

RECEIVED

OCT 23 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

CALDERONE BRACEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-000264

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

MEGAN HARRIGAN
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i

GUILTY PLEA TRANSCRIPT DATED SEPTEMBER 19, 2011..... 1

APPLICATION FOR POST-CONVICTION RELIEF.....29

RETURN48

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 10, 2012.....54

ORDER OF DISMISSAL91

INDICTMENT101

State of South Carolina)
)
County of Sumter)
)

Calderen M. Bracey, Carlton L. Bracey,
Plaintiffs

vs.

The State of South Carolina,
Defendants

Guilty Plea
2011-GS-43-00881

September 19, 2011
Sumter, S.C.

Before the Honorable Howard P. King, Judge.

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

Mr. Timothy Ward Murphy,
Attorney for Plaintiff Calderen Bracey

Mr. Jack D. Howle, Jr.
Attorney for Carlton Bracey

Mr. Glenn B. Manning,
Attorney for the State

Margaret T. Sullivan,
Court Reporter

1 MR. MANNING: May it Please the Court on Your
2 Honor's docket 2011-GS-43-0881, the State versus Carlton
3 Lee Bracey. Also on Your Honor's docket 2011-GS-43-0881
4 Calderen Mondrell Bracey. Both defendants are in court
5 with their lawyers.

6 And they are charged, Your Honor, in a
7 25-count indictment for murder, burglary,
8 kidnapping, assault with and battery with intent
9 to kill, assault with intent to kill, armed
10 robbery, attempted armed robbery and kidnapping,
11 Your Honor. Your Honor, the State has a
12 recommendation in this matter. And I would pass
13 this up.

14 THE COURT: There is a difference between
15 negotiated and a recommended, Mr. Manning. Is it
16 negotiated?

17 MR. MANNING: Yes, sir.

18 THE COURT: You said recommended.

19 MR. MANNING: I understand.

20 (Whereupon, both defendants are sworn.)

21 THE COURT: Mr. Carlton Lee Bracey is the
22 gentleman to my left. And, Mr. Howle, you
23 represent him?

24 MR. HOWLE: Yes, sir, I do, Your Honor.

25 THE COURT: And have you explained to him

1 the charges contained in the indictment, the
2 possible punishment, and his constitutional
3 rights; including his right to a jury trial?

4 MR. HOWLE: I have, Your Honor.

5 THE COURT: In your opinion, does he
6 understand those things?

7 MR. HOWLE: He does, Your Honor.

8 THE COURT: And how has he indicated he
9 wishes to plead to this charge of voluntary
10 manslaughter as a negotiated sentence?

11 MR. HOWLE: Guilty, Your Honor.

12 THE COURT: And, Mr. Murphy, the gentleman
13 to my left is Mr. Calderen Mondrell Bracey; is
14 that correct, Mr. Bracey? Did I pronounce your
15 name correctly?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you represent him,
18 Mr. Murphy?

19 MR. MURPHY: Yes, Your Honor.

20 THE COURT: And have you explained to him
21 the charges contained in the indictment to which
22 he is pleading, his possible punishment, and his
23 constitutional rights?

24 MR. MURPHY: Yes, sir, I have.

25 THE COURT: And has he indicated to you he

1 wishes to plead guilty to the negotiated sentence;
2 is that correct?

3 MR. MURPHY: Yes, sir.

4 THE COURT: And you agree with that?

5 MR. MURPHY: Yes, sir.

6 THE COURT: Gentlemen, before I can accept
7 your guilty plea, I need to make sure it is freely
8 and voluntarily given. I need to ask you some
9 questions. If you don't understand the questions
10 or the words I use, you tell me, and I will glad
11 to explain them to you. You may talk your
12 lawyers at any time as we go through this process.
13 Do you understand, Mr. Carlton Bracey?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand,
16 Mr. Calderen Bracey?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Carlton Bracey, let me
19 address you. First of all, how old are you now?

20 THE DEFENDANT: 24.

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

22 THE DEFENDANT: The 12th.

23 THE COURT: Did you graduate?

24 THE DEFENDANT: No, sir.

25 THE COURT: What kind of work do you

1 normally do?

2 THE DEFENDANT: I am working at Zaxby's,
3 sir.

4 THE COURT: Have you ever been treated for
5 the abuse of alcohol or drugs?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you ever been treated for
8 any kind of mental illness?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you today under the
11 influence of any kind of drugs or alcohol?

12 THE DEFENDANT: No, sir.

13 THE COURT: Are you today aware of any
14 physical, emotional or nervous problems that would
15 keep you from understanding what you are doing
16 here today?

17 THE DEFENDANT: No, sir.

18 THE COURT: You have heard your lawyer
19 tell me that he has explained to you the charge to
20 which you are pleading; that is, voluntary
21 manslaughter and that you understand these things;
22 is that correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: I am trying to figure out
25 which count is the one that he is actually

1 pleading to. He is pleading to a lesser included
2 of murder, Count 1.

3 Count 1, charges that you and others did
4 on December 14th 2009, wilfully, feloniously and
5 intentionally kill Kemper Holliday with malice
6 aforethought either express or implied by shooting
7 him in the right side. And he died as a result on
8 December 14th 2009. That was a charge of murder.

9 The State advises me that you are pleading
10 guilty to the lesser included offense of voluntary
11 manslaughter; is that correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You understand that for
14 voluntary manslaughter you can get up to 30 years
15 in prison?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And we will talk about the
18 negotiations in just a minute. Let me go to
19 Mr. Calderen Bracey. Mr. Bracey, how old are you?

20 THE DEFENDANT: 26.

21 THE COURT: And how far did you go in
22 school?

23 THE DEFENDANT: 12th.

24 THE COURT: Did you graduate?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have you ever been treated for
2 the abuse of alcohol or drugs?

3 THE DEFENDANT: No.

4 THE COURT: Are you today under the
5 influence of any kind of alcohol or drugs?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you ever been treated for
8 any kind of mental illness?

9 THE DEFENDANT: No, sir.

10 THE COURT: What kind of work do you
11 usually do?

12 THE DEFENDANT: I mean like hands on work.
13 Voc Rehab.

14 THE COURT: Okay. The indictment in this
15 case again charges on Count 1, that you and others
16 did participate in the homicide of Kemper Holliday
17 on December 14th 2009. The charge is one of
18 murder. The State has indicated a willingness to
19 accept a plea to voluntary manslaughter for which
20 you can get up to 30 years in prison. Do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Gentlemen, when you plead
24 guilty you give up important constitutional
25 rights. You give up the right to remain silent;

1 that is, your privilege against self
2 incrimination. Your right to say nothing at all.
3 You cannot be required to provide evidence against
4 yourself. You give up your right to have a jury
5 trial; that is, the right to have jury decide
6 whether you are guilty beyond a reasonable doubt.

7 In a trial, you would be presumed to be
8 innocent. The State would have to produce
9 evidence that would convince all 12 members of the
10 jury of your guilt beyond a reasonable doubt.
11 Also you give up the right to confront the
12 witnesses against you; that is, the right to
13 require the witnesses against you to come in to
14 court and testify. And the right to subpoena and
15 call witnesses on your behalf.

16 Those are the constitutional rights that
17 you give up when you plead guilty. Do you
18 understand that, Mr. Carlton Bracey?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Calderen Bracey?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Carlton Bracey,
23 understanding the nature of the charges against
24 you and the consequences of the guilty plea, how
25 do you wish to plead to this charge of voluntary

1 manslaughter, guilty or not guilty?

2 THE DEFENDANT: Guilty.

3 THE COURT: Do you understand that when
4 you plead guilty, you are admitting the truth of
5 the charge against you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You are pleading guilty
8 because you are guilty?

9 THE DEFENDANT: Yes.

10 THE COURT: Is that a yes?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Calderen Brace, y,
13 understanding the nature of the charge against you
14 and the consequences of the guilty plea, how do
15 you wish to plea to this charge of voluntary
16 manslaughter, guilty or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: You understand that when you
19 plead guilty, you are admitting the truth of the
20 charge against you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You are pleading guilty
23 because you are guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Gentlemen, the court has been

1 advised that your lawyers and the State's
2 attorneys have entered into negotiations, and this
3 is what we would call a negotiated plea. That
4 means that the sentence is a negotiated one
5 between the State and your lawyers of 30 years in
6 prison.

7 That means that I have no discretion about
8 this matter. After hearing the facts on the
9 matter, if I decide that I could not accept the
10 negotiations between your lawyers and the State,
11 that I would allow you to withdraw your guilty
12 plea. That if I can't accept the negotiations, it
13 means that I would not have any discretion this
14 the matter and I would then sentence you to 30
15 years prison. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Let me ask each one of you
18 separately. Mr. Carlton Bracey, do you understand
19 that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And, Mr. Calderen Bracey, do
22 you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Carlton Bracey, is that
25 what you understand the negotiations to be?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Howle, do you agree that
3 is what the negotiations are, a negotiated 30 year
4 sentence?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Calderen Bracey, is that
7 what you understand the negotiations to be?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Murphy, you agree that is
10 what the negotiations are?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: A 30-year sentence?

13 MR. MURPHY: Yes, sir.

14 THE COURT: And Mr. Carlton Bracey, you
15 are represented in this matter by Mr. Jack Howle.
16 Are you satisfied with the manner in which he has
17 advised and represented you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Has he done everything for you
20 that you feel he could have or should have done on
21 your behalf?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has he done anything you feel
24 he should not have done?

25 THE DEFENDANT: No, sir.

1 THE COURT: And you are satisfied with his
2 services?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Calderen Bracey, you are
5 represented by Mr. Tim Murphy. Are you satisfied
6 with the manner in which he has advised and
7 represented you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Has he done everything for you
10 that you feel he could have or should have done on
11 your behalf?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Has he done anything that you
14 feel he should not have done?

15 THE DEFENDANT: No, sir.

16 THE COURT: And you are completely
17 satisfied with his service?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Carlton Bracey, have you
20 understood my questions?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Is there anything you would
23 like to ask me about what we have been over?

24 THE DEFENDANT: No, sir.

25 THE COURT: And have your answers to me

1 been truthful?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you understand that you
4 have a right to appeal the guilty plea and
5 sentence of the court and you must do so within 10
6 days. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Calderen Bracey, have you
9 understood my questions?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is there anything you would
12 like to ask me about what we have been over?

13 THE DEFENDANT: No, sir.

14 THE COURT: And have your answers to me
15 been truthful?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And do you understand that you
18 have the right to appeal, and you must do so
19 within 10 days?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Manning, give me the
22 factual background, please.

23 MR. MEADORS: Yes, Your Honor. Sheriff
24 Mims will give us the facts.

25 THE COURT: Mr. Mims.

1 MR. MIMS: Yes, sir. May it please the
2 Court, Your Honor, on December 14th 2009, at
3 approximately 9:40 that night, law enforcement and
4 the Sumter County Sheriff's Office received a
5 call to respond to a house on Odell Lane up in the
6 Rembert area. As a result of that call, the
7 investigation followed. These charges that you
8 have heard about came out of that as a result of
9 that.

10 The two Bracey's entered that house with
11 the intent to rob the occupants of money and
12 drugs. There was one individual killed, Kemper
13 Holliday. Two individuals were shot. Hugh
14 Phillips was shot. A bullet striking him in the
15 back. He remains paralyzed from the waist down.
16 And Lance McCray was shot once in the left leg.
17 And he has had extensive surgery on that leg, and
18 had a steel plate on the shin bone.

19 The two Bracey brothers got there as a
20 result of a telephone call from a co-defendant,
21 who stated he wanted them to go with him to hit a
22 lick at a house in the Rembert area. There were
23 two individuals, two co-defendants came and picked
24 them up at their house, their grandfather's house
25 in the Kershaw, Cassatt area. Kershaw County,

1 ~~Cassatt area. And proceeded back to one of the~~
2 co-defendant's house where the co-defendant
3 supplied them with weapons, masks, gloves and duct
4 tape. .

5 They proceeded to the residence on Odell
6 Lane. And gave the co-defendants, gave them
7 instructions on where the house was located. And
8 what they were to do once they entered the house,
9 was to try to get an individual who may be beside,
10 or drive up to the house and use him as a hostage,
11 if you will, to get inside the house. And that
12 happened to be the person of Hugh Phillips. Once
13 inside the house, they fired several shots and
14 gained control of all the occupants in the house.

15 There were some eight or nine occupants in
16 the house at that time. Calderen proceeded to
17 duct tape the individuals asking them to empty
18 their pockets. Asking was that all the money they
19 had; to give up the money and the drugs. One of
20 the occupants of the house, a Lennie Belton who
21 resided there, was able to get loose and get his
22 gun and came out. And in his statement he said he
23 was in fear that one of the Bracey's were going to
24 shoot Kemper. And that's when he started firing
25 his weapon. And as a result of that, some 20 to

1 25 to 30 rounds of ammunition were discharged in
2 the house and out in the yard.

3 As a result, as I said earlier, Kemper
4 Holliday was struck in the upper chest. And as a
5 result of those gunshot wounds, died on the scene.
6 Hugh Phillips remains paralyzed. Lance McCray, as
7 I said, was shot in the left leg.

8 THE COURT: Thank you, Mr. Mims. And as I
9 understand it, they're still charges pending
10 against Mr. Kelly and Mr. Goodwin.

11 MR. MIMS: Yes, sir.

12 THE COURT: Thank you, sir.

13 THE COURT: I find that there is a
14 substantial factual basis for the pleas in this
15 case. I find the defendants are represented by
16 competent counsel. And have freely and
17 voluntarily and knowingly entered into these pleas
18 after having been advised of their constitutional
19 rights and then been advised by counsel with whom
20 they say they are satisfied. Counsel, come up
21 just a moment.

22 (Whereupon, attorneys confer with judge at
23 the bench.)

24 THE COURT: At the bench conference we
25 talked about the negotiated sentence. And as a

1 ~~result of the bench conference and the information~~
2 furnished to me by the Solicitor's, the court is
3 going to accept the plea on both defendants to the
4 plea as negotiated.

5 There is a substantial factual basis as I
6 have said, for the pleas, and the court will
7 accept the negotiations. And I understand that
8 there is a little bit more to the negotiations
9 than have been put on the record. And that is
10 what, Mr. Manning?

11 MR. MANNING: Your Honor, in exchange for
12 their cooperation, Your Honor, we would drop the
13 remaining charges after they testify truthfully in
14 the case in chief against the other two
15 co-defendants.

16 THE COURT: And, Mr. Murphy, and
17 Mr. Howle -- well I'll ask you first, Mr. Howle.
18 Is that what you understand? That it's a
19 negotiated 30-year sentence on this case, with the
20 understanding that the other charges against them
21 are not being dismissed until such time as the
22 co-defendant's cases are disposed of. And if they
23 are called upon to testify, or if your client is
24 called upon to testify, that he would testify in
25 that case in return for which the other charges

1 against him would be dismissed.

2 MR. HOWLE: That's correct, Your Honor.

3 THE COURT: Do you agree with that, Mr.
4 Murphy?

5 MR. MURPHY: Yes, Your Honor. They must
6 testify truthfully.

7 THE COURT: And if they testify
8 truthfully, the other charges will be dismissed.
9 Let me ask you, Mr. Carlton Bracey. Do you
10 understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You have got other charges
13 pending against you and this 30 years is one
14 matter. But if you testify in the other cases
15 that the State calls, the other charges would be
16 dismissed. Do you understand that would be part
17 of the negotiations?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Calderen Bracey, do you
20 understand the same thing?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: That being the case, counsel,
23 is there any necessity, do I need to hear from the
24 victims or do I need to hear from the defendants?
25 And if it is negotiated, then I am willing to

1 accept it as a negotiated plea. Is there anything
2 further you need to present to the court,
3 Mr. Manning?

4 MR. MANNING: I don't think so. I think
5 that would be better done at sentencing.

6 THE COURT: This is sentencing, sir.

7 MR. MANNING: Yes, Your Honor. Just one.
8 Just one person.

9 THE COURT: Yes, ma'am. Give me your
10 name, please.

11 MS. HOLLIDAY: I am Patricia Holliday. I
12 am the mother of the deceased, Kemper Holliday.

13 THE COURT: Okay. Yes, ma'am.

14 MS. HOLLIDAY: What I wanted to say and
15 have it known that our lives have been forever
16 changed by the death of my son Kemper, whom I love
17 dearly. I wish, Your Honor, that the young man
18 before us had an opportunity to know my son. And
19 to know him would have been to love him. When I
20 think about the things my son and I shared that I
21 am no longer able to share, I am hurt deeply.

22 Every night, Your Honor, it has been 21
23 months and 5 days until this very day. And I hurt
24 today just as I did on the December 14th of 2009.
25 I think that the act that was taken was a

1 senseless act. I think that the fact that these
2 young men could go to that level to take the life
3 of my son, who was an innocent young man. He was
4 a beautiful young man. He was a minister of music
5 at church. He loved to sing, and we loved
6 singing together. And think that again, I think
7 again if they had just gotten to know him, they
8 would know that my son would never harm a flea.
9 Because he was a lover of people.

10 And here my heart is broken and words
11 leave me. See I rehearsed this whole line of what
12 I would say before I got here. And now that I am
13 here, those words tend to leave me. If I could
14 say anything to them, I would just say I wish they
15 had an opportunity to know my son. That's all I
16 want to say.

17 THE COURT: Thank you, ma'am.

18 MS. HOLLIDAY: My name is Cynthia
19 Holliday. Kemper was my first cousin. And I
20 would just like to address the court and everyone
21 here today, and piggy back on what my aunt has
22 said; that Kemper was an amazing young man. He
23 was a tremendous part of me. And I shared many
24 times with him. He's lived with me. And I know
25 he was not only my first cousin to me. And to the

1 Bracey young men, I only wish that your character
2 was that of the Kemper. And if it were, we would
3 not be standing here today. That's all I have to
4 say.

5 THE COURT: Thank you.

6 MS. PHILLIPS: My name is Ellen Phillips.
7 And my husband was the one who got shot in the
8 back and paralyzed. He was not able to be here
9 right now. But will be here tomorrow. If it
10 just -- I just want to express how it changed our
11 whole life. And I don't understand the judicial
12 system really, because he is not here and I
13 thought I would come up here and speak on his
14 behalf. I was -- it's just been very traumatic.
15 Very rough and very painful.

16 REVEREND: Judge.

17 THE COURT: Yes, sir.

18 REVEREND DAVIS: My name is Reverend
19 Lorenzo Davis. I am the pastor of Church of
20 St. James. I am here for support. And as well as
21 to make reference to Kemper Holliday. He was
22 actually a musician for a church up the street
23 from where I pastor at. And a member of our
24 church. And brought up in the church. He's a
25 very fine young man. I wish and trust that

1 Sister Patricia said that everyone got to know
2 Kemper, because he was a very beautiful young boy
3 who did work and trust and believe in the law.

4 And it was just senseless what happened.
5 And there is nothing we can do to change that.
6 And we just want to know and as a pastor
7 sometimes, I realize that this mother -- that this
8 mother and these two young men are hurt as well.
9 But can you understand the hurt of Brother James
10 and Sister Patricia and what they are going
11 through, because they are longer able to see their
12 son again.

13 And a crime itself speak for itself.
14 There is nothing we can say about the crime, as it
15 speaks for itself. But we pray and trust that
16 whatever you can do. My understanding is that
17 they have a plea bargain and made a deal. And we
18 pray and trust that things with the other two
19 young men who are coming up, I think the trial
20 will begin tomorrow; that these told young men
21 would be truthful and say everything that really
22 happened that night. Because they are the only
23 ones that know. And we hear so many stories. And
24 we pray and trust that the truth will come out in
25 the end; that everyone would get whatever you

1. decide that they should have. Thank you.

2 MS. SIMON: Your Honor, Nicole Simon,
3 victim advocate. But today I will speak as the
4 victim advocate. I had the pleasure of knowing
5 Kemper Holliday when he was a student at Allen
6 University. And I was the security, chief of
7 security. He was one of the few students that I
8 was happy to see in the morning, because he always
9 wore a smile. He always had a pleasant attitude.
10 And he was just a bright light on the campus.

11 Unfortunately, I did not know these young
12 men. But I am quite sure they were loved by their
13 families, and they are still loved by their
14 families. But in knowing Kemper, when you think
15 and you see, when you are involved in law
16 enforcement, and you see sometimes the dismay of
17 our young, black male population, Kemper was a
18 young man with a future. He was a young man that
19 you knew was going places. He was a young man
20 that you knew that was going to make a difference.

21 And I am quite sure his family misses him
22 and loves him. And this tragedy has hurt me also,
23 not only as the victim advocate, but also as
24 someone who knew this young man on a different
25 level. Inside the educational setting and also on

1 a personal level.

2 THE COURT: Okay. Thank you. Prior
3 records of the defendants?

4 MR. MIMS: Yes, sir.

5 THE COURT: Not that it really matters.

6 MR. MIMS: Yes, sir. Calderen Bracey has
7 no record. Carlton Bracey as a juvenile in 03,
8 convicted of criminal domestic violence. In 2005,
9 he was convicted of burglary second degree and
10 grand larceny. A youthful offender sentence. In
11 May of 2006, Driving under or driving without a
12 license. June of 07, convicted of grand larceny.
13 Another youthful offender sentence. That's his
14 record.

15 THE COURT: All right, thank you.
16 Counsel, and Mr. Solicitor, I have heard the
17 factual recitation and the recommendation. Not
18 the recommendation, but the negotiations of the
19 parties. I have accepted the plea, which means
20 that I have accepted the negotiations. And I
21 don't have any discretion about this matter.

22 Mr. Murphy, or Mr. Howle, I will be glad
23 to hear from you, but it is not necessary unless
24 it is something that you would like to say.

25 MR. MURPHY: No, Your Honor. I just want

1 to point out that there are family members here
2 today.

3 THE COURT: Mr. Howle.

4 MR. HOWLE: I would say the same thing.

5 THE COURT: Let me address the victim's
6 family for just a moment. I do appreciate your
7 being here. The victim's rights amendment does
8 provide that you have the right to be kept advised
9 of everything that is going on. You also have the
10 right to be present whenever there is any matter
11 in court, and you have the right to address the
12 court and you have done so.

13 I would tell you that there is nothing
14 that I can say or do that will ease your pain. I
15 only hope that by the acts of today in court, that
16 this will bring some closure to the matter as far
17 as these defendants are concerned. I am sure that
18 you are aware that the State is still proceeding
19 against two other defendants in this case, and
20 that those matters are still pending before the
21 court and will be heard later this week.

22 But I do want you to know that I do
23 appreciate your being here. And I do empathize
24 with you. And I hope that these proceedings at
25 least as far as these two defendants, will bring

1 some closure and that you will be able to move
2 forward. The court is going to accept the
3 negotiations as set forth by the Solicitor and the
4 defense counsel. With the understanding that
5 these defendants will be expected to testify
6 truthfully against the co-defendants, and that if
7 they do so, the other charges against them can and
8 will be dismissed. But if they do not testify
9 against the co-defendants then the State will be
10 free to proceed with those charges regardless of
11 this plea here today.

12 So as far as the case 2011-GS-43-0881, to
13 Mr. Carlton Lee Bracey, the Sentence of the Court
14 is the Defendant is committed to the State
15 Department of Corrections for a determinate term
16 of 30 years, to be given credit for whatever time
17 he has served in jail. The Sentence with regard
18 to Mr. Calderen Mondrell Bracey in Case No.
19 2011-GS-43-881 is that the Defendant is sentenced
20 to the Department of Corrections for a term of
21 30 years. Again given credit for whatever time
22 that he has served.

23 Good luck to you, gentlemen. I hope you
24 can get your time behind you, and get it served.
25 And come out and become productive members of

1 society.

2 -----End of Requested Transcript of Record-----

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third 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 Court of General Sessions on September 19, 2011, in Sumter County, Sumter, South Carolina.

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

8/26/12
DATE

Margaret T. Sullivan
COURT REPORTER
My Commission expires: 9/7/21

RECORDED

2012 APR -9 PM 1:49

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILE

B. ...
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

County of Sumter

Calderen Bracey #347965

Full name and prison number (if any) of Applt.

vs.

State of South Carolina

Name of Respondent.

Attorney General Office

In the Court of Common Pleas

2012-CP-43-669

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention McCormick Corrections Inst, 386
Redemption Hwy McCormick S.C. 29899
2. Name and location of Court which imposed sentence Court of General Sessions
Sumter County
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2011-BS-43-0881
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 9-19-11
 - (b) _____
 - (c) _____

State of South Carolina
County of Sumter

RECORDED
2012 APR -9 PM 1:48
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.
347965

Court of Common Pleas
Case 2012-CP-43-601

Calderone Bruce
Applicant

Proof of Service

vs

State of South Carolina
Respondent

To Respondent:

I certify that a true copy of the
Post-Conviction Relief Application has
been served upon the Respondent's clerk
of court James C. Campbell at courthouse
Room 308 Sumter S.C. 29150 By Place a
copy in the united states mail address.

Swoen before me this
day 6 of April 2012

Notary Deje L Young

Public 10/11-2021

~~Calderone Brucey~~
Calderone Brucey
347965
386 Redemption way
McClemick, S.C. 29899

For an applicant to be granted PCR
 AS A result to reasonably effective
 assistance of counsel, failed to render
 reasonably effective assistance under
 prevailing professional norm and (2)
 that he was prejudice by his counsel
 ineffective Performance Strickland
V. Washington 466 U.S. 104 S.Ct. 2052
 80 L.Ed2d 674 (1984).

Conclusion

wherefore PCR court should vacate
 my conviction and sentence.

Date 4-6 2012

Calderone Brasca
 Calderone Brasca
 386 Redemptionway
 Mc Cormick, S.C. 29579

5. Check whether a finding of guilty was made

- (a) after a plea of guilty YES
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

NA

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

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

- i. NA
- ii. _____
- iii. _____

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

- i. NA
- ii. _____
- iii. _____

(c) the date of each such result:

- i. NA
- ii. _____
- iii. _____

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

- i. NA
- ii. _____
- iii. _____

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

- (a) NA
- (b) _____
- (c) _____

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

- (a) see Attachment memorandum of law
- (b) _____
- (c) _____

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

- (a) see Attachment memorandum of law
- (b) _____
- (c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? NA

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NA

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NA

(d) any other petitions, motions or applications in this or any other Court? NA

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. NA
- ii. _____
- iii. _____
- iv. _____

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

- i. NA
- 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?

NA

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

(a) which grounds have been presented:

- i. NA
- ii. _____
- iii. _____

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

- i. NA
- 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) NA
- (b) _____
- (c) _____

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

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

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. Timothy W. Murphy
- ii. _____
- iii. _____

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

- i. Guilty Pleas
- ii. _____
- iii. _____

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

Vacate Sentence

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

NA

STATE OF SOUTH CAROLINA

VERIFICATION

County of Sumter

I, Calderone Mondrell Bracey, 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.

Calderone Bracey

SWORN to and subscribed before me this 6 day of April, 192012

Joseph L. Young (L.S.)
Notary Public

My Commission Expires: 10/1/2021

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

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

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

Calderone Bracey
Applicant

SWORN or affirmed to and subscribed before me this

6 day of April, 192012

Joseph L. Young
Notary Public

10/1/2021

Calderone Bracey # 347965

306 Redemption way

McCormick S.C. 29889

RECORDED

2012 APR -9 PM 1:48

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Date 4-6 2012

CASE 2012-CP-43-669

Dear Honorable James Campbell:

Enclosed Please find for filing
the original Application for PCR
Relief Request to be filed
within your clerk's office; PS
Returned copy:

Respectfully Submitted
s/ Calderone Bracey

C.C. C.B.

C.C. A.G.O.

RECORDED

State of South Carolina
County of Sumter

2012 APR 9 PM 1:48
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Court of Common
Pleas
Case 2012-CP-43-669

Calderone Bracey #347965
Applicant

MEMORANDUM OF LAW
Support Post-Conviction
Relief Application

V.S.

State of South Carolina
Respondent

To Respondent

This matter comes before the Honorable
Court Pursuant to S.C. Code of Law §17-27-10
and 17-27-80,

STATEMENT OF THE FACTS

A shooting arose at the residence
located at 7530 Odell Ln. The applicant
went to the residence to buy drugs and
the victims in the residence pull guns
out on the defendant and demand his

money and shoot the applicant several
time gun shot wounds injury to the legs;
and the applicant co-defendant's went alone
with the applicant to buy drugs from the
victim which this was a "CRACK HOUSE" and
the victim shot and Robbery the applicant
calderone Tracey.

Applicant Pled guilty to Voluntary
manslaughter (30) thirty years and
counsel did not filed no notice of
Appeal from his guilty Pleas, 2011.

ARGUMENT 1

Trial Counsel was ineffective failing
filed a timely notice of appeal.

Counsel prejudice the applicant by not seeks and filing a timely notice of appeal from his guilty pleas of voluntary manslaughter (30) years:

Applicant does has a right to a direct appeal and applicant did not knowingly and intelligently waived, his right see White v State 263 S.C 110, 208 SE2d 35 (1974).

under Strickland v Washington 466 U.S. 668, 104 S.Ct. 2052, 80 LEd 2d 674 (1984) applicable to guilty pleas

0
under Hill v. Lockhart 474 U.S. 52 106
S.Ct. 366, both deficient performance and
prejudice to prevail on an ineffective
assistance of counsel claim.

Argument 2

Trial counsel was ineffective for failing
to prepare and to conduct a proper pre-
trial investigation.

The Petitioner submit that he received ineffective assistance of counsel prior to and during his guilty plea. The six amendment to the United States Constitution guarantees that every criminal defendant is entitled to the effective assistance of counsel in presenting their defense. see also, S.C. Const, Art 1, section 14. The Supreme Court has stated, "The right to counsel is a fundamental right of criminal defendants; it assures the fairness, and thus the

The legitimacy, of our Adversary Process!!
Kimmelman v. Morrison 477 U.S. 365 (1986)

Furthermore, the Supreme Court has recognized that "the right to counsel is the right to ineffective assistance of counsel."
McMann v. Richardson, 397 U.S. 759, 771 (1970);

To see whether counsel has fallen below the minimum standard needed for effective assistance of counsel under the sixth amendment to the constitution, a two prong test must be met. In Strickland v. Washington 466 U.S. 668, 688-694 (1984)

the Supreme Court held that a determination of ineffective assistance of counsel would be conditioned on two factors.

1. Counsel performance must have fallen below an objective standard of reasonableness; and it is the duty of the lawyer to conduct a prompt investigation of the circumstances

of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecutor and law enforcement authorities. The duty to investigate exists regardless of the accused admissions, or statements of the lawyer of facts constituting guilt or the lawyer of facts constituting guilt or the accused stating desire to plead guilty.

A defendant's right to effective assistance of counsel confers a duty on counsel to conduct an adequate pre-trial investigation. When a lawyer fails to conduct a substantial investigation into any of his client's plausible lines of defense, the lawyer has failed to render effective assistance of counsel. CoBA v. State

408 SE2d 223 (1991), Pre trial Preparation, Principally Because it provides a Basis upon which most of the defense case must rest, is perhaps, the most critical stage of a lawyer's Preparation. Id Failure to investigate evidence that would be helpful to the defense is also an indication of ineffective assistance of Counsel. Id.

2). There must be a Reasonable Probability that but for Counsel's error, the Results of the proceeding would probably have been different.

South Carolina has adopted the Strickland standard. see, eg. Cherry v. State 386 SE2d 624 (1989). The right to effective assistance of Counsel may be violated by even an isolated error of Counsel if the error is sufficiently egregious and prejudicial. Murray v. Carrier 477 U.S. 478

(1986). "It is the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client's interest". Frazier v United States, 18 F.3d 778 785 (9th Cir 1994). "Defense counsel must do his utmost to bring his legal acumen to bear on behalf of the defendant; keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequate, and professionally for trial; conduct the trial to the best of his ability; and at the bottom, serve as a vigorous and devoted advocate of the defendant's cause United States ex Rel. Pardee v Lane, 926 F.2d 694; 702 17th Cir (1991).

(A) Counsel was ineffective for failing to an adequate Pretrial investigation.

As the Supreme Court also recognized in Strickland; "counsel bears a duty to make a reasonable investigation of the law and facts in his client's case."

Strickland 466 U.S. at 691 Additionally, The ABA standards relating to the Administration of criminal justice provide;

Argument 3

Trial counsel was ineffective by advise the applicant to Plead guilty to the charged of manslaughter.

Based on all the evidence in this case took into the hands of SLED custody to deter the fatal Bullet killed the victim during shooting.

"Counsel prejudice the defendant by advise the defendant to enter a Pled to manslaughter for (30) thirty years because there was no evidence linking to the applicant that his weapon cause the death of the victim and the state could not put forth evidence which Fatal Bullet cause the death, from there Ballistics Report.

Counsel prejudice the applicant to Plead guilty by advise the defendant to enter into a guilty Plead knowing there was no physical evidence linking to the applicant that the bullet fired from his weapon cause the death of the victim because there was several gun fired returned at one another.

Applicant who has pled guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there

is a reasonable probability that but for counsel's errors, the defendant not have pled guilty Johnson v. Estee S.C. 1999) 336 S.C. 354 520 SE2d 617.

Defendant who pleads guilty on 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 demanded of attorneys in criminal cases and that there is a reasonable probability that, but for counsel's errors, defendant would not have pled guilty and would have insisted on going to trial, and "reasonable probability" is a probability sufficient to undermine confidence in the outcome of the trial. cite Thompson v State, (S.C. 2000) 340 S.C. 112, 531 SE2d 294

| | | |
|----------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF SUMTER |) | FOR THE THIRD JUDICIAL CIRCUIT |
| |) | |
| |) | 2012-CP-43-669 |
| |) | |
| Calderen-Bracey, # 347965. |) | |
| |) | |
| Applicant. |) | |
| |) | |
| v. |) | RETURN |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| |) | |

The Respondent, making its Return to the application for post-conviction relief filed April 9, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted during the May 2011 term of the Sumter County Grand Jury under a twenty five-count indictment (2011-GS-43-0881) for one (1) count for Murder, one (1) count for First Degree Burglary, eight (8) counts of Kidnapping, seven (7) counts of Assault With Intent to Kill, two (2) counts of Armed Robbery, and six (6) counts of Attempted Armed Robbery. The Applicant was represented by Timothy W. Murphy, Esquire. On September 19, 2011, the Applicant pled guilty to voluntary manslaughter. The Applicant was sentenced by the Honorable Howard P. King, to a negotiated sentence of thirty (30) years imprisonment. The remaining charges were *nolle prossed* pursuant to the plea. The Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina

Department of Corrections, and the guilty plea transcript.¹ The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Trial counsel was ineffective failing filed a timely notice of appeal."
 - a. "Counsel prejudice the Applicant by not seeks and filing a timely notice of appeal from his guilty pleas of voluntary manslaughter (30 years)."
 - b. "Applicant does have a right to a direct appeal and applicant did not knowingly and intelligently waived, his right see White v. State 263 S.C. 110, 208 SE 2d35(1974)."
2. "Trial Counsel was ineffective for failing to prepare and to conduct a proper trail investigation."
 - a. "The Petitioner submit that he received ineffective assistance of counsel prior to and during his guilty plea. The six amendment to the United States Constitution Guarantees that every criminal defendant is entitled to the effective assistance of counsel in presenting their defense. See also, S.C. Const. Art. 1, Section 14. The Supreme Court has stated, 'the right to counsel is a fundamental right of criminal defendants; it assures the fairness and thus the legitimacy of our adversary process.' Kimmelman v. Morrison 477 U.S. 365 (1986). Furthermore, the Supreme Court has reconised that 'the right to counsel is the right to ineffective assistance of counsel.' McMann v. Richardson 397 U.S. 759, 771 (1970) to see whether counsel has fallen below the minimum standard needed for effective assistance of counsel under the sixth amendment to the constitution, a two prong test must be met. In Strickland v. Washington, 466 U.S. 668, 688-694 (1984) the Supreme Court held that a determination of ineffective assistance of counsel would be conditioned on two factor."
 - b. "Counsel performance must have fallen below an objective standard of reasonableness; and it is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecutor and law enforcement authorities. The duty to investigate exist regardless of the accused admissions, or statements of the lawyer of facts constitution guilt or the accused stating desire to plead guilty."
 - c. "A defendant right to effective assistance of counsel confers a duty on

¹ The guilty plea transcript has been ordered and not yet received. A copy will be forwarded upon receipt.

counsel to conduct an adequate pre-trial investigation when a lawyer fails to conduct a substantial investigation into any of his clients plausible lines of defense, the lawyer has failed to render effective assistance of counsel. Cobb v. State 408 SE2d; 223 (1991). Pre trial preparation principally because it provides a basis upon which most of the defense case must rest, is perhaps the most critical stage of a lawyers preparation. Id failure to investigate evidence that would be helpful to the defense is also an indication of ineffective assistance of counsel. Id.

- d. "There must be a reasonable probability that but for counsels error, the results of the proceeding would probably have been different."
 - e. "South Carolina has adopted the Strickland standard. See, eg. Cherry v. State 386 SE2d 624 (1989). The right to effective assistance of counsel may be violated By even an isolated error of counsel if the error is sufficiently egregious and prejudicial. Murray v. Carrier 477 U.S. 478 (1986). 'it is the clients right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the clients interest.' Frazer v. United States 18 F.3d 778 785 19th Cir 1994). 'Defense counsel must do his utmost to bring his legal acumen ot bear on behalf of the defendant; keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre trial investigation, which should include contacting potential witnesses; prepare adequate, and professionally for trial; conduct the trial to best of his ability; and at the bottom, serve as a vigorous and devoted advocate of the defendants cause United States ex Rel. Partee V Lane, 926 F2d 694, 702 17th cir. (1991)."
 - f. "Counsel was ineffective for failing to an adequate Pretrial investigation." "As the Supreme Court also recognized in Strickland, 'Counsel bears a duty to make a reasonable investigation of law and facts in his clients case.' Strickland 466 U.S. at 691 Additionally, The ABA standards Relating to the administration of criminal justice provide;"
3. "Trial Counsel was ineffective by advise the applicant to pleas guilty to the charged of manslaughter."
 - a. "Based on all the evidence in this case took into the hands of SLED custody to deter the fatal Bullet Killed the victim during shooting."
 - b. "Counsel prejudice the defendant by advise the defendant to enter a pled to manslaughter for (30) thirty years because there was no evidence linking to the applicant that his weapon cause the death of the victim and the state could not put forth evidence which Fatal Bullet cause the death, from there Ballistics Report:"
 - c. "Counsel prejudice the applicant to Pleas guilty by advise the defendant to enter into a guilty pleas knowing there was no physical evidence linking to the applicant that the bullet fired from his weapon

cause the death of the victim because there was several gun fired returned at one another.”

- d. “Applicant who has pled guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the defendant not have pled guilty *Johnon v. Catoe* S.C. 1999) 336 S.C. 354 520 SE2d 617.”
- e. “Defendant who pleads guilty on 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 demanded of attorneys in criminal ability that, but for counsel’s errors, defendant would not have pled guilty and a reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Cite at *Thompson v. State* (S.C. 200) 340 S.C.112. 531, SE2d 294.”

Any claims not specifically enumerated in the post-conviction relief application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

IV.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signatures on next page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

June 25, 2012

| | |
|---------------------------|------------------------------|
| State of South Carolina) | In the Court of Common Pleas |
| County of Sumter) | Third Judicial Circuit |
| | 2012-CP-43-00669 |

Calderone Bracey,)
)
 Plaintiff)
)
 vs.)
)
 State of South Carolina)
)
 Defendant.)
)
)
)

Transcript of Record

December 10, 2012
Sumter, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Judge

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

Megan E. Harrigan, Esq.
Attorney for the Defendant

Charles T. Brooks III, Esq.
Attorney for the Plaintiff

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

| 1 | <u>WITNESS/DESCRIPTION</u> | | | | <u>PAGE NO.</u> |
|----|----------------------------|-------|----------|---------|-----------------|
| 2 | Case called/Ms. Harrigan | | | | 4 |
| 3 | DIRECT | CROSS | REDIRECT | RECROSS | |
| 4 | CALDERONE BRACEY | | | | |
| 5 | Mr. Brooks | 5 | | 19 | |
| 6 | Ms. Harrigan | | 13 | | |
| 7 | TIMOTHY MURPHY | | | | |
| 8 | Mr. Brooks | 21 | | | |
| 9 | Ms. Harrigan | | 25 | | |
| 10 | ANGELA Stuckey | | | | |
| 11 | Mr. Brooks | 32 | | | |
| 12 | Ms. Harrigan | | 33 | | |
| 13 | Decision by The Court | | | | 35 |
| 14 | Certificate Page | | | | 37 |
| 15 | | | | | |

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>I.D.</u> | <u>EVID</u> |
|------------|--------------------|-------------|-------------|
|------------|--------------------|-------------|-------------|

- NO EXHIBITS -

1 THE COURT: Thank you. You can be seated.

2 MS. HARRIGAN: May it please the Court.

3 THE COURT: Yes, ma'am.

4 MS. HARRIGAN: Your Honor, the next case is *Calderone*
5 *Bracey vs. The State of South Carolina*, Docket No. 2012-CP-
6 43-0669. The applicant was indicted during the May, 2011
7 term of the Sumter County Grand Jury under a 25-count
8 indictment for one count of murder, one count of burglary
9 in the first degree, eight counts of kidnaping, seven
10 counts of assault with intent to kill, two counts of armed
11 robbery, and six counts of attempted armed robbery.
12 Applicant was represented by Timmy -- Timothy Murphy.

13 On September 19, 2011, he pled guilty to the lesser
14 included offense of voluntary manslaughter. The Honorable
15 Howard P. Cooper [sic] sentenced applicant to a negotiated
16 30 years imprisonment. The remaining charges were all nol
17 prossed pursuant to the plea negotiations.

18 Applicant did not appeal his convictions or sentence.
19 He did, however, file a timely application for post-
20 conviction relief on April 9, 2012, alleging plea counsel
21 was ineffective for failing to file a timely notice of
22 appeal; plea counsel was ineffective for failing to prepare
23 and conduct a proper investigation; and plea counsel was
24 ineffective for advising him to plead guilty to voluntary
25 manslaughter where there was no physical evidence that his

1 weapon fired the fatal shot.

2 The State made it's return on June 28, 2011, and he's
3 represented in this action Charles T. Brooks III.

4 THE COURT: Okay. Mr. Brooks.

5 MR. BROOKS: Ready, Judge?

6 THE COURT: Yes, sir.

7 MR. BROOKS: Call Mr. Bracey to the stand.

8 THE COURT: Okay. Will you come around, Mr. Bracey?

9 CALDERONE BRACEY, having been
10 first duly sworn, testifies as follows:

11 THE BAILIFF: State your name please, and spell your
12 first and last name for the record.

13 THE DEFENDANT: Calderone Bracey.

14 THE COURT REPORTER: Spell your name, please.

15 THE DEFENDANT: Oh. C-a-l-d-e-r-o-n-e; Bracey, B-r-a-
16 c-e-y.

17 MR. BROOKS: Ready, Judge?

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION BY MR. BROOKS:

20 Q Mr. Bracey, how are you today?

21 A I'm doing fine.

22 Q As you testify here today, I'm going to tell you to
23 make sure you speak up, and speak clearly and distinctly.

24 Say "yes, sir," "no, sir," "yes, ma'am, "no, ma'am,"

25 because this lady sitting right here is the court reporter,

DIRECT EXAMINATION BY MR. BROOKS - CALDERONE BRACEY

6

1 and it's important -- she has to take down everything you
2 say, basically preserving the record, which is one of the
3 things you want to do. Okay?

4 A Yes, sir.

5 Q You understand that?

6 A Yes, sir.

7 Q So you know, you can't just talk like we back there in
8 the holding cell, you nod and "unh-unh," "uh-huh," and all
9 that. She can't pick that up. You understand?

10 A Okay.

11 Q All right. Now, you were represented by Mr. Murphy in
12 this case, and you pled guilty; is that right?

13 A Yes, sir.

14 Q And you testified at some trials of your
15 co-defendants; is that correct?

16 A Yes, sir.

17 Q Okay. And you ended up receiving a sentence of 30
18 years from Judge King.

19 A Yes, sir.

20 Q Okay. Now, as the Attorney General told the Court,
21 you had a number of charges. I want to make sure you
22 understand this, and we talked about this back in the
23 holding cell. You understand that if Judge Cothran grants
24 your PCR, you could go back and you could face all those
25 charges again, which could potentially give you a life

1 sentence. You understand that?

2 A Yes, sir.

3 Q And you told me you understood that, and it is still
4 your desire to go forward in your PCR; is that correct?

5 A Yes, sir.

6 Q Okay. Now, why did you enter the -- plead guilty?

7 A Because my lawyer, Mr. Murphy -- he was -- think that
8 was best for me to plead guilty.

9 Q Okay. Now, what -- now that you've been in jail -- in
10 prison --

11 A Yes, sir.

12 Q -- what do you think you should've done?

13 A Took it to trial.

14 Q Do you think you would've beat it at a trial?

15 A Really, yes, sir.

16 Q Okay. All right. So now what you're asking Judge
17 Cothran to do is give you a new trial so that you can have
18 a chance to face a jury of your peers; is that correct?

19 A Yes, sir.

20 Q Okay. Now, I'm going to ask you this, and I think the
21 Court's going to want to know this: You know this case
22 better than anybody, because this is what got you locked
23 up.

24 A Yes, sir.

25 Q If you would've had a trial, do you think you would've

1 -- you would have convinced a neutral and impartial jury to
2 let you go?

3 A Yes, sir.

4 Q Okay. All right. And during the course of your
5 conversations with Mr. Murphy, how did y'all come up with
6 the idea that you would end up pleading guilty? How did
7 that come about? I mean, what -- did you tell him you
8 wanted to take a deal? Take -- take us back through that,
9 because none of us was there. Take us ---

10 A Okay.

11 Q --- back through that.

12 A It's like this: He came -- him and the prosecutor was
13 talking. So he came to me when I was in the County, that
14 him and the prosecutor came to agreement on me doing 24
15 years instead of 30.

16 Q All right. Let me stop you right there. Now, if you
17 -- so one of the things you raised is you thought you were
18 going to get 24 years; is that right?

19 A Yes, sir.

20 Q Now, if you had gotten 24 years, which is what you
21 thought you should've gotten --

22 A Yes, sir.

23 Q -- would you still be going forward in your PCR?

24 A No, sir.

25 Q So if you go the 24 years, if that's what you had

1 gotten --

2 A Uh-huh.

3 Q -- you wouldn't be coming in here today asking for a
4 new trial?

5 A No, sir.

6 Q Okay. I just want to make sure we're clear on that.
7 So you thought -- that's -- is that the reason why you
8 pled, because you thought you was getting 24?

9 A Yes, sir.

10 Q Okay. Go -- go ahead and continue.

11 A Then when he came with me with the 24, I accepted the
12 24 years, because he said he was going to talk to my mother
13 about it, because she was going to the County to see me.
14 So, you know what I'm saying, she came to a decision. I
15 let her have the decisions, too, about it was okay let me
16 go ahead and do 24.

17 So she came that Saturday morning -- that Saturday
18 morning. Then me and her talked about it when she ---

19 Q Out here at the county jail.

20 A Out there, yes, sir.

21 Q Okay.

22 A Sumter County. So we was talking about it during the
23 visit. So I told her I'd go for it, I'd take 24. Then she
24 told me, "Just go ahead. It's your decision."

25 Q In exchange, you had to testify against some of your

1 co-defendants.

2 A Yes, sir.

3 Q Okay. And you testified against them in their trial.

4 A Yes, sir.

5 Q Okay. And now -- all right. So once you got into the
6 prison -- what do you know now that if you had known back
7 then would've caused you to do differently in this case?

8 A First is the investigation.

9 Q The what?

10 A The investigation of the crime scene and stuff like
11 that.

12 Q Okay.

13 A So I -- like I said, and the ballistic report of the -
14 - like, the fatal bullet that killed the victim. I know I
15 didn't pull no trigger, so I ain't -- it ain't me. And --
16 and the gun powder and all that stuff, the residue.

17 Q Okay. Were you with the guys that ended up pulling
18 the trigger that killed the victim?

19 A Yes.

20 Q Okay. Did Mr. Murphy talk to you about the "hand of
21 one is the hand of all"?

22 A No, sir.

23 Q Okay. Do you know what the "hand of one and the hand
24 of all" means?

25 A No, sir.

- 1 Q Want me to tell you what that means?
- 2 A Yes, sir.
- 3 Q Okay. If you and I go in the store and we're robbing
4 somebody, and you shoot them and kill them and I didn't
5 shoot and kill them, guess what: The hand of one is the
6 hand of all. Do you know what that means now?
- 7 A Yes, sir.
- 8 Q Okay. He didn't take the time to explain that to you?
- 9 A Yes, sir.
- 10 Q Okay. I -- and the only reason I ask you that, is
11 because normally, when you start talking about whether you
12 fired the bullets that killed ---
- 13 A Yes, sir.
- 14 Q --- the victim ---
- 15 A Yes, sir.
- 16 Q --- when they get in here in court, that -- that --
17 you know, that might not have made much difference.
- 18 A Yes, sir.
- 19 Q Okay. Now, is that something that you, you know,
20 didn't necessarily know why you were in prison?
- 21 A No, sir.
- 22 Q Okay. All right. Now, do you -- did you understand
23 what you were doing when you pled in front of Judge King --
24 -
- 25 A No, sir.

DIRECT EXAMINATION BY MR. BROOKS - CALDERONE BRACEY 12

1 Q --- when -- when he was asking you certain questions?

2 A No, sir.

3 Q Do you -- do you know what you didn't understand? I
4 mean, do you remember in the transcript what you did not
5 understand in those questions?

6 A No, sir.

7 Q Okay. All right. Is there -- as far as this -- this
8 PCR that you raised, what other issues did you want to tell
9 the judge that we haven't covered?

10 A Basically that's it.

11 Q Now you sure? Listen ---

12 A Uh-huh.

13 Q --- now, this is your day now. I want to make sure we
14 get everything out for this lady here to get it all on
15 record. We just -- have we ---

16 A That's it.

17 Q --- told him everything --

18 A Yeah.

19 Q -- about this plea and why we want this thing
20 overturned?

21 A Uh-huh.

22 Q Is that ---

23 A I really ---

24 Q --- a "yes"?

25 A --- I really want my 24.

1 Q Well, I understand that, but now you know the only
2 thing this judge can do -- we talked about that --

3 A Oh, yeah.

4 Q -- he can only press the reset button. Remember we
5 talked about ---

6 A Yeah.

7 Q --- the computer game? He can only press the reset
8 button and put you back to the beginning.

9 A Uh-huh.

10 Q Is that what you still want?

11 A Oh, yeah.

12 Q Okay. Is there anything else that we need to tell the
13 judge that we haven't told him thus far this morning?

14 A That's it.

15 Q All right. Answer any questions of the Attorney
16 General.

17 MS. HARRIGAN: May it please the Court.

18 THE COURT: Yes, ma'am.

19 CROSS-EXAMINATION BY MS. HARRIGAN:

20 Q Mr. Bracey, how many times did you meet with Mr.
21 Murphy before your guilty plea?

22 A About three.

23 Q Three times. Okay. And you were originally charged
24 under a 25-count indictment, correct?

25 A Yes, ma'am.

- 1 Q So you were originally charged with murder, one count
2 of first degree burglary, eight counts of kidnaping, seven
3 counts of assault with intent to kill, two counts of armed
4 robbery, and six counts of attempted armed robbery?
- 5 A Yes, ma'am.
- 6 Q Okay. And the State allowed you to plead guilty to
7 the lesser included offense of voluntary manslaughter,
8 correct?
- 9 A Yes, ma'am.
- 10 Q And the State dismissed all 24 other charges?
- 11 A Yes, ma'am.
- 12 Q And your testimony here today is you would rather have
13 a trial on all 25 charges?
- 14 A Yes, ma'am.
- 15 Q And are you aware that the mandatory minimum sentence
16 for murder is 30 years --
- 17 A Yes, ma'am.
- 18 Q -- and carries up to life without parole?
- 19 A Yes, ma'am.
- 20 Q You admitted to Judge King during your plea that you
21 were guilty, correct?
- 22 A Yes, ma'am.
- 23 Q So you are indeed guilty.
- 24 A Yes, ma'am.
- 25 Q And you were injured during this incident, correct?

1 A Yes, ma'am.

2 Q And you were actually found on the scene the next
3 morning, correct?

4 A Yes, ma'am.

5 Q And you told Judge King that you were satisfied with
6 Mr. Murphy's representation, right?

7 A Yes, ma'am.

8 Q But today one of your allegations is that Mr. Murphy
9 was ineffective for failing to conduct a proper
10 investigation, right?

11 A Yes, ma'am.

12 Q What other things did you want Mr. Murphy to
13 investigate?

14 A The -- the fatal bullet that actually killed the
15 victim. And I want him to investigate the ballistic
16 report, that the gun powder on my -- on the gloves or on
17 the coat, to show them that I ain't pull no trigger.

18 Q Did you have any of these things tested before you
19 came to court today?

20 A No, ma'am.

21 Q Okay. So you don't have any of that evidence here
22 today with you?

23 A No, ma'am.

24 Q So you don't really know what any of that additional
25 testing -- what result it would yield, do you?

- 1 A No, ma'am.
- 2 Q It'd just be speculative at best, right?
- 3 A Yes, ma'am.
- 4 Q This was a negotiated plea, correct?
- 5 A Yes, ma'am.
- 6 Q So you knew when you went before Judge King that you'd
7 be receiving 30 years if you pled guilty, correct?
- 8 A No, ma'am.
- 9 Q On page 10 of your guilty plea transcript, you told
10 Judge King you knew it was for 30 years, didn't you?
- 11 A No, ma'am.
- 12 Q So the record ---
- 13 A Because ---
- 14 Q --- is wrong?
- 15 A --- no. That's -- excuse me. Like I said before, my
16 lawyer and the prosecutor, they'd agreed -- agreed for me
17 to get 24 years --
- 18 Q Uh-huh.
- 19 A -- instead of 30 --
- 20 Q Uh-huh.
- 21 A -- if I had to testify against the other -- my other
22 co-defendants.
- 23 Q But ---
- 24 A So when they say it was ---
- 25 Q Okay. But during the plea, when Judge King said to

1 you that the sentence is a negotiated one between the State
2 and your lawyers for 30 years, which is on page 10 of the
3 record, lines 3 through 6, you told him you knew that; that
4 you knew it was for 30 years, didn't you?

5 A Yes, ma'am.

6 Q And you signed a sentencing sheet where it was marked
7 that it was negotiated for 30 years, didn't you?

8 A Yes, ma'am. Well ---

9 Q So you ---

10 A --- so ---

11 Q --- knew it wasn't ---

12 A --- so -- so basically he lied to me, then.

13 Q So you knew it wasn't for 24 years when you pled in
14 front of Judge King.

15 A So -- I'm just saying, though -- basically, he lied to
16 me.

17 Q Okay.

18 A Huh? He lied to me, right?

19 Q You signed the sentencing sheet.

20 A All right. So -- okay, then.

21 Q In exchange for allowing you to plead guilty to the
22 lesser included offence of voluntary manslaughter for 30
23 years and dismissing the other 24 charges against you, you
24 agreed to testify against two of your co-defendants, didn't
25 you?

- 1 A Yeah.
- 2 Q And you did testify against them --
- 3 A Yes ---
- 4 Q -- correct?
- 5 A --- I did.
- 6 Q And they were convicted at trial?
- 7 A Yes.
- 8 Q And they received a sentence of greater than 30 years,
- 9 didn't they?
- 10 A Yes.
- 11 Q But you wanted a trial on all 25 of these charges?
- 12 A No.
- 13 Q Okay. So you didn't want a trial?
- 14 A Unh-unh.
- 15 Q You wanted to plead guilty?
- 16 A Well, I was -- I was going -- I wanted the 24 instead
- 17 of that 30, so I ain't got to go back to trial and face
- 18 everything back over again.
- 19 Q But you didn't want to go to trial?
- 20 A No. I wanted that 24, so I done lay it down.
- 21 Q One of your allegations against Mr. Murphy is that he
- 22 didn't file an appeal on your behalf, correct?
- 23 A Yes.
- 24 Q Did you ask him to file an appeal?
- 25 A No.

RE-DIRECT EXAMINATION BY MR. BROOKS - CALDERONE BRACEY 19

1 MS. HARRIGAN: No further questions, Your Honor.

2 THE COURT: Okay. Anything further?

3 MR. BROOKS: Calderone, do you -- do you need a minute
4 to compose yourself?

5 THE DEFENDANT: No, I'm good.

6 RE-DIRECT EXAMINATION BY MR. BROOKS:

7 Q Okay. After hearing the Attorney General's questions
8 -- and -- and you've talked with me. You understand that
9 getting your sentence reduced from 30 to 24 is not an
10 option.

11 A Uh-huh.

12 Q The only options you have is to lay it down --

13 A Lay it down.

14 Q -- or get a new trial. Do you still want the new
15 trial?

16 A No. Lay it down.

17 Q Okay. Now, if you lay it down -- and I'll use your
18 term, "lay it down," -- that means you're withdrawing your
19 PCR. And that means you're going to do the rest of your
20 sentence, and that means it's your decision. Is that what
21 you want to do?

22 A I don't know if I ---

23 THE COURT REPORTER: I'm sorry?

24 A Know what, I ain't got nothing to lose, so let's go
25 for it.

RE-DIRECT EXAMINATION BY MR. BROOKS - CALDERONE BRACEY 20

1 Q Okay.

2 A Word.

3 Q You -- you -- you still want a new ---

4 A Yeah.

5 Q --- trial?

6 A Yeah. I want -- I ain't got ---

7 Q I ---

8 A --- nothing to lose.

9 Q --- I just wanted to -- and I'm not trying to talk you
10 out of doing it. I just wanted to make sure you -- you
11 knew exactly what you want.

12 A Yeah.

13 Q Okay?

14 A I -- I ain't got nothing to lose.

15 Q All right.

16 MR. BROOKS: No -- no other questions, Judge.

17 THE COURT: Okay. Anything further?

18 MS. HARRIGAN: Nothing additional ---

19 THE COURT: You can step ---

20 MS. HARRIGAN: --- from the State.

21 THE COURT: --- down.

22 MR. BROOKS: You can come on back down, Mr. Bracey. W

23 (The witness exits the stand.)

24 MR. BROOKS: We would call Mr. Murphy to the stand.

25 TIMOTHY MURPHY, having been first

1 duly sworn, testifies as follows:

2 THE BAILIFF: State your name and spell your first and
3 last name for the record, please.

4 THE DEFENDANT: Timothy Ward Murphy; T-i-m-o-t-h-y, M-
5 -u-r-p-h-y.

6 DIRECT EXAMINATION BY MR. BROOKS:

7 Q All right. Mr. Murphy, you represented Mr. Bracey in
8 this matter?

9 A Yes. Yes, sir.

10 Q And that's through the Public Defender Office?

11 A Yes, sir.

12 Q And he -- let's cut to the chase: He ended up
13 pleading guilty ---

14 A Yes, sir.

15 Q --- is that correct?

16 A Yes, he did.

17 Q And he testified against his co-defendants.

18 A Yes, he did.

19 Q According to the transcript, this was a negotiated 30-
20 year sentence.

21 A Yes, it was.

22 Q Okay.

23 A Voluntary manslaughter.

24 Q According to the transcript.

25 A Right.

1 Q Do you -- do you recall telling him anything about
2 getting 24 years?

3 A This is what -- we had a long discussion about it.
4 Mr. Manning, who was the assistant solicitor on this case,
5 we -- we were -- this case was getting closer and closer to
6 trial. And the -- the evidence was basically that the
7 Bracey brothers were the two shooters that went in to rob
8 this drug dealer. My client was wounded during the
9 shootout, found at the scene, made a statement to law
10 enforcement at the scene; and then, I believe,
11 subsequently, and -- which there were some legal issues
12 about. And we were preparing for trial.

13 Mr. Manning came to me and came to Mr. Howell, who
14 represented Mr. Bracey's brother, and asked would we --
15 would our clients be interested in testifying against the
16 other two co-defendants, who were not the two individuals
17 who broke into the home. The -- the -- it was the -- the
18 Solicitor's Office had more concern with one of the co-
19 defendants, who they viewed as the mastermind of this
20 situation -- apparently he had a bunch of other issues --
21 than they did with the Bracey brothers.

22 The Bracey brothers had -- didn't have much of a
23 criminal record. I'm -- I'm not sure they had any criminal
24 record.

25 The plea would be to 30 years voluntary manslaughter.

1 Okay. So what I explained to Mr. Bracey -- my client, Mr.
2 Bracey, was that there's a difference in the SCDC
3 calculation between 30 years murder and 30 years voluntary
4 manslaughter. Thirty years murder is day-for-day. So
5 assuming he got 30 years for murder -- which, quite
6 frankly, if we'd have gone to trial, he was not going to
7 get 30 years. He was going to get a lot more than 30
8 years, in my view. I mean, it was -- because he's the
9 shooter -- he's with the shooter. I mean, it's one of the
10 two Bracey brothers that shot and killed that boy. So it
11 would be 30 years day-for-day.

12 Voluntary manslaughter, however, is not day-for-day.
13 You get credits for -- it's an 85 percent -- you get credit
14 for different things. And I told him that he would not
15 serve day-for-day 30 by pleading 30 to voluntary
16 manslaughter. And we had a discussion about that.

17 I don't recall ever saying a particular time frame for
18 that or calculating it. But I did say ultimately, with the
19 time he had in and everything, that he would end up serving
20 a bit less than the 30 years. And he was agreeable to
21 that.

22 Q Is it -- is it possible that that's where the 24
23 could've come from?

24 A You -- it -- the -- the number 24 didn't come from me,
25 because, you know, that -- even if you calculate it very

1 quickly, that's probably too low. I mean, I -- I may have
2 said you'll get a couple years taken off, but I -- I -- I
3 didn't tell him 24. I mean, what I did tell him is he
4 wouldn't serve day-for-day 30 years. I do recall telling
5 him that.

6 Q But ---

7 A Also -- let me also say this: After -- I mean, Mr.
8 Bracey wrote to me and said afterwards there's a CDR code -
9 - there was a CDR code problem with the sentencing sheet.
10 And he had actually been -- SCDC calculated his time as 30
11 years murder day-for-day.

12 And on my own initiative, when I saw that, I filed a
13 motion with Judge King, and had Judge King change the
14 sentencing sheet by court order. And we sent that to SCDC
15 so that they would recalculate his time according to the 30
16 year voluntary manslaughter standard. So I did that after
17 the fact, and I -- and I know that time changed, but I
18 don't know exactly what it is.

19 MR. BROOKS: Okay. Beg the Court's indulgence, Your
20 Honor.

21 (Mr. Brooks confers with Mr. Bracey.)

22 MR. BROOKS: No other questions at this time.

23 THE COURT: Okay.

24 MS. HARRIGAN: May it please the Court.

25 THE COURT: Yes, ma'am.

1 CROSS-EXAMINATION BY MS. HARRIGAN:

2 Q Mr. Murphy, how long have you been practicing law?

3 A Over 25 years..

4 Q Approximately what percentage would you categorize as
5 criminal defense?

6 A At the present time, 75 percent.

7 Q Were you appointed or retained in this case?

8 A I was appointed.

9 Q Okay. Do you recall approximately when you were
10 appointed?

11 A I believe in the -- shortly after the -- probably in
12 the summer of 2010.

13 Q Have you had the opportunity to review your file?

14 A Yes.

15 Q Do you recall the number of times you met with Mr.
16 Bracey?

17 A I met with him over five times. Now, not all of those
18 were -- were substantive meetings. We had -- we had -- we
19 met more frequently as we got closer to the actual plea.
20 But periodically I would go in and just tell him nothing's
21 happening, and then -- but I -- I would meet with him.

22 Q And where did you meet with him?

23 A At the -- at the jail, Sumter Lee Regional Detention
24 Center.

25 Q During those meetings were you able to go over the

1 indictments and elements of the charges he was facing?

2 A We did talk about the discovery and the charge and
3 everything, yes. Uh-huh.

4 Q And he was facing 25 different --

5 A Yes.

6 Q -- counts, correct?

7 A Yes.

8 Q Did you advise him of potential sentences for each of
9 those varied crimes?

10 A Yes. I also talked about the "hand of one, hand of
11 all."

12 Q Did he ever indicate that he didn't understand that
13 concept to you?

14 A Yeah. Well, look, I had to take some time discussing
15 with Mr. Bracey the legal concepts. Mr. Bracey is a very
16 emotional person, and it took some time to -- to get
17 through things. But I'm -- I'm confident he understood he
18 was facing probably life in prison.

19 Q So you did explain to him the likely he would receive
20 if he was found guilty at trial?

21 A Yes.

22 Q Did you discuss his version of the facts with him?

23 A Yes.

24 Q Did he ever deny his involvement or guilt?

25 A Initially, yes.

1 Q But eventually he admitted his guilt to you?

2 A Yes.

3 Q And I believe you stated before, he was actually found
4 at the scene of the crime the next morning, correct?

5 A Yes, he was.

6 Q Okay. Could you briefly categorize the State's
7 evidence against Mr. Bracey in this case?

8 A The State's -- well, given the fact he was at the
9 scene, I -- I felt the State's evidence was very -- very
10 strong.

11 Now, I will say this: There was a significant issue
12 about whether or not Mr. Bracey's statements would've come
13 in. Number one, he was -- they -- they started questioning
14 him as he's laying on the ground with a bullet in him, and
15 I -- I had some -- some issues about whether that was
16 really a voluntary statement.

17 And then subsequently, the family had hired an
18 attorney for a period of time, who told officers not to
19 visit Mr. Bracey. And he was actually visited at a time
20 when -- you know, shortly after that attorney had withdrawn
21 from the case. But I had -- I had some serious questions
22 about that.

23 Statement aside, the physical evidence alone I thought
24 was very strong against Mr. Bracey and his brother.

25 Q Did you explain to Mr. Bracey that if he elected to go

1 forward with the trial, you would move to suppress these
2 statements?

3 A Yes.

4 Q But he would rather -- he indicated to you he'd rather
5 accept a plea negotiation than go forward to trial?

6 A When that plea negotiation came in, he was very, very
7 open to it, yes.

8 Q Okay.

9 A As was I. I mean, to be frank, I was stunned. I --
10 I've never been in a situation, as either a prosecutor or a
11 defense attorney, where I would offer the -- the shooter
12 the deal. I mean, that was -- I -- I thought that was
13 unusual.

14 Q And in exchange for this plea offer, allowing him to
15 plea to the lesser included of voluntary manslaughter for
16 30 years, he agreed to testify against his two co-
17 defendants ---

18 A Yes ---

19 Q --- correct?

20 A --- he did.

21 Q And did he indeed testify?

22 A Yes, he did.

23 Q Do you recall whether the co-defendants were convicted
24 or acquitted at trial?

25 A Both of them were convicted, and both of them received

1 sentences well in excess of 30 years.

2 Q So you felt the plea negotiation was in his best
3 interest.

4 A Yes, I did. Very ---

5 Q Do you ---

6 A --- strongly.

7 Q Do you think you gave him adequate advice as to
8 whether he was making an informed and intelligent decision
9 to plea?

10 A Yes, I did.

11 Q And he understood that the plea was negotiated and he
12 would be serving 30 years, correct?

13 A That's correct.

14 Q And you explained to him the difference between
15 voluntary manslaughter and murder in accordance ---

16 A Oh, yeah.

17 Q --- to SCDC calculation?

18 A I -- I explained that deal to him in detail very
19 specifically, yes.

20 Q And he understood that murder would've been a day-for-
21 day sentence?

22 A Yes. Yes.

23 Q Okay.

24 A Assuming he would've got 30 years. I mean, he -- I
25 mean, I'm -- I -- that's the minimum. I -- I don't think,

1 in my experience, a judge is going to give a guy the
2 minimum for that type of offense. I -- I just -- so, I
3 mean, that would've been the minimum --

4 Q And you ---

5 A -- day-for-day.

6 Q --- relayed this to your client?

7 A Oh, yeah. Uh-huh.

8 Q And during his testimony in his co-defendants' trial,
9 he admitted to his involvement in this incident ---

10 A Yes.

11 Q --- correct?

12 A Yes.

13 Q Ultimately, whose decision was it for Mr. Bracey to
14 plead guilty?

15 A Mr. Bracey's.

16 Q And did you advise him of his right to appeal?

17 A Yes, I did. Uh-huh.

18 Q Did he ever ask you to file --

19 A No.

20 Q -- an appeal on his behalf?

21 A No, he did not.

22 Q And Judge King also advised him of his right to appeal
23 during the plea colloquy, didn't he?

24 A Yes, he did.

25 Q Okay. Do you feel that he had any meritorious grounds

1 on which an appeal could have been granted?

2 A No.

3 Q If he had requested you file one, would you still have
4 done so?

5 A I think I have an ethical obligation to file it, but
6 it would've been a -- an Anders-type of appeal. I mean,
7 when a client asks me to appeal something, even if I think
8 it's groundless, there's case law that says the defense
9 attorney's nevertheless supposed to appeal it -- of it's
10 ineffective. So had I ever received a -- a request to
11 appeal, I would have. But I -- I never received a request,
12 and I certainly would have advise him to appeal. I mean,
13 he got a very good deal.

14 MS. HARRIGAN: No further questions ---

15 THE COURT: Okay.

16 MS. HARRIGAN: --- Your Honor.

17 THE COURT: Anything further?

18 MR. BROOKS: No other questions of Mr. Murphy, Judge.

19 THE COURT: Okay. You can step down.

20 MR. MURPHY: Thank you, Your Honor.

21 MS. HARRIGAN: And that's the State's case, Your
22 Honor.

23 MR. BROOKS: No, no, no.

24 THE COURT: He's not through

25 MR. BROOKS: It's still our case.

DIRECT EXAMINATION BY MR. BROOKS - ANGELA STUCKEY

32

1 MS. HARRIGAN: Oh, sorry. I thought we called him.
2 I'm sorry, Charles.

3 MR. BROOKS: Your Honor, we would call Angela Stuckey.

4 ANGELA R. STUCKEY, having been
5 first duly sworn, testifies as follows:

6 THE BAILIFF: State your name, please, and spell your
7 first and last name for the record.

8 THE DEFENDANT: Angela R. Stuckey. Angela, A-n-g-e-l-
9 a, R. Stuckey, S-t-u-c-k-e-y.

10 DIRECT EXAMINATION BY MR. BROOKS:

11 Q Ms. Stuckey, how are you today?

12 A Doing fine.

13 Q Good. You know this gentleman seated next to me?

14 A Yes, sir.

15 Q How do you know him?

16 A That's my son.

17 Q Okay. Were you present with any conversations between
18 him and Mr. Murphy?

19 A Not with him and Mr. Murphy. Me and Mr. Murphy met
20 one time.

21 Q Okay. Did Mr. Murphy communicate to you a deal of 24
22 years for your son?

23 A Me and Mr. Murphy and Mr. Howell --

24 Q Mr. Howell represented your other ---

25 A -- my other ---

1 Q --- son.

2 A --- son.

3 Q Okay.

4 A We all met in -- in the office, and from my
5 understanding, it was -- 24 years came out. And because I
6 don't know the legal system, but I was just going by what
7 they told me, and so that's what I -- my understanding was
8 the 24 years plea deal.

9 Q Okay.

10 A Uh-huh.

11 Q All right. And that would've been for both of your
12 sons or just for Calderone? I'm trying to --

13 A My understanding it, with Mr. Howell being there, for
14 the both.

15 Q Okay. All right.

16 A For their testimony ---

17 Q -- against the other ---

18 A --- against the other two co-defendants.

19 Q Okay.

20 MR. BROOKS: Beg the Court's indulgence.

21 (Mr. Brooks confers with Mr. Bracey.)

22 MR. BROOKS: No other questions, Judge.

23 THE COURT: Okay. Any questions ---

24 CROSS-EXAMINATION BY MS. HARRIGAN:

25 Q Ms. Stuckey, your testimony is that you weren't

1 present for any meetings between your son and his attorney

2 ---

3 A No.

4 Q --- correct?

5 A No, ma'am.

6 Q And you did attend one meeting with Mr. Murphy, but
7 your son was not present.

8 A No, ma'am, he was not present.

9 Q Okay. And were you present for his guilty plea?

10 A Yes.

11 Q And did you hear Judge King tell your son that it was
12 for a negotiated 30 years?

13 A Well, when I got in there, to my surprise, the 30
14 years came up, because I never heard of 30 years.

15 Q But you heard Judge King ---

16 A I ---

17 Q --- say that ---

18 A --- I heard ---

19 Q --- to your son?

20 A --- Judge King say -- uh-huh.

21 Q And did you hear your son acknowledge that he knew the
22 deal was for 30 years?

23 A I think that -- for his expression on -- well, his
24 face, that he was shocked that it was 30 years.

25 Q But you heard him state to the judge that he knew that

1 it was for ---

2 A Yes.

3 Q --- 30 years.

4 MS. HARRIGAN: No further questions, Your Honor.

5 THE COURT: Okay. Anything further, Mr. Brooks?

6 MR. BROOKS: No other questions, Your Honor.

7 THE COURT: Okay. You can step down. Thank you,
8 ma'am.

9 THE WITNESS: Thank you.

10 (The witness exits the witness stand.)

11 MR. BROOKS: Judge, that -- that -- that is the
12 applicant's case, Judge.

13 THE COURT: Okay. Now, the State have anything?

14 MS. HARRIGAN: The State does not have any witnesses -
15 --

16 THE COURT: Okay.

17 MS. HARRIGAN: --- or evidence to present.

18 MR. BROOKS: Just and -- and just briefly, Judge, we
19 would submit to the Court that we've put up enough evidence
20 to show that this plea was not voluntarily given. And that
21 my client, Mr. Bracey's, post-conviction relief application
22 should be granted, and he should be granted a new trial.

23 THE COURT: Thank you, sir. I'll review the file and
24 let y'all know within the next ---

25 MR. BROOKS: Thank you, Judge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: --- few days. Thank you.

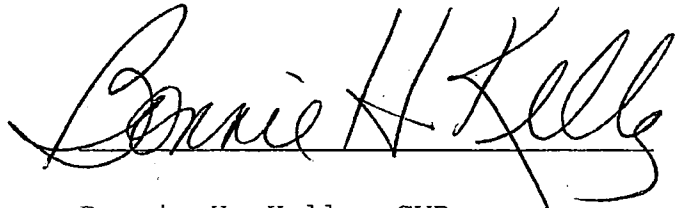
MS. HARRIGAN: Thank you, Your Honor.

-- END OF TRANSCRIPT OF RECORD --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Third Circuit for Sumter County, South Carolina, on the 10th day of December, 2012.

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



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

May 11, 2013

| | |
|------------------------------|--------------------------------|
| STATE OF SOUTH CAROLINA) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF SUMTER) | FOR THE THIRD JUDICIAL CIRCUIT |
| Calderone Bracey, #347965,) | Case No. 2012-CP-43-0669 |
| Applicant,) | |
| v.) | ORDER OF DISMISSAL |
| State of South Carolina,) | |
| Respondent.) | |

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
Sandra C. Dickerson
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed April 9, 2012. The Respondent made its Return on June 25, 2012. An evidentiary hearing into the matter was convened on December 10, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted during the May 2011 term of the Sumter County Grand Jury under a twenty five-count indictment (2011-GS-43-0881) for one count for Murder, one count for First Degree Burglary, eight counts of Kidnapping, seven counts of Assault With Intent to Kill, two counts of Armed Robbery, and six counts of Attempted Armed Robbery. Applicant was represented by Timothy W. Murphy, Esquire, for all charges. On September 19, 2011, the Applicant appeared before the Honorable Howard P. King and pled guilty to the lesser included offense of voluntary manslaughter pursuant to plea negotiations with the State. Judge

King sentenced Applicant to a negotiated sentence of thirty years imprisonment. The remaining charges were *nolle prossed* pursuant to plea negotiations. Applicant did not appeal his plea and sentence.

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

1. Counsel was ineffective failing to file a timely notice of appeal;
2. Counsel was ineffective for failing to prepare and to conduct a proper trial investigation; and
3. Counsel was ineffective for advising Applicant to plead guilty to the lesser included offense of voluntary manslaughter.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from plea counsel Timothy W. Murphy, Esquire ("Counsel") and his mother, Angela Stuckey. This Court also had before it a copy of the Applicant's guilty plea transcript, the records of the Sumter County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Applicant testified that he met with Counsel three times prior to his guilty plea. Applicant stated that he testified at his co-defendants' trial in exchange for a favorable plea deal from the state, which included allowing him to plead to the lesser included offense of voluntary manslaughter and the dismissal of his twenty-four other charges. Applicant testified that his co-defendants were convicted at trial and both received a harsher sentence than his thirty year sentence. Applicant stated that he only pled guilty based on the advice of his attorney, but that he now wishes he had "taken it to trial" and "would have beat

the charges.” Applicant testified that he told the plea court under oath that he was guilty, and Applicant acknowledged during the evidentiary hearing that he is guilty. Applicant testified that he was injured during the incident and was found on the scene the next morning suffering from a gunshot wound. Applicant stated that he did not want to proceed to trial on any of his charges.

Applicant testified that he was originally indicted with twenty-five different charges, including murder. Applicant testified that he is aware that murder carries a mandatory minimum sentence of thirty years imprisonment and carries up to life without parole and acknowledged that Counsel reviewed this with him prior to his guilty plea. Applicant also testified that Counsel advised him of the legal concept of “hand of one, hand of all” and explained to him that even if he did not fire the fatal shot that killed the victim, he could still be charged with murder under this theory. Applicant testified that he was aware that his plea negotiation was for thirty years imprisonment and dismissal of all other charges, but stated that Counsel told him he would only be required to serve twenty-four years within the Department of Corrections. Applicant testified that he told the plea court he understood the negotiation between himself and the State was for a negotiated thirty year sentence for voluntary manslaughter.

Applicant testified that he told the plea court while under oath that he was satisfied with Counsel’s representation, but that he now feels Counsel failed to conduct a proper investigation. Specifically, Applicant stated that he wanted Counsel to: investigate which bullet fatally injured the victim, conduct and review a ballistic report, and investigate gun powder on various items. Applicant did not present any such reports, evidence, or expert testimony to this Court.

Applicant testified that he wished to appeal his guilty plea, which was entered pursuant to negotiations with the State. However, Applicant acknowledged that he never requested Counsel file an appeal on his behalf.

Following Applicant's testimony, Counsel testified that he has been practicing law for approximately twenty-five years and roughly seventy-five percent of his practice is comprised of criminal defense work. He testified that he was appointed to represent Applicant in the summer of 2010 and that he met with Applicant "frequently" prior to his guilty plea. Counsel testified that he reviewed the indictments and elements of the crimes for each of the twenty-five charges with Applicant.

Counsel testified that he received discovery in this case and reviewed all the materials with Applicant. Counsel testified that the evidence showed that Applicant and his brother were the likely shooters who fatally injured the victim during an armed robbery; Counsel elaborated that there were two other co-defendants who did not enter the incident location but whom law enforcement believed to be masterminds behind the plan. Counsel testified that he thoroughly explained the concept of "hand of one, hand of all" to Applicant. Counsel testified that the State wanted Applicant to testify against these two co-defendants and offered Applicant an extremely favorable plea deal in exchange for his testimony. Counsel characterized the State's plea offer as so favorable that it "stunned" him. Counsel testified that he reviewed the State's plea offer with Applicant and advised Applicant that he felt the plea offer was in Applicant's best interest. Counsel testified that he explained to Applicant that the plea offer was for a thirty year sentence to the lesser included offense of voluntary manslaughter, which would allow Applicant to serve roughly eighty-five percent of his sentence before he would be eligible for community supervision, as opposed to murder, which requires day-to-day service of a full thirty years. Counsel testified that Applicant indicated to him that he understood these conversations with him. Counsel testified that he never told Applicant or any member of his family that he would only be required to serve twenty-four years of his sentence.

Counsel testified that Applicant never denied his involvement in this matter and indicated that he wished to secure a favorable plea deal. Counsel testified that after a thorough review of the discovery, his primary focus was moving to suppress incriminating statements that Applicant made to law enforcement after the incident. Counsel elaborated that he believed these statements may not have been voluntary, and that if Applicant proceeded to trial, he would have moved to suppress these statements.

Counsel testified that he advised Applicant of his right to appeal prior to his guilty plea. Counsel also testified that the plea court advised Applicant of his right to appeal during his plea colloquy. Counsel testified that Applicant never contacted him following his plea regarding an appeal. However, Counsel testified that Applicant did contact him regarding an error on his sentencing sheet, in which the CDR code for murder was listed incorrectly in place of the CRD code for voluntary manslaughter. Counsel testified that Applicant wanted this to be corrected, as it was affecting his projected release date from the Department of Corrections. Counsel testified that he contacted the necessary parties and had this corrected for Applicant. Counsel testified that he does not believe that Applicant had a meritorious issue on which to appeal his negotiated guilty plea. Counsel stated that it is his general practice to file an appeal whenever a client requests an appeal, as he feels it is his ethical obligation.

Following Counsel's testimony, Applicant's mother, Angela Stuckey, testified on behalf of her son. Ms. Stuckey testified that she was not present for any meetings between Counsel and Applicant, but she did meet once with Counsel by herself. She testified that she thought her son had a plea deal that would require him to spend twenty-four years in prison, but acknowledged that she heard Judge King state numerous times during the plea that the negotiation was for a thirty year sentence.

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).

Ineffective Assistance of Counsel

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. 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).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel was ineffective for failing to file a direct appeal

Applicant alleges that he is entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S.Ct. 1029 (2000). "Even in cases when the defendant pleads guilty, the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights." Id. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). "One

extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Applicant testified that he never contacted Counsel following his guilty plea to inquire about or request an appeal. Counsel testified that he never received any requests from Applicant to file an appeal on his behalf and had no reason to believe that Applicant wished to file an appeal. Counsel testified that he reviewed Applicant's right to appeal with him prior to his guilty plea and that the plea court also reviewed these rights during the guilty plea. Additionally, Counsel testified that he did not believe that Applicant had a meritorious ground on which an appeal could be sought. This Court finds that Counsel's performance was reasonable and effective. Therefore, this Court finds that this allegation must be denied and dismissed.

Counsel was ineffective for failing to prepare and conduct a proper investigation

Applicant alleges that Counsel was ineffective for failing to prepare and conduct a proper investigation. At the evidentiary hearing, Applicant testified that Counsel should have investigated the source of the fatal gunshot, prepared a ballistics report, and investigated gun powder on various items. Applicant presented no reports, offered no expert testimony, and otherwise provided no evidence to support this allegation. Applicant was unable to even speculate as to what benefit could have been derived from any such investigation. "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, 496 S.E.2d 415 (1998). As Applicant was unable to provide any evidence to support this allegation, this Court finds that this allegation must be denied and dismissed.

Counsel was ineffective for advising Applicant to plead guilty to the charge of manslaughter

Applicant alleges that Counsel was ineffective for advising him to plead guilty to the lesser included offense of voluntary manslaughter where there was no physical evidence that his weapon fired the fatal shot. Applicant testified that Counsel explained the legal concept of "hand of one, hand of all" to him and clarified to him that even if he did not fire the fatal shot that killed the victim, he could still be charged with murder under this theory. Applicant further testified that he told the plea court under oath that he was guilty, and Applicant acknowledged during the evidentiary hearing that he is guilty. Applicant also stated that he did not want to proceed to trial on any of the twenty-five different charges. Counsel testified that Applicant never denied his involvement or guilt and Applicant informed him that he wanted Counsel to pursue a plea offer to resolve his charges. Counsel testified that Applicant was offered a plea deal so favorable that he was "stunned" the State was making such an offer. Counsel testified that he advised Applicant it was in his best interest to accept the negotiated plea offer after reviewing the State's evidence and discussing the case with Applicant.

This Court finds that Counsel's performance was reasonable and effective. Furthermore, Applicant stated that he was indeed guilty and did not wish to proceed to trial on any of his twenty-five different charges. Applicant has failed to meet his burden of establishing prejudice from Counsel's alleged deficiency. Therefore, this Court finds this allegation must be denied and dismissed.

CONCLUSION

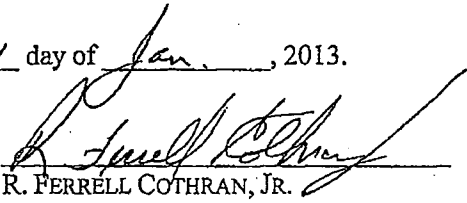
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 24 day of Jan., 2013.


R. FERRELL COTHRAN, JR.
Presiding Judge
Third Judicial Circuit

, South Carolina.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

Murder
 Burglary
 Kidnapping
 Assault & Battery With Intent to Kill
 Assault With Intent to Kill
 Armed Robbery
 Attempted Armed Robbery

DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

At a Court of General Sessions, convened on May 19, 2011 the Grand Jurors of

SUMTER County present upon their oath:

COUNT ONE - MURDER

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County, on or about December 14, 2009, willfully, feloniously, and intentionally kill the victim, Kemper B. Holiday, with malice aforethought, either express or implied, by means of shooting the victim with a gun in the right side of the chest area, and the victim did die as a proximate result thereof on or about December 14, 2009, in Sumter County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO - BURGLARY, 1ST DEGREE

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin, Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009 enter the dwelling of Lennie Belton located at 7530 Odell Lane without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant entered or remained in said dwelling in the nighttime and was armed with a deadly weapon, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

COUNT THREE - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Hugh Phillips, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT FOUR - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Ellen Phillips, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR
CALDERON MONDRELL BRACEY, CARLTON LEE BRACEY, VERNON SENTELL
GOODWIN, AND CAMEREN LARODERICK KELLEY WITH THE AFORESAID
NAMES SHOWN THEREON:

COUNT FIVE - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Lance Orlando McCray, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT SIX - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Darren L. Graham, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT SEVEN - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Kemper B. Holiday, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT EIGHT - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Lennie Belton, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT NINE - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Maurice Ransom, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT TEN - KIDNAPPING

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Tywan Ransom, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR
CALDERON MONDRELL BRACEY, CARLTON LEE BRACEY, VERNON SENTELL
GOODWIN, AND CAMEREN LARODERICK KELLEY WITH THE AFORESAID
NAMES SHOWN THEREON:

COUNT ELEVEN – ASSAULT & BATTERY WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, commit an unlawful act of violent injury to the person of another, to wit: Hugh Phillips, with malice aforethought, either express or implied, by shooting Hugh Phillips in the back, thus committing the crime of Assault and Battery with Intent to Kill, in violation of Section 16-03-0620, S. C. Code of Laws, 1976, as amended.

COUNT TWELVE – ASSAULT & BATTERY WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, commit an unlawful act of violent injury to the person of another, to wit: Lance Orlando McCray, with malice aforethought, either express or implied, by shooting Lance Orlando McCray in the left leg, thus committing the crime of Assault and Battery with Intent to Kill, in violation of Section 16-03-0620, S. C. Code of Laws, 1976, as amended.

COUNT THIRTEEN – ASSAULT WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully commit an unlawful act of a violent nature to Tywan Ransom, with malicious intent accompanied by a present ability to complete the act, to wit: by shooting at him with a gun, in violation of the Common Law Crime of Assault with Intent to Kill.

COUNT FOURTEEN – ASSAULT WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully commit an unlawful act of a violent nature to Maurice Ransom, with malicious intent accompanied by a present ability to complete the act, to wit: by shooting at him with a gun, in violation of the Common Law Crime of Assault with Intent to Kill.

COUNT FIFTEEN – ASSAULT WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully commit an unlawful act of a violent nature to Lennie Belton, with malicious intent accompanied by a present ability to complete the act, to wit: by shooting at him with a gun, in violation of the Common Law Crime of Assault with Intent to Kill.

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR
 CALDERON MONDRELL BRACEY, CARLTON LEE BRACEY, VERNON SENTELL
 GOODWIN, AND CAMEREN LARODERICK KELLEY WITH THE AFORESAID
 NAMES SHOWN THEREON:

COUNT SIXTEEN – ASSAULT WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully commit an unlawful act of a violent nature to Darren Graham, with malicious intent accompanied by a present ability to complete the act, to wit: by shooting at him with a gun, in violation of the Common Law Crime of Assault with Intent to Kill.

COUNT SEVENTEEN – ASSAULT WITH INTENT TO KILL

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley did in Sumter County on or about December 14, 2009, unlawfully commit an unlawful act of a violent nature to Ellen Phillips, with malicious intent accompanied by a present ability to complete the act, to wit: by shooting at her with a gun, in violation of the Common Law Crime of Assault with Intent to Kill.

COUNT EIGHTEEN – ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: handgun, did feloniously take from victim, Tywan Ransom in the presence of Tywan Ransom, by means of force or intimidation goods or monies of the said victim, such goods or monies being described: approximately \$175.

COUNT NINETEEN – ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: handgun, did feloniously take from victim, Darren Graham in the presence of Darren Graham, by means of force or intimidation goods or monies of the said victim, such goods or monies being described: approximately \$800.

COUNT TWENTY – ATTEMPTED ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, while armed with a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did attempt to take and carry away the personal property from or in the immediate presence of Maurice Ransom, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR
CALDERON MONDRELL BRACEY, CARLTON LEE BRACEY, VERNON SENTELL
GOODWIN, AND CAMEREN LARODERICK KELLEY WITH THE AFORESAID
NAMES SHOWN THEREON:

COUNT TWENTY ONE- ATTEMPTED ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, while armed with a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did attempt to take and carry away the personal property from or in the immediate presence of Lennie Belton, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT TWENTY TWO - ATTEMPTED ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, while armed with a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did attempt to take and carry away the personal property from or in the immediate presence of Kemper Holiday, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT TWENTY THREE - ATTEMPTED ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, while armed with a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did attempt to take and carry away the personal property from or in the immediate presence of Lance McCray, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT TWENTY FOUR- ATTEMPTED ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, while armed with a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did attempt to take and carry away the personal property from or in the immediate presence of Hugh Phillips, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, -1976, as amended.

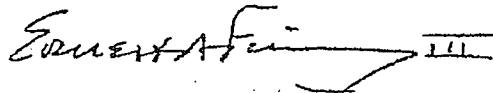
ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR CALDERON MONDRELL BRACEY, CARLTON LEE BRACEY, VERNON SENTELL GOODWIN, AND CAMEREN LARODERICK KELLEY WITH THE AFORESAID NAMES SHOWN THEREON:

COUNT TWENTY FIVE - ATTEMPTED ARMED ROBBERY

That Calderone Mondrell Bracey, Carlton Lee Bracey, Vernon Sentell Goodwin and Cameren Laroderick Kelley, did in Sumter County on or about December 14, 2009, while armed with a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did attempt to take and carry away the personal property from or in the immediate presence of Ellen Phillips, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

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

Solicitor

A handwritten signature in black ink, appearing to read "Ernest A. Finley III". The signature is written in a cursive style with a long horizontal stroke extending to the right.