

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lancaster County

Brooks P. Goldsmith, Circuit Court Judge

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S.C. Supreme Court

BRIAN ANSELM DIGGS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000285

APPENDIX

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ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

COURT OF GENERAL SESSIONS
95-GS-29-189, 191

STATE OF SOUTH CAROLINA :

-vs- :

BRIAN ANSELM DIGGS :

TRANSCRIPT OF RECORD
GUILTY PLEA

APRIL 13 AND 14, 1998
LANCASTER, SOUTH CAROLINA

B E F O R E:

HONORABLE PAUL E. SHORT, JR., JUDGE.

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

JOHN JUSTICE, SOLICITOR
DOUGLAS BARFIELD, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

LEON BANKS, ESQUIRE
JERRY SCREEN, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

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1 (MONDAY, APRIL 13, 1998.)

2 THE COURT: ALL RIGHT. SOLICITOR, MR. BANKS, MR.
3 SCREEN. GENTLEMEN, ARE YOU READY TO PROCEED?

4 MR. SCREEN: YES, SIR.

5 MR. BANKS: NO, SIR.

6 (PAUSE.)

7 MR. BANKS: YES, SIR.

8 THE COURT: ALL RIGHT. DO YOU WANT TO CALL THE CASE,
9 SOLICITOR?

10 MR. JUSTICE: YOUR HONOR, MAY IT PLEASE THE COURT.
11 SET FOR TRIAL BEGINNING TODAY WAS THE CASE OF THE STATE
12 VERSUS BRIAN A. DIGGS, INDICTED FOR MURDER AND ATTEMPTED
13 ARMED ROBBERY IN LANCASTER COUNTY BY THE GRAND JURY IN
14 1995. THE MURDER HAVING BEEN COMMITTED ON MAY 16, 1994.

15 UPON ARRIVING AT THE COURTHOUSE THIS MORNING, I WAS
16 ADVISED BY COUNSEL FOR THE DEFENSE THAT MR. DIGGS HAS
17 ELECTED TO ENTER INTO A PLEA DEAL THAT WAS PROPOSED BY THE
18 STATE SOME TIME BACK WHEREUPON UPON THE ACCEPTANCE OF THE
19 PLEAS OF GUILTY TO MURDER AND ATTEMPTED ARMED ROBBERY, THAT
20 BEING AN AGGRAVATING CIRCUMSTANCE UNDER THE LAW OF THE
21 STATE OF SOUTH CAROLINA, THE STATE WOULD ASK THE COURT NOT
22 TO SENTENCE MR. DIGGS TO DEATH, BUT RATHER TO A LIFE
23 SENTENCE PROVIDED BY LAW.

24 THE COURT: ALL RIGHT. NOW, GENTLEMEN, I BELIEVE THAT
25 BEFORE WE PROCEED THAT IN OUR HEARING LAST WEEK ON LAST

STATE VS. BRIAN DIGGS

1 MONDAY, WHICH I BELIEVE WOULD BE APRIL 6, WE DETERMINED
2 THAT WE NEEDED PERHAPS A BLAIR HEARING IN THIS CASE; IS
3 THAT CORRECT, MR. BANKS AND MR. SCREEN?

4 MR. SCREEN: YES, SIR.

5 MR. BANKS: YES, SIR. AT THAT TIME THAT WAS WHAT WE
6 DISCUSSED, YES.

7 THE COURT: I BELIEVE THE DEFENDANT WAS SENT FOR
8 EVALUATION PURSUANT TO COURT ORDER, WAS HE NOT, SOLICITOR?

9 MR. JUSTICE: YES, YOUR HONOR. I PASS UP AS COURT'S
10 EXHIBIT 1 THE ORIGINAL ORDER DATED 3 FEBRUARY 1995 ORDERING
11 THE THREE PRONGED EXAMINATION.

12 THE COURT: ALL RIGHT. ANY OBJECTION TO MARKING THAT
13 COURT'S EXHIBIT NO. 1, GENTLEMEN, THE ORDER?

14 MR. SCREEN: NO, YOUR HONOR.

15 MR. BANKS: NO, YOUR HONOR.

16 THE COURT: SO ORDERED.

17 MR. JUSTICE: YOUR HONOR, THAT EVALUATION WAS
18 COMPLETED BY THE REPORT OF JUNE 19, 1995, A 3-PAGE
19 DOCUMENT. IT'S A REPORT SIGNED BY DR. DONALD MORGAN AND
20 ALSO DR. LARRY MONTGOMERY, IN WHICH THEY DETERMINE ALL
21 THREE ISSUES, COMPETENCY TO STAND TRIAL, SANITY, AND
22 ABILITY TO CONFORM, ALL IN THE AFFIRMATIVE.

23 MARK THAT AS COURT'S EXHIBIT 2.

24 THE COURT: ALL RIGHT. ANY OBJECTION TO MARKING THE
25 REPORT DATED JUNE 19, 1995 AS COURT'S EXHIBIT NO. 2, MR.

1 SCREEN?

2 MR. SCREEN: NO, YOUR HONOR.

3 THE COURT: MR. BANKS?

4 MR. BANKS: NO, SIR.

5 THE COURT: ALL RIGHT. SO ORDERED, COURT'S EXHIBIT

6 NO. 2.

7 MR. JUSTICE: YOUR HONOR, AT A LATER TIME, SEPTEMBER

8 OF '97, I THINK THIS WAS AFTER NOTICE OF INTENT HAD BEEN

9 SERVED UPON MOTION FROM THE DEFENSE, IF I'M NOT MISTAKEN, A

10 SECOND EVALUATION WAS ORDERED.

11 I'M PASSING UP WHAT IS NOT A SIGNED COPY. WE WILL

12 LOCATE A SIGNED COPY AND REPLACE IT. BUT THIS IS A COPY

13 DATED 25 SEPTEMBER 1997 ORDERING THE EVALUATION THE SECOND

14 TIME.

15 THE COURT: ALL RIGHT. ANY OBJECTION TO RECEIVING

16 THAT NOW AND LATER SUBSTITUTING A SIGNED COPY, MR. SCREEN

17 AND MR. BANKS?

18 MR. SCREEN: NO, SIR.

19 MR. BANKS: NO, SIR.

20 THE COURT: COURT'S EXHIBIT NO. 3, SO ORDERED.

21 MR. JUSTICE: FINALLY, YOUR HONOR, COURT'S EXHIBIT NO.

22 4 IS THE REPORT RESULTING FROM THE LAST ORDER, EVALUATION

23 OF NOVEMBER THE 7TH, 1997. IN THIS REPORT, AS IS THEIR

24 FASHION, THE STATE HOSPITAL OFFICIALLY RENDERED NO OPINIONS

25 ON ANY OF THE THREE QUESTIONS BECAUSE, ACCORDING TO THE

1 DOCTORS AT THE STATE HOSPITAL, MR. DIGGS DID NOT COOPERATE
2 WITH THE EVALUATION.

3 THE COURT: ALL RIGHT. ANY OBJECTION TO MARKING THAT
4 COURT'S EXHIBIT NO. 4, MR. SCREEN?

5 MR. SCREEN: NO, SIR.

6 THE COURT: MR. BANKS?

7 MR. BANKS: NO, SIR.

8 THE COURT: THANK YOU. SO ORDERED.

9 ALL RIGHT. DOES THE STATE WISH TO CALL ANY WITNESSES
10 OR PRESENT ANY FURTHER EVIDENCE IN REGARD TO THE BLAIR
11 HEARING, MR. SOLICITOR?

12 MR. JUSTICE: THE STATE RESTS ITS CASE ON THE REPORTS
13 ADMITTED INTO THE RECORD.

14 THE COURT: ALL RIGHT. MR. SCREEN AND MR. BANKS, DOES
15 THE DEFENDANT WISH TO PRESENT ANY EVIDENCE IN REGARD TO THE
16 BLAIR HEARING?

17 MR. BANKS: NO, SIR. I WOULD, HOWEVER, REQUEST THE
18 COURT -- AS I KNOW THE COURT WILL -- NOT TAKE ANY STATEMENT
19 OF UNCOOPERATIVE ---

20 THE COURT: YES, SIR.

21 MR. BANKS: --- AT THAT TIME AGAINST HIM. OTHER THAN
22 THAT, NO OTHER STATEMENT.

23 THE COURT: CERTAINLY NOT. THAT'S HIS RIGHT, SIR.

24 MR. BANKS: YES, SIR.

25 THE COURT: ALL RIGHT. MR. SCREEN?

1 MR. SCREEN: JUDGE ---

2 THE COURT: JUST IN REGARD TO THE BLAIR HEARING.

3 MR. SCREEN: JUST IN REGARD TO THE BLAIR HEARING

4 ITSELF, HIS COMPETENCY I JUST WANT THE RECORD REFLECT THAT
5 I HAVE SPENT SINCE YESTERDAY AND TODAY INCLUDING, PROBABLY
6 A TOTAL OF 6 HOURS IN VERY CLOSE CONSULTATION WITH MY
7 CLIENT. AND I BELIEVE HE UNDERSTANDS WHAT'S GOING ON AND
8 WAS ABLE TO RESPOND TO ME.

9 THE COURT: ALL RIGHT. THANK YOU. ALL RIGHT. AFTER
10 CAREFULLY REVIEWING COURT'S EXHIBITS 1 THROUGH 4, THE COURT
11 FINDS THAT THE DEFENDANT WAS DIAGNOSED WITH AN ADJUSTMENT
12 DISORDER, WITH DEPRESSED MOOD, AND BORDERLINE INTELLECTUAL
13 FUNCTIONING. AND, FURTHER, THE DEFENDANT WAS FOUND CAPABLE
14 -- AND THE COURT SO FINDS THAT HE IS CAPABLE OF
15 UNDERSTANDING THE NATURE OF THE CHARGES AGAINST HIM AND IS
16 CAPABLE OF ASSISTING HIS ATTORNEYS IN HIS OWN DEFENSE.

17 FURTHER, THE COURT FINDS THAT THE DEFENDANT DID HAVE
18 THE ABILITY TO DIFFERENTIATE BETWEEN RIGHT AND WRONG AT THE
19 TIME OF THE ALLEGED OFFENSE ON OR ABOUT MAY 16, 1994, AND
20 THAT HE DID HAVE THE CAPACITY TO CONFORM HIS CONDUCT TO THE
21 REQUIREMENTS OF THE LAW ON MAY 16, 1994.

22 THEREFORE, THE COURT FINDS THAT HE IS COMPETENT TO
23 STAND TRIAL.

24 ALL RIGHT. I BELIEVE WE HAVE COMPLETED THE MATTER; IS
25 THAT CORRECT?

1 MR. SCREEN: YES, SIR.

2 THE COURT: ALL RIGHT. MR. BANKS AND MR. SCREEN, OF
3 COURSE, YOU GENTLEMEN ARE REPRESENTING AND HAVE BEEN ABLY
4 REPRESENTING MR. DIGGS; IS THAT CORRECT, MR. BANKS AND MR.
5 SCREEN?

6 MR. BANKS; THAT'S CORRECT, YOUR HONOR.

7 MR. SCREEN: THAT'S CORRECT, YOUR HONOR.

8 THE COURT: NOW, GENTLEMEN, YOU'VE HEARD THE
9 SOLICITOR, SOLICITOR JUSTICE, ADVISE THE COURT THAT YOU
10 HAVE INFORMED HIM THAT THE DEFENDANT WISHES TO TENDER A
11 PLEA OF GUILTY OF MURDER AT THIS TIME, AND THE PLEA OF
12 GUILTY TO ATTEMPTED ARMED ROBBERY AT THIS TIME, AND THAT
13 THE STATE OF SOUTH CAROLINA IS WITHDRAWING ITS NOTICE OF
14 INTENT TO SEEK THE DEATH PENALTY; IS THAT CORRECT, MR.
15 BANKS?

16 MR. BANKS: THAT'S CORRECT, YOUR HONOR.

17 THE COURT: IS THAT CORRECT, MR. SCREEN?

18 MR. SCREEN:-- YES, SIR, IT IS.

19 THE COURT: AND, GENTLEMEN, HAVE EACH OF YOU AND
20 COLLECTIVELY HAVE YOU ALL HAD AN OPPORTUNITY TO REVIEW ALL
21 OF THESE MATTERS WITH MR. DIGGS?

22 MR. SCREEN: YES, SIR.

23 MR. BANKS: YES, YOUR HONOR.

24 THE COURT: IN YOUR OPINION, MR. BANKS, DOES MR. DIGGS
25 FULLY UNDERSTAND THESE MATTERS?

1 MR. BANKS: YES, SIR, HE DOES.

2 THE COURT: AND DOES HE FULLY UNDERSTAND THE NATURE OF
3 ALL OF THE CHARGES AGAINST HIM AND THE MAXIMUM SENTENCES HE
4 COULD RECEIVE?

5 MR. BANKS: YES, SIR.

6 THE COURT: AND HOW DOES HE INDICATE TO YOU HE WISHES
7 TO PLEAD, SIR?

8 MR. BANKS: GUILTY, YOUR HONOR.

9 THE COURT: FROM YOUR INVESTIGATION OF HIS CASE AND
10 ALL OF THE CIRCUMSTANCES, DO YOU AGREE WITH HIS DECISION?

11 MR. BANKS: I DO, YOUR HONOR.

12 THE COURT: MR. SCREEN, HAVE YOU HAD A FULL
13 OPPORTUNITY TO DISCUSS THIS MATTER WITH MR. DIGGS?

14 MR. SCREEN: YES, SIR, I HAVE.

15 THE COURT: AND DOES MR. DIGGS FULLY UNDERSTAND THE
16 NATURE OF ALL OF THE CHARGES AGAINST HIM AND THE POSSIBLE
17 PUNISHMENTS IF CONVICTED OF THESE OFFENSES?

18 MR. SCREEN: IN MY OPINION HE DOES, YOUR HONOR.

19 THE COURT: AND HOW DOES HE INDICATE TO YOU HE WISHES
20 TO PLEAD?

21 MR. SCREEN: WISHES TO ENTER A PLEA OF GUILTY, YOUR
22 HONOR.

23 THE COURT: BASED UPON YOUR INVESTIGATION OF THE CASE,
24 DO YOU AGREE WITH HIS DECISION TO PLEAD GUILTY TO MURDER
25 AND ATTEMPTED ARMED ROBBERY?

1 MR. SCREEN: YES, SIR, I DO.
2 THE COURT: THANK YOU.
3 MR. DIGGS, SIR, WILL YOU PLEASE RAISE YOUR RIGHT HAND.
4 (THE DEFENDANT COMPLIED.)
5 THE COURT: DO YOU SOLEMNLY SWEAR OR AFFIRM THE
6 TESTIMONY YOU GIVE TODAY WILL BE THE TRUTH, THE WHOLE
7 TRUTH, AND NOTHING BUT THE TRUTH SO HELP YOU GOD?
8 THE DEFENDANT: YES, SIR.
9 THE COURT: THANK YOU, MR. DIGGS, SIR. YOU MAY PUT
10 YOUR HAND DOWN, SIR.
11 HOW OLD ARE YOU, MR. DIGGS, SIR?
12 DEFENDANT: 21.
13 THE COURT: 21 YEARS OF AGE. WHAT IS YOUR DATE OF
14 BIRTH, SIR?
15 DEFENDANT:
16 THE COURT: AND WHERE WERE YOU BORN?
17 DEFENDANT: I WAS BORN IN CHESTERFIELD COUNTY.
18 THE COURT: ARE YOU MARRIED?
19 DEFENDANT: NO, SIR.
20 THE COURT: WHAT IS YOUR FORMAL EDUCATION, SIR?
21 DEFENDANT: NINTH.
22 THE COURT: YOU COMPLETED THE NINTH?
23 THE DEFENDANT: YES, SIR.
24 THE COURT: ALL RIGHT. WHY DID YOU QUIT GOING TO
25 SCHOOL IN THE NINTH?

1 DEFENDANT: I WAS TAKEN FROM SCHOOL BECAUSE I WAS
2 INCARCERATED.
3 THE COURT: ON THIS CASE?
4 THE DEFENDANT: YES, SIR.
5 THE COURT: SO YOU WERE ATTENDING SCHOOL AT THE TIME
6 OF THIS ALLEGED OFFENSE?
7 THE DEFENDANT: YES, SIR.
8 THE COURT: NOW, MR. DIGGS, ARE YOU MARRIED?
9 DEFENDANT: NO, SIR.
10 THE COURT: WERE YOU LIVING ALONE AT THE TIME OF THIS
11 ALLEGED ---
12 DEFENDANT: NO, SIR.
13 THE COURT: WITH WHOM WERE YOU LIVING?
14 DEFENDANT: MY MOTHER.
15 THE COURT: YOUR MOTHER.. YOUR MOTHER, IS SHE PRESENT
16 TODAY?
17 DEFENDANT: DECEASED.
18 THE COURT: SHE'S DECEASED. AND HOW LONG HAVE YOU
19 BEEN INCARCERATED, SIR?
20 DEFENDANT: ALMOST 3 AND A HALF.
21 THE COURT: DO YOU RECALL THE DATE OF YOUR
22 INCARCERATION, SIR?
23 DEFENDANT: YES, SIR. 1995 -- SIXTH -- 19TH.
24 THE COURT: JUNE ---
25 DEFENDANT: JANUARY.

1 THE COURT: SIR?

2 DEFENDANT: JANUARY OF '95.

3 THE COURT: SO YOU'VE BEEN IN JAIL SINCE JANUARY 19,
4 1995?

5 DEFENDANT: (NODS HEAD.)

6 THE COURT: MR. DIGGS, HAVE YOU EVER BEEN TREATED FOR
7 ALCOHOL ABUSE, DRUG ABUSE, OR MENTAL ILLNESS?

8 DEFENDANT: NO, SIR.

9 THE COURT: ARE YOU UNDER THE INFLUENCE OF ANY DRUG,
10 ALCOHOL, OR MEDICATIONS TODAY?

11 DEFENDANT: NO, SIR.

12 THE COURT: ARE YOU AWARE, SIR, OF ANY PHYSICAL,
13 EMOTIONAL, OR NERVOUS CONDITION YOU MIGHT HAVE WHICH WOULD
14 PREVENT YOU FROM UNDERSTANDING WHAT YOU'RE DOING IN COURT
15 TODAY?

16 DEFENDANT: NO, SIR.

17 THE COURT: MR. DIGGS, ARE YOU FULLY AWARE OF WHY YOU
18 ARE PRESENT IN THIS COURTROOM TODAY?

19 THE DEFENDANT: YES, SIR.

20 THE COURT: AND, MR. DIGGS, HAVE YOU HAD A FULL
21 OPPORTUNITY TO DISCUSS YOUR CASE WITH EACH OF YOUR
22 ATTORNEYS, MR. BANKS AND MR. SCREEN?

23 DEFENDANT: YES, I HAVE.

24 THE COURT: MR. DIGGS, IN THIS FIRST INDICTMENT THE
25 STATE OF SOUTH CAROLINA ALLEGES THAT YOU DID ON OR ABOUT

1 MAY THE 16TH, 1994 FELONIOUSLY, WILFULLY, AND WITH MALICE
2 AFORETHOUGHT KILL ONE JACKIE HALLMAN BY MEANS OF SHOOTING
3 HER AND THAT SAID VICTIM DIED AS A PROXIMATE RESULT
4 THEREOF. DO YOU UNDERSTAND THAT CHARGE OF MURDER?

5 DEFENDANT: YES, I DO.

6 THE COURT: AND DO YOU UNDERSTAND THAT UNDER THE
7 CURRENT LAW OF THIS STATE THAT THE COURT COULD SENTENCE YOU
8 UP TO -- WELL, 30 YEARS OR LIFE IMPRISONMENT. HOWEVER,
9 THIS IS A CASE WHERE IT IS ALLEGED AGGRAVATING
10 CIRCUMSTANCES WHEN THE COURT COULD SENTENCE YOU UP TO LIFE
11 IMPRISONMENT AND YOU WOULD BE REQUIRED TO SERVE 30 YEARS IN
12 JAIL BEFORE YOU WERE ELIGIBLE FOR PAROLE. DO YOU
13 UNDERSTAND THAT, SIR?

14 THE DEFENDANT: YES, SIR.

15 THE COURT: HAS THAT BEEN FULLY EXPLAINED TO YOU?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: THE NEXT INDICTMENT ALLEGES THAT YOU DID
18 THAT SAME DATE AND TIME AND PLACE HERE IN LANCASTER COUNTY
19 ARMED WITH A DEADLY WEAPON, TO WIT, A PISTOL, FELONIOUSLY
20 ATTEMPT TO TAKE FROM THE PERSON OF JACKIE HALLMAN BY MEANS
21 OF FORCE OR INTIMIDATION GOODS OR MONEY OF JACK'S
22 CONVENIENCE STORE, SUCH GOODS OR MONEYS BEING DESCRIBED AS
23 MONEY WITH THE INTENT TO DEPRIVE THE OWNER PERMANENTLY OF
24 THE POSSESSION OF SAID PROPERTY.

25 MR. DIGGS, SIR, DO YOU FULLY UNDERSTAND THE CHARGE OF

1 ATTEMPTED ARMED ROBBERY?

2 DEFENDANT: (NO RESPONSE.)

3 THE COURT: MR. DIGGS ---

4 DEFENDANT: YES, SIR.

5 THE COURT: --- DO YOU FULLY UNDERSTAND THAT CHARGE?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: AND YOU UNDERSTAND THE COURT COULD

8 SENTENCE YOU UP TO 10 YEARS IMPRISONMENT FOR THAT OFFENSE?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: MR. DIGGS, DO YOU FULLY UNDERSTAND THAT

11 ATTEMPTED ARMED ROBBERY IS NOW AN AGGRAVATING CIRCUMSTANCE

12 UNDER OUR LAW, UNDER 1603020 (C) BY MEANS OF AN

13 INTERPRETATION OF THE SOUTH CAROLINA SUPREME COURT, THE

14 CASE STATE VERSUS HUMPHRIES, (PHONETIC). DO YOU FULLY

15 UNDERSTAND THAT?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: ALL RIGHT. UNDERSTANDING THE CHARGES

18 CONTAINED IN EACH OF THE INDICTMENTS AGAINST YOU AND

19 UNDERSTANDING THE MAXIMUM SENTENCES YOU COULD RECEIVE, HOW

20 DO YOU WISH TO PLEAD TO THE CHARGE OF MURDER; GUILTY OR NOT

21 GUILTY?

22 DEFENDANT: GUILTY.

23 THE COURT: HOW DO YOU WISH TO PLEAD TO THE CHARGE OF

24 ATTEMPTED ARMED ROBBERY?

25 DEFENDANT: GUILTY.

1 THE COURT: NOW, MR. DIGGS, SIR, YOU'VE HEARD THE
2 SOLICITOR RECITE TO THE COURT THAT IN CONSIDERATION OF YOUR
3 GUILTY PLEAS TO THE OFFENSE OF MURDER AND ATTEMPTED ARMED
4 ROBBERY, THE STATE OF SOUTH CAROLINA HAS WITHDRAWN ITS
5 NOTICE OF INTENTION TO SEEK THE DEATH PENALTY IN THIS CASE.
6 DID YOU HEAR HIM RECITE THAT INTO THE RECORD?

7 THE DEFENDANT: YES, SIR.

8 THE COURT: OTHER THAN THAT PROMISE OR OTHER THAN THAT
9 REPRESENTATION, HAS ANYONE PROMISED YOU ANYTHING OR HELD
10 OUT ANY HOPE OF REWARD TO GET YOU TO PLEAD GUILTY?

11 DEFENDANT: NO, SIR.

12 THE COURT: HAS ANYONE THREATENED YOU OR USED ANY
13 FORCE OR INTIMIDATION AGAINST YOU, SIR, TO CAUSE YOU TO
14 PLEAD GUILTY?

15 (PAUSE.)

16 DEFENDANT: NO, SIR.

17 THE COURT: HAS ANYONE THREATENED YOU OR USED ANY
18 MEANS TO CAUSE YOU TO PLEAD GUILTY?

19 DEFENDANT: NO, SIR.

20 THE COURT: ARE YOU PLEADING GUILTY TO THE OFFENSE OF
21 MURDER AND ATTEMPTED ARMED ROBBERY OF YOUR OWN FREE WILL
22 AND ACCORD?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: ARE YOU GUILTY OF THESE OFFENSES?

25 THE DEFENDANT: YES, SIR.

STATE VS. BRIAN DIGGS

1 THE COURT: HAVE YOU HAD FULL OPPORTUNITY TO DISCUSS
2 YOUR CASE WITH BOTH OF YOUR ATTORNEYS, MR. BANKS AND MR.
3 SCREEN?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: AND HAVE THEY DONE EVERYTHING YOU'VE ASKED
6 THEM TO DO FOR YOU IN REGARD TO YOUR CASE?

7 THE DEFENDANT: YES, SIR.

8 THE COURT: ARE YOU SATISFIED WITH YOUR ATTORNEYS'
9 REPRESENTATION OF YOU?

10 THE DEFENDANT: YES, SIR.

11 THE COURT: NOW, MR. DIGGS, IS THERE ANYTHING THAT YOU
12 WOULD LIKE FOR THIS COURT TO EXPLAIN FURTHER TO YOU AT THIS
13 PARTICULAR TIME, SIR?

14 (PAUSE.)

15 DEFENDANT: NO, SIR.

16 THE COURT: ALL RIGHT, SIR. THANK YOU. ALL RIGHT.
17 SOLICITOR, WOULD YOU RECITE INTO THE RECORD THE FACTS OF
18 THIS CASE?

19 MR. JUSTICE: YOUR HONOR, MAY IT PLEASE THE COURT, ON
20 MAY THE 16TH, 1994 IN LANCASTER COUNTY ON HIGHWAY 903 EAST
21 OF THE CITY OF LANCASTER THE VICTIM, JACKIE STRAWN HALLMAN,
22 AND HER LITTLE SISTER, REGINA STRAWN, WERE OPERATING THE
23 FAMILY CONVENIENCE STORE BUSINESS ON THAT HIGHWAY.

24 SHORTLY AFTER 9:30 THE YOUNG LADIES WERE GETTING READY
25 TO CLOSE UP AT 10:00 O'CLOCK. SHORTLY BEFORE 9:30 OR

1 AROUND 9:30 THE DEFENDANT, MR. DIGGS, ENTERED THE STORE
2 ARMED WITH WHAT IS BELIEVED TO BE A .22 CALIBER HANDGUN.
3 HIS DRIVER, CO-DEFENDANT, MR. SUTTON. REMAINED OUTSIDE IN
4 AN AUTOMOBILE.

5 MR. DIGGS CAME INTO THE STORE BY ALL ACCOUNTS AND
6 TRIED TO MAKE IT APPEAR THAT HE WAS GOING TO BUY SOMETHING.
7 HE WENT TO THE BACK WHERE THE SOFT DRINKS ARE KEPT, PICKED
8 UP A DRINK OF ONE OF THESE FLAVORED WATERS, I BELIEVE, WENT
9 TO THE FRONT. AT THAT POINT PRODUCED A PISTOL AND DEMANDED
10 THE MONEY FROM MS. JACKIE HALLMAN.

11 MS. HALLMAN REFUSED TO TURN OVER THE MONEY TO HIM, AND
12 THE TWO BEGAN TO TUSSLE AS MS. HALLMAN STARTED CALLING
13 9-1-1.

14 DURING THAT PERIOD OF TIME MR. DIGGS FIRED ONE SHOT.
15 IT ENTERED THROUGH MS. HALLMAN'S ARM, EXITING THE OTHER
16 SIDE OF THE ARM, AND THEN FINALLY COMING TO REST IN HER
17 ~~CHEST, CUTTING~~ THE AORTA.

18 MS. HALLMAN WAS ABLE TO COMPLETE HER 9-1-1 CALL PRIOR
19 TO DYING FROM LOSS OF BLOOD FROM THE AORTA INJURY.

20 DURING THE TUSSLE SHE WAS ALSO STRUCK ON THE HEAD AT
21 LEAST ONE TIME.

22 THE DEFENDANT FLED THE SCENE. AND AT THE TIME IN MAY
23 OF '94 THE SHERIFF'S DEPARTMENT OF LANCASTER COUNTY
24 LAUNCHED ONE OF THE MOST WIDE SPREAD INVESTIGATIONS THAT I
25 HAVE SEEN IN THE 20 YEARS I'VE BEEN HERE. LITERALLY FOR

1 MONTHS POTENTIAL SUBJECTS -- I WON'T CALL THEM SUSPECTS,
2 BUT PEOPLE WHO MIGHT KNOW SOMETHING WERE IDENTIFIED AND
3 SUBSEQUENTLY ELIMINATED.

4 WHEN THE KILLER RAN FROM THE STORE, HE APPARENTLY
5 OPENED THE GLASS DOOR BY PUSHING IT WITH BOTH HANDS. WE
6 GOT TWO VERY GOOD PALM PRINTS. AND EVERY SUSPECT WHO EVEN
7 ROSE TO THE LEVEL OF SUSPECT WAS ELIMINATED BY COMPARISONS
8 TO THESE PALM PRINTS.

9 IN DECEMBER OF 1994 THE SHERIFF'S DEPARTMENT RECEIVED
10 INFORMATION FROM A CONFIDENTIAL SOURCE THAT AN INDIVIDUAL
11 HAD MADE STATEMENTS THAT HE KNEW WHO KILLED THE GIRL IN
12 LANCASTER IN A STORE, BECAUSE THE GUY WHO HAD DONE IT HAD
13 TOLD HIM THAT HE DID IT.

14 THE SHERIFF'S DEPARTMENT TRACKED DOWN SEVERAL LEADS
15 AND FOUND IN FACT THREE INDIVIDUALS, ALL OF CHESTERFIELD
16 COUNTY AT THE TIME, TO WHOM BRIAN DIGGS SHORTLY AFTER THE
17 KILLING HAD MADE ADMISSIONS THAT HE WAS THE ONE WHO KILLED
18 THE CLERK IN LANCASTER.

19 ALL THREE STORIES WERE TAKEN SEPARATELY, AND ALL WERE
20 PRETTY MUCH CONSISTENT WITH EACH OTHER AS TO WHAT THESE
21 THREE INDIVIDUALS KNEW.

22 MR. DIGGS WAS LOCATED. HE WAS AT WILL LOU GRAY
23 OPPORTUNITY SCHOOL AT THE TIME. HE WAS LOCATED THERE,
24 ARRESTED, AND BROUGHT BACK TO LANCASTER COUNTY FOR
25 QUESTIONING.

1 UPON QUESTIONING, MR. DIGGS ADMITTED TO THE BASIC
2 FACTS THAT HE ATTEMPTED TO ROB THE STORE AND HE FIRED THE
3 FATAL SHOT. HE ALSO INDICATED MR. SUTTON AS HIS DRIVER.

4 MR. SUTTON WAS THEN FOUND AND ARRESTED.

5 MR. SUTTON GAVE A STORY LARGELY CORROBORATIVE, THAT HE
6 WAS THE DRIVER OF THE CAR. THE ONLY REAL BONE OF
7 DISSENTION BETWEEN THE TWO OF THEM IS WHO HAD INTRODUCED
8 THE GUN INTO THE MIX.

9 THE STATE ALSO HAD INTENDED TO CALL MR. SUTTON AS A
10 WITNESS AGAINST MR. DIGGS. AND, ACCORDINGLY, LAST WEEK HIS
11 ATTORNEY TURNED OVER TO ME A NUMBER OF LETTERS THAT WE
12 DETERMINED TO BE ~~INCRIMINATING THAT MR. DIGGS HAD~~ WRITTEN
13 TO MR. SUTTON WHILE IN JAIL.

14 OF COURSE, THE PALM PRINTS WERE A MATCH; AND THAT WAS
15 THE FINAL MATTER IN REGARDS TO SEALING THE PROOF OF MR.
16 DIGGS.

17 THE COURT: ALL RIGHT. THANK YOU.

18 ALL RIGHT. MR. DIGGS, YOU'VE HEARD THE RECITATION OF
19 THE FACTS BY THE SOLICITOR AS TO HOW THE EVENTS ALLEGEDLY
20 OCCURRED. DO YOU ~~AGREE~~ OR DISAGREE, SIR?

21 DEFENDANT: DISAGREE.

22 THE COURT: ~~ALL RIGHT~~, SIR. IN WHAT WAYS DO YOU
23 DISAGREE, SIR?

24 (PAUSE.)

25 DEFENDANT: I ~~AGREE~~.

1 THE COURT: ALL RIGHT. NOW, MR. DIGGS, I DON'T WANT
2 ANYONE TO PLEAD GUILTY WHO IS NOT GUILTY. AND I WANT TO BE
3 VERY PATIENT WITH YOU, SIR. YOU HEARD THE SOLICITOR RECITE
4 THE FACTS; IS THAT CORRECT?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: IS THERE ANYTHING YOU WOULD LIKE FOR THE
7 COURT TO REQUIRE HIM TO RECITE AGAIN, SIR, THAT YOU NEED TO
8 HEAR AGAIN?

9 DEFENDANT: NO.

10 THE COURT: YOU HEARD THE FACTS AS RECITED TO YOU?

11 DEFENDANT: YES.

12 THE COURT: AND I NOW ASK YOU, SIR, DO YOU AGREE OR
13 DISAGREE WITH THE RECITATION OF THE FACTS BY THE SOLICITOR?

14 DEFENDANT: YES.

15 THE COURT: IS THAT HOW THE EVENTS OCCURRED?

16 DEFENDANT: YES.

17 THE COURT: THANK YOU. ALL RIGHT. I FIND THERE IS A
18 SUBSTANTIAL FACTUAL BASIS FOR HIS GUILTY PLEA. I FIND THE
19 DEFENDANT'S DECISION TO PLEAD GUILTY IS FREELY,
20 VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY MADE, AND THAT HE
21 HAS HAD THE ADVICE OF COUNSEL OF TWO VERY COMPETENT
22 ATTORNEYS WITH WHOM HE SAYS HE'S SATISFIED. THIS COURT
23 WILL ACCEPT HIS PLEA.

24 YOU MAY PUBLISH HIS PLEAS, MR. CLERK.

25 CLERK: YES, SIR, YOUR HONOR. YOUR HONOR, CASE NO.

1 95-GS-29-189, THE STATE VERSUS BRIAN ANSELM DIGGS, INDICTED
2 FOR MURDER, THE DEFENDANT HEREBY ENTERS A PLEA OF GUILTY TO
3 THE WITHIN INDICTMENT.

4 CASE NO. 95-GS-29-191, THE STATE VERSUS BRIAN ANSELM
5 DIGGS, INDICTED FOR ATTEMPTED ARMED ROBBERY, THE DEFENDANT
6 HEREBY ENTERS A PLEA OF GUILTY TO THE WITHIN INDICTMENT.

7 THE COURT: ALL RIGHT. NOW, GENTLEMEN, WOULD YOU LIKE
8 TO PROCEED WITH SENTENCING AT THIS TIME OR DO YOU WANT TO
9 DEFER SENTENCING?

10 MR. BANKS: BEG THE COURT'S INDULGENCE.

11 THE COURT: ALL RIGHT.

12 (PAUSE.)

13 MR. BANKS: YOUR HONOR, WE WOULD ASK THE COURT'S LEAVE
14 ~~TO DELAY SENTENCING.~~ HE HAS ONE PERSON HERE WHO WE'VE BEEN
15 ABLE TO GET HERE, BUT THERE'S SOME OTHERS THAT WE EXPECT
16 THAT WOULD LIKE TO SPEAK ON HIS BEHALF THAT AREN'T HERE.

17 THE COURT: ALL RIGHT, SIR.

18 MR. JUSTICE: YOUR HONOR, I SUGGEST IF WE'RE GOING TO
19 DELAY SENTENCING, TO SET A TIME CERTAIN LIKE 2:30 TOMORROW
20 AFTERNOON.

21 THE COURT: WHEN?

22 MR. BANKS: 2:30 TOMORROW AFTERNOON WOULD BE FINE,
23 YOUR HONOR.

24 THE COURT: IS THAT FINE WITH YOU, MR. SCREEN?

25 MR. SCREEN: YES.

1 THE COURT: IS THAT FINE WITH ALL OF YOUR FOLKS? ALL
2 RIGHT. THAT IS YOUR DESIRE, THE COURT WILL -- DO YOU NEED
3 TO CHECK, MR. BANKS?

4 MR. BANKS: JUST ONE SECOND.

5 (PAUSE.)

6 MR. BANKS: YOUR HONOR, THE ONE GENTLEMAN WE HAVE
7 HERE, IF HE COULD SPEAK NOW AND THEN HE WOULDN'T HAVE TO
8 COME BACK.

9 THE COURT: DOES THE STATE HAVE ANY OBJECTION TO THAT?

10 MR. JUSTICE: HAVE NO OBJECTION.

11 THE COURT: CERTAINLY, WE'RE WILLING TO ACCOMMODATE
12 THE DEFENDANT AND HIS WITNESS IN THAT REGARD, YES, SIR.

13 MR. BANKS: THANK YOU, YOUR HONOR.

14 THE COURT: IF THAT'S WHAT YOU DESIRE, SIR.

15 DR. ROGERS: DR. WAYNE ROGERS.

16 THE COURT: YES, SIR, DOCTOR.

17 DR. ROGERS: I TRIED TO GET DOWN HERE THIS MORNING
18 FROM SPARTANBURG, SOUTH CAROLINA. AND MAYBE FOR THE LAST
19 TWO OR THREE WEEKS I DIDN'T SPEAK TO THE GENTLEMAN HERE,
20 MR. BRIAN DIGGS. AND MOSTLY HE HAS BEEN ADDRESSING ME
21 ABOUT SENDING HIM PAMPHLETS AND PUBLICATIONS TO KEEP HIM
22 INFORMED AS FAR AS READING MATERIAL DURING THE PERIOD OF
23 TIME THAT HE'S PENNED UP.

24 BASED ON WHAT I HEAR, I -- YOU KNOW, IT'S A VERY
25 TROUBLING TIME FOR HIM. I'M SURE IT'S VERY TROUBLING FOR

1 THE FAMILY THAT WAS ALSO INVOLVED IN WHAT TOOK PLACE.

2 I'VE HEARD THE PLEA OF GUILTY. AND I'VE NEVER MET
3 THIS GENTLEMAN BEFORE. I DON'T KNOW ANYTHING ABOUT HIM.
4 BUT JUST BASED ON WHAT I DEAL WITH JUST IN ENCOUNTERING
5 YOUNG PEOPLE IN THIS COUNTRY, I JUST THINK IT HAS TO BE
6 SOMETHING BETTER THAN THE DEATH PENALTY OR LIFE IN PRISON,
7 BECAUSE I SEE TOO MANY YOUNG PEOPLE WHO ARE JUST COMING TO
8 THE SAME TYPE OF IGNORANCE THAT IS JUST RUNNING RAMPANT
9 THROUGHOUT THE COUNTRY.

10 I'M NOT SPEAKING AS SOME TYPE OF PREACHER OR SOME TYPE
11 OF REFORMER. I'M JUST TELLING YOU SOMETHING'S WRONG WITH
12 THE MENTALITY OF WHAT'S TAKING PLACE IN AMERICA. YOU HAVE
13 TOO MANY YOUNG KILLING YOUNG. YOU HAVE TOO MANY YOUNG WITH
14 GUNS.

15 I MEAN, WE'RE TALKING ABOUT A YOUNG MAN WHO IS JUST 21
16 YEARS OLD AND HE'S ALREADY DONE ABOUT 3 OR 4 YEARS. ALL
17 RIGHT. AND, YOU KNOW, WE'RE TALKING LIFE. YOU KNOW, I
18 FEEL THERE HAVE TO BE SOME OTHER MEANS OF REFORMATION
19 BECAUSE OUR YOUNG IS JUST GOING DOWN THE DRAIN.

20 THE COURT: ALL RIGHT.

21 DR. ROGERS: YOU KNOW, THAT'S ABOUT THE BEST I CAN
22 SAY. YOU KNOW, I HOPE THERE'S SOMETHING OTHER THAT CAN BE
23 REACHED, BECAUSE LIKE I SAY, I JUST SEE THE YOUNG IS JUST
24 GOING TO WASTE. IT NEEDS TO BE A BETTER DIRECTION.

25 THE COURT: THANK YOU, DOCTOR. THANK YOU VERY MUCH.

1 ALL RIGHT. ANYTHING FURTHER FROM THE STATE OR THE
2 DEFENDANT AT THIS TIME?

3 MR. JUSTICE: NO, SIR, YOUR HONOR.

4 MR. BANKS: NOTHING FROM THE DEFENSE AT THIS TIME.

5 MR. SCREEN: NOTHING AT THIS TIME, YOUR HONOR.

6 THE COURT: ALL RIGHT. WE WILL RECONVENE TOMORROW
7 AFTERNOON AT 2:30 P.M. TO CONCLUDE THIS MATTER. THANK YOU
8 VERY MUCH.

9 (COURT WAS IN RECESS.)

10 (TUESDAY, APRIL 14, 1998.)

11 THE COURT: ALL RIGHT. ARE WE READY TO PROCEED,
12 SOLICITOR, MR. BANKS, MR. SCREEN?

13 MR. JUSTICE: YES, YOUR HONOR, THE STATE IS READY.

14 MR. SCREEN: YES, AS SOON AS THEY BRING THE DEFENDANT
15 IN.

16 THE COURT: YES, PLEASE.

17 (PAUSE.)

18 (THE DEFENDANT ENTERS THE COURTROOM.)

19 THE COURT: ALL RIGHT. MR. BANKS, MR. SCREEN, IS THE
20 DEFENDANT READY TO PROCEED?

21 MR. BANKS: YES, SIR, WE ARE.

22 MR. SCREEN: YES.

23 THE COURT: SOLICITOR, IS THE STATE READY?

24 MR. JUSTICE: YES, SIR, THE STATE IS READY.

25 THE COURT: ALL RIGHT. I BELIEVE THAT WE'VE REACHED

1 THE PORTION OF THE PROCEEDING YESTERDAY WHEREIN THE COURT
2 HAD ACCEPTED THE PLEA OF THE DEFENDANT, HAD PUBLISHED THE
3 PLEA OF THE DEFENDANT, AND HAD ALLOWED -- THE STATE HAD
4 AGREED TO TAKE ONE OF THE WITNESSES OR PERSONS APPEARING ON
5 BEHALF OF THE DEFENDANT OUT OF ORDER TO ACCOMMODATE HIM, SO
6 HE WOULD NOT HAVE TO RETURN TODAY; IS THAT CORRECT?

7 MR. SCREEN: YES, SIR.

8 MR. BANKS: THAT'S CORRECT, YOUR HONOR.

9 THE COURT: ALL RIGHT. SOLICITOR, I'LL HEAR FIRST
10 FROM THE STATE AND THEN FROM THE DEFENDANT.

11 MR. JUSTICE: YOUR HONOR, MAY IT PLEASE THE COURT,
12 INSOFAR AS THE STATUTORY AGGRAVATING CIRCUMSTANCE, I THINK
13 THE INDICTMENT, ATTEMPTED ARMED ROBBERY, SPEAKS FOR ITSELF
14 IN THAT REGARD, THE GUILTY PLEA TAKEN ON YESTERDAY.

15 THE STATE WILL HAVE APPROXIMATELY FOUR OR FIVE VICTIM
16 IMPACT-TYPE OF FAMILY MEMBERS I WILL CALL ON. I'D PREFER
17 TO DO THAT LAST IF THE COURT WOULD AGREE.

18 THE COURT: ALL RIGHT. WELL, IF THERE'S NO OBJECTION,
19 GENTLEMEN, THE COURT DOES FIND THAT YESTERDAY THE DEFENDANT
20 ENTERED PLEAS OF GUILTY TO THE OFFENSE OF MURDER AND GUILTY
21 TO THE OFFENSE OF ATTEMPTED ARMED ROBBERY AT THE SAME TIME
22 AS ALLEGED AS OF THE OFFENSE OF MURDER, AND THE COURT MAKES
23 THE FINDING UNDER SECTION 16-3-20 (B) IN A SEPARATE
24 SENTENCING PROCEEDING AT THIS TIME, AND I SO FIND THAT THIS
25 IS AN AGGRAVATING CIRCUMSTANCE BEYOND A REASONABLE DOUBT.

1 ALL RIGHT. THANK YOU.

2 MR. BANKS: YOUR HONOR, I THINK MR. SCREEN AND I WOULD
3 LIKE THE RECORD TO REFLECT THAT WE HAVE DISCUSSED AMONG
4 OURSELVES AND WITH OUR CLIENT THE EFFECT OF STATE V.
5 HUMPHRIES AND WHY IT WAS AN AGGRAVATING CIRCUMSTANCE.

6 IT IS NO NEWS TO ANYBODY INVOLVED IN THIS CASE THAT
7 THAT WAS THE LENGTH OF TIME THAT IT TOOK. AND WE CERTAINLY
8 HAVE NO OBJECTION TO THE COURT'S SO FINDING BASED UPON THAT
9 CASE.

10 THE COURT: CERTAINLY.

11 MR. BANKS: WITHOUT THAT CASE, OF COURSE, WE WOULD
12 HAVE FILED A MOTION ---

13 THE COURT: CERTAINLY. THAT IS THE LAW OF THIS STATE
14 AS ENUMERATED BY OUR SUPREME COURT IN THE DECISION OF STATE
15 V. HUMPHRIES. THANK YOU.

16 ALL RIGHT. ARE YOU READY TO PROCEED WITH THE STATE
17 AND THEN WITH THE DEFENSE?

18 ARE WE READY?

19 MR. BANKS: YES, SIR.

20 THE COURT: ALL RIGHT. SOLICITOR.

21 MR. JUSTICE: YOUR HONOR, I HAD ASKED COULD I PUT MY
22 FAMILY MEMBERS UP LAST. I THOUGHT THE COURT AGREED.

23 THE COURT: OH, ALL RIGHT, SIR. ANY OBJECTION TO
24 THAT? I DON'T SEE ANY ---

25 MR. SCREEN: NO, YOUR HONOR.

1 MR. BANKS: NO, SIR.

2 THE COURT: I'D BE GLAD. WE'VE ALREADY HEARD FROM ONE
3 WITNESS APPEARING FOR THE DEFENDANT. I WOULD BE GLAD TO
4 CONTINUE IN THAT LIGHT. THAT'S FINE. I DON'T SEE AS IT
5 MAKES ANY DIFFERENCE.

6 MR. BANKS: YOUR HONOR, MR. DIGGS, AS YOU KNOW,
7 YESTERDAY HAD REQUESTED FROM BOTH MR. SCREEN AND I THAT
8 SEVERAL MEMBERS OF HIS FRIENDS AND ACQUAINTANCES AND FAMILY
9 WOULD BE AVAILABLE TO HIM.

10 THE COURT: YES, SIR.

11 MR. BANKS: ONE MINISTER SPOKE YESTERDAY FROM
12 SPARTANBURG. TODAY WE HAVE SEVERAL ---

13 THE COURT: I BELIEVE THAT WAS DR. ROGERS.

14 MR. BANKS: THAT'S CORRECT, YOUR HONOR.

15 THE COURT: YES.

16 MR. BANKS: SEVERAL PEOPLE TODAY ARE GOING TO SPEAK ON
17 HIS BEHALF, AN UNCLE AND SOME TEACHERS. FIRST ASK MS.
18 LYND A OWENS, L-Y-N-D-A OWENS.

19 THE COURT: I'D BE GLAD TO HEAR FROM YOU.

20 MS. OWENS: I TAUGHT YOUNG PEOPLE AT THE WILL LOU GRAY
21 OPPORTUNITY SCHOOL, YOUNG PEOPLE FROM ALL OVER THE STATE
22 FOR 29 1/2 YEARS.

23 ON SEPTEMBER THE 12TH, 1994 BRIAN ENTERED MY G.E.D.
24 CLASSES, AND HE WAS A MEMBER OF THOSE CLASSES UNTIL JANUARY
25 19, 1995.

1 DURING THAT TIME IN MY CLASSROOM HE WAS POLITE,
2 CONSIDERATE, AND HE WORKED HARD TO ACHIEVE THE GOAL OF
3 OBTAINING HIS G.E.D. DIPLOMA.

4 HE WAS SCHEDULED TO TAKE HIS G.E.D. TEST IN FEBRUARY
5 OF 1995. HE WAS PREPARED AND READY FOR IT AND WOULD HAVE
6 PASSED IT HAD HE NOT BEEN INCARCERATED.

7 DURING THE TIME THAT I KNEW BRIAN, I NEVER SAW HIM
8 LOSE HIS TEMPER. I NEVER SAW HIM WITH A WEAPON. I NEVER
9 SAW ANYTHING BUT KINDNESS, GENTLENESS, AND A DESIRE TO
10 SUCCEED.

11 HE WAS, ALONG WITH OTHER STUDENTS, A GUEST IN OUR HOME
12 SEVERAL TIMES. BRIAN WAS ONE OF MY STUDENTS WHO SINCERELY
13 WANTED TO OBTAIN HIS DIPLOMA AND THEN GO ON TO TECH SCHOOL.

14 DURING THE FIRST NINE WEEKS HE HAD A 99 AVERAGE, BOTH
15 THE FIRST AND THE SECOND NINE WEEKS IN HIS MATH SKILLS, AND
16 IN HIS VERBAL SKILLS HE HAD A 99 AVERAGE THE FIRST WEEK --
17 NINE WEEKS, AND A 97 AVERAGE THE SECOND NINE WEEKS.

18 THIS IS THE BRIAN THAT I KNOW.

19 THE COURT: THANK YOU, MS. OWENS. THANK YOU VERY
20 MUCH.

21 MR. BANKS: EDNA KIRKLEY, K-I-R-K-L-E-Y.

22 MS. KIRKLEY: YOUR HONOR, I'VE KNOWN BRIAN FOR SEVERAL
23 YEARS THROUGH HIS MOTHER, LISSIE DIGGS. I WORK AT THE
24 MENTAL HEALTH CENTER -- I DID UNTIL I RETIRED -- FOR 28
25 YEARS. WHAT I REMEMBER ABOUT BRIAN IS THE GOODNESS THAT HE

1 SHOWED TO HIS MOTHER. SHE LOVED HIM DEARLY. SHE CARED
2 GREATLY ABOUT HIM: SHE WAS MENTALLY ILL, AND THERE WERE
3 NUMEROUS TIMES WHEN HE WAS REALLY HAVING TO LOOK AFTER HER,
4 AND HE SHOWED HER GREAT COMPASSION, UNDERSTANDING. SHE
5 LOVED HIM. HE WAS THE JOY OF HER LIFE.

6 AND HE WAS ALWAYS RIGHT THERE FOR HER DURING THOSE
7 KINDS OF TIMES WHEN SHE WAS HAVING SUCH GREAT DIFFICULTY
8 COPING WITH THINGS.

9 THANK YOU.

10 THE COURT: THANK YOU VERY, VERY MUCH.

11 MR. BANKS: YOUR HONOR, NEXT WE HAVE MS. MARLENE
12 HAYWARD. MS. HAYWARD IS HERE AND WOULD JUST LIKE THE COURT
13 ACKNOWLEDGE HER PRESENCE.

14 THE COURT: CERTAINLY, I WILL NOTE THAT. CERTAINLY I
15 WILL.

16 MR. BANKS: RICHARD DIGGS, WHO IS BRIAN'S UNCLE.

17 THE COURT: YES, SIR.

18 MR. RICHARD DIGGS: THE STATEMENT I WOULD LIKE TO MAKE
19 ON MY NEPHEW'S BEHALF, HE'S -- HE'S A VERY GOOD PERSON.
20 AND THAT'S ALL I CAN SAY.

21 THE COURT: THANK YOU, MR. DIGGS. THANK YOU, SIR.

22 MR. BANKS: MR. DIGGS HAS BEEN -- RICHARD DIGGS HAS
23 ASSISTED US GREATLY IN THE DEFENSE OF GETTING PEOPLE HERE
24 AS WELL.

25 THE COURT: THANK YOU FOR HAVING HIM PRESENT.

1 MR. BANKS: YOUR HONOR, I BELIEVE THAT WAS ALL THE
2 PEOPLE THAT WERE GOING TO SPEAK. WE HAD OTHER MEMBERS OF
3 HIS FRIENDS AND FAMILY THAT WERE HERE -- YOU WISH TO SPEAK.
4 ONE MORE, YOUR HONOR.

5 THE COURT: YES, CERTAINLY.

6 MR. BANKS: JESSIE HARRELL, YOUR HONOR.

7 THE COURT: I DIDN'T HEAR THE LAST NAME.

8 MR. BANKS: HARRELL.

9 THE COURT: MS. HARRELL.

10 MS. HARRELL: I'M JESSIE HARRELL, I'M BRIAN'S AUNT.
11 AND I KNOW HIM AS HE RAISED. HE WAS A VERY POLITE CHILD.
12 HE WAS BROUGHT UP IN CHURCH. AND HE WAS A WELL-RAISED
13 CHILD. AND ALL OF US LOVE HIM DEARLY. AND I HAVE NO IDEA
14 THAT HE KILLED ANYBODY. NOBODY. BECAUSE I KNOW HOW HE WAS
15 RAISED.

16 THE COURT: THANK YOU, MS. HARRELL.

17 MR. BANKS: THANK YOU, YOUR HONOR.

18 THE COURT: ALL RIGHT. ANYONE ELSE THAT THE DEFENSE
19 WOULD LIKE TO PRESENT ---

20 MR. BANKS: JUST ONE MORE, YOUR HONOR.

21 THE COURT: CERTAINLY.

22 MR. BAKER: JUDGE, YOUR HONOR, SIR ---

23 THE COURT: NAME. I NEED THE NAME.

24 MR. BAKER: MY NAME IS GERALD BAKER.

25 THE COURT: YES, SIR, MR. BAKER.

1 MR. BAKER: I'M BRIAN DIGGS' NEIGHBOR. AND I'M THE
2 SUPERINTENDENT OF THE CHURCH WHERE HE ATTENDS. I'M
3 PRESIDENT OF 16 CHURCHES AND AM ALSO SUPERINTENDENT OF MY
4 CHURCH AND TRUSTEE BOARD.

5 I'VE KNOWN THIS GUY ALL HIS LIFE. AND WHEN I HAD MY
6 ACCIDENT, HE WAS VERY WILLING TO ALWAYS COME DOWN AND HELP
7 ME ANY TIME I HAD NEED FOR HIM. HE WAS ALWAYS BEEN VERY,
8 VERY POLITE.

9 I COULD NOT UNDERSTAND THIS. FURTHERMORE, I COULD NOT
10 BELIEVE THAT THIS HAPPENED BECAUSE I'VE KNOWN THIS GUY ALL
11 HIS LIFE.

12 HE WAS VERY SUPPORTIVE OF HIS MOM BECAUSE SHE WAS ILL,
13 AND SHE WAS HIS WHOLE LIFE. AND AFTER THIS HAPPENED, IT
14 JUST TOOK HER OUT. SHE JUST COULDN'T STAND IT. AND HIS
15 GRANDMOTHER ALSO. AND HE'S HAD A VERY BAD TRAGEDY, AND
16 IT'S JUST -- I THINK HE'S JUST A VICTIM OF A CIRCUMSTANCE
17 AT THE TIME.

18 BUT I ASK THAT YOU HAVE MERCY ON HIS SOUL ALSO AT THIS
19 PARTICULAR TIME. THANK YOU, YOUR HONOR.

20 THE COURT: THANK YOU, SIR. THANK YOU FOR APPEARING,
21 MR. BAKER.

22 MR. BANKS: YOUR HONOR, I THINK AT SOME POINT BRIAN
23 DIGGS WISHES TO SPEAK AS WELL.

24 THE COURT: CERTAINLY.

25 MR. BANKS: I WOULD ADD THAT FROM THE TIME THAT I WAS

1 APPOINTED BY THIS COURT BACK IN OCTOBER, HIS COOPERATION
2 WITH ME HAS BEEN TOTAL. I'VE DONE EIGHT OF THESE IN THE
3 LAST TWO YEARS. AND FOR A CAPITAL CASE, HIS QUESTIONS HAVE
4 BEEN APPROPRIATE. HIS EXERCISING OF HIS RIGHTS TO
5 BASICALLY COME TO THE COURTHOUSE STEPS HAS BEEN APPROPRIATE
6 IN THIS CASE.

7 HE HAS CONTINUED TO GIVE US PEOPLE THAT HE THOUGHT
8 WOULD ASSIST US IN OUR DEFENSE. AS WE INTERVIEWED THEM AND
9 WOULD GO BACK TO HIM WITH WHAT HE SAID, HE WOULD ACCEPT IT
10 AND GO ON. YOU KNOW, HIS COOPERATION HAS BEEN VERY TOTAL.

11 I WANT THE COURT TO KNOW THAT AFTER THIS IS OVER AND
12 WHETHER THEY TAKE HIM BACK LOCALLY FOR THE NIGHT OR TAKE
13 HIM ONTO COLUMBIA, HE HAS EXPRESSED A DESIRE TO MR. SCREEN
14 AND I THIS MORNING THAT LAW ENFORCEMENT INTERVIEW HIM. HE
15 WISHES TO GIVE THEM SOME INFORMATION ON GUNS, CO-
16 DEFENDANTS, THAT TYPE OF ISSUES.

17 AS HIS MINISTER SAID THIS MORNING, THERE WAS SOME
18 CIRCUMSTANCES INVOLVED, THERE WERE OTHER PEOPLE IN THIS
19 CASE. AND BRIAN FELT THE BRUNT OF THAT. AND I THINK IT
20 SPEAKS HIGHLY OF HIM THAT AT THIS POINT AFTER HIS PLEA --
21 AFTER HIS PLEA HAS ALREADY BEEN ACCEPTED, HE NOW WISHES --
22 REGARDLESS OF WHAT HAPPENS TODAY, TO GIVE SOME INFORMATION
23 TO LAW ENFORCEMENT.

24 THE COURT: THANK YOU. MR. SCREEN, ON BEHALF OF MR.
25 DIGGS?

1 MR. SCREEN: YES, SIR. JUST BRIEFLY, YOUR HONOR.
2 THIS IS LIKE ALL DEATH PENALTY CASES I'VE BEEN INVOLVED IN,
3 THE GUT WRENCHES FOR ALL PEOPLE INVOLVED, THE COURT, THE
4 LAWYERS, THE VICTIMS, EVERYBODY. THIS IS A TOUGH SITUATION
5 FOR ALL OF US TO GO THROUGH.

6 I HAVE A SON THAT'S THIS MAN'S AGE. AND IT'S
7 FRIGHTENING TO SEE THE KINDS OF THINGS THAT HAPPEN.

8 I'VE HAD HIM FROM THE VERY BEGINNING. HIS MOTHER CAME
9 TO SEE ME SHORTLY AFTER HE WAS ARRESTED ON THIS THING. AND
10 I'VE HAD HIM UNDER MY WINGS EVER SINCE, JUDGE.

11 HIS MOTHER AND HIS GRANDMOTHER DIED WHILE HE WAS IN
12 CUSTODY THE PAST THREE AND A HALF YEARS. SO HE REALLY LOST
13 MUCH OF HIS IMMEDIATE SUPPORT SYSTEM. AND IT WORKED ON HIM
14 SIGNIFICANTLY. AND I'VE WATCHED HIM GO THROUGH A LOT OF
15 CHANGES IN JAIL SINCE THIS HAPPENED.

16 THERE ARE VICTIMS ALL AROUND THIS CASE. IT'S KIND OF
17 LIKE A BOMB GOING OFF. EVERYBODY THAT'S CLOSE TO IT GET
18 HIT WITH SOMETHING.

19 AND I SAY WITHOUT TONGUE AND CHEEK THAT I'M NEVER
20 PLEASED TO BE INVOLVED IN THESE KIND OF SITUATIONS, IT'S
21 JUST THE KIND OF PRACTICE I'VE DEVELOPED ACROSS THE YEARS.
22 BUT IT'S A DIFFICULT THING, ADVISING THEM AND TELLING THEM
23 WHAT TO DO WHEN THE SPECTER OF DEATH IS AROUND. IT'S
24 ALREADY REARED ITS UGLY HEAD AT HIS FAMILY, AND PERHAPS
25 DEVASTATED THEM IN A WAY THAT THEY'LL NEVER GET OVER IT.

1 AND FOR THAT, AS ONE OF HIS DEFENSE LAWYERS, I EXPRESS
2 TO THEM MY SYMPATHY AND MY CONCERN ABOUT THE WELFARE OF
3 THAT FAMILY AND THE VICTIMS IT LEFT BEHIND.

4 BRIAN HAS TAKEN THE PLEA. I STAND HERE AND TELL THIS
5 COURT THAT I BELIEVE WITH ALL MY HEART, WITH ALL OF MY
6 PROFESSIONAL JUDGMENT THAT HE MADE THE BEST CALL THAT HE
7 HAS MADE IN HIS RECENT LIFE TO ACCEPT THIS GUILTY PLEA, TO
8 FESS UP TO IT AND ACCEPT THIS GUILTY PLEA.

9 BUT I WOULD ASK THIS COURT TO GIVE HIM THE OPPORTUNITY
10 TO SPEAK. I'VE TALKED TO HIM ABOUT WHAT HE MIGHT SAY OR
11 WANT TO SAY. BUT HERE, AGAIN, THE LINE OF VICTIMS INVOLVED
12 -- AND I EXPRESSED TO PARTICULARLY THIS FAMILY, MY
13 CONDOLENCES FOR WHAT HAPPENED IN THIS CASE. IT SHATTERED
14 THIS COUNTY. IT BROKE THE PEACE AND DIGNITY OF THIS STATE.
15 AND WE NEVER TAKE LIGHTLY WHEN SOMEBODY DIES.

16 MY BROTHER CAME HOME FROM NEW YORK, HE SAID, ARE YOU
17 ALL STILL PUTTING THE NAMES OF PEOPLE IN THE PAPER FOR THE
18 OBITUARY COLUMN? WE CAN'T DO THAT IN NEW YORK, BECAUSE
19 WE'VE GOT SO MANY.

20 I SAID, I HOPE WE NEVER GET SO BIG AND SO CALLOUS THAT
21 DEATH DOESN'T BOTHER US. I THINK IT'S STILL SAYING
22 SOMETHING ABOUT THE WAY WE LIVE IN THIS PART OF THE
23 COUNTRY.

24 THANK YOU, SIR.

25 THE COURT: THANK YOU, MR. SCREEN. THANK YOU VERY,

1 VERY MUCH.

2 MR. DIGGS, SIR, THE COURT WILL EXTEND TO YOU AN
3 OPPORTUNITY TO TELL THE COURT ANYTHING YOU WOULD LIKE ABOUT
4 YOURSELF, YOUR CASE, OR ANYTHING AT THIS PARTICULAR TIME IF
5 YOU WISH TO DO SO, SIR.

6 DEFENDANT: YES, I WOULD LIKE TO SAY THAT IF THE
7 SYSTEM REMAIN THE WAY IT DOES, WE'LL NEVER SEE JUSTICE.
8 THANK YOU.

9 THE COURT: ALL RIGHT. ANYTHING FURTHER FOR THE
10 DEFENSE, MR. BANKS OR MR. SCREEN?

11 MR. BANKS: NO, SIR.

12 MR. SCREEN: NO, SIR.

13 THE COURT: THANK YOU. ALL RIGHT. SOLICITOR.

14 MR. JUSTICE: YOUR HONOR, MAY IT PLEASE THE COURT. I
15 FIND MYSELF IN VIRTUAL, TOTAL AGREEMENT WITH MR. SCREEN AND
16 SOME OF HIS REMARKS. I'VE BEEN PROSECUTING IN THIS CIRCUIT
17 FOR 20 YEARS. THERE ARE NO LITTLE MURDER CASES. ALL
18 MURDER CASES CONSIST OF AT LEAST ONE DECEASED VICTIM AND
19 MANY, MANY SECONDARY VICTIMS. IN THIS CASE IT IS PRIMARILY
20 THE FAMILY AND THE FRIENDS OF JACKIE STRAWN HALLMAN.

21 AND PROBABLY MURDER CASES ARE EVEN MORE SAD WHEN THE
22 VICTIM WAS A PERSON STARTING OUT IN LIFE, A YOUNG PERSON.
23 JACKIE WAS 24 AT THE TIME OF HER DEATH.

24 SEVERAL OF THOSE FAMILY MEMBERS -- A DOZEN OR 15 OR
25 MORE ARE PRESENT IN THE COURTROOM, 3 OR 4 OF WHOM WISH TO

STATE VS. BRIAN DIGGS

1 SPEAK. HOWEVER, ONE WHO IS NOT HERE TO SPEAK FOR HIMSELF,
2 JACKIE'S FATHER, JACK STRAWN -- A LOCAL BUSINESSMAN WHO I
3 HAD KNOWN CASUALLY IN THE PAST, CARRIED THIS CASE PENT UP
4 INSIDE OF HIM SINCE THE NIGHT IT HAPPENED.

5 THERE WAS A LONG PERIOD OF INVESTIGATION, AND THE
6 MONTHS THAT WE SPENT WAITING FOR CLARIFICATION IN THE
7 HUMPHRIES CASE, I TALKED WITH JACK A NUMBER OF TIMES.

8 AND JACK AND HIS FAMILY ENDORSED THE CONCEPT OF
9 ACCEPTING A PLEA IN EXCHANGE FOR DROPPING THE DEATH PENALTY
10 SOME MONTHS AGO OUT OF THEIR COMPASSION AND THEIR
11 WILLINGNESS OR DESIRE TO BRING CLOSURE TO THIS MATTER.

12 UNFORTUNATELY, YOUR HONOR, SHORTLY AFTER THE FIRST OF
13 THE YEAR JACK STRAWN WAS DIAGNOSED WITH INOPERABLE CANCER.
14 A LITTLE LESS THAN A MONTH AGO HE PASSED AWAY.

15 THERE HAS BEEN SOME MEDICAL STUDIES THAT STRESS IS A
16 FACTOR IN THE TERMINATION OF LIFE DUE TO CANCER. AND I
17 FEEL SURE IT WAS A FACTOR THERE.

18 BUT BEFORE HE DIED WHEN I MET WITH HIM A YEAR AGO, HE
19 HAD WRITTEN OUT A LITTLE STATEMENT. I THINK IT WAS FOR A
20 BOND REDUCTION HEARING. AND I HAVE IT. AND I WOULD LIKE
21 TO READ JACK STRAWN'S WORDS INTO THE RECORD AT THIS TIME,
22 YOUR HONOR.

23 (READING.) DIGGS TOOK THE LIFE OF A BEAUTIFUL, HARD-
24 WORKING, TAX PAYING YOUNG WOMAN WHO BELIEVED IN WORKING FOR
25 WHAT YOU GET. ON THE OTHER HAND, HE WANTED TO ROB, STEAL,

1 RUIN, AND KILL FOR WHAT HE WANTED.

2 NOW IT IS TIME FOR HIM TO PAY FOR THE HEINOUS ACTS,
3 AND DEATH IS ALMOST TOO GOOD FOR THOSE WHO IMPOSE SUCH
4 ATROCITIES UPON SOCIETY, ASSAULTING AND TAKING THE LIVES,
5 ROBBING, CHANGING THE LIVES, AFFECTING FOREVER THE LIVES OF
6 JACKIE'S LOVED ONES WHO HAVE BEEN FOREVER ALTERED, AND IT
7 WILL NEVER BE THE SAME.

8 SO THE ONE VIOLENT ACT COMMITTED ON THAT NIGHT IN MAY
9 OF 1994 CONTINUES TO REEK HAVOC ON ALL WHO LOVED HER. THIS
10 IS NOT A RANDOM ACT.

11 YOUR HONOR, I DO HAVE FIVE FAMILY MEMBERS WHO WISH TO
12 SPEAK. I WOULD CALL FIRST ---

13 MR. BANKS: YOUR HONOR, EXCUSE ME FOR INTERRUPTING.
14 SOLICITOR. I JUST WANT TO MAKE SURE THAT THE RECORD IS
15 CLEAR IN THIS CASE. THAT LETTER WAS NOT PROVIDED US IN
16 DISCOVERY. IT WOULD BE OUR POSITION THAT MITIGATION AT
17 THIS POINT WOULD STILL NEED TO FOLLOW THOSE. AND I'M SURE
18 THE COURT ---

19 THE COURT: ALL RIGHT. WELL, I'M NOT CONSIDERING THAT
20 FOR MITIGATING OR AGGRAVATING, MR. BANKS.

21 MR. BANKS: THANK YOU, YOUR HONOR.

22 MR. JUSTICE: THAT WOULD BE VICTIM IMPACT, WHICH IS
23 ALSO IN THE HUMPHRIES CASE.

24 MR. BANKS: LIKEWISE, YOUR HONOR, THE COMMENT
25 REGARDING STRESS AND THE CANCER.

1 THE COURT: CERTAINLY. I TAKE THAT JUST AS COMMENTS
2 AS I DID YOUR REMARKS. I DON'T BELIEVE YOUR REMARKS WERE
3 OFFERED ---

4 MR. BANKS: AND I'M SURE THE COURT UNDERSTANDS THAT I
5 NEED TO PROTECT THE RECORD ON THAT ISSUE.

6 THE COURT: CERTAINLY. CERTAINLY. SO NOTED.

7 MR. BANKS: YES, SIR.

8 MR. JUSTICE: CALL MS. JESSICA NORRIS, A NIECE OF THE
9 DECEASED.

10 MS. NORRIS: HELLO. MY NAME IS JESSICA NORRIS. I WAS
11 HER NIECE. I'M JUST GOING TO TELL YOU A LITTLE BIT ABOUT
12 MY AUNT. SHE WAS A BEAUTIFUL PERSON. SHE SHONE LIKE A
13 BRIGHT STAR. WE'RE ALL GOING TO MISS HER LAUGHTER, HER
14 TEARS, AND HER LITTLE DISAGREEMENTS THAT WE ALL HAD. EVEN
15 MORE, WE'RE GOING TO MISS THE LOVE THAT SHE SHOWED ALL OF
16 US.

17 WHEN HE WALKED INTO THAT STORE THAT NIGHT, EVERYBODY
18 IN THIS FAMILY -- LIVES WERE CHANGED, ESPECIALLY MY
19 GRANDFATHER'S WHO SADLY IS NOT HERE TO BE WITH US TODAY.
20 BUT I KNOW HE'S WATCHING, TO SEE JUSTICE BE SERVED.

21 NO, HE DIDN'T TAKE MONEY OR ANYTHING ELSE THAT WAS
22 SOLD. HE TOOK A HUMAN BEING, THE MOST PRECIOUS AND
23 PRICELESS THING IN THAT STORE. HE TOOK HER DREAMS, HER
24 HOPES, HER LIFE -- HER LIFE..

25 NEVER WILL SHE BE ABLE TO EXPERIENCE MOTHERHOOD,

1 LAUGHTER, OR JOY, OR ALL OF HAPPINESS AGAIN.

2 AND HE TOOK A LITTLE OF THAT FROM US ALSO, A PIECE IS
3 MISSING FROM ALL OF US TODAY AND WILL ALWAYS MISS FROM US,
4 AND WE WILL NEVER GET THAT BACK.

5 ALTHOUGH THIS DAY WILL PUT SOME CLOSURE ON IT, THE
6 WOUNDS WILL NEVER FULLY HEAL. THE HOLIDAYS AND BIRTHDAYS
7 WILL COME, BUT INSTEAD OF SEEING HER BEAUTIFUL FACE AND
8 BEAUTIFUL LIFE THAT SHE SHOWED US, WE HAVE TO VISIT HER
9 GRAVE AND PUT FLOWERS ON HER GRAVE AND THINK ABOUT THE
10 GREAT LOSS THAT WE HAVE ALL SUFFERED THROUGH THIS. AND
11 WE'LL HAVE TO THINK ABOUT THAT UNTIL EACH OF US PASS ON OUR
12 DAY.

13 HE GAVE HER A DEATH SENTENCE IN A WAY. IF THE WORLD
14 CONTINUES TO BE THIS WAY, THEN WE'LL JUST ALL HAVE TO KEEP
15 GOING THROUGH TRIALS AND HOLD ONTO SAD THINGS. BUT I KNOW
16 IN MY HEART THAT JUSTICE WILL BE SERVED TODAY.

17 THANK YOU.

18 THE COURT: THANK YOU.

19 MR. JUSTICE: MR. EDWARD HALLMAN, HUSBAND. YOU WON'T
20 SPEAK. MS. STRAWN. MS. ANN STRAWN, THE MOTHER OF THE
21 VICTIM.

22 MS. STRAWN: MY NAME IS ANN STRAWN. JACKIE'S MY
23 DAUGHTER. I KNEW WE WOULD HEAR STORIES AND THINGS ABOUT
24 BRIAN DIGGS TODAY. I DON'T HAVE ANY INTEREST IN BRIAN
25 DIGGS, EXCEPT THAT HE PAY FOR WHAT HE DID TO JACKIE AND HER

1 FAMILY.

2 WHAT BRIAN DIGGS DOES NOT KNOW IS THAT ALL HE HAD TO
3 DO THAT NIGHT WAS WALK INTO THAT STORE AND SAY, LADY, I'M
4 DESPERATE. I NEED SOME MONEY. SHE WOULD HAVE GIVEN HIM
5 EVERY PENNY SHE HAD. SHE DID IT NUMEROUS TIMES BEFORE.

6 JACKIE WAS A BEAUTIFUL, WARM, LOVING GIRL. I MISS HER
7 EVERY DAY. I CAN'T HUG HER. I CAN'T TOUCH HER. I CAN'T
8 TALK TO HER. I CAN'T PLAN WITH HER. BRIAN DIGGS MADE SURE
9 OF THIS.

10 I UNDERSTAND DIGGS LOST HIS MOTHER AFTER HIS ARREST.
11 WELL, JACKIE REGAINED HER FATHER ON MARCH THE 16TH. HE
12 WENT TO BE WITH HER. AND I FEEL TODAY THAT BOTH OF THEM
13 ARE HERE WITH US.

14 IF THE TRUTH IN SENTENCING BILL WOULD HAVE APPLIED TO
15 BRIAN DIGGS, WE WOULD NOT ACCEPT THIS PLEA. WE BELIEVE
16 THAT IF YOU TAKE A LIFE, YOU SHOULD PAY FOR IT WITH YOUR
17 OWN. BUT BRIAN DIGGS HAS HURT OUR FAMILY. WE DON'T WANT
18 OUR DAUGHTERS TO SPEND 20 YEARS HAVING TO DEAL WITH HIM ANY
19 MORE, ESPECIALLY GINA, WHO WAS WITH HER SISTER THAT NIGHT
20 THAT SHE DIED. HE ROBBED GINA OF HER YOUTH; AND THAT'S
21 QUITE ENOUGH.

22 THE ONLY THING THAT WE ASK TODAY IS BRIAN DIGGS BE
23 GIVEN THE LONGEST, HARDEST SENTENCE POSSIBLE.

24 THANK YOU, YOUR HONOR.

25 THE COURT: THANK YOU, MA'AM.

1 MR. JUSTICE: YOUR HONOR, AT THIS TIME I WOULD CALL
2 REGINA STRAWN IF SHE WISHES TO MAKE A STATEMENT. I WOULD
3 ADD TO THE COURT AS MS. STRAWN THAT IS REFERRED TO, REGINA
4 WAS 14 YEARS OLD AT THE TIME OF THE KILLING, WAS PRESENT
5 WORKING IN THE STORE AND HAS SUFFERED CONSIDERABLY FROM
6 THAT EXPERIENCE.

7 GINA STRAWN: YOUR HONOR, ALL I WANT TO TELL YOU IS
8 I'VE HEARD ALL THESE THINGS ABOUT HOW A WONDERFUL PERSON HE
9 WAS. I'M SURE HE HAS BEEN GOOD TO SOME PEOPLE. BUT THE
10 WAY -- THE WAY I REMEMBER HIM AND THE WAY I'M ALWAYS GOING
11 TO REMEMBER HIM IS WHEN HE TOOK MY SISTER'S LIFE, WHEN HE
12 CAME IN, USED HIS MEAN WORDS, YELLED AND FIRED; THAT'S ALL
13 I HAVE TO SAY.

14 THANK YOU.

15 THE COURT: THANK YOU, MA'AM.

16 MR. JUSTICE: FINALLY, YOUR HONOR, THE AUNT OF THE
17 VICTIM, MS. BARBARA BRADLEY.

18 MS. BRADLEY: YOUR HONOR.

19 THE COURT: YES, MA'AM.

20 MS. BRADLEY: I MAY BE ABLE TO DO THIS, BUT I MIGHT
21 NOT, BUT I CERTAINLY HOPE THAT I CAN.

22 IF JACKIE HAD BEEN ALLOWED TO LIVE AND TO DIE ONLY IN
23 GOD'S TIME, SHE WOULD HAVE BEEN 28 YEARS OLD TODAY. JACKIE
24 WAS A HIGH SPIRITED, BEAUTIFUL, YOUNG, CARING, AND VIBRANT
25 YOUNG WOMAN, AND SHE DIDN'T DESERVE TO DIE, NOR DOES ANY

1 OTHER VICTIM, OF A VIOLENT CRIME.

2 UNLIKE THE DEFENDANT WHO BELIEVED IN USING WEAPONS AND
3 FORCE TO GET WHAT THEY WANTED, JACKIE WAS A HARD-WORKING
4 GIRL. SHE DIDN'T WORK JUST AT THE STORE HE KILLED HER IN.
5 SHE WORKED AT ANOTHER ONE, AND SHE MANAGED BOTH OF THOSE
6 STORES.

7 THERE'S ONLY ONE STORE TODAY BECAUSE HER PARENTS COULD
8 NEVER, EVER GO INTO THAT OTHER STORE AGAIN.

9 ONE OF JACKIE'S DREAMS WAS THAT ONE DAY SHE AND HER
10 HUSBAND WOULD OWN ONE OF THOSE STORES AND OPERATE IT. BUT
11 THAT DREAM WAS KILLED WHEN HE PULLED THE TRIGGER THAT TOOK
12 HER LIFE.

13 AND I COULD SPEND THE WHOLE REST OF THIS AFTERNOON IN
14 THE COURT TRYING TO TELL ALL OF YOU WHAT IT'S LIKE WHEN
15 MURDER HITS HOME. BUT NOBODY -- NOT ONE WOULD EVEN
16 UNDERSTAND. IT'S BEEN LIKE A DARK, DARK CLOUD LOOMING
17 OVERHEAD.

18 AND WE HEARD A GENTLEMAN SPEAK, I THINK DR. ROGERS OR
19 REVEREND ROGERS FROM SPARTANBURG YESTERDAY, TALK ABOUT THE
20 THREE YEARS THAT HAVE BEEN TAKEN FROM THIS YOUNG MAN'S
21 LIFE. WELL, I WANT EVERYBODY HERE TODAY TO KNOW THAT FOUR
22 YEARS HAVE BEEN TAKEN FROM THE LIFE OF EVERY ONE OF US
23 BECAUSE THROUGH THAT FOUR YEARS THAT DARK CLOUD NEVER LEFT.

24 WE HAVE ALL BEEN WAITING FOR THE DAY THAT WE THOUGHT
25 WE MIGHT SEE JUSTICE SERVED. IT'S BEEN AN UNENDING

STATE VS. BRIAN DIGGS

1 NIGHTMARE. AND I DON'T KNOW IF SENTENCING TO LIFE WITHOUT
2 PAROLE IS POSSIBLE UNDER THE LAW THAT WAS IN EXISTENCE AT
3 THE TIME OF THE MURDER. I HOPE THAT IT WAS.

4 BUT I DO KNOW THAT JACKIE DESERVED TO LIVE. AND I DO
5 KNOW THAT HER KILLER DESERVES THE TOUGHEST SENTENCE THAT IS
6 POSSIBLE UNDER THE LAW AT THAT TIME, AND THIS IS GOING TO
7 BE OUR REQUEST. THE WORLD NEEDS MORE PEOPLE LIKE JACKIE,
8 NOT FEWER. AND THE WORLD NEEDS FEWER KILLERS, NOT MORE.

9 AND I THINK ONE OF THE WAYS THAT WE IN OUR SOCIETY CAN
10 ASSURE THAT WE CAN HAVE A SAFER WORLD TO LIVE IN IS BY
11 IMPOSING THE TOUGHEST SENTENCES POSSIBLE.

12 THANK YOU.

13 THE COURT: THANK YOU, MA'AM.

14 MR. JUSTICE: YOUR HONOR, THAT'S ALL THAT WE HAVE.

15 THE COURT: ON BEHALF OF THE STATE?

16 MR. JUSTICE: ON BEHALF OF THE STATE.

17 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM THE
18 DEFENSE, MR. SCREEN, MR. BANKS, IN REGARDS TO MITIGATION?

19 (PAUSE.)

20 MR. BANKS: NOTHING FURTHER.

21 THE COURT: THANK YOU. ALL RIGHT.

22 WELL, LET THE RECORD REFLECT THAT THE ONLY AGGRAVATING
23 CIRCUMSTANCE THAT THIS COURT IS CONSIDERING AND FIND BEYOND
24 A REASONABLE DOUBT UNDER SECTION 16-3-20 (B) IS THE
25 AGGRAVATING CIRCUMSTANCE OF ATTEMPTED ARMED ROBBERY; THAT

1 IS THE ONLY ONE I AM CONSIDERING IN REGARD TO SENTENCING.

2 THIS IS CERTAINLY A TRAGEDY, ONE YOUNG LIFE HAS BEEN
3 LOST, ANOTHER YOUNG PERSON STANDS BEFORE THE BAR OF THIS
4 COURT HAVING PLED GUILTY TO MURDER AND ATTEMPTED ARMED
5 ROBBERY.

6 I CERTAINLY AGREE WITH ONE OF THE THINGS THAT DR.
7 ROGERS SAID YESTERDAY. IT MAKES US WONDER ABOUT THE
8 MENTALITY OF SOME OF OUR YOUNG PEOPLE. I JUST DON'T
9 UNDERSTAND. IT SEEMS THAT WE'RE REVERTING TO THIRD-WORLD
10 COUNTRY-TYPE SITUATIONS SOMETIMES. WE SEEM NOT TO REGARD
11 HUMAN LIFE.

12 I JUST HOPE THAT IN THE FUTURE THAT OUR SOCIETY WILL
13 -- THE PENDULUM WILL SWING THE OTHER WAY AND THAT ALL OF US
14 WILL COME TO REGARD HUMAN LIFE AS SACRED.

15 SENTENCE OF THE COURT

16 IN REGARD TO 95-GS-29-189, THE STATE VERSUS BRIAN A.
17 DIGGS, WHEREIN HE HAS PLED GUILTY TO MURDER, IT IS THE
18 SENTENCE OF THE COURT THAT HE BE CONFINED TO THE SOUTH
19 CAROLINA DEPARTMENT OF CORRECTIONS FOR THE BALANCE OF HIS
20 NATURAL LIFE.

21 IN REGARD TO 95-GS-29-191 WHEREIN THE DEFENDANT, BRIAN
22 A. DIGGS, HAS PLED GUILTY TO ATTEMPTED ARMED ROBBERY, IT IS
23 THE SENTENCE OF THE COURT HE BE CONFINED TO THE SOUTH
24 CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 10
25 YEARS. THIS SENTENCE IS CONSECUTIVE TO THE SENTENCE

STATE VS. BRIAN DIGGS

1 IMPOSED IN THE OTHER INDICTMENT.

2 THANK YOU VERY MUCH.

3 (ORDER DATED FEBRUARY 3, 1995, MARKED FOR
4 IDENTIFICATION AS COURT'S EXHIBIT NO. 1.)

5 (REPORT DATED 6/19/95, 3 PAGES, MARKED FOR
6 IDENTIFICATION AS COURT'S EXHIBIT NO. 2.)

7 (ORDER DATED 9/25/97, MARKED FOR IDENTIFICATION AS
8 COURT'S EXHIBIT NO. 3.)

9 (REPORT 11/7/97, MARKED FOR IDENTIFICATION AS COURT'S
10 EXHIBIT NO. 4.)

11 --- END OF TRANSCRIPT OF RECORD ---

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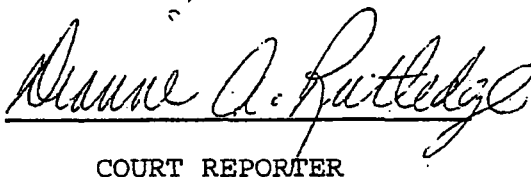
25

STATE VS. BRIAN DIGGS

1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT
2 REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF
3 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
4 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL
5 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE PLEA OF
6 THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
7 COURT FOR LANCASTER COUNTY, SOUTH CAROLINA, ON THE 13TH AND
8 14TH DAYS OF APRIL 1998.

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

11 OCTOBER 10, 1999

12 
13
14 COURT REPORTER

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STATE VS. BRIAN DIGGS

FORM 5

STATE OF SOUTH CAROLINA)

County of Lancaster)Brian Diggs, # 248964)

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

v.)

State of South Carolina)

Respondent.)

IN THE COURT OF COMMON PLEAS

2011 CP 2

APPLICATION FOR

POST-CONVICTION RELIEF

2011 JUN 7 AM 8:58
CLERK OF COURT
LANCASTER, SC

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTION, SCD
4460 BROAD RIVER ROAD, RICHLAND COUNTY, COLUMBIA, S.C. 29210
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) David Sutton
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 95-CS-29-189
(b) Attempted Armed Robbery. Indictment No.: N/A

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 14, 1998
- (b) Natural Life For Murder
- (c) Ten (10) Years For Attempted Armed Robbery
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
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. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) The United States Supreme Court has announced a new substantive standard/right that applies "retroactively to the Applicant."
- (b) See, Paragraph 9 (a)

- (c) See, Paragraph 9 (a)
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See, Attached Sheet
- (b) See, Attached Sheet
- (c) See, Paragraph 10 (a) (b)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See, Attached Sheet
- (b) See, Attached Sheet
- (c) See, Paragraph 11 (a) (b)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (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: See, Attached Procedural History
- i. P.C.R. April 07, 1999, In The Court of Common Pleas
- ii. P.C.R. Appeal, August 18, 2003
- iii. Writ of Certiorari In The South Carolina Supreme Court
- iv. 2254 Federal Habeas Corpus vs. P.C.R. Court of Common Pleas
- (b) the name and location of the Court in which each was filed:
- i. Court of Common Pleas
- ii. South Carolina State, Supreme Court
- iii. South Carolina Federal District Court
- iv. United States Supreme Court

- (c) the disposition thereof:
- i. P.C.R. Court Order of Denial, Dated August 01, 2003
 - ii. P.C.R. Appeal Denied, Dated April 11, 2007
 - iii. Petition For A Writ of Federal Habeas Corpus Denied, January 20, 2009
 - iv. United States Supreme Court, denied (See, Order)
- (d) the date of each such disposition:
- i. See, Paragraph 13, (c) i
 - ii. See, Paragraph 13, (c) ii
 - iii. See, Paragraph 13, (c) iii
 - iv. See, Paragraph 13, (c) iv
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. See, Applicants' Attached Procedural History
 - ii. See, Paragraph 13, (e) i
 - iii. See, Paragraph 13 (e) i
 - iv. See, Paragraph 13 (e) i
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?
- YES (YES)
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. That, Applicants' Plea was not voluntarily, intelligently, knowingly
 - ii. See, Case Cited, Boykins vs. Alabama
 - iii. Ineffective Assistance of Counsel
 - iv. Retroactively of Case cited In, Roper vs. Simmons, To guilty plea
- (b) the proceedings in which each ground was raised:
- i. P.C.R. Court
 - ii. P.C.R. Appeal
 - iii. Petition For A Writ of Certiorari

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) See, Applicant's Attached Sheet

(b) See, Paragraph 16 (a)

(c) See, Paragraph 16 (a)

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? NO

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

YES

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. Jerry M. Screen, 1337 Gregg Street, Columbia, S.C. 29201

Leon C. Banks, Post Office Box 773, Lancaster, S.C. 29721

ii. Philip E. Wright, 408 N. Main Street, Lancaster, S.C. 29720

iii. Same As Paragraph 18 (a) ii

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

i. P.C.R.

Petition for A Writ of Certiorari

ii.

iii.

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

Applicant Respectfully Demands of Vacation And Set-Aside Judgment of
Corriction & Guilty Pleas, Reverse & Remand For New Trial

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

N/A

STATE OF SOUTH CAROLINA)

County of LANCASTER)

VERIFICATION

I, BRIAN DIGGS, # 248964, 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.

s/

BID
BRIAN DIGGS, #248964

SWORN to and subscribed before me this 16th
 day of May, 2011.

Susan H. Frye (L.S.)
 Notary Public

My Commission Expires

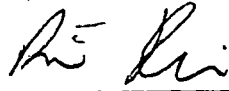
My Commission Expires: March 5, 2018

*Need to
 Sign &
 Need to be
 Notarized*

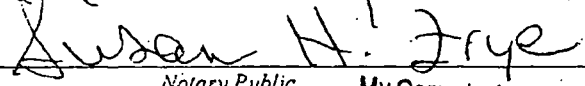
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, BRIAN DIGGS, # 248964, 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.

s/ 
BRIAN DIGGS, ^{Applicant} #248964

SWORN or affirmed to and subscribed before me this
16th day of May, 2011.


Notary Public My Commission Expires
March 5, 2018

My Commission Expires: _____

PROCEDURAL HISTORY

Applicant is currently incarcerated at the Broad River Correctional Institution, within the South Carolina Department of Corrections, pursuant to an Judicial order of commitment from the Clerk of Court of Lancaster County, General Session. A Lancaster County Grand Jury indicted Applicant in February 1995 for murder (95-GS-29-189), and Attempted Armed Robbery (95-GS-29-191).

The State served a notice of intent to seek the death penalty. Jerry M. Screen, Esquire and Leon C. Banks, Esquire represented Applicant on the aforesaid charges.

On April 13, 1998, said Applicant elected to enter a guilty plea in exchange for the State, withdrawing the notice of intent to seek the death penalty. The Honorable Paul E. Short, Jr., heard and accepted the plea. Sentencing was deferred until the following day.

On April 14, 1998, after hearing statements from both sides, the plea judge as aforesaid, sentenced Applicant to life imprisonment for murder, and ten (10) years consecutive, for attempted armed robbery. Applicant did not appeal his plea or sentence.

On April 07, 1999, Petitioner filed an Application for post-conviction relief (P.C.R.), in which he raised the following claims:

(A) Ineffective Assistance of Counsel

(B) No right to appeal guilty plea, (See, Case Cited, White vs. State)

The State made its' return on September 14, 1999. Mr. Philip E. Wright, Esquire, represented Applicant in the action. On May 27, 2003, P.C.R. counsel amended the application and raised the following claims:

[1] The Applicant was denied his constitutional rights to a jury trial in that he (Applicant), was not advised by his counsel or the Court of the nature and importance of the right and that he (Applicant), did not knowingly and intentionally waive that right;

[2] The Applicant was denied his Constitutional rights to call and confront witness on the issue of his innocence or guilt in that he (Applicant), was not advised by his counsel of the Court of the nature and importance of the right and that he (Applicant) did not knowingly and intentionally, waive that right;

[3] The Applicant was denied his Constitutional rights to challenge the voluntariness of any statement which he had given in that he (Applicant) was not advised by his counsel or the Court of the nature and importance of the right and that he did not knowingly and intentionally waived that right;

[4] The Applicant's decision to plead guilty was coerced by his attorney(s) and the State in that it (The State), contended that it could seek the death penalty based on the allegation that the said Applicant had committed attempted armed robbery and that attempted armed robbery was an aggravating circumstance to allow the State to pursue the death penalty, when in fact attempted armed robbery was not listed as an aggravating circumstance in the death penalty statute and the State did not have the right to try the Applicant's case as a capital case. The Applicant pled guilty in part to avoid the death penalty.

[5] The Applicant's decision to plead guilty was coerced by his attorney(s) and the State in that the Applicant gave a statement while in custody that was coerced by the investigating authorities but which was not challenged by the Applicant's attorney(s) and which the Applicant did not know that he had a right to challenge by hearing in open Court.

[6] The Applicant has been denied his right to rehabilitation while incarcerated as granted by Article XII, Section 2, of the South Carolina State Constitution;

[7] The Applicant asserts that his attorney(s) failed to adequately investigate the case and failed to properly advise him concerning the possible punishments for the alleged crime and place undue pressure on Applicant to plead guilty;

CONTINUED, PAGE THREE (3), APPLICANT'S ATTACHED SHEET, PCR APPLICATION, PARAGRAPH 10#
PROCEDURAL HISTORY

Furthermore, the Applicant asserts, that an evidentiary hearing was convened on June 04, 2003, before the Honorable Judge Kenneth G. Goode. The P.C.R. Judge, Goode, issued a written Order of dismissal on August 01, 2003. Subsequently, the said Applicant filed a motion to alter or amend or reconsider the judgment/order, pursuant to Rule 59 (e), of the South Carolina Rules of Civil Procedure. On the contrary, the said Presiding P.C.R. Judge Goode, denied said motion to alter or amend, on September 19, 2003;

Ms. Tara S. Taggart, Assistant Appellate Defender of the South Carolina Office of the Appellate Defense Division, represented the Applicant/Petition on appeal.

Said Appellate counsel filed a Petition for a Writ of Certiorari in the S.C., Supreme Court on March 08, 2004, and raised the following issue:

Whether Petitioner's guilty Plea Failed to Comply with The Mandates of Boykin vs. Alabama, supra.

The State filed a return to the Petitioner on July 20, 2004. The appeal was thereafter transferred to the South Carolina Court of Appeals. The Court of Appeals denied said Petitioner's appeal on April 11, 2007, and issued the remittitur on May 01, 2007.

Applicant then filed a second (2nd) post-conviction relief application, on May 01, 2009, alleging claims of newly discovered evidence, based on the United States Supreme Court holding in, *Roper vs. Simmons*, 543, U.S. 551 (2005), which prohibited capital punishment for those under eighteen (18) years old, when the crime was committed. The State filed its Return and motion to dismiss and the Court issued a Conditional Order of Dismissal dated, September 15, 2009.

Applicant submitted a "Motion to Amend," objecting to the State's Request for Summary Dismissal on October 05, 2009, asserting the following:

[1] That as a matter of law, Applicant's sentence and conviction is unconstitutional in the light of the new constitutional standards ruled on in *Roper vs. Simmons, supra*;

[2] That, as a matter of law, Applicant was denied due process and said Applicant is entitled to an evidentiary hearing based on the applicability standards in *Roper vs. Simmons, supra*;

[3] That, as a matter of law, Applicant's plea was not voluntarily, as referred to, *North Carolina vs. Alford*;

[4] That, as a matter of law, said Applicant's sentence and plea negotiation is void and the sentence and conviction is illegal and should no longer have any equitable application based upon the change of law;

[5] That, as a matter of law, said Applicant was denied of fundamental fairness inasmuch that, the error ruled upon in, *Standfort vs. Kentucky, Court*, worked to Standfort's actual and substantial disadvantage, infecting his entire trial with error of Constitutional dimensions;

[6] That, as a matter of law, said Applicant was wrongfully held to adult standard, that counsel was ineffective.

In additional, Applicant asserts, that the State filed a return and moved to dismiss on grounds that, Applicant's second (2nd) P.C.R. Application was allegedly untimely filed and unsuccessful because of the date on which the newly/after discovered evidence and/or new trial emerged;

THEREAFTER, Applicant's second (2nd) P.C.R. action was denied by the lower Court via conditional order of dismissal and final order echoed upon the same grounds outlined in the Return and motion to dismiss. In addition, said Applicant's

motion to alter, amend or reconsider, under Rule 59 (e), of the South Carolina Rules of Civil Procedure, as a matter of law, was denied as well by the lower Court.

However, on June 04, 2010, said Applicant filed an appeal with the South Carolina State, Supreme Court. In Applicant's appeal, Applicant argued in the effect that the lower Court erred in denying his claims that Applicant's guilty plea were impacted retroactively by the new rule standard announced in, *Roper supra*, and this action as a matter of law, should not have been deemed barred as successive and untimely filed.

10) The State violated Applicant's rights guaranteed by the Sixth, Eighth, and Fourteenth Amendments of the United States' Constitution and by South Carolina law insomuch as Applicant's sentence of natural life imprisonment is constituted as unconstitutionally cruel and unusual as applied to punish an offense committed when the perpetrator was less than 18 years of age. In light of the holding in, *Graham* and *Roper*, said Applicant sentence is disproportional with respect to his juvenile culpability and is intolerable to fundamental fairness.

11). Applicant plead guilty to murder and attempted armed robbery after the State served notice of intent to seek the death penalty. Applicant was sentence to natural life and a consecutive 10 years. The intervening laws of *Roper* and *Graham*, establish invading standards of decency precludes such punishments and plea negotiations. The tender age of the Applicant made him constitutionally less cupable and that his crime is, thus less weight than it would be otherwise.

Moreover, there exist strong legislative consensus against imposing natural life sentences on offenders who commit their crimes before the age of 18.

10) The State violated Applicant's rights guaranteed by the Sixth, Eighth and Fourteenth Amendments of the United States Constitution and by South Carolina law as the main waiver transfers statute setting forth the circumstances under which 17 years old juveniles may be prosecuted and exposed to the death penalty and

and natural life sentences violates due process.

The South Carolina Waiver And Transfer Statutes, Section 20-7-430-207, UnCon-
stitutionally Delegated

Defacto-transfer decision to prosecute Applicant for capital murder exposing him to a sentence of death or natural life deprived him of due process. The sentencing practice by the Court and the State upon said Applicant, during the aforesaid time mentioned, is unconstitutional and forges fundamental fairness to the Applicant under the Fourteenth Amendment right to due process;

10). The sentence violates Applicant's rights guaranteed by the Eighth and Fourteenth Amendments of the United States' Constitution and by South Carolina laws as it serves no legitimate public purpose.

The record of the plea proceeding, the solicitor summarized the facts in the case. The States' evidence asserted that, said Petitioner went into Jack Hallman's family convenient store in, Lancaster, South Carolina, on May 16, 1995, while holding a 22. Caliber, which allegedly, obtained from co-defendant David Sutton and demanded money from Jack Hallmen.

According to the State's evidence the said co-defendant and the Applicant began tussling and a shot was fired during the struggle. The State's forensic

pathologist report included that every wound begin at the tip of the left middle finger traveled and cut the aorta near the heart. Nothing was removed from the store.

Based upon the most recent studies on juvenile culpability and brain development studies the inadequacy of penological theory to justify natural life for Applicant fails a constitutional or common sense test of the retributive and deterrence goals of punishment.

International norms strongly oppose natural life sentences for minors. See, HRW-AI, 2005. The norms and practices of other jurisdiction reveal the jurisprudential isolation and outlier status of South Carolina law and policy on this question.

Juvenile natural life sentences violate several international covenants (Goliath 2003; Human Right Watch-AI, 2005, Including Articles VII (right to special protection); XXV right to due process), and XXVI right to protection against cruel, infamous, or unusual punishment) of the American Declaration of the Rights and Duties of Man.

Article 37 of the Convention of Rights of the Child, which has been signed and ratified by every country but the United States' and Somalia, explicitly prohibits LWOP sentences for juvenile offenders under the age of 18 years old also see, U.N., JLWOP Standards Minimum Rules For The Administration of Juvenile Justice; and (the Beijing Rules).

10). The State violated Applicant's rights guaranteed by the Sixth, Eighth and Fourteenth Amendments of the United States' Constitution and by South Carolina law in light of the international treaties and customary international norms ~~is~~ binding upon the U.S. forbidding the execution and natural life sentences on juvenile offenders. The binding jus cogens norms forbids the sentencing practice and plea negotiation at issues.

11). Article 6 (5) of the International Covenant on Civil and Political Rights 91 CCPR, a treaty which the U.S. ratified in 1992 bar the use of the death penalty for those under the age of 18 at the time of the crime and likewise natural life sentences. Moreover, international customary norms jus cogens upon the U.S. bars the execution of juvenile offenders. Despite this binding international law, which applies to the States through the Supremacy Clause of the U.S. Constitution, the State violated Applicant's rights in this since.

10). The State violated Applicant's rights guaranteed by the Fifth, Sixth and Fourteenth Amendments of the United States' Constitution and by South Carolina law insomuch as the State introduce evidence in aggravation of the punishment and at the same time violated the plea agreement as described in Santobello vs. New York, 404 U.S. 257, 92 S.Ct., 495, 30 LEd 2d 427 (1971).

11). Pursuant to South Carolina Code § 16-3-20 (B), only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. Applicant was not given a fair and complete opportunity to respond to each factual allegation the State used as a justification for a sentence of natural life. See, State vs. Riddle, 353 S.E.2d 138, 141 S.C. (1987).

CONTINUED, PAGE EIGHT (A) (8)(A), APPLICANT'S ATTACHED SHEET,
PROCEDURAL HISTORY

Accordingly, introduction of the evidence of Applicant's guilty plea, violated S.C. Code § 16-3-20 (B), and deprived Applicant of due process of law. See, Gardner vs. Florida. The State had agreed to make no sentencing recommendation other than its' withdrawal of intent to seek the death penalty. See, Thompson vs. State, 340 S.C. 112, 531 S.E.2d 294 (2000);

The State violated Applicant's rights guaranteed by the Fifth, Sixth and Fourteenth Amendments of the United States' Constitution and by South Carolina law, where the trial Court failed to comply with the mandates of Boykin, Graham and Ropers' Court, which created a fundamental **unfairness** that violates Applicant's due process.

Applicant's guilty plea failed to comply with the mandates of Boykin vs. Alabama Court, where the record of the plea proceedings revealed that the trial judge failed

ENDED PAGE EIGHT A (8)(A)

CONTINUED ON PAGE NINE (9)

to inform Applicant of the threshold Constitutional rights he was waiving as required by Boykins vs. Alabama. Applicant was not advised of his rights to a jury trial, the right to confront his accusers, the right to remain silent, or the right to present witnesses in the Applicant's own behalf. In this matter, the Court appears to have incorrectly, relied upon the conclusion, such that trial counsel "thoroughly discussed these issues with Applicant.

This such finding, even if true, does not change the fact that the guilty plea was insufficient as a matter of law, because the guilty plea of said Applicant was unknowingly, involuntarily, and unintelligent.

Thus, the whole basis of the plea was the defense counsel's attempt to avoid any risk of said Applicant receiving the death penalty, which later said Applicant discovered to be unlawful and unconstitutional in the Roper's Court, as applied to the Applicant case. Thus, the circumstances of Applicants guilty plea creates a fundamental unfairness that violates said Applicant's Fourteenth Amendment rights to due process.

THEREFORE, again, the State violated said Applicant's rights guaranteed by the Sixth and Fourteenth Amendment of the United States Constitution and by the South Carolina law as he is actually innocence base on the most recent adolescent brain studies and culpability standards announced in Atkins, Roper and Kennedy's Court.

Applicant was evaluated May 19, 1995, to determine the defendant's capacity to stand trial pursuant to Section 44-23-410, S.C. Code of Law. The Applicant was diagnosed with adjustment disorder and with depressed mood and borderline intellectual functioning and I Q of 75. The trial judge failed to accurately render a individualized assessment about whether said Applicant's immaturity and development. For the Applicant was wrongfully held to adult standards of culpability as the adolescent brain studies were not available at the time of Applicant's trial or post-conviction proceedings.

As a result the trial Court fail to apply the correct proportionality standards

and categorical approach in his determination. The Applicant was denied the right to mitigation as following:

- [A] Applicant acted under duress and determination of adult co-defendant;
- [B] Applicant had no juvenile or adult criminal history of prior criminal conviction or prior experience with the criminal justice system at the time of his plea;
- [C] Applicant had sub-average general intellectual functioning existing with a I Q below 75 and reduce culpability at the time of the crime and plea;
- [D] The circumstances of his interrogation and confession by police;

The constitutional violation mentioned in the intervening law announced in Atkins, Roper, Kennedy and Graham relating to culpability of juveniles led to the Applicant's conviction and sentence;

The Applicant's sentence by the Court violates the Eighth, Fifteenth, Fourteenth Amendments of the United States' Constitution and by the South Carolina law, because such sentence by the Court, deprived said Applicant of his political citizenship in the nation political system, and because South Carolina does not have authority to strip said Applicant of federal and human rights under the Common law.

Furthermore, said Applicant asserts and claims that his conviction and juvenile natural life sentence, by the Court, robs him of his political citizenship in the United States' and South Carolina under the common law and Uniformed Commercial Code in that as a result of Applicant's juvenile natural life sentence that he has never been afforded the rights to vote, engage in civil matters, pay taxes and political self determination in general;

The plea and sentence offered the holding of the United States Supreme Court Vermont School District, 475 vs. Actor, 115 S.Ct. 2386.

16)

[A] The Applicant moves pursuant to the filing procedures of the Uniform Post-Conviction Procedure Act of S.C. Code Ann., § 17-27-45 (b), base on the retroactive effect of the holding in, *Graham vs. Florida*, the United States' Supreme Court has announced a new substantive Right that applies to the Applicant.

[B] The new rule is intended to be applied retroactively;

[C] The Applicant has commenced this application within one (1) year after the Court decision announcing the new rule. South Carolina courts are required to follow the United States' Supreme Court's decision on retroactivity. See, *Danforth vs. Minnesota*, 128 S.Ct., 1029, 1035; *Tally vs. State*, 371 S.C. 535, 541, 640 S.E. 2d 878, 880, (007);

In general, a new procedural rule will not be applied retroactively unless the new rule falls within one of two exception: (1) it places certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe; or (2) it requires the observance of those procedures that ... are implicit in the concept of ordered liberty. *Teague vs. Lane*, 489 U.S. 288, 305, 109 S.Ct. 1060, 1072, 103 L.E 2d 334 (1989).

Respectfully Submitted,

S/ Brian Diggs

BRIAN DIGGS, #248964

DOCKET NO. 95-GS-29-189
The State of South Carolina,
County of LANCASTER

COURT OF GENERAL SESSIONS
FEBRUARY TERM 1995

THE STATE
vs.
Brian Anselm Diggs

Indictment for Murder
CDR - 116

1-19-95 Gardner

WITNESSES
Rick Ghent

ARREST WARRANT NO. E417254

ACTION OF GRAND JURY

FEB 24 1995
Foreman of Grand Jury
Phanda Baker

VERDICT

Date: 1-19-95

And now comes the within named defendant in (his) (her) own proper person, and being asked in open Court by the Clerk of said Court if (he) (she) desires freely and voluntarily to plead guilty to the within indictment makes the following plea to the within indictment. I do hereby freely and voluntarily, and without mental reservation and without any intimidation by any person or persons whatsoever either by threats, promises, rewards or hope of reward plead guilty to the within indictment.

MURDER

LANCASTER, S.C.
APR 13 1995
WITNESSES
Wanda Baker
Clerk of Court

Rick Ghent

The State of South Carolina,

County of LANCASTER

FILED
OFFICE OF CLERK
OF COURT

COURT OF GENERAL SESSIONS

FEBRUARY TERM 1995

THE STATE

vs.

Brian Anselm Diggs

REST WARRANT NO. E4.17451

ACTION OF GRAND JURY

FEB 24 1995

7

Panel of Grand Jury

Phanda Baker

VERDICT

Panel of Petit Jury

1-24-95 Gardner

2009 AUG 31 P 3:45

CLERK OF COURT
LANCASTER COUNTY, SC

[illegible]

E-417451

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
LANCASTER

THE STATE

against 94006639

Brian Anselm DIGGS

ess:

SSN: _____

M Race: B Height: 5'8" Weight: 160 (app)

S.C. DL #: 4

Agency ORI #: SC0290000

Recruiting Agency: LCSD

Recruiting Officer: Capt. Rick GHENT

Offense: Attempt Armed Robbery

Offense Code: _____

e/Ordinance Sec. 16-11-330 (2)

warrant is CERTIFIED FOR SERVICE in the

County/ ☐ Municipality of LANCASTER

to be arrested and brought before the court to be

it with according to law.

Signature of Judge _____

Signature of Constable/Law Enforcement Officer

TURN WARRANT TO: _____

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

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Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
LANCASTER

Personally appeared before me the affiant

being duly sworn deposes and says that defendant

did within this county and state on 05/16/94

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of LANCASTER

in the following particulars:

DESCRIPTION OF OFFENSE:

Attempt Armed Robbery

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts:

That the Defendant named above, along with a Co-Defendant, did

go to Jack's Convenience Store which was located on Hwy. 903 East

of Lancaster, S. C. on the date reflected above, at the approx.

time of 9:35 P.M., and while armed with a .22 cal. handgun, did

enter the store and demand money from the clerk, Jackie Strawn

HALLMAN. The clerk refused to comply with the demand and a scuffle

The Clerk was shot with said weapon and subsequently died as a

result. This Attempted Robbery was planned by both the Defendant

and Co-Defendant as both parties did conspire and agree to obtain

money by robbing the store Clerk.

Sworn to and subscribed before me)

on 01/24/95)

Signature of Issuing Judge)

Signature of Affiant)

Affiant's Address)

Affiant's Telephone)

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of)

LANCASTER)

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 05/16/94 defendant Brian Anselm DIGGS

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of LANCASTER) as set forth below:

DESCRIPTION OF OFFENSE:

Attempt Armed Robbery

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before

me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the

defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address _____

Judge's _____

Signature of Issuing Judge _____

Judge Code: _____

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

JAN 24 1995

89

AFFIDAVIT

Capt. Rick GHENT

Brian Anselm DIGGS

05/16/94

violate the criminal laws of the

Municipality of LANCASTER

Attempt Armed Robbery

DESCRIPTION OF OFFENSE:

Attempt Armed Robbery

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts:

That the Defendant named above, along with a Co-Defendant, did

go to Jack's Convenience Store which was located on Hwy. 903 East

of Lancaster, S. C. on the date reflected above, at the approx.

time of 9:35 P.M., and while armed with a .22 cal. handgun, did

enter the store and demand money from the clerk, Jackie Strawn

HALLMAN. The clerk refused to comply with the demand and a scuffle

The Clerk was shot with said weapon and subsequently died as a

result. This Attempted Robbery was planned by both the Defendant

and Co-Defendant as both parties did conspire and agree to obtain

money by robbing the store Clerk.

Sworn to and subscribed before me)

on 01/24/95)

Signature of Issuing Judge)

Signature of Affiant)

Affiant's Address)

Affiant's Telephone)

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of)

LANCASTER)

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 05/16/94 defendant Brian Anselm DIGGS

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of LANCASTER) as set forth below:

DESCRIPTION OF OFFENSE:

Attempt Armed Robbery

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before

me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the

defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address _____

Judge's _____

Signature of Issuing Judge _____

Judge Code: _____

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

JAN 24 1995

89

STATE OF SOUTH CAROLINA

vs

Brian Anselm Diggs

COUNT NO: _____
CASE NO: 026 95 GS-29 191
WARRANT NO: 5-16-94
CHARGE: Attempted ARM Robbery

The sentence of the Court is that Brian Anselm Diggs, the defendant named in this indictment be confined to the State Board of Corrections/Lancaster County Detention for a term of 10 years (and) (or) pay a fine of \$ _____ : provided that upon the service of _____ (and) (c) payment of \$ _____ plus (pay) (waive) cost and assessments as applicable*, the balance is suspended and the defendant is placed on probation for _____ (months) (years).

RESTITUTION: (YES) (NO) _____ PHYSICAL INJURY \$ _____
(and) (or) _____
HEARING HELD OR WAIVED ON: _____ PROPERTY DAMAGE \$ _____
PAYABLE TO CLERK FOR (VICTIM) _____ TOTAL \$ _____

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: This sentence is consecutive to 95-GS-29-189

DATE: April 14, 1998
LANCASTER, S.C.

Paul E. Short Jr
Presiding Judge

*COST AND ASSESSMENTS: FINE \$ _____
NON WAIVABLE \$ _____
NOT WAIVED \$ _____
TOTAL \$ _____

Clerk of Court _____
Date of Birth _____
Social Security _____
Drivers License _____
ATTORNEY FOR DEF: Terry Screen
Leon Banks
ADDRESS: _____

COPY RECEIVED BY: _____
Defendant

M / F
B / W

2011 CP 29 816

0 Brian Diggs #248964

Broad River Corr. Inst. Murry Unit 224-B
4460 Broad River Rd.

Columbia, S.C 29210

The Honorable Jeff Hammond, Clerk of
Court
P.O. Box 1809
Lancaster, S.C 29721-1809

FILED
OFFICE OF CLERK
OF COURT
2011 JUN -7 AM 9:58
CLERK OF COURT
LANCASTER, SC

May 17, 2011

Dear Mr. Hammond:

I am returning to you my P.C.R. Application with the notarized signature. Included is a Affidavit of the Broad River Correctional Institution Mail Room Staff indicating that I timely deliver to them ~~the~~ my P.C.R. Application for mailing to your office. Please make the necessary adjustments to your record that your office received my Application before May 10, 2011 which ~~is~~ was the deadline for filing. The agents of the Respondent have submitted a Affidavit that they are responsible for the turnaround.

With Best Regards:

cc BD

LCC

Mr. Diggs

STATE OF SOUTH CAROLINA)
County of Lancaster)

In the Court of Common
Pleas

Brian Diggs #248964)

2011 CP 29 816

vs.

State of South Carolina)

Respondent)

Affidavit

of

Broad River Correctional
Institution Mail Room Staff.

FILED
OFFICE OF CLERK
OF COURT
2011 JUN -7 AM 9:50
CLERK OF COURT
LANCASTER, SC

Personally Appeared before me Broad River Correction Institution
Mail Room Staff who being first duly Sworn depose and
says:

1. That I am the Affiant in the above referenced matter.
2. On May 5th 2011 Brian Diggs delivered to me his P.C.R.
Application for mailing to the Lancaster Court Clerk of Court.
3. Included in this Application was a request that I notarize
the documents which I failed to do.
4. Nevertheless, Brian Diggs did in fact deliver to me his P.C.R.
Application before his one year deadline (May 10, 2011)
5. Attached is a Affidant of Service in support of this claim dated
May 5, 2011 with Notary signature by mail room staff Eugene
Keeth.

Sworn and Subscribed to and before me,

this 18th day of May 2011

x Susan N. Frye

Notary Public State of South Carolina Commission Expires
March 5 2018

x R. M.

x B.D.

May 03, 2011

TO: The Honorable Jeff Hammond, Clerk
 Court of Common Pleas, Lancaster County
 Sixth (6TH) Judicial Circuit
 Post Office Box 1809
 Lancaster, South Carolina 29721-1809

RE: Brian Diggs, #248964, vs. State, S.C. PCR Action

SUBJ: Applicant Respectfully Request Filing & Return To The Applicant

Dear Mr. Hammond/Clerk:

Please find enclosed an Original PCR Application to include an Affidavit to proceed in forma pauperis status and Twelve (12) copies of Applicant's Attached Sheet(s), regarding the PCR Application Page Three (3), Paragraph 10#, with an Affidavit of Service by U.S. Regular Mail.

Thank you so kindly for your assistance and cooperation, regarding this requested matter!

Respectfully Submitted, I am

RICHLAND COUNTY,

S/ Brian Diggs

COLUMBIA, SOUTH CAROLINA 29210

CLA BRIAN DIGGS, #248964

MAY 03, 2011

AFFIDAVIT OF SERVICE

PERSONALLY APPEARED before me, BRIAN DIGGS, #248964, who, being first duly Sworn depose and says:

That, I am the Affiant/Applicant in the above-referenced matter. I hereby have served/mailed an original PCR Application, Attached Sheets, with an affidavit of service to; The Honorable Jeff Hammond, Clerk, Court of Common Pleas, Lancaster County. Sixth Judicial Circuit, Post Office Box 1809, Lancaster, South Carolina 29721-1809; bearing proper Via United States' Regular postage as it appears on this 5 day of MAY, 2011.

Sworn and Subscribed to and before me,
 this 5 day of MAY, 2011.

S/ Brian Diggs
 BRIAN DIGGS, #248964

Eugene Keith
 Notary Public, State of South Carolina
 My Commission Expires April 4, 2016

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF LANCASTER	) 2-23	
	)	
	)	
Brian Diggs #248964	)	2011-CP-29-0846 ⁸¹⁶
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed June 7, 2011, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted at the February 1995 term of the Court of General Sessions for Lancaster County for murder (95-GS-29-189) and attempted armed robbery (95-GS-29-191). He was represented by Leon Banks, Esquire. On April 14, 1998, the Applicant pled guilty as indicted. He was sentenced by the Honorable Paul E. Short, Jr., to confinement for life and a consecutive term of ten (10) years, respectively. The Applicant did not appeal his guilty plea or sentence.

1999-CP-29-0187

The Applicant subsequently filed an application for post-conviction relief (PCR) on April 7, 1999 and amended on May 27, 2003. The State filed its Return on September 21, 1999. An evidentiary hearing was convened on June 4, 2003, at the Fairfield County Courthouse. The

Applicant was present and represented by Philip E. Wright, Esquire. In that application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and
2. No right to appeal guilty plea.

The Honorable Kenneth G. Goode, denied and dismissed Applicant's application by written Order on August 1, 2003. Subsequently, the Applicant filed a document titled "59(e) Motion to Alter or Amend the Judgment." The Honorable Kenneth G. Goode denied this motion on September 19, 2003. A Petition for Writ of Certiorari was filed on behalf of the Applicant on March 8, 2004. The South Carolina Court of Appeals denied the Applicant's Petition for Writ of Certiorari by written Order dated April 11, 2007. The Remittitur was issued on May 1, 2007.

2009-CP-29-0641

The Applicant subsequently filed an application for post-conviction relief (PCR) on May 1, 2009. In that application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Newly discovered evidence; in that,
 - a. Applicant alleges that the negotiated plea was made before the ruling of Roper v. Simmons, 543 U.S. 551 (2005). In Roper, the United States Supreme Court held capital punishment unconstitutional for offenders who are under the age of eighteen when their crimes were committed. The Applicant, who was under the age of eighteen when his crime was committed, claims that the "state informed the court that in exchange for the plea, Petitioner would not be exposed to the death penalty." Thus, he claims that his plea negotiation is void since the threat of the death penalty is no longer applicable.

The Respondent made its Return and Motion to Dismiss on August 25, 2009. The Court issued a Conditional Order of Dismissal dated September 15, 2009, provisionally denying and dismissing the action. The Court gave twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. The Applicant submitted a pro se

document motion for extension of time to respond to the conditional order of dismissal on September 17, 2009. On October 5, 2009, the Applicant submitted a "Motion to Amend Objection to State's Request for Summary Dismissal." The Applicant asserted the following reasons he is entitled to an evidentiary hearing:

1. Roper v. Simmons, 543 U.S. 551 (2005) prohibits capital punishment for those under eighteen when the crime was committed;
2. The State originally sought the death penalty against the Applicant in 1997, which is no longer an option.

The Applicant submitted an additional "Motion to Amend Objection to State's Request for Summary Dismissal" filed on October 22, 2009. The Applicant again submitted Roper v. Simmons rendered his plea involuntary. Filed that same day, the Applicant submitted a "Motion to Construe Pro-Se Pleadings Liberally" due to the Applicant's lack of legal training. On October 22, 2009, he also filed a "Motion to Add Future Motions," "Motion to Require the State to Reproduce and Seal Entire File and Make Such File a Part of the Record," and a "Motion for Appointment of Counsel and Hearing Request."

On October 27, 2009, the Applicant submitted an additional two-part "Motion to Amend Objection to State's Conditional Order of Dismissal." Again, the Applicant submitted that his application was appropriate due to new constitutional standards via Roper v. Simmons and his claim is one of newly discovered evidence. On November 2, 2009, the Applicant submitted an additional motion requesting an extension of time to respond to the Conditional Order of Dismissal. The Honorable Brooks P. Goldsmith denied the application by written Order filed December 11, 2009.

On January 12, 2010, the applicant submitted a "Motion 59(e) to Alter or Amend Judgment." Respondent made its Return to Applicant's Pro Se 59(e) Motion on March 9, 2010. The Honorable Brooks P. Goldsmith denied the motion with written Order filed March 24, 2010.

The Petition for Writ of Certiorari was filed November 23, 2010. Respondent made its Return to Petition for Writ of Certiorari on January 7, 2011. This case is currently pending before the South Carolina Court of Appeals.

II.

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

1. Ineffective assistance of trial counsel; in that,
 - a. Counsel failed to challenge a statement given by Applicant under coercion,
 - b. Counsel failed to argue Applicant "acted under duress and determination of adult co-defendant,
 - c. Counsel failed to argue Applicant "had no juvenile or adult criminal history of prior criminal conviction or prior experience with the criminal justice system at the time of his plea"
 - d. Counsel failed to argue Applicant "had sub-average general intellectual functioning existing with a IQ below 75;"
2. Involuntary guilty plea; in that
 - a. Applicant only pled guilty to avoid the death penalty,
 - b. Neither his Counsel nor the Court explained the importance of the rights he was waiving;
3. Denial of due process; in that,
 - a. Applicant's sentence of life imprisonment is "unconstitutionally cruel and unusual as applied to punish an offense committed when the perpetrator was less than 18 years of age,"
 - b. The State introduced evidence of aggravation it had not informed the Applicant of in writing before the sentencing hearing. "Pursuant to South Carolina Code § 16-3-20 (B), only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible."

For the purpose of this Return, Respondent incorporates the records of the Lancaster County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and Applicant's prior PCR records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the Remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offenses he challenges in this Application on April 14, 1998. The Applicant was therefore required to file the application before April 14, 1999. This Application was filed on June 7, 2011, which was more than twelve years after the statutory filing period had expired.

Applicant submits that the application is timely because it was filed one year after the Supreme Court's May 10, 2010 decision in Graham v. Florida. 130 S. Ct. 2011 (2010). Applicant's reliance on Graham v. Florida is misguided. In that case, the Supreme Court held that it is unconstitutional for States to sentence a juvenile offender of a non-homicide crime to life in prison without parole. Id. "What the State must do . . . is give the defendant[] . . . some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." Id. at 2030. The Applicant will be up for parole on January 20, 2025, providing him with a "meaningful opportunity to obtain release." Id. Furthermore, even if Applicant was entitled to file a PCR application one year after Graham v. Florida, which Respondent submits he was not, his application was late. Graham v. Florida was decided on May 10, 2010. The Applicant was

therefore required to file the application before May 10, 2011. This Application was filed on June 7, 2011, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

IV.

The Respondent submits that the Court should also summarily dismiss the current Application because it is successive to the previously filed applications for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991).

Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired and is successive to the Applicant's prior PCR applications.

Respectfully submitted,

ALAN WILSON
Attorney General

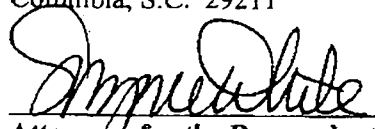
JOHN W. McINTOSH
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SALLEY ELLIOTT
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P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

June 28, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

Brian Diggs #248964)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2011-CP-29-0846

CONDITIONAL ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed June 7, 2011. Respondent made its Return and Motion to Dismiss on or about May 25, 2012.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted at the February 1995 term of the Court of General Sessions for Lancaster County for murder (95-GS-29-189) and attempted armed robbery (95-GS-29-191). He was represented by Leon Banks, Esquire. On April 14, 1998, the Applicant pled guilty as indicted. He was sentenced by the Honorable Paul E. Short, Jr., to confinement for life and a consecutive term of ten (10) years, respectively. The Applicant did not appeal his guilty plea or sentence.

1999-CP-29-0187

The Applicant subsequently filed an application for post-conviction relief (PCR) on April 7, 1999 and amended on May 27, 2003. The State filed its Return on September 21, 1999. An evidentiary hearing was convened on June 4, 2003, at the Fairfield County Courthouse. The Applicant was present and represented by Philip E. Wright, Esquire. In that application, Applicant alleged he was being held in

custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and
2. No right to appeal guilty plea.

The Honorable Kenneth G. Goode, denied and dismissed Applicant's application by written Order on August 1, 2003. Subsequently, the Applicant filed a document titled "59(e) Motion to Alter or Amend the Judgment." The Honorable Kenneth G. Goode denied this motion on September 19, 2003. A Petition for Writ of Certiorari was filed on behalf of the Applicant on March 8, 2004. The South Carolina Court of Appeals denied the Applicant's Petition for Writ of Certiorari by written Order dated April 11, 2007. The Remittitur was issued on May 1, 2007.

2009-CP-29-0641

The Applicant subsequently filed an application for post-conviction relief (PCR) on May 1, 2009. In that application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Newly discovered evidence; in that,
 - a. Applicant alleges that the negotiated plea was made before the ruling of Roper v. Simmons, 543 U.S. 551 (2005). In Roper, the United States Supreme Court held capital punishment unconstitutional for offenders who are under the age of eighteen when their crimes were committed. The Applicant, who was under the age of eighteen when his crime was committed, claims that the "state informed the court that in exchange for the plea, Petitioner would not be exposed to the death penalty." Thus, he claims that his plea negotiation is void since the threat of the death penalty is no longer applicable.

The Respondent made its Return and Motion to Dismiss on August 25, 2009. The Court issued a Conditional Order of Dismissal dated September 15, 2009, provisionally denying and dismissing the action. The Court gave twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. The Applicant submitted a pro se document motion for extension

of time to respond to the conditional order of dismissal on September 17, 2009. On October 5, 2009, the Applicant submitted a "Motion to Amend Objection to State's Request for Summary Dismissal." The Applicant asserted the following reasons he is entitled to an evidentiary hearing:

1. Roper v. Simmons, 543 U.S. 551 (2005) prohibits capital punishment for those under eighteen when the crime was committed;
2. The State originally sought the death penalty against the Applicant in 1997, which is no longer an option.

The Applicant submitted an additional "Motion to Amend Objection to State's Request for Summary Dismissal" filed on October 22, 2009. The Applicant again submitted Roper v. Simmons rendered his plea involuntary. Filed that same day, the Applicant submitted a "Motion to Construe Pro Se Pleadings Liberally" due to the Applicant's lack of legal training. On October 22, 2009, he also filed a "Motion to Add Future Motions," "Motion to Require the State to Reproduce and Seal Entire File and Make Such File a Part of the Record," and a "Motion for Appointment of Counsel and Hearing Request."

On October 27, 2009, the Applicant submitted an additional two-part "Motion to Amend Objection to State's Conditional Order of Dismissal." Again, the Applicant submitted that his application was appropriate due to new constitutional standards via Roper v. Simmons and his claim is one of newly discovered evidence. On November 2, 2009, the Applicant submitted an additional motion requesting an extension of time to respond to the Conditional Order of Dismissal. The Honorable Brooks P. Goldsmith denied the application by written Order filed December 11, 2009.

On January 12, 2010, the applicant submitted a "Motion 59(e) to Alter or Amend Judgment." Respondent made its Return to Applicant's Pro Se 59(e) Motion on March 9, 2010. The Honorable Brooks P. Goldsmith denied the motion with written Order filed March 24, 2010.

The Petition for Writ of Certiorari was filed November 23, 2010. Respondent made its Return to

Petition for Writ of Certiorari on January 7, 2011. This case is currently pending before the South Carolina Court of Appeals.

Applicant's Current PCR Application

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

1. Ineffective assistance of trial counsel; in that,
 - a. Counsel failed to challenge a statement given by Applicant under coercion,
 - b. Counsel failed to argue Applicant "acted under duress and determination of adult co-defendant,
 - c. Counsel failed to argue Applicant "had no juvenile or adult criminal history of prior criminal conviction or prior experience with the criminal justice system at the time of his plea"
 - d. Counsel failed to argue Applicant "had sub-average general intellectual functioning existing with a IQ below 75;"
2. Involuntary guilty plea; in that
 - a. Applicant only pled guilty to avoid the death penalty,
 - b. Neither his Counsel nor the Court explained the importance of the rights he was waiving;
3. Denial of due process; in that,
 - a. Applicant's sentence of life imprisonment is "unconstitutionally cruel and unusual as applied to punish an offense committed when the perpetrator was less than 18 years of age,"
 - b. The State introduced evidence of aggravation it had not informed the Applicant of in writing before the sentencing hearing. "Pursuant to South Carolina Code § 16-3-20 (B), only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible."

Before this Court are the records of the Lancaster County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's PCR application, and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

This Court finds that this Application for Post-Conviction Relief should be summarily dismissed

for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the Remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offenses he challenges in this Application on April 14, 1998. The Applicant was therefore required to file the application before April 14, 1999. This Application was filed on June 7, 2011, which was more than twelve years after the statutory filing period had expired.

Applicant submits that the application is timely because it was filed one year after the Supreme Court's May 10, 2010 decision in Graham v. Florida, 130 S. Ct. 2011 (2010). Applicant's reliance on Graham v. Florida is misguided. In that case, the Supreme Court held that it is unconstitutional for States to sentence a juvenile offender of a non-homicide crime to life in prison without parole. Id. "What the State must do . . . is give the defendant[] . . . some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." Id. at 2030. The Applicant will be up for parole on January 20, 2025, providing him with a "meaningful opportunity to obtain release." Id. Furthermore, even if Applicant was entitled to file a PCR application one year after Graham v. Florida, his application was late. Graham v. Florida was decided on May 10, 2010. The Applicant was therefore required to file the application before May 10, 2011. This Application was filed on June 7, 2011, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994).

In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute.

Successiveness

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his previously filed applications for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has

failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

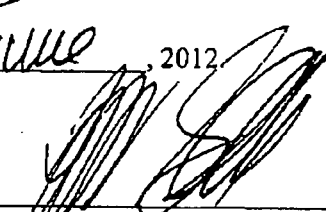
Therefore, this Court finds that the application for post-conviction relief is summarily dismissed because it was filed after the statute of limitations had expired and is successive to the Applicant's prior PCR application.

Summary

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Lancaster County Clerk of Court and shall serve opposing counsel at the following address:

Suzanne H. White, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 29 day of June, 2012.


Broderick P. Goldsmith
Administrative Judge – Common Pleas
Sixth Judicial Circuit

Lancaster, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

BRIAN DIGGS,
Applicant,

2011-CP-29-0816
JUL 2 2012
CLERK, SC

vs.

STATE OF SOUTH CAROLINA,
Respondent.

**RESPONSE TO STATE'S MOTION
TO DISMISS**

To: **The Honorable Brooks P. Goldsmith**

This matter is before this Court on Brian Diggs's application for post-conviction relief (hereinafter "PCR"). The state filed a return and motion to dismiss on June 29, 2012 and asks this Court to dismiss the action because, it asserts, it is untimely and successive. Diggs, by and through counsel appointed on July 24, 2012, hereby responds to the state's motion to dismiss his PCR application.

Response to state's motion to dismiss

Brian Diggs received extraordinarily incompetent representation by his trial counsel, which fell well below professional norms, while he was charged with capital murder as a juvenile. For the reasons presented below, this Court should not grant the state's motion to dismiss his PCR application.

Standard of Review for Summary Dismissal

Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief. S.C. Code Ann. §17-27-70(b) and (c) (2003). When considering the State's motion for summary dismissal of an application, where no evidentiary hearing has been held, the circuit court must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant.

Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005).

Brian Diggs will be prepared to show this Court, at an evidentiary hearing, that he received ineffective assistance of counsel at the trial level, and that he is now entitled to a new sentencing hearing under two different theories. First, he is entitled to have a judge consider the substantial mitigating evidence that exists in his case and to use his or her discretion in rendering a sentence that fairly accounts for his life and character, and the circumstances of his crime, under the recent United States Supreme Court decision, Miller v. Alabama, 132 S.Ct. 2455 (June 25, 2012). But also, Diggs will be prepared to show this Court that his counsels' discharge of their obligations in seeking an alternative sentence, other than life, was so woefully inadequate that he is also entitled to a new sentencing hearing under the recent United States Supreme Court cases, Lafler v. Cooper, 132 S.Ct. 1376 (March 21, 2012) and Missouri v. Frye, 132 S.Ct. 1399 (March 21, 2012). Gathering relevant records is on-going, but even at this point in time, Diggs is prepared to show the following:

Brian Diggs was only barely 17 when he allegedly committed the crime for which is he now serving a life sentence. He pleaded guilty *on the day his capital trial was set to begin*, and with no family present (his mother, and sole caretaker, had died approximately 8 months earlier after succumbing to breast cancer).¹ Present that day were his two attorneys—Jerry Screen, an attorney who received a mere \$5,000 from Diggs's mother to defend this capital case, and Leon Banks, subsequently disbarred by the South Carolina Supreme Court because of his inappropriate handling of money in connection with death penalty cases during this same time

¹ From the plea transcript, the Solicitor states: "Upon arriving at the courthouse this morning, I was advised by counsel for the defense that Mr. Diggs has elected to enter into a plea deal that was proposed by the state some time back . . .". See Exhibit 1, Plea transcript, page 3.

frame. See *In re Banks*, 344 S.C. 17, 542 S.E.2d 721 (2001). Diggs is prepared to show this Court that they sought **no funding at all** in connection with either the guilt or sentencing phases of this capital trial,² and he is further prepared to show this Court that evidence of significant mental health issues and possible mental retardation was readily apparent from court-ordered mental health examinations and which were in the possession of trial counsel. See Exhibit 2, Court Exhibit #2, Forensic Unit Outpatient Evaluation (noting full scale IQ is 75 placing him in the range of borderline intellectual functioning); Court Exhibit #4, Forensic Unit Staffing (noting "Mr. Diggs' past history is significant for psychiatric hospitalization at the William S. Hall Psychiatric Institute April 10, 1995 to April 14, 1995" and given a diagnosis of Major Depressive Episode).

Too, Diggs can presently show this Court that his trial counsel affirmatively helped the state seek the death penalty against him because they took no actions at all to resolve this case while Diggs remained in pre-trial detention for over 3 years. At the time, *State v. Humphries*, 325 S.C. 28, 479 S.E.2d 52 (1997), was wending its way through the court system which clarified the legal theory upon which the state sought death in this case. Instead of using this fact to their client's advantage, they were complicit in the state's decision to just let him sit in jail until the state was satisfied it could seek death.³ See Exhibit 3, PCR hearing, dated June 4, 2003:

² Counsel for petitioner travelled to the Lancaster County Courthouse on July 26, 2012 to review the Court file associated with this case, and co-defendant, David Sutton's, case. No funding motions were present in the file. Counsel further contacted to Clerk of Court on that date to ensure that there were no sealed files existing in this case and was informed that there were not.

³ And see Leon Banks's statement at the plea: "Your Honor, I think Mr. Screen and I would like the record to reflect that we have discussed among ourselves and with our client the effect of *State v. Humphries* and why it was an aggravating circumstance. It is no news to anybody involved in this case that that was the length of time that it took . . ." Exhibit 1, Plea transcript, p. 26, ll. 2-9.

[Jerry Screen]: Well, let me back up and first tell you: When I was first hired, it started out that there was a run—nothing is run-of-the-mill, but it was a regular murder case without the tentacles of possibilities of death penalty. The question was whether or not it qualified for the death penalty, and there was a case I believe in the upstate pending in the Supreme Court that had involved the felony murder rule, attempted robbery, and our Supreme Court—it took us about—better than a year to get a ruling back from the Supreme Court and that's what the solicitor was waiting on, to see whether he could proceed for the death penalty.

PCR hearing, p. 5, l. 17- 6, l. 2.

And,

[The *Humphries* decision] was a part of our discussions for awhile and then it became a larger part of the discussions after the solicitor decided to seek the death penalty. I explained to Brian that we did not have a speedy trial act, so to speak, in South Carolina. I think I might have talked to him about the 180-day rule or something like that, but I told him as a practical matter—I recall telling him that—that I had been knowing John Justice a long time and he was an effective solicitor and he wouldn't like to do anything with that case until a decision was made . . . We've got no choice but to see and wait to see what they do.

PCR hearing, p. 32, l. 21- 33, l. 12.

This "advice"—that Diggs just had to sit and wait until the solicitor tried his case-- was unmistakably inaccurate. See Doggett v. United States, 505 U.S. 647 (1992) (outlining the analytical framework for assessing speedy trial claims); Barker v. Wingo, 407 U.S. 514 (1972) (recognizing remedy for speedy trial violation is dismissal of the indictments); State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997); State v. Waites, 270 S.C. 104, 240 S.E.2d 651 (1978).

In short, it is readily apparent from the record created in this case thus far that trial counsel rendered ineffective assistance of counsel, and Diggs was prejudiced by their substandard performance. Strickland v. Washington, 466 U.S. 668 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). It does not appear that counsel undertook any efforts to even prepare this case for trial, or would have been prepared to proceed to a capital sentencing

proceeding had Diggs been found guilty.⁴ They clearly did not investigate or present any of the relevant information necessary in such cases, and their performance fell well below established standards at the time. See American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, 1989, Guideline 11.4.1 Investigation,

Commentary: Counsel has a duty to investigate the case before recommending that a guilty plea be taken (or sought) or proceeding to trial. This duty is intensified (as are many duties) by the unique nature of the death penalty and is broadened by the bifurcation of capital trials into two phases. . . .Resources that counsel needs to pursue a proper investigation should be sought early in the case. . . .[C]ounsel should demand on behalf of the client all necessary experts for preparation of both phases. Compare this Guideline with Screen's testimony at the PCR hearing: "It was going to be a murder and attempted robbery and the elements and the evidence and none of that was necessarily going to change. Penalties could certainly get higher, but the basic evidence was going to be about the same. The preparation would have been along the same lines." PCR tr., p. 33, ll. 13-19. It is clear from a review of the now-existing record in this case that there are significant issues for this Court to address and that dismissal is improper. These precedent facts, now understood against the backdrop of these recent United States Supreme Court decisions, provide a basis for this Court to grant Diggs a new sentencing hearing. Diggs asks this Court to deny the state's motion to dismiss his PCR.

Argument

The state relies on the statute of limitations and this application being successive as a basis for dismissing this action. S.C. Code Ann. §17-27-45(b), however, extends the PCR statute of

⁴ See Screen's admission at the first PCR hearing (PCR Transcript, 8, ll. 5-6) that they did not try to challenge the palm print evidence which the state characterized as "sealing the proof of Mr. Diggs. Plea tr., 19, ll. 14-16.

limitations by one year for binding constitutional decisions. Under this statute, successive post-conviction applications are the proper procedure to ask the Court to apply binding constitutional decisions. Franklin v. Maynard, 356 S.C. 276, 588 S.E.2d 604 (2003) (holding S.C. Code §17-27-45(b) is proper procedure for challenging death sentence imposed prior to Atkins v. Virginia, 536 U.S. 304 (2002)).

Diggs filed his *pro se* PCR application on June 7, 2011 asserting his entitlement to relief under Graham v. Florida, 130 S.Ct. 2100 (2010). He attempted to file it by the May 17, 2011 deadline but it was returned by the Clerk of Court, upon information and belief, because it was not properly verified. As quickly as he could, Diggs rectified the problem and made a timely application. Given Diggs's inability to travel freely to the Lancaster County Courthouse to address these issues, the Court should find that his application filed in a timely manner. Certainly the state cannot show that it has been prejudiced by the 20 day delay in Diggs's filing.⁵

Graham was, at the time that Diggs filed his application, the latest decision issued by the United States Supreme Court relating to contours and limits for sentencing less culpable citizens. First, Atkins v. Virginia, 536 U.S. 304 (2002) established a categorical prohibition against imposing the death penalty for people with mental retardation. Then Roper v. Simmons, 543 U.S. 551 (2005) established a categorical prohibition against imposing the death penalty on children who commit the crime before age eighteen. Graham holds specifically "that for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole." Graham, 130 S.Ct. at 2030. Graham reasoned, "[W]hen compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral

⁵ In any event, this Court *could* construe this filing, and the forthcoming amended application for relief as a "successive post-conviction application" asking the Court to apply new binding constitutional decisions pursuant to *Miller*, *Lafler*, and *Frye*, and according to the procedure outlined in *Franklin*.

culpability. The age of the offender and the nature of the crime each bear on the analysis.” *Graham*, 130 S.Ct. at 2027. This result is derived from the *Roper* decision that “established that because juveniles have lessened culpability they are less deserving of the most severe punishments.” *Id.* at 2026. *Graham* also concluded that juvenile LWOP “cannot be justified by the goal of rehabilitation. The penalty forswears altogether the rehabilitative ideal.” *Id.* at 2029-30. It was proper for Diggs to file a successive application to have his case reviewed in light of *Graham* since the principles articulated in that case apply to his situation. Though a juvenile when his crime occurred, he was given a *mandatory* sentence of life in prison, and even though by statute he theoretically has a chance of parole in 2025, he is prepared to show the Court that South Carolina does not often grant parole to the extent as to make it a meaningful opportunity. And additionally, given his custodial status, he is being denied access to programs geared at rehabilitation which buttresses his claim that his sentence violates *Graham*.

On June 25, 2012, the United States Supreme Court rendered its opinion in *Miller, supra*. *Miller* holds that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. *Miller* at 2468. To be clear, Diggs is **not** serving a life without parole sentence because one was not available at the time of his plea. He did, however, receive the harshest punishment the law allowed at that time, and counsel, in good faith, believes that the reasoning of *Miller* entitles Diggs to a sentencing hearing which takes into account all of the significant, and highly mitigating evidence that he will be prepared to offer.⁶

⁶ Diggs was arrested in 1995 for the 1994 shooting of the victim. The statute in place at the time provided: (A) A person who is convicted of or pleads guilty to murder must be punished by death or by imprisonment for life and is not eligible for parole until the service of twenty years; provided, however, that when the State seeks the death penalty and an aggravating circumstance is specifically found beyond a doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the court must impose a sentence of life

In the *Miller* opinion, the Court continues its trajectory of addressing appropriate sentencing considerations that apply to juveniles and emphasizes that sentencing juveniles implicates two different strands of Supreme Court precedent—the categorical prohibitions addressed in *Roper* and *Graham*, and also the line of cases prohibiting mandatory punishment in the context of death penalty cases and that require sentencing authorities consider the characteristics of a defendant and the details of his offense before sentencing him to death. Woodson v. North Carolina, 428 U.S. 280 (1976); Lockett v. Ohio, 438 U.S. 586 (1978). In *Miller*, the Court recognizes:

Such mandatory penalties, by their nature, preclude a sentence from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it. Under these schemes, every juvenile will receive the same sentence as every other—the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one. And still worse, each juvenile . . . will receive the same sentence as the vast majority of adults committing similar homicide offenses—but really, as *Graham* noted, a greater sentence than those adults will serve.

Miller at 2467-68. And see *Miller* at 2466. (“[The] imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.”).

The *Miller* decision, with its references to *Woodson* and *Lockett*, has imported a wide range of sentencing factors, present in the capital context, into the realm of juvenile sentencing. It is appropriate, therefore, for a court to consider a wide range of factors in rendering an appropriate sentence in this case. See Eddings v. Oklahoma, 455 U.S. 104, 115 (1982) (evidence of a difficult family history and of emotional disturbance typically introduced by defendants in mitigation). American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, 11.8.3(F)(1) (1989) (in preparing for the sentencing phase, the

imprisonment without eligibility for parole until the service of thirty years. S.C. Code Ann. §16-3-20.

On January 1, 1996, this section was modified to read: “For purposes of this section, “life imprisonment” means until death of the offender.”

trial counsel should consider investigating [w]itnesses familiar with and evidence relating to the client's life and development, from birth to the time of sentencing, who would be favorable to the client); 11.8.6(B)(5) (stating that trial counsel should consider presenting in mitigation: Family, and social history . . .). Council v. State, 380 S.C. 159, 173- 174, 670 S.E.2d 356, 364 (2008) ("Even though funding was available, trial counsel chose not to hire a social history investigator. Instead, he relied on his law partner and private investigator to collect potentially relevant information. However, neither of these individuals was qualified, in terms of social work experience, to evaluate the information to assess Respondent's background."). Diggs submits there will be much for this Court to consider at the appropriate time. At this point, collection of relevant materials is on-going.

Diggs appropriately filed his application for this Court to consider his case in light of the *Graham* decision, but additionally, the Court's more recent *Miller* opinion also provides a basis for this Court to exercise its jurisdiction and allow his PCR to proceed.

Additional Claims

In addition to the claim Diggs raises in his *pro se* application, counsel intends to file an amended application alleging trial counsel's failure to perform adequately during the plea bargaining process also offers him a basis for relief pursuant to the recent decisions in *Lafler v. Cooper*, *supra*, and *Missouri v. Frye*, *supra*. Since investigation is on-going, counsel for Diggs respectfully asks to file an amended application once enough facts are developed to more specifically plead this issue.

For these reasons, Diggs respectfully asks this Court to deny the State's motion to dismiss his PCR application.

Respectfully submitted,



Elizabeth A. Franklin-Best
Attorney for Petitioner
900 Elmwood Avenue, Ste. 101
Columbia, SC 29201
betsy@blumelaw.com
(803) 765-1044, Ext. 12

Dated 7th, August 2012

STATE OF SOUTH CAROLINA)
 COUNTY OF LANCASTER)
)
 BRIAN DIGGS,)
 Applicant,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA,)
 Respondent.)
)
)
)
)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

2011-CP-29-0816

MOTION FOR ORDER
 TO PRODUCE RECORDS

FILED
 2011 OCT 23 PM 4:40
 CLERK OF COURT

To: The Honorable Brooks P. Goldsmith

The Applicant, Brian Anselm Diggs, hereby submits to this Court a motion for an order to produce records. The Applicant believes that he requires this order so that counsel may adequately prepare for his post-conviction proceeding.

The need for this order to produce records is based on the following:

- (1) Brian Diggs is an inmate currently incarcerated at Broad River Correctional Institute, and serving a life sentence for murder and attempted robbery, a crime committed when he was a juvenile.
- (2) Counsel, Elizabeth Franklin-Best was appointed to represent Applicant in this matter because he is indigent.
- (3) To ensure meaningful access to justice, the Supreme Court has construed the meaning of Due Process to guarantee access to a number of resources to the indigent defendant. This guarantee started with the fundamental right to court appointed counsel, Powell v. Alabama, 287 U.S. 45 (1932), and expanded from there. See e.g., Douglas v. California, 372 U.S. 353 (1963) (ensuring assistance of counsel as a right for the first direct appeal); Little v. Streater, 452 U.S. 1,

101 (1981) (extending the right to "meaningful participation of an indigent defendant to "quasi-criminal" cases); *Strickland v. Washington*, 466 U.S. 668 (1984) (holding assistance of counsel must be effective). Furthermore, a criminal trial is fundamentally unfair, in violation of the Fourteenth Amendment's Due Process and Equal Protection Clauses, where the "State proceeds against an indigent defendant without making certain he has the raw materials integral to the building of an effective defense." *Ake v. Oklahoma*, 470 U.S. 68, 77 (1985). See also U.S. Const. amend. IV §1.

(4) During the course of investigating Diggs's case, counsel has received records from the South Carolina Department of Corrections which corroborate her understanding that Diggs was treated for mental health issues prior to his incarceration. Additionally, counsel has spoken to Diggs's aunt (and sister to Diggs's deceased mother), Ms. Sue Diggs, who informs her that both Diggs and his mother received extensive psychiatric treatment at Chesterfield Mental Health and the South Carolina Mental Hospital located on Bull Street. Diggs's mother's name was Lessie Mae Diggs, born in Lancaster County on July 16, 1954 and she died on September 26, 1997. Counsel believes access to these records is necessary to fully investigate Diggs's family history for psychiatric and psychological disorders.

(5) Specifically, counsel requests the records concerning Brian Anselm Diggs and Lessie Mae Diggs from the following entities:

Tri-County Community Mental Health Center - Chesterfield Clinic
(South Carolina Department of Mental Health)
207 Commerce Avenue
Chesterfield, SC 29709

Chesterfield General Hospital
711 Chesterfield Hwy.
Cheraw, SC 29520

South Carolina Department of Mental Health
Administration Building
2414 Bull Street
Columbia, South Carolina 29202

WHEREFORE, the undersigned counsel asks this Court to grant an *ex parte* order to require the above named entities to produce to the Applicant's attorney and her agents copies of the medical and mental health records of the above named Brian Anselm Diggs and Lessie Mae Diggs.


ELIZABETH A. FRANKLIN-BEST
Attorney for Applicant, Brian Diggs
900 Elmwood Avenue, Ste. 101
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(803) 765-1044

August 20, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Brian Diggs, #248964,

2011-CP-29-0816

Applicant,

v.

**RETURN TO MOTION TO
COMPEL PRODUCTION
OF RECORDS**

State of South Carolina,

Respondent.

This matter comes before the Court by way of the Applicant's Motion to Compel production of documents and records related to the Applicant and his mother. The Applicant requests an Order compelling three agencies: Tri-County Community Mental Health Center, Chesterfield General Hospital, and the South Carolina Department of Mental Health, to produce copies of the medical and mental health records of the Applicant, Brian Diggs, and his mother, the late Lessie Mae Diggs. The Respondent submits that the Applicant's Motion to Compel is without merit and should be denied.

I.

Respondent objects to the Motion to Compel Production, first, because there has been no Order granting discovery in this action and the Applicant has not established good cause for the production of these documents.

The Uniform Post-Conviction Procedure Act does not allow for discovery in a non-capital post-conviction relief case without good cause and order of the circuit court permitting discovery requests. S.C. Code Ann. § 17-27-150(A) states:

A party in a non-capital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of

Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for the effective utilization of discovery procedures, counsel may be appointed by the judge for an applicant who qualifies for appointment pursuant to Section 17-27-60 or similar applicable provisions of law.

The conviction being challenged by the Applicant in this action arises from a non-capital offense. On April 14, 1998, the Petitioner pled guilty to charges of murder and attempted armed robbery. The Petitioner was sentenced by the Honorable Paul E. Short, Jr., to confinement for a period of life and a consecutive term of ten years, respectively. Petitioner did not appeal his convictions or sentences. According to the South Carolina Department of Corrections, the Applicant is currently eligible for parole in the year 2025.

Moreover, all claims at which the Applicant hints could have been raised in the Applicant's initial PCR, as is required by procedure established in this State, cannot establish good cause to permit discovery for a third and untimely application for PCR.

II.

Second, Respondent objects to an order being granted, as this is a successive application, which has been conditionally dismissed by signed Order, dated June 29, 2012. Applicant has filed objections to the Conditional Order of Dismissal, which have not yet been reviewed or ruled upon by this Court. This is the Applicant's third PCR application, which he filed while his appeal of the dismissal of his second application is still pending before the South Carolina Supreme Court.

The documents requested by Applicant are the Applicant and his mother's mental health and medical records. First, the medical and mental health records of the Applicant's mother are irrelevant to the proceedings. In fact, as the record reflects, the Applicant's mother died many

months prior to his guilty plea. Second, any issues regarding the Applicant's mother or Applicant's competency could have been and was clearly litigated in Applicant's prior application. Applicant's mental health was brought before the lower court prior to Applicant's guilty plea, as indicated by records submitted by Applicant in support of Applicant's Response to the State's Motion to Dismiss. There was a Blair hearing prior to the plea and the evaluation, which found the Applicant both competent to stand trial or plead guilty and criminally responsible, was entered into evidence. (Plea Tr. p. 3-7). The IQ level of the Applicant was also before the plea court in the provided evaluation report. Furthermore, the Applicant stated on the record during his guilty plea that he had never been treated for any mental illness. (Plea Tr. p. 12). Additionally, at his first PCR hearing, Applicant's mental state was discussed and counsel was questioned about his being "functional illiterate." (PCR Tr. p. 14-15). The Applicant discussed the fact that he spent time being evaluated prior to his plea following his arrest, the death of his mother, and the State's decision to seek the death penalty. (PCR Tr. p. 31).

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). As indicated above, it is clear that not only was there opportunity to raise issues regarding the Applicant's mental state at his first post-conviction relief hearing, but the issues were raised. Respondent submits that the current application is successive and barred under S.C. Code § 17-27-90; therefore, judicial resources and time should not be utilized in order to provide documents which were available at the time of Applicant's prior post-conviction relief hearing.

Moreover, although Applicant raises numerous recent decisions by the United States Supreme Court as sufficient reasons to grant Applicant a hearing on this third application, Respondent submits that each of the referenced cases are both irrelevant to and inapplicable to the Applicant's case. Respondent will address these issues in more detail in its Reply to the Applicant's Response to the Conditional Order of Dismissal; however, the cases alone do not provide good cause for discovery in a third and untimely application.

III.

Finally, Respondent submits that the request for production should not be permitted because the Applicant has not made the requisite showing of good cause and has requested an ex parte Order, which is not allowed in post-conviction relief proceedings. The Respondent submits that the use of ex-parte proceedings in PCR is improper and any reliance on statutes purporting to authorize ex-parte proceedings of this nature is inapplicable to PCR.

When a defendant requests expert services for a criminal trial, the request is determined by the judge in ex parte proceedings. S.C. Code Ann. § 16-3-26(C) and § 17-3-50(B) (Supp.1995); Ex parte Lexington County, 314 S.C. 220, 442 S.E.2d 589 (1994). These statutory provisions are, however, inapplicable to post-conviction relief proceedings. Section 16-3-26(C), which is limited to capital cases, applies to "the representation of the defendant whether in connection with issues relating to guilt or sentence." Therefore, this provision applies only to the capital trial itself and not to post-conviction relief proceedings. While § 17-3-50(A) mentions that the same hourly rates for appointed counsel shall apply to post-conviction proceedings, the use of the word "defendant" throughout § 17-3-50(B) indicates that it applies only to the criminal trial itself and not to post-conviction relief actions. Accordingly, the post-conviction relief judge in this case properly conducted a hearing on the motion at which counsel for the State was allowed to fully participate. Thames v. State, 325 S.C. 9, 11, 478 S.E.2d 682, 682 (1996).

IV.

The Respondent therefore objects to the Motion for Production and requests that the Court deny the Applicant's Motion.

WHEREFORE, the State requests that this Court deny the Motion for Production.

Respectfully submitted,

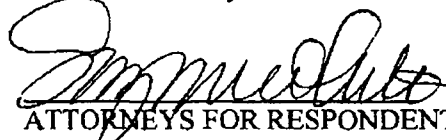
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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(803) 734-3737

August 27, 2012.

FILED
OFFICE OF CLERK
OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER) 2012 NOV 30 PM 12:17 SIXTH JUDICIAL CIRCUIT

CLERK OF COURT
LANCASTER, SC

BRIAN DIGGS,
Applicant,) 2011-CP-29-0816

vs.)

STATE OF SOUTH CAROLINA,) **AMENDED APPLICATION FOR**
Respondent.) **POST-CONVICTION RELIEF**

[Note: This application follows SCRCF Appendix of Forms, Form 5, as required by Rule 71.1(b), SCRCF.]

Because of additional recently decided, binding Constitutional decisions, the Applicant, Brian Diggs, amends his post-conviction relief application.

1. Applicant is detained at Broad River Correctional Institution, 4460 Broad River Road, Columbia, South Carolina 29210.
2. He was convicted and sentenced in the Lancaster County Court of General Sessions.
3. Applicant's co-defendant is David Lockett Sutton.
4. Applicant was indicted for Murder (95-GS-29-189), Possession of a Firearm during commission of violent crime (95-GS-29-190), Attempted armed robbery (95-GS-29-191), and Conspiracy to commit armed robbery (95-GS-29-192).
5. On April 14, 1998, the Honorable Paul E. Short, Jr. sentenced Applicant to life in prison.
6. Applicant was found guilty after pleading guilty.
7. Applicant did not appeal the convictions and sentences.
9. Counsel's ineffectiveness could not have been raised on direct appeal.

10&11.

GROUND FOR RELIEF WITH SUPPORTING FACTS

Ground A-- Unconstitutionality of Juvenile Life Sentence

10(a)(1)(a) The Eighth Amendment's prohibition against cruel and unusual punishment prohibits South Carolina from sentencing a juvenile to life imprisonment.

10(a)(1)(b) S.C. Constitution Article I, Section 15's prohibition against cruel and unusual punishment prohibits South Carolina from sentencing a juvenile to life imprisonment.

10(a)(2)(a) The Eighth Amendment's prohibition against cruel and unusual punishment prohibits South Carolina from sentencing a juvenile to life imprisonment when the juvenile did not receive an individualized sentencing hearing during which all available mitigation evidence is considered.

10(a)(2)(b) S.C. Constitution Article I, Section 15's prohibition against cruel and unusual punishment prohibits South Carolina from sentencing a juvenile to life imprisonment when the juvenile did not receive an individualized sentencing hearing during which all available mitigation evidence is considered.

Ground B—Ineffective Assistance of Trial Counsel (Plea Negotiations)

Trial counsel rendered ineffective assistance of counsel by failing to conduct a meaningful investigation into Diggs's background, or use any of that information in attempting to persuade the Solicitor to consent to an alternate disposition. *See Strickland v. Washington*, 466 U.S. 668 (1984); *Missouri v. Frye*, 132 S.Ct. 1399 (2012) and *Lafler v. Cooper*, 132 S.Ct. 1376, 1391 (2012).

Ground C- Ineffective Assistance of Post-Conviction Counsel

Post-conviction counsel rendered ineffective assistance of counsel by failing to conduct any investigation, or develop and present relevant mitigation evidence, available at the time of Diggs's trial, which would have influenced the Solicitor and/ or trial judge to offer or impose a sentence of less than life in prison. *See Strickland, supra*, and *Martinez v. Ryan*, 132 S.Ct. 1309 (2012).

FACTS IN SUPPORT OF GROUNDS A,B, and C

Brian Diggs was only barely 17 when he allegedly committed the crime for which is he now serving a life sentence. He pleaded guilty on the day his capital trial was set to begin, and with no family present (his mother, and sole caretaker, had died approximately 8 months earlier after succumbing to breast cancer). Present that day were his two attorneys—Jerry Screen, an attorney who received a mere \$5,000 from Diggs's mother to defend this capital case, and Leon Banks, subsequently disbarred by the South Carolina Supreme Court because of his inappropriate handling of money in connection with death penalty cases during this same time frame. *See In re Banks*, 344 S.C. 17, 542 S.E.2d 721 (2001). Trial counsel did not seek funding at all in connection with either the guilt or sentencing phases of his capital trial, and evidence of significant mental health issues and possible mental retardation was readily apparent from court-ordered mental health examinations which were in the possession of trial counsel.

Also, Diggs's trial counsel affirmatively helped the state seek the death penalty against him because they took no actions at all to resolve this case while Diggs remained in pre-trial detention for over 3 years. At the time, *State v. Humphries*, 325 S.C. 28, 479 S.E.2d 52 (1997), was wending its way through the court system which clarified the legal theory upon which the state sought death in this case. Instead of using this fact to their client's advantage, they were

complicit in the state's decision to just let him sit in jail until the state was satisfied it could seek death.

Additionally, post-conviction relief counsel did not undertake any investigation into Diggs's case or retain any experts which may have uncovered relevant mitigation evidence.

PCR counsel is in the process of investigating Diggs's case. Current PCR counsel intends to move this Court for funds to conduct an evaluation of Diggs at some point in the future. This evaluation is important for two reasons. First, it will show that Diggs has rehabilitated himself, should not spend the rest of his life in prison, and is an appropriate candidate for resentencing. Second, it will show that an evaluation for Diggs for sentencing would have discovered mitigation evidence available at the time of his plea that would have influenced the trial court to impose a sentence of less than life imprisonment.

On October 29, 2012, undersigned counsel, along with others, filed a petition for writ of certiorari in the original jurisdiction of the South Carolina Supreme Court. See *Aiken et al. v. Byars*, a copy of which is attached to Diggs's motion to stay these proceedings that is being filed simultaneously with this amended application. The petition asks our Supreme Court to resolve the following issues:

- A. Whether the Eighth Amendment precludes life imprisonment without the possibility of parole for juvenile offenders;
- B. Whether all juveniles sentenced to life imprisonment without the possibility of parole are entitled to a new sentencing proceeding; and
- C. What procedures are required where life imprisonment without the possibility of parole is a sentencing option?

If our Supreme Court grants certiorari, then the resolution of these issues will determine not only the procedures for Diggs's resentencing but also the nature and extent of the required mitigation investigation, including access to resources for investigators and experts.

12 & 13. Prior to this application, Diggs filed a post-conviction relief petition on April 7, 1999 in the Lancaster County Court of Common Pleas. An order of dismissal was signed on August 1, 2003. Upon information and belief, the dismissal was appealed by Tara Taggart of the Office of Appellate Defense, but the disposition is unknown.

14 & 15. None of the grounds set forth in paragraphs 10 & 11 have been previously presented to this or any other court, state or federal.

16. The grounds set forth in paragraphs 10 & 11 have not previously been presented to any court, state or federal. Since dismissal of the prior PCR, new developments in the law entitle Applicant to a successive post-conviction relief action. See S.C. Code §17-27-45(b) (extending the PCR statute of limitations by one year for binding constitutional decisions) and *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003) (holding S.C. Code §17-27-45(b) is proper procedure for challenging death sentence imposed prior to *Atkins v. Virginia*, 536 U.S. 304 (2002)). The relevant, binding constitutional decisions are:

a) In Claim A, Diggs relies on *Graham v. Florida*, ___ U.S. ___, 130 S.Ct. 2011 (2010), decided on May 17, 2010 as modified on July 6, 2010, and *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455 (2012), decided June 25, 2012. In *Miller*, the Supreme Court held "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of

parole for juvenile offenders.” The Court did “not consider [the] argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles.” Slip Op. at 12. The Court, therefore, still might hold that the Eighth Amendment categorically bars life without parole sentences for juveniles. See 10(a)(1), *supra*.

The Court cautioned that because of “*Roper, Graham*, and this decision about children’s diminished culpability and heightened capacity for change, [the] appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” Slip Op. at 12. The Court held the sentencer “must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.” Slip Op. at 17. Diggs, therefore, is entitled to an individualized sentencing determination.

b) In Claim B, Diggs relies on *Missouri v. Frye*, 132 S.Ct. 1399, 1408 (2012) and *Lafler v. Cooper*, 132 S.Ct. 1376, 1391 (2012). The Supreme Court of the United States decided both of these cases on March 21, 2012.

c) In Claims C and D, Diggs relies on *Martinez v. Ryan*, 132 S.Ct. 1309 (2012), decided on March 20, 2012.

17 & 18. Applicant was previously represented as follows:

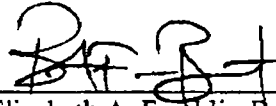
(a) At trial by Jerry M. Screen, Sr., 1337 Gregg Street, Columbia, SC 29201 and Leon Banks (disbarred).

(b) During the first PCR by Phillip Wright, 408 N. Main Street, Lancaster, SC 29720 and Tara Taggart, Office of Appellate Defense, 1330 Lady Street, Ste. 401, Columbia, SC 29201.

19. Applicant seeks the vacation of her convictions and sentences.

20. Applicant is not under sentence from any other court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Elizabeth A. Franklin-Best', written over a horizontal line.

Elizabeth A. Franklin-Best
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FILED
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OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT

2012 NOV 30 PM 12:17

CLERK OF COURT
LANCASTER SC

BRIAN DIGGS,)
Applicant,) 2011-CP-29-0816
)
)
)
vs.) MOTION TO HOLD IN ABEYANCE
)
STATE OF SOUTH CAROLINA,)
Respondent.)
)
)
)

The Applicant, Brian Anselm Diggs, moves this Court to stay these proceedings until the South Carolina Supreme Court decides *Aiken et. al. v. Byars*.

Factual and Procedural Background

Diggs is serving a life sentence for a murder that occurred when he was a juvenile.

On this date, Diggs also files a successive application for post-conviction relief (hereinafter "PCR") contending that the Supreme Court of the United State's decision in *Graham v. Florida*, ___ U.S. ___, 130 S.Ct. 2011 (2010) precludes his life sentence.

On June 25, 2012, the Supreme Court of the United States decided *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455 (2012). *Miller* held that mandatory life imprisonment for juvenile homicide offenses violates the Eighth Amendment. Although the precise issue was not before the Court, *Miller* calls into question all juvenile life without parole sentences. Simultaneously with filing this motion, Diggs is filing a second amended PCR application requesting relief under *Miller*.

On October 29, 2012, a petition for writ of *certiorari* was filed in the original jurisdiction of the South Carolina Supreme Court. This petition asks our Supreme Court to resolve the following issues:

- A. Whether the Eighth Amendment preclude life imprisonment without the possibility of parole for juvenile offenders;
- B. Whether all juveniles sentenced to life imprisonment without the possibility of parole are entitled to a new sentencing proceeding; and
- C. What procedures are required where life imprisonment without the possibility of parole is a sentencing option.

A copy of the petition for writ of certiorari in *Aiken et. al. v. Byars* is attached.

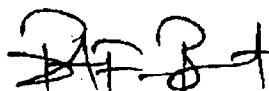
Additionally, there is reason to believe that the United States Supreme Court would find Diggs's sentence to be unconstitutional in light of *Miller*, despite his parole eligibility. The Supreme Court recently summarily vacated the Wyoming Supreme Court's decision in *Bear Cloud v. State*, 275 P.3d 377 (2012). *Bear Cloud v. Wyoming*, ___ S.Ct. ___, 2012 WL 2002444 (Oct. 1, 2012). As the state observed, "Bear Cloud did not receive a 'life without parole' sentence," *Bear Cloud*, 275 P.3d at 387 n.3, and "[r]ehabilitation and even release are still possible," *id.* at 412. Despite these features, the Supreme Court remanded the case for further consideration in light of *Miller*.

Relief Requested

If our Supreme Court accepts this petition, then the resolution of these issues will determine not only the procedures for Diggs's resentencing but also the nature and extent of the required mitigation investigation, including access to resources for investigators and experts. This Court, therefore, should stay these proceedings until our Supreme Court rules in *Aiken et. al. v. Byars*.

IT IS SO MOVED.

Respectfully submitted,



Elizabeth A. Franklin-Best
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November 15th, 2012.

FILED
OFFICE OF CLERK
OF COURT
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT
2012 DEC 17 AM 8:36
CLERK OF COURT
LANCASTER, SC
Brian Diggs, #248964,) 2011-CP-29-0816
Applicant,)
v.)
State of South Carolina,)
Respondent.)
**REPLY TO APPLICANT'S
RESPONSE TO STATE'S
RETURN AND MOTION TO DISMISS
AND MOTION TO HOLD IN ABEYANCE**

In reply to Applicant's Response to the Respondent's Return and Motion to Dismiss, Amended Application, and Motion to Hold in Abeyance, the Respondent would submit that Applicant has not provided sufficient reason that a hearing should be held regarding his successive post-conviction relief application, or that the decision regarding the application should be held in abeyance.

Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted at the February 1995 term of the Court of General Sessions for Lancaster County for murder (95-GS-29-189) and attempted armed robbery (95-GS-29-191). He was represented by Leon Banks, Esquire. On April 14, 1998, the Applicant pled guilty as indicted. He was sentenced by the Honorable Paul E. Short, Jr., to confinement for life and a consecutive term of ten (10) years, respectively. The Applicant did not appeal his guilty plea or sentence.

1999-CP-29-0187

The Applicant then filed his first application for post-conviction relief (PCR) on April 7, 1999 and amended the application on May 27, 2003. The State filed its Return on September 21, 1999. An evidentiary hearing was convened on June 4, 2003, at the Fairfield County Courthouse. The Applicant was present and represented by Philip E. Wright, Esquire. In that application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and
2. No right to appeal guilty plea.

The Honorable Kenneth G. Goode, denied and dismissed Applicant's application by written Order on August 1, 2003. Subsequently, the Applicant filed a document titled "59(e) Motion to Alter or Amend the Judgment." The Honorable Kenneth G. Goode denied this motion on September 19, 2003. A Petition for Writ of Certiorari was filed on behalf of the Applicant on March 8, 2004. The South Carolina Court of Appeals denied the Applicant's Petition for Writ of Certiorari by written Order dated April 11, 2007. The Remittitur was issued on May 1, 2007.

2009-CP-29-0641

The Applicant subsequently filed a second application for post-conviction relief (PCR) on May 1, 2009. In that application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Newly discovered evidence; in that,
 - a. Applicant alleges that the negotiated plea was made before the ruling of Roper v. Simmons, 543 U.S. 551 (2005). In Roper, the United States Supreme Court held capital punishment unconstitutional for offenders who are under the age of eighteen when their crimes were committed. The Applicant, who was under the age of eighteen when his crime was committed, claims that the "state informed the court that in exchange for the plea, Petitioner would not be exposed to the death penalty." Thus, he

claims that his plea negotiation is void since the threat of the death penalty is no longer applicable.

The Respondent made its Return and Motion to Dismiss on August 25, 2009. The Court issued a Conditional Order of Dismissal dated September 15, 2009, provisionally denying and dismissing the action. The Court gave twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. The Applicant submitted a pro se document motion for extension of time to respond to the conditional order of dismissal on September 17, 2009. On October 5, 2009, the Applicant submitted a "Motion to Amend Objection to State's Request for Summary Dismissal." The Applicant asserted the following reasons he is entitled to an evidentiary hearing:

1. Roper v. Simmons, 543 U.S. 551 (2005) prohibits capital punishment for those under eighteen when the crime was committed;
2. The State originally sought the death penalty against the Applicant in 1997, which is no longer an option.

The Applicant submitted an additional "Motion to Amend Objection to State's Request for Summary Dismissal" filed on October 22, 2009. The Applicant again submitted Roper v. Simmons rendered his plea involuntary. Filed that same day, the Applicant submitted a "Motion to Construe Pro-Se Pleadings Liberally" due to the Applicant's lack of legal training. On October 22, 2009, he also filed a "Motion to Add Future Motions," "Motion to Require the State to Reproduce and Seal Entire File and Make Such File a Part of the Record," and a "Motion for Appointment of Counsel and Hearing Request."

On October 27, 2009, the Applicant submitted an additional two-part "Motion to Amend Objection to State's Conditional Order of Dismissal." Again, the Applicant submitted that his application was appropriate due to new constitutional standards via Roper v. Simmons and his

claim is one of newly discovered evidence. On November 2, 2009, the Applicant submitted an additional motion requesting an extension of time to respond to the Conditional Order of Dismissal. The Honorable Brooks P. Goldsmith denied the application by written Order filed December 11, 2009.

On January 12, 2010, the applicant submitted a "Motion 59(e) to Alter or Amend Judgment." Respondent made its Return to Applicant's *pro se* 59(e) Motion on March 9, 2010. The Honorable Brooks P. Goldsmith denied the motion with written Order filed March 24, 2010. The Petition for Writ of Certiorari appealing the dismissal was filed November 23, 2010. Respondent made its Return to Petition for Writ of Certiorari on January 7, 2011. The Applicant filed a Motion to Relieve Counsel and proceed *pro se*, which was denied on September 9, 2011. The South Carolina Court of Appeals denied the appeal on September 4, 2012.

Applicant then filed a *pro se* Motion to Amend/Supplement the Record, which was interpreted by the Court as a Motion for Rehearing, and subsequently denied on October 23, 2012. Applicant then filed a *pro se* Petition for Writ of Certiorari to the South Carolina Court of Appeals, which was denied on November 30, 2012.

Current Application

Applicant filed his third post-conviction relief application on June 7, 2011, and the Respondent made its Return and Motion to Dismiss on or about May 25, 2012. At that time, the appeal from the denial of the Applicant's second application was pending before the South Carolina Supreme Court. The Applicant argued in the third application that it should not be dismissed as barred by the statute of limitations because he filed it within one year after the Supreme Court's May 10, 2010, decision in Graham v. Florida, 130 S. Ct. 2011 (2010).

Applicant's reliance on Graham v. Florida is misguided. In that case, the Supreme Court held that it is unconstitutional for States to sentence a juvenile offender of a *non-homicide crime* to life in prison without parole. Id. (emphasis added). It fell within a strand of Eighth Amendment precedent adopting categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty. Miller v. Alabama, 132 S.Ct. 2455, 2463 (June 25, 2012). "What the State must do . . . is give the defendant[] . . . some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." Graham at 2030. First, as the record reflects, the Applicant was sentenced for murder, which makes Graham inapplicable. Second, the Applicant will be up for parole on January 20, 2025, providing him with a "meaningful opportunity to obtain release." Graham at 2030. Thus, the Applicant simply does not fit the class subject to Graham's categorical ban.

This Court signed the Conditional Order of Dismissal on June 29, 2012, dismissing the application as barred by the statute of limitations and as successive. Respondent then received documents from Applicant dated July 12, 2012, seeking an enlargement of time to response to the Conditional Order of Dismissal and a Motion for Appointment of Counsel. In the documents included with the Motion for Appointment of Counsel, Applicant also attempts to raise the applicability of the recent Supreme Court case of Miller v. Alabama, 132 S.Ct. 2455 (June 25, 2012), and included a letter sent on July 10, 2012, to this Court by Elizabeth Franklin-Best, Esquire, requesting to be appointed on this matter.

This Court appointed Ms. Franklin-Best to represent the Applicant in this matter, over the Respondent's objection. On August 20, 2012, Counsel for the Applicant then filed a Motion for an Order to Produce Records relating to the Applicant's mental health, along with records

relating to the Applicant's mother's mental health. Respondent submitted a Return to the Motion, asking the Court to deny the Motion, on August 27, 2012. As of this time, to Respondent's understanding, this Motion is still pending. Applicant also filed an amended application for post-conviction relief and a motion to hold the case in abeyance pending a decision on a recently filed matter in the original jurisdiction of the South Carolina Supreme Court. The Return to the Petition for Writ of Certiorari, which was submitted on behalf of the State, is attached.

Applicant's Claims

The Applicant claims that his third and successive application, which was filed outside of the statute of limitations, should be allowed to proceed and an evidentiary hearing should be held based upon several theories.

1. Applicant's third application¹ listed the following claims:

- a. Ineffective assistance of trial counsel; in that,
 - i. Counsel failed to challenge a statement given by Applicant under coercion,
 - ii. Counsel failed to argue Applicant "acted under duress and determination of adult co-defendant,
 - iii. Counsel failed to argue Applicant "had no juvenile or adult criminal history of prior criminal conviction or prior experience with the criminal justice system at the time of his plea"
 - iv. Counsel failed to argue Applicant "had sub-average general intellectual functioning existing with a IQ below 75;"
- b. Involuntary guilty plea; in that
 - i. Applicant only pled guilty to avoid the death penalty,
 - ii. Neither his Counsel nor the Court explained the importance of the rights he was waiving,
- c. Denial of due process; in that,
 - i. Applicant's sentence of life imprisonment is "unconstitutionally cruel and unusual as applied to punish an offense committed when the perpetrator was less than 18 years of age,"

¹ Applicant filed his third application on June 7, 2011, and filed the amended application on November 19, 2012.

- ii. The State introduced evidence of aggravation it had not informed the Applicant of in writing before the sentencing hearing. "Pursuant to South Carolina Code § 16-3-20 (B), only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible."
- 2. Applicant then filed his response to the signed Conditional Order of Dismissal, which included arguments that he was entitled to a hearing and resentencing based upon two new overall theories:
 - a. The first theory is that the Applicant, based upon the ineffective assistance of counsel received by Applicant at the trial level, is entitled to have a new sentencing hearing in which a judge would review mitigating evidence that exists in Applicant's case, pursuant to Miller v. Alabama, 132 S.Ct. 2455 (June 25, 2012).
 - b. The second theory is that the Applicant, based upon the ineffective assistance of counsel received by Applicant at the trial level, is entitled to have a new sentencing hearing based upon the fact that the Applicant alleges that counsel failed to adequately seek an alternative to a life sentence, pursuant to Lafler v. Cooper, 132 S.Ct. 1376 (March 21, 2012) and Missouri v. Frye, 132 S.Ct. 1399 (March 21, 2012).
 - i. However, the Applicant also appears to raise additional allegations of ineffective assistance of counsel, which Respondent submits are barred by the statute of limitations and based upon the successiveness of the application and claims². Applicant alleges claims relating to Counsels' failure to seek funding, failure to address potential mental health issues, failure to resolve the case during the three year pre-trial detention phase, and others.
- 3. Applicant has now submitted an amended application for post-conviction relief, in which he continues to argue that trial counsel was ineffective, but also adds two additional claims:
 - a. A juvenile life sentence is unconstitutional according to the United States' Constitution and the South Carolina Constitution,

² Respondent would note that although the Applicant continues to assert the relevance of various facts as it relates to a capital trial (i.e. "guilt and sentencing phases of this capital trial," Response p. 3), there was no capital trial held in this matter. Rather the Applicant pled guilty to murder and armed robbery.

- b. Ineffective assistance of post-conviction relief counsel for failing to conduct any investigation, or develop and present relevant mitigation evidence, available at the time of trial, which would have influenced the Solicitor and/or trial judge to offer or impose a sentence of less than life in prison. Martinez v. Ryan, 132 S.Ct. 1309 (2012).

Respondent's Response to Applicant's Claims

Respondent submits that the claims raised by the Applicant in the application filed on June 7, 2011, response to the Conditional Order and the amended application are all barred by the statute of limitations and successive. Successive applications for post-conviction relief are clearly disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "**could not have been raised . . . in the previous application.**" [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

Clearly, the Applicant had an opportunity to fully raise any claims of ineffective assistance of counsel, involuntary guilty plea, and due process violations in his first application filed on April 7, 1999 and amended on May 27, 2003, and at the hearing, held June 4, 2003. Furthermore, the Applicant filed a Motion to Alter or Amend, Rule 59(e), SCRCP, and an appeal following the dismissal of his application, all of which were dismissed.

However, as the Applicant raises various recently decided United States Supreme Court cases as new substantive rulings, in an attempt to override the doctrines of successiveness and statute of limitations, Respondent will address each of those claims individually.

Miller v. Alabama claim

Respondent submits that Applicant's reliance on the recent decision in Miller v. Alabama, 132 S. Ct. 2455 (2012), is misplaced and the case is inapplicable to this matter. Miller holds that a sentence of **mandatory** life imprisonment without the possibility of parole for offenders under the age of eighteen is unconstitutional. Id.

Respondent would note that the State of South Carolina does not provide for a sentence of mandatory life without parole for any crime, even murder, but instead gives the sentencing judge discretion to determine an appropriate sentence, as long as it includes a minimum term of thirty years. Indeed, unlike the sentences in Miller, the sentence received by the Applicant was not mandatory. The distinction between the Miller mandatory sentences and the Applicant's discretionary one renders Miller inapposite. California v. Gutierrez, 209 Cal.App.4th 646, 146 Cal.Rept.3d 248 (Ct. App. 2012). The Applicant received a sentence of life for murder and a consecutive ten years for the armed robbery charge. The South Carolina Department of Corrections indicates that the Applicant is eligible for parole in January 2025.

Therefore, this case is inapplicable to the facts of this matter and should be disregarded in any decision regarding the dismissal of Applicant's third application.

Lafler v. Cooper & Missouri v. Frye claim

Respondent also submits that Applicant's reliance on the recent decisions in Lafler v. Cooper, 132 S.Ct 1376 (2012), and Missouri v. Frye, 132 S.Ct. 1399 (2012), is misplaced and the cases are inapplicable to this matter.

The Lafler case holds that counsel is ineffective when a defendant stands trial based upon counsel's ineffective advice, which led to the defendant rejecting a plea offer and proceeding to trial. The defendant must show that "but for the ineffective advice, there is a reasonable probability that the plea offer would have been presented to the court, that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the actual judgment and sentence imposed." Lafler v. Cooper, 132 S. Ct. 1376 (2012). Clearly, this case is inapplicable to Applicant's case, in that there was no prejudice as a result of the Applicant proceeding to trial after rejecting a plea offer. The Applicant did not proceed to trial.

Similarly, Applicant's reliance on Missouri v. Frye, 132 S. Ct. 1399 (2012), is misplaced. The Frye case established that counsel has the duty to communicate formal offers from the prosecution, which involve terms and conditions that may be favorable to the defendant. In Frye, the Court found that counsel was deficient in failing to communicate a written plea offer to the defendant before it expired. Id. Again, Frye is inapplicable to the facts of Applicant's case. There is no allegation that there was an offer that counsel failed to communicate to Applicant. In

fact, as indicated from all of the pleadings, the Applicant pled guilty to murder on the day of a scheduled trial, to avoid the possibility of the death penalty.

Therefore, Respondent submits that these cases are inapplicable to the facts of this matter and should be disregarded in any decision regarding the dismissal of Applicant's third application.

Martinez v. Ryan claim - Ineffective Assistance of PCR Counsel

Again, Applicant inappropriately relies on a recently decided United States' Supreme Court case, Martinez v. Ryan, 132 S.Ct. 1309 (March 20, 2012), to support his claim of ineffective assistance of post-conviction relief counsel. Respondent submits that the Martinez decision is only applicable in Federal Habeas Corpus proceedings where a procedural bar is asserted by the State.

Martinez specifically states that the question that they are addressing is "whether ineffective assistance in an initial-review collateral proceeding on a claim of ineffective assistance at trial may provide cause for a procedural default in a **federal habeas** proceeding." Martinez at 1315 (emphasis added). A federal court can hear [] ineffective-assistance claims only if the Petitioner can establish cause to excuse the procedural default. Id. at 1316.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient

reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

Accordingly, any claim of ineffective assistance of post-conviction relief counsel is not a sufficient reason to warrant a successive PCR application.

Conclusion

Respondent objects to a hearing being granted, as this is a successive application, which has been conditionally dismissed by signed Order, dated June 29, 2012. This is the Applicant's third PCR application, which he filed while his appeal of the dismissal of his second application was still pending before the South Carolina Supreme Court.

Although the Applicant supplies a great deal of commentary on the representation Applicant received during the time prior to his guilty plea and following, the fact remains that none of the cases offered to overcome the statute of limitations or successiveness of Applicant's third application apply to the facts at hand. Respondent further submits that post-conviction relief is not the proper avenue to address Applicant's desire for a resentencing or his alleged rehabilitation in prison. If this Court were to allow for a successive application to proceed based upon the premise that it is allowable for State funds to be provided to evaluate a current prisoner to determine his rehabilitation, it would appear that the entire parole system is being bypassed.

The Respondent therefore in reply to the Applicant's Response to the Conditional Order of Dismissal, requests that the Court dismiss the successive application.

Respectfully submitted,

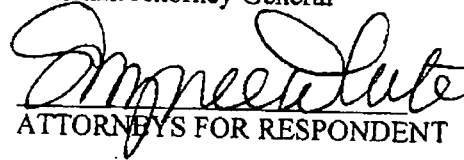
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BY:


ATTORNEYS FOR RESPONDENT

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December 12, 2012.

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Brian Diggs, #248964,)

2011-CP-29-0816

Applicant,)

v.)

FINAL ORDER

State of South Carolina,)

Respondent.)

FILED
OFFICE OF CLERK
OF COURT
2012 FEB 20 A 11:41
CLERK OF COURT
LANCASTER, SC

This matter comes before this Court by way of an application for post-conviction relief filed June 7, 2011, and amended application filed November 19, 2012. Respondent made its Return and Motion to Dismiss on or about May 25, 2012, requesting that the application be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated June 29, 2012, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. This Court then received a Motion for Enlargement of Time and Motion for Appointment of Counsel, dated July 12, 2012. Counsel was subsequently appointed and Applicant filed a Response to State's Return and Motion to Dismiss. Applicant then filed his amended application, along with a Motion to Hold the Matter in Abeyance on November 19, 2012.

In the document captioned "Response to State's Return and Motion to Dismiss," dated August 7, 2012, Applicant argues that his application should not be summarily dismissed based on Statute of Limitations and the Doctrine of Successiveness. Applicant argues that recent United

States Supreme Court decisions entitle him to a successive application pursuant to S.C. Code §17-27-25(b), which extends the statute of limitations by one year from the decision date of a new substantive law. The cases on which the Applicant relies are Graham v. Florida, 130 S. Ct. 2011 (2010) and Miller v. Alabama, 132 S.Ct. 2455 (2012); cases which focus on the constitutionality of the life without parole sentence for juveniles first in non-homicide crimes (Graham) and then, a mandatory sentence of life without parole (Miller). This Court finds that neither of these cases is applicable in the Applicant's case, as the Applicant did not receive a sentence of life without parole.

The Applicant also relies on Lafler v. Cooper, 132 S.Ct 1376 (2012), and Missouri v. Frye, 132 S.Ct. 1399 (2012), which were both decided on March 21, 2012. The Lafler case holds that counsel is ineffective when a defendant stands trial based upon counsel's ineffective advice, which led to the defendant rejecting a plea offer and proceeding to trial. The defendant must show that "but for the ineffective advice, there is a reasonable probability that the plea offer would have been presented to the court, that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the actual judgment and sentence imposed." Lafler v. Cooper, 132 S. Ct. 1376 (2012). Clearly, this case is inapplicable to Applicant's case, in that there was no prejudice as a result of the Applicant proceeding to trial after rejecting a plea offer. The Applicant did not proceed to trial.

Similarly, Applicant's reliance on Missouri v. Frye, 132 S. Ct. 1399 (2012), is misplaced. The Frye case established that counsel has the duty to communicate formal offers from the prosecution, which involve terms and conditions that may be favorable to the defendant. In Frye, the Court found that counsel was deficient in failing to communicate a written plea offer to the defendant before it expired. Id. Again, Frye is inapplicable to the facts of Applicant's case. There is



no allegation that there was an offer that counsel failed to communicate to Applicant. In fact, as indicated from all of the pleadings, the Applicant pled guilty to murder on the day of a scheduled trial, to avoid the possibility of the death penalty. Therefore, this Court finds that neither of these cases is applicable in Applicant's case.

Finally, the Applicant seeks to file a successive application outside of the statute of limitations based upon Martinez v. Ryan, 132 S.Ct. 1309 (2012), decided March 20, 2012. Martinez addresses whether or not ineffective assistance in an initial-review collateral proceeding on a claim of ineffective assistance at trial may provide cause for a procedural default in a federal habeas proceeding." Martinez at 1315 (emphasis added). This Court finds that, as indicated in the Martinez opinion, the potential for claims of ineffective assistance of post-conviction relief counsel only exists as a possible cause for procedural default in Federal Habeas claims and is not applicable on a State post-conviction relief level. Therefore, this Court finds that this case does not support Applicant's attempt to file a successive application outside of the statute of limitations.

This Court finds that because the Applicant has not established that a new substantive law exists, which would extend the statute of limitations for filing his successive application, the application should be dismissed.

This Court also addresses the Applicant's Motion to Compel. There has been no Order granting discovery in this matter and this Court finds that good cause has not been established to permit the third party discovery.



Motion to Compel

The Uniform Post-Conviction Procedure Act does not allow for discovery in a non-capital post-conviction relief case without good cause and order of the circuit court permitting discovery requests. S.C. Code Ann. § 17-27-150(A) states:

A party in a non-capital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for the effective utilization of discovery procedures, counsel may be appointed by the judge for an applicant who qualifies for appointment pursuant to Section 17-27-60 or similar applicable provisions of law.

The conviction being challenged by the Applicant in this action arises from a non-capital offense. On April 14, 1998, the Petitioner pled guilty to charges of murder and attempted armed robbery. The Petitioner was sentenced by the Honorable Paul E. Short, Jr., to confinement for a period of life and a consecutive term of ten years, respectively. Petitioner did not appeal his convictions or sentences. According to the South Carolina Department of Corrections, the Applicant is currently eligible for parole in the year 2025.

This Court finds that all claims at which the Applicant hints could have been raised in the Applicant's initial PCR, as is required by procedure established in this State, cannot establish good cause to permit discovery for a third and untimely application for PCR. Furthermore, this Court finds that any issues regarding the Applicant's mother or Applicant's competency could have been and were clearly litigated in Applicant's prior application. Applicant's mental health was brought before the lower court prior to Applicant's guilty plea, as indicated by records submitted by Applicant in support of Applicant's Response to the State's Motion to Dismiss. There was a Blair hearing prior to the plea and the evaluation, which found the Applicant both competent to stand trial

or plead guilty and criminally responsible, was entered into evidence. (Plea Tr. p. 3-7). The IQ level of the Applicant was also before the plea court in the provided evaluation report. Furthermore, the Applicant stated on the record during his guilty plea that he had never been treated for any mental illness. (Plea Tr. p. 12). Additionally, at his first PCR hearing, Applicant's mental state was discussed and counsel was questioned about his being "functional illiterate." (PCR Tr. p. 14-15). The Applicant discussed the fact that he spent time being evaluated prior to his plea following his arrest, the death of his mother, and the State's decision to seek the death penalty. (PCR Tr. p. 31). Therefore, the Applicant's Motion to Compel is denied.

Motion to Hold in Abeyance

This Court now addresses the Motion to Hold in Abeyance. This Court finds that Applicant has not established good cause to hold this matter in abeyance pending the outcome of the Petition filed by Counsel for the Applicant, asking the South Carolina Supreme Court to address, in its original jurisdiction, issues of the constitutionality of sentences of life without parole for juveniles. As of yet, the Supreme Court has not accepted the Petition. Counsel seeks to hold this matter in abeyance pending the decision, but as noted, the Applicant was not sentenced to life without parole. This Court finds the Applicant's speculation that the United States Supreme Court might one day find the Applicant's sentence to be unconstitutional, even though he is parole eligible, to be over reaching. Therefore, this Court denies the Motion to Hold in Abeyance.

Conclusion

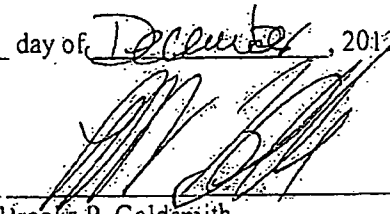
As to the successive application, This Court has reviewed Applicant's responses to the State's Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings and amended application and finds that a sufficient reason has not been shown why the Conditional

Order of Dismissal should not become final. This Court further finds that Applicant's current Application is successive to Applicant's previously filed applications and that Applicant's current application was filed outside the statute of limitations.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court cautions 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. Your attention is directed to South Carolina Appellate Court Rule-243 for appropriate procedures for appeal.

AND IT IS SO ORDERED this 20 day of December, 2012.



Brooks P. Goldsmith
Administrative Judge – Common Pleas
Seventh Judicial Circuit

Lancaster, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

BRIAN DIGGS,
Applicant,

2011-CP-29-0816

VS.

STATE OF SOUTH CAROLINA,
Respondent.

RULE 59(e) MOTION

To: The Honorable Brooks P. Goldsmith

This matter is before this Court on this Court's Final Order dismissing his case. Counsel hereby files this Rule 59(e) motion and asks this Court to remand his case for an evidentiary hearing or, in the alternative, to simply hold his case in abeyance pending the South Carolina Supreme Court's review of his case. Counsel received a copy of the Final order on December 27, 2012.

RELEVANT FACTS

Brian Diggs received extraordinarily incompetent representation by his trial counsel, which fell well below professional norms, while he was charged with capital murder as a juvenile. For the reasons presented below, this Court has erred in granting the state's motion to dismiss his PCR application.

Standard of Review for Summary Dismissal

Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief. S.C. Code Ann. §17-27-70(b) and (c) (2003). When considering the State's motion for summary dismissal of an application, where no evidentiary hearing has been held, the circuit court must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant.

Learnon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005).

Brian Diggs will be prepared to show this Court, at an evidentiary hearing, that he received ineffective assistance of counsel at the trial level, and that he is now entitled to a new sentencing hearing under two different theories. First, he is entitled to have a judge consider the substantial mitigating evidence that exists in his case and to use his or her discretion in rendering a sentence that fairly accounts for his life and character, and the circumstances of his crime, under the recent United States Supreme Court decision, Miller v. Alabama, 132 S.Ct. 2455 (June 25, 2012). But also, Diggs will be prepared to show this Court that his counsels' discharge of their obligations in seeking an alternative sentence, other than life, was so woefully inadequate that he is also entitled to a new sentencing hearing under the recent United States Supreme Court cases, Lafler v. Cooper, 132 S.Ct. 1376 (March 21, 2012) and Missouri v. Frye, 132 S.Ct. 1399 (March 21, 2012). Gathering relevant records is on-going, but even at this point in time, Diggs is prepared to show the following:

Brian Diggs was only barely 17 when he allegedly committed the crime for which is he now serving a life sentence. He pleaded guilty *on the day his capital trial was set to begin*, and with no family present (his mother, and sole caretaker, had died approximately 8 months earlier after succumbing to breast cancer).¹ Present that day were his two attorneys—Jerry Screen, an attorney who received a mere \$5,000 from Diggs's mother to defend this capital case, and Leon Banks, subsequently disbarred by the South Carolina Supreme Court because of his inappropriate handling of money in connection with death penalty cases during this same time

¹ From the plea transcript, the Solicitor states: "Upon arriving at the courthouse this morning, I was advised by counsel for the defense that Mr. Diggs has elected to enter into a plea deal that was proposed by the state some time back . . .". See Exhibit 1, Plea transcript, page 3.

frame. See *In re Banks*, 344 S.C. 17, 542 S.E.2d 721 (2001). Diggs is prepared to show this Court that they sought **no funding at all** in connection with either the guilt or sentencing phases of this capital trial,² and he is further prepared to show this Court that evidence of significant mental health issues and possible mental retardation was readily apparent from court-ordered mental health examinations and which were in the possession of trial counsel. See Exhibit 2, Court Exhibit #2, Forensic Unit Outpatient Evaluation (noting full scale IQ is 75 placing him in the range of borderline intellectual functioning); Court Exhibit #4, Forensic Unit Staffing (noting "Mr. Diggs' past history is significant for psychiatric hospitalization at the William S. Hall Psychiatric Institute April 10, 1995 to April 14, 1995" and given a diagnosis of Major Depressive Episode).

Too, Diggs can presently show this Court that his trial counsel affirmatively helped the state seek the death penalty against him because they took no actions at all to resolve this case while Diggs remained in pre-trial detention for over 3 years. At the time, State v. Humphries, 325 S.C. 28, 479 S.E.2d 52 (1997), was wending its way through the court system which clarified the legal theory upon which the state sought death in this case. Instead of using this fact to their client's advantage, they were complicit in the state's decision to just let him sit in jail until the state was satisfied it could seek death.³ See Exhibit 3, PCR hearing, dated June 4, 2003:

² Counsel for petitioner travelled to the Lancaster County Courthouse on July 26, 2012 to review the Court file associated with this case, and co-defendant, David Sutton's, case. No funding motions were present in the file. Counsel further contacted to Clerk of Court on that date to ensure that there were no sealed files existing in this case and was informed that there were not.

³ And see Leon Banks's statement at the plea: "Your Honor, I think Mr. Screen and I would like the record to reflect that we have discussed among ourselves and with our client the effect of State v. Humphries and why it was an aggravating circumstance. It is no news to anybody involved in this case that that was the length of time that it took" Exhibit 1, Plea transcript, p. 26, ll. 2-9.

[Jerry Screen]: Well, let me back up and first tell you: When I was first hired, it started out that there was a run—nothing is run-of-the-mill, but it was a regular murder case without the tentacles of possibilities of death penalty. The question was whether or not it qualified for the death penalty, and there was a case I believe in the upstate pending in the Supreme Court that had involved the felony murder rule, attempted robbery, and our Supreme Court—it took us about—better than a year to get a ruling back from the Supreme Court and that's what the solicitor was waiting on, to see whether he could proceed for the death penalty.

PCR hearing, p. 5, l. 17- 6, l. 2.

And,

[The *Humphries* decision] was a part of our discussions for awhile and then it became a larger part of the discussions after the solicitor decided to seek the death penalty. I explained to Brian that we did not have a speedy trial act, so to speak, in South Carolina. I think I might have talked to him about the 180-day rule or something like that, but I told him as a practical matter—I recall telling him that—that I had been knowing John Justice a long time and he was an effective solicitor and he wouldn't like to do anything with that case until a decision was made . . . We've got no choice but to see and wait to see what they do.

PCR hearing, p. 32, l. 21- 33, l. 12.

This "advice"—that Diggs just had to sit and wait until the solicitor tried his case-- was unmistakably inaccurate. See Doggett v. United States, 505 U.S. 647 (1992) (outlining the analytical framework for assessing speedy trial claims); Barker v. Wingo, 407 U.S. 514 (1972) (recognizing remedy for speedy trial violation is dismissal of the indictments); State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997); State v. Waites, 270 S.C. 104, 240 S.E.2d 651 (1978).

In short, it is readily apparent from the record created in this case thus far that trial counsel rendered ineffective assistance of counsel, and Diggs was prejudiced by their substandard performance. Strickland v. Washington, 466 U.S. 668 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). It does not appear that counsel undertook any efforts to even prepare this case for trial, or would have been prepared to proceed to a capital sentencing

proceeding had Diggs been found guilty.⁴ They clearly did not investigate or present any of the relevant information necessary in such cases, and their performance fell well below established standards at the time. See American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, 1989, Guideline 11.4.1 Investigation, Commentary: Counsel has a duty to investigate the case before recommending that a guilty plea be taken (or sought) or proceeding to trial. This duty is intensified (as are many duties) by the unique nature of the death penalty and is broadened by the bifurcation of capital trials into two phases. . . .Resources that counsel needs to pursue a proper investigation should be sought early in the case. . . .[C]ounsel should demand on behalf of the client all necessary experts for preparation of both phases. Compare this Guideline with Screen's testimony at the PCR hearing: "It was going to be a murder and attempted robbery and the elements and the evidence and none of that was necessarily going to change. Penalties could certainly get higher, but the basic evidence was going to be about the same. The preparation would have been along the same lines." PCR tr., p. 33, ll. 13-19. It is clear from a review of the now-existing record in this case that there are significant issues for this Court to address and that dismissal is improper. These precedent facts, now understood against the backdrop of these recent United States Supreme Court decisions, provide a basis for this Court to grant Diggs a new sentencing hearing. Diggs asks this Court to deny the state's motion to dismiss his PCR.

Argument

The state relies on the statute of limitations and this application being successive as a basis for dismissing this action. S.C. Code Ann. §17-27-45(b), however, extends the PCR statute of

⁴ See Screen's admission at the first PCR hearing (PCR Transcript, 8, ll. 5-6) that they did not try to challenge the palm print evidence which the state characterized as "sealing the proof of Mr. Diggs. Plea tr., 19, ll. 14-16.

limitations by one year for binding constitutional decisions. Under this statute, successive post-conviction applications are the proper procedure to ask the Court to apply binding constitutional decisions. Franklin v. Maynard, 356 S.C. 276, 588 S.E.2d 604 (2003) (holding S.C. Code §17-27-45(b) is proper procedure for challenging death sentence imposed prior to Atkins v. Virginia, 536 U.S. 304 (2002)).

Diggs filed his *pro se* PCR application on June 7, 2011 asserting his entitlement to relief under Graham v. Florida, 130 S.Ct. 2100 (2010). He attempted to file it by the May 17, 2011 deadline but it was returned by the Clerk of Court, upon information and belief, because it was not properly verified. As quickly as he could, Diggs rectified the problem and made a timely application. Given Diggs's inability to travel freely to the Lancaster County Courthouse to address these issues, the Court should find that his application filed in a timely manner. Certainly the state cannot show that it has been prejudiced by the 20 day delay in Diggs's filing.⁵

Graham was, at the time that Diggs filed his application, the latest decision issued by the United States Supreme Court relating to contours and limits for sentencing less culpable citizens. First, Atkins v. Virginia, 536 U.S. 304 (2002) established a categorical prohibition against imposing the death penalty for people with mental retardation. Then Roper v. Simmons, 543 U.S. 551 (2005) established a categorical prohibition against imposing the death penalty on children who commit the crime before age eighteen. *Graham* holds specifically "that for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole." *Graham*, 130 S.Ct. at 2030. *Graham* reasoned, "[W]hen compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral

⁵ In any event, this Court *could* construe this filing, and the forthcoming amended application for relief as a "successive post-conviction application" asking the Court to apply new binding constitutional decisions pursuant to *Miller*, *Lafler*, and *Frye*, and according to the procedure outlined in *Franklin*.

culpability. The age of the offender and the nature of the crime each bear on the analysis.”

Graham, 130 S.Ct. at 2027. This result is derived from the *Roper* decision that “established that because juveniles have lessened culpability they are less deserving of the most severe punishments.” *Id.* at 2026. *Graham* also concluded that juvenile LWOP “cannot be justified by the goal of rehabilitation. The penalty forswears altogether the rehabilitative ideal.” *Id.* at 2029-30. It was proper for Diggs to file a successive application to have his case reviewed in light of *Graham* since the principles articulated in that case apply to his situation. Though a juvenile when his crime occurred, he was given a *mandatory* sentence of life in prison, and even though by statute he theoretically has a chance of parole in 2025, he is prepared to show the Court that South Carolina does not often grant parole to the extent as to make it a meaningful opportunity. And additionally, given his custodial status, he is being denied access to programs geared at rehabilitation which buttresses his claim that his sentence violates *Graham*.

On June 25, 2012, the United States Supreme Court rendered its opinion in *Miller, supra*. *Miller* holds that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. *Miller* at 2468. To be clear, Diggs is not serving a life without parole sentence because one was not available at the time of his plea. He did, however, receive the harshest punishment the law allowed at that time, and counsel, in good faith, believes that the reasoning of *Miller* entitles Diggs to a sentencing hearing which takes into account all of the significant, and highly mitigating evidence that he will be prepared to offer.⁶

⁶ Diggs was arrested in 1995 for the 1994 shooting of the victim. The statute in place at the time provided: (A) A person who is convicted of or pleads guilty to murder must be punished by death or by imprisonment for life and is not eligible for parole until the service of twenty years; provided, however, that when the State seeks the death penalty and an aggravating circumstance is specifically found beyond a doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the court must impose a sentence of life

In the *Miller* opinion, the Court continues its trajectory of addressing appropriate sentencing considerations that apply to juveniles and emphasizes that sentencing juveniles implicates two different strands of Supreme Court precedent—the categorical prohibitions addressed in *Roper* and *Graham*, and also the line of cases prohibiting mandatory punishment in the context of death penalty cases and that require sentencing authorities consider the characteristics of a defendant and the details of his offense before sentencing him to death. Woodson v. North Carolina, 428 U.S. 280 (1976); Lockett v. Ohio, 438 U.S. 586 (1978). In *Miller*, the Court recognizes:

Such mandatory penalties, by their nature, preclude a sentence from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it. Under these schemes, every juvenile will receive the same sentence as every other—the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one. And still worse, each juvenile . . . will receive the same sentence as the vast majority of adults committing similar homicide offenses—but really, as *Graham* noted, a greater sentence than those adults will serve.

Miller at 2467-68. And see *Miller* at 2466. (“[The] imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.”).

The *Miller* decision, with its references to *Woodson* and *Lockett*, has imported a wide range of sentencing factors, present in the capital context, into the realm of juvenile sentencing. It is appropriate, therefore, for a court to consider a wide range of factors in rendering an appropriate sentence in this case. See Eddings v. Oklahoma, 455 U.S. 104, 115 (1982) (evidence of a difficult family history and of emotional disturbance typically introduced by defendants in mitigation). American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, 11.8.3(F)(1) (1989) (in preparing for the sentencing phase, the

imprisonment without eligibility for parole until the service of thirty years. S.C. Code Ann. §16-3-20.

On January 1, 1996, this section was modified to read: “For purposes of this section, “life imprisonment” means until death of the offender.”

trial counsel should consider investigating [w]itnesses familiar with and evidence relating to the client's life and development, from birth to the time of sentencing, who would be favorable to the client); 11.8.6(B)(5) (stating that trial counsel should consider presenting in mitigation: Family, and social history . . .). Council v. State, 380 S.C. 159, 173- 174, 670 S.E.2d 356, 364 (2008) ("Even though funding was available, trial counsel chose not to hire a social history investigator. Instead, he relied on his law partner and private investigator to collect potentially relevant information. However, neither of these individuals was qualified, in terms of social work experience, to evaluate the information to assess Respondent's background."). Diggs submits there will be much for this Court to consider at the appropriate time. At this point, collection of relevant materials is on-going.

Diggs appropriately filed his application for this Court to consider his case in light of the *Graham* decision, but additionally, the Court's more recent *Miller* opinion also provides a basis for this Court to exercise its jurisdiction and allow his PCR to proceed.

Additional Claims

In addition to the claim Diggs raises in his *pro se* application, counsel filed an amended application alleging trial counsel's failure to perform adequately during the plea bargaining process and also offers him a basis for relief pursuant to the recent decisions in *Lafler v. Cooper*, *supra*, and *Missouri v. Frye*, *supra*. This court's summary dismissal of this claim fails to acknowledge the sea-change these recent United States Supreme Court cases impose on counsel's duties with respect to the plea-bargaining process.

PETITION CURRENTLY BEFORE THE SOUTH CAROLINA SUPREME COURT

On October 29, 2012, a petition for writ of certiorari was filed in the original jurisdiction of the South Carolina Supreme Court. This petition asks our Supreme Court to resolve the following issues:

- A. Whether the Eighth Amendment preclude life imprisonment without the possibility of parole for juvenile offenders;
- B. Whether all juveniles sentenced to life imprisonment without the possibility of parole are entitled to a new sentencing proceeding; and
- C. What procedures are required where life imprisonment without the possibility of parole is a sentencing option?

A copy of the petition for writ of certiorari in *Aiken et. al. v. Byars* was attached to petitioner's motion to hold this case in abeyance.

Additionally, there is reason to believe that the United States Supreme Court would find Diggs's sentence to be unconstitutional in light of *Miller*, despite his parole eligibility. The Supreme Court recently summarily vacated the Wyoming Supreme Court's decision in *Bear Cloud v. State*, 275 P.3d 377 (2012). *Bear Cloud v. Wyoming*, ___ S.Ct. ___, 2012 WL 2002444 (Oct. 1, 2012). As the state observed, "Bear Cloud did not receive a 'life without parole' sentence," *Bear Cloud*, 275 P.3d at 387 n.3, and "[r]ehabilitation and even release are still possible," *id.* at 412. Despite these features, the Supreme Court remanded the case for further consideration in light of *Miller*. If our Supreme Court accepts this petition, then the resolution of these issues will determine not only the procedures for Diggs's resentencing but also the nature and extent of the required mitigation investigation, including access to resources for investigators and experts. This Court, therefore, should stay these proceedings until our Supreme Court rules in *Aiken et. al. v. Byars*.

MOTION TO COMPEL DISCOVERY

As for the Final Order's assertion regarding a "Motion to Compel" discovery—the order simply misstates the facts. Petitioner, through counsel, filed an ex parte motion for records in this case. Your Honor asked for additional authority on this issue, which counsel provided. Your Honor stated in an email dated August 20, 2012 **that he did not have any problem with counsel's request**, but asked that the AG's office also be noticed in the request (which, predictably, it opposed). See attached emails. Counsel for petitioner never filed a Motion to Compel Discovery, but merely requested an ex parte court order for mental health records. This entire section of the order should be stricken since it is factually inaccurate.

CONCLUSION

For these reasons, this Court should not dismiss petitioner's action, and allow his PCR claim to go forward. There has been a substantial change in the law, and petitioner is deserving of its benefits. Petitioner respectfully asks for an evidentiary hearing in this matter or, in the alternative, for this Court to hold this case in abeyance until the South Carolina Supreme Court addresses these issues. In any event, dismissal of this case is premature.

Respectfully submitted,



Elizabeth A. Franklin-Best
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(803) 765-1044, Ext. 12

Dated 31st, December 2012

STATE OF SOUTH CAROLINA	FILED OFFICE OF CLERK OF COURT	THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	SIXTH JUDICIAL CIRCUIT
	2013 JAN 28 P 5:42	
Brian Diggs, #248964,	CLERK OF COURT	2011-CP-29-0816
Applicant,	LANCASTER, SC	
	)	
v.	)	RETURN TO 59(e) MOTION
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCP, in which he asks the Court to reconsider its Final Order dismissing his Application for post-conviction relief (PCR) as successive and barred by the statute of limitations. The Respondent (the State) would submit the following:

I.

The Respondent submits that the Final Order of Dismissal of the Honorable Brooks P. Goldsmith, served December 20, 2012, contains the findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003), and Rule 52(a) SCRCP. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Essentially, the only portion of the Final Order that Applicant argues should be altered or amended is the section denying Applicant's Motion for an Ex Parte Order for Mental Health records. Applicant argues that the entire section is factually inaccurate because it refers to Applicant's Motion as a Motion to Compel Discovery. In the argument, Applicant refers to various ex parte communications with the Court and the inaccurate caption of the referenced Motion as reasons that entire section of the Order should be stricken.

First, the Respondent notes that the use of ex-parte proceedings in PCR is improper and any reliance on statutes purporting to authorize ex-parte proceedings of this nature is inapplicable to PCR.

When a defendant requests expert services for a criminal trial, the request is determined by the judge in ex parte proceedings. S.C. Code Ann. § 16-3-26(C) and § 17-3-50(B) (Supp.1995); Ex parte Lexington County, 314 S.C. 220, 442 S.E.2d 589 (1994). These statutory provisions are, however, inapplicable to post-conviction relief proceedings. Section 16-3-26(C), which is limited to capital cases, applies to "the representation of the defendant whether in connection with issues relating to guilt or sentence." Therefore, this provision applies only to the capital trial itself and not to post-conviction relief proceedings. While § 17-3-50(A) mentions that the same hourly rates for appointed counsel shall apply to post-conviction proceedings, the use of the word "defendant" throughout § 17-3-50(B) indicates that it applies only to the criminal trial itself and not to post-conviction relief actions. Accordingly, the post-conviction relief judge in this case properly conducted a hearing on the motion at which counsel for the State was allowed to fully participate.

Thames v. State, 325 S.C. 9, 11, 478 S.E.2d 682, 682 n.1 (1996).

Second, the Respondent submits that the Applicant shall serve copies of all pleadings and other papers as per Rule 5(a), SCRCP. The Respondent is aware of the "ex-parte" exception to Rule 5(a), SCRCP¹; however, as stated above, it is the Respondent's position that the use of ex-parte proceedings of this type is inapplicable in PCR matters.

However, Respondent acknowledges that the Motion filed by the Applicant was captioned, "Motion for an ex parte Order for Mental Health Records." Therefore, Respondent concurs that the Final Order of Dismissal, in an effort to accurately reflect Applicant's Motion, should refer to the dismissed Motion as "Applicant's Motion for an ex parte Order for Mental Health Records," rather than "Applicant's Motion to Compel Production of Mental Health Records." Respondent would propose a Form 4 Order acknowledging the correct name for the Motion.

¹ Rule 5(a)(3), SCRCP. See also, Rule 6(b) and 77(d), SCRCP.

II.

Other than the above referenced section, the Respondent submits that the Applicant's motion fails to identify any other portions of the order he alleges to be "defective," or to identify with specificity the contentions that are recited incorrectly, and in what manner the Final Order of Dismissal is in need of amendment or alteration. The Applicant raises the same arguments in the Motion that were raised in the original response to the Conditional Order of Dismissal.

It is incumbent upon the Applicant to present a motion asking the Court to address specific questions or factual and legal matters rather than just generally disagreeing with the outcome of the hearing. See Bennett v. Investor's Title Ins. Co., 370 S.C. 578, 635 S.E.2d 649 (Ct. App. 2006)(stating that where the trial court did not rule on a specific issue and appellant failed to seek a ruling on the issue in a post-trial motion, the matter is not preserved for appeal); Doe v. Doe, 370 S.C. 206, 634 S.E.2d 51(Ct. App. 2006)(same); Cowan v. Leventis, 366 S.C. 20, 619 S.E.2d 437 (Ct. App. 2005)(same); Jones v. State Farm, 364 S.C.222, 612 S.E.2d 719(Ct. App. 2005)(stating claim is not preserved where appellant argued to the trial court that an issue of fact was created by a form but failed to set forth a legal theory which would entitled him to recovery based upon the form and failed to move to alter or amend judgment); Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001)(PCR applicant failed to preserve an ineffective assistance of counsel claim for appellate review where applicant did not file a motion asking the court to rule on the specific issue of applicant's appearance in shackles).

III.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed, with the exception of the

amending of the Order in reference to the correct caption for Applicant's prior Motion for ex parte Order for Mental Health Records.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

January 25, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

BRIAN DIGGS,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

CIVIL CASE NO: 2011-CP-29-0816

ORDER

This matter comes before the Court upon Applicant's Motion to Reconsider the Court's Order, filed January 3, 2013, that granted Respondent's Motion to Dismiss.

After considering the arguments set for in memoranda submitted by each party's counsel, this Court finds there is no basis for granting the motion and, therefore, denies Application's motion.



Brooks P. Goldsmith, Judge

Lancaster, South Carolina
January 31, 2013

CLERK OF COURT
LANCASTER, SC

2013 JAN 31 P 1:47

FILED
OFFICE OF CLERK
OF COURT

DOCKET NO. 95-GS-29-189

The State of South Carolina,

County of LANCASTER

WITNESSES

Rick ghent

COURT OF GENERAL SESSIONS

FEBRUARY TERM 1995

THE STATE

vs.

Brian Anselm Diggs

ARREST WARRANT NO. E417254

ACTION OF GRAND JURY

FEB 24 1995

Foreman of Grand Jury

Phanda Baker

VERDICT

Foreman of Petit Jury

Date:

CERTIFIED TO BE A TRUE COPY

Jeff Hammond

JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.

And now comes the within named defendant in (his) (her) own proper person, and being asked in open Court by the Clerk of said Court if (he) (she) desires freely and voluntarily to plead guilty to the within indictment makes the following plea to the within indictment, I do hereby freely and voluntarily, and without reserve reservation and without any intimidation by any person or persons whatsoever either by threat, promise, rewards or hope of reward plead guilty to the Murder

within indictment.

LANCASTER, S.C.

WITNESSES

Clerk of Court

Defendant

INDICTMENT FOR MURDER

COUNT ONE — MURDER

.....

STATE OF SOUTH CAROLINA

VS

Brian Anselm Diggs

COUNT NO:

CASE NO: 116 5-16-94 95 GS-29- 189

WARRANT NO:

CHARGE: MURDER

The sentence of the Court is that Brian Anselm Diggs, the defendant named in this indictment be confined to the State Board of Corrections/Lancaster County Detention for a term of his Natural Life (and) (or) pay a fine of \$: provided that upon the service of (and) (or) payment of \$ plus (pay) (waive) cost and assessments as applicable*, the balance is suspended and the defendant is placed on probation for (months) (years).

RESTITUTION: (YES) (NO)

PHYSICAL INJURY \$

(and) (or)

HEARING HELD OR WAIVED ON: PROPERTY DAMAGE \$ PAYABLE TO CLERK FOR (VICTIM) **CERTIFIED TO BE A TRUE COPY**SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: Jeff Hammond

JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.

DATE: April 14, 1998
LANCASTER, S.C.

Paul E. Shortt
Presiding Judge

*COST AND ASSESSMENTS: FINE \$ NON WAIVABLE \$ NOT WAIVED \$ TOTAL \$

COPY RECEIVED BY:
Defendant

Clerk of Court

Date of Birth 1Social Security Drivers License ATTORNEY FOR DEF: Jerry Screen
LEON BANKSADDRESS:

M/F
B/W

WHITE: Clerk

PINK: Detention

YELLOW: Probation Dept.

Date: _____

STATE OF SOUTH CAROLINA 20)

COUNTY OF LANCASTER)

ATTEMPTED
INDICTMENT FOR ARMED ROBBERY

XXXXXXXXXXXXXXXXXXXX

At a Court of General Sessions, convened on February 24, 1995
the Grand Jurors of Lancaster County present upon their oath:

ATTEMPTED
COUNT ONE — ARMED ROBBERY

That Brian Anselm Diggs did in
Lancaster County on or about May 16, 1994, while armed with a deadly
weapon, to wit: pistol
 feloniously ^{attempt to} take from the person or presence of Jackie Hallman by means of
force or intimidation goods or monies of Jack's Convenience Store such goods or monies being
described as follows: money

with intent to deprive the owner permanently of such property.

COUNT TWO — ROBBERY

That _____ did in _____
County on or about _____ feloniously take from the
person or presence of _____ by means of
force or intimidation goods or monies of _____
such goods or monies being described as follows: _____
_____ with intent to deprive the owner permanently of such property.

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

SOLICITOR

STATE OF SOUTH CAROLINA

VS

Brian Anselm Diggs026
5-16-94

COUNT NO: _____

CASE NO: 95 GS-29-191

WARRANT NO: _____

CHARGE: Attempted Armed Robbery

The sentence of the Court is that Brian Anselm Diggs, the defendant named in this indictment be confined to the State Board of Corrections/Lancaster County Detention for a term of 10 years (and) (or) pay a fine of \$ _____ : provided that upon the service of _____ (and) (or) payment of \$ _____ plus (pay) (waive) cost and assessments as applicable*, the balance is suspended and the defendant is placed on probation for _____ (months) (years).

RESTITUTION: (YES) (NO)

PHYSICAL INJURY \$ _____
(and) (or)

HEARING HELD OR WAIVED ON: _____

PROPERTY DAMAGE \$ _____

PAYABLE TO CLERK FOR (VICTIM) _____

TOTAL \$ _____

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: _____

This sentence is consecutive to 95-GS-29-189

CERTIFIED TO BE A TRUE COPY

Jeff HammondJEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.DATE: April 14, 1998
LANCASTER, S.C.Paul G. Short Jr.
Presiding Judge

*COST AND ASSESSMENTS: FINE \$ _____

NON WAIVABLE \$ _____

NOT WAIVED \$ _____

TOTAL \$ _____

COPY RECEIVED BY: _____

Defendant

Clerk of Court

Date of Birth _____

Social Security _____

Drivers License _____

ATTORNEY FOR DEF: Terry Screen
Leon Banks

ADDRESS: _____

M / F
B / W

WHITE: Clerk

PINK: Detention

YELLOW: Probation Dept.

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF LANCASTER

99-CP-29-187

BRIAN A. DIGGS

-VS-

THE STATE OF SOUTH CAROLINA

:
:
: TRANSCRIPT OF RECORD
:
:

JUNE 4, 2003

WINNSBORO, SOUTH CAROLINA

B E F O R E:

THE HONORABLE KENNETH G. GOODE, JUDGE.

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

PHILIP E. WRIGHT, ESQUIRE
ATTORNEY FOR THE APPLICANT

B. ALLEN BULLARD, ESQUIRE
ATTORNEY FOR THE STATE

DAPHNE D. HELMS
CIRCUIT COURT REPORTER

I N D E X

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WITNESSJERRY M. SCREEN

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BRIAN A. DIGGS

DIRECT EXAMINATION BY MR. WRIGHT.....15
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JERRY M. SCREEN (RECALLED)

DIRECT EXAMINATION BY MR. BULLARD.....32

(THERE WERE NO EXHIBITS INTRODUCED.)

1 THE COURT: YES, SIR, MR. GENERAL.

2 MR. BULLARD: YOUR HONOR, THE NEXT CASE IS BRIAN
3 DIGGS VERSUS STATE OF SOUTH CAROLINA, LANCASTER COUNTY CASE
4 1999-CP-29-187. MR. DIGGS IS PRESENT. HE IS REPRESENTED BY
5 MR. PHILIP WRIGHT WHO IS ALSO PRESENT, AND I BELIEVE THEY'RE
6 READY TO PROCEED.

7 THE COURT: IS THAT CORRECT?

8 MR. WRIGHT: THAT'S CORRECT, YOUR HONOR.

9 THE COURT: DO YOU HAVE A PACKET FOR THE COURT ON
10 THIS ONE?

11 MR. BULLARD: YES, SIR. I'M SORRY.

12 THE COURT: THANK YOU, SIR.

13 MR. BULLARD: YES, SIR.

14 THE COURT: YES, SIR, MR. WRIGHT.

15 MR. WRIGHT: YOUR HONOR, I WOULD -- AND I DON'T KNOW
16 HOW THE COURT DOES THIS IN THESE CASES. I APOLOGIZE I
17 HAVEN'T DONE THAT MANY OF THEM, BUT IS THE RECORD AT THE PLEA
18 -- IS THE TRANSCRIPT OF THE PLEA PART OF THE COURT RECORD
19 ALREADY OR DO I NEED TO INTRODUCE THAT?

20 THE COURT: THE TRANSCRIPT OF THE PLEA?

21 MR. WRIGHT: THE TRANSCRIPT.

22 THE COURT: IT'S PART OF THE RECORD.

23 MR. WRIGHT: ALL RIGHT, SIR. WE'LL BE REFERRING TO
24 THAT. I JUST WANTED TO BE SURE THAT THAT WAS IN.

25 THE COURT: YES, SIR.

1 MR. WRIGHT: I WOULD CALL MR. SCREEN AS THE INITIAL
2 WITNESS.

3 THE COURT: MR. SCREEN, IF YOU'D COME FORWARD AND BE
4 SWORN, PLEASE, SIR. PLACE YOUR LEFT HAND ON THE BIBLE AND
5 RAISE YOUR RIGHT HAND.

6 JERRY M. SCREEN, AFTER BEING DULY SWORN,
7 TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. WRIGHT:

10 Q. I'M JUST WEARING THESE SUNGLASSES TO FAKE YOU OUT.
11 ACTUALLY I BROKE MY GLASSES, SO IT'S THE ONLY WAY I CAN SEE
12 YOU. MR. SCREEN, TELL US YOUR NAME.

13 A. I'M JERRY M. SCREEN.

14 Q. AND, MR. SCREEN, YOU'RE AN ATTORNEY HERE IN SOUTH
15 CAROLINA?

16 A. YES, SIR, I AM.

17 Q. AND HOW LONG HAVE YOU BEEN PRACTICING HERE?

18 A. APPROXIMATELY 28 YEARS.

19 Q. ALL RIGHT, SIR. AND I BELIEVE WE'VE HAD OCCASION TO
20 MEET AND PRACTICE ON A NUMBER OF OTHER OCCASIONS.

21 A. YES, SIR.

22 Q. OKAY. YOU WERE ONE OF THE ATTORNEYS REPRESENTING
23 BRIAN A. DIGGS IN THE CASE IN WHICH HE WAS CHARGED WITH
24 MURDER AND ATTEMPTED ARMED ROBBERY IN LANCASTER COUNTY. IS
25 THAT CORRECT?

1 A. YES, SIR.

2 Q. WERE YOU RETAINED OR APPOINTED IN THAT CASE?

3 A. I WAS RETAINED BY HIS LATE MOTHER.

4 Q. AND IN THE COURSE OF THE CASE DID LEON BANKS WHO WAS

5 THE PUBLIC DEFENDER FOR LANCASTER COUNTY ALSO AT SOME POINT
6 BECOME INVOLVED IN THE CASE ASSISTING YOU?

7 A. YES, SIR.

8 Q. DID YOU IN YOUR REPRESENTATION OF MR. DIGGS HAVE
9 TIME TO TALK WITH HIM ABOUT THE FACTS OF THE CASE?

10 A. YES, SIR.

11 Q. DID YOU HAVE TIME TO DISCUSS WITH HIM ANY DEFENSES
12 THAT WERE AVAILABLE TO THE CHARGE THAT WAS MADE BY THE STATE?

13 A. YES, SIR.

14 Q. BASICALLY WHAT WAS MR. DIGGS' POSITION IN RELATION
15 TO WHAT HAD HAPPENED? WHAT DID HE TELL YOU ABOUT WHAT
16 HAPPENED IN THE CASE?

17 A. WELL, LET ME BACK UP AND FIRST TELL YOU: WHEN I WAS
18 FIRST HIRED, IT STARTED OUT THAT THERE WAS A RUN -- NOTHING
19 IS RUN-OF-THE-MILL, BUT IT WAS A REGULAR MURDER CASE WITHOUT
20 THE TENTACLES OF POSSIBILITIES OF DEATH PENALTY. THE
21 QUESTION WAS WHETHER OR NOT IT QUALIFIED FOR THE DEATH
22 PENALTY, AND THERE WAS A CASE I BELIEVE IN THE UPSTATE
23 PENDING IN THE SUPREME COURT THAT HAD INVOLVED THE FELONY
24 MURDER RULE, ATTEMPTED ROBBERY, AND OUR SUPREME COURT -- IT
25 TOOK US ABOUT -- BETTER THAN A YEAR TO GET A RULING BACK FROM

1 THE SUPREME COURT AND THAT'S WHAT THE SOLICITOR WAS WAITING
2 ON, TO SEE WHETHER HE COULD PROCEED FOR THE DEATH PENALTY.

3 Q. SO WHEN YOU---

4 A. THE SUPREME COURT QUALIFIED AN ATTEMPTED ROBBERY
5 UNDER THOSE CIRCUMSTANCES AS SUFFICIENT FOR DEATH PENALTY.
6 SO IT MOVED FROM JUST THE REGULAR MURDER CASE -- GRADUATED U
7 TO A DEATH PENALTY CASE.

8 Q. A CAPITAL CASE?

9 A. YES, SIR.

10 Q. AND WAS IT YOUR UNDERSTANDING THAT THE STATE
11 INTENDED TO PROCEED WITH IT AS A CAPITAL CASE?

12 A. YES, SIR.

13 Q. AND YOU TALKED ABOUT THAT WITH MR. DIGGS?

14 A. YES, SIR.

15 Q. OKAY. NOW, DURING THE COURSE OF YOUR REPRESENTATION
16 DID YOU TALK WITH MR. DIGGS ABOUT HIS CONSTITUTIONAL RIGHTS
17 AS THEY RELATED TO TRIAL?

18 A. YES, SIR.

19 Q. YOU WERE AWARE THAT MR. DIGGS HAD MADE A STATEMENT
20 WHILE IN CUSTODY OF THE POLICE. IS THAT CORRECT?

21 A. THEY PICKED HIM UP FROM THE WIL LOU GRAY SCHOOL IN
22 THE MORNING HOURS LIKE AT NIGHT AND I WAS AWARE THAT HE MADE
23 THE STATEMENT; YES, SIR.

24 Q. ALL RIGHT. AND THAT STATEMENT WAS AN INCRIMINATING
25 STATEMENT, WAS IT NOT?

A. ABSOLUTELY.

Q. DID YOU TALK WITH HIM ABOUT THE POSSIBILITY OF CHALLENGING THE VOLUNTARINESS OF THAT STATEMENT?

A. MR. WRIGHT, I TALKED TO HIM ABOUT ALL OF THE PRESCRIPTIONS OF JACKSON VERSUS DENNO, THE VOLUNTARINESS OF IT, AND EVEN IF THE COURT RULED AGAINST US IN THE IN-CAMERA, OUT-OF-THE-PRESENCE-OF-THE-JURY HEARING THAT STILL WHEN THE JURY HEARD IT THEY WOULD STILL HAVE THE RIGHT TO REJECT OR ACCEPT PORTIONS OF IT, ALL OF IT, OR WHATEVER THEY FELT WAS APPROPRIATE.

Q. SO IT'S YOUR TESTIMONY THAT YOU DID TALK WITH HIM ABOUT THE POSSIBILITY OF CONTESTING THE VOLUNTARINESS OF HIS CONFESSION?

A. YES, SIR.

Q. AND WHEN YOU TALKED WITH HIM ABOUT THAT, WHAT -- WHAT DECISION DID HE MAKE ABOUT WHETHER TO CONTEST THAT OR NOT?

A. WELL, I DON'T KNOW THAT WE WERE IN THE -- WE WERE TALKING GENERALLY ABOUT HIS -- THAT AS A BACKDROP AGAINST ALL OF THE OTHER ISSUES WITHOUT JUST SIMPLY ISOLATING IT BY ITSELF BECAUSE THERE WERE OTHER MATTERS THAT WERE ALMOST AS DAMAGING AS WHAT CAME FROM HIS LIPS.

Q. WHAT -- WHAT OTHER ASPECTS OF THE CASE DID YOU TALK WITH HIM ABOUT THAT WERE DAMAGING EVIDENTIARY ASPECTS?

A. THE FACT THAT THEY GOT A PRINT OFF THE FRONT DOOR OF

1 THE STORE THAT HE CAME OUT OF THAT MATCHED HIS.

2 Q. WAS THERE ANY EFFORT BY YOU OR MR. -- OR THE OTHE
3 ATTORNEY ON THE CASE TO TRY TO CHALLENGE THE ACCURACY OF T
4 IDENTIFICATION OF THAT PALM PRINT?

5 A. WE TALKED ABOUT IT. I DON'T KNOW THAT WE PUT UP
6 ANYTHING FORMAL ABOUT IT. THEN THERE WERE TWO OTHER GUYS
7 WERE HIS COLLEAGUES, COMRADES, OVER IN THE COUNTY WHERE HE
8 GREW UP, BUT THERE WAS NO IMMEDIATE ARREST MADE IN THIS CAS
9 AND THERE WAS A COMPOSITE PICTURE DRAWN FROM THE LADY WHO W
10 RELATED TO THE DECEDENT IN THIS CASE AS A RESULT. SHE GAVE
11 COMPOSITE. THEY MADE A COMPOSITE FROM HER IDENTIFICATION A
12 THEY KNEW THEY WERE LOOKING FOR A LIGHT-SKINNED-TYPE MALE A
13 THEY KNEW ABOUT WHAT HEIGHT AND SIZE AND THEY ALMOST HAD HIM
14 LOOKING IN ALMOST AN ORIENTAL-TYPE LOOK ON HIS PICTURE. SO
15 THEY TOOK A LONG TIME TO FIND HIM. HE CRACKED THE CASE FOR
16 THEM, BRIAN DIGGS DID.

17 Q. HOW DID HE CRACK THE CASE?

18 A. WELL, HE TOLD TWO OF HIS FRIENDS ON DIFFERENT
19 OCCASIONS AT A BALL FIELD THAT HE'S THE GUY THAT THEY WERE
20 LOOKING FOR. I'M THE GUY THAT THEY WERE LOOKING FOR AND THE
21 CAN'T CATCH ME, YA-DA, YA-DA, YA-DA. ONE OF THESE GUY'S
22 SISTER WORKED IN A CONVENIENCE-TYPE STORE AND HE WENT HOME
23 AND TOLD HER, AND SHE BEGAN TO PUT A LOT OF PRESSURE ON HIM
24 ABOUT GOING TO TELL THE AUTHORITIES BECAUSE SHE SAID THAT
25 COULD BE ME IN THAT STORE THAT GOT KILLED LIKE THAT.

THE OTHER BOY'S DADDY WAS A HIGHWAY PATROLMAN AND WHEN HE TOLD HIS DADDY, HIS DADDY MADE A BEELINE TO THE LANCASTER AUTHORITIES AND TOLD THEM. AND WHEN THEY GOT OUT THERE AND GOT BRIAN, EVERYTHING ADDED UP. THEY LOCKED HIM UP FOR IT.

Q. DID BRIAN TELL YOU THAT THE STATEMENT HE MADE WAS MADE AFTER SEVERAL HOURS OF QUESTIONING AND COERCING BY THE POLICE?

A. HE TOLD ME THAT THEY PICKED HIM UP THAT NIGHT AND THAT HE DIDN'T KNOW WHAT WAS GOING ON. HE THOUGHT SOMETHING WAS WRONG WITH HIS MOTHER. THEY TOOK HIM TO RICHLAND COUNTY JAIL AND FROM THERE TO LANCASTER. SO I KNEW THAT HE WAS IN THEIR CUSTODY FOR AWHILE, AND SO IT WOULD CERTAINLY BE SUFFICIENT -- I EXPLAINED TO HIM THERE WASN'T A THING WE HAD TO SHOW IN THE STATEMENT, THAT IT WAS AN IN-CUSTODIAL STATEMENT. IT WAS A STATEMENT MADE WHILE IN CUSTODY. YOU KNOW, THERE'S NO QUESTION ABOUT THAT---

Q. NO QUESTION ABOUT IT. ALL RIGHT.

A. ---IN THIS CASE. SO WE TALKED ABOUT IT. WE TALKED ABOUT ALL OF HIS CONSTITUTIONAL RIGHTS.

Q. BUT DID HE TELL YOU THAT THE STATEMENT THAT HE MADE WAS ONLY MADE AFTER HE WAS COERCED BY THE AUTHORITIES, THAT HE WAS PHYSICALLY THREATENED, THAT HE WAS BEATEN AND THAT HE WAS THREATENED? DID HE TELL YOU THAT?

A. I DON'T RECALL WHETHER HE TOLD ME HE WAS BEATEN OR

1 PHYSICALLY THREATENED. I WILL TELL YOU THIS: HAD WE
2 PERSISTED -- HAD HE PERSISTED IN GOING TO TRIAL, I WOULD
3 CHALLENGED THAT STATEMENT NOTWITHSTANDING ANY -- I WOULD
4 TAKEN THE POSITION THAT IT WAS A COERCED, INVOLUNTARY
5 STATEMENT.

6 Q. BUT WITHOUT HIS STATEMENT ALL THEY HAD WAS A PALM
7 PRINT, A PARTIAL DESCRIPTION BY A 14-YEAR-OLD SISTER WHO WAS
8 THE SISTER OF THE DECEASED, AND THE STATEMENTS BY TWO FRIENDS
9 THAT HE HAD MENTIONED BEING INVOLVED.

10 A. AND ANOTHER GUY BY THE NAME OF SUTTON WHO TESTIFIED
11 -- WHOSE TESTIMONY WOULD HAVE BEEN THAT HE TOOK BRIAN TO THE
12 STORE.

13 Q. THIS WAS A CO-DEFENDANT.

14 A. AND LET HIM OUT AND THAT HE WENT UP THE ROAD AND
15 TURNED AROUND, TOOK A FEW MINUTES, AND WHEN HE CAME BACK DOWN
16 THE ROAD THAT HE JUMPED OUT OF THE BUSHES, GOT IN HIS CAR,
17 THAT HE HAD BLOOD ON HIM. HE HAD THE PISTOL AND HE SAID, I
18 HAD TO CAP THAT EXPLETIVE DELETE PERSON AND THEN HE THREW THE
19 GUN OUT THE WINDOW IN THE RIVER.

20 Q. WHEN YOU -- WHEN YOU PARTICIPATED IN THE GUILTY PLEA
21 THAT MR. DIGGS ENTERED BEFORE JUDGE SHORT, I BELIEVE YOU AND
22 MR. BANKS AND MR. DIGGS AND SOME OTHER PEOPLE WERE PRESENT IN
23 THE COURTROOM TO SPEAK FOR HIM. IS THAT RIGHT?

24 A. YES, SIR.

25 Q. DURING THE COURSE OF THE PLEA, JUDGE SHORT WENT

THROUGH A SERIES OF QUESTIONS WITH MR. DIGGS CONCERNING THE
CASE AND CONCERNING HIS RIGHTS AND KNOWLEDGE OF THE CASE. DO
YOU RECALL THAT?

A. YES, SIR.

Q. ARE YOU AWARE THAT NOWHERE IN THE TRANSCRIPT DOES
JUDGE SHORT AT ANY TIME GO OVER HIS RIGHT TO HAVE A JURY
TRIAL? STARTING ON PAGE 12 OF THE TRANSCRIPT AND RUNNING TO
PAGE 16, HE DOES SORT OF A LITANY OF VARIOUS THINGS WHICH ARE
ORDINARILY ASKED IN THESE CASES, BUT AT NO POINT IN TIME DID
HE MENTION A JURY TRIAL RIGHT. DO YOU RECALL HIM MENTIONING
A JURY?

A. I'VE NOT READ IT, SIR, MR. WRIGHT. SINCE THEN I'VE
NOT VISITED THAT CASE. WE WERE THERE CONSIDERING A TRIAL. I
HAD SPENT -- THAT WAS A HOLIDAY LEADING UP TO THE DAY THAT WE
ACTUALLY OPENED COURT. I THINK IT WAS EASTER AND I WENT TO
LANCASTER, GOT A MOTEL ROOM, SPENT MUCH OF THE EVENING IN THE
LANCASTER JAIL WITH HIM.

Q. DID YOU GET MR. DIGGS TO SIGN ANYTHING DURING YOUR
REPRESENTATION ACKNOWLEDGING THAT YOU HAD TOLD HIM ABOUT ANY
OF HIS CONSTITUTIONAL RIGHTS? DID YOU HAVE A FORM OR
ANYTHING THAT YOU USED?

A. NO, SIR, I DON'T HAVE A MIRANDA-TYPE FORM.

Q. OKAY.

A. I TOLD HIM ENOUGH TO GET HIM A C.L.E. CREDIT.

Q. ISN'T IT -- WELL, IN REVIEWING THE TRANSCRIPT I

JERRY SCREEN - DIRECT EXAM BY MR. WRIGHT

1 DON'T FIND ANY PLACE WHERE JUDGE SHORT TOLD HIM THAT HE
2 WAS -- HE HAD A RIGHT TO SUBPOENA WITNESSES. DO YOU REMEM
3 THE JUDGE TELLING HIM ANYTHING LIKE THAT?

4 A. MR. WRIGHT, I WAS LISTENING TO THE COURT BUT AT THE
5 SAME TIME CONTEMPLATING WHAT RECITATION THAT I COULD MAKE
6 HIM. I'LL TELL YOU THAT I BELIEVED IN MY HEART AND I BELIEVE
7 IT TODAY THAT SOLICITOR JUSTICE HAD THE WHEREWITHAL TO PUT
8 THAT YOUNG MAN SUCCESSFULLY IN THE ELECTRIC CHAIR AND THAT
9 HAD SPENT A REASONABLE AMOUNT OF TIME WITH JOHN AND HE TALK
10 WITH THE FAMILY TO NOT PRESS HIM INTO THE ELECTRIC CHAIR.
11 I WAS CONCERNED ABOUT MAKING STATEMENTS TO THE COURT ABOUT
12 BRIAN, HIS BACKGROUND. BRIAN HAD GONE THROUGH SOME DIFFICULT
13 TIMES WITH HIS MOTHER AND HIS GRANDMOTHER WHILE HE WAS LOCKED
14 UP. SO I HAD GONE -- I WAS CONCERNED. WHAT THE JUDGE SAID,
15 WHATEVER THAT TRANSCRIPT SAYS, I HAVE TO -- I HAVE TO RELY ON
16 IT TODAY.

17 Q. I GUESS MY POINT IS: IN SPITE OF THE FACT THAT
18 THERE WAS NO RECITATION AT THE PLEA CONCERNING HIS
19 CONSTITUTIONAL RIGHTS, YOU DIDN'T TELL THE JUDGE OR ASK THE
20 JUDGE TO EXPLAIN THAT TO HIM ON THE RECORD SO HE'D BE SURE HE
21 KNEW THAT HE HAD ALL THOSE RIGHTS AND THAT HE WAS WAIVING
22 THEM AND GIVING THEM UP BY PLEADING GUILTY TO MURDER AND
23 ATTEMPTED ARMED ROBBERY.

24 A. WHATEVER IS IN THAT RECORD, AS I SAY, I HAVE TO RELY
25 UPON IT, BUT I AM SATISFIED THAT MY CLIENT WAS FULLY AWARE OF

WHAT HE WAS DOING, WHY WE WERE DOING IT, THE WHOLE WORKS.

MR. WRIGHT: THANK YOU. THAT'S ALL.

THE COURT: GENERAL BULLARD?

CROSS-EXAMINATION

BY MR. BULLARD:

Q. MR. SCREEN, IN YOUR DISCUSSIONS WITH MR. DIGGS, YOU DID TELL HIM THAT WE COULD GO TO TRIAL; RIGHT?

A. ABSOLUTELY.

Q. AND Y'ALL HAD DISCUSSIONS ABOUT THE JURY TRIAL AND HOW IT WORKED.

A. (WITNESS NODDED HEAD UP AND DOWN.)

Q. AND YOU TALKED ABOUT POTENTIALLY SUPPRESSING THE STATEMENT THAT HE HAD MADE?

A. YES.

Q. AND THAT YOU WOULD BE ABLE TO QUESTION WITNESSES IF YOU WENT TO TRIAL?

A. YES. I WALKED HIM THROUGH THE TRIAL AND THE -- THE IMPORTANT STEPS OF TRIAL, THE CONSIDERATIONS FOR THOSE STEPS. I WENT TO SEE BRIAN PRETTY FREQUENTLY. I SPENT A GOOD BIT OF TIME WITH HIM IN THE LANCASTER JAIL. I VISITED HIM A NUMBER OF TIMES, AND WHEN I WAS THERE I SPENT A GOOD BIT OF TIME TALKING TO HIM ABOUT IT, ABOUT WHAT HAPPENED, WHAT HIS CONSTITUTIONAL RIGHTS WERE, AND DOING SOME DEGREE OF PROGNOSTICATION. LIKE I SAID, IT STARTED OFF JUST A REGULAR MURDER CASE AND THEN IT FLIPPED ON US UP TO A DEATH PENALTY.

1 SO I HAD TO GO BACK AND TAKE HIM THROUGH A LOT OF OTHER
2 STUFF.

3 Q. BUT AGAIN YOUR TESTIMONY IS YOU HAVE NO QUESTION
4 THAT HE UNDERSTOOD WHAT WAS GOING ON?

5 A. I HAVE ABSOLUTELY NONE.

6 MR. BULLARD: I DON'T HAVE ANY FURTHER QUESTIONS,
7 YOUR HONOR.

8 THE COURT: THANK YOU. ANYTHING ON REDIRECT?
9

REDIRECT EXAMINATION

10 BY MR. WRIGHT:

11 Q. AS PART OF THE PREPARATION FOR THIS CASE, MR. DIGG
12 WAS EVALUATED BY A PSYCHIATRIST, WAS HE NOT, FOR PURPOSES C
13 CAPACITY TO STAND TRIAL?

14 A. I BELIEVE SO.

15 Q. AND THE CONCLUSION OF THAT PSYCHIATRIST WAS THAT HI
16 WAS A FUNCTIONAL ILLITERATE; IS THAT CORRECT?

17 A. I HAVEN'T SEEN IT IN AWHILE, BUT IF YOU SAY THAT'S
18 WHAT IT SAYS, I'LL HAVE TO ACCEPT IT.

19 Q. SO -- SO GIVEN THE FACT THAT HE WAS A FUNCTIONING -
20 FUNCTIONAL ILLITERATE, DID THAT WEIGH ANYTHING ON YOUR
21 DECISION TO -- ON HOW YOU ADVISED HIM OR HOW YOU PROGRESSED
22 WITH HIM?

23 A. WELL, YOU'RE TALKING ABOUT A -- SOMEBODY TESTING AS
24 FUNCTIONALLY ILLITERATE. BRIAN'S RESPONSES TO ME WERE
25 APPROPRIATE. THEY WERE SNAPPY. IN FACT, HE HAD MORE MOUTH

SOMETIMES THAN HE SHOULD HAVE HAD WHEN I WAS TALKING TO HIM.
SO TO GET DIRECTLY RIGHT DOWN TO THE NUTS AND BOLTS, I DON'T
KNOW THAT BRIAN -- I BELIEVE THAT BRIAN DIGGS HAD THE
CAPACITY - NOTWITHSTANDING ANY EVALUATION - TO UNDERSTAND ME,
TO RESPOND TO ME, TO ASSIST IN HIS DECISION-MAKING PROCESS AT
TRIAL AND ALL OF THAT. AND SO NOTWITHSTANDING ANYTHING THOSE
PSYCHIATRISTS SAID, I THOUGHT HE WAS RIGHT ON.

MR. WRIGHT: THANK YOU. THAT'S ALL.

THE COURT: THANK YOU. YOU MAY STEP DOWN, MR.

SCREEN.

MR. WRIGHT: YOUR HONOR, I CALL THE APPLICANT, MR.

DIGGS.

THE COURT: MR. DIGGS, IF YOU'D COME FORWARD AND BE
SWORN, PLEASE, SIR. PLACE YOUR LEFT HAND ON THE BIBLE AND
RAISE YOUR RIGHT HAND.

BRIAN A. DIGGS, AFTER BEING DULY SWORN,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q. MR. DIGGS, TELL US YOUR NAME.

A. MY NAME IS BRIAN DIGGS.

Q. YOU'RE GOING TO HAVE SPEAK UP SO THIS LADY CAN HEAR
YOU AND I CAN HEAR YOU, TOO.

A. OKAY.

Q. WHERE ARE YOU PRESENTLY INCARCERATED?

1 A. EVANS CORRECTIONAL INSTITUTION.

2 Q. YOU'VE KIND OF BEEN MOVED AROUND FROM PLACE TO
3 PLACE, HAVE YOU NOT?

4 A. YES, SIR.

5 Q. I TRIED TO SEE YOU LAST YEAR AND THEY MOVED YOU
6 BEFORE I GOT THERE.

7 A. YES, SIR.

8 Q. ALL RIGHT. BRIAN, WHEN YOU WERE ARRESTED FOR THIS
9 CRIME SOME I THINK THREE YEARS AFTER IT OCCURRED, WERE YOU
10 TAKEN INTO CUSTODY BY THE AUTHORITIES AND QUESTIONED?

11 A. YES, SIR.

12 Q. AND DURING THAT QUESTIONING DID YOU MAKE A
13 STATEMENT?

14 A. YES, SIR.

15 Q. WHY DID YOU MAKE THAT STATEMENT?

16 A. I WAS COERCED. THERE WAS PHYSICAL FORCE USED
17 AGAINST ME DURING THE ARREST.

18 Q. WHAT DID THEY DO TO COERCE YOU TO MAKE YOU TESTIFY?

19 A. THEY THREATENED ME.

20 Q. WITH WHAT?

21 A. WITH ASSAULT. THEY ASSAULTED ME AT ONE POINT AND
22 HANDCUFFED -- YOU KNOW, BELLY CHAINS AND SHACKLES AND THEY
23 WERE DRIVING ALL OVER THE STATE WITH ME. FROM DIFFERENT
24 COUNTIES THEY DREW -- THEY RODE THROUGH THE SCENE OF THE
25 CRIME AND FINALLY TOOK ME TO THE---

Q. THEY TOOK YOU---

A. ---FROM THE SCENE OF THE CRIME TO LANCASTER COUNTY.

Q. THEY TOOK YOU TO THE SCENE OF THE CRIME?

A. YEAH.

Q. ACTUALLY BACK TO THE STORE OR---

A. THEY WENT BY THE STORE.

Q. ALL RIGHT. AND DID YOU TELL MR. SCREEN AND THE
EARLIER ATTORNEY ABOUT THAT ACTIVITY?

A. YEAH, I EXPLAINED TO THEM THAT THE STATEMENT WAS
COERCED AND THAT...

Q. DID THEY EVER ADVISE YOU YOU HAD A RIGHT TO
CHALLENGE THE VOLUNTARINESS OF THAT STATEMENT?

A. YEAH, HE TOLD ME THAT I HAD A RIGHT TO CHALLENGE IT.

Q. HE TOLD YOU YOU HAD A RIGHT TO CHALLENGE IT.

A. UH-HUH.

Q. AND WHAT DID YOU TELL HIM ABOUT THAT?

A. WELL, I TOLD HIM THAT THE STATEMENT WASN'T -- IT WAS
COERCED AND THAT I WANT TO CHALLENGE IT BECAUSE I NEVER SAID
ANY OF THOSE THINGS THAT WERE IN THE STATEMENT.

Q. AND DID YOU WANT TO CHALLENGE THE STATEMENT?

A. YES, I DID.

Q. AND SO WHY DID YOU PLEAD GUILTY AND IN EFFECT GIVE
UP THE RIGHT TO DO THAT?

A. WELL, I DIDN'T UNDERSTAND AT THAT PARTICULAR TIME
THAT THAT WAS WHAT I WAS DOING.

1 Q. YOU DIDN'T UNDERSTAND THAT BY PLEADING GUILTY---

2 A. YEAH, I DIDN'T UNDERSTAND.

3 Q. ---YOU GAVE UP THAT RIGHT?

4 A. YEAH. I DIDN'T UNDERSTAND I WAS GIVING UP THAT
5 RIGHT TO...

6 Q. WHEN YOU WENT BEFORE JUDGE SHORT FOR THE PLEA---

7 A. UH-HUH.

8 Q. ---DO YOU RECALL THE JUDGE GOING OVER A LIST OF YOUR
9 RIGHTS WITH YOU?

10 A. YES, I RECALL SOME OF THEM.

11 Q. DID HE TELL YOU YOU HAD A RIGHT TO A TRIAL BY JURY

12 A. NO, HE DIDN'T.

13 Q. DID HE TELL YOU YOU HAD A RIGHT TO CONFRONT
14 WITNESSES?

15 A. NO, HE DIDN'T.

16 Q. SUBPOENA WITNESSES?

17 A. NO.

18 Q. THE RIGHT TO CHALLENGE THE VOLUNTARINESS OF THAT
19 STATEMENT?

20 A. NO, HE DIDN'T TELL ME.

21 Q. SO AT THE PLEA NONE OF THAT WAS COVERED.

22 A. NO.

23 Q. AND WHAT -- MR. SCREEN TESTIFIED THAT WHEN HE TOOK
24 THIS CASE IT STARTED OUT AS A REGULAR JUST ORDINARY MURDER
25 CASE WITH A LIFE PENALTY, BUT DURING THE COURSE OF THE CASE

BECAUSE OF THE DECISION THAT I BELIEVE IS THE HUMPHRIES CASE
THIS BECAME A CAPITAL MURDER CASE POTENTIALLY.

A. YEAH.

Q. WHAT EFFECT DID THAT HAVE ON YOU DECIDING WHETHER TO
PLEAD GUILTY OR NOT?

A. IT HAD A BIG EFFECT BECAUSE I SAT IN THE COUNTY JAIL
FOR THREE YEARS AND FOUR MONTHS APPROXIMATELY, AND DURING
THAT TIME MY MOTHER HAD DIED. ALL MY IMMEDIATE FAMILY HAD
DIED, SO HE WAS MY ONLY SUPPORT. HE WAS MY ONLY INFLUENCE.
YOU KNOW, I WAS -- AT THAT POINT I WAS DIRECTLY UNDER HIS
INFLUENCE, DIRECTLY UNDER ANYTHING THAT HE---

Q. HOW CLOSE---

A. ---SUGGESTED I MADE---

Q. HOW CLOSE IN TIME TO THE PLEA DID YOUR MOTHER DIE?

A. SHE DIED IN SEPTEMBER OF 1997 AND THE PLEA WAS IN
APRIL.

Q. ALL RIGHT.

A. SO MAYBE ABOUT SIX OR SEVEN MONTHS.

Q. AND WHEN YOU -- SO WAS -- DO YOU REMEMBER WHAT
ADVICE YOUR ATTORNEY GAVE YOU ABOUT THE POSSIBILITY THAT THE
STATE COULD GO FOR THE DEATH PENALTY?

A. AS I RECALL, BASICALLY WHAT HE TOLD ME WAS THIS:
THAT I DON'T WANT YOUR BLOOD ON MY HANDS. YOU KNOW, HE NEVER
REALLY -- HE NEVER REALLY PRESENTED ME ANY DEFENSES. I CAN'T
REMEMBER NOT EVEN ONE DEFENSE HE WENT OVER WITH ME

1 SPECIFICALLY. I NEVER EVEN TOLD HIM ANY OF THOSE THINGS
2 THE STATEMENT. I NEVER EVEN TOLD HIM I COMMITTED THE CRIME
3 HE JUST USED ME -- USED THE STATEMENTS AND ALL THE
4 POLICE RECORDS AND NOTES TO ASSUME THAT THIS WAS WHAT I'M
5 SAYING, BUT I NEVER TOLD HIM NOR MR. BANKS THAT I COMMITTED
6 THIS CRIME. HE JUST -- YOU JUST -- HE JUST BROUGHT ME WHAT
7 JOHN JUSTICE SAID: HERE'S A DEAL. HERE'S A DEAL. HERE'S
8 A DEAL. THIS IS WHAT WE WANT TO DO. BUT I NEVER -- BUT I
9 INSISTED ON GOING TO TRIAL. I INSISTED ON GOING TO TRIAL,
10 BUT AT THAT PARTICULAR TIME I WASN'T FOR SURE ALL THE RIGHTS
11 I WAS WAIVING BY PLEADING GUILTY.

12 SO I CONTINUED TO INSIST ON GOING TO TRIAL, BUT IF
13 NOT FOR -- IF NOT FOR HIS ADVICE, YOU KNOW, I WOULD HAVE WENT
14 TO TRIAL BECAUSE I WAS UNDER THE IMPRESSION THAT I WAS
15 RECEIVING A 30-YEAR SENTENCE. YOU KNOW, I'D BE ELIGIBLE FOR
16 A REDUCTION DURING THE COURSE OF THAT SENTENCE, AND THIS WAS
17 WHAT -- HOW IT WAS EXPLAINED TO ME BY HIM AND MR. BANKS. YOU
18 KNOW, SO THIS WAS SOMETHING TO INFLUENCE OR SWAY AND I WAS
19 NOT -- REALLY, THE FACT OF THE DEATH PENALTY WASN'T REALLY
20 THE REASON WHY I PLED GUILTY, BUT IT WAS MORE SO MY
21 ATTORNEY'S ADVICE AS TO HOW HE EXPLAINED TO ME THAT, YOU
22 KNOW, THIS IS THE TYPE OF SENTENCE YOU'RE GOING TO GET AND
23 THIS -- WE GOT A DEAL. LET'S TAKE THIS DEAL BEFORE THEY TAKE
24 IT BACK.

25 Q. LET ME ASK YOU: DID YOU -- WERE YOU AWARE THAT THEY

1 HAD -- THE STATE HAD SOME EVIDENCE CONCERNING A PALM PRINT
2 FOUND AT THE SCENE---

3 A. YES, SIR.

4 Q. ---THAT THEY CLAIMED MATCHED YOUR PALM PRINT?

5 A. YES, AND I WANTED TO CHALLENGE THAT, BUT MY ATTORNEY
6 NEVER MADE ANY EFFORTS TO DISCUSS THE ISSUE. AS A MATTER OF
7 FACT, I NEVER RECALL HIM EVEN WANTING TO DEAL WITH THAT.

8 Q. YOU DON'T REMEMBER TALKING WITH HIM ABOUT GETTING
9 SOMEBODY---

0 A. NO.

1 Q. ---TO INVESTIGATE THAT---

2 A. NO.

3 Q. ---TO SEE IF THE PALM PRINT REALLY DID MATCH---

4 A. HUH-UH.

5 Q. ---GETTING ANOTHER EXPERT OR ANYTHING---

6 A. NO, SIR.

7 Q. ---LIKE THAT?

8 A. NO, SIR.

9 Q. DO YOU THINK THEY SHOULD HAVE DONE THAT?

0 A. YES, SIR.

1 Q. SINCE YOU'VE BEEN INCARCERATED, YOU'VE DONE SOME
2 RESEARCH I BELIEVE CONCERNING THE SOUTH CAROLINA
3 CONSTITUTION.

4 A. YES, SIR.

5 Q. ARTICLE 12, SECTION 2.

1 A. YES, SIR.

2 Q. THAT RELATES TO REHABILITATION.

3 A. YES, SIR.

4 Q. AND IS THAT AN ISSUE THAT YOU WANTED TO RAISE AS
5 PART OF THIS PROCEEDING TODAY?

6 A. THAT, TOO, SIR. YES, THE SENTENCE THAT MY ATTORNE
7 TOLD ME I WAS PLEADING TO, HE SAID I WOULD BE ABLE TO BE
8 PROVIDED REHABILITATION. AND THE TYPE SENTENCE THAT I HAVE
9 UNDER 16-3-20, IF THAT'S CORRECT, IT DOESN'T ALLOW ME ACCES
10 TO ANY TYPE OF PROGRAMS BUT---

11 Q. WHAT TYPE OF PROGRAMS?

12 A. I'M NOT ELIGIBLE FOR FURLOUGH. I'M NOT ELIGIBLE F
13 WORK CREDITS, EDUCATION CREDITS. YOU KNOW, I'M -- YOU KNOW
14 I'M STRICTLY -- I HAVE TO DO A 30-YEAR SENTENCE BEFORE I'M
15 ELIGIBLE FOR ANY TYPE OF WORK RELEASE. I CAN'T ADVANCE IN
16 CUSTODY. YOU KNOW, I'M AT MY HIGHEST CUSTODY NOW.
17 REGARDLESS OF THAT, I'VE BEEN DISMERITED THREE TIMES THE
18 ENTIRE TIME I'VE BEEN IN PRISON. YOU KNOW...

19 Q. SO YOUR LIFE SENTENCE THAT YOU RECEIVED---

20 A. YES, SIR.

21 Q. ---HAD A 30-YEAR MANDATORY SERVICE---

22 A. YES, SIR.

23 Q. ---BEFORE YOU'RE PAROLE-ELIGIBLE. AND I BELIEVE YC
24 WERE GIVEN A 10-YEAR CONSECUTIVE SENTENCE ON THE ARMED
25 ROBBERY.

A. YEAH, I WAS GIVEN A 10-YEAR CONSECUTIVE SENTENCE.

Q. WHAT OTHER BASIS OR REASON DO YOU WANT TO PUT BEFORE THE COURT TODAY RELATED TO MR. SCREEN AND MR. BANKS' REPRESENTATION?

A. THERE WAS THE ISSUE OF THE HUMPHRIES AND HOW MY CRIME IN RELATION TO HUMPHRIES, THE DECISION WAS MADE AFTER, YOU KNOW---

Q. BY HUMPHRIES YOU'RE TALKING ABOUT---

A. YES, SIR.

Q. ---YOU'RE TALKING ABOUT THE SUPREME COURT CASE---

A. THE SUPREME COURT DECISION.

Q. ---IN THIS STATE THAT DECIDED THAT THE DEATH PENALTY---

A. THEY DECIDED TO SEEK THE DEATH PENALTY---

COURT REPORTER: I CAN'T TAKE BOTH OF YOU AT THE SAME TIME.

BY MR. WRIGHT:

Q. LET ME ASK A QUESTION AND THEN YOU ANSWER; OKAY? BY REFERRING TO HUMPHRIES---

A. YES, SIR.

Q. ---YOU MEAN THE STATE SUPREME COURT CASE THAT DECIDED THAT ATTEMPTED ARMED ROBBERY IS AN AGGRAVATING CIRCUMSTANCE UNDER THE MURDER STATUTE.

A. YEAH.

Q. ALL RIGHT. NOW, TELL ME -- TELL ME HOW THAT

1 IMPACTED THEIR REPRESENTATION AND YOUR BEING HERE TODAY.

2 A. WELL, INITIALLY -- YOU KNOW, I HAD ASKED MY ATTORNI
3 WHEN I FIRST HIRED HIM TO -- MOST OF ALL FOR A FAST AND
4 SPEEDY TRIAL IN ORDER TO BEAT THAT HUMPHRIES CASE BEFORE IT
5 WENT TO THE SUPREME COURT SO I COULD GET MY -- YOU KNOW, GI
6 MY CASE IN COURT BEFORE THE DECISION WAS MADE, BUT HE FAILE
7 TO DO THAT. SO THE HUMPHRIES CASE CAME AND I BELIEVE IT WA
8 '96 AND THAT'S WHEN THEY DECIDED TO SEEK THE DEATH PENALTY,
9 BUT PRIOR TO THAT MINE WASN'T ELIGIBLE FOR THE DEATH PENALTI
10 UNTIL AFTER -- AFTER HUMPHRIES.

11 Q. SO YOU'RE SAYING THAT YOU WANTED YOUR ATTORNEYS TO
12 GET YOU A SPEEDY TRIAL---

13 A. YEAH.

14 Q. ---SO YOU COULD HAVE YOUR CASE HEARD BEFORE
15 HUMPHRIES WAS DECIDED.

16 A. YES, SIR.

17 Q. AND, THEREFORE, THAT STATUTE---

18 A. YEAH, BEFORE THAT DEATH PENALTY CAME IN EFFECT.

19 Q. GOT TO LET ME FINISH ASKING THE QUESTION.

20 A. EXCUSE ME.

21 Q. YOU WANTED TO HURRY UP AND GET A TRIAL SO YOU COUL
22 BEAT THAT CASE COMING THROUGH.

23 A. YES.

24 Q. AND YOU THOUGHT THAT WOULD PREVENT YOU FROM HAVING
25 TO USE THAT AS AN AGGRAVATING CIRCUMSTANCE.

1 A. YES.

2 Q. ANYTHING ELSE?

3 A. NOT AT THIS MOMENT. NOT AT THIS MOMENT.

4 Q. THIS IS THE ONLY P.C.R. YOU'RE GOING TO GET.

5 A. YES. WELL, IS IT POSSIBLE FOR ME TO GET MY NOTES?

6 MR. WRIGHT: MAY I HAND THIS UP, YOUR HONOR?

7 THE COURT: YES, SIR.

8 THE WITNESS: WITH REFERENCE TO MY LAWYER LEON
9 BANKS, HE PROVIDED A LOT OF INEFFECTIVE ADVICE TO ME THAT
0 ALSO ADDED TO INFLUENCING ME TO PLEAD GUILTY. NONE OF THE
1 RIGHTS WERE EXPLAINED TO ME. NONE OF THE RIGHTS WERE
2 EXPLAINED TO ME BEFORE I -- I MADE AN ON-THE-SPOT DECISION.
3 I WAS INSISTENT ON GOING TO TRIAL UNTIL MY ATTORNEYS, SCREEN
4 AND BANKS, SEEN OTHERWISE. YOU KNOW, THEY USED DIFFERENT
5 PSYCHOLOGICAL TACTICS. FOR INSTANCE, MY ATTORNEY -- WHEN I
6 TOLD HIM I WANTED TO GO TO TRIAL AND I WASN'T GOING TO SIGN
7 THE INDICTMENT, HE BARGED OUT OF THE ROOM. HE BARGED OUT OF
8 THE ROOM.

19 BY MR. WRIGHT:

20 Q. WHO?

21 A. BANKS. HE BARGED OUT OF THE ROOM AND I WAS LEFT
22 THERE WITH SCREEN AND SCREEN JUST SAT BACK IN HIS CHAIR AND
23 THEY GAVE ME THE IMPRESSION AS IF HE WOULD ABANDON ME IF I
24 DECIDED TO TAKE A TRIAL. SO I WAS NEVER TOLD THAT IF I
25 DECIDED TO GO TO TRIAL THAT THEY WOULD ABANDON ME. THEY

1 WOULD LEAVE ME AT THE MERCY OF THE STATE TO BE EXECUTED.

2 SO THIS IS ANOTHER REASON THAT I WANTED THE RECORD
3 TO ESTABLISH THAT MY ATTORNEY BANKS, YOU KNOW, ALONG WITH A
4 SCREEN, YOU KNOW, THEY USED DIFFERENT TACTICS TO COERCE ME
5 INTO ACCEPTING THIS PLEA BECAUSE THEY WERE THE ONLY
6 PERSONS -- AS A MATTER OF FACT, THEY HAD TOLD MY -- I HAD
7 GAVE THEM THE PHONE NUMBERS -- THE LIST OF MY PHONE NUMBERS
8 TO THEM TO CONTACT MY FAMILY, THE DAY BEFORE THE PLEA TO
9 CONTACT, BUT IF YOU LOOK AT THE RECORD YOU'LL SEE THAT MY
10 FAMILY DIDN'T COME TO THE -- THEY ONLY CAME TO THE
11 SENTENCING. THEY DIDN'T HAVE A CHANCE TO COME TO THE PLEA
12 BECAUSE MY ATTORNEYS NEVER CALLED THEM. I DIDN'T HAVE A
13 CHANCE TO EVEN CONFRONT MY FAMILY TO ASK THEM WHAT SHOULD I
14 DO. SO THAT'S SOMETHING I WOULD LIKE THE RECORD TO REFLECT

15 YOU KNOW, MY MOTHER HAD DIED ALSO, SO I COULDN'T -
16 YOU KNOW, MY ATTORNEY DIDN'T MAKE ARRANGEMENTS FOR ME TO GO
17 TO THE FUNERAL EVEN AFTER I HAD ASKED HIM. THERE'S A NUMBER
18 OF OTHER THINGS THAT OCCURRED, BUT HE NEVER REALLY SPENT TIME
19 WITH ME LIKE HE HAD SAID HE DID. YOU KNOW, HE JUST ONLY
20 RELAYED TO ME WHAT THE D.A. WAS SAYING. HE NEVER PREPARED
21 ANY DEFENSES FOR ME.

22 YOU KNOW, IT'S MY UNDERSTANDING I THINK MR. BANKS -
23 HE WAS DISBARRED; CORRECT? YOU KNOW, AT THIS PARTICULAR TIME
24 -- AT THAT PARTICULAR TIME, YOU KNOW, THAT MR. BANKS WAS
25 INVOLVED WITH A CRIMINAL ACTIVITY, YOU KNOW, IN '97 OR '98..

I GOT THE SUPREME COURT, IF I COULD -- JUDGE?

THE COURT: YES, SIR.

THE WITNESS: THIS IS THE CASE THAT I WANTED TO
PRESENT AS AN EXHIBIT.

THE COURT: HAVE YOU PROVIDED YOUR ATTORNEY WITH A
COPY OF THIS CASE?

THE WITNESS: YES, SIR, HE HAS A COPY.

THE COURT: I'VE BEEN HANDED -- EXCUSE ME. IN THE
MATTER OF LEON C. BANKS AS 344 SOUTH CAROLINA 17 FROM THE
SUPREME COURT DATED JANUARY --- EXCUSE ME, FEBRUARY 12TH OF
2001.

BY MR. WRIGHT:

Q. ANY OTHER BASIS, MR. DIGGS?

A. AT THIS MOMENT, NO, SIR.

MR. WRIGHT: THANK YOU. ANSWER ANY QUESTIONS THAT
MR. BULLARD HAS.

THE COURT: GENERAL BULLARD?

CROSS-EXAMINATION

BY MR. BULLARD:

Q. MR. DIGGS, DID YOU SAY THAT YOU DIDN'T UNDERSTAND
THAT YOU WERE PLEADING GUILTY THE DAY THAT YOU PLED GUILTY?

A. NO, I DIDN'T UNDERSTAND THE NATURE OF THE RIGHTS I'D
BE WAIVING.

Q. DID YOU UNDERSTAND THAT YOU WERE THERE FOR A GUILTY
PLEA?

1 A. I UNDERSTOOD THAT I WAS PLEADING GUILTY.

2 Q. OKAY. AND YOU UNDERSTOOD THAT YOU WERE GOING TO
3 RECEIVE A SENTENCE---

4 A. YEAH---

5 Q. AT THE CONCLUSION---

6 A. ---THAT I WAS GOING TO RECEIVE A SENTENCE, YES.

7 Q. OKAY. DID YOU SAY THAT YOU WANTED YOUR ATTORNEYS
8 TRY AND MOVE YOUR CASE ALONG FASTER BEFORE THE HUMPHRIES
9 DECISION WAS BROUGHT OUT OR CAME OUT?

10 A. DID I SAY THAT I WANTED---

11 Q. IS THAT WHAT YOU WERE JUST---

12 A. THAT'S SOMETHING I ASKED MY ATTORNEY TO DO.

13 Q. YOU HAD ASKED HIM ABOUT THAT?

14 A. YES, SIR.

15 Q. SPECIFICALLY ABOUT THE HUMPHRIES CASE?

16 A. HE HAD TOLD ME THAT WAS THE SITUATION, THAT THEY
17 WERE WAITING FOR A SUPREME COURT RULING TO COME DOWN TO SEE
18 WHETHER OR NOT THEY COULD SEEK THE DEATH PENALTY AGAINST ME,
19 AND I TOLD 'EM I DIDN'T WANT TO WAIT ON A DECISION.

20 Q. WHAT DID YOUR ATTORNEYS TELL YOU---

21 A. WELL, HE---

22 Q. ---ABOUT THAT?

23 A. HE NEVER EVEN -- HE NEVER EVEN TOLD ME NOTHING. YO
24 KNOW, I DIDN'T -- HE DIDN'T EXPLAIN NOTHING TO ME ABOUT THE
25 TRIAL OR WHAT I COULD DO. HE JUST GLOSSED OVER IT AND SAID

THIS IS -- THIS IS WHAT WE'RE GOING TO DO IN ORDER TO SAVE YOUR LIFE.

Q. I WAS ASKING SPECIFICALLY ABOUT THE ISSUE ABOUT THE HUMPHRIES CASE. DID YOUR ATTORNEYS MAKE ANY COMMENT ABOUT THAT WHEN YOU ASKED THEM TO TRY AND MOVE YOUR CASE ALONG FASTER?

A. EXCUSE ME?

Q. WHEN YOU TALKED TO YOUR ATTORNEYS ABOUT THE HUMPHREY (SIC) CASE---

A. UH-HUH.

Q. ---HUMPHRIES -- DID THEY MAKE ANY COMMENT TO YOU AFTER YOU TOLD THEM YOU WANTED TO TRY AND MOVE THE CASE ALONG FASTER?

A. DID THEY MAKE ANY COMMENTS TO ME? NO, THEY JUST -- THEY NEVER MADE ANY COMMENTS TO ME SAYING THAT THEY WANTED TO...

Q. SO IS IT MY -- IS IT YOUR TESTIMONY THAT YOUR ATTORNEYS DIDN'T DISCUSS ANY OF YOUR JURY TRIAL RIGHTS WITH YOU?

A. NO, THEY DIDN'T DISCUSS THEM IN DETAIL. THEY JUST GLOSSED OVER THEM.

Q. WHEN YOU SAY THEY GLOSSED OVER THEM, WHAT DO YOU MEAN?

A. WELL, HE NEVER TOLD ME THAT I WOULD BE -- THAT I COULDN'T CHALLENGE ANY OF THE EVIDENCE. I NEVER HAD THE

1 OPPORTUNITY TO CHALLENGE ANY OF THE EVIDENCE OR CHALLENGE
2 BRING WITNESSES OR TO BRING OR TO -- OR TO CHALLENGE THE
3 STATEMENT ON -- FULLY CHALLENGE THE FULLNESS OF THE
4 STATEMENT, TO BRING ALL MY EVIDENCE TO CHALLENGE THE
5 STATEMENT, TO BRING ALL THE PEOPLE I NEED TO SAY THAT I WA
6 COERCED AND THAT INFORMATION WAS DISTORTED. HE NEVER DID
7 OF THOSE THINGS.

8 Q. BUT YOU DID SAY THAT YOU TESTIFIED -- I MEAN, YOU
9 TOLD THEM -- YOU TOLD YOUR ATTORNEYS THAT YOU HAD BEEN
10 THREATENED WITH BEING BEATEN---

11 A. YEAH.

12 Q. ---OR WHAT HAVE YOU TO GET YOU TO GIVE THEM A
13 STATEMENT; RIGHT?

14 A. UH-HUH.

15 Q. YOU TOLD THEM THAT.

16 A. YEAH, I TOLD THEM I WAS THREATENED.

17 Q. AND THEY DIDN'T COMMENT ON THAT AT ALL WITH YOU?

18 A. HE WAS LIKE: THAT'S COOL. WE'RE GOING TO WORRY
19 ABOUT THAT LATER. RIGHT NOW WE'RE GOING TO WAIT ON HUMPHRIE
20 AND SEE WHAT THE HUMPHRIES CASE -- THIS WAS THE MAIN THEME
21 WITH MR. SCREEN, YOU KNOW, AND MR. BANKS BROUGHT ABOUT.
22 WE'RE GOING TO WAIT ON HUMPHRIES AND SEE WHAT HUMPHRIES DO.
23 THEN WE'LL GO FROM THERE, YOU KNOW, AND -- BUT OTHER THAN
24 THAT, I CAN'T REMEMBER ANY DEFENSES THAT HE PREPARED FOR ME.

25 Q. AFTER---

A. HE NEVER EVEN---

Q. GO AHEAD.

A. NO, GO ON, PLEASE.

Q. AFTER HUMPHRIES WAS DECIDED, DID YOU ASK HIM ABOUT
THESE ISSUES AGAIN?

A. AFTER HUMPHRIES WAS DECIDED?

Q. (MR. BULLARD NODDED HIS HEAD UP AND DOWN.)

A. AT THAT PARTICULAR POINT I CAN SAY THIS: THAT MY
MOTHER HAD DIED. YOU KNOW, MY MOTHER HAD TERMINAL -- SHE WAS
DIAGNOSED WITH TERMINAL CANCER AND I WAS BEING SENT BACK AND
FORTH TO THE EVALUATION CENTER BECAUSE I WAS HAVING SOME
MENTAL -- MENTAL PROBLEMS, AND DURING THAT TIME I JUST
COULDN'T REALLY COMMUNICATE OR UNDERSTAND DIFFERENT THINGS.
IT'S JUST LIKE MY MIND WOULD SLIP AWAY FROM ME AT TIMES. I
JUST COULDN'T -- I COULDN'T FUNCTION AT THE LEVEL WHERE I WAS
USED TO FUNCTIONING AT AFTER THEY DECIDED -- YOU KNOW, MY
MOTHER DIED FROM CANCER AND THEY DECIDED TO SEEK THE DEATH
PENALTY AND, YOU KNOW, I JUST HAD A REAL -- A SLIGHT NERVOUS
BREAKDOWN.

Q. SO WOULD IT BE FAIR TO SAY THAT YOU DIDN'T REALLY
ADDRESS THOSE ISSUES WITH HIM AFTER HUMPHRIES WAS DECIDED?

A. I REALLY DIDN'T KNOW WHAT TO ADDRESS, TO BE HONEST
WITH YOU.

Q. WHEN YOU -- YOU SAID THAT PRIOR TO HUMPHRIES MR.
SCREEN JUST SAID: WE'LL DEAL WITH THAT LATER AFTER

1 HUMPHRIES?

2 A. YEAH.

3 Q. NOW, OF THOSE ISSUES HE TOLD YOU ABOUT WHEN HE SA
4 WE'LL DEAL WITH THAT LATER AFTER HUMPHRIES, DID YOU EVER
5 ADDRESS THOSE AGAIN WITH HIM AFTER HUMPHRIES CAME OUT?

6 A. NO, I DIDN'T. I DIDN'T REALLY ADDRESS THEM LIKE
7 SHOULD. I TRIED, BUT I JUST COULDN'T GET NO -- I COULDN'T
8 GET NOTHING OUT OF HIM THAT WOULD -- THAT WOULD SATISFY ME.

9 MR. BULLARD: I DON'T HAVE ANY FURTHER QUESTIONS,
10 YOUR HONOR.

11 THE COURT: THANK YOU. ANY REDIRECT?

12 MR. WRIGHT: COME DOWN. THAT'S ALL FOR THE
13 APPLICANT.

14 THE COURT: THANK YOU. STATE?

15 MR. BULLARD: YES, SIR. WE WOULD RECALL MR. SCREEN

16 THE COURT: MR. SCREEN, YOU'RE STILL UNDER OATH.

17 JERRY M. SCREEN, HAVING BEEN PREVIOUSLY SWORN
18 AND REMAINING UNDER OATH, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. BULLARD:

21 Q. MR. SCREEN, DO YOU RECALL WHETHER OR NOT THE
22 HUMPHRIES CASE WAS A TOPIC OF DISCUSSION IN PREPARING MR.
23 DIGGS' DEFENSE?

24 A. IT WAS FOR A PART OF OUR DISCUSSIONS FOR AWHILE AND
25 THEN IT BECAME A LARGER PART OF THE DISCUSSIONS AFTER THE

SOLICITOR DECIDED TO SEEK THE DEATH PENALTY. I EXPLAINED TO BRIAN THAT WE DID NOT HAVE A SPEEDY TRIAL ACT, SO TO SPEAK, IN SOUTH CAROLINA. I THINK I MIGHT HAVE TALKED TO HIM ABOUT THE 180-DAY RULE OR SOMETHING LIKE THAT, BUT I TOLD HIM AS A PRACTICAL MATTER -- I RECALL TELLING HIM THAT -- THAT I HAD BEEN KNOWING JOHN JUSTICE A LONG TIME AND HE WAS AN EFFECTIVE SOLICITOR AND HE WOULDN'T LIKE TO DO ANYTHING WITH THAT CASE UNTIL A DECISION WAS MADE. BUT I SAID TO HIM THAT IS NOT ALL BAD BECAUSE IF THE COURT GOES THE OTHER WAY THEN WE'RE RIGHT BACK WHERE WE STARTED. SO IT DOESN'T NECESSARILY MEAN ALL -- WE'VE GOT A RULE SITUATION. WE'VE GOT NO CHOICE BUT TO SIT AND WAIT TO SEE WHAT THEY DO.

Q. DID THE PENDENCY OF THAT CASE AFFECT IN ANY WAY YOUR PREPARATION FOR TRIAL?

A. IT WAS GOING TO BE MURDER AND ATTEMPTED ROBBERY AND THE ELEMENTS AND THE EVIDENCE AND NONE OF THAT WAS NECESSARILY GOING TO CHANGE. PENALTIES COULD CERTAINLY GET HIGHER, BUT THE BASIC EVIDENCE WAS GOING TO BE ABOUT THE SAME. THE PREPARATION WOULD HAVE BEEN ALONG THE SAME LINES.

Q. DID YOU EVER TELL MR. DIGGS THAT IF HE TRIED TO GO TO TRIAL THAT YOU AND MR. BANKS WOULD ABANDON HIM?

A. NO, SIR. I TOLD HIM HE HAD AN ABSOLUTE CONSTITUTIONAL RIGHT TO A TRIAL BY A JURY AND THAT IF THE COURT, THE POLICE, NO ONE COULD TAKE THAT RIGHT AWAY FROM HIM. THAT WAS AN ABSOLUTE UNFETTERED RIGHT THAT HE HAD, THAT

1 EVEN IF I DID NOT AGREE WITH HIS EXERCISE OF IT, I WOULD
2 UNDER MY OATH PROFESSIONALLY ZEALOUSLY REPRESENT HIM.

3 I SAID TO BRIAN I'LL FIGHT THEM TILL THE LAST DOG
4 DIES, BUT IF I -- IF I FEEL A CERTAIN WAY AND DON'T EXPRES
5 THAT AS YOUR LAWYER, THEN I'M NOT DOING MY JOB EITHER. I'M
6 NOT IN THE BUSINESS OF TELLING CLIENTS WHAT THEY WANT TO
7 HEAR.

8 Q. DO YOU REMEMBER IF MR. DIGGS TOLD YOU THAT HE WAS
9 THREATENED WITH BEATINGS BY THE POLICE AND THAT -- IN ORDER
10 TO GET A STATEMENT OUT OF HIM?

11 A. I DON'T RECALL THAT, SIR. THE ONLY THING I RECALL
12 IS ABOUT THE THREATS AND SOME SCUFFLES AND SOME FIGHTS BRIAN
13 GOT INTO WHILE HE WAS IN JAIL AND HE SAID THAT THEY WERE NO
14 TREATING HIM THE BEST AND I THINK I TALKED TO THE JAILER AN
15 TO THE SHERIFF ABOUT BRIAN BECAUSE HE ALLEGED THEY WERE
16 HANDLING HIM DIFFERENTLY IN JAIL. THAT'S MY RECOLLECTION.

17 Q. WERE THOSE FIGHTS WITH OFFICERS OR WERE THEY WITH
18 OTHER---

19 A. WITH INMATES. IT WAS SOMETHING ABOUT DIFFERENCES
20 BUT MOSTLY WITH INMATES.

21 Q. AND IF YOU HAD GONE TO TRIAL, WOULD YOU HAVE
22 ATTEMPTED TO SUPPRESS HIS STATEMENT?

23 A. ABSOLUTELY. ABSOLUTELY. I EXPLAINED TO HIM THAT
24 THE -- IN A CRIMINAL TRIAL THERE'S TWO THINGS THAT'S VERY
25 DIFFICULT TO GET AWAY FROM AND THAT IS OBVIOUSLY AN

1 EYEWITNESS AND, SECONDLY, WHAT COMES OUT OF YOUR MOUTH, WHAT
2 YOU SAY. I TOLD HIM THOSE ARE DIFFICULT THINGS TO DODGE.

3 Q. AND DID -- DIDN'T HE HAVE BOTH OF THOSE THINGS GOING
4 AGAINST HIM IN THIS CASE?

5 A. THAT'S EXACTLY WHY I MADE THE STATEMENT THAT WE HAD
6 A FOOT IN BOTH CAMPS.

7 MR. BULLARD: THAT'S ALL THE QUESTIONS I HAVE, YOUR
8 HONOR.

9 THE COURT: THANK YOU. ANYTHING ADDITIONALLY, MR.
0 WRIGHT?

1 MR. WRIGHT: NO, SIR. THAT'S ALL, YOUR HONOR.

2 THE COURT: THANK YOU. YOU MAY STEP DOWN, MR.
3 SCREEN -- SCREEN.

4 MR. BULLARD: NO FURTHER WITNESSES FROM THE STATE,
5 YOUR HONOR.

6 THE COURT: ALL RIGHT. THANK YOU. I'LL TAKE THIS
7 MATTER UNDER ADVISEMENT AND I'LL RULE BY THE END OF THE WEEK.

8 MR. WRIGHT: THANK YOU, YOUR HONOR.

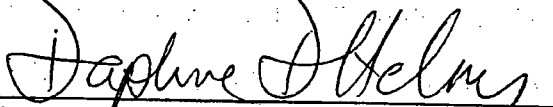
9 THE COURT: THANK YOU.

10 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)
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I, THE UNDERSIGNED DAPHNE D. HELMS, OFFICIAL COURT REPORTER FOR THE ELEVENTH 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 AT THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, THE CIRCUIT COURT FOR LANCASTER COUNTY, SOUTH CAROLINA ON THE 4TH DAY OF JUNE, 2003.

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

OCTOBER 7, 2003


DAPHNE D. HELMS, COURT REPORTER