither he nor counsel *ever* told Applicant what answers to give to the plea judge during the hearing.

Based upon a thorough review of the record and the PCR testimony presented, this Court finds Applicant's claim to be wholly without merit. First, this Court finds Applicant's testimony as to his rendition of facts leading to the charges, his conversations with counsel (or lack thereof) prior to the plea and his understanding of the legal theories and defenses related to his case to all be entirely not credible. Further, this Court finds Leddy's testimony to be credible, particularly in regard to his and counsel's conversations with Applicant prior to the plea and the pretrial preparations/investigation undertaken. With this credible testimony in mind, this Court finds counsel was not ineffective in her representation of Applicant.

"A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). The credible testimony and record firmly convince this Court Applicant's pleas were entered freely, intelligently and voluntarily with full knowledge and understanding of all relevant issues, concerns, potential defenses and penalties related thereto, in accordance with the requirements of Boykin v. Alabama, 395 U.S. 238, 89-S.Ct. 1709 (1969). Applicant readily admitted he was aware he would be waiving his right to present defenses and/or otherwise challenge the state's evidence by pleading guilty. Counsel adequately advised Applicant of all relevant issues and matters pertinent to the case to allow Applicant to make an intelligent, informed and voluntary decision on whether to enter a guilty plea or proceed to trial. Applicant, with full knowledge of the

nuances and particulars of his case, made the voluntary and informed decision to ~~forfeit his right~~ to jury trial to accept an advantageous plea offer from the state. Applicant has failed to carry his burden in proving counsel was deficient in any way in his representation of Applicant on the charges; in fact, the credible testimony before this Court indicates counsel's representation was carried out in a professional and thorough manner to ensure Applicant the best possible outcome. Accordingly, this Court finds counsel was not objectively unreasonable in any area of his performance.

Further, this Court finds Applicant has failed to prove resulting prejudice from counsel's alleged deficient representation. First, Applicant failed to provide this Court with any evidence to support the claim that counsel failed to properly investigate the case. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Finally, Applicant has failed to convince this Court there is *any* "reasonable likelihood" that had counsel undertaken any further preparations or investigation to prepare a defense for trial, Applicant would not have pled guilty but rather proceeded to trial on the charges. As testified to by Leddy, Applicant was facing two separate trials on the charges where conviction was almost certain for Armed Robbery at the first trial. Thereafter, the state would have the opportunity to seek a LWOP sentence if Applicant were convicted of the murder charge as indicted, *or* the lesser included offenses of Voluntary or Involuntary Manslaughter. With this background, Leddy's credible PCR testimony and the record before this Court, it is clear Applicant has failed to prove that "but for counsel's alleged deficiency", he would not have pled but rather insisted upon proceeding to trial.

Having the allegation raised by Applicant at the PCR hearing to be wholly without merit, this Court finds the current application for post-conviction relief must be denied and 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. Therefore, this application for post conviction relief must be denied and with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. 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 issues 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.

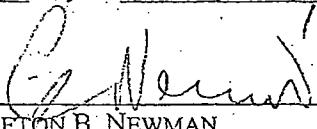
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an 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. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 27th day of February, 2013.


CLIFTON B. NEWMAN
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas
Honorable Clifton B. Newman, Circuit Court Judge

Case No: 2010-CP-40-7502

Tremon Doctor.....Appellant

S.C.D.C. 280808

v.

The State.....Respondent

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 8th day of March, 2013, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Certificate of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on March, addressed to the following as indicated below:

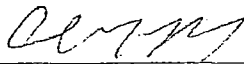
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Robert D. Corney, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Tremon Doctor, 280808
Broad River Correctional Institution
4460 Broad River Road
Columbia, South Carolina, 29210

Dated: March 8, 2013



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Michelle J. Childs, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TREMON L. DOCTOR,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

LANELLE C. DURANT

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, S. C. 29211-1589

(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES**Cases**

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in not insuring that appellant's guilty plea complied with the mandate of Boykin v. Alabama?

STATEMENT OF THE CASE

On February 14, 2007, the Richland County Grand Jury indicted Tremon Doctor on the charges of murder, carjacking, and armed robbery. On March 31, 2008, Doctor appeared before the Honorable J. Michelle Childs and entered a guilty plea to the lesser included charge to murder of voluntary manslaughter, carjacking, and armed robbery. He was represented by Megan Lee, Esquire, and Micah Leddy, Esquire. Judge Childs accepted the negotiated sentence of twenty to thirty years and sentenced Doctor to twenty-five years on the voluntary manslaughter, five years on the carjacking, and ten years on the armed robbery all to run concurrently. His attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in not insuring that appellant's guilty plea complied with the mandate of Boykin v. Alabama.

Tremon Doctor lived down the street from the victim, Brian Washington, who had been friends with Doctor most of their lives. ROA p. 16, lines 4 – 12. On the day of the incident involving the voluntary manslaughter charge, Doctor allegedly approached Washington as he was walking down the street and a verbal altercation ensued allegedly over money owed. Eye witnesses reported that Doctor picked up a shovel and hit Washington in the leg and in the head. Washington walked home and died on the front porch of his mother's home about 36 hours later. The coroner reported that Washington died as the result of blunt force trauma to the head. ROA p. 3, lines 10 – 25; p. 4, lines 1 – 8.

While Doctor was out on bond, on October 22, 2006, Doctor and a co-defendant were in a van and allegedly approached a girl sitting in a car outside a club. The co-defendant got into the girl's car and forced her to drive while Doctor followed in the van. The girl escaped from the car which was later found wrecked. Doctor and the co-defendant were seen riding in the van a short time later and were arrested after a chase. ROA p. 4, lines 13 – 25; p. 5, lines 1 – 25; p. 6, lines 1-5. Doctor was charged under the hand of one is the hand of all doctrine. ROA p. 7, lines 5 – 15.

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). In State v. Patterson, 278 S.C. 319, 295 S.E.2d 264

(1982), the Court held that the record must clearly establish a waiver of these three constitutional rights for the waiver to be valid under the due process clause.

Further, the court in State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), required judges "give the defendant adequate warning of the consequences of the plea in every case" which "should include an explanation of the defendant's waiver of constitutional rights and a realistic picture of all sentencing possibilities." (Emphasis added).

The record in this case indicates the trial court failed to adequately advise appellant of his constitutional rights so that he could waive those rights knowingly and intelligently. A valid waiver of the defendant's constitutional rights cannot be presumed from a silent record. The record must show with certainty that the plea is "an intentional relinquishment or abandonment of a known right or privilege." State v. Patterson, 278 S.C. 319, 295 S.E.2d 264, 265 (1982) citing Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) (emphasis added).

In this case, the judge advised appellant of these rights in a cursory manner that failed to convey the importance of these rights. Thus, the plea was not voluntarily and intelligently given because the full consequences of the plea were not explained. Therefore, the conviction and sentence should be reversed and the case remanded.

CONCLUSION

Based on the foregoing reasons, the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,

LaNelle C. DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of November, 2008.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Tremon L. Doctor, Appellant.

Appeal From Richland County
J. Michelle Childs, Circuit Court Judge

Unpublished Opinion No. 2009-UP-561
Submitted November 2, 2009 – Filed November 23, 2009

APPEAL DISMISSED

Appellate Defender LaNelle C. DuRant, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott;
and Solicitor Warren B. Giese, all of Columbia; for
Respondent.

PER CURIAM: Tremon L. Doctor appeals his guilty plea and sentences for carjacking, armed robbery, and voluntary manslaughter arguing his guilty plea did not comply with the mandates set forth in Boykin v. Alabama, 395 U.S. 238 (1969). After a thorough review of the record, counsel's brief, and Doctor's pro se brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.[1]

APPEAL DISMISSED.

WILLIAMS, PIEPER, and LOCKEMY, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.

Treman Doctor
AKA: Treman Doctor
Race: _____ Sex: _____ Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip Cola SC 29223
DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2005 - GS - 40 - 8122
AW#: 7915407
Date of Offense: 07-23-05
S.C. Code §: 16-3-10
CDR Code #: 011116
☐ CASE RESTORED
SENTENCE SHEET
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Voluntary Manslaughter
In violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 012117

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

[Signature] Solicitor X Treman L. Doctor Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 2.5 days/months/years or ☐ under the Youthful 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: 07-GS-40-9659, 07-GS-40-96☒ 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. Since 10-22-06☐ 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: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set 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) \$ _____

TOTAL \$ _____

Barbara A. Scott
Clerk of Court Deputy ClerkCourt Reporter: J. Williams

PTUP _____

_____ 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

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to _____

PRESIDING JUDGE

Judge Code: _____

Sentence Date: _____

OF ORIGINAL FILED
C.C.P. & C.P.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

INDICTMENT/CASE#:

2007 - GS - 40 - 9659AKA: Treman DoctorAW#: I 971436Race: _____ Sex: _____ Age: 29Date of Offense: 10-22-06

DOB: _____ SS#: _____

S.C. Code §: 16-11-330(A)Address: 1 _____ StCDR Code #: 0 / 1 / 1 / 3 / 9City, State, Zip: Columbia, SC☐ CASE RESTORED

DL# _____ SID# _____

SENTENCE SHEET

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Armed Robberyin violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 1 / 3 / 9☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ §17-25-45 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:

Kenneth S. Se
SolicitorTreman L. Doctor
DefendantRD Lee
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful 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: 07-GS-40-9662, 05-GS-40-8122☒ 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. since 10-22-06☐ 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: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set 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) \$ _____

TOTAL \$ _____

PTUP

_____ 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

pmts. 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.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: _____

Clerk of Court/ Deputy Clerk

Court Reporter: J. Williams

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

AKA: Tremon Doctor
 Race: _____ Sex: _____ Age: _____
 DOB: 1 SS#: _____
 Address: _____
 City, State, Zip: Columbia, SC
 DL# _____ SID# _____

INDICTMENT/CASE#: 2007 - GS - 40 - 9662
 A/W#: T979437
 Date of Offense: 10-22-06
 S.C. Code §: 16-3-1075(B)(1)
 CDR Code #: 2151919
☐ CASE RESTORED
☒ SENTENCE SHEET
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Carjackingin violation of § 16-3-1075(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2151919
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ \$17-25-45
 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:

[Signature]
 Solicitor

Tremon L. Doctor
 Defendant

[Signature]
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 9 days/months/years or ☐ under the Youthful 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: 07-GS-40-9659; 05-GS-40-8122☐ 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. since 10-22-06☐ 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: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set 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)	\$
TOTAL	\$

Barbara A. Scott
 Clerk of Court Deputy Clerk

Court Reporter: J. Williams

PTUP

_____ 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

pmts. 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.

PRESIDING JUDGE

Judge Code: 2151919Sentence Date: 3-31-07