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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

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KENNY JACKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000769

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APPENDIX

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State of South Carolina )  
 County of Aiken ) Court of General Sessions  
 2012-GS-02-00446,00447

State of South Carolina )  
 Plaintiff )  
 vs. ) Transcript of Record  
 Kenny Jackson )  
 Defendant )

March 14, 2012  
 Aiken, South Carolina

**B E F O R E:**

The Honorable George C. James, Jr., Judge.

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

Samuel B. Grimes, Jr., Assistant Solicitor  
 Attorney for the Plaintiff

Charles H. S. Lyons, III, Esq.  
 Attorney for the Defendant

Lisa H. Davenport, RPR  
 Official Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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(none offered)

1 (Whereupon, on March 14, 2012 the following  
2 proceedings were held:)

3 KENNY JACKSON, after being duly sworn, testified  
4 as follows:

5 THE COURT: All right. Mr. Grimes?

6 MR. GRIMES: Your Honor, before you is Mr. Kenny  
7 Jackson. He is indicted 2012-GS-02-00446 and 47; two  
8 counts of felony DUI where death results. Additionally,  
9 he's been indicted in 2012-GS-02-00448 and 49 with  
10 reckless homicide. Those have been true billed by the  
11 grand jury but they have not been served on the defendant.  
12 They will be dismissed as a result of this plea.

13 THE COURT: All right. Mr. Lyons, you represent  
14 Mr. Jackson?

15 MR. LYONS: Yes, sir, Your Honor, I do.

16 THE COURT: All right. Do you believe he understands  
17 both of these charges, all of his constitutional rights,  
18 and the punishment that he faces?

19 MR. LYONS: I believe he does, Your Honor.

20 THE COURT: I believe -- Well, I know that the range  
21 of sentence is one to 25 years. I believe the minimum  
22 fine is mandatory; is that right? The fine is between  
23 \$10,100 and 25,000.

24 MR. LYONS: That is correct, Judge.

25 THE COURT: All right. Is there any recommendation

1 in the case?

2 MR. GRIMES: None from the state, Your Honor.

3 THE COURT: Mr. Lyons, based on your knowledge of the  
4 basic facts of the case do you believe that a jury would  
5 likely find your client guilty?

6 MR. LYONS: I do, Your Honor.

7 THE COURT: And do you think that he is competent?

8 MR. LYONS: I do, Your Honor.

9 THE COURT: Has he been able to discuss the case with  
10 you and assist you to your satisfaction?

11 MR. LYONS: Yes, Your Honor.

12 THE COURT: And do you agree with this decision to  
13 enter the plea?

14 MR. LYONS: I do, Your Honor.

15 THE COURT: All right. Your name is Kenny Jackson?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Mr. Jackson, I'll be asking  
18 you some questions. The law requires that I make sure  
19 that you enter your pleas freely and voluntarily and for  
20 me to make sure of that I do have to ask you some  
21 questions. If at any time as we go through this process  
22 if you would like to stop and talk with your lawyer, you  
23 let me know. The only way I'll know that you want to do  
24 that is if you bring it to my attention. All right?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Also, if someone in the courtroom says  
2 something that you do not understand or you don't agree  
3 with it, let your lawyer know and he'll bring that to my  
4 attention. Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right, sir. You are according to the  
7 information I have 30 years old?

8 THE DEFENDANT: Yes, Your Honor.

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

10 THE DEFENDANT: I went through the ninth grade, but I  
11 went through Job Corps and I also received my GED.

12 THE COURT: Okay. Have you been working?

13 THE DEFENDANT: Yes, sir, I was.

14 THE COURT: Where do you work?

15 THE DEFENDANT: Well, not now. Recently not now I am  
16 not working.

17 THE COURT: Have you ever been treated for any drug  
18 problems?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Alcohol problems?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Do you have any drugs or alcohol in your  
23 system now?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Do you have any history of mental

1 problems?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Do you have any problem at all today,  
4 Mr. Jackson, that would keep you from being able to  
5 understand what you're doing?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: There are two indictments in your case.  
8 One ends in the number 446. The other one ends in the  
9 number 447. They are both from 2012 and 446 says that on  
10 or about January 8, 2011 you were driving a vehicle on the  
11 highways of this state while under the influence of  
12 alcohol, drugs, or a combination of those and that you did  
13 an act forbidden by law in that you failed to operate your  
14 vehicle in a safe and reasonable manner and that you --  
15 and those actions did proximately cause the death of  
16 Brenda Jett Adams.

17 The second indictment ending in 447 repeats those  
18 allegations. The only difference is that the indictment  
19 names Sheila Roberts as having died as a result of your  
20 actions. Do you understand those two charges?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now, both of these carry from one year  
23 mandatory in the penitentiary up to 25 years. Do you  
24 understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And there is a maximum fine of \$25,100 on  
2 these two charges. Do you understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: There is a minimum fine of \$10,100. All  
5 right?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Now, do you understand completely what  
8 the state is asserting against you -- the felony DUI  
9 charge as resulting in death?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. Under South Carolina law,  
12 Mr. Jackson, these are classified as what are called  
13 serious offenses. We have a three-strikes law and a  
14 two-strikes law. More pertinent for this plea is  
15 three-strikes law. You are entitled or -- Excuse me.  
16 Upon your conviction for a third serious offense you would  
17 be facing mandatory life in prison without the possibility  
18 of parole. Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. So you understand that today if I  
21 accept your pleas today you will have a strike against  
22 you?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: In addition, any time that I sentence you  
25 to in prison you'll be required to serve 85 percent of

1 that sentence before you could get out on what is called  
2 community supervision under the law as it is now. Do you  
3 understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Now whatever period of time I sentence  
6 you to you have to understand or you must assume that  
7 you'll do that entire amount of time in prison. Do you  
8 understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Have you spent any time in jail on these  
11 charges at all or did you bond out immediately?

12 THE DEFENDANT: Just for five days; five or six days  
13 that I did in Aiken County.

14 THE COURT: And this probably pales in comparison to  
15 what you're facing here, but do you have any DUI  
16 convictions on your record now?

17 THE DEFENDANT: No.

18 THE COURT: In the future if you're convicted of DUI  
19 it will be treated as a subsequent offense. Do you  
20 understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. Are you on probation or  
23 parole now?

24 THE DEFENDANT: No.

25 THE COURT: When you plead guilty you give up some

1 rights that you have under the Constitution. There are  
 2 basically three that I am going to talk to you about now.  
 3 First, you give up your right to remain silent which means  
 4 you give up your right against self-incrimination. It  
 5 means you give up your right to say nothing because if you  
 6 do want to plead guilty at some point I'll be asking you  
 7 some questions or asking you to confirm whether or not  
 8 certain facts are true. Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Secondly, if you plead guilty you give up  
 11 the right to have a jury trial. A jury trial is a setting  
 12 where 12 citizens of the county would sit in judgment and  
 13 base a decision of guilt or non-guilt on evidence or lack  
 14 of evidence. If the trial was in this courtroom the jury  
 15 would sit over here in this box. You would be in the  
 16 courtroom with your lawyer. The prosecutor would be in  
 17 the courtroom and the evidence would be presented.

18 In order for you to be convicted the prosecutor would  
 19 have to convince all 12 of the jurors of your guilt beyond  
 20 a reasonable doubt. You would not have to prove or  
 21 disprove anything. You are presumed innocent and the  
 22 burden of proof beyond a reasonable doubt is a very high  
 23 burden of proof for the prosecutor to meet. Do you  
 24 understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Do you understand that if you plead  
2 guilty you'll not get a jury trial?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: The third right that you have that you  
5 must give up if you want to plead guilty is your right to  
6 confront and be confronted by witnesses who will be called  
7 to testify. That means you would give up your right to  
8 see them and listen to them and most importantly cross  
9 examine them through your lawyer. You would also give up  
10 the right to call witnesses of your own. An example of  
11 that would be that the prosecutor today is likely going to  
12 summarize what certain eye witnesses or fact witnesses  
13 would testify to if they were at the trial. You will not  
14 get to actually see them say that and you won't get to  
15 cross examine them. Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Now, you understand your right to remain  
18 silent and your right to a jury trial and your right to  
19 confront witnesses?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you understand if you plead guilty you  
22 would also be giving up any defenses you may have?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And the right to challenge the  
25 admissibility of any evidence which would include but is

1 not limited to any statements you gave to law enforcement?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. With regard to indictment  
4 2012-446, felony DUI resulting in death to Brenda Jett  
5 Adams, do you plead guilty or not guilty?

6 THE DEFENDANT: Guilty.

7 THE COURT: In indictment 2012-447, felony DUI  
8 resulting in the death of Sheila Roberts, do you plead  
9 guilty or not guilty?

10 THE DEFENDANT: Guilty.

11 THE COURT: Had you consumed alcohol at the time  
12 surrounding or prior to the collision?

13 THE DEFENDANT: It was earlier during the night, Your  
14 Honor.

15 THE COURT: In a minute the prosecutor is going to  
16 give me some facts, but I'll just ask you this question  
17 right now. Are you truly guilty of both of these  
18 offenses?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. Any -- I may have mentioned this.  
21 I think you said it when we went on the record. Is there  
22 any negotiation or recommendation from the state?

23 MR. GRIMES: None, Your Honor. The defendant is  
24 pleading straight-up to these charges.

25 THE COURT: All right. Is that correct, Mr. Lyons?

1 MR. LYONS: It is, Judge.

2 THE COURT: Is that your understanding, too,

3 Mr. Jackson?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Has anybody promised you  
6 anything at all to get you to plead guilty?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Has anyone used any pressure, threat, or  
9 force or intimidation?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Is your lawyer forcing you to do this?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Have you had enough time to make up your  
14 mind?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Are you entering these pleas based on  
17 your own free will?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: You're represented by Mr. Lyons; is that  
20 correct?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you think you have talked to him long  
23 enough and often enough about the ins and outs of these  
24 cases?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Are you satisfied with his representation  
2 of you?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you think he's done everything within  
5 reason to represent you properly?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Interviewing witnesses, examining  
8 evidence, and perhaps analyzing some defenses you may  
9 have -- do you think he's done all of that to your  
10 satisfaction?

11 THE DEFENDANT: I have, Your Honor.

12 THE COURT: Do you have any complaints about the  
13 prosecutor or the police?

14 THE DEFENDANT: No.

15 THE COURT: Have you understood everything we've gone  
16 over so far?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. You do have 10 days from  
19 today to appeal these pleas and sentences and if you want  
20 to appeal you or your lawyer would have to file the  
21 appropriate documents within 10 days. Do you understand  
22 that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. All right.

25 MR. GRIMES: Thank you, Your Honor. Shortly after.

1 10 PM on January 8, 2011 dispatcher locally informed  
2 Trooper Nix from the South Carolina Highway Patrol of a  
3 collision on Highway 278 here in Aiken County. Trooper  
4 Nix responded to that location and eventually that  
5 collision was investigated by the South Carolina Highway  
6 Patrol, Coroner's Office, SLED. The following information  
7 was discovered from the investigation: That just after  
8 10 PM on that night the defendant was traveling westbound  
9 on Highway 278 in a blue 1995 Toyota behind a line of  
10 vehicles. At the back of that line of vehicles and just  
11 in front of the defendant was Mrs. Jacqueline Davis.

12 Mrs. Davis was later interviewed by the South  
13 Carolina Highway Patrol and in her video interview  
14 indicated that the defendant passed her in a line of  
15 vehicles about six vehicles all at the same time at a high  
16 rate of speed on Highway 278. Shortly after that she  
17 noticed that traffic had come to a complete stop. She  
18 didn't witness the collision in this case. Somebody came  
19 to her vehicle and told her that they believed that  
20 somebody up ahead was deceased.

21 Mrs. Davis is an off-duty EMT and she made her way to  
22 the vehicles so she could see if there was something that  
23 she could do. Initially, she came across the blue Toyota  
24 vehicle and that the defendant was driving and noticed him  
25 to be alive and responsive, however, belligerent to the

1 extent that she moved on to the second vehicle. She  
2 noticed the driver of the second vehicle which was a white  
3 2006 Toyota Corolla. She noticed that there was nothing  
4 at that time that she could do for the driver of that  
5 vehicle.

6 She did find the passenger in -- the front seat  
7 passenger of that vehicle, Ms. Jody Stein, to be alive and  
8 responsive but stuck in the vehicle and she also located  
9 the back seat passenger of that vehicle Mrs. Sheila  
10 Roberts. Mrs. Roberts was about to fall out of the door  
11 when she opened it; so Mrs. Davis and one of the  
12 bystanders actually repositioned her in the back seat of  
13 the vehicle and she climbed in the back seat of the  
14 vehicle with Mrs. Davis -- or Mrs. Roberts -- and  
15 essentially held her head and discussed -- asked her how  
16 she was doing and how she felt.

17 At that time Mrs. Roberts was responsive and answered  
18 her questions, although it was obvious that she was in a  
19 dire condition and by the time the EMS arrived at that  
20 location and was preparing to transport Mrs. Roberts she  
21 stopped breathing and she didn't respond. She never was  
22 revived at that point. She was transported by EMS to the  
23 Medical College of Georgia; however, she was never  
24 revived. Mrs. Roberts was pronounced deceased at 22:58  
25 hours, cause of death being blunt force trauma and the

1 death being ruled due to injuries sustained in a motor  
2 vehicle crash.

3 Mrs. Brenda Adams was the driver of the white Toyota.  
4 She was pronounced deceased at the scene, 22:47 hours, the  
5 cause of death being multiple body trauma, death due to  
6 injury sustained in a motor vehicle crash. The front seat  
7 passenger of the white Toyota was transported to MCG by  
8 ambulance with injuries. Her name is Jody Stein and the  
9 defendant in this case was transported to the hospital as  
10 well.

11 THE COURT: Ms. Stein -- she was where?

12 MR. GRIMES: In the front seat passenger of the white  
13 Toyota.

14 THE COURT: With Mrs. Roberts and Mrs. Adams?

15 MR. GRIMES: With Mrs. Roberts and Mrs. Adams. Your  
16 Honor, Mrs. Roberts and Mrs. Adams are sisters. Ms. Stein  
17 wasn't related to them. She was a friend.

18 The defendant was transported to the hospital and  
19 Trooper Nix with the South Carolina Highway Patrol  
20 followed the defendant to the hospital where he noted that  
21 the defendant appeared to be highly intoxicated and  
22 smelled of alcohol. The defendant was provided his  
23 implied consent rights and a blood sample was taken.

24 Your Honor, the collision in this case was  
25 investigated by the Highway Patrol Midlands MAIT Team and

1 they determined that the defendant's vehicle was traveling  
2 westbound on Highway 278, crossed the center line into the  
3 eastbound lane causing a collision with the victims'  
4 vehicle which was traveling eastbound in the eastbound  
5 lane. MAIT calculated the defendant's vehicle speed at  
6 the point of impact to be 24 to 29 miles per hour and the  
7 victims' vehicle speed to 41 to 49 miles per hour in a  
8 posted 55-mile-per-hour zone.

9 The defendant's blood sample that was taken that  
10 night was tested by SLED and the blood alcohol  
11 concentration of the defendant was found to be  
12 .222 percent, Your Honor, which I'm sure you're aware is  
13 almost three times the .08 percent inference level in this  
14 state. It was also determined or found that the defendant  
15 at the time of this wreck did not have a driver's license  
16 and the vehicle that he was driving belonged to a Ms. Tara  
17 Dickson was also uninsured.

18 Your Honor, we've been in contact with the surviving  
19 victim of this case Ms. Stein. The defendant was  
20 additionally charged with felony DUI with great bodily  
21 injury as a result of her injuries from that night;  
22 however, she has made almost a complete physical recovery  
23 from this wreck and we're no longer pursuing that charge.  
24 That warrant will be dismissed.

25 THE COURT: No indictment, though?

1 MR. GRIMES: No indictment, Your Honor. We have some  
2 pictures of this collision, Your Honor, that we're going  
3 to put up for you here on this projector. While I'm  
4 waiting on that, the defendant's prior record includes in  
5 2001 possession of 28 grams or less marijuana; 2001,  
6 purchase, possession of beer or wine by a minor; 2003,  
7 possession of 28 grams or less marijuana.

8 Your Honor, the photograph that you're looking at is  
9 Highway 278 here in Aiken County. This is from the  
10 eastbound direction. This is the white 2006 Toyota  
11 Corolla that the victim Mrs. Brenda Adams was driving.  
12 Sheila Roberts would have been in the back seat of that  
13 vehicle and Ms. Stein ---

14 THE COURT: Orient me again. The white vehicle?

15 MR. GRIMES: The white vehicle is the vehicle that  
16 the victims would have been driving in this case.

17 THE COURT: Okay.

18 MR. GRIMES: And this is in the eastbound direction  
19 so you can see where the vehicles stopped actually both  
20 facing the same direction from the head-on collision.  
21 This is another picture showing the front of both of of  
22 those vehicles.

23 THE COURT: So these vehicles are in the?

24 MR. GRIMES: Eastbound lane, Your Honor.

25 THE COURT: Eastbound lane.

1 MR. GRIMES: This is a picture from the westbound  
2 direction from the westbound lane showing both of the  
3 vehicles in the eastbound lane pointing off the road. The  
4 blue 1995 Toyota is the vehicle that the defendant would  
5 have been driving and you can see that both of the  
6 vehicles are in the eastbound lane. Your Honor, this is  
7 another picture of the front of both of the vehicles and  
8 you can see they are pretty crushed. That's additionally  
9 another view of both of the front of the vehicles.

10 THE COURT: And you said the MAIT team determined  
11 Mr. Jackson's speed to be between 24 and 29?

12 MR. GRIMES: At the time of the collision, Your  
13 Honor.

14 THE COURT: And the victims' to be 41 to 49. Any  
15 skid marks noted in the MAIT report that you know of?

16 MR. GRIMES: Not that I'm aware of, Your Honor.

17 THE COURT: Okay.

18 MR. GRIMES: Your Honor, you can see the MAIT CAD  
19 drawing of the collision showing the direction of travel.  
20 The blue vehicle here is the defendant's vehicle headed  
21 westbound in the westbound lane and then coming into the  
22 eastbound lane. The white Toyota Corolla also depicted on  
23 there is traveling in the eastbound lane at the point of  
24 the head-on collision. This is just a photograph of or a  
25 CAD drawing of the collision itself. This is a CAD

1 drawing of the final resting place between the two  
2 vehicles. You can see they basically sheared off in the  
3 same direction.

4 Your Honor, there are a number of people here from  
5 the victims' families. I am just going to ask as soon as  
6 this monitor comes down if you're here in relation to this  
7 case from the victims' families please raise your hand.  
8 Additionally, there are several members of the Highway  
9 Patrol here for this plea, Your Honor.

10 Speaking for the victims' families is going to be  
11 Michael who is Brenda Adams' husband. She was the driver  
12 of the Toyota Corolla.

13 MRS. KAYLA DODSON: I'll be speaking for Michael  
14 Adams today.

15 THE COURT: Is he present?

16 MRS. KAYLA DODSON: He is.

17 THE COURT: I just want to make sure that all of you  
18 understand you do have the right to speak to me directly.  
19 You don't have to, but I want to make sure that you were  
20 aware of that right. I'm sure it's been explained to you.  
21 Okay.

22 MRS. KAYLA DODSON: Thank you.

23 THE COURT: How old was Mrs. Adams?

24 MR. GRIMES: Mrs. Adams was 47 years old.

25 THE COURT: And your name, ma'am?

1 MRS. KAYLA DODSON: Kayla Dodson. I am a Victim  
2 Advocate for the Solicitor's Office.

3 THE COURT: Okay.

4 MRS. KAYLA DODSON: "Brenda -- she loved people. She  
5 had many friends. Any time we went out she would run into  
6 people she knew. She loved to go on vacation. She was  
7 always at the computer planning a trip. Brenda was the  
8 go-to person when it came to where to go to eat. Most of  
9 all she loved her girls, Bailey and Jetta.

10 Brenda and I were married for 30 years. I met her on  
11 a blind date. I remember the first time I saw her she had  
12 these oversized glasses on. I thought they looked funny  
13 but it wasn't long that I didn't even think about the  
14 glasses. We dated for four years before she told me I  
15 needed to ask her to marry her which I promptly did.  
16 After our wedding we both went to work at the same place.  
17 That's another thing about my wife. She always worked.  
18 When I met her she was 14 and working at the Pink Dipper,  
19 then at the peach shed sorting peaches.

20 After about two years working together I went in the  
21 military. After basic she followed me to Kansas with four  
22 dogs. Again, she found a job as a waitress. After the  
23 military we came home. We bought a home and started new  
24 jobs. Our lives rolled on. We had our dreams, our goals.  
25 We had our conversations about important things and

1 not-so-important things. We laughed and cried together,  
2 and, yes, we also argued.

3 After 18 years of marriage we had our first girl,  
4 Bailey Nicole Adams; then two years later our second girl  
5 Jetta Marie Adams. Brenda, like all parents, dearly loved  
6 her girls. When the girls were old enough to go to school  
7 Brenda decided to stay home to homeschool them which for  
8 those that have never done it, it's not easy.

9 Life continued. The girls grew. They became  
10 gymnasts. We traveled to competitions. We went on  
11 vacations, sat outside around the fire. We made plans.  
12 We did birthday parties, Christmases. We also attended  
13 church. We were always together. We were a family.

14 February 8 was a Saturday. It was cold. We were  
15 expecting snow on Sunday. Brenda loved snow. Like most  
16 mornings Brenda was on the computer planning a trip. This  
17 one was for Disney World. After breakfast we began to  
18 prepare for a baby shower. My nephew Kyle and his wife  
19 Angela were expecting in February. Brenda and her sister  
20 Sheila had been planning this and had been looking forward  
21 to it.

22 Bailey was going over to a friend's house to spend  
23 the night. Jetta was having a friend over to play.  
24 Brenda and I went to the shower. We had a good time  
25 talking and visiting with friends and family as I

1 remember. It is ironic that one of the things we talked  
2 about was the tragic death of two of Kyle's friends just  
3 before Christmas. They had been killed by a drunk driver.  
4 After the shower Brenda and Sheila and a good friend Jody  
5 went out for dinner. I went home.

6 Late that night around nine I took Jetta's friend  
7 home and I called my wife. She sounded happy. I arrived  
8 home around ten. I got out of the car. I heard sirens in  
9 the distance and I thought little of it. It was common.  
10 Jetta and I go to bed. Jetta wants to sleep in my bed.  
11 She could not sleep in her own. Jetta was concerned for  
12 her mother. Ever since she heard of people being killed  
13 by drunk drivers she would tell her mother to be careful.

14 Two AM I awakened by three loud knocks at my front  
15 door. Thinking it was Brenda I jump out of bed, go to the  
16 door, and open it. It's not Brenda. I'm from the -- It's  
17 from the Aiken County Coroner's Office. Are you Michael  
18 Adams? Is your wife Brenda Adams? At that point I know.  
19 I asked them to come in. I sit on the couch looking at  
20 Daryl, the coroner, and I tell him, Go ahead, tell me. He  
21 informs me that my wife as well as her sister were  
22 deceased. They had been in a car crash.

23 Many things took place that night before sunrise. My  
24 home was full of friends and family. Jetta was mercifully  
25 still asleep; Bailey at a friend's house. My biggest

1 concern was how to tell my girls that their mother was  
2 dead. Bailey arrived home early that morning. She was  
3 not told what had happened; only that she needed to be  
4 home early. When she sees all the cars she thinks we're  
5 having a party, but once she enters the house she knows  
6 something is terribly wrong.

7 I take her hand. She looks at me -- Dad, what is  
8 going on? What's wrong? I lead her to my older daughter  
9 who is still asleep. Jetta, wake up. She sits up, looks  
10 at me. With tears I tell them that their mother is dead.  
11 Jetta screams, No, no, no. She covers her face with a  
12 pillow. She looks at me and asks, Is he dead -- the drunk  
13 driver? I tell her, No. She asked, why? Why didn't he  
14 die?

15 That night Sunday we stayed with friends. It snowed  
16 and I wept. When the morning came Jetta awoke and came  
17 downstairs. Bailey remained in bed. I went to awake her.  
18 She said to me, Dad, I'm afraid to get up. If I get up  
19 will mom still be dead? Much has changed since Brenda and  
20 Sheila's death. Very little remains the same. My girls  
21 no longer have their mother to tuck them in, to go to for  
22 advice, to teach them. They won't have her there at their  
23 graduation, at their wedding.

24 Brenda and Sheila's mother and father lost both of  
25 their girls that night. All this was caused by a

1 decision -- a decision that changed everything, that  
2 touched all of our lives. I was taught that for each  
3 decision -- for each choice there are consequences.

4 In closing that Sunday morning when Bailey asked me  
5 if Brenda would still be dead if she got up I answered  
6 her, Yes, but we are comforted by the knowledge that she  
7 is with the Lord and we will once again see her.

8 Your Honor, I ask that you give Mr. Jackson the  
9 maximum time allowed by law. I ask this not because of  
10 any personal vendetta. I ask this so that the next time  
11 someone has to make the choice to drive drunk or not they  
12 may recall this judgment and decide not to drive. Thank  
13 you."

14 THE COURT: How old is Jetta and Bailey?

15 MRS. KAYLA DODSON: Fourteen and twelve. They are  
16 now.

17 THE COURT: Jetta is oldest?

18 MRS. KAYLA DODSON: Jetta is younger and Bailey is  
19 the older.

20 THE COURT: All right. Thank you.

21 MR. GRIMES: Your Honor, Rose is going to speak. She  
22 is the sister-in-law speaking for Sam Roberts who is  
23 Sheila Roberts' husband.

24 THE COURT: Your name, again, please, ma'am?

25 MS. ROSE DAUGHTERY: My name is Rose Daughtery.

1 THE COURT: Daughtery?

2 MS. ROSE DAUGHTERY: Yes, sir.

3 THE COURT: D-O-R or D-A-U?

4 MS. ROSE DAUGHTERY: D-A-U. I'm speaking on behalf  
5 of my brother.

6 THE COURT: Yes, ma'am. His name?

7 MS. ROSE DAUGHTERY: Sam Roberts. "My name is Sam  
8 Roberts and I'm Sheila's husband. Sheila and I were  
9 married for 32 years. We met when she was a police cadet  
10 working for the City of Aiken while obtaining a Criminal  
11 Justice Degree at USC of Aiken and I was a fire cadet  
12 working for the City of Aiken while I was getting my  
13 Bachelor's Degree in Accounting at USC of Aiken.

14 We got married in 1978. She was the first female  
15 traffic officer for the City of Aiken. We had one son  
16 Kyle who is absolutely her heart and joy of her life. She  
17 was without a doubt, with exception to my mom, the most  
18 giving person I have ever known. I would say this about  
19 her if she wasn't my wife.

20 She would do for anyone before she ever did for  
21 herself and then when my son and daughter-in-law announced  
22 to us that we were going to be grandparents she was so  
23 very, very happy. She told everyone she knew and could  
24 not wait for Jackson to be born. She was going to babysit  
25 him for the first two years and would have made a

1 fantastic grandmother. She was going to be called  
2 She-She.

3 On January 8, 2011 she gave a baby shower for my son  
4 and his wife. That same night she was killed when  
5 Mr. Jackson decided to drink and drive. Mr. Jackson stold  
6 [sic] my wife from me as well as my son's and grandson's  
7 mother and grandmother. My grandson never got to meet his  
8 grandmother and every day when I watch Jackson play it  
9 makes me so terribly sad because I so wish she could hold  
10 him and love him like I do.

11 On that day when Mr. Jackson got behind the wheel he  
12 was a lethal weapon. He not only took her life but he  
13 took part of my life because a part of me died that night  
14 also. Our whole family has suffered tremendously because  
15 of his selfish act. My wife's sister was taken that night  
16 from her husband and daughters. They need their mother so  
17 bad. My father-in-law and mother-in-law were robbed of  
18 two of their daughters because of this senseless act.

19 My son and his mom were so very, very close and it  
20 has been a very, very bad year for him. I try to be there  
21 for him, but I could never replace the bond that he and  
22 she had. It makes me so sad but also angry because  
23 Mr. Jackson had a choice that night and he chose to  
24 destroy our lives. I am so immensely sad and lonely  
25 because Mr. Jackson did not care if he destroyed people's

1 lives that night.

2 Mr. Jackson ruined at least a dozen lives that night.  
3 I feel he should have to pay tremendously for all the hurt  
4 he has caused. I will never be the same. Neither will  
5 any of our family because of the impact she had on our  
6 lives and the love that she gave us."

7 THE COURT: How old was Sheila Roberts when she died?

8 MS. ROSE DAUGHTERY: Fifty-four.

9 THE COURT: And how many children?

10 MS. ROSE DAUGHTERY: One.

11 THE COURT: How old -- a son?

12 MS. ROSE DAUGHTERY: Uh-huh. Kyle is 33?

13 MR. KYLE ROBERTS: I'll be 30 this year.

14 THE COURT: Thank you, Mrs. Daughtery.

15 MR. GRIMES: Your Honor, Kyle is going to speak now.

16 THE COURT: Mr. Roberts -- son? You're Kyle Roberts?

17 MR. KYLE ROBERTS: Yes, sir. January 8 was supposed  
18 to be a day of celebration for my family.

19 I can't read this.

20 MRS. KAYLA DODSON: It is okay. "January 8 was  
21 supposed to be day of celebration for my family. It is a  
22 day that destroyed it. On January 8 my mom and my aunt  
23 hosted a baby shower for what was to be her first  
24 grandchild. My mom was very excited to meet our son who  
25 was to arrive in six weeks. The time ended well and I

1 told her I loved her not knowing those were the last words  
2 I would say to her.

3 At 2 o'clock AM I heard a heavy knock at the door.  
4 It was my dad who could barely stand because he was so  
5 upset. He told me that my mom and my aunt had been killed  
6 in a car accident. After the initial shock we all drove  
7 to MCG to see my mom one last time. A son's last time of  
8 his mother -- a son's last image of his mother should not  
9 be on the hospital operating table.

10 Six weeks later my son was born. My mom should have  
11 been there to witness that special moment with us. Thanks  
12 to Kenny Jackson the only view my mom has of my son is  
13 from Heaven. As my son grows up I will make sure he knows  
14 his grandmother, but the only way he will get to know her  
15 is through pictures I have of her. She will never be here  
16 to see him walk, talk, and just grow up.

17 Every day I drive by my parents' house hoping I will  
18 see her sitting out on the porch, hoping all of this is  
19 just a crazy nightmare. Yet, the reality sets in that she  
20 will never be here ever again. Every day I see the pain  
21 and loss in my father's eyes and it angers me that someone  
22 took her from him. My mom was everything to my dad and he  
23 did everything for her. She was his heart and soul and it  
24 hurts me more that this happened to him because he did not  
25 deserve this.

1           On the morning this happened my cousin and I had to  
2 make the unfortunate trip over to my grandparents' house  
3 to deliver the grave news that two of their daughters were  
4 both killed. They already lost a son about 20 years ago  
5 and for them to lose my mom and my aunt, I did not know  
6 how they would react. When I uttered those words that my  
7 mom and aunt Brenda were both killed by a drunk driver  
8 they both broke down.

9           My grandfather kept saying, What are we going to do  
10 now because my mom helped them out so much and" -- Sorry,  
11 Your Honor.

12           "Everyone loved my mom and aunt and there is not  
13 enough time in the world that can Kenny Jackson can get  
14 that will ease our pain. Courtesy of Kenny Jackson my  
15 family's life was destroyed and we want him to pay for his  
16 crimes. I want justice for my grandparents, dad, uncle,  
17 aunt Debbie, cousins, my wife, my son, myself. Most of  
18 all I want justice for my mom and my aunt."

19           THE COURT: Thank you.

20           MR. GRIMES: Your Honor, on this easel below the  
21 picture of Sheila and Brenda ---

22           THE COURT: There is a glare on the top. You can  
23 just hand it up.

24           MR. GRIMES: Your Honor, this is a picture of Sheila  
25 and Brenda together.

1 THE COURT: All right. I can see the other one. The  
2 other one is of who?

3 MR. GRIMES: Kyle's son, the grandson.

4 THE COURT: Okay.

5 MR. GRIMES: Your Honor, we have Brenda and Sheila's  
6 parents.

7 THE COURT: All right. He can stay seated if he'd  
8 like.

9 MR. LOWELL T. JETT: It is difficult for me. Excuse  
10 me. I'm Sheila's and Brenda's father and ---

11 THE COURT: What is your --

12 MR. LOWELL T. JETT: -- I'd just like to tell  
13 Mr. Jackson that he ---

14 THE COURT: I'd just like his name first.

15 MR. GRIMES: Just speak to the Judge.

16 MR. LOWELL T. JETT: To the Judge; okay.

17 MRS. KAYLA DODSON: Just the Judge and let him know  
18 your name.

19 MR. LOWELL T. JETT: Okay. It's Lowell Jett; Lowell  
20 T. Jett.

21 THE COURT: Yes, sir.

22 MR. LOWELL T. JETT: Like I said, I am the father of  
23 Brenda and Sheila. They told me that I should write  
24 something down that I wanted to say, but I didn't want to  
25 write down. I wanted to speak from the heart.

1 THE COURT: Yes, sir.

2 MR. LOWELL T. JETT: And maybe I shouldn't say this,  
3 but there is two families that are completely destroyed  
4 over this action and it's difficult to realize how much  
5 we've lost in losing two daughters at the same time.  
6 Brenda was our travel agent. We -- Someone said that we  
7 did everything together as a family, and we did and Brenda  
8 was the travel agent. She organized all the things and  
9 Sheila was the organizer. Once Brenda obtained the condo  
10 or whatever, then Sheila would -- and you don't realize  
11 how much they do until you don't have them any more.  
12 That's probably all I need to say.

13 THE COURT: Thank you, sir.

14 MR. GRIMES: Finally, we have Brenda and Sheila's  
15 mother.

16 THE COURT: Your name, please, ma'am?

17 MRS. BILLIE JETT: Billie Jett.

18 THE COURT: Yes, ma'am?

19 MRS. BILLIE JETT: On January 9 at 6 AM there was a  
20 knock on our door. It was our two grandsons. They told  
21 me to sit down and Michael said Aunt Sheila and Brenda  
22 have been killed in a car accident. No, no, no, I said --  
23 not both of them. That's the morning my heart was torn  
24 from my body. They were not only my daughters, but  
25 friends.

1           We as a family did everything together. When their  
2           dad had to go on dialysis and later diagnosed with  
3           Parkinson's they were my support group. Now we only have  
4           one daughter left which we're thankful for and I don't  
5           want anybody to say to me you know how I feel. Only  
6           another mother who has lost a child this way would know.

7           He chose to drink and get drunk and drive crossing  
8           the center line and hit their car. I would like to plead  
9           with you to give him the maximum time. Wherever he goes  
10          his parents can see and talk to him. I will never see my  
11          girls again. Thank you.

12          MR. GRIMES: Your Honor, as far as I'm aware I don't  
13          believe that the victims in this case had any  
14          relationship, knowledge of, prior experience or dealing  
15          with the defendant in this case. That's the state's  
16          presentation.

17          THE COURT: Mr. Sam Roberts -- he is present, too?

18          MR. GRIMES: Yes, Your Honor.

19          THE COURT: I just want to let him know that he does  
20          have the right to speak as well. He's done that through  
21          his sister.

22          Okay. Anyone else, Mr. Grimes?

23          MR. GRIMES: No. That's it, Your Honor.

24          THE COURT: All right. Mr. Jackson, a while back you  
25          heard a resuscitation of the facts from the prosecutor

1 about having gone across the center line. Is that what  
2 you did?

3 THE DEFENDANT: Apparently, that night -- the only  
4 thing I remember was when I was topping the top of the  
5 hill. The only thing I seen was headlights also and that  
6 was my last recollection of anything.

7 THE COURT: All right. I will accept both pleas at  
8 this point. They have been entered freely and  
9 voluntarily. There is a factual basis for the pleas.  
10 Along those lines, what had you had to drink?

11 THE DEFENDANT: About three 24 ounces.

12 THE COURT: And you had a .22 blood alcohol level; is  
13 that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: What time did it happen?

16 MR. GRIMES: Shortly after 10 o'clock; within just a  
17 few minutes after 10 o'clock.

18 THE COURT: Again, I'll accept both pleas entered  
19 freely and voluntarily. Mr. Jackson is represented by an  
20 attorney with whom he is satisfied and there's a  
21 substantial factual basis for both.

22 I'll be glad to hear from you, Mr. Lyons, and then  
23 from Mr. Jackson.

24 MR. LYONS: Yes, sir, Your Honor. May it please the  
25 court, and, Judge, I will be brief. I truly understand.

1 the pain that these families have experienced and what  
2 they continue to experience. I know one of the family  
3 members said that they don't want to hear anything about  
4 knowing how you feel and I understand that sincerely, Your  
5 Honor. Me myself some 30 years ago myself having been a  
6 victim of someone who was driving under the influence  
7 involved in a car accident and almost took my own life, I  
8 do have some feelings just standing up here. I have  
9 problems standing and I have to shift some, but definitely  
10 I can't understand the grief that they feel, and, Judge,  
11 my heart goes out to these families. I want them to know  
12 that. I know that doesn't ease their pain, but when I  
13 initially got involved in this case it is a touching  
14 situation knowing that you can lose two daughters so  
15 tragically and so instantaneously and I want them to know  
16 that I feel -- my heart goes out to them.

17 Judge, Mr. Jackson -- he is a mild-mannered  
18 individual and it is quite tragic for him that he finds  
19 himself facing this court facing the potential sentence  
20 that he is facing. Even though he has not led a perfect  
21 life, he has up until this point in his life been able to  
22 avoid serious trouble with the law and I think that is  
23 tragic on his part.

24 Judge, before this happened he was working at CVS in  
25 the warehouse. He suffered himself some extensive

1 injuries in this tragic incident that kept him from going  
2 back to work. Judge, I want the family to know that one  
3 of the things that did keep the case moving along and did  
4 not resolve in some other fashion sooner is that I felt  
5 that it was my obligations to make sure that there were no  
6 other defenses to try to reason in my mind that a guilty  
7 plea to this case would be the right decision for  
8 Mr. Jackson to make -- that the evidence did substantiate  
9 that he was at fault in this accident to make sure that he  
10 had no other potential defenses and even up until today,  
11 Judge, I was apprehensive and I wanted to make sure that I  
12 was satisfied that there were no defenses and to relay  
13 those sentiments to Mr. Jackson, and so on behalf of  
14 Mr. Jackson, Your Honor, I would ask the court to consider  
15 the fact that he has come here in front of this court and  
16 he has taken total and full responsibility for these  
17 actions.

18 My understanding, Judge, is that he had been at a  
19 friend's house and he had been drinking and obviously he  
20 was drinking too much. No doubt about that. When he told  
21 me initially he had had three beers, you know, after I  
22 learned of the blood alcohol level I said that's a lot for  
23 three beers and when he told me the sizes it made a lot  
24 more sense; so, Judge, we'd ask the court to consider  
25 Mr. Jackson being here, not taking the court or this

1 family through any additional heartache by resolving this  
2 case, accepting his responsibility, not wasting the  
3 court's time or anybody else's and entering this guilty  
4 plea, and, Judge, on behalf of Mr. Jackson I would like to  
5 express his sentiment for this tragic situation and I  
6 believe, Judge, that he's really sincere about that  
7 apology.

8 THE COURT: Thank you, sir.

9 Mr. Jackson, what would you like to say?

10 THE DEFENDANT: I just -- I just want to let the  
11 families know I truly am deeply sorry. I am. All the  
12 years of my life I never thought I would be in a situation  
13 like this and I just want to let them know that I'm truly,  
14 truly, truly sorry.

15 THE COURT: All right. Thank you, sir. Anyone else,  
16 Mr. Lyons, from the side of the defendant?

17 Your name, please, ma'am?

18 MS. LAWANDA READY: LaWanda Ready.

19 THE COURT: R-E-D-D-Y?

20 MS. LAWANDA READY: R-E-A-D-Y. Me and Mr. Jackson --  
21 we started dating from the time we was 12 -- like we was  
22 real young and I just -- I can't believe it happened. I  
23 just want to apologize along with him to the family  
24 because my children are losing -- they're going to lose  
25 their father along with the whole situation. I just wish

1 that he would never have drove, would never have left  
2 because that night I went and I looked for him, but I  
3 couldn't find him to keep him from driving and I looked.  
4 I looked and looked and my phone went dead; so I feel that  
5 I'm responsible as well as him because maybe if I would  
6 have found him he would have never left. He would have  
7 never drove. I just want to apologize to the family along  
8 with him.

9 THE COURT: How old are you? How old are his  
10 children?

11 MS. LAWANDA READY: My daughter is ten and my son is  
12 seven.

13 THE COURT: All right. Thank you, ma'am. Anyone  
14 else?

15 MR. LYONS: No, Your Honor.

16 THE COURT: All right. We'll take a break for about  
17 five minutes. Okay.

18 (Whereupon, a break was taken.)

19 THE COURT: All right. We're back on the record in  
20 the State versus Kenny Jackson. I made some notes about  
21 the presentations as I heard them and I certainly agree  
22 with one thing that Mr. Roberts -- Mr. Kyle Roberts --  
23 related that there is not any particular sentence in the  
24 world that would ease the pain that these families have  
25 experienced and that they're going to continue to

1 experience. It is such a senseless thing. Some people in  
2 society kind of laugh away a drunk driving case, but I  
3 certainly don't.

4 When Mr. -- or Ms. Daughtery related that her  
5 brothers thought Mr. Jackson was simply driving a lethal  
6 weapon down the highway, that's exactly what it was. It  
7 just never ceases to amaze me that folks will continue to  
8 do this and whether you call it a mistake or a willful act  
9 you have destroyed two families that are basically one big  
10 family and the collateral consequence of this is also your  
11 children are going to suffer in a different way but for  
12 the same thing that you did, and as I thought about this  
13 one thing is obvious to me. There's really no such thing  
14 as an absolute just sentence and I've said it before that  
15 I don't know why the legislature picks -- how they pick  
16 maximum sentences. I don't know how they pick minimum.  
17 Felony DUI resulting in death having a minimum of one  
18 year -- that's kind of amazing in and of itself that it  
19 could be that small.

20 What I am going to do is issue sentences that I think  
21 are just and I would dare say that there will be people  
22 who will agree with it, people who will heartily disagree  
23 with it, and there may be somewhere in between, but I am  
24 doing what I think is appropriate and there is no amount  
25 of time that will be a label on the value of somebody's

1 life because if 25 years is a maximum sentence for one and  
2 25 sentence is a maximum sentence for the other, I think  
3 that belittles the value of their lives. Their lives were  
4 worth much more than any number of years anybody can  
5 arbitrarily assign.

6 Mr. Jackson, I am going to commit you to -- under  
7 indictment 446 to the South Carolina Department of  
8 Corrections for a period of 23 years and you're fined  
9 \$25,100 and concurrently with that indictment 447, 23  
10 years in the Department of Corrections.

11 There is nothing anybody can say to you that will  
12 alter what you've done. As a human being my heart  
13 somewhat goes out to you, but you're the one who did this.  
14 Nobody else.

15 All right. And the fine of \$25,100 on that as well.  
16 All right. It's concluded. Thank you very much.

17 (End of Transcript of Record.)

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CERTIFICATE OF REPORTER

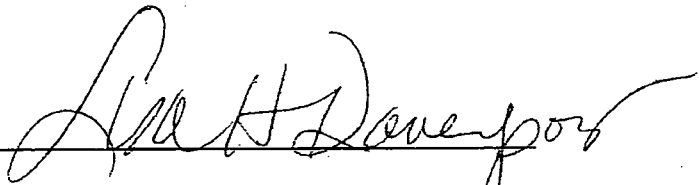
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State of South Carolina        )  
County of Aiken                 )

I, Lisa H. Davenport, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Aiken County, South Carolina, on the 14th day of March, 2012.

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

August 28, 2012

  
\_\_\_\_\_  
Lisa H. Davenport, Court Reporter

WITNESSES

DOCKET NO. 2012GSS0200446

SC Department of Public Safety (SCHP)

The State of South Carolina

Matthew Nix

County of Aiken

ARREST WARRANT NUMBER

SRG

COURT OF GENERAL SESSIONS

M007653

FILED March 8 2012

MARCH TERM 2012

*Richard*  
R.C.P.&G.S.

*Dave Sanders*  
Deputy Clerk

THE STATE  
vs.

ACTION OF GRAND JURY

KENNY JACKSON

*Torbill*

*Walter*  
Foreperson of Grand Jury

CDR #: 0395

Date: March 8, 2012

Indictment for

VERDICT

CAUSING DEATH BY OPERATING A  
VEHICLE WHILE UNDER THE  
INFLUENCE OF DRUGS OR ALCOHOL

§ 56-05-2945(A)(2)

Foreperson of Petit Jury

J. STROM THURMOND, SOLICITOR

Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

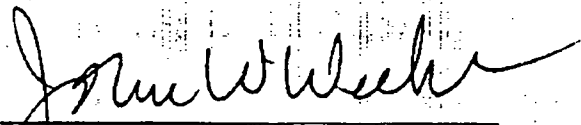
INDICTMENT FOR  
CAUSING DEATH BY OPERATING A  
VEHICLE WHILE UNDER THE INFLUENCE OF  
DRUGS OR ALCOHOL

§ 56-05-2945(A)(2)

At a Court of General Sessions, convened on March 12, 2012, the Grand Jurors of Aiken County present upon their oath:

That KENNY JACKSON did in Aiken County on or about January 8, 2011, while driving a vehicle under the influence of alcohol, drugs, or a combination thereof, do an act forbidden by law or neglect a duty imposed by law in driving of said vehicle, by failing to operate vehicle in a safe and reasonable manner and failure to maintain proper control of vehicle, which act or neglect proximately caused death to Brenda Jett Adams. All in violation of Section 56-5-2945 of the Code of Laws of South Carolina (1976), as amended.

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

  
\_\_\_\_\_  
J. STROM THURMOND, SOLICITOR

WITNESSES

SC Department of Public Safety (SCHP)

Matthew Nix

Law Enforcement Case #

DOCKET NO. 2012GS0200447

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MARCH TERM 2012

ARREST WARRANT NUMBER

M007655

FILED March 8 2012

*[Signature]*  
DCCP E.O.S.

*[Signature]*  
Deputy Sheriff

ACTION OF GRAND JURY

*True bill*

KENNY JACKSON

THE STATE  
vs.

CDR #: 0395

Indictment for

CAUSING DEATH BY OPERATING A  
VEHICLE WHILE UNDER THE  
INFLUENCE OF DRUGS OR ALCOHOL

§ 56-05-2945(A)(2)

J. STROM THURMOND, SOLICITOR

Foreperson of Grand Jury

Date: March 8, 2012

VERDICT

*[Signature]*

Foreperson of Petit Jury  
Date:

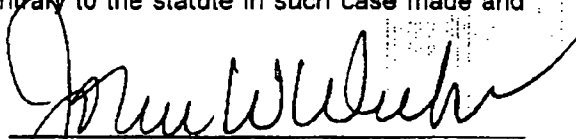
STATE OF SOUTH CAROLINA     )  
   )  
 COUNTY OF AIKEN                ) INDICTMENT FOR  
   ) CAUSING DEATH BY OPERATING A  
   ) VEHICLE WHILE UNDER THE INFLUENCE OF  
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§ 56-05-2945(A)(2)

At a Court of General Sessions, convened on March 12, 2012, the Grand Jurors of Aiken County present upon their oath:

That KENNY JACKSON did in Aiken County on or about January 8, 2011, while driving a vehicle under the influence of alcohol, drugs, or a combination thereof, do an act forbidden by law or neglect a duty imposed by law in driving of said vehicle, by failing to operate vehicle in a safe and reasonable manner and failure to maintain proper control of vehicle, which act or neglect proximately caused death [REDACTED] All in violation of Section 56-5-2945 of the Code of Laws of South Carolina (1976), as amended.

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

  
 \_\_\_\_\_  
 J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA )  
 COUNTY OF Aiken )  
 STATE )  
 VS. )  
 Kenny Jackson )  
 AKA: )  
 Race: Sex: M Age: 30 )  
 DOB: SS# [REDACTED] )  
 Address: ELL DRIVE )  
 City, State, Zip: )  
 DL# SID# SC01397587 )  
 \*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0200446  
 A/W#: M007653  
 Date of Offense: 1/8/2011  
 S.C. Code §: 56-05-2945(A)(2)  
 CDR Code #: 0395

SENTENCE SHEET

1-25 years and \$10,100 - \$25,100

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO: DUI / Felony driving under the influence, death results

In violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  \$17-25-45  
 (CSC w/minor 1<sup>st</sup> or Low d Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (def.'s initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

Samuel Sims 77509 Solicitor SC Bar # King John Defendant  
[Signature] Attorney for Defendant SC Bar # 6486

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of 23 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ 10,100 provided that upon the service of \_\_\_\_\_ days/months/years and or payment of \$ \_\_\_\_\_ plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_

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

CONCURRENT or  CONSECUTIVE to sentence on: Other plea today

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

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

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

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

Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_

\*Fine: \$ 25,100.00 Substance Abuse Counseling

§14-1-206 (Assessments 107.5%) \$ 26,922.50 Random Drug/Alcohol Testing

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

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \_\_\_\_\_ prts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

§56-5-2995 (DUI Assessment) \$12 \$ 12.00 \$ \_\_\_\_\_ Paid to Public Defender Fund

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

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_

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

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

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

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

Proviso 90.5 (SCCJA Surcharge) \$5 \$ \_\_\_\_\_

3% to County (if paid in installments) \$ 1510.59  Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

TOTAL \$ 53,782.59 Presiding Judge [Signature]

Clerk of Court/Deputy Clerk [Signature] Judge Code: 2143

Court Reporter: [Signature] Sentence Date: 3/14/12

STATE OF SOUTH CAROLINA  
COUNTY OF Aiken  
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0200447

VS.  
Kenny Jackson

A/W#: M007655  
Date of Offense: 1/8/2011  
S.C. Code §: 56-05-2945(A)(2)  
CDR Code #: 0395

AKA: \_\_\_\_\_  
Race: \_\_\_\_\_ Sex M Age: 30  
DOB: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
DL# \_\_\_\_\_ SID# SC01397587

SENTENCE SHEET

1-25 years and \$10,100 - \$25,100  
 CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was  
TO: DUI / Felony driving under the influence, death results

In violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (def.'s initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:  
Samuel Stearns 77509 Solicitor SC Bar # \_\_\_\_\_  
Kenny Jackson Defendant  
Paul H. [Signature] Attorney for Defendant SC Bar # 6986

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
for a determinate term of 23 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ 25,100 provided that upon the service of \_\_\_\_\_ days/months/years and or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable; the balance is suspended with probation for  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are  
incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: other plea today  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections.  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

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

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

Payment Terms: \_\_\_\_\_ Obtain GED   
 Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient:		
*Fine:		\$ <u>25,100.00</u>
§14-1-206 (Assessments 107.5%)		\$ <u>26,982.50</u>
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u> <del>100.00</del> <u>sd</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ <u>12.00</u> <del>12.00</del> <u>sd</u>
§58-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ _____ <u>sd</u>
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u> <del>25.00</del> <u>sd</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§58-5-2942(J) (Vehicle Assessment)	\$40/lea	\$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5:	\$ _____
3% to County (if paid in installments)		\$ <u>1566.58</u> <u>59</u> <u>JP</u>

TOTAL \$ 53,786.08 08 09

Clerk of Court/Deputy Clerk: Sharon A. Roenkrantz  
Court Reporter: Risa H. Ravenfort  
SCCA/217 (03/2011)

May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol Testing   
Fine may be pd. in equal consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_  
\$ \_\_\_\_\_ Paid to Public Defender Fund  
Other: \_\_\_\_\_

Appointed PD or appointed other counsel,  
\$47.12 requires \$500 be paid to Clerk  
during probation.

Presiding Judge: [Signature]  
Judge Code: 2143  
Sentence Date: 3/14/12

M007653  
007655  
FORM 5 007656

2012-cr-02-01544  
2012-cr-02-446,447  
Filed 6-20-12

STATE OF SOUTH CAROLINA )  
County of AIKEN )  
KENNY JACKSON # 350150 )  
Full name and prison number (if any) of Applicant )  
v. )  
State of South Carolina )

IN THE COURT OF COMMON PLEAS

C.C.P. of S.C. - Aiken County  
Trial Judge: James J. [unclear]  
Trial Atty: Charles H. Lyons III  
Court Reporter: Lisa Davenport  
Sec. PCR Petitioner: [unclear]  
General Sessions: [unclear]  
Appointed Atty: [unclear]

APPLICATION FOR  
POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 LIEBER CORR. INST., P.O. Box 205, RIDGEVILLE, S.C. 29472
2. Name and location of Court which imposed sentence AIKEN COUNTY COURT P.O. Box 583, AIKEN, S.C. 29802-0583
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2012-GS-0200446 / 23 YEARS OF CONFINEMENT
  - (b) 2012-GS-0200447 / 23 YEARS CONCURRENT

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) MARCH 14, 2012 23 YEARS OF CONFINEMENT
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a)  after a plea of guilty I PLED GUILTY
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
  - NO
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. NO
    - ii. NO
    - iii. NO
  - (b) the result in each such Court to which you appealed:
    - i. NONE
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. NONE
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) \_\_\_\_\_
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ① DUE PROCESS VIOLATION, ② NEWLY AND AFTER DISCOVERY
- (b) EVIDENCE, ③ INEFFECTIVE ASSISTANCE OF COUNSEL, ④ \_\_\_\_\_
- (c) RELATED APPEAL, ⑤ SUBJECT MATTER JURISDICTION.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. NONE
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

- (c) the disposition thereof:
  - i. NONE!
  - ii. //
  - iii. //
  - iv. //

- (d) the date of each such disposition:
  - i. //
  - ii. //
  - iii. //
  - iv. //

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. //
  - ii. //
  - iii. //
  - iv. //

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?

//

//

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

- (a) which grounds have been presented:
  - i. //
  - ii. //
  - iii. //
- (b) the proceedings in which each ground was raised:
  - i. //
  - ii. //
  - iii. //

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. MR. CHARLES H.S. LYONS, III  
336 TELFAIR STREET
  - ii. AUGUSTA, GA 30901
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

GUILTY PLEA, SENTENCE, & CONVICTION BE SET ASIDE  
OVERTURN, REVERSED, AND OR VACATED.

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

NO

STATE OF SOUTH CAROLINA )  
County of \_\_\_\_\_ )

VERIFICATION

I, KENNY JACKSON # 350150, 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.

Kenny Jackson

SWORN to and subscribed before me this 15th day of June, 2012

Sylvia Jones (L.S.)  
Notary Public

My Commission Expires: 1/24/2018

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

I, KENNY JACKSON # 350150, 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.

Kenny Jackson  
Applicant

SWORN or affirmed to and subscribed before me this

15th day of June, 2012

Sylvia Jones  
Notary Public

My Commission Expires: 1/24/2018

MR. KENNY JACKSON # 350150  
P.O. Box 205 / COOPER A-39  
RIDGEVILLE, S.C. 29472

JUNE 20, 2012

AIKEN COUNTY COURT HOUSE  
ATTN: MRS. LIZ GODARD, CLERK  
POST OFFICE Box 583  
AIKEN, S.C. 29802-0583

DEAR HONDRABLE GODARD;

MAY YOU PLEASE BE SO KIND BY FORWARDING ME A COPY OF  
THE FOLLOWING WARRANTS: \*23660BY 10-19-2001-Jackson | Beech-Island  
not Aiken 65 → 39960CK 3-9-2003 summary of  
cannot find \*H436487 8-9-2007-Jackson | Beech-Island  
✓M007653 2-4-2011-attached SC  
✓M007655 2-4-2011-attached  
✓M007656 2-4-2011-attached

SECONDLY, MAY YOU ALSO FORWARD ME A STAMP-CLOCKED-  
IN COPY OF THE ENCLOSED P.C.R. APPLICATION WITH THE  
SELF-STAMPED ENVELOPE I'VE ENCLOSED. THANK YOU VERY  
MUCH IN ADVANCE MRS. GODARD FOR YOUR TIME, ASSISTANCE,  
ETC.

RESPECTFULLY SUBMITTED,

*S/ Kenny Jackson*

\* Mr. Jackson-

We are not in possession  
of the indicated warrants  
You may contact the  
Jackson | Beech-Island Mag Court @  
227 Gateway Dr. Ste 133, Aiken SC 29803  
for \* 23660BY + H 436487. Have no info on # 39960CK  
Good Luck - Anita 6.26.12

STATE OF SOUTH CAROLINA )  
 COUNTY OF AIKEN )  
 Kenny Jackson, #350150, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2012-CP-02-1544

**RETURN**

The Respondent, making its Return to the application for post-conviction relief, filed June 26, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted during the March 2012 term of the Aiken County Grand Jury for two counts of Causing Death by Operating a Vehicle While under the Influence of Drugs or Alcohol (2012-GS-02-0446, -0447). Charles H.S. Lyons, III, Esquire, represented him. On March 14, 2012, Applicant pled guilty as indicted to both counts before the Honorable George C. James, Jr., who sentenced Applicant to twenty-three years imprisonment and a \$25,100 fine for each count, with the sentences to run concurrently. Applicant did not appeal his convictions or sentence.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections; Applicant's guilty plea transcript has been ordered and will be forwarded

upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. Due Process Violation;
2. Newly and after Discovered Evidence;
3. Ineffective Assistance of Counsel;
4. Belated Appeal; and
5. Subject Matter Jurisdiction.

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

## III.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has

failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

#### IV.

The Applicant's second claim is an allegation that newly discovered or after discovered evidence exists. The Applicant waived his right to a jury trial. If the Court determines that the Applicant knowingly and voluntarily pled guilty, the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975).

Furthermore, this contention is vague and general in its terms. There are no specific allegations of the nature of the evidence. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence, as he fails to even state to what evidence he is referring. The Court should summarily dismiss this allegation.

#### V.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's

conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

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

(1983).

## VI.

Applicant claims that he was denied effective assistance of counsel because his trial attorney did not file an appeal from his conviction. In Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000), the United States Supreme Court found that counsel does not always have to consult with a defendant regarding an appeal. Counsel must only consult with a defendant about an appeal in two situations: (1) where a rational defendant would want to appeal, as when there are non-frivolous grounds for an appeal, or (2) where a defendant reasonably demonstrated to counsel that he was interested in an appeal. Id. Courts must take into account all information counsel knew or should have known in making this determination. Id.

Respondent submits that trial counsel for the Applicant was diligent in his representation of Applicant and that he performed within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). In Strickland, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Respondent submits that trial counsel's performance was not deficient nor was the Applicant prejudiced in any way by such performance. The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the Applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally

deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Respondent submits that this allegation is totally frivolous and demands strict proof thereof. Nevertheless, the allegation raises a question of fact, which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

## VII.

The Respondent submits that the Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), *citing* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In this case, the Applicant was indicted by the Georgetown County grand jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g.,* Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). The Applicant here cannot show any irregularity, because the indictments in question are sufficient on their face. Therefore, the Respondent would move for summary judgment on this allegation pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this

allegation and it should be dismissed as a matter of law.

VIII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

IX.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel and whether Applicant is entitled to a belated appeal.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN  
Assistant Attorney General

By: *Megan E. Harrigan*  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

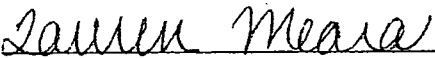
~~September 11~~, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2012-CP-02-1544
	)	
KENNY JACKSON, 350150,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Ziva Bruckner, Esquire**  
**Capers Dunbar Sanders & Bruckner, & Bellotti, LLP**  
**2604 Commons Blvd**  
**Augusta, GA 30909-2080**

DATED this 11<sup>th</sup> day of September, 2012.

  
 Lauren Meara, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
Kenny Jackson, #350150,	)	Case No. 2012-CP-02-1544
Applicant,	)	
v.	)	<b>MOTION FOR A MORE DEFINITE</b>
	)	<b>STATEMENT</b>
State of South Carolina,	)	
Respondent.	)	

The Respondent, making its Motion for a More Definite Statement to the application for post-conviction relief, filed June 26, 2012, would respectfully show this Court:

I.

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

1. Due Process Violation;
2. Newly and after Discovered Evidence;
3. Ineffective Assistance of Counsel;
4. Belated Appeal; and
5. Subject Matter Jurisdiction.

Applicant merely lists these five grounds for relief in his Application without any additional information or facts to support such grounds. In its Return, dated September 11, 2012, Respondent stated: “[a]ny claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing, S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.” This Return was served on Applicant’s counsel, Ziva Bruckner, Esquire, on September 11, 2011.

## II.

As of today's date, Applicant has not amended his application or provided Respondent with any facts to support these grounds for relief. Applicant has yet to explain with any specificity whatsoever, the actual scenarios/facts upon which these supposed claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985).

The Respondent submits that it would be unfair to wait until the day of the hearing to finalize the specificity of plea counsel's supposed errors. The Respondent and plea counsel(s) are entitled to adequately prepare for the hearing; to withhold the specific grounds and amend only on the day of the hearing prejudices the Respondent and plea counsel.

The Respondent respectfully submits that it is incumbent on the Applicant to amend the application and provide specifics so that adequate preparation is possible. The Respondent reserves the right to request that any amendment(s) withheld until the last minute be stricken because of undue prejudice to the Respondent. Rule 15(a), SCRCP.

## III.

WHEREFORE, the Respondent objects to any last minute amendment(s) because there would not be sufficient time to adequately prepare/respond.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN  
Assistant Attorney General

By: *Megan E. Harrigan*  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

January 11, 2013

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 )  
 )  
 KENNY JACKSON, 350150, )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2012-CP-02-1544

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Motion for a More Definite Statement** in the above-captioned matter on the following persons by depositing same in the United States mail, postage prepaid:

**Ziva Bruckner, Esquire**  
**Capers Dunbar Sanders & Bruckner, & Bellotti, LLP**  
**2604 Commons Blvd**  
**Augusta, GA 30909-2080**

DATED this 11<sup>th</sup> day of January, 2013

*Lauren Meara*  
 Lauren Meara, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SENCOND JUDICIAL
	)	
Kenny Jackson, #350150	)	Case No. 2012-CP-02-1544
Applicant,	)	
v.	)	<b>RETURN TO MOTION FOR A</b>
	)	<b>MORE DEFINITE STATEMENT</b>
State of South Carolina,	)	
Respondent.	)	

NOW COMES Applicant, Kenny Jackson, and files this his Return to Motion for a More Definite Statement and respectfully shows to the Court as follows:

1.

Applicant filed his application for post conviction relief on June 26, 2012. Respondent did not file its return to the application until September 7, 2011. On January 11, 2013 Respondent forwarded to the Court for filing and served a copy on applicant's counsel this Motion for a More Definite Statement. At the time Respondent filed its Motion, a hearing on the application had already been scheduled to take place on January 23, 2013 and notice had been served on the parties. Applicant submits to the Court that Respondent's motion is untimely in that it waited until just a few days before the scheduled hearing and subsequent to the scheduling of the hearing to file this motion.

2.

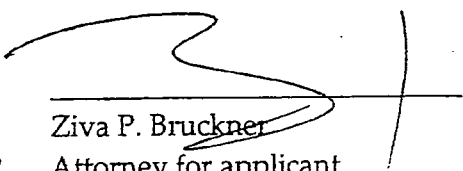
If indeed Respondent wishes to have a more definite statement of the applicant's application, it should have filed the motion long ago giving the applicant time to respond and possibly amend his application.

3.

Therefore Applicant respectfully requests that the Court deny respondent's Motion to Dismiss and allow the hearing scheduled for January 23, 2013 to go forward as scheduled. In the alternative Applicant respectfully requests that the Court continue the hearing and allow Applicant sufficient time to provide additional statements regarding his application.

This 17<sup>th</sup> day of January, 2013

Capers, Dunbar, Sanders, Bruckner & Bellotti, LLP  
2604 Commons Blvd.  
Augusta, GA 30909  
Office 706-722-7542



Ziva P. Bruckner  
Attorney for applicant  
SC Bar No.: 9025

STATE OF SOUTH CAROLINA )  
 COUNTY OF AIKEN )  
 )  
 Kenny Jackson, #350150 )  
                   Applicant, )  
                   v. )  
 State of South Carolina, )  
                   Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE SENCOND JUDICIAL

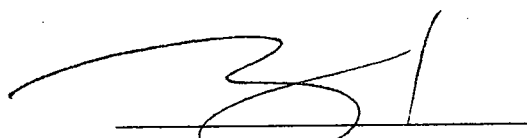
Case No. 2012-CP-02-1544

**CERTIFICATE OF SERVICE**

I have this day served a copy of the Return Motion for a More Definite Statement in the above-referenced matter on the following person by depositing same in the United States mail postage prepaid:

Meagan E. Harrigan  
 Assistant Attorney General  
 Post Office Box 11549  
 Columbia, SC 29211-1549

This 17<sup>th</sup> day of January, 2013



Ziva P. Bruckner  
 Attorney for applicant  
 SC Bar No.: 9025

Capers, Dunbar, Sanders, Bruckner & Bellotti, LLP  
 2604 Commons Blvd.  
 Augusta, GA 30909  
 Office 706-722-7542

State of South Carolina )  
County of Aiken )

Court of Common Pleas  
2012-CP-02-01544

Kenny Jackson )  
Applicant )  
vs. )  
State of South Carolina )  
Defendant )

Transcript of Record

January 23, 2013  
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

Ziva P. Bruckner, Esq.  
Attorney for the Applicant

Megan E. Harrigan, Esq.  
Attorney for the Defendant

Lisa H. Davenport, RPR  
Official Court Reporter

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**INDEX OF WITNESSES**

**KENNY JACKSON**

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Recross By Ms. Harrigan . . . . . 9

**CHARLES H. S. LYONS, III**

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**EXHIBITS**

NO.	DESCRIPTION	ID	EVD
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(NONE OFFERED)

1 (Whereupon, on January 23, 2013 the following  
2 proceedings were held:)

3 MS. HARRIGAN: Applicant was indicted during the  
4 March 2012 term of the Aiken County Grand Jury for two  
5 counts of causing death while operating a vehicle while  
6 under the influence of drugs or alcohol. He was  
7 represented by Charles Lyons, III, who is present in the  
8 courtroom. On March 14, 2012 Applicant plead guilty as  
9 indicted to both counts before the Honorable George C.  
10 James, Jr., who sentenced Applicant to 23 years  
11 imprisonment and \$25,100 fine on each count with the  
12 sentences to be served concurrently.

13 Applicant did not appeal his convictions and  
14 sentence. He did, however, filed a timely application for  
15 post-conviction relief on June 26, 2012. He is  
16 represented in this action by Ziva P. Bruckner and I'll  
17 turn it over to Ms. Bruckner at this time.

18 THE COURT: Ms. Bruckner, you may proceed.

19 MS. BRUCKNER: Mr. Jackson.

20 THE COURT: You're Mr. Kenny Jackson?

21 THE APPLICANT: Yes, Your Honor.

22 THE COURT: Please come place your left hand on the  
23 Bible and raise your right.

24 KENNY JACKSON, after being duly sworn, testified  
25 as follows:

DIRECT EXAMINATION

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BY MS. BRUCKNER:

Q Good morning, Mr. Jackson. Would you please state your name?

A Kenny Jackson.

Q And you recall that you pleaded guilty to the two indictments that involve the -- that were discussed by the prosecutor here?

A Yes.

Q Were you represented by an attorney for your trial -- I mean, for the proceedings involving the case?

A Yes, I was.

Q Who was your attorney?

A Charles Lyons.

Q You made a decision to plead guilty; correct?

A Yes.

Q Did you discuss with Mr. Lyons the guilty plea?

A Yes, at that time.

Q Did he discuss with you what was the sentence that you were going to get if you plead guilty?

A Yes, he had told me 20.

THE COURT: Told you what?

THE DEFENDANT: Twenty.

Q Did he tell you that you would get 20 for both -- that you would end up serving just 20 years for both of

1 those causes; right?

2 A Excuse me?

3 Q Is that what you said?

4 A I didn't understand the question.

5 Q You were going to serve 20 total?

6 A Yes.

7 Q What was the actual sentence that you received?

8 A I received 23.

9 Q And were you surprised when that was the sentence you  
10 received?

11 A Yes, I was.

12 Q Why were you surprised?

13 A Because I thought it was going to be 20.

14 Q What are you asking the judge to do for you today?

15 A The 20.

16 Q You mean you want him to change the 23 to the 20  
17 because that was your understanding?

18 A Yes.

19 MS. BRUCKNER: Thank you, Your Honor. That's all I  
20 have.

21 MS. HARRIGAN: May it please the court.

22 CROSS-EXAMINATION

23 BY MS. HARRIGAN:

24 Q Mr. Jackson, how many times did you meet with your  
25 attorney Mr. Lyons before your guilty plea?

1 A It was three times.

2 Q Was he appointed or did you hire him?

3 A I hired him.

4 Q Do you recall reviewing discovery materials of  
5 Mr. Lyons?

6 A Yes. We went over motions of discoveries.

7 Q Do you recall discussing possible defenses with  
8 Mr. Lyons?

9 A Maybe once.

10 Q But you did discuss possible defense?

11 A Yes, we discussed it.

12 Q Did you give him any leads or potential witnesses to  
13 investigate for your case?

14 A Well, I didn't really have no witnesses at the time.

15 Q Did you discuss any plea offers made by the state  
16 with Mr. Lyons?

17 A Excuse me?

18 Q Did you discuss any plea offers made by the state  
19 with Mr. Lyons?

20 A Plea offers? Just the one that we discussed the day  
21 when we was going to court.

22 Q Do you recall what plea offer was from the state?

23 A From the state? From my recollection it was 20.

24 Q You told Judge James that you were satisfied with  
25 Mr. Lyons' representation; is that correct?

1 A Yes, I was.

2 Q And you told Judge James that Judge Lyons -- that  
3 Mr. Lyons had done everything he possibly could have to  
4 properly represent you?

5 A Yes.

6 Q And that included interviewing witnesses, examining  
7 evidence and analyzing your defenses; correct?

8 A Yes.

9 Q And you told Judge James it was your decision to  
10 plead guilty; correct?

11 A Yes.

12 Q Do you recall waiving your constitutional right at  
13 your guilty plea proceeding?

14 A Yes.

15 Q And you told Judge James that you had been drinking  
16 prior to driving; correct?

17 A Yes.

18 Q And you were under oath then; correct?

19 A Yes.

20 Q And you admitted you were guilty; correct?

21 A Yes.

22 Q So you are guilty of these offenses?

23 A Yes.

24 Q And you apologized to the victims during your guilty  
25 plea; correct?

1 A Yes, I did.

2 Q And one of your allegations that you've raised in  
3 your application is that your attorney didn't file an  
4 appeal on your behalf; correct?

5 A Yes.

6 Q Did he advise you of your right to appeal?

7 A I had told him, you know, right before I left out to  
8 file an appeal on my behalf. He never did get around to  
9 doing it.

10 Q And Judge James advised you during your guilty plea  
11 that you had a right to appeal within 10 days; correct?

12 A Yes.

13 Q So you knew you only had 10 days to file an appeal;  
14 correct?

15 A Yes.

16 Q Did you ask your attorney to file an appeal?

17 A Yes.

18 Q How?

19 A Right before I left out the courtroom.

20 Q Did you ever follow up with that?

21 A I had my sister also tried to call him and get in  
22 touch with him about filing the appeal, but she never was  
23 able to get in contact with him.

24 Q Did you send him any letters or written requests?

25 A No.

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

2 THE COURT: Anything on redirect?

3 REDIRECT EXAMINATION

4 BY MS. BRUCKNER:

5 Q Mr. Jackson, when you responded to the Judge's  
6 questions as to whether or not you were satisfied with the  
7 representation you received was that before or after the  
8 sentence was declared by the Judge?

9 A That was before.

10 Q Before. Okay. And your main concern is that the  
11 sentence was what you were not told you would get; is that  
12 correct?

13 A Yes.

14 MS. BRUCKNER: Thank you.

15 MS. HARRIGAN: Just briefly, Your Honor.

16 RE-CROSS-EXAMINATION

17 BY MS. HARRIGAN:

18 Q When you plead before Judge James you acknowledged  
19 that you knew this was an open sentence; correct? That  
20 there were no negotiations or recommendations being made  
21 by the state?

22 A No.

23 Q Did you sign sentencing sheets that acknowledged  
24 that --

25 A I signed---

1 Q -- there were no negotiations or recommendations?

2 A -- the sentence sheet, but I didn't see anything, you  
3 know. It said one to 25, but I was looking to the 20.

4 Q Do you have a copy of your sentencing sheets in front  
5 of you?

6 A I don't have one right now.

7 MS. HARRIGAN: May I approach, Your Honor?

8 THE COURT: You may.

9 Q Mr. Jackson, I am going to hand you a copy of your  
10 sentencing sheets for each of your indictments and  
11 charges. Can you show me where on there it promises that  
12 you're going to get 20 years?

13 A It doesn't say. It was verbally discussed. It  
14 doesn't have it in writing.

15 Q Do you notice where on those two sheets that it is  
16 marked that this plea is without any negotiation or  
17 recommendation from the state? I believe the portion is  
18 highlighted.

19 A No.

20 Q With that---

21 A Okay.

22 Q Do you acknowledge that's checked on both of those  
23 sheets?

24 A Uh-huh.

25 Q Is your signature on those sentencing sheets?

1 A Yes.

2 Q On both of them?

3 A Uh-huh.

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

5 THE COURT: You may step down. Next witness, please.

6 MS. BRUCKNER: I have no further witnesses, Your  
7 Honor.

8 THE COURT: Thank you.

9 MS. HARRIGAN: The state will call Mr. Charles Lyons.

10 THE COURT: Mr. Lyons, come forth, please.

11 CHARLES H. S. LYONS, III, after being duly  
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. HARRIGAN:

15 Q Good morning, Mr. Lyons.

16 A Good morning.

17 Q How long have you been practicing law?

18 A Twenty-six years.

19 Q And what percentage would you say is criminal defense  
20 work?

21 A At least half.

22 Q Were you appointed or retained in this case?

23 A Retained.

24 Q Have you had an opportunity to review your file prior  
25 to coming into court today?

1 A Yes.

2 Q Do you recall how many times you met with Mr. Jackson  
3 to discuss these charges?

4 A We met a number of times. I don't know exactly how  
5 many, but we did talk a number of times about the case.

6 Q Was he out on bond before his guilty plea?

7 A Yes.

8 Q Do you recall where you met with him?

9 A My office.

10 Q Did you also correspond any other way?

11 A Phone.

12 Q During these meetings and discussions were you able  
13 to go over his indictments and the charges he was facing?

14 A Yes. We, you know, talked about possible defenses,  
15 possibility of maybe trying to suppress the evidence, that  
16 type of thing.

17 Q Did you discuss potential sentences he might receive?

18 A Well, he knew what the maximum sentence was that he  
19 was looking at on each count.

20 Q Did you ever advise him of a sentence he likely would  
21 receive if he plead guilty?

22 A I advised him as to the sentence possibility. Me and  
23 Mr. Grimes, the Assistant Solicitor who prosecuted the  
24 case, we actually had -- we actually spoke with Judge  
25 James prior to sentencing to get a feel for what he would

1 do in the case and he informed us that he would -- he  
2 would give him a concurrent sentence. So my information  
3 that I passed on to the client was that the maximum  
4 sentence that you would receive on that day of sentencing  
5 would be 25 years.

6 Q Do you recall any discussions with your client where  
7 you promised him he would receive a 20-year sentence?

8 A There is no way I would have told him that because,  
9 you know, I told him what the maximum sentence was. The  
10 Judge didn't -- he didn't tell us what he was going to  
11 sentence him to, but he said it wouldn't be more than 25  
12 years.

13 Q Do you believe he understood that he was facing up to  
14 25 years --

15 A No doubt.

16 Q -- if he plead guilty? Were you with Mr. Jackson  
17 when he signed the sentencing sheets?

18 A Yes.

19 Q Did he acknowledge that this plea was without  
20 negotiation or recommendation on the sentencing sheets?

21 A Yes, he understood that.

22 Q Do you recall receiving Mr. Jackson's discovery file  
23 in this case?

24 A Yes.

25 Q Did you review those contents with him?

1 A I copied it and gave him a copy of it.

2 Q What was the extent of the evidence against him in  
3 this case?

4 A Well, if the results of his blood alcohol testing --  
5 if that came into evidence, the case would be over. It  
6 wouldn't last long.

7 Q Do you recall what his blood alcohol content was?

8 A It was .22, I believe. He passed the line of cars.  
9 I think it was about six cars, I believe, he passed and  
10 the last car he passed was a lady who was an EMT who was  
11 off duty and shortly after he passed that car she crested  
12 the hill and she testified -- well, she gave the court a  
13 statement saying that interview and came upon the accident  
14 which he was involved in.

15 Q Did he also give a statement to law enforcement  
16 admitting to drinking?

17 A I don't think he -- I don't remember if he gave a  
18 statement where he admitted to drinking or not. I know  
19 there was a strong odor of alcohol when the trooper  
20 approached the vehicle and there was a smell of alcohol  
21 when he was in the emergency room at the Medical College  
22 of Georgia.

23 Q Based on your review of the file and your discussions  
24 with your client were you able to develop an opinion on  
25 the state's ability to prove that he was guilty beyond a

1 reasonable doubt?

2 A I think they would have been able to prove it pretty  
3 easily.

4 Q Did you discuss this with Mr. Jackson?

5 A Yes.

6 Q Do you feel you spent sufficient time preparing this  
7 case for trial or guilty plea?

8 A Yes.

9 Q What sort of investigation did you do in this case?

10 A I talked to witnesses, reviewed the video interview,  
11 looking over documents to see if there was a way possible  
12 to attack the testing -- the blood testing -- any way to  
13 keep that evidence out, and a lot of research surrounding  
14 that issue and just didn't find anything that we could  
15 march on on that issue.

16 Q Ultimately, whose decision was it for Mr. Jackson to  
17 plead guilty?

18 A It was ultimately his decision, but I strongly  
19 encouraged him to consider pleading guilty. He was facing  
20 a lot of time. Quite frankly, I told him that I think the  
21 Judge was really giving him a break to allow him to plead  
22 to a concurrent sentence.

23 Q Did you advise him of his right to appeal his guilty  
24 plea?

25 A I told him about -- I talked to him about appeal, but

1 I didn't think he had anything really to appeal on.

2 Q Is it your standard practice to advise the client  
3 that they can file an appeal from guilty plea?

4 A Yes.

5 Q Do you recall Judge James informing your client of  
6 his right to appeal within 10 days?

7 A He did.

8 Q Did he ever request you file an appeal on his behalf?

9 A No. The only thing -- I know one of his sisters  
10 called me a few days after the sentencing and the topic of  
11 the conversation was that there was supposedly another  
12 person driving the car. It was supposed to be an  
13 ex-girlfriend of somebody of Mr. Jackson who was actually  
14 driving the car and supposed to be some person who lived  
15 near where the accident took place where this person  
16 supposedly ran and knocked on the door. That was the  
17 first time I ever heard anything about somebody else  
18 driving the car.

19 Q But just so we're clear, there was never a request  
20 for him to file an appeal on your behalf?

21 A No.

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

23 THE COURT: Cross.

24 CROSS-EXAMINATION

25 BY MS. BRUCKNER:

1 Q Mr. Lyons, you mentioned that you discussed the range  
2 of one to 25 that Mr. Jackson can get for the two  
3 offenses. Will you agree with me that sometimes even  
4 though the individual is presented with a range there is  
5 also a discussions of what he's likely to be getting from  
6 the judge even though the judge, of course, does not make  
7 a commitment ahead of time? Isn't that true?

8 A Yea, that's true; however, under these facts I  
9 thought anything 25 or less was going to be very gracious.  
10 I mean, you had two people who got killed in this accident  
11 and, you know, a sentencing judge could have very easily  
12 sentenced Mr. Jackson above 25 years.

13 Q Well, you would agree with me that the difference  
14 between 20 and 23 is not that large, and if he recollects  
15 20, then he heard it somewhere. Wouldn't that be true?

16 A Yes, he heard it in his mind because he didn't hear  
17 it -- I'll tell you who he didn't hear it from. He didn't  
18 hear it from me. There is no doubt about that. I had --  
19 there was no incentive, I mean, when you think about it.  
20 There is no incentive to plead to 20 as opposed to the  
21 Judge had you capped at 25. You didn't have a defense.  
22 You weren't going anywhere. So it wouldn't be a  
23 motivating factor for me to get him to plead to say, well,  
24 you're going to get 20 because just -- the motivating  
25 factor for him to plead was that he wasn't going to get

1 more than 25. That's what I stressed with him.

2 Q Well, with your experience in doing so much criminal  
3 work you had some feel for how much a person might get  
4 even though you don't have a direct commitment from  
5 someone that that is what he will get and so isn't it  
6 possible that you suggested to him that he would probably  
7 get 20 and he would not get any more than that?

8 A Quite honestly, I thought he was going to get 25  
9 years.

10 Q You mentioned that he never directly asked you to  
11 appeal the sentence within the 10 days; is that correct?

12 A I think we talked about it.

13 Q Did he ever give you anything in writing that says  
14 I'm okay with the sentence and I am not interested in an  
15 appeal?

16 A No, he didn't.

17 Q So you don't have any document or any record that  
18 would show that he decided to forego an appeal and not  
19 really ask for an appeal?

20 A No. I don't have any document at all, no.

21 Q So you're just -- you're speaking about pure  
22 recollection --

23 A Right.

24 Q -- that he did not ask you specifically to appeal?

25 A No.

1 Q That's all you can go on; right?

2 A That's correct.

3 Q How many cases do you handle per year, would you say?

4 A I'm really not sure. Criminal cases? Quite a few.

5 Q Quite a few?

6 A Right.

7 Q You remember the details of each and every one of  
8 them? You would agree with me that that is highly  
9 unlikely that you can remember all of the details of these  
10 cases?

11 A I can remember the details of most of my criminal  
12 cases. I can tell you -- I remember the details of this  
13 one because it was bad.

14 Q Well, you did have to go and review the file in order  
15 to come here and testify today? I mean, didn't you? You  
16 did testify to that?

17 A I reviewed it, but and to say I remember every little  
18 bit and piece, no, I didn't, but the major parts of the  
19 case, it's not easy to forget it. I mean, I remember  
20 standing up right here in this courtroom I know for at  
21 least an hour, maybe two, listening to victims, the  
22 families of the victims.

23 Q But you'll have to admit---

24 THE COURT: Ma'am, let him finish his answer.

25 MS. BRUCKNER: I'm sorry.

1 THE WITNESS: And it was tough. It was tough on  
2 everybody in this courtroom.

3 THE COURT: The transcript said they had a lot of  
4 pictures, too -- very graphic pictures; is that correct?

5 THE WITNESS: Yes, Judge. It was a tough sentencing.  
6 I really think Judge James was very, very fair to  
7 Mr. Jackson to sentence him in light of what he did in  
8 light of the circumstances.

9 Q But you would agree with me that the issue of an  
10 appeal came after that; right? I mean---

11 A I don't think there was ever an issue of appeal. As  
12 I said, the only issue that was really brought to me was  
13 that there was somebody else driving and that was not an  
14 issue of appeal. That was an issue of whether or not the  
15 case should have been tried, but as I said, that never was  
16 stated to me until after he was sentenced.

17 Q Whether or not you thought there was a basis for  
18 appeal does not necessarily determine whether or not  
19 Mr. Jackson decided to appeal. I mean, these are two  
20 different issues. I understand what you're saying about  
21 your perception of the case, but as we sit here today the  
22 only thing that we can rely on is your memory that he  
23 didn't ask you for an appeal. There is nothing else that  
24 we can rely on?

25 A That's correct.

1 Q Thank you. I have no further questions.

2 THE COURT: Redirect, if any.

3 MS. HARRIGAN: None, Your Honor.

4 THE COURT: Mr. Lyons, you may step down. May he be  
5 excused?

6 MR. LYONS: I have another one, Judge.

7 THE COURT: Okay. Well, you better stay.

8 Next witness, please.

9 MS. HARRIGAN: The state has no additional witnesses  
10 to call.

11 THE COURT: Anything in reply?

12 MS. BRUCKNER: No, Your Honor.

13 THE COURT: Any arguments anybody wishes to make?

14 MS. HARRIGAN: The state will rely on the testimony  
15 provided by Applicant and Trial Counsel.

16 THE COURT: Mrs. Bruckner?

17 MS. BRUCKNER: I know that, first of all, Mr. Jackson  
18 acknowledges that he pleaded guilty and he did it  
19 knowingly. The issue is not that. His petition for  
20 relief here is based open the fact that, number one, he  
21 was -- he remembered clearly that before he went into the  
22 courtroom and actually went through the appeal -- went  
23 through the plea process he was told that he would get 20  
24 years for both and in addition to that he remembers that  
25 he requested an appeal and that an appeal was not filed on

1 his behalf. So, and I think that we're talking really  
2 about the ability of Mr. Lyons to remember what it was  
3 that transpired. He doesn't have any record. Obviously,  
4 he has no record of what he told him about the sentence,  
5 but he has no record that he can go and review that would  
6 demonstrate that Mr. Jackson did not wish to appeal the  
7 case.

8 Mr. Jackson remembers he did request to appeal the  
9 case and whether or not Mr. Lyons thought there was merit  
10 to an appeal, that does not foreclose the possibility that  
11 Mr. Jackson is correctly asserting that he requested an  
12 appeal and I think that he should be entitled to follow on  
13 this late stage. That's all it is.

14 THE COURT: Thank you. All right, I have reviewed  
15 the testimony of the Applicant and Mr. Lyons. I have also  
16 reviewed the transcript of the -- I hadn't reviewed the  
17 testimony. I have heard their testimony. I have reviewed  
18 the testimony taken from the trial or from the guilty  
19 plea.

20 What strikes me as important in the transcript was  
21 that the Court asked Mr. Lyons had he advised his client  
22 of the range of sentence. Obviously, it is a mandatory  
23 one to a maximum of 25 and Judge James then again when he  
24 was talking with the Defendant or speaking with the  
25 Defendant advised him that both of the indictments carry

1 from one year mandatory up to 25 and asked him did he  
2 understand that and he said he did and the Court also  
3 asked Mr. Lyons was there any recommendation in the case  
4 and Mr. Lyons said there was none from the state and in  
5 going over further with the Applicant during the plea he  
6 asked the Defendant did he recognize and realize that  
7 there was no recommendation or negotiation and that he was  
8 pleading straight up which meant he was looking at 25 on  
9 both cases -- stated that he was happy with his lawyer.  
10 He doesn't say anything about a promise of 20 years. The  
11 Court further advised him that he had 10 days from the  
12 date of the sentence to appeal.

13 So, I am asked to judge the credibility of the  
14 witnesses in this case and I find that Mr. Lyons'  
15 credibility outweighs that of the Applicant and I  
16 respectfully deny the petition for post-conviction relief.  
17 Thank you. Please prepare me an order.

18 Mr. Jackson, when you get the order -- when you  
19 receive the order you have 10 days from the receipt of  
20 that order -- well, 30 days. This is a civil action.

21 MS. HARRIGAN: Thirty.

22 MS. BRUCKNER: Thirty days, Your Honor.

23 THE COURT: You have 30 days from the date of the  
24 receipt of the order to file an appeal from my order. Do  
25 you understand that?

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THE APPLICANT: Yes, sir.

THE COURT: Thank you. Have a nice day.

(End of Transcript of Record.)

CERTIFICATE OF REPORTER

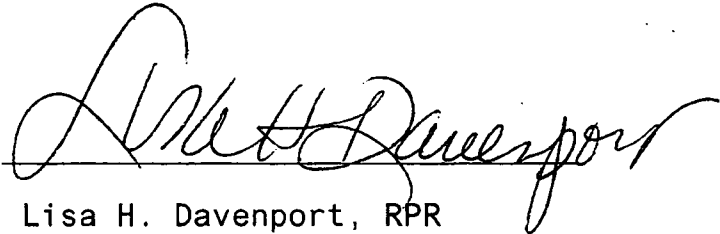
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State of South Carolina        )  
County of Aiken                )

I, Lisa H. Davenport, Official Court Reporter for the  
Second Judicial Circuit of the State of South Carolina, do  
hereby certify that the foregoing is a true, accurate and  
complete Transcript of Record of the proceedings had and  
evidence introduced in the trial of the captioned case,  
relative to appeal, in the Court of Common Pleas for Aiken  
County, South Carolina, on the 23rd day of January, 2013.

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

June 9, 2013

  
Lisa H. Davenport, RPR

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

Kenny Jackson, #350150, )  
 )  
Applicant, )

Case No. 2012-CP-02-1544

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )  
 )  
Respondent. )

3.13.13  
Liz Godard  
C.C.P. & G.S. 830  
Anita Knoepfle  
Deputy Clerk

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an application for post-conviction relief filed June 26, 2012. The Respondent made its Return on September 11, 2012. An evidentiary hearing into the matter was convened on January 23, 2013, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Ziva P. Bruckner, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted during the March 2012 term of the Aiken County Grand Jury for two counts of Causing Death by Operating a Vehicle While under the Influence of Drugs or Alcohol (2012-GS-02-0446, -0447). Charles H.S. Lyons, III, Esquire, represented him. On March 14, 2012, Applicant appeared before the Honorable George C. James, Jr., where he pled guilty as indicted to both counts. Judge James sentenced Applicant to twenty-three years imprisonment and a \$25,100 fine for each count, with the sentences to run concurrently. Applicant did not appeal his convictions or sentence.

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

VMC  
AUG 23 2013  
Liz Godard  
C.C.P. & G. A., Aiken County, S.C.  
Deputy Clerk

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

1. Due Process Violation;
2. Newly and after Discovered Evidence;
3. Ineffective Assistance of Counsel;
4. Belated Appeal; and
5. Subject Matter Jurisdiction.

At the evidentiary hearing, Applicant proceeded forward on allegations that Counsel was ineffective for advising Applicant that he would receive a sentence of no more than twenty years if he pled guilty and for failing to file an appeal on his behalf. Applicant abandoned and presented no evidence in regards to his allegations of Due Process Violation, Newly and After Discovered Evidence, and Subject matter jurisdiction. These allegations are deemed waived and are denied and dismissed with prejudice.

#### SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Applicant's plea counsel, Charles H.S. Lyons, III (herein "Counsel"). This Court also had before it a copy of the Applicant's guilty plea transcript, the records of the Aiken County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that he retained Counsel and met with him three times prior to his guilty plea. He testified that he reviewed all discovery materials with Counsel and discussed possible defenses with Counsel. He testified that he was unable to give Counsel any potential witnesses that could be called in his defense. Applicant testified that he wanted to plead guilty and did not want to proceed to trial. Applicant testified that he discussed plea offers made by the State with Counsel and Counsel assured him that he would receive no

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more than twenty years if he entered a guilty plea. Applicant acknowledged that Counsel and the plea court both advised him that each charge carried up to twenty-five years imprisonment and he could be sentenced up to fifty years imprisonment. However, Applicant testified that he only pled guilty because Counsel advised him that he would receive a sentence of no more than twenty years.

Applicant testified that he admitted to the plea court while under oath that he did drink prior to driving and that he was guilty. Applicant testified that he is indeed guilty. Applicant testified that he apologized to the victims during his guilty plea. Applicant testified that he informed the plea court he was satisfied with Counsel's representation and that Counsel had done everything within reason to properly represent him. Applicant testified that it was his decision to waive his constitutional rights and plead guilty.

Following Applicant's testimony, the State presented testimony from Counsel. Counsel testified that he has been practicing law for approximately twenty-six years and that at least fifty-percent of his practice is comprised of criminal defense work. He testified that he was retained to represent Applicant shortly after the incident giving rise to the charges. He testified that he met with Applicant "a number of times" at his office, as well as corresponded with him by phone and letter. Counsel testified that he discussed possible defenses with Applicant as well as trying to suppress evidence that could be introduced against him if he proceeded to trial. Counsel testified that he informed Applicant that the sentence range for each charge was one to twenty-five years for each count and that the court could run these sentences consecutively, which could result in a sentence of up to fifty years imprisonment.

Counsel testified that the evidence against evidence was strong, including a Blood Alcohol level of .222 BAC. Additionally, Counsel testified that Applicant gave a statement to

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law enforcement admitting that he had been drinking before driving and that numerous eyewitnesses had seen him driving erratically immediately before the fatal wreck. Counsel testified that he felt the State would be able to prove guilt beyond a reasonable doubt if Applicant proceeded to trial and he advised his client of his professional opinion. Counsel testified that he spoke with witnesses, watched Applicant's video interview with law enforcement, and thoroughly reviewed his blood testing with the hope of suppressing it. Counsel testified that Applicant informed him he wished to forego a trial and enter a guilty plea, which he felt was in his client's best interest.

Counsel testified that he met with the prosecuting Assistant Solicitor, Samuel B. Grimes, Jr., and Judge James in chambers prior to the guilty plea. Counsel testified that Judge James told counsels that he would give Applicant concurrent sentences if he pled guilty. Counsel testified that he informed Applicant that based on Judge James' assurances, he would receive a sentence of between one to twenty-five years if he pled guilty. Counsel elaborated that he told Applicant that a sentence of under twenty-five years would be "very gracious." Counsel testified adamantly that he never told applicant that he would receive a twenty year sentence, stating he has "absolutely no doubt [that] he did not tell him he would get twenty years or anything less than twenty-five years." Counsel testified that Applicant had no defense and he fully expected Applicant would receive a twenty-five year sentence. Counsel testified that he thinks Judge James' sentence of twenty-three years imprisonment was "very, very fair in light of the circumstances with two people dead."

Counsel testified that he discussed Applicant's appellate rights with him prior to his guilty plea and that the plea court also reviewed his right to appeal during the plea colloquy.



Counsel testified that Applicant never asked him to file an appeal on his behalf, nor did any member of Applicant's family request he file an appeal on Applicant's behalf.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

#### *Ineffective Assistance of Counsel*

Applicant alleges that Counsel was ineffective for informing Applicant that he would receive a sentence of no more than twenty years imprisonment if he pled guilty and for failing to file an appeal on his behalf. In a post-conviction relief action, the Applicant has the burden of proving the allegations in his application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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

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professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

*Counsel was ineffective for advising Applicant he would receive a sentence of no more than twenty years imprisonment*

After careful review based on the standard discussed above, this Court finds that the Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant for informing Applicant that he would receive a sentence of no more than twenty years imprisonment. Counsel's credible testimony reveals that he informed Applicant of the sentence range for the charges, never promised Applicant he would receive a particular sentence of twenty years or less, and that Applicant understood his sentence exposure prior to entering his guilty plea. The guilty plea transcript reflects that the plea court asked both Counsel and Applicant if they were aware that each charge had a sentence range of up to twenty-five years and that

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Applicant told the plea court while under oath that he understood he could receive a sentence of up to twenty-five years on each count. The record also reflects that there was no recommendation or negotiation and that Applicant was pleading "straight up" without any promise of a particular sentence, which Applicant recognized under oath. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel, as the Applicant stated numerous times during the evidentiary hearing that he was guilty and that he did not want to proceed to trial on these charges. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

*Counsel was ineffective for failing to file a direct appeal*

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

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appeal from a guilty plea would arise when the defendant inquires about an appeal.” Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Counsel testified that he never received any requests from Applicant, or any member of Applicant’s family, to file an appeal on his behalf and had no reason to believe that Applicant wished to file an appeal. Counsel testified that he reviewed Applicant’s right to appeal with him prior to his guilty plea and that the plea court also reviewed these rights during the guilty plea. This Court finds that Counsel’s performance was reasonable and effective. Therefore, this Court finds that this allegation must be denied and dismissed.

#### CONCLUSION

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


This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel’s assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant’s behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

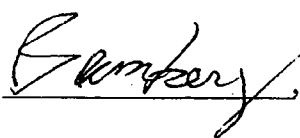


**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED** this 6 day of March, 2013.

  
\_\_\_\_\_  
DOYET A. EARLY, III  
Presiding Judge  
Second Judicial Circuit

  
\_\_\_\_\_, South Carolina

STATE OF SOUTH CAROLINA )

COUNTY OF AIKEN )

Kenny Jackson, 350150, )  
 Plaintiff )

v. )

State Of South Carolina )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
 2012-CP-02-1544

MOTION AND ORDER INFORMATION  
 FORM AND COVER SHEET

Plaintiff's Attorney: Ziva P. Bruckner, Bar No. Address: 2604 Commons Blvd Augusta, GA 30909-2080 phone: (706) 722-7542 fax: e-mail: other:	Defendant's Attorney: Megan E. Harrigan, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<u>Megan E. Harrigan</u> Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	<u>March 4, 2013</u> Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	_____ JUDGE  CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____  <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	Date Filed: <u>3.13.13</u> <u>Lynn A. Harland</u> CC.C.P.&G.S. <u>Anita Knoepfle</u> Deputy Clerk

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP0201544

Kenny Jackson	South Carolina State Of
<b>PLAINTIFF(S)</b>	<b>DEFENDANT(S)</b>

<b>Submitted by:</b>	<b>Attorney for:</b> <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
----------------------	--

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRCP;
  - Rule 41(a), SCRCP (Vol. Nonsuit);
  - Rule 43(k), SCRCP (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRCP;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**     See attached order; (formal order to follow)     Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk:

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