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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge

BOUVIA A. SALES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000495

APPENDIX

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State of South Carolina) In the Court of General Sessions
) Fifth Judicial Circuit
 County Of Richland) 2017-GS-40-5201
) 2017-GS-40-5202
) 2017-GS-40-5203

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Bouvia A. Sales,)
)
 Defendant.)
)
 _____)

January 29, 2020
 Columbia, South Carolina

B E F O R E:

The Honorable DeAndrea G. Benjamin, Judge

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

Carter R. Potts, Esquire, Assistant Solicitor
 Attorney for the State

Alicia D. Goode, Esquire
 Attorney for the Defendant

Elizabeth B. Harris, CVR-M-CM
 Circuit Court Reporter

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I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
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No exhibits introduced.

1 (PRIOR TO HEARING, THE DEFENDANT IS DULY SWORN.)

2 THE COURT: All right. Yes, sir.

3 MR. POTTS: Thank you, Your Honor. Standing before
4 you is Bouvia Sales with his attorney, Alicia Goode of the
5 public defender's office. He's here today to plead guilty
6 to a negotiated -- plead guilty under *Alford*, I apologize,
7 to a -- on a negotiated plea, Your Honor. He's pleading
8 guilty to one count of voluntary manslaughter and one count
9 of burglary first degree for a negotiated twenty-five
10 years. Additionally, Your Honor, he's pleading to
11 possession of a weapon during the commission of a violent
12 crime for a negotiated five years consecutive to that
13 twenty-five year sentence.

14 THE COURT: All right, and is that correct, Ms. Goode?

15 MS. GOODE: Yes, Judge.

16 THE COURT: All right, and you represent Mr. Bouvia
17 Anthony Sales?

18 MS. GOODE: I do, Your Honor.

19 THE COURT: All right, and have you explained to your
20 client the charges contained in the indictment, the
21 possible punishment, and his constitutional rights?

22 MS. GOODE: I have.

23 THE COURT: And how does he wish to plead?

24 MS. GOODE: He wishes to plead guilty under *North*
25 *Carolina vs. Alford*.

1 THE COURT: And after your examination of the facts
2 and circumstances of the case, do you find that there is a
3 probability that if he were to go to trial, that he would
4 be found guilty beyond a reasonable doubt, found beyond a
5 reasonable doubt to be guilty on these charges and for
6 purposes of the negotiations, is that why he is pleading
7 under *North Carolina vs. Alford*?

8 MS. GOODE: Yes, Your Honor.

9 THE COURT: All right, and do you agree with his
10 decision to plead guilty under *North Carolina vs. Alford*?

11 MS. GOODE: I do.

12 THE COURT: All right. Thank you.

13 EXAMINATION BY THE COURT:

14 Q. And you are Bouvia Sales?

15 A. Yes, Bouvia.

16 Q. Bouvia?

17 A. Yes.

18 Q. All right, and you're pleading guilty under *North*
19 *Carolina vs. Alford* to voluntary manslaughter, burglary
20 first degree, and possession of a weapon during the
21 commission of a violent crime. Is that correct?

22 A. That's correct.

23 Q. And how old are you, sir?

24 A. Twenty-five.

25 Q. And how far did you go in school?

1 A. I made it to the eleventh grade, then got my GED.

2 Q. And are you married?

3 A. No, I'm not.

4 Q. Do you have children?

5 A. Yes, I do.

6 Q. And their ages?

7 A. I have a daughter that's five.

8 Q. And, sir, are you currently on probation or parole?

9 A. No, I am not.

10 Q. Within the last twenty-four hours, have you taken any
11 medication, drugs, or alcohol?

12 A. No.

13 Q. All right, and is there anything that affects your
14 ability to know and understand what you're doing here
15 today?

16 A. Not at all.

17 Q. All right. Listen closely to the solicitor as he
18 states the facts.

19 MR. POTTS: Thank you, Your Honor. This incident took
20 place on April 8th of 2017. Your Honor, the victim, Marlon
21 Button -- Butler, Sr., and his son, Marlon Button [sic]
22 Jr., came home around 1:45 AM to their house on Candwenn
23 Court here in Richland County. When they got there, they
24 saw the front door of the house had been forced open.
25 There was a light that was off when they left that was now

1 on. They decided to go inside. They immediately noticed
2 the house had been burglarized. One item missing was a 50
3 inch Vizio TV.

4 As they headed upstairs, Your Honor, the son lagged
5 behind the father, and Marlon, Jr., saw his father enter a
6 bedroom on the right-hand side. He then heard his father
7 say whoa, whoa, and then gunshots. Marlon, Jr., hid behind
8 the wall and decided to make a run for it. As he ran out
9 of the home, he heard and felt shots being fired after him.
10 He then went and called 911 and met law enforcement at the
11 residence. Marlon, Jr., never saw the person who fired
12 that gun.

13 Once law enforcement entered, entered the home, they
14 found mattresses overturned, cushions pulled off couches;
15 multiple doors had been forced open, and the glass door at
16 the front of the house that was intact when victims arrived
17 had now been lying shattered; shell casings all over the
18 hallway upstairs; and the victim lying faced down on the
19 floor of the bedroom. Your Honor, they retrieved the
20 serial number from the TV that was stolen and contacted
21 Vizio to have it flagged.

22 The next day, Marlon, Jr., called back law enforcement
23 and said there were other items in the home that could --
24 that should not have been there, most prominently a can of
25 Pepsi in the incident location, in that bedroom. Crime

1 scene photos the night before revealed the Pepsi can was
2 there when law enforcement initially investigated.

3 After processing that can, Your Honor, the DNA
4 eventually came back to this defendant, Bouvia Sales, with
5 -- around the rim of the cup and on the inside. Your
6 Honor, without that, this case would have been a whodunit.
7 Investigator Duckett, Montgomery of the CPD, Your Honor,
8 did an excellent job, and I'm going to go into a little bit
9 about their investigation, more about the evidence in the
10 case.

11 In May, Your Honor, about a month later, this
12 defendant was arrested for outstanding warrants in Cayce,
13 and Investigators Duckett and Montgomery went to go talk to
14 him. He invoked his right to remain silent and they -- but
15 they told him anyway he was a suspect in a homicide, and at
16 that point he requested an attorney.

17 They then pulled his jail phone calls from that night,
18 and he had placed a phone call to a woman named Kenyatta
19 Mitchell. He told her that CPD investigators came to speak
20 with him about a homicide, but he didn't tell them
21 anything. Kenyatta immediately responded with so burn
22 everything from that night, and Bouvia said that he didn't
23 want to talk about it.

24 Search warrants were served for various Facebook pages
25 for people connected with Mr. Sales, including Lillian

1 Corley, the mother of his child. She had a conversation
2 with this defendant on April 12th, four days after the
3 murder, and they had this following conversation. This
4 defendant: You ruined me. She responded: No. You ruined
5 you. He said: No fucking with you. Dead. I killed a man.
6 Since you were so cold and heartless to me, I have no
7 remorse.

8 Later on, Your Honor, in June Vizio responded the TV
9 that they had flagged that had been reported missing in the
10 burglary had reappeared, had reconnected to the internet.
11 Investigators did a search warrant on the home the TV went
12 to; it belonged to a woman named Sharia [ph.] Green. They
13 executed the search warrant on her home, Your Honor, and
14 made contact with her. She said she had bought the TV from
15 a named -- man named Alexander Robinson. Mr. Robinson was
16 at the same address as the phone number that Mr. Sales had
17 called for Kenyatta Mitchell.

18 After talking with him, Your Honor, he told that --
19 investigators that this defendant was living with him at
20 the time of the incident, and that this defendant confessed
21 to him about the murder, and confirmed the timeline about
22 what happened. He said that he got the TV from him and
23 that's why he sold it to Ms. Green. He also said that a
24 man named Derrick Nance had also been involved in the
25 burglaries.

1 A search warrant was served at the jail, and
2 investigators recovered Derrick Nance's cell phone. He had
3 had his location services turned on, so his phone was
4 tracking where he was at all time. They were able to see
5 that he was in the area of the incident between 12:30 and
6 1:42 AM, and from 1:42 to 2 AM he was driving to the
7 Robinson home. And as I said, this incident occurred about
8 1:45 in the morning.

9 Investigators interviewed Nance at this time after --
10 the second time. The first time, he denied any
11 involvement. In the second interview, Your Honor, he gave
12 himself -- he gave a statement implicating himself in the
13 burglary and confirmed the timeline of the phone. That he
14 had left Mr. Sales in the home by himself. That he had
15 gone got back to the Robinson home without him. He then
16 came to try and pick up Mr. Sales after he dropped off the
17 items, and he saw the blue light at the house. At that
18 point, he kind of abandoned ship.

19 Your Honor, those are the facts of the case, Your
20 Honor. Once again, I just want to commend the efforts of
21 CPD, particularly Investigator Duckett, Investigator McCoy,
22 Investigator Montgomery; they did marvelous work. Each of
23 them made a serious piece of what made this case possible.
24 This case would have been a true whodunit without their
25 continued efforts over months to get this case solved.

1 And, Your Honor, they are here today, along with Sergeant
2 Moore, in support of this case, Your Honor, and I just
3 wanted to thank them for their efforts and let them know
4 that we are here today because of them.

5 Your Honor, the victim -- I have a letter from the
6 victim's family I'd like to pass up at the appropriate
7 time, and the victim's representative, Bobby Rogers, is
8 also here, and he would like to address you at the
9 appropriate time.

10 THE COURT: All right. Let me -- I'm going to finish
11 taking the plea and I'll get that.

12 MR. POTTS: Thank you, Your Honor.

13 BY THE COURT:

14 Q. All right, sir, you have heard the solicitor state the
15 facts and the allegations and the evidence that they intend
16 on presenting at trial. And this case is scheduled next
17 week, I believe, for trial, the evidence that they intend
18 on presenting at trial next week. Based on the information
19 that you just heard stated by the solicitor, do you find
20 that there is a -- there is sufficient probability that if
21 this matter were to go to trial, that you would be found
22 guilty beyond a reasonable doubt?

23 A. I believe so.

24 Q. All right, and is that -- and for purposes of the
25 negotiation, is that your reason for the plea under --

B. SALES - EXAMINATION BY THE COURT

11

1 pleading guilty under *North Carolina vs. Alford*?

2 A. Yes, Your Honor.

3 Q. All right, and, sir, you understand that the voluntary
4 manslaughter carries up to thirty years in jail. You
5 understand that?

6 A. I do.

7 Q. All right. Knowing that, you still wish to plead
8 guilty?

9 A. Yes, Your Honor.

10 Q. And the burglary first degree carries up to ---

11 THE COURT: It's thirty also, right?

12 MR. POTTS: It's life imprisonment, Your Honor.

13 BY THE COURT:

14 Q. It carries up to life imprisonment. You understand
15 that?

16 A. I do.

17 Q. All right. Knowing that, you still wish to plead?

18 THE COURT: And then the weapon, it carries five?

19 MR. POTTS: Five years, Your Honor.

20 THE COURT: All right.

21 BY THE COURT:

22 Q. And the possession of a weapon during the commission
23 of a violent crime carries up to five years. You
24 understand, sir, that I could run these all consecutive and
25 you would be looking at life in prison. You understand

1 that? One of them carries thirty years, one carries life,
2 one carries five years consecutive to the, to the other
3 sentences. You understand that?

4 A. Yes, I do.

5 Q. Knowing that, you still wish to enter this plea today?

6 A. I do.

7 Q. All right. The voluntary manslaughter and the
8 burglary first degree are classified as violent, most
9 serious offenses. If you were to get -- and under our
10 two-strike law, most serious means if you were to get
11 another conviction that was classified as most serious, the
12 state could move before the court for life without parole.
13 You understand that?

14 A. Yes, Your Honor.

15 Q. All right, and you understand that these are
16 classified as violent offenses, meaning you'll have to
17 serve eighty-five percent of any sentence that you get here
18 today. You understand that?

19 A. Yes, Your Honor.

20 Q. Also, you'll be classified for purposes of the
21 Department of Corrections as violent. You understand that?

22 A. Yes, Your Honor.

23 Q. All right, and you understand that the burglary
24 offense has what we call an enhanced penalty provision. If
25 you were to get another burglary charge in the future, the

B. SALES - EXAMINATION BY THE COURT

13

1 penalties and fines could increase. You understand that?

2 A. Yes, Your Honor.

3 Q. Knowing that, you still wish to plead guilty?

4 A. Yes, Your Honor.

5 Q. All right. You understand when you plead guilty, you
6 waive your right to a jury trial, and that's a, that's a
7 guilty under *North Carolina vs. Alford*. You waive your
8 right your right to a jury trial. At a jury trial, the
9 state would have to prove you guilty beyond a reasonable
10 doubt. You and your attorney would have to -- have the
11 opportunity to cross-examine any witnesses that they would
12 present. You would not have to testify, sir. The burden
13 is upon the state to prove you guilty beyond a reasonable
14 doubt. If there were any incriminating statements against
15 you, sir, you'd have the opportunity to challenge the
16 admission of those statements against you. You understand
17 that, sir?

18 A. Yes, Your Honor.

19 Q. All right. You understand, sir, once again that you
20 have the right to remain silent. Under our constitution,
21 you would not have to present any evidence unless you chose
22 to present evidence. If you chose not to testify, I would
23 instruct the jurors that they could not hold that against
24 you. You understand that, sir?

25 A. Yes, Your Honor.

1 Q. All right, and, sir, if there were -- was evidence
2 that you had any defenses that you wish to advance, you and
3 your attorney would have the opportunity if you chose to,
4 only if you chose to, to present those defenses. You
5 understand that?

6 A. Yes, Your Honor.

7 Q. All right. Knowing all of that, sir, do you wish to
8 give up those important constitutional rights and waive
9 your right to a jury trial?

10 A. Yes, Your Honor.

11 Q. And is that what you wish to do?

12 A. Yes, Your Honor.

13 Q. All right, and you've been represented by Ms. Alicia
14 Goode. Are you satisfied with her representation?

15 A. Yes, Your Honor.

16 Q. And have you met with her for as long and as necessary
17 for her to properly represent you?

18 A. I do believe so, Your Honor.

19 Q. All right, and you all, I'm assuming, were preparing
20 for trial in this matter?

21 A. Yes.

22 Q. And she's gone over -- she went over your defenses and
23 the evidence against you. Is that correct?

24 A. Yes, Your Honor.

25 Q. All right, and Ms. -- has she answered all of your

B. SALES - EXAMINATION BY THE COURT

15

1 questions?

2 A. Yes, Your Honor.

3 Q. And has she done everything for you that you feel she
4 could have done or should have done?

5 A. Yes, Your Honor.

6 Q. And are you completely satisfied with her services?

7 A. I am.

8 Q. All right. Now, is anyone forcing you to plead guilty
9 today?

10 A. No.

11 Q. And are you pleading guilty of your own free will?

12 A. I am.

13 Q. And has anyone offered you anything in exchange for
14 your guilty plea today?

15 A. No, ma'am.

16 Q. Other than the state's offering. I'll have him recite
17 that for the record again.

18 MR. POTTS: Your Honor, the state has offered a
19 negotiated sentence of twenty-five years on the burglary
20 and the voluntary manslaughter, Your Honor, followed by a
21 consecutive five on the possession of a pistol during
22 commission -- possession of a weapon during the commission
23 of a violent crime.

24 THE COURT: And is that correct, Ms. Goode?

25 MS. GOODE: Yes, Judge.

1 BY THE COURT:

2 Q. All right, and, sir, Mr. Sales, is that your
3 understanding of the negotiations?

4 A. Yes, it is.

5 Q. And are you in agreement with that?

6 A. Yes, Your Honor.

7 Q. And that's what you're pleading guilty under *Alford* to
8 today? Is that correct?

9 A. Yes, Your Honor.

10 Q. All right, and other than the offer from the state,
11 has anyone offered you anything in exchange for your plea
12 today?

13 A. No, Your Honor.

14 Q. Has anyone threatened you into pleading today?

15 A. No, Your Honor.

16 Q. Has anyone coerced you into pleading today?

17 A. No, Your Honor.

18 Q. And are you pleading freely and voluntarily?

19 A. Yes, Your Honor.

20 Q. All right, and have you understood my questions?

21 A. Yes.

22 Q. Have you answered them truthfully?

23 A. Yes, Your Honor.

24 Q. And the answers you've given me, I'm sure your
25 attorney went over everything that I was going to ask

1 today, but the answers that you have given me are your
2 answers. Is that correct?

3 A. Yes, Your Honor.

4 Q. All right, and you wish for me to accept your plea of
5 guilty under *North Carolina vs. Alford* to these three
6 indictments. Is that correct?

7 A. Yes, Your Honor.

8 Q. All right, sir, and you understand you have the right
9 to appeal the guilty plea and sentence of this court within
10 ten days of today's date. If you cannot afford an attorney
11 for that appeal, one will be appointed for you. You
12 understand that, sir?

13 A. Yes, Your Honor.

14 Q. All right. Knowing everything that we've gone over
15 today, you still wish for me to accept your plea to these
16 charges?

17 A. Yes, Your Honor.

18 Q. And is there any -- do you have any questions with me
19 regarding anything we went over today?

20 A. No, Your Honor.

21 THE COURT: All right, I find there is a substantial
22 factual basis for this plea. I also find that the
23 defendant's decision to plead guilty under *North Carolina*
24 *vs. Alford* is freely, voluntarily, and knowingly given,
25 that he is represented by counsel to whom he has indicated

1 to me he is completely satisfied with. I will accept your
2 plea.

3 Yes, sir. Priors.

4 MR. POTTS: Your Honor, his prior record is a 2013
5 shoplifting and a 2014 possession of stolen motor vehicle
6 and auto breaking.

7 THE COURT: All right, and I'll be glad to hear from
8 the victim representative, and I believe you said you also
9 have something to pass up, and I would like to hear from
10 law enforcement if they wish to speak also.

11 MR. POTTS: Thank you, Your Honor. Mr. Bobby Rogers,
12 representative of the family, Your Honor.

13 THE COURT: Yes, sir.

14 MR. ROGERS: I'm Bobby Rogers. I'm Marlon's uncle.

15 THE COURT: Yes, sir.

16 MR. ROGERS: And I just want to thank law enforcement,
17 the solicitor's office, and the court for giving my whole
18 family a chance to start healing now. And we just want to
19 go forward with our lives and hope everyone else will do
20 the same. Just want to thank everyone who was involved
21 with helping us start healing from this day forward. Thank
22 you.

23 THE COURT: Thank you, sir, for being here, and I am
24 sorry for your loss that you even have to be here today.
25 All right. Thank you.

1 MR. ROGERS: Thank you, Your Honor.

2 MR. POTTS: Your Honor, may I approach with a copy of
3 the letter from his family?

4 THE COURT: You can approach.

5 MR. POTTS: I've already shown a copy of the letter to
6 Ms. Goode.

7 (A PAUSE.)

8 THE COURT: Thank you.

9 MR. POTTS: And, Your Honor, I just want to confirm
10 that -- what you said, Your Honor, that up until this
11 morning, the state was preparing for trial next week, and
12 we were ready, go. Your Honor, law enforcement, while they
13 are here, they do not wish to address the court at this
14 time.

15 THE COURT: Thank you.

16 All right, yes, ma'am, Ms. Goode.

17 MS. GOODE: Judge, you've accepted the plea. I've
18 talked Mr. Potts's ear off over the past several years at
19 this point, so I won't do that to you.

20 Mr. Sales Bouvia is twenty-five years old. He has
21 been incarcerated on these charges for 964 days. We, we
22 appreciate the cooperation of the state and hopefully this,
23 this resolution can help the family, and everybody can kind
24 of start moving on and healing from all of this.

25 THE COURT: Thank you.

1 Anything else from the state?

2 MR. POTTS: No, Your Honor.

3 MS. GOODE: Your Honor, I, I would make a request. I
4 don't know if you'd be able to help us out with this. He
5 -- with the plea happening today and potential pick up
6 tomorrow from DOC, he has a visit with his sister scheduled
7 for Sunday, and I would just ask that maybe we -- if we can
8 keep him at the detention center through the weekend to
9 allow -- that he have a visit with his sister.

10 MR. POTTS: And, Your Honor, the defense mentioned
11 that to me, and we're, we're fine with that, Your Honor.

12 MS. GOODE: If there was a way we can do that.

13 THE COURT: I don't know. I've never done that
14 before.

15 MS. GOODE: Could do an order?

16 (A PAUSE.)

17 THE COURT: All right, yeah, I've, I've not done that
18 before, to hold them.

19 MS. GOODE: It may just be a matter of not getting the
20 paperwork to the jail until...

21 MR. POTTS: Monday morning.

22 MS. GOODE: Yeah.

23 SENTENCE OF THE COURT:

24 THE COURT: All right, on indictments 2017-GS-40-5201
25 and 5202, sir, you will be sentenced to the state

1 Department of Corrections for twenty-five years. These
2 sentences will be run concurrent to each other, and you'll
3 be given credit for 964 days. And then, and then on
4 2017-GS-40-5203, you'll be sentenced to the state
5 Department of Corrections for five years. This sentence
6 will run consecutive to indictments 2017-GS-40-5201 and
7 5202. And because I'm giving him the credit on the other
8 ones, there will be no credit on this one since it's
9 running consecutive. All right.

10 MR. POTTS: Thank you, Your Honor.

11 THE COURT: All right. Thank you.

12 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM 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 CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 29TH DAY OF JANUARY, 2020.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

FEBRUARY 25TH, 2021

STATE OF SOUTH CAROLINA)
)
County of Richland)
)
Boovia Sales)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

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

2020 DEC 10 AM 8:30

RICHLAND COUNTY
FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee County Correction Inst.

2. Name and location of Court which imposed sentence General Session
Richland, Columbia S.C.

3. Name(s) of co-defendant(s) (if any) NA

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Burgary 1 17GS-400-5202 ~ 17GS4005203
 - (b) Manslaughter 17-GS4005201

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) January 29, 2020 - 25 years

(b) January 29, 2020 - 5 years

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No

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

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

i. N/A

ii. _____

iii. _____

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

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

i. _____

ii. N/A

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) N/A

(c) _____

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

(a) Ineffective assistance of Counsel

(b) Due Pro. Violation

(c) _____

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

(a) Counsel failed to investigate

(b) Counsel failed to motion for speedy trial

(c) Counsel failed to motion for bond hearing

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

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

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

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. N/A

iv. _____

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

i. _____

ii. _____

iii. NA

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

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

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

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

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

- (a) the name and address of each attorney who represented you:
 i. A.D. Goode Richland County Public Defenders
Office 1701 Main St. Columbia, SC 29201
 ii. _____
 iii. _____
- (b) the proceedings at which each such attorney represented you:
 i. Arraignment and plea
 ii. Sentencing
 iii. _____

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

To have all Charges reversed for New Trial.

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

No

STATE OF SOUTH CAROLINA)
County of Richland)

VERIFICATION

I, Bouvia Anthony Sales, 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.

B. Bow

SWORN to and subscribed before me this 17 day of Nov, 2020.

Debra Eastlund (L.S.)
Notary Public

My Commission Expires: 3/3/2021

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

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

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

B. Bow
Applicant

SWORN or affirmed to and subscribed before me this 17 day of Nov, 2020.

Delma Eastwood
Notary Public

My Commission Expires: 3/3/2024

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Bouvia Sales, #382266,)
 Applicant,)
))
 v.)
))
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2020-CP-40-5786

**RETURN & MOTION FOR A MORE
 DEFINITE STATEMENT**

2021 MAR -5 AM 10:10
 RICHLAND COUNTY
 CLERK OF COURT
 100 W. BROAD ST.
 COLUMBIA, SC 29201

In response to Applicant Bouvia Sales’s action for post-conviction relief (PCR) commenced December 10, 2020, Respondent, the State of South Carolina, makes this return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the August 2017 term, the Richland County Grand Jury indicted Applicant for murder (2017-GS-40-5201) and burglary – first degree (2017-GS-40-5205); and possession of a weapon during the commission of a violent crime (2017-GS-40-5203). Applicant was represented by Richland County Assistant Public Defender Alicia Goode. Assistant Solicitor Carter Potts of the Fifth Circuit Solicitor’s Office prosecuted the case.

On January 29, 2020, Applicant entered an *Alford*¹ plea of guilty, pursuant to a negotiated plea agreement with the State, before the Honorable DeAndrea G. Benjamin. Judge Benjamin sentenced Applicant as negotiated to concurrent terms of twenty-five years each for the voluntary manslaughter and first-degree burglary charges, to run concurrently, and five years for possession of a weapon during a violent crime, to run consecutively. Applicant did not appeal.

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

II. FACTS GIVING RISE TO THE CONVICTION

The incident giving rise the charges occurred on April 8, 2017 (Plea Tr. 5). At the guilty plea proceeding Assistant Solicitor Potts gave the following factual recitation in support of the pleas:

[T]he victim, Marlon Button -- Butler, Sr., and his son, Marlon Button [sic] Jr., came home around 1:45 AM to their house on Candwenn Court here in Richland County. When they got there, they saw the front door of the house had been forced open. There was a light that was off when they left that was now on. They decided to go inside. They immediately noticed the house had been burglarized. One item missing was 50 inch Vizio TV.

As they headed upstairs, Your Honor, the son lagged behind the father, and Marlon, Jr., saw his father enter a bedroom on the right-hand side. He then heard his father say whoa, whoa, and then gunshots. Marlon, Jr., hid behind the wall and decided to make a run for it. As he ran out of the home, he heard and felt shots being fired after him. He then went and called 911 and met law enforcement at the residence. Marlon, Jr., never saw the person who fired that gun.

Once law enforcement entered, entered the home, they found mattresses overturned, cushions pulled off couches; multiple doors had been forced open, and the glass door at the front of the house that was intact when victims arrived had now been lying shattered; shell casings all over the hallway upstairs; and the victim lying faced down on the floor of the bedroom. Your Honor, they retrieved the serial number from the TV that was stolen and contacted Vizio to have it flagged.

The next day, Marlon, Jr., called back law enforcement and said there were other items in the home that could -- that should not have been there, most prominently a can of Pepsi in the incident location, in that bedroom. Crime scene photos the night before revealed the Pepsi can was there when law enforcement initially investigated.

After processing that can, Your Honor, the DNA eventually came back to this defendant, Bouvia Sales, with -- around the rim of the cup and on the inside.

* * *

In May, Your Honor, about a month later, this defendant was arrested for outstanding warrants in Cayce, and Investigators Duckett and Montgomery went to go talk to him. He invoked his

right to remain silent and they -- but they told him anyway he was a suspect in a homicide, and at that point he requested an attorney.

They then pulled his jail phone calls from that night, and he had placed a phone call to a woman named Kenyatta Mitchell. He told her that CPD investigators came to speak with him about a homicide, but he didn't tell them anything. Kenyatta immediately responded with so burn everything from that night, and Bouvia said that he didn't want to talk about it.

Search warrants were served for various Facebook pages for people connected with Mr. Sales, including Lillian Corley, the mother of his child. She had a conversation with this defendant on April 12th, four days after the murder, and they had this following conversation. This defendant: You ruined me. She responded: No. You ruined you. He said: No fucking with you. Dead. I killed a man. Since you were so cold and heartless to me, I have no remorse.

Later on, Your Honor, in June Vizio responded the TV that they had flagged that had been reported missing in the burglary had reappeared, had reconnected to the internet. Investigators did a search warrant on the home the TV went to; it belonged to a woman named Sharia [ph.] Green. They executed the search warrant on her home, Your Honor, and made contact with her. She said she had bought the TV from a named -- man named Alexander Robinson. Mr. Robinson was at the same address as the phone number that Mr. Sales had called for Kenyatta Mitchell.

After talking with him, Your Honor, he told that -- investigators that this defendant was living with him at the time of the incident, and that this defendant confessed to him about the murder, and confirmed the timeline about what happened. He said that he got the TV from him and that's why he sold it to Ms. Green. He also said that a man named Derrick Nance had also been involved in the burglaries.

A search warrant was served at the jail, and investigators recovered Derrick Nance's cell phone. He had had his location services turned on, so his phone was tracking where he was at all time. They were able to see that he was in the area of the incident between 12:30 and 1:42 AM, and from 1:42 to 2 AM he was driving to the Robinson home. And as I said, this incident occurred about 1:45 in the morning

Investigators interviewed Nance at this time after -- the second time. The first time, he denied any involvement. In the second interview, Your Honor, he gave himself -- he gave a statement implicating himself in the burglary and confirmed the timeline of the phone. That he had left Mr. Sales in the home by himself. That he had gone got back to the Robinson home without him. He then came to try and pick up Mr. Sales after he dropped off

the items, and he saw the blue light at the house. At that point, he kind of abandoned ship.

Plea Tr. 5-9.

III. CURRENT APPLICATION

Applicant timely commenced this PCR action on December 10, 2020. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. Counsel failed to investigate
 - b. Counsel failed to motion for speedy trial
 - c. Counsel failed to motion for bond hearing
2. "Due Pro[cess] violation"

As requested relief, Applicant is seeking to have all charges reversed for a new trial.

Attached herewith and incorporated herein are the Richland County Clerk of Court records regarding the subject conviction, Applicant's SCDC records, the plea transcript, and the records of this PCR action. Respondent reserves the right to amend this Return upon receipt of any relevant materials

IV. RESPONSE TO ALLEGATIONS

Applicant has alleged plea counsel, Alicia Goode, was constitutionally ineffective in her representation for failing to investigate, failing to move for a speedy trial, and failing to move for a bond hearing. However, Applicant fails to provide the required specificity regarding these claims or any facts to support these vague claims. Accordingly, it is impossible for Respondent to address these claims with specificity and requests Applicant, through counsel, amend his application to provide the required specificity. However, Respondent submits the record establishes these claims lack merit.

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI;

Strickland v. Washington, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland*, 466 U.S. at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). “[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985).

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. *Id.*; *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625. Under this prong, the court measures an attorney's performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at

118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner 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, 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 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668.

Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, *Strickland* requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." *Id.* at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is

conducted, courts must exercise caution in setting aside the guilty plea.” *Garren v. State*, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see *Jamison v. State*, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”).

Respondent submits Applicant cannot satisfy either requirement of the *Strickland* test as to any of his allegations of ineffective assistance of counsel. Each allegation is addressed below.

Allegation that counsel failed to investigate

Applicant alleges counsel was ineffective for failing to fully investigate. However, Applicant wholly failed to provide any facts or circumstances to support this allegation, such as what investigation counsel should have conducted and how it impacted his case or decision to plead guilty. Based on this, it is impossible for Respondent to discern how exactly Applicant believes counsel was ineffective. Accordingly, Respondent moves for Applicant, through his appointed counsel, to amend this allegation to include sufficient, specific facts to support his claims of ineffective assistance of counsel.

“Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary.” *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014) (citing *Strickland*, 466 U.S. at 691). “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel’s decision not to undertake a particular investigation should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. *Bagwell*,

410 S.C. at 265, 763 S.E.2d at 633 (citing *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006)). “[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). “Counsel’s conversations with the defendant may be critical to a proper assessment of counsel’s investigation decisions.” *Bagwell*, 410 S.C. at 265, 763 S.E.2d at 634. (internal citations omitted). “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. Without more information for the supporting facts, it is impossible for Applicant to respond to this allegation.

Allegation that counsel failed to motion for speedy trial

Applicant contends he was denied his right to a speedy trial. However, the record reflects Applicant’s *Alford* plea was entered into freely and voluntarily. “The general rule is that a plea of guilty, voluntarily and understandingly made, constitutes a waiver of nonjurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea.” *Rivers v. Strickland*, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975). The constitutional guarantee of a speedy trial affords protection only against unnecessary or unreasonable delay. *State v. Chapman*, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) (citing *State v. Waites*, 270 S.C. 104, 240 S.E.2d 651 (1978); *Wheeler v. State*, 247 S.C. 393, 147 S.E.2d 627 (1966)). “[A] speedy trial does not mean an immediate one; it does not imply undue haste, for the [S]tate, too, is entitled to a reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay.” *State v. Langford*, 400 S.C. 421, 441, 735 S.E.2d 471, 481-82 (2012), reh’g denied (Dec. 20, 2012) (citing *Wheeler*).

The record of Applicant's plea hearing reflects that neither Applicant nor Counsel mentioned a speedy trial issue throughout the proceeding. Further, Applicant was indicted during the August 2017 term of the Richland County Grand Jury, and entered a plea on January 29, 2020. The length of time between Applicant's indictment and plea is not one that would suggest a constitutional violation occurred through impermissible delay. Respondent therefore submits this allegation is without merit.

Allegation that counsel failed to motion for bond hearing

Similarly, Applicant alleges counsel was ineffective for failing to motion for a bond hearing. As with the allegation discussed directly above, no bond hearing issue was mentioned by Applicant or Counsel throughout the plea proceeding. Moreover, post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(B). As Applicant has provided no facts or circumstances to detail this allegation, it is impossible for Respondent to discern how exactly Applicant believes counsel was ineffective. As such, Respondent submits this allegation is without merit, and additionally, moves for Applicant, through his appointed counsel, to amend this allegation to include sufficient, specific facts to support his claims of ineffective assistance of counsel.

V. MOTION FOR A MORE DEFINITE STATEMENT

Through his PCR application, Applicant's alleges ineffective assistance of counsel and due process violations; however, Applicant fails to set forth with specificity the facts and circumstances upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must ". . . specifically set forth the grounds upon which the application

is based.” Section 17-27-50 of the *Code of Laws of South Carolina* (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Rule 71.1(d), SCRPC, provides appointed PCR counsel “shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”

Here, Applicant has failed to state with any specificity the specific facts giving rise to these allegations, as required by section 17-27-50. Additionally, these allegations are not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRPC, and Rule 71.1(d), SCRPC, to require Applicant, through PCR counsel, to provide a more definite statement of his allegations of ineffective assistance of counsel and due process violations. Moreover, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, Respondent will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. As noted above, Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VII. ALL OTHER CLAIMS

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

VIII. CONCLUSION

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on the issues of ineffective assistance of counsel after applicant, through his counsel, amends the application to provide the required specificity for each allegation.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

YASMEEN E. KLEIN
Assistant Attorney General

By:



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

March 2, 2021

State of South Carolina)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2020-CP-40-5786

Bouvia Sales,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)
_____)

Transcript of Record

September 11, 2023
Columbia, South Carolina

B E F O R E:

The Honorable Daniel Coble, Judge

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

Timothy L. Griffith, Esquire
Attorney for the Applicant

D. Russell Barlow, III, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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Witness/Description Page No.

Bouvia Sales

Direct Examination by Mr. Griffith 5

Cross-examination by Mr. Barlow. 13

Natalie Middleton

Direct Examination by Mr. Griffith 20

Cross-examination by Mr. Barlow. 23

Alicia Goode

Direct Examination by Mr. Barlow 24

Cross-examination by Mr. Griffith. 31

Certificate Page. 41

E X H I B I T S

No. Description Page No.

No Exhibits Introduced.

1 MR. BARLOW: Thank you, Your Honor. May it please the
2 court? Assistant Attorney General Russ Barlow on behalf of
3 the State of South Carolina. This is the post-conviction
4 relief matter of *Bouvia A. Sales v. The State*, case number
5 2020-CP-40-5786 out of Richland County.

6 During the August 2017 term, the Richland County Grand
7 Jury indicted applicant for murder, 2017-GS-40-5201;
8 burglary first degree, 2017-GS-40-5205; and possession of a
9 weapon during the commission of a violent crime,
10 2017-GS-40-5203. Applicant was represented by Richland
11 County assistant public defender Alicia Goode, and
12 assistant solicitor Carter Potts of the Fifth Circuit
13 Solicitor's Office prosecuted the case.

14 On January 29, 2020, applicant entered an *Alford* plea
15 of guilty pursuant to a negotiated plea agreement with the
16 state before the Honorable DeAndrea G. Benjamin. Judge
17 Benjamin sentenced applicant as negotiated to concurrent
18 terms of twenty-five years each for the voluntary
19 manslaughter and first degree burglary charges to run
20 concurrently, and five years for possession of a weapon
21 during a violent crime to run consecutively. Applicant did
22 not appeal.

23 Applicant timely commenced this PCR action on December
24 10, 2020, and asserted multiple allegations of ineffective
25 assistance of counsel, and he requested relief in the form

1 of all charges being reversed and a new trial. State made
2 its return and motion for more definite statement filed on
3 March 5, 2021.

4 On November 30, 2023, PCR counsel emailed amended
5 allegations to include that plea counsel was pregnant and
6 only saw applicant once every six months, wasn't into his
7 case, and because of her workload failed to investigate
8 multiple alibi witnesses, and the arraignment it seemed
9 that they were not -- they did not believe applicant and
10 assumed that he was guilty of something.

11 Before this court are the Richland County clerk of
12 court records, the plea transcript, applicant's SCDC
13 records, and records of this PCR action. And, Your Honor,
14 I have packets for you here. If I could approach?

15 (A PAUSE.)

16 MR. BARLOW: And we're ready to proceed.

17 THE COURT: Yes, sir, Mr. Griffin.

18 MR. GRIFFITH: Please the court, Your Honor? We would
19 call Bouvia Sales.

20 THE COURT: All right, Mr. Sales, if you'll come up
21 here and be sworn.

22 BOUVIA SALES, BEING DULY SWORN,
23 TESTIFIES AS FOLLOWS:

24 THE COURT: All right, if you'll grab a seat up there,
25 state your name for the record, and spell it for the

1 record, please.

2 WITNESS: All right. Good morning. Name is Bouvia
3 Anthony Sales. That's B-o-u-v-i-a A-n-t-h-o-n-y S-a-l-e-s.

4 MR. GRIFFITH: Please the court, Your Honor?

5 DIRECT EXAMINATION BY MR. GRIFFITH:

6 Q. Mr. Sales, good morning.

7 A. Good morning, sir.

8 Q. Where are you currently incarcerated, Mr. Sales?

9 A. I'm currently housed in SCDC Lee Correctional
10 Institution.

11 Q. Lee Correctional, okay, and how long have you actually
12 been in jail now?

13 A. I mean, all together with county time, I've been
14 incarcerated going on seven years.

15 Q. And you understand that you were charged with murder,
16 which carries up to life. Is that right?

17 A. Correct, sir.

18 Q. You were charged with burglary up to thirty years,
19 right?

20 A. Correct.

21 Q. And a weapons charge carried an additional five years?

22 A. Correct, and I was also charged with attempted murder
23 as well.

24 Q. Yeah, and you and I discussed that, and you understand
25 that if we win today, that you'd just go right back to that

B. SALES - DIRECT EXAMINATION BY MR. GRIFFITH

6

1 position and things all still being there. You understand?

2 A. Yes, I understand, and that's what I aim to do, and
3 that's why I filed the PCR.

4 Q. Okay, and so knowing that, we're going to proceed with
5 your PCR.

6 Now, Mr. Sales, in your application, you listed
7 several reasons for ineffective assistance of counsel, and
8 to, to remind you on the first one, let's talk about
9 failure to investigate. Can you tell us about that?

10 A. Yes. During the time that Ms. Goode was my attorney,
11 there were a couple things about the case that needed to be
12 investigated. One of the main things that I asked to be
13 investigated was my alibi witnesses.

14 Another thing I asked to be investigated was the
15 domain because one of the state's evidence seemed to be
16 Facebook messages, you know what I'm saying? And without
17 video or audio evidence confirming who was behind those,
18 writing those messages, you know what I'm saying? They had
19 my phone in custody, and I asked her if she could go
20 through it and check and see IP addresses, where it was
21 logged in at because it was not working on cell towers, but
22 it was still on somebody's Wi-Fi, you know. So, I asked
23 that that be investigated.

24 And when I asked about being -- the very first thing I
25 asked her when we met for the first time after, after I got

1 -- I got charged in June, I met with her in August. So,
2 one of the first things I asked about was a speedy trial
3 because, you know what I'm saying, the Sixth Amendment, I'm
4 promised a speedy trial by a jury of my peers. Boom. She
5 said she would not be ready for trial in six weeks, and I,
6 I let that go off because, you know what I'm saying, she's
7 my counsel. She knows her stuff. I believe she knew her
8 stuff at the time.

9 So, along with my alibi witnesses, I told her the
10 names of Biale Jenkins, Kenneth Archie, who goes by Juvie,
11 and my friend DJ, whose Facebook name I only knew. I
12 didn't know his real name. I gave her the name Halerio
13 Jones, which it come -- come to find it was Horatio Jones,
14 but that's not here or there.

15 And upon being admitted to SCDC, you know, I filed a
16 PCR. Well, I was at Kirkland during the pandemic, so of
17 course we shut -- things shut down and I'd had no access
18 to, you know what I'm saying, the law library, talk to
19 attorney, anything like that to really prepare for my case
20 whatsoever. So, when I finally got to Lee County in
21 November, I filed, I filed in December because I had to get
22 someone to look over, get a little bit of time and
23 understand what was going on.

24 And upon that, I say a week later, I'm on the phone
25 with a friend from the street who happened to be one of the

B. SALES - DIRECT EXAMINATION BY MR. GRIFFITH

8

1 people in my case, you know what I'm saying, Mr. Anthony
2 Robinson. He's deceased now, and he was with Biale
3 Jenkins. And I asked Biale Jenkins, I said do you remember
4 the last time that we seen each other? He's, like, yes.
5 When we played cards together. I was, like, yeah. That
6 was the same night they say this incident happened. I need
7 you to give a statement. But at the time, I was
8 represented by Mr. Speedy, I think his name was, and I
9 never met him and was never able to talk to him.

10 So, with -- in that timeframe -- in that timeframe, I
11 say, what, two years, two -- well, no, three years have
12 passed. Three years passed since 2020, and then you were
13 assigned to my case, and I told you this.

14 Since then, I have had two other conversations with
15 Biale Jenkins. At the time, I tried to give you his
16 Facebook name. I didn't know it by heart, you know what
17 I'm saying, and I apologize for that.

18 And then one of the other things, like, I'm aiming at
19 in my PCR when I say, you know what I'm saying, ineffective
20 counsel, I felt as though, like you stated on the record,
21 that they really didn't believe in my innocence. Well, not
22 they. My public defender, Ms. Goode, didn't believe in my
23 innocence from beginning to end. I wouldn't say that she
24 is a bad attorney, but this is not a case she put forth her
25 best effort.

1 Q. How often did you talk with your attorney?

2 A. I was at Alvin S. Glenn Detention Center from June
3 29th until February 3, 2020, and throughout that time, I
4 saw Ms. Goode maybe a total of five times, which comes
5 almost every six months.

6 Q. So, basically you only got to talk to your attorney
7 once every six months?

8 A. Correct.

9 Q. Okay, and that was another part of your ineffective
10 assistance of counsel. Can you tell me why do you think
11 your attorney didn't get to talk to YOU but every six
12 months?

13 A. Because she's a public defender, and I understand they
14 have a heavy workload. And then also unbeknownst to my
15 knowledge at the time, she was with child, you know. I
16 didn't find out she was with child until a year later when
17 she wrote me a letter and let her -- let me know she was
18 going on leave for six months, which I felt as though could
19 have been time put towards this case because it was a very
20 serious case, and it was my life we was talking about, so.

21 Q. So, you think that her representation was affected by
22 her leave of absence that she took for -- after her child?

23 A. Correct.

24 Q. And after she returned, how often did you get to talk
25 to her?

B. SALES - DIRECT EXAMINATION BY MR. GRIFFITH

10

1 A. I was supposed to go to trial that Monday. Still once
2 every six months.

3 Q. And so ---

4 A. Until, until -- I apologize -- until two weeks before
5 my arraignment, I saw her twice. One time with Ms. Tracy
6 and another time when we were going over a plea agreement.

7 My first plea agreement was forty years, which she
8 never told me about. The second, the second one was thirty
9 day for day. The next one was thirty at eighty-five;
10 that's the one we discussed. Somehow she convinced the
11 solicitor twenty-five. I asked for twenty-two. He said
12 no.

13 Q. So, how many years did you actually get?

14 A. I got, in retrospect, thirty. The two consecutive
15 twenty-fives plus the five on the end for weapons charge.

16 Q. But you said at one point you had an offer for
17 twenty-two. Is that -- or you wanted twenty-two but then
18 you had an offer for -- what was the lowest offer?

19 A. Lowest offer I received before the twenty-five was
20 thirty, the eighty-five percent instead of day for day for
21 the burglary.

22 Q. So, when you were discussing the twenty-five year
23 offer, did you realize at that time that another five was
24 going to be tacked on for the weapons?

25 A. I did not. I thought it was all going to be

1 consecutive; I didn't know it was going to be concurrent.
2 You know, the whole plea agreement when we were downstairs
3 discussing it, we were talking about me pleading guilty,
4 just straight out guilt. Admitting to the crime, admitting
5 to my actions, and I felt in my heart that I couldn't do it
6 because I knew I was innocent. So, I asked can I plead no
7 contest so I won't have to say anything, and that's when
8 the *Alford* plea came into play.

9 Q. Okay, and so you did plead under *Alford*?

10 A. I did plead under *Alford*.

11 Q. All right.

12 A. Because I wanted to preserve my innocence.

13 Q. You didn't want to admit to any guilt?

14 A. Correct.

15 Q. Okay. What else can you tell us about your attorney's
16 actions or anything else that would be grounds for you
17 receiving a new trial?

18 A. Like I said, when she hired the private investigator,
19 we were all supposed to sit down and have a discussion and
20 go over some things. That discussion never happened. She
21 said she hired -- she -- there was a private investigator,
22 an investigator firm that they use a lot, you know what I'm
23 saying, but these guys were mostly tech guys. Really what
24 I needed for my case, I feel, is that I needed people on
25 the ground because there were people I needed to talk to,

1 you know what I'm saying, for my alibi.

2 Like Biale Jenkins say he was never talked to. She
3 said herself that, boom, the investigator went by an
4 address, found an address for him, talked to somebody
5 there. They don't know who he is, but they know that he's
6 a person. Kenneth Archie, Juvie, she say she never -- they
7 never found them, never went looking for them, which I
8 thought was kind of strange because prior to me and her
9 having that conversation, we were housed together at Alvin
10 S. Glenn. So, I thought that was kind odd. And also due
11 to the fact that that's my sister -- that's the father of
12 my sister's child, boom. And as far -- I understand it was
13 hard to find Horatio Jones or, as I stated at the time,
14 Halerio Jones because I didn't know it at the time, but
15 Facebook is a big world.

16 But I felt as though if those actions were taken, I
17 would've never taken a plea. I would have taken a trial.
18 I wanted to go to trial. I just felt like she wasn't into
19 the fight.

20 And along with her workload, her being a new mother, I
21 understand that, you know what I'm saying, sitting hours a
22 week in a courtroom defending somebody you don't have faith
23 in doesn't seem like the right thing.

24 Q. Do you have anything else you want to add?

25 A. Not at this time.

1 Q. Okay.

2 MR. GRIFFITH: No further questions. Please ask --
3 answer any questions the attorney general has.

4 CROSS-EXAMINATION BY MR. BARLOW:

5 Q. Good morning, Mr. Sales.

6 A. Good morning.

7 Q. All right, I know that your counsel here today has
8 already explained to you what you're facing through a PCR,
9 but I want to run through it with you one more time, that
10 you, you are placed back into day one of your position.

11 All of your indictments come back on you, and you face the
12 maximum exposure in all of those at trial. Do you
13 understand that?

14 A. Correct.

15 Q. And do you know what your maximum is, maximum exposure
16 is right now?

17 A. I understand that with murder, it's thirty to life.
18 Burglary, thirty to life. Well, twenty to life, and I
19 understand that attempted murder is two to thirty, and a
20 possession of weapon violent crime is a five year.

21 Q. And how many years did you get?

22 A. I got twenty-five. Well, thirty altogether.

23 Q. So, your maximum exposure at a new trial would be two
24 life sentences plus thirty-five years?

25 A. Correct.

B. SALES - CROSS-EXAMINATION BY MR. BARLOW

14

1 Q. Okay, and you're still willing to proceed with that?

2 A. Correct.

3 Q. Okay. How many times did you meet with your attorney
4 prior to your plea?

5 A. Prior to my plea, like I said, five, six, times at the
6 most out of a three-year span.

7 Q. And what made you decide to plea that day and not go
8 to trial?

9 A. The discussion we had with Ms. Tracy when I -- when
10 she was getting ready to be second chair, we was preparing
11 for trial, the discussion they came at me with. So, what
12 is our defense going to be? You were there. You didn't
13 mean for it to happen. It was a robbery gone wrong. You
14 didn't mean to kill him. And from my understanding, my
15 defense is I'm innocent. I don't have to prove my defense.
16 It was up to the state to prove my guilt. So, that threw
17 me off.

18 Q. And you said that plea counsel was pregnant and only
19 saw you once every six months, and that affected your case.
20 How so?

21 A. Because with a case like mine, and it was a major
22 case. It was murder. Understand that I felt like my life
23 was on the line because I was facing, like I say, double
24 life plus thirty-five. So, an adequate amount of time
25 presented to the case and invested in the case makes a sure

1 defense, and we're talking about my freedom for the rest of
2 my life, so.

3 Q. Was there DNA in this case?

4 A. There was D -- DNA was circumstantial evidence. Is
5 DNA. It was a soda can.

6 Q. How is that circumstantial?

7 A. Because it can be moved.

8 Q. But the DNA ---

9 A. And it said ---

10 Q. --- was yours, correct?

11 A. Correct, but it holds no grounds. It's not
12 substantial. It doesn't say whether I murdered somebody,
13 robbed somebody, shot somebody, killed somebody. It says
14 that I was in that location at that time or not even at
15 that time. I'm frequent at that location.

16 Q. You were frequently at this location inside these --
17 inside this home?

18 A. Correct.

19 Q. Inside the room that the can was found in?

20 A. I don't know about what room a can was found in. I
21 haven't even seen crime scene photos. I understand from
22 the investigative report written by Officer Duckett that it
23 was found in a room off to the corner. When I frequent
24 this address, I go no further than the living room.

25 Q. And why would you frequent that address?

B. SALES - CROSS-EXAMINATION BY MR. BARLOW

16

1 A. Not to incriminate myself, but going to say business
2 deals.

3 Q. So, you knew the people that lived inside that home?

4 A. I didn't know them personally but through business
5 deals. One of -- one of the reasons I frequent that house
6 was because of one of the statements ---

7 MR. GRIFFITH: Objection, Your Honor. I don't want --
8 he doesn't need to incriminate himself by going into
9 details.

10 THE COURT: Sustained. Let's move on.

11 Q. All right, you said one of the reasons that you had
12 ineffective assistance of plea counsel was that they failed
13 to investigate multiple alibi witnesses. Such as who?

14 A. Biale Jenkins, Kenneth Archie, Juvie, and Halerio
15 Jones, DJ.

16 Q. And what would they provide?

17 A. An alibi. They would place me at a whole nother
18 address. One of the addresses in the whole investigator
19 notes was 2120 Broadham [phonetic] Street. Everyone
20 frequented this address. This was -- this the address I
21 was staying at in Columbia, South Carolina, 2120 Broadham
22 Street.

23 Q. Do you recall that there were cell phone records that
24 were used?

25 A. I recall that there were Facebook messages used. The

1 only cell phone records I seen used were for state witness
2 Derek Nance. They had his cell phone records, pinging him
3 at different locations, one of those locations being ---

4 MR. GRIFFITH: Your Honor, I would still object. I
5 mean, he's not on trial. I mean, if he's going to ask him
6 questions concerning his allegations of ineffective
7 assistance of counsel, okay, but he's getting him to --
8 he's trying to get him to talk specifically about the case,
9 and he has a right not to incriminate himself.

10 MR. BARLOW: Right, Your Honor. I just asked him the
11 question about the alibi witnesses and who they were.

12 THE COURT: Let's lead this witness. I'm going to let
13 him lead this witness. Sustained.

14 And, Mr. Sales, if it's a yes or no question, just
15 answer yes or no, okay?

16 WITNESS: Yes, sir.

17 THE COURT: And if you need to elaborate, you may, but
18 then you might talk to your attorney, but for the sake of
19 this point, protect all your rights, let's try to lead as
20 much as possible.

21 Q. Do you recall agreeing with the facts as they were
22 presented at trial, as the solicitor read them into the
23 record? Do you recall agreeing with those facts?

24 A. I have not seen a transcript, so no.

25 Q. Do you ---

B. SALES - CROSS-EXAMINATION BY MR. BARLOW

18

1 MR. GRIFFITH: Objection, Your Honor. He gave an
2 *Alford* plea, so he wasn't going to agree with the...

3 THE COURT: You can rephrase.

4 Q. Do you recall agreeing that the state's facts would
5 lead to a potential conviction if you were not to plead?

6 A. I haven't read the transcript. I can't recall.
7 Sorry.

8 Q. Do you recall informing the court that you were
9 satisfied with the representation of Ms. Alicia Goode?

10 A. I can't recall.

11 Q. Do you recall telling the court that you had met with
12 her for as long as necessary to properly represent you?

13 A. I can't recall.

14 Q. Do you recall informing the court that you were -- had
15 met with her long enough to prepare for trial?

16 A. I can't recall.

17 Q. Do you recall informing the court that Ms. Goode had
18 gone over all of your -- all of your defenses and the
19 evidence against you?

20 A. I can't recall.

21 Q. Do you recall informing the court that she, Ms. Goode,
22 had done everything for you that you feel she could have
23 done and should have done?

24 A. I can't recall.

25 Q. Do you recall telling the court that you were

1 completely satisfied with her services?

2 A. I can't recall.

3 Q. Do you recall telling the court that you were pleading
4 of your own free will?

5 A. I can't recall.

6 Q. Do you recall telling the court that no one was
7 forcing you to plead?

8 A. I can't recall.

9 MR. BARLOW: Nothing further, Your Honor.

10 THE COURT: Any redirect?

11 MR. GRIFFITH: None, Your Honor.

12 THE COURT: All right. Thank you, sir. You may step
13 down.

14 (THE WITNESS EXITS THE STAND.)

15 MR. GRIFFITH: Your Honor, we would call our next
16 witness, which is Natalia [sic] Middleton.

17 NATALIE MIDDLETON, BEING DULY
18 SWORN, TESTIFIES AS FOLLOWS:

19 THE COURT: Come step up. State your full name for
20 the record and spell it, please.

21 WITNESS: Natalie Middleton, N-a-t-a-l-i-e
22 M-i-d-d-l-e-t-o-n.

23 MR. GRIFFITH: Please the court?

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION BY MR. GRIFFIN:

1 Q. Ms. Middleton, thank you for coming today.

2 A. Thank him.

3 Q. Okay, Ms. Middleton, can you tell us how you know the
4 defendant, Mr. Sales?

5 A. That's my brother.

6 Q. He's your brother?

7 A. Yeah.

8 Q. Okay.

9 THE COURT: If you could speak into that microphone.

10 WITNESS: Oh. I'm sorry.

11 A. That's my brother.

12 Q. Okay. Is he your older brother or your younger
13 brother?

14 A. My younger.

15 Q. Okay. So, you've known him all your life?

16 A. Yes, sir.

17 Q. Now, when Mr. Sales was arrested and on trial, did he
18 give you permission to speak with his attorney?

19 A. Yes, sir.

20 Q. And do you remember that attorney's name?

21 A. Um.

22 Q. What is Ms. Goody? Ms. Goode?

23 A. Alicia. Like I said, I can't quite remember, but I
24 think it was Alicia.

25 Q. Okay.

1 A. I'm thinking.

2 Q. But -- so, did you have opportunity to talk to her?

3 A. Once.

4 Q. Okay. Now, Ms. Middleton, Mr. Sales said that he
5 really only got to talk to her about once every six months.

6 A. Correct.

7 Q. But he was in jail quite a long time, wasn't he?

8 A. Correct.

9 Q. Before the trial. So, were you trying to get in touch
10 with his attorney?

11 A. Yes, I was. I tried multiple times to get in contact
12 with her. I left voicemails as well for her to get in
13 contact with me, and when she finally did get in contact
14 with me, she stated that she couldn't release no
15 information. But if she had've been in contact with my
16 brother, Bouvia Sales, she would have known that she was
17 able to release information.

18 Q. So, was she -- did she later become aware that your
19 brother wanted her to talk to you?

20 A. Yes.

21 Q. Okay. So, then did you get to talk to her?

22 A. No.

23 Q. So, why, why did you think -- what were the
24 circumstances as to why you wouldn't be able to talk to
25 her?

1 A. Well, I found out through my brother that she was
2 pregnant, which I didn't know, so I can understand that.
3 And then plus she's a public defender. I really didn't
4 feel like -- they really don't do they job. I'm just being
5 honest; I'm just saying.

6 Q. Okay, but basically your brother contends that his
7 attorney didn't believe him and didn't work on his case.
8 And so did he -- do, do you feel that same way when you
9 were talking, trying to talk to his attorney?

10 A. Yes.

11 Q. Can you tell us a little more about your ---

12 A. I just felt that she didn't have time. That's the way
13 I felt. I felt that she didn't take it serious. I mean,
14 whether it was wrong or right, you know, you step up to do
15 that job, and that's what you're supposed to do. And I
16 understand, you know, being a parent and being pregnant. I
17 understand how that go as well because I'm a mother myself.
18 But she didn't put forth the effort at all.

19 Q. Okay.

20 A. She didn't even return phone calls. I mean, I left
21 voice messages and everything to let her know that she was
22 able to inform me so that we could talk about it. So, I
23 think even being -- like knowing what was going on because
24 I barely know the whole situation.

25 Q. Okay. Do you have anything else you can add for us?

1 A. No, sir.

2 Q. Okay.

3 MR. GRIFFITH: Please answer any questions the
4 attorney general may have.

5 WITNESS: Okay.

6 MR. BARLOW: Very briefly.

7 CROSS-EXAMINATION BY MR. BARLOW:

8 Q. Ms. Middleton.

9 A. Yes.

10 Q. Is it your contention here that Ms. Goode did not
11 contact you and keep you informed?

12 A. Yes.

13 Q. And that's your argument?

14 A. She didn't.

15 Q. Okay.

16 MR. BARLOW: Nothing further, Your Honor.

17 THE COURT: Any redirect?

18 MR. GRIFFITH: None, Your Honor.

19 THE COURT: All right. Thank you, ma'am. You may
20 step down.

21 (THE WITNESS EXITS THE STAND.)

22 MR. GRIFFITH: No further witnesses, Your Honor.

23 THE COURT: All right.

24 MR. BARLOW: Your Honor, the state would call Ms.
25 Alicia Goode.

A. GOODE - DIRECT EXAMINATION BY MR. BARLOW

24

1 ALICIA GOODE, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 THE COURT: All right, state your name, and spell it
4 for the record.

5 WITNESS: Alicia Goode, A-l-i-c-i-a G-o-o-d-e.

6 MR. BARLOW: Thank you, Your Honor. May it please the
7 court?

8 DIRECT EXAMINATION BY MR. BARLOW:

9 Q. Good morning, Ms. Goode. I'm going to get it correct.

10 A. Yes.

11 Q. It's not good. It's Goode.

12 A. It's Goode.

13 Q. All right. Got it.

14 How long have you been practicing law?

15 A. About, I guess, twelve years at this point, yeah.

16 Q. And how much of that practice has been in criminal
17 law?

18 A. The entire amount.

19 Q. And were you retained or appointed on this?

20 A. Appointed.

21 Q. And how long before the plea were you appointed?

22 A. It was actually -- so, Mr. Sales originally had been
23 arrested in Lexington County. I think for maybe a
24 possession of a stolen vehicle charge, but in the news it
25 had come out that he was either served or about to be

1 served warrants for a murder, burglary first, attempted
2 murder. So, I was actually -- we opened the file before he
3 was technically arrested here in Richland. I went to see
4 him in Lexington on June 20th of 2017. So, somewhere in
5 June of 2017 I would have been appointed.

6 Q. And the plea was January 29, 2020?

7 A. That's -- yes.

8 Q. So, you represented him for approximately two, a
9 little over ---

10 A. Two years ago.

11 Q. --- two and a half years ago. All right, and do your
12 records reflect how many times you met with applicant?

13 A. I was able to count up sixteen meetings.

14 Q. And how about phone calls?

15 A. I wouldn't have had any phone calls with him as he was
16 incarcerated the whole time.

17 Q. During those meetings, did you discuss the elements of
18 the charges that he was charged with?

19 A. Yes, we did.

20 Q. And did you discuss the -- did you review his
21 discovery with him?

22 A. Yes, and at some point I had given him several of the
23 items of discovery. I think I even maybe took some out of
24 my trial notebook to give him at some point.

25 Q. Would you briefly characterize the state's evidence in

1 this case?

2 A. Best of my recollection, there was a -- it was a
3 burglary of a house. The homeowner came home during the
4 middle of the burglary, surprised the person in the home,
5 and was shot and killed. The person that was inside the
6 home then fled and started shooting at -- I believe it was
7 his -- the homeowner's son was also there. He was running
8 away from the, the house and was shot at. He wasn't
9 injured or hit. He was shot at, and that's where the
10 attempted murder comes from. And then the -- through crime
11 scene investigation, they collected a Pepsi can that was
12 left in a closet at the location and processed that for
13 DNA, and there was a CODIS hit to Mr. Sales.

14 Q. And did you discuss the -- his version of facts with
15 applicant?

16 A. Yes.

17 Q. And were those facts different? Were applicant's
18 version of the facts different from the state's?

19 A. It sounded somewhat the same, and I think that there
20 was -- there was another person that was potentially
21 involved. I don't believe he was ever charged but had
22 given information to law enforcement about his involvement
23 as well as Mr. Sales's.

24 Q. We've handled allegation one, and you've told us that
25 I believe you met with him, from your notes, sixteen times,

1 correct?

2 A. Yes.

3 Q. Okay. So, we'll move on to allegation two, that you
4 failed to investigate the multiple alibi witnesses.

5 A. So, I -- you know, it being a murder case, I requested
6 -- I requested an investigator. We -- the information was
7 limited at that time. I did put in my request he had
8 potential alibi witnesses, and I have to look back at the
9 language exactly.

10 Potential alibi witnesses. Requested investigator to
11 interview potential alibi witnesses and witnesses spoken to
12 by law enforcement.

13 At that time, Fielding Pringle, our -- she was our
14 chief, I believe, at that time, she wanted more information
15 before we would request funding, I guess, from the judge
16 because my information that I had at that point was nothing
17 concrete as far as names. He had given -- and I'll have to
18 look back at my handwritten notes here to see exactly, but
19 he was -- I went ahead to get, you know, to -- because of
20 the serious nature of the allegations, the charge, I wanted
21 to go ahead and get an investigator on it as quickly as
22 possible but didn't have any information to actually
23 provide to that investigator as far as alibi witnesses.

24 I kept asking. The first time I was actually given a
25 name of anyone was in September of 2018, and that was Biale

A. GOODE - DIRECT EXAMINATION BY MR. BARLOW

28

1 Jenkins. They did attempt to locate him, but the number I
2 believe that they had for the -- basically the
3 investigators weren't able -- the information that they had
4 that pertained to Mr. Jenkins when they reached out, that
5 person, I think, lived in Blythewood and said that they had
6 no knowledge of a Mr. Jenkins.

7 Q. So, you did investigate the alibi?

8 A. The -- with the name that we were given, yes, that I
9 was given.

10 Q. Did you discuss possible defenses with applicant?

11 A. I did. You know, this was a situation where, you
12 know, obviously self-defense isn't an option. If, if he
13 is, in fact, there, it's not a situation where the person
14 -- because there was some information provided from other
15 witnesses that were interviewed that he panicked. He
16 wasn't -- you know, it wasn't that he intended to kill the
17 victim in the -- in the home of -- the homeowner, but that,
18 you know, that he was coming at him and he felt like he had
19 to, to do that. And obviously given, you know, the felony
20 murder rules and, and those types of things, that wouldn't
21 be a defense in this type of case.

22 And without -- I really will say I didn't have much
23 cooperation from Mr. Sales as far as the kind of -- those
24 kind of conversations. I did, I feel, like a lot of
25 talking at him and not necessarily talking with him. So, I

1 just kind of had to try to pull this information out,
2 explain the potential defenses, essentially being the
3 defense here would have to have been that it -- you know,
4 he wasn't there and that it was the uncharged codefendant
5 who would have the opportunity and the -- and the means to
6 be able to carry this out. So, we discussed that but,
7 yeah, that's, that's my answer to that.

8 Q. Did you inform him of his right to a jury trial?

9 A. Yes. We actually had a trial date set. We had had
10 several status conferences with our chief admin at the time
11 about the trial, and then obviously it pled. We got an
12 offer that he agreed to take prior to that.

13 Q. Going to the negotiations, you entered into
14 negotiations with the solicitor's office apparently,
15 correct?

16 A. Yes.

17 Q. And you got them to reduce the murder charge to
18 voluntary?

19 A. That's right.

20 Q. And you got a -- I think the total was thirty with the
21 weapons charge?

22 A. Yeah. That would have been a consecutive five on the
23 weapons charges, yes, but twenty-five on the burglary and
24 twenty-five on the voluntary, those would be concurrent to
25 each other with the weapons charge running consecutive.

A. GOODE - DIRECT EXAMINATION BY MR. BARLOW

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1 Q. What -- did, did Mr. Sales indicate to you that he
2 wanted to go to trial or that he wanted to try to get a
3 plea deal?

4 A. He wanted the best possible plea. He knew, I think he
5 knew very well what the evidence was against him. I'd had
6 multiple conversations with him about it, let him know, you
7 know -- I mean, I retained a DNA expert. You know,
8 obviously it was a DNA case. You know, discussion --
9 discussions with the DNA expert didn't lead to much of a, a
10 challenge on the DNA evidence. Our potential alibi names
11 that I were -- I was -- I mean, like he said, he didn't
12 know the names at the time. I have notes of a, you know, a
13 Juvie, the Biale Jenkins person, and then I'm trying to
14 find my notes where the other name was, but nothing...

15 We had two investigators. We had -- it was Chris
16 Watkins and Dave Anatra. Chris Watkins does a lot of the
17 technical stuff like he, he testified to. Mr. Anatra was
18 more of the on the ground talk to people. And he, yeah,
19 Dave was the one trying to track down Biale Jenkins. He
20 even went to an address in Blythewood and a guy named Ahmed
21 answered the door, and he didn't know Mr. Sales or Mr.
22 Jenkins. So, just the -- they attempted to run down any
23 information, however vague it was, and just was -- they
24 were never able to, to get anything concrete.

25 Q. Did your pregnancy affect your representation?

1 A. No, it did not. I tried a case, I think, a month
2 after I came back from maternity leave and tried several
3 murder cases while being quite pregnant, so.

4 Q. Did you inform Mr. Sales of the consequences of the
5 plea?

6 A. I did.

7 Q. And prior to his plea, were you prepared to go to
8 trial?

9 A. Yes, I was.

10 Q. And I believe you already testified to this, but was
11 it Mr. Sales's inclination to plead?

12 A. Yes.

13 Q. Did you agree with his inclination?

14 A. Yes.

15 Q. Do you stand by the counsel you provided?

16 A. I do.

17 Q. Did you feel or do you feel that a plea was in his
18 best interest?

19 A. Yes, I do.

20 MR. BARLOW: Please answer any questions Mr. Griffith
21 asks of you.

22 MR. GRIFFITH: Please the court, Your Honor?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION BY MR. GRIFFITH:

25 Q. Ms. Goode, thank you for coming.

A. GOODE - CROSS-EXAMINATION BY MR. GRIFFITH

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1 Do you recall receiving telephone calls from Mr.
2 Sales's sister? Do you recall getting telephone calls from
3 Mr. Sales's sister?

4 A. I, I don't. I don't remember getting phone calls from
5 any of Mr. Sales's family.

6 Q. I know in the Third Circuit we send out a letter
7 saying we don't talk to family. Do you send out a letter
8 like that?

9 A. Not generally, but I do in my initial meetings with
10 clients and -- you know, my, my initial meeting with Mr.
11 Sales when I went to try to see him in Lexington, he
12 refused to come to the visit. So, I was able to meet with
13 him about two or three weeks later when he was brought to
14 Richland County jail. And in my initial meetings with,
15 with all client, I, you know, I ask is there anyone -- you
16 know, family members call all the time or girlfriends,
17 boyfriends. Who can I speak with if somebody calls? At
18 that point, I was given permission to speak with Lillian
19 Corley, who is the mother of his child.

20 Q. Do you recall him ever giving you permission to speak
21 with his sister, Natalia?

22 A. Yes. So, he was brought back to the courthouse on
23 September 1, 2017, for a probation violation. I met with
24 him ahead of that hearing, and at that time he gave me his
25 sister's name and said it was okay to speak with her.

1 Q. Okay. So, then did you yourself reach out to Ms.
2 Middleton?

3 A. No. I was not given a phone number, and I'm not sure
4 that he had the information with him or was able to recall
5 it, but I was not given a number at that time, just
6 permission to speak with her.

7 Q. And you don't have any recollection, you say, of her
8 calling you ever?

9 A. I don't. I looked through my notes earlier. I don't
10 see -- generally I will put in if I've had a conversation
11 with a family member or somebody other than the client. I
12 have no information in here that I had any conversations
13 with her. So, I just -- I can't say that it -- or, you
14 know, unequivocally that it didn't happen. I just don't
15 have any notes to that effect, so, no, I don't recall.

16 Q. And if she left a message, you wouldn't have a note
17 saying somebody left me a message?

18 A. Right. And, I mean, I would have had where I returned
19 her call on whatever date.

20 Q. All right.

21 A. If that was the case.

22 Q. Now, as far as the alibi witnesses, did you yourself
23 speak with Mr. Sales to get names of these witnesses?

24 A. Yes. So as I said, in September of 2018, I was given
25 the name Biale Jenkins. I passed that information on to

A. GOODE - CROSS-EXAMINATION BY MR. GRIFFITH

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1 our investigators at the time. I met with him again in
2 December of 2018 and told him I needed specific names in
3 order for our investigators to be able to track people
4 down. And my notes indicate at that time he didn't have
5 any, any specific names.

6 Q. So, your investigator never actually talked to Mr.
7 Jenkins or any of the other alibi witnesses?

8 A. Right. So, they attempted to locate Mr. Jenkins.
9 They were unable to based on the information that -- of the
10 Biale Jenkins, that they were able to find an address.
11 They went to that address. The person that lived there had
12 never heard of Mr. Sales or Mr. Jenkins. So, yes, they
13 were never able to speak to Mr. Jenkins or locate him.

14 Q. Okay. Do you recall Mr. Sales asking you for a speedy
15 trial?

16 A. You know, I don't have that in my notes. You know, a
17 lot of clients ask for a speedy trial. I try to explain to
18 them what that means. And if I am going to make that
19 assertion on the record, I want to make sure I am 100
20 percent prepared because if I'm not, then, you know, it
21 affects him. And, you know, we've had judges before say
22 all right. We don't have a trial on the docket for next
23 week. Is that speedy enough?

24 So, I always tell people if I'm going to file a speedy
25 trial, I want to make sure I have all the discovery. I

1 have -- that, that we are ready to go.

2 So, I don't -- yeah, I don't specifically recall and
3 don't have in my notes that he specifically requested that.
4 But if we had had that conversation, that's what it would
5 have sounded like, so.

6 Q. Well, you recall Mr. Sales testifying that he asked
7 you for a speedy trial?

8 A. I remember him saying that, yes.

9 Q. And he was incarcerated for three years for -- about.

10 A. He was incarcerated. I think he got arrested in
11 Lexington some time maybe in May of 2017. The Richland
12 County's warrants were served some time in June, and then
13 the plea was entered in January of 2020.

14 Q. Okay. So, like, at least two and a half ---

15 A. Near -- yeah, or inching up on three years, yeah.

16 Q. So in that much time, you, you didn't ever file for a
17 speedy trial?

18 A. No, I did not.

19 Q. Did you ever consider that Mr. Sales was -- wanted to
20 go to trial?

21 A. Yeah. We had trial dates. We had -- I, as I said
22 earlier, had several status conferences with our chief
23 administrative judge at that point getting -- to try to get
24 a trial date scheduled. We had been scheduled for -- I
25 believe it was September of 2019. Then it got -- yeah, it

A. GOODE - CROSS-EXAMINATION BY MR. GRIFFITH

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1 ended up getting moved. We had a telephone call with the
2 judge the week before, and I -- yeah, that -- I was
3 actually in trial on another case that week. So, this one
4 at this point, I believe the prosecutor requested that it
5 be tried some time at the beginning of January, and she,
6 she moved it, I think, to February 3rd was going to be our
7 date certain trial date. And we were going to be first up
8 per my request. I wanted to make sure that we weren't
9 going to be backup to anybody and that we were going to be
10 called first.

11 Q. During this time when you were representing Mr. Sales,
12 he contends that he only got to talk to you about once
13 every six months.

14 A. Right. I heard that.

15 Q. Is that about right?

16 A. No. That is not correct.

17 Q. Okay. He also contends that during part of this time,
18 you were actually out of the office on maternity leave.
19 And how long did you spend on maternity leave?

20 A. Nine weeks. I had a C-section, and I still was only
21 out nine weeks, and I didn't transfer any of my cases. I
22 kept them all. And I provided everyone a letter if I
23 didn't get to see them right before I went out that if
24 anything came up to, to please contact -- and I gave them
25 three names of people to call if -- or to notify if

1 anything came up.

2 Q. Yeah. I mean, you were certainly entitled to
3 maternity leave, and for good reason.

4 So, did you explain to Mr. Sales that -- when you told
5 him about the twenty-five year plea agreement, did you at
6 that time explain, oh, you're going to get another five for
7 the weapons?

8 A. You know, and I don't know. I can't really remember
9 if I did or not, so I can't answer that. But my -- I was
10 under the impression that, you know, the plea offer was
11 twenty-five. But, I mean, in my notes that I have from our
12 last, I guess, meeting prior to the plea, I have written
13 next to, you know, what the offer is and what was relayed
14 that the voluntary will be for twenty-five years,
15 possession of a weapon during a violent crime five years,
16 with a notation CS next to it which would be consecutive,
17 his original offer being murder and burglary first for a
18 thirty-year sentence, and the prosecutor came down to
19 voluntary to avoid the day for day.

20 Q. I mean, a twenty-five compared to life, okay, but you
21 didn't tell him about the five consecutive years, did you?

22 A. I don't -- all I have is what's written in my notes
23 and that it was relayed. I can't tell you if I said
24 exactly the five years would have been consecutive; I can't
25 say for sure.

1 Q. Okay.

2 MR. GRIFFITH: I have no further questions.

3 THE COURT: Anything else from the state?

4 MR. BARLOW: Nothing, Your Honor.

5 THE COURT: All right. Thank you. You may step down.

6 (THE WITNESS EXITS THE STAND.)

7 THE COURT: Any other witnesses for the state?

8 MR. BARLOW: No, Your Honor.

9 THE COURT: Anything else from the defense?

10 MR. GRIFFITH: No more witnesses, Your Honor.

11 THE COURT: Just a brief summation of your argument.

12 MR. GRIFFITH: Your Honor, Mr. Sales contends that had
13 he been presented with the opportunity, he would've liked
14 to have gone to trial. He asked for a speedy trial at the
15 beginning. And he had -- he believed he had alibi
16 witnesses who could clear him of this case, but of course
17 the investigation did not find those witnesses, but he did
18 give names.

19 Also, Your Honor, he was -- he contends when he
20 finally did do a plea, he was under the impression he was
21 going to get twenty-five years, and when it came to it, he
22 got twenty-five plus five, thirty. And so Ms. Goode did
23 testify she can't recall whether she told him he was going
24 to get that extra five or not. So, we would ask that the
25 court give him another opportunity for trial and grant his

1 PCR.

2 THE COURT: Thank you.

3 Yes, sir.

4 MR. BARLOW: May it please the court? Your Honor, as
5 far as it goes to the motion for a speedy trial, that is
6 not a -- it's not a PCR issue. It does not collaterally
7 attack the validity of a conviction or sentence. It's
8 procedurally barred by 17-27-20(b)

9 As for the other allegations, Your Honor, especially
10 the one about him not understanding that was a twenty-five
11 year sentence and the five years runs consecutive, Your
12 Honor, the plea transcript before they qualified the plea
13 is page 15 of the record, Your Honor. The court had the
14 state again recite the offer in the record. And, Your
15 Honor, it states that the offer was a negotiated sentence
16 of twenty-five years for burglary and voluntary
17 manslaughter, and followed by consecutive five years on the
18 possession of pistol. Ms. Goode agreed with that and said
19 that that was correct, and the court on page 16 of the
20 record asks Mr. Sales if that was his understanding of the
21 negotiations, and he agreed.

22 So, Your Honor, it's our contention that he was fully
23 aware of what the sentence would be, and even if Ms. Goode
24 had not conveyed that to him, the plea court cured that,
25 that, that incorrect -- or she did not provide it, it cured

1 it, and he agreed with it.

2 And so, Your Honor, our contention is that the record
3 speaks for itself. And to any of the other allegations,
4 Your Honor, I think the plea transcript is -- we will stand
5 on that. Thank you.

6 THE COURT: What I'm going to do is I'm going to take
7 this under advisement, review the packet you've handed me,
8 everything I've heard today before I make my decision.
9 I'll have that decision to you shortly.

10 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM 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 CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 11TH DAY OF SEPTEMBER, 2023.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

NOVEMBER 29TH, 2023

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY RICHLAND)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
Bouvia A. Sales, #382266,)	CASE NO. 2020-CP-40-5786
)	
Applicant,)	
)	
v.)	ORDER OF DISMISSAL
)	WITH PREJUDICE
State of South Carolina,)	
)	
Respondent.)	
)	

Presiding Judge:	Hon. Daniel Coble
Applicant's Attorney:	Timothy L. Griffith, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Plea Counsel:	Alicia D. Goode, Esq.
Date of Hearing:	September 11, 2023
Court Reporter:	Elizabeth B. Harris

This matter comes before the Court by way of Bouvia A. Sales' (Applicant) application for post-conviction relief (PCR) filed on December 10, 2020. Respondent, the State of South Carolina, filed its Return and Motion for a More Definite Statement on March 5, 2021, requesting an evidentiary hearing to resolve the claims set forth in the application.

On September 11, 2023, an evidentiary hearing convened at the Richland County Courthouse before the Honorable Daniel Coble. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant was present and represented by Timothy L. Griffith, Esquire (PCR Counsel). At the hearing, Applicant proceeded forward on the claims set forth in his original application. In support of these claims, Applicant testified on his own behalf and presented testimony from his sister, Natalie Middleton. Respondent presented testimony from Fifth Circuit Public Defender Alicia D. Goode, Esquire.

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

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Richland County Clerk of Court. During the August 2017 term, the Richland County Grand Jury indicted Applicant for Murder (2017-GS-40-5201), Burglary-1st Degree (2017-GS-40-5205), and Possession of a Weapon During the Commission of a Violent Crime (2017-GS-40-5203). Fifth Circuit Public Defender Alicia D. Goode (Plea Counsel) represented Applicant. Assistant Solicitor Carter R. Potts of the Fifth Circuit Solicitor's Office prosecuted the case.

On January 29, 2020, Applicant appeared before the Honorable DeAndrea G. Benjamin and pled guilty under Alford¹, pursuant to a negotiated plea agreement to Voluntary Manslaughter, Burglary-1st Degree, and Possession of a Weapon During the Commission of a Violent Crime. Judge Benjamin accepted Applicant's plea and sentenced him to a negotiated term of twenty-five (25) years for Voluntary Manslaughter and Burglary-1st Degree, to run concurrently, and five (5) years for Possession of a Weapon During the Commission of a Violent Crime, to run consecutively. Applicant was given credit for nine hundred sixty-four days (964) of time served.

Applicant did not appeal his conviction and sentence.

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

FACTS GIVING RISE TO THE CONVICTION

The facts in support of the plea were articulated by the State at Applicant's plea hearing as follows:

Thank you, Your Honor. This incident took place on April 8th of, 2017. Your Honor, the victim, Marlon Button -- Butler, Sr., and his son, Marlon Button [sic] Jr., came home around 1:45 AM to their house on Candwenn Court here in Richland County. When they got there, they saw the front door of the house had been forced open. There was a light that was off when they left that was now on. They decided to go inside. They immediately noticed the house had been burglarized. One item missing was a 50-inch Vizio TV.

As they headed upstairs, Your Honor, the son lagged behind the father, and Marlon, Jr., saw his father enter a bedroom on the right-hand side. He then heard his father say whoa, whoa, and then gunshots. Marlon, Jr., hid behind the wall and decided to make a run for it. As he ran out of the home, he heard and felt shots being fired after him. He then went and called 911 and met law enforcement at the residence. Marlon, Jr., never saw the person who fired that gun.

Once law enforcement entered, entered the home, they found mattresses overturned, cushions pulled off couches; multiple doors had been forced open, and the glass door at the front of the house that was intact when victims arrived had now been lying shattered; shell casings all over the hallway upstairs; and the victim lying faced down on the floor of the bedroom. Your Honor, they retrieved the serial number from the TV that was stolen and contacted Vizio to have it flagged.

The next day, Marlon, Jr., called back law enforcement and said there were other items in the home that could -- that should not have been there, most prominently a can of Pepsi in the incident location, in that bedroom. Crime scene photos the night before revealed the Pepsi can was there when law enforcement initially investigated.

After processing that can, Your Honor, the DNA eventually came back to this defendant, Bouvia Sales, with around the rim of the cup and on the inside. Your Honor, without that, this case would have been a whodunit. Investigator Duckett, Montgomery of the CPD, Your Honor, did an excellent job, and I'm going to go into a little bit about their investigation, more about the evidence in the case.

In May, Your Honor, about a month later, this defendant was arrested for outstanding warrants in Cayce, and Investigators Duckett and Montgomery went to go talk to him. He invoked his right to remain silent and they -- but they told him anyway he was a suspect in a homicide, and at that point he requested an attorney.

They then pulled his jail phone calls from that night, and he had placed a phone call to a woman named Kenyatta Mitchell. He told her that CPD investigators came to speak with him about a homicide, but he didn't tell them anything. Kenyatta immediately responded with so burn everything from that night, and Bouvia said that he didn't want to talk about it.

Search warrants were served for various Facebook pages for people connected with Mr. Sales, including Lillian Corley, the mother of his child. She had a conversation with this defendant on April 12th, four days after the murder, and they had this following conversation. This defendant: You ruined me. She responded: No. You ruined you. He said: No fucking with you. Dead. I killed a man. Since you were so cold and heartless to me, I have no remorse.

Later on, Your Honor, in June Vizio responded the TV that they had flagged that had been reported missing in the burglary had reappeared, had reconnected to the internet. Investigators did a search warrant on the home the TV went to; it belonged to a woman named Sharia [ph.] Green. They executed the search warrant on her home, Your Honor, and made contact with her. She said she had bought the TV from a named -- man named Alexander Robinson. Mr. Robinson was at the same address as the phone number that Mr. Sales had called for Kenyatta Mitchell.

After talking with him, Your Honor, he told that -- investigators that this defendant was living with him at the time of the incident, and that this defendant confessed to him about the murder and confirmed the timeline about what happened. He said that he got the TV from him and that's why he sold it to Ms. Green. He also said that a man named Derrick Nance had also been involved in the burglaries.

A search warrant was served at the jail, and investigators recovered Derrick Nance's cell phone. He had had his location services turned on, so his phone was tracking where he was at all time. They were able to see that he was in the area of the incident between 12:30 and 1:42 AM, and from 1:42 to 2 AM he was driving to the Robinson home. And as I said, this incident occurred about 1:45 in the morning.

Investigators interviewed Nance at this time after -- the second time. The first time, he denied any involvement. In the second interview, Your Honor, he gave himself -- he gave a statement implicating himself in the burglary and confirmed the timeline of the phone. That he had left Mr. Sales in the home by himself. That he had gone got back to the Robinson home without him. He then came to try and pick up Mr. Sales after he dropped off the items, and he saw the blue light at the house. At that point, he kind of abandoned ship. Your Honor, those are the facts of the case, Your Honor.

(Plea Tr. pp. 5-9)

CURRENT ACTION BEFORE THIS COURT

Applicant timely commenced this PCR action on December 10, 2020, in which he alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Plea Counsel
 - a. "Counsel failed to investigate."
 - b. "Counsel failed to motion for speedy trial."
 - c. "Counsel failed to motion for bond hearing."
2. "Due Process violation"

On September 2, 2023, PCR Counsel emailed amendments to Applicant's application to include the following allegations:

1. Plea Counsel was pregnant and didn't come to see him but once every 6 months -- was not really into his case -- because of her workload
2. Applicant initiated the Alford plea, not Plea Counsel.
3. Plea Counsel failed to investigate -- Applicant named multiple alibi witnesses that she never found or interviewed.
 - a. If Plea Counsel had talked to the alibi witnesses Applicant would have gone to trial if it came to that with those witnesses.
4. Week of Applicant's arraignment, he and his co-counsel discussed the case but it seemed that they didn't believe him and assumed he was guilty of at least something.

Before this Court are the Richland County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from SCDC, Applicant's guilty plea transcript, and the records of Applicant's current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy].

S.C. Code Ann. § 17-27-20(A).

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

² S.C. Code Ann. §§ 17-27-10 to -160.

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry V. State, 300 S.C. 115, 117-118, 386 S.E.2d 624,625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356,373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of Strickland remains unchanged; the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58-59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58-59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant if correctly informed of circumstances surrounding the plea, would have pleaded guilty - **not** whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

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

INITIAL FINDINGS

As an initial matter, this Court finds the testimony of Natalie Middleton generally **not credible** and **not persuasive**. This Court finds Plea Counsel's testimony generally **credible** and **persuasive**. This Court finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, she rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort he made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 11-13); 2. Applicant understood the details and circumstances of the negotiated plea (Plea Tr. pp. 3-4; 15-16); 3. Applicant clearly

indicated he was satisfied with Plea Counsel (Plea Tr. p. 15); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 13-14); 5. Applicant indicated he had enough time with Plea Counsel (Plea Tr. p. 14); 6. Applicant indicated Plea Counsel had gone over all the evidence and potential defenses (Plea Tr. pp. 14-15); 7. Applicant indicated no promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. p. 15); 8. Applicant was not on drugs or medications that would affect his ability to understand the plea proceedings (Plea Tr. p. 5); 9. Applicant understood the sentencing range (Plea Tr. pp. 11-13); 10. Applicant agreed with the allocation of the facts surrounding the State's case (Plea Tr. pp. 5-10); 11. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. pp. 15-18).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation: Plea Counsel failed to investigate.

Allegation: Plea Counsel failed to investigate alibi witnesses.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to investigate. Specifically, Applicant alleged Plea Counsel failed to investigate his alibi witnesses and the Facebook messages. This Court finds these allegations are without merit.

Strickland v. Washington makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. 668, 691 (1984). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. Ard. v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing

to call a witness, the witness(es) must be produced at the PCR evidentiary hearing, or their testimony must otherwise be presented, consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

Moreover, to prevail on a claim of ineffective assistance based on failure to investigate, a PCR applicant must ordinarily present some probative evidence that could have been discovered by a more thorough investigation. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court's grant of relief where the applicant failed to "present any evidence of what counsel could have discovered or what other defenses [Applicant] would have requested counsel pursue had counsel more fully prepared for the trial").

Through an alibi, an accused attempts "to show that because he was not at the scene of the crime at the time of its commission, having been at another place at the time, he could not have committed the crime." State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d Criminal Law § 136). To do so, the accused must show "he was at a place so distant that his participation in the crime was impossible." Id. Furthermore, the alibi must account for the entire time during which these crimes were committed. Id. "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." State v. Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (citing Robbins, 275 S.C. 373, 271 S.E.2d 319).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he asked Plea Counsel to investigate his alibi witnesses. (PCR Tr. p. 6). Applicant testified that he told Plea Counsel to contact his alibi

witnesses, whose names were Biale Jenkins, Kenneth Archie (aka Juvie), DJ³, and Halerio Jones⁴. Applicant testified that after having been transferred to Lee County, he spoke with his friend, Anthony Robinson, who was now deceased, from the "street" who was with Biale Jenkins (Jenkins). (PCR Tr. p. 7). Applicant testified that he asked Jenkins whether he remembered the last time they saw each other. (PCR Tr. p. 8). Applicant testified that he was playing cards with Jenkins on the night of the incident. (PCR Tr. p. 8). Applicant testified that his Plea Counsel did not "believe in his innocence from beginning to end" and did not "put forth her best effort." (PCR Tr. p. 8).

Applicant testified that he also asked Plea Counsel to investigate the domain of the Facebook messages because he was concerned about who wrote the messages. (PCR Tr. p. 6). Applicant testified that his phone was in custody, and he asked Plea Counsel to investigate the IP addresses and where it was logged. (PCR Tr. p. 6). Applicant testified that his phone was "logged on somebody's Wi-Fi" and did not work on the cell towers. (PCR Tr. p. 6).

On cross-examination, Applicant testified that Plea Counsel failed to investigate multiple alibi witnesses such as Jenkins, Kenneth Archie (aka Juvie), Horatio, and DJ, who would have provided an alibi. (PCR Tr. p. 16). Applicant testified that he recalled that Facebook messages were used in his trial. (PCR Tr. p. 17). Applicant testified that the only cell phone records used were for the State's witness, Derek Nance (Nance). (PCR Tr. p. 17). Applicant testified the cell phone records pinged Nance at different locations. (PCR Tr. 17).

³ This Court notes that at the evidentiary hearing, Applicant testified he did not know DJ's real name and only knew DJ by his Facebook name. (PCR Tr. p. 7).

⁴ This Court notes that at the evidentiary hearing, Applicant testified that Halerio Jones's name was Horatio Jones. (PCR Tr. p. 7).

Applicant testified that he could not recall agreeing with the State's facts and that they would likely lead to a conviction had he gone to trial. (PCR Tr. p. 18). Applicant testified that he could not recall informing the plea court that Plea Counsel had done everything that she could have done. (PCR Tr. p. 18). Applicant testified he could not recall informing the plea court that he was pleading of his own free will. (PCR Tr. 19). Applicant testified that he could not recall that he informed the plea court that no one was forcing him to plead. (PCR Tr. p. 19).

On direct examination, Plea Counsel testified that Applicant's charges stemmed from the burglary of a house. (PCR Tr. p. 26). Plea Counsel testified that the homeowner came home during the middle of the burglary and was shot and killed. (PCR Tr. p. 26). Plea Counsel testified that the shooter fled and fired at the homeowner's son as he ran away from the house. (PCR Tr. p. 26). Plea Counsel testified that a Pepsi can was collected from the closet in the house where the burglars were located and processed for DNA. (PCR Tr. p. 26). Plea Counsel testified that the DNA on the Pepsi can was run through CODIS and came back to Applicant. (PCR Tr. p. 26). Plea Counsel testified she retained a DNA expert, and discussions with the DNA expert were not fruitful, which did not leave much of a challenge to the DNA evidence. (PCR Tr. p. 30).

Further, Plea Counsel testified she discussed the elements of the charges and reviewed discovery with Applicant. (PCR Tr. p. 25). Plea Counsel testified that she hired an investigator, but Applicant did not provide any concrete information to provide to the investigator as far as alibi witnesses. (PCR Tr. p. 27). Plea Counsel testified that she requested the investigator "interview potential alibi witnesses and witnesses spoken to by law enforcement." (PCR Tr. p. 27). Plea Counsel testified she kept asking for information on his alibi witnesses. (PCR Tr. p. 27). In September 2018, Plea Counsel was given the name Biale Jenkins, and the investigator's attempts to locate Jenkins were unsuccessful. (PCR Tr. p. 27).

Findings

As an initial matter, this Court finds Plea Counsel's testimony **credible** and Applicant's testimony **not credible**. This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. Plea Counsel **credibly** testified that she hired two investigators and retained a DNA expert. Plea Counsel **credibly** testified that Applicant did not provide concrete contact information for his alleged alibi witnesses, and the investigator was unable to find anyone from the information Applicant provided them.

Additionally, Applicant has failed to present evidence of any discoverable matters or defenses Plea Counsel would have discovered had she been more prepared. Applicant also did not present credible evidence to this Court regarding Facebook messages. Notably, Applicant did not present any witnesses to this Court to support his contention that Plea Counsel failed to investigate his alibi witnesses. To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing, or their testimony must otherwise be presented, consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993).

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

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Plea Counsel failed to move for a speedy trial.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to move for a speedy trial. This Court finds this allegation to be without merit.

Pursuant to both the United States Constitution and the South Carolina Constitution, an accused in a criminal prosecution has a constitutionally guaranteed right to a speedy trial. See U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]"); S.C. Const. art. I, § 14 ("Any person charged with an offense shall enjoy the right to a speedy and public trial[.]"). That right is designed to protect against anxiety stemming from public accusations of a crime and to limit the possibility of a lengthy pre-trial delay impairing an accused's defense. State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471, 481 (2012). However, the right to a speedy trial is chiefly designed to prevent undue pre-trial impairment of liberty. United States v. Loud Hawk, 474 U.S. 302, 312 (1986). Critically, though, the criminal trial process is designed to move deliberately due to the many procedural safeguards involved, and, thus, the essential guarantee provided by the right to a speedy trial is the orderly expedition of a charge as opposed to mere speedy expedition. United States v. Ewell, 383 U.S. 116, 120 (1966);

see Beavers v. Haubert, 198 U.S. 77, 87 (1905) ("The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures the rights of a defendant. It does not preclude the rights of public justice.").

In order to trigger a speedy trial analysis, a criminal defendant's trial must have been delayed for a period of time that is presumptively prejudicial, which is necessarily dependent on the particular circumstances of each case. Langford, 400 S.C. at 442, 735 S.E.2d at 482. Notably, "a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case." Id. In South Carolina, a delay of over two years has previously been found to be sufficient to trigger a speedy trial analysis. State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978). Likewise, the United States Supreme Court has suggested a delay of roughly one year could—in certain circumstances—he presumptively prejudicial. See Doggett v. United States, 505 U.S. 647, 652, n.1 (1992) ("Depending on the nature of the charges, the lower courts have generally found post accusation delay 'presumptively prejudicial' at least as it approaches one year."). However, even where a delay that is presumptively prejudicial exists, a speedy trial determination "is *not based on the passage of a specific period of time*," and delay alone is not singularly dispositive. State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (emphasis added).

Ultimately, once a speedy trial analysis has been triggered, the question of whether a defendant's speedy trial rights have been violated is necessarily dependent on the specific circumstances of the case. State v. Robinson, 335 S.C. 620, 625, 518 S.E.2d 269, 272 (Ct. App. 1999). When attempting to answer that question, several factors should be considered. State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703-704 (Ct. App. 2000). Specifically, a court analyzing a speedy trial claim should consider: (1) the length of the delay; (2) the reason for the

delay; (3) the defendant's assertion of his right; and (4) whether any prejudice was suffered by the defendant as a result of the delay. Barker v. Wingo, 407 U.S. 514, 530 (1972). Notably, though, none of the four factors is alone necessary or sufficient for a finding of a speedy trial violation. Id. at 533. Instead, "they are related factors and must be considered together with such other circumstances as may be relevant." Id. "In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process." Id.

Findings

This Court finds that even assuming, *in arguendo*, the speedy trial analysis was triggered in this case, that Applicant has not established a speedy trial violation from the facts of his case. Applicant was arrested on or about June 9, 2017, and was indicted by the Richland County Grand jury in August 2017. Applicant's trial commenced on January 29, 2020. A portion of Applicant's detainment occurred during the COVID-19 pandemic. Furthermore, Applicant testified at the evidentiary hearing that Plea Counsel said she could not be ready in six weeks for a trial and that he had "let that go." (PCR Tr. p. 7). This Court reasserts its finding that no violation of Applicant's right to a speedy trial occurred in this case.

Moreover, to whatever extent Applicant was not entirely satisfied that he had not received a speedy trial, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Plea Counsel failed to move for a bond hearing.

Applicant alleged Plea Counsel was constitutionally ineffective for not moving for a bond hearing.

Findings

No evidence, testimony, or legal authority was presented at the evidentiary hearing regarding this allegation. Therefore, the Court deems it abandoned. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Cl. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Cl. App. 2011)).

Allegation: Plea Counsel failed to meet a sufficient number of times.

Allegation: Plea Counsel was pregnant and did not visit Applicant but once every six months.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times. This Court finds this allegation to be without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Ustelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense

and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). Mere speculation and conjecture are not insufficient to substantiate an allegation that counsel's deficient performance was prejudicial. Id.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel only met with him about every six months. (PCR Tr. p. 9).

On direct examination, Plea Counsel testified that from her notes, she counted at least sixteen meetings with the Applicant.

Findings

As an initial matter, this Court finds Plea Counsel's testimony in this matter **credible** and Applicant's testimony **not credible**. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. Plea Counsel **credibly** testified that her notes reflected that she met with Applicant at least sixteen (16) times. Plea Counsel **credibly** testified that her pregnancy did not affect her ability to represent Applicant. This Court finds Applicant has failed

to meet his burden of showing Plea Counsel was constitutionally ineffective for failing to meet with Applicant a sufficient number of times. See Campbell, Olson, and Easter, supra.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Moreover, to whatever extent Applicant was not entirely satisfied with the number of meetings he had with Plea Counsel, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Plea Counsel failed to convey one of the plea offers.

Allegation: Applicant initiated the plea offer and not Plea Counsel.

Applicant alleged Plea Counsel was constitutionally ineffective for failing to convey a plea offer to him. Specifically, Applicant alleged Plea Counsel failed to convey the first plea offer of forty (40) years. Also, Applicant avers he initiated the plea offer and not Plea Counsel. This Court finds these allegations to be without merit.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davis v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). "The United States Supreme Court has

held that 'defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.'" Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)); see also Lafler v. Cooper, 566 U.S. 156, 169-70 (2012) (rejecting proposition that a fair trial wipes clean any deficient performance by defense counsel during plea bargaining).

Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145. To show prejudice, an applicant for post-conviction relief "must demonstrate a reasonable probability that: (1) he [or she] 'would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler v. Cooper, 566 U.S. 156, 164 (2012)). An applicant must show actual prejudice, but depending on the facts of the case, an applicant's self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

Findings

This Court finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. It strains credulity to suggest that Applicant suffered any prejudice from this allegation where Applicant's plea deal he received was for less time than that which he claims Plea Counsel was ineffective for not conveying. See Collins, *supra*. This Court finds Applicant cannot

demonstrate that he would have taken the forty-year (40) plea deal had Plea Counsel conveyed that offer to him.

Turning to Applicant's claim that he initiated the Alford plea offer and not Plea Counsel, this Court finds Applicant has failed to meet his burden in proving any deficiency or prejudice from the alleged deficiency. The only testimony on this issue was from Applicant, where he testified that during negotiations, he asked if he could plead "no contest," and that was how an Alford plea was presented. (PCR Tr. p. 11). Applicant presented nothing further to this Court to substantiate any deficiency in Plea Counsel's representation; thus, this Court cannot find Plea Counsel's performance fell below a reasonably objective standard.

Moreover, to whatever extent Applicant was not entirely satisfied with the thirty (30) year plea deal Plea Counsel secured, he was presented the opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea and negotiated thirty (30) year sentence.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds Applicant has failed to establish any prejudice to Applicant by the alleged deficiency of Plea Counsel. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Week of Applicant's arraignment, he and Plea Counsel discussed the case – but it seemed that they didn't believe him and assumed he was guilty of at least something.

Applicant alleges that he is entitled to post-conviction relief because the week of Applicant's arraignment, he and Plea Counsel discussed the case – but it seemed that they didn't believe him and assumed he was guilty of at least something. This Court finds this allegation to be without merit.

Findings

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoc, supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. Applicant's allegation is pure conjecture. Importantly, speculation cannot satisfy Applicant's burden of proving prejudice. *See Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

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

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or

omissions to prove the second prong of Strickland as laid out in Hill- that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

[CONCLUSION PAGE FOLLOWS]

CONCLUSION

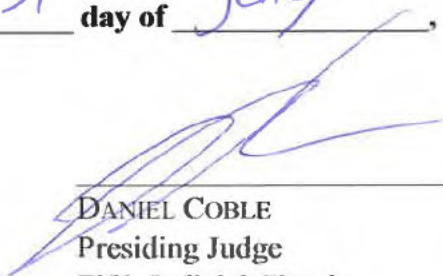
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED with PREJUDICE.**

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 31 day of July, 2024.



 DANIEL COBLE
 Presiding Judge
 Fifth Judicial Circuit

Richland, South Carolina

WITNESSES

(S) Chauncey B Duckett
- Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601395

ACTION OF GRAND JURY
TRUE BILL

Keith B.
Foreperson of Grand Jury
Date: **AUG 09 2017**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS4005201

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2017

150

THE STATE

vs.

Bouvia Anthony Sales

Indictment for
MURDER / MURDER

SC Code: **16-03-0010**
CDR Code: **0116**

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

Defendant

Bouvia Sales

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

Voluntary manslaughter

K. B. Duckett
Defendant

Witness:

C.C.C. PLS. AND G.S. **CERTIFIED TRUE COPY**
OF ORIGINAL FILED,
Juanita...
2017
RICHLAND COUNTY
SOUTH CAROLINA

SCANNED

WITNESSES

(S) Chauncey B Duckett
- Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601397

ACTION OF GRAND JURY
TRUE BILL

Keith B.
Foreperson of Grand Jury
Date: **AUG 09 2017**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS4005202

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2017

150

THE STATE
vs.

Bouvia Anthony Sales

Indictment for
BURGLARY / BURGLARY (AFTER JUNE
20, 1985) - FIRST DEGREE

SC Code: 16-11-0311
CDR Code: 0079

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

Defendant

Bouvia Sales

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

X B. Sw
Defendant

Witness:

C.C.C. PLS. AND G.S. CERTIFIED TRUE COPY
OF ORIGINAL FILED
Janet...
C.C.C. PLS.
RICHLAND COUNTY
SOUTH CAROLINA

SCANNED

WITNESSES

(S) Chauncey B Duckett
- Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601398

ACTION OF GRAND JURY
TRUE BILL

Keith Bl
Foreperson of Grand Jury **AUG 09 2017**
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS4005203

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2017

150

THE STATE
vs.

Bouvia Anthony Sales

Indictment for
WEAPONS / POSS. WEAPON DURING
VIOLENT CRIME, IF NOT ALSO
SENTENCED TO LIFE WITHOUT PAROLE
OR DEATH

SC Code: 16-23-0490
CDR Code: 0549

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

Defendant

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

X B. B.
Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on August 9, 2017, the
Grand Jurors of Richland County present upon their oath:

MURDER

That Bouvia Anthony Sales did in Richland County, on or about April 8,
2017, kill the victim, Marlon Butler, Sr., with malice aforethought, either
express or implied, by means of gunshot, and the victim did die as a
proximate result thereof. All in violation of Section 16-03-0010, S. C. Code
of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on August 9, 2017, the Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That Bouvia Anthony Sales did in Richland County on or about April 8, 2017, enter the dwelling of Marlon Butler, Sr., located at [REDACTED] [REDACTED] 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 during the nighttime, and/or while armed with a deadly weapon, and/or caused physical injury to a non-participant of the crime, and/or threatened the use of a dangerous instrument, and/or displayed what appeared to be a firearm, all in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on August 9, 2017, the
Grand Jurors of Richland County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

That Bouvia Anthony Sales did in Richland County, on or about April 8,
2017, possess a firearm, or visibly display what appeared to be a firearm,
or visibly displayed a knife, during the commission or attempted
commission of a violent crime, in violation of Section 16-23-0490, 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.



DAN JOHNSON, SOLICITOR

STATE OF 14TH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

INDICTMENT/CASE#: 2017GS4005201

Bouvia Anthony Sales

A/W#: 2017A4021601395

AKA: _____

Date of Offense: 4/8/2017

Race: BLACK Sex: M Age: 25

S.C. Code § : 16-03-0010

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 0116

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Manslaughter / Voluntary manslaughter

SENTENCE SHEET

CONVICTED OF or PLEADS

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

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
25 years + 5 consecutive on the weapon charge (CSC w/minor 1st or CSC w/minor 3rd)

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

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

ATTEST: _____
[Signature] Solicitor 76417 + B. E. N. Defendant [Signature] Attorney for Defendant 100067 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____

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

CONCURRENT or CONSECUTIVE to sentence on:

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

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

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

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>3.75</u>
TOTAL		\$ <u>128.75</u>

Clerk of Court/ Deputy Clerk Jeanette McBride gpp
Court Reporter: [Signature]
SCCA/217 (04/2018)

_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

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OF ORIGINAL FILED
[Signature]
SOUTH CAROLINA

SCANNED

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge [Signature]
Judge Code: 2161
Sentence Date: 1-29-2020

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

Bouvia Anthony Sales

AKA: _____

Race: BLACK Sex: M Age: 25

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

INDICTMENT/CASE#: 2017GS4005202

A/W#: 2017A4021601397

Date of Offense: 4/8/2017

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
25 years w/ 5 consecutive on the weapon charge (CSC w/minor 1st or CSC w/minor 3rd)

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

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

ATTEST: [Signature] Solicitor [Signature] SC Bar# [Signature] Defendant [Signature] Attorney for Defendant 100007 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-26 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

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

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Jeanette McBride
Court Reporter: Harris

SCCA/217 (04/2018)

_____ days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling
Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge [Signature]

Judge Code: 2161

Sentence Date: 1-29-2020

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SCANNED

116
STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

INDICTMENT/CASE#: 2017GS4005203

Bouvia Anthony Sales

A/W#: 2017A4021601398

AKA: _____

Date of Offense: 4/8/2017

Race: BLACK Sex: M Age: 25

S.C. Code § : 16-23-0490

DOB: _____ SS#: _____

CDR Code #: 0549

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

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

5 years, consecutive to 25 on Burg 1st and vol. manslaughter

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

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

ATTEST: _____ 100061

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on: 2017GS405201, 5202

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

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

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

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %) _____ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ prnts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso (Public Def/Probation) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Jeanette McBride ggs Presiding Judge _____

Court Reporter: Harris Judge Code: 2161

SCCA/217 (04/2018) Sentence Date: 1-29-2020